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Contents

Federal Register

Vol. 83, No. 113

Tuesday, June 12, 2018

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Administrative Orders:

Notices:

Notice of June 8, 2018: 27287

7 CFR

51.....27289

52.....27289

12 CFR

611.....27486

615.....27486

17 CFR

49.....27410

Proposed Rules:

1.....27444

19 CFR

12.....27380

113.....27380

122.....27380

141.....27380

178.....27380

192.....27380

26 CFR

Proposed Rules:

1.....27302

32 CFR

287.....27290

33 CFR

165.....27290

40 CFR

372.....27291

48 CFR

Proposed Rules:

15.....27303

50 CFR

622 (2 documents) 27297, 27300

Proposed Rules:

300.....27305

Federal Register
Vol. 83, No. 113
Tuesday, June 12, 2018

Presidential Documents

Title 3—

The President

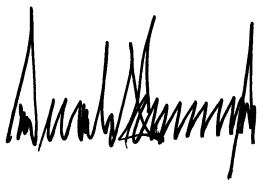
Notice of June 8, 2018

Continuation of the National Emergency With Respect to the Actions and Policies of Certain Members of the Government of Belarus and Other Persons To Undermine Democratic Processes or Institutions of Belarus

On June 16, 2006, by Executive Order 13405, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of certain members of the Government of Belarus and other persons to undermine Belarus's democratic processes or institutions, manifested in the fundamentally undemocratic March 2006 elections; to commit human rights abuses related to political repression, including detentions and disappearances; and to engage in public corruption, including by diverting or misusing Belarusian public assets or by misusing public authority.

The actions and policies of certain members of the Government of Belarus and other persons continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on June 16, 2006, and the measures adopted on that date to deal with that emergency, must continue in effect beyond June 16, 2018. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13405.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
June 8, 2018.

[FR Doc. 2018–12719
Filed 6–11–18; 8:45 am]
Billing code 3295–F8–P

Rules and Regulations

Federal Register
Vol. 83, No. 113
Tuesday, June 12, 2018

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 51 and 52

[Doc. No. AMS–SC–16–0063 FIR]

Inspection Application Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting as a final rule, without change, an interim rule that amended the inspection, certification and standards requirements for fresh fruits, vegetables and other products and processed fruits and vegetables, processed products and certain other processed food products by adding an option to allow for electronic submissions of inspection applications. The interim rule also eliminated outdated terminology that referenced submission of inspection applications by telegraph.

DATES: Effective June 13, 2018.

FOR FURTHER INFORMATION CONTACT: Francisco Grazette, USDA, AMS, SCP, SCI Division, 1400 Independence Avenue SW, Room 1536, Stop 0240, Washington, DC 20250–0250; telephone: (202) 720–5870; fax: (202) 720–0393; email: *Francisco.Grazette@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Section 203(c) (7 U.S.C. 1622(c)) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) (Act of 1946), as amended, directs and authorizes the Secretary of Agriculture to develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.

Parts 51 and 52 of title 7 of the Code of Federal Regulations specify the inspection, certification and standard requirements for fresh and processed fruit, vegetable and specialty crops to ensure uniformity and consistency.

USDA is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect and does not preempt any state or local law, regulation, or policy unless it presents an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

This rule continues in effect an interim rule that amended the inspection, certification and standards requirements for fresh fruits, vegetables and other products and processed fruits and vegetables, processed products and certain other processed food products (7 CFR parts 51 and 52) by adding an option to allow for electronic submissions of inspection applications. This rule also continues in effect a change that eliminated outdated terminology referencing the telegraph. These changes were administrative in nature and did not impose any new requirements on applicants.

Pursuant to Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (Act of 1937), whenever certain commodities are regulated under Federal marketing orders, imports of those commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality or maturity requirements as those in effect for domestically produced commodities. The Act of 1937 also authorizes USDA to perform inspections and other related functions (such as commodity sampling) on those commodities and to certify whether these requirements have been met.

AMS's Specialty Crops Inspection (SCI) Division performs the inspections and other related functions on Section 8e imports in accordance with its authority under the Act of 1946.

SCI Division amended 7 CFR parts 51 and 52 to add the ability to submit initial inspection requests electronically and eliminate terminology referencing the telegraph. Individuals desiring to apply for an inspection for applicable fruit, vegetable, and specialty crop imports must complete and file AMS's form SC–357, *Initial Inspection Request for Regulated Imported Commodities,* in writing or electronically, to notify AMS of its need for an inspection.

Amending parts 51 and 52 of title 7 to provide for the electronic filing of the application for inspection supports the International Trade Data System (ITDS), a system that streamlines the export and import process for America's businesses. Implementation of ITDS allows businesses to electronically submit import and export cargo data required by U.S. Customs and Border Protection (CBP) and its Partner Government Agencies (PGAs) through a ''single window'' concept using CBP's Automated Commercial Environment (ACE) system.

The update to the inspection, certification and standards to allow for electronic submission of inspection applications meets CBP's requirement for ITDS.

In an interim rule published in the **Federal Register** on December 21, 2016, and effective on December 22, 2016 (81 FR 93571, Doc. No. AMS–SC–16–0063 IR), §§ 51.6 and 52.7 were amended by adding the option for electronic submission of inspection applications and removing reference to submission by telegraph.

Final Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of no more than $750,000 and small agricultural service firms are defined as those having annual receipts of no more than $7.5 million (13 CFR 121.201). Under these definitions, AMS estimates the number of companies affected is approximately 60,000 with 24,000, or 40%, of the companies considered small businesses. AMS does not foresee any effect on

members of the industry as a result of this final rule.

AMS made these administrative changes to allow for the use of current technology by allowing the application for inspection to be submitted electronically and eliminating references to filing applications for service by telegraph.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection requirements for the SC–357, *Initial Inspection Request for Regulated Imported Commodities,* was previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0125, effective August 1, 2016 (Regulations Governing Inspection Certification, of Fresh & Processed Fruits, Vegetables & Other Products 7 CFR part 51 & 52). No changes are necessary in those requirements as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

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

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

Comments on the interim rule were required to be received on or before March 23, 2017. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *https://www.regulations.gov/document?D=AMS_FRDOC_0001-1559.*

This action also affirms information contained in the interim rule concerning Executive Orders 12866, 12988, 13175, and 13563; the Paperwork Reduction Act (44 U.S.C. chapter 35); and the E-Gov Act (44 U.S.C. 101).

List of Subjects

7 CFR Part 51

Food grades and standards, Fruits, Nuts, Reporting and recordkeeping, Vegetables.

7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruits, Reporting and recordkeeping requirements, Vegetables.

■ Accordingly, the interim rule that amended 7 CFR parts 51 and 52, published at 81 FR 93571 on December 21, 2016, is adopted as a final rule without change.

Dated: June 6, 2018.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2018–12538 Filed 6–11–18; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 287

[Docket ID: DOD–2017–OS–0019]

RIN 0790–AJ60

Defense Information Systems Agency Freedom of Information Act Program

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Final rule.

SUMMARY: This final rule removes DoD's regulation concerning the Defense Information Systems Agency (DISA) Freedom of Information Act program. On February 6, 2018, the DoD published a FOIA program final rule as a result of the FOIA Improvement Act of 2016. When the DoD FOIA program rule was revised, it included DoD component information and removed the requirement for component supplementary rules. The DoD now has one DoD-level rule for the FOIA program that contains all the codified information required for the Department. Therefore, this part can be removed from the CFR.

DATES: This rule is effective on June 12, 2018.

FOR FURTHER INFORMATION CONTACT: Robin Berger at 301–225–6104.

SUPPLEMENTARY INFORMATION: It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on removing DoD internal policies and procedures that are publically available on the Department's website.

DISA internal guidance concerning the implementation of the FOIA within DISA will continue to be published in DISA Instruction 630–225–8 (available at *http://disa.mil/~/media/Files/DISA/About/Publication/Instruction/di6302258.pdf*).

This rule is one of 14 separate DoD FOIA rules. With the finalization of the DoD-level FOIA rule at 32 CFR part 286, the Department is eliminating the need for this separate FOIA rule and reducing costs to the public as explained in the preamble of the DoD-level FOIA rule published at 83 FR 5196–5197.

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review,'' therefore, E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs'' does not apply.

List of Subjects in 32 CFR Part 287

Freedom of information.

PART 287—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 287 is removed.

Dated: June 7, 2018.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–12569 Filed 6–11–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2018–0534]

Safety Zones; Annual Fireworks Displays Within the Sector Columbia River Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce regulations for two safety zones at various locations in the Sector Columbia River Captain of the Port zone. This action is necessary to provide for the safety of life on these navigable waters during fireworks displays. During the times these safety zone regulations are subject to enforcement, persons and vessels are prohibited from being in the safety zone unless authorized by the Captain of the Port Sector Columbia River or a designated representative.

DATES: The regulations in 33 CFR 165.1315 will be enforced for the safety zones identified in the **SUPPLEMENTARY INFORMATION** section below for the dates and times in July 2018 specified in this document.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LCDR Laura Springer, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503–240–9319, email *msupdxwwm@uscg.mil.*

SUPPLEMENTARY INFORMATION: These following two safety zones found in 33

CFR 165.1315 will be activated and thus subject to enforcement at least 1 hour before and 1 hour after the duration of the event each day as listed in the following Table:

TABLE—DATES AND DURATIONS IN 2018 FOR EVENTS LISTED IN 33 CFR 165.1315 AND THE LOCATION OF THESE EVENTS WITHIN THE SECTOR COLUMBIA RIVER CAPTAIN OF THE PORT ZONE

Event name (typically)	Event location	Date and duration of event	Latitude	Longitude
Gardiner 4th of July	Gardiner, OR	July 4, 2018, 9:15 p.m. to 10:15 p.m	43°43′55″ N	124°06′48″ W
Ilwaco July 4th Committee Fireworks/Independence Day at the Port.	Ilwaco, WA	July 7, 2018, 10 p.m. to 10:30 p.m	46°18′17″ N	124°02′00″ W

All coordinates are listed in reference Datum NAD 1983. These safety zones cover waters within a 450-yard radius of the barge or other launch site with a ''FIREWORKS—DANGER—STAY AWAY'' sign at the locations indicated by latitude and longitude coordinates listed in the table above.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of these enforcement periods via the Local Notice to Mariners.

Dated: June 6, 2018.

D.F. Berliner,

Captain, U.S. Coast Guard, Acting Captain of the Port, Sector Columbia River.

[FR Doc. 2018–12623 Filed 6–11–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA–HQ–TRI–2016–0222; FRL–9979–16]

RIN 2070–AK15

Addition of Nonylphenol Ethoxylates Category; Community Right-to-Know Toxic Chemical Release Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is adding a nonylphenol ethoxylates (NPEs) category to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act (PPA). EPA is adding this chemical category to the EPCRA section 313 list because EPA has determined that NPEs meet the EPCRA section 313(d)(2)(C) toxicity criteria. Specifically, EPA has determined that short-chain NPEs are highly toxic to aquatic organisms and longer chain NPEs, while not as toxic as short-chain NPEs, can break down in the environment to short-chain NPEs and nonylphenol, both of which are highly toxic to aquatic organisms.

DATES:

Effective date: This final rule is effective November 30, 2018.

Applicability date: This final rule will apply for the reporting year beginning January 1, 2019 (reports due July 1, 2020).

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–TRI–2016–0222. All documents in the docket are listed on *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.* Additional instructions on visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Daniel R. Bushman, Toxics Release Inventory Program Division (7410M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–0743; email: *bushman.daniel@epa.gov.*

For general information contact: The Emergency Planning and Community Right-to- Know Hotline; telephone numbers: toll free at (800) 424–9346 (select menu option 3) or (703) 348–5070 in the Washington, DC Area and International; or go to *https://www.epa.gov/home/epa-hotlines.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or otherwise use NPEs. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Facilities included in the following NAICS manufacturing codes (corresponding to Standard Industrial Classification (SIC) codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211130*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512230*, 512250*, 519130*, 541713*, 541715* or 811490*. *Exceptions and/or limitations exist for these NAICS codes.
- Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (corresponds to SIC code 12, Coal Mining (except 1241)); or 212221, 212222, 212230, 212299 (corresponds to SIC code 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221118, 221121, 221122, 221330 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (corresponds to SIC codes 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (limited to facilities previously classified in SIC code 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC code 5171, Petroleum Bulk Terminals and Plants); or 562112 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC code 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920

(limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*) (corresponds to SIC code 4953, Refuse Systems).

- Federal facilities.

To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What action is the Agency taking?

EPA is adding a NPEs category to the list of toxic chemicals subject to reporting under EPCRA section 313 and PPA section 6607. EPA is adding this chemical category to the EPCRA section 313 list because EPA believes NPEs meet the EPCRA section 313(d)(2)(C) toxicity criteria.

C. What is the Agency's authority for taking this action?

This action is issued under EPCRA sections 313(d) and 328, 42 U.S.C. 11023 *et seq.,* and PPA section 6607, 42 U.S.C. 13106. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986.

Section 313 of EPCRA, 42 U.S.C. 11023, requires certain facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting threshold levels to report their environmental releases and other waste management quantities of such chemicals annually. These facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the PPA, 42 U.S.C. 13106. Congress established an initial list of toxic chemicals that was comprised of 308 individually listed chemicals and 20 chemical categories.

EPCRA section 313(d) authorizes EPA to add or delete chemicals from the list and sets criteria for these actions. EPCRA section 313(d)(2) states that EPA may add a chemical to the list if any of the listing criteria in EPCRA section 313(d)(2) are met. Therefore, to add a chemical, EPA must demonstrate that at least one criterion is met, but need not determine whether any other criterion is met. Conversely, to remove a chemical from the list, EPCRA section 313(d)(3) dictates that EPA must demonstrate that none of the criteria in ECPRA section 313(d)(2) are met. The listing criteria in EPCRA section 313(d)(2)(A)–(C) are as follows:

- The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.
- The chemical is known to cause or can reasonably be anticipated to cause in humans: Cancer or teratogenic effects, or serious or irreversible reproductive dysfunctions, neurological disorders, heritable genetic mutations, or other chronic health effects.
- The chemical is known to cause or can be reasonably anticipated to cause, because of its toxicity, its toxicity and persistence in the environment, or its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

EPA often refers to the EPCRA section 313(d)(2)(A) criterion as the ''acute human health effects criterion;'' the EPCRA section 313(d)(2)(B) criterion as the ''chronic human health effects criterion;'' and the EPCRA section 313(d)(2)(C) criterion as the ''environmental effects criterion.''

EPA published in the **Federal Register** of November 30, 1994 (59 FR 61432) (FRL–4922–2), a statement clarifying its interpretation of the EPCRA section 313(d)(2) and (d)(3) criteria for modifying the EPCRA section 313 list of toxic chemicals.

II. Summary of Proposed Rule

A. What chemical category did EPA propose to add to the EPCRA section 313 list of toxic chemicals?

As discussed in the proposed rule of November 16, 2016 (81 FR 80624) (FRL–9951–01), EPA proposed to add a NPEs category to the EPCRA section 313 list of toxic chemicals. NPEs are nonionic surfactants containing a branched nine-carbon alkyl chain bound to phenol and a chain of repeating ethoxylate units ($C_9H_{19}C_6H_4(OCH_2CH_2)_nOH$). The number of repeating ethoxylate units (n) can range from 1 to 100. NPEs were proposed to be listed as a category that would include the thirteen NPEs that currently appear on the Toxic Substances Control Act inventory (*https://www.epa.gov/tsca-inventory*). The NPEs category would be defined as Nonylphenol Ethoxylates and would only include those chemicals covered by the following Chemical Abstracts Service Registry Numbers (CASRNs):

- 7311–27–5; Ethanol, 2-[2-[2-[2-[2- (4-nonylphenoxy) ethoxy] ethoxy]ethoxy]-
- 9016–45–9; Poly(oxy-1,2-ethanediyl), α-(nonylphenyl)-ω-hydroxy-
- 20427–84–3; Ethanol, 2-[2-(4-nonylphenoxy)ethoxy]-
- 26027–38–3; Poly(oxy-1,2-ethanediyl), α-(4-nonylphenyl)-ω-hydroxy-
- 26571–11–9; 3,6,9,12,15,18,21,24-Octaoxahexacosan-1-ol, 26-(nonylphenoxy)-
- 27176–93–8; Ethanol, 2-[2-(nonylphenoxy)ethoxy]-
- 27177–05–5; 3,6,9,12,15,18,21-Heptaoxatricosan-1-ol, 23-(nonylphenoxy)-
- 27177–08–8; 3,6,9,12,15,18,21,24,27-Nonaoxanonacosan-1-ol, 29-(nonylphenoxy)-
- 27986–36–3; Ethanol, 2-(nonylphenoxy)-
- 37205–87–1; Poly(oxy-1,2-ethanediyl), α-(isononylphenyl)-ω-hydroxy-
- 51938–25–1; Poly(oxy-1,2-ethanediyl), α-(2-nonylphenyl)-ω-hydroxy-
- 68412–54–4; Poly(oxy-1,2-ethanediyl), α-(nonylphenyl)-ω-hydroxy-, branched
- 127087–87–0; Poly(oxy-1,2-ethanediyl), α-(4-nonylphenyl)-ω-hydroxy-, branched

B. What was EPA's rationale for proposing to list the NPEs category?

As discussed in the proposed rule of November 16, 2016 (81 FR 80624) (FRL–9951–01), EPA proposed to add short-chain NPEs to the EPCRA section 313 toxic chemical list because they are highly toxic to aquatic organisms with toxicity values well below 1 mg/L. Therefore, EPA believed that the evidence was sufficient for listing short-chain NPEs on the EPCRA section 313 toxic chemical list pursuant to EPCRA section 313(d)(2)(C) based on the available ecological toxicity data. Long-chain NPEs, while not as toxic as short-chain NPEs, are known to become more toxic as they degrade in the environment to produce products that include highly toxic short-chain NPEs and nonylphenol. Nonylphenol is even more toxic to aquatic organisms than short-chain NPEs and was added to the EPCRA section 313 toxic chemical list based on its toxicity to aquatic organisms of September 30, 2014 (79 FR 58686) (FRL–9915–59–OEI). As long-chain NPEs are a source of degradation products that are highly toxic to aquatic organisms, EPA believed that the evidence was also sufficient for listing long-chain NPEs on the EPCRA section 313 toxic chemical list pursuant to

EPCRA section 313(d)(2)(C) based on the available ecological toxicity and environmental fate data.

EPA stated that it did not believe that it was appropriate to consider exposure for chemicals that are highly toxic based on a hazard assessment when determining if a chemical can be added for environmental effects pursuant to EPCRA section 313(d)(2)(C) (*see* 59 FR 61440–61442). Therefore, in accordance with EPA's standard policy on the use of exposure assessments (*see* November 30, 1994 (59 FR 61432) (FRL–4922–2)), EPA stated that it did not believe that an exposure assessment was necessary or appropriate for determining whether NPEs meet the criteria of EPCRA section 313(d)(2)(C).

III. What comments did EPA receive on the proposed rule?

EPA received six comments on the proposed rule to add a NPEs category to the EPCRA section 313 list of toxic chemicals, three were anonymously submitted (References (Refs.) 1, 2, and 3). The comments received that were not anonymously submitted are from the following groups, the Alkylphenols & Ethoxylates Research Council (APERC) (Ref. 4), American Coatings Association (ACA) (Ref. 5), and Women's Voices for the Earth (Ref. 6). Two of the anonymous commenters supported the listing as did the Women's Voices for the Earth. One anonymous commenter only asked whether there were any exemptions or exceptions to the rule given its particular low-level use of NPEs (Ref. 2). ACA's comment requested that EPA delay the effective date of the final rule. The only extensive comments received were submitted by APERC, which opposes the listing based on their technical and legal interpretations. Summaries of the most significant comments and EPA's response are discussed here. The complete set of comments and EPA's detailed responses can be found in the response to comments document in the docket for this rulemaking (Ref. 7).

APERC stated that long-chain NPEs are not ''highly toxic'' to the aquatic environment, which EPA defined in the proposed rule and its supporting documents as ecotoxicity values below aquatic concentrations of 1 mg/L.

As EPA has previously stated, when considering toxicity alone under EPCRA 313(d)(2)(C), EPA typically limits it's consideration of highly toxic to those chemicals that cause acute aquatic toxicity at about 1 mg/L or less and chronic aquatic toxicity at 0.1 mg/L or less (76 FR 64022, October 17, 2011). The purpose of these values is not to determine which chemicals are toxic but rather to determine if exposure should be part of EPA's listing decision per its established exposure policy (59 FR 61432, November 30, 1994). However, these are not absolute values and they do not preclude consideration of other factors such as the environmental fate of the chemical. While not as toxic to aquatic organisms as nonylphenol and short-chain NPEs, as noted by the commenter, long-chain NPEs are still toxic to aquatic organisms. As EPA cited in the proposed rule, the longer-chain NPEs are toxic to aquatic organisms (Refs. 8 and 9). For an ethoxylate chain length of 5 reported toxicity values include a LC_{50} (*i.e.,* the concentration that is lethal to 50% of test organisms) of 3.6 milligrams per liter (mg/L) for Japanese killifish (*Oryzias latipes*) and LC_{50}s of 2.4–2.8 mg/L for bluegill sunfish (*Lepomis macrochirus*). For chain lengths of 9, toxicity ranged from a LC_{50} of 1.2 mg/L for *Mysidopsis bahia* to an EC_{50} (*i.e.,* the concentration that is effective in producing a sublethal response in 50% of test organisms) of 500 mg/L for green algae. Chain lengths of 50 were less toxic, for example an EC_{50} of >4,000 mg/L for emergence in mosquito larvae (*Culex pipiens*) was reported. Analysis of data from Hall (Table 2, Ref. 8) demonstrates a significant positive log-linear relationship between nonylphenol ethoxylate chain length (1.5 to 50) and acute 48-hour toxicity (LC_{50} values for 3 to 8-day old mysid shrimp (*M. bahia*)). Shrimp LC_{50}'s ranged from 0.11 mg/L for an ethoxylate chain length of 1.5 to greater than 4,110 mg/L for a chain length of 50. In general, the data indicate that toxicity of NPEs decreases as ethoxylate chain length increases, and vice versa. Because longer chain NPEs break down to shorter chain NPEs in the environment, they become more toxic. As noted in EPA's exposure policy, for chemicals that are low to moderately ecotoxic, EPA may consider exposure factors such as environmental fate (59 FR 61432, November 30, 1994). EPA's assessment of long-chain NPEs is that, depending on chain length, they are low to moderately toxic to aquatic organisms but that their environmental fate results in the formation of highly toxic nonylphenol and short-chain NPEs.

It is well documented that long-chain NPEs can readily degrade to nonylphenol and short-chain NPEs and thus are a primary source of these chemicals found in the environment (Ref. 10). As noted in the proposed rule:

> Nonylphenol ethoxylate biodegradation products include shorter chain NPEs and ethoxycarboxylates. (Refs. 9, 10, and 20). Nonylphenol ethoxycarboxylates are NPEs that terminate with a carboxylate group (-CO2H) rather than an alcohol group (-OH). Although not commonly observed under aerobic conditions, nonylphenol is a major metabolite of NPEs under anaerobic conditions (Refs. 9, 10, 21, 22, 23, 24, 25, 26, and 27) (81 FR 80626, November 16, 2016).

Releases of long-chain NPEs, therefore, are essentially releases of both nonylphenol and short-chain NPEs which are highly toxic to aquatic organisms. To ignore the available data on the environmental fate of NPEs would underestimate the potential impact long-chain NPEs can have on aquatic organisms.

APERC stated that listing the long-chain NPEs on the basis that they are a source of degradation products that are highly toxic to aquatic organisms is not consistent with the statutory language in EPCRA section 313(d)(2)(C). APERC stated that the language in EPCRA section 313(d)(2)(C) is clear in stating that only the hazard of the chemical to be listed is to be considered. APERC notes that the statutory language specifies that significant adverse effects to the environment should be based on a compound's toxicity, or its toxicity and persistence or its toxicity and bioaccumulation. APERC stated that the statutory language does not portend that listing of a chemical should be based on its degradation pathways or the toxicity of its degradation products. APERC also stated that where degradation intermediates themselves represent the hazard of interest that hazard is contingent on the conditions of disposal and treatment and ultimately the occurrence of those degradants in emissions and the receiving environment. They stated that disposal of long-chain NPEs in one treatment scenario may generate degradation products of concern whereas disposal in another treatment scenario may not generate any degradants of concern. APERC noted that reporting is already required for nonylphenol, which is the degradant of highest concern.

As noted in the previous comment response, long-chain NPEs are toxic to aquatic organisms and become more toxic as they degrade. In the 1994 chemical expansion final rule EPA made the following statements regarding degradation products:

> The EPCRA section 313(d)(2) listing criteria each state that EPA may list a chemical that it determines ''causes or may reasonably be anticipated to cause'' the relevant adverse human health or environmental effects. EPA believes that this language allows EPA to consider the effects

caused by the degradation products of a listed chemical. Where it may reasonably be anticipated, based on available data, that the listed chemical would readily degrade into another chemical that would cause the adverse effect, EPA is acting reasonably and within its grant of authority in listing the precursor to the toxic degradation product (59 FR 61432, November 30, 1994).

EPA believes that the ''toxicity'' of a chemical includes the toxicity of degradation products that are produced as a result of the chemical's release to the environment. These degradation products are a direct result of the chemical properties of the parent compound that determine its environmental fate, and as such should be considered part of the chemical's toxicity. As EPA has previously noted:

> Therefore, to meet its obligation under section 313(d)(2)(C), in cases where a chemical is low or moderately ecotoxic, EPA may look at certain exposure factors (including pollution controls, the volume and pattern of production, use, and release, *environmental fate,* as well as other chemical specific factors, and the use of estimated releases and modeling techniques) to determine if listing is reasonable, *i.e.,* could the chemical ever be present at high enough concentrations to cause a significant adverse effect upon the environment to warrant listing under section 313(d)(2)(C) [emphasis added] (59 FR 61432, November 30, 1994).

While the distribution and type of degradation products can vary based on disposal and environmental conditions, the environmental data clearly show that there are numerous disposal and environmental conditions that result in the degradation of NPEs to short-chain NPEs and nonylphenol (Ref. 4). Therefore, EPA has concluded that the long-chain NPEs to be listed, like the short-chain NPEs in the category, can reasonably be anticipated to cause a significant adverse effect on the environment of sufficient seriousness to warrant reporting.

APERC's statement that TRI reporting is already required for nonylphenol, which is the degradant of highest concern, is irrelevant to the issue of listing NPEs. The reports of releases of nonylphenol do not provide any information related to the presence of nonylphenol in the environment that results from the release and degradation of NPEs. Nonylphenol was not listed because it is a degradation product of NPEs, it is also used in the chemical industry, including as the starting material for the production of NPEs. Since nonylphenol is used in the chemical industry there is the potential for releases to the environment. With regard to listing chemicals that are degradation products, EPA has stated:

> If the degradation product meets the toxicity criteria of EPCRA section 313, the precursor chemical may be considered for listing on EPCRA section 313. The degradation product would not be considered for listing on EPCRA section 313 because a facility subject to EPCRA section 313 is only required to file a TRI report for a chemical that it manufactures, processes, or otherwise uses, within the facility boundaries (59 FR 1788, January 12, 1994).

If nonylphenol were present in the environment only as a degradation product of releases of NPEs, EPA would not have added it to the EPCRA section 313 toxic chemical list since no reports would have been filed.

ACA requested that EPA adopt a January 1, 2020 effective date for the addition of a NPEs category. ACA stated that their members require sufficient lead time to ensure that all facilities are able to comply with changes in regulations. ACA stated that even though some of their industry members are already subject to reporting, a significant amount of other industry members would now fall under the scope of the proposed rule and have to comply. ACA claimed that the January 1, 2018 compliance date would not give their members adequate time to account for and report NPEs under the regulations. ACA also stated that several of their industry members are planning on reformulating their products to lower or eliminate the use of designated NPEs altogether, rather than become subject to the new reporting requirements. ACA stated that those facilities intend to phase out the use of NPEs and replace them with safer alternative chemicals, or lower their usage below the reporting threshold. ACA noted that regardless of the reasoning, reformulation takes a substantial amount of time and increases cost for companies. ACA claims that therefore, their industry members need an extended effective date of January 1, 2020 to reformulate their products.

EPCRA 313(d)(4) provides the timing for the effective date for a change to the EPCRA section 313 list of toxic chemicals:

> (4) Effective Date.—Any revision made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any revision made on or after December 1 of any calendar year and before January 1 of the next calendar year shall take effect beginning with the calendar year following such next calendar year.

If a rule is finalized by November 30 of a calendar year, then its effective date is January 1 of the following year. However, reports for that year are not due to EPA until July 1 of the following year, which would be at least 19 months from the date the final rule was published. Nineteen months should be more than enough time for facilities to make reasonable estimates of releases and waste management quantities for chemicals that they manufacture, process or otherwise use. The commenter did not provide any information on how many facilities would be new reporters under EPCRA section 313, however, EPA's economic analysis estimated that only 8 facilities would be new reporters so most facilities would be familiar with the reporting requirements (Ref. 11). Even when EPA added nearly 300 chemicals to the EPCRA section 313 chemical list, the effective date was not extended (note the final rule was published in November 1994 with the first reports due July 1, 1996). The final rule for the addition of NPEs is being published before November 30 of 2018, which makes the effective date for reporting purposes January 1, 2019, with the first reports due July 1, 2020. This should be more than enough time for facilities to prepare for reporting.

Further, reports from facilities that choose to reformulate products to lower or eliminate the use of NPEs would provide useful information to data users, including industry stakeholders. A key component of EPCRA section 313 reporting includes information on source reduction activities that reduce the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, energy recovery, treatment, or disposal. Data that demonstrates or fails to demonstrate anticipated downward trends alongside information on activities conducted to phase out the use of NPEs is information of high utility and can help spur other facilities to reduce their use of NPEs.

IV. Summary of Final Rule

EPA is finalizing the addition of a NPEs category to the EPCRA section 313 list of toxic chemicals. EPA has determined that NPEs meet the listing criteria under EPCRA section 313(d)(2)(C). The NPEs category will be defined as: Nonylphenol Ethoxylates (This category includes only those chemicals covered by the CAS numbers listed here):

- 7311–27–5; Ethanol, 2-[2-[2-[2-(4-nonylphenoxy)ethoxy] ethoxy]ethoxy]-
- 9016–45–9; Poly(oxy-1,2-ethanediyl), α-(nonylphenyl)-ω-hydroxy-
- 20427–84–3; Ethanol, 2-[2-(4-nonylphenoxy)ethoxy]-

- 26027–38–3; Poly(oxy-1,2-ethanediyl), α-(4-nonylphenyl)-ω-hydroxy-
- 26571–11–9; 3,6,9,12,15,18,21,24-Octaoxahexacosan-1-ol, 26-(nonylphenoxy)-
- 27176–93–8; Ethanol, 2-[2-(nonylphenoxy)ethoxy]-
- 27177–05–5; 3,6,9,12,15,18,21-Heptaoxatricosan-1-ol, 23-(nonylphenoxy)-
- 27177–08–8; 3,6,9,12,15,18,21,24,27-Nonaoxanonacosan-1-ol, 29-(nonylphenoxy)-
- 27986–36–3; Ethanol, 2-(nonylphenoxy)-
- 37205–87–1; Poly(oxy-1,2-ethanediyl), α-(isononylphenyl)-ω-hydroxy-
- 51938–25–1; Poly(oxy-1,2-ethanediyl), α-(2-nonylphenyl)-ω-hydroxy-
- 68412–54–4; Poly(oxy-1,2-ethanediyl), α-(nonylphenyl)-ω-hydroxy-, branched
- 127087–87–0; Poly(oxy-1,2-ethanediyl), α-(4-nonylphenyl)-ω-hydroxy-, branched

V. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not itself physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. Anonymous public comment. November 16, 2016. EPA–HQ–TRI–2016–0222–0139.
2. Anonymous public comment. November 17, 2016. EPA–HQ–TRI–2016–0222–0140.
3. Anonymous public comment. December 6, 2016. EPA–HQ–TRI–2016–0222–0143.
4. Comments submitted by Alkylphenols and Ethoxylates Research Council (APERC). January 17, 2017. EPA–HQ–TRI–2016–0222–0144.
5. Comments submitted by Raleigh Davis, Assistant Director, Environmental Health and Safety and Rhett Cash, Counsel, Government Affairs, American Coatings Association (ACA). January 13, 2017. EPA–HQ–TRI–2016–0222–0142.
6. Comments submitted by Alexandra Scranton, Director, Science and Research, Women's Voices for the Earth. November 28, 2016. EPA–HQ–TRI–2016–0222–0141.
7. USEPA, OPPT. Response to Comments Received on the November 16, 2016 Proposed Rule (81 FR 80624): Addition of Nonylphenol Ethoxylates Category; Community Right-to-Know Toxic Chemical Release Reporting. U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics. May 31, 2018.
8. Hall, W.S., M.B. Patoczka, R.J. Mirenda, B.A. Porter, and E. Miller. 1989. Acute toxicity of industrial surfactants to Mysidopsis bahia. Arch. Environ. Contam. Toxicol. 18: 765–772. 44.
9. Servos, M.R. 1999. Review of the aquatic toxicity, estrogenic responses and bioaccumulation of alkylphenols and alkylphenol polyethoxylates. Water Qual. Res. J. Canada 34: 123–177.
10. USEPA, 2016. Chemistry and Environmental Fate of Nonylphenol Ethoxylates (NPEs). May 10, 2016.
11. USEPA, OPPT. Economic Analysis of the Final Rule to Add Nonylphenol Ethoxylates to the EPCRA Section 313 List of Toxic Chemicals. March 21, 2017.

VI. What are the statutory and Executive Order reviews associated with this action?

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

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This action does not contain any new information collection requirements that require additional approval by OMB under the PRA, 44 U.S.C. 3501 *et seq.* OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2025–0009 and 2050–0078. Currently, the facilities subject to the reporting requirements under EPCRA section 313 and PPA section 6607 may use either EPA Toxic Chemicals Release Inventory Form R (EPA Form 1B9350–1), or EPA Toxic Chemicals Release Inventory Form A (EPA Form 1B9350–2). The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For the Form A, EPA established an alternative threshold for facilities with low annual reportable amounts of a listed toxic chemical. A facility that meets the appropriate reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternative manufacture, process, or otherwise use threshold of 1 million pounds per year of the chemical, provided that certain conditions are met, and submit the Form A instead of the Form R. In addition, respondents may designate the specific chemical identity of a substance as a trade secret pursuant to EPCRA section 322, 42 U.S.C. 11042, 40 CFR part 350.

OMB has approved the reporting and recordkeeping requirements related to Forms A and R, supplier notification, and petitions under OMB Control number 2025–0009 (EPA Information Collection Request (ICR) No. 1363) and those related to trade secret designations under OMB Control 2050–0078 (EPA ICR No. 1428). As provided in 5 CFR 1320.5(b) and 1320.6(a), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers relevant to EPA's regulations are listed in 40 CFR part 9 or 48 CFR chapter 15, and displayed on the information collection instruments (*e.g.,* forms, instructions).

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* The small entities subject to the requirements of this action are small manufacturing facilities. The Agency has determined that of the 178 entities estimated to be impacted by this action, 161 are small businesses; no small governments or small organizations are expected to be affected by this action. All 161 small businesses affected by this action are estimated to incur annualized cost impacts of less than 1%. Thus, this action is not expected to have a significant adverse economic impact on a substantial number of small entities. A more detailed analysis of the impacts on small entities is located in EPA's economic analysis (Ref. 11).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action is not subject to the requirements of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. EPA did not identify any small governments that would be impacted by this action. EPA's economic analysis indicates that the

total cost of this action is estimated to be $619,627 in the first year of reporting (Ref. 11).

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards and is therefore not subject to considerations under section 12(d) of NTTAA, 15 U.S.C. 272 note.

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

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This regulatory action adds an additional chemical category to the EPCRA section 313 reporting requirements; it does not have any impact on human health or the environment. This action does not address any human health or environmental risks and does not affect the level of protection provided to human health or the environment. This action adds an additional chemical category to the EPCRA section 313 reporting requirements which provides information that government agencies and others can use to identify potential problems, set priorities, and help inform activities.

K. Congressional Review Act (CRA)

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

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: June 6, 1018.

Charlotte Bertrand,

Acting Principal Deputy Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, 40 CFR chapter I is amended as follows:

PART 372—[AMENDED]

■ 1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

■ 2. In § 372.65, add alphabetically an entry for ''Nonylphenol Ethoxylates (This category includes only those chemicals covered by the CAS numbers listed here)'' to the table in paragraph (c) to read as follows:

§ 372.65 Chemicals and chemical categories to which this part applies.

* * * * *

(c) * * *

Category name	Effective date
* * * * * * *	
Nonylphenol Ethoxylates (This category includes only those chemicals covered by the CAS numbers listed here)	1/1/19
7311–27–5 Ethanol, 2-[2-[2-[2-(4-nonylphenoxy)ethoxy]ethoxy]ethoxy]-	
9016–45–9 Poly(oxy-1,2-ethanediyl), α-(nonylphenyl)-ω-hydroxy-	
20427–84–3 Ethanol, 2-[2-(4-nonylphenoxy)ethoxy]-	
26027–38–3 Poly(oxy-1,2-ethanediyl), α-(4-nonylphenyl)-ω-hydroxy-	
26571–11–9 3,6,9,12,15,18,21,24-Octaoxahexacosan-1-ol, 26- (nonylphenoxy)-	
27176–93–8 Ethanol, 2-[2-(nonylphenoxy)ethoxy]-	
27177–05–5 3,6,9,12,15,18,21-Heptaoxatricosan-1-ol, 23-(nonylphenoxy)-	
27177–08–8 3,6,9,12,15,18,21,24,27-Nonaoxanonacosan-1-ol, 29-(nonylphenoxy)-	
27986–36–3 Ethanol, 2-(nonylphenoxy)-	
37205–87–1 Poly(oxy-1,2-ethanediyl), α-(isononylphenyl)-ω-hydroxy-	
51938–25–1 Poly(oxy-1,2-ethanediyl), α (2-nonylphenyl)-ω-hydroxy-	
68412–54–4 Poly(oxy-1,2-ethanediyl), α-(nonylphenyl)-ω-hydroxy-, branched	
127087–87–0 Poly(oxy-1,2-ethanediyl), α-(4-nonylphenyl)-ω-hydroxy-, branched	
* * * * * * *	

[FR Doc. 2018–12628 Filed 6–11–18; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 170413393–8487–02]

RIN 0648–BG83

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Modifications to Individual Fishing Quota Programs

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

ACTION: Final rule.

SUMMARY: NMFS implements management measures described in Amendment 36A to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Gulf) (Amendment 36A), as prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule requires owners or operators of federally permitted commercial Gulf reef fish vessels landing any commercially harvested, federally managed reef fish from the Gulf to provide notification prior to landing and to land at approved locations; requires shares from the red snapper individual fishing quota (IFQ) (RS–IFQ) program and the groupers and tilefishes IFQ (GT–IFQ) program that are in non-activated IFQ accounts to be returned to NMFS for redistribution; and allows NMFS to withhold a portion of IFQ allocation at the start of a fishing year equal to an anticipated commercial quota reduction. The purpose of this final rule is to improve compliance and increase management flexibility in the RS–IFQ and GT–IFQ programs, and increase the likelihood of achieving optimum yield (OY) for Gulf reef fish stocks managed under these programs.

DATES: This final rule is effective July 12, 2018, except for the addition of § 622.26(a)(2), which is effective on January 1, 2019.

ADDRESSES: Electronic copies of Amendment 36A, which includes an environmental assessment, a fishery impact statement, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis may be obtained from the Southeast Regional Office website at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2017/A36A_comm_IFQ/am36Aindex.html.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirement contained in this final rule may be submitted to Adam Bailey, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; or to the Office of Management and Budget (OMB) by email to *OIRA_submission@omb.eop.gov,* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Peter Hood, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *peter.hood@noaa.gov;* IFQ Customer Service, telephone: 1–866–425–7627, Monday through Friday from 8 a.m. to 4:30 p.m., eastern time.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery under the FMP. The FMP was prepared by the Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*).

On February 21, 2018, NMFS published a notice of availability (NOA) for Amendment 36A and requested public comment (83 FR 7447). On March 21, 2018, NMFS published a proposed rule for Amendment 36A and requested public comment (83 FR 12326). The proposed rule and Amendment 36A outline the rationale for the actions contained in this final rule. A summary of the management measures described in Amendment 36A and implemented by this final rule is provided below.

Management Measures Contained in This Final Rule

This final rule requires that the owner or operator of a commercial reef fish permitted vessel landing any commercially harvested Gulf reef fish, or Florida Keys/East Florida hogfish harvested in the Gulf, to notify NMFS between 3 and 24 hours in advance of landing and to land at approved locations. In addition, this final rule permanently returns to NMFS any IFQ shares contained in RS–IFQ or GT–IFQ accounts that have not been activated since the current web-based system was put in place on January 1, 2010. Finally, this final rule allows NMFS to withhold distribution of IFQ allocation on January 1, the beginning of the fishing year, if a reduction in the commercial quota for any IFQ species or multi-species group is expected to be implemented in that same fishing year. The amount of IFQ allocation withheld from distribution would equal the amount of the expected commercial quota reduction.

Landing Notification

This final rule expands the requirement for an advance landing notification to all commercial trips that land Gulf reef fish species or Florida Keys/East Florida hogfish harvested in the Gulf even if no IFQ species are on board.

The vessel owner or operator is required to notify NMFS at least 3 hours, but no more than 24 hours, in advance of landing on each trip. The landing notification will report the vessel identification number, the date and time of landing, and the approved landing location. This notification will be submitted via the vessel's existing onboard vessel monitoring system (VMS), but could also be submitted by other NMFS approved methods (*e.g.,* by phone) if they are developed at a later time. NMFS expects that requiring a notification in advance of landing any federally managed reef fish from the Gulf will help deter fishermen from illegally landing IFQ species or reporting IFQ species as another species (*e.g.,* red snapper reported as vermilion snapper), because law enforcement and port agents will be informed in advance of all reef fish trips returning to port and can meet vessels to inspect landings. If any IFQ species are to be landed, all regulations under the applicable IFQ program must be followed, including the more extensive advance notice of landing report. Only one IFQ advance landing notification covering both IFQ and non-IFQ Gulf reef fish species or Florida Keys/East Florida hogfish harvested in the Gulf is required on such a trip.

Additional information about approved landing locations and submitting additional landing locations to NMFS for approval is described later in this final rule.

Non-Activated IFQ Shareholder Accounts

This final rule also addresses RS–IFQ and GT–IFQ shareholder accounts that received shares through the initial apportionment when each IFQ program began, but the accounts have never been accessed by the shareholder since January 1, 2010, the initiation of the current IFQ system. NMFS and the Council have attempted to notify account holders with these non-activated IFQ accounts through phone calls, certified letters, and discussion at public meetings. Although shares in the non-activated accounts represent a small fraction of the total shares, annual allocation assigned to these non-activated IFQ accounts is not landed, and therefore, may prevent achieving

OY if not made available for use. This final rule will return the shares from non-activated RS–IFQ and GT–IFQ accounts to NMFS for redistribution. The Council intends to redistribute these shares to IFQ program participants through a mechanism determined in Amendment 36B to the FMP, which is currently under development.

For more information on how to activate an existing non-activated IFQ account before this final rule is effective, persons may call the IFQ Customer Service line at 1–866–425–7627, and select option 2 during weekday business hours of 8 a.m. to 4:30 p.m., eastern time (see **FOR FURTHER INFORMATION CONTACT** section). In April 2018, NMFS sent additional notification to holders of the non-activated IFQ accounts via certified mail to advise them of this action and to provide an opportunity for those individuals to activate their accounts.

Allocation

Finally, this final rule addresses how to distribute allocation to IFQ shareholders in years in which there is an anticipated reduction of the commercial quota. As a result of the time involved to develop documents, consider alternatives, and solicit public feedback, this situation would generally occur if the Council approved an action to reduce the commercial quota of any IFQ species or multi-species share category but NMFS could not complete the associated rulemaking before January 1, the start of the fishing year. Under the IFQ programs, annual allocation is distributed to IFQ shareholders on January 1, and most IFQ program participants begin to use or transfer their allocation early in each year. After shareholders begin transferring or landing allocation, NMFS is not able to retroactively withdraw allocation from shareholder accounts if a quota decrease became effective after the beginning of the fishing year. This final rule allows NMFS to anticipate a decrease in the quota of any IFQ species or multi-species share categories after the start of a fishing year and withhold distribution of quota equal to the amount of the expected decrease in commercial quota. NMFS would distribute the remaining portion of the annual allocation to shareholders on January 1. If a final rule to implement the associated commercial quota reduction is not effective by June 1 in the same fishing year, then NMFS would distribute the withheld quota back to the current shareholders, as determined on the date the withheld IFQ allocation is distributed.

Approved Landing Locations

As explained previously, this final rule requires vessel owners or operators on commercial trips who harvest non-IFQ Gulf reef fish species or Florida Keys/East Florida hogfish harvested in the Gulf to land at an approved landing location. To comply with this requirement, current and potential fishery participants may submit additional landing locations to NMFS for approval. Landing locations can be submitted by calling IFQ Customer Service at any time (see contact information above), or by submitting a Landing Location Request Form to NMFS, which is available from *http://sero.nmfs.noaa.gov/sustainable_fisheries/ifq/documents/pdfs/landing_location_request_form.pdf.*

A list of currently approved landing locations for the IFQ programs can be found at the IFQ website (*portal.southeast.fisheries.noaa.gov/cs/main.html*), under View Landing Locations. Any landing locations that have been approved for use in the IFQ programs will also be approved to land non-IFQ Gulf reef fish species or Florida Keys/East Florida hogfish harvested in the Gulf. Therefore, NMFS suggests persons check the list to determine if desired landing locations are currently in use prior to submitting a landing location for approval.

Approved landing locations must be publicly and freely accessible by land and water, and must have a street address or, if a particular landing location has no street address on record, global positioning system (GPS) coordinates for an identifiable geographic location provided in degrees and decimal minutes. Other criteria used by NOAA's Office of Law Enforcement (OLE) when approving locations are listed at 50 CFR 622.21(b)(5)(v) and 622.22(b)(5)(v), and are added by reference to § 622.26(a)(2)(v) through this final rule.

Comments and Responses

A total of 12 comments from 11 individuals were received on the notice of availability and proposed rule for Amendment 36A. Three comments supported the actions in Amendment 36A and the proposed rule and four comments were not relevant to Amendment 36A or the proposed rule. Specific comments related to the actions in Amendment 36A and the proposed rule are grouped as appropriate and summarized below, followed by NMFS' respective responses.

Comment 1: No change should be made to the IFQ program unless all Federal reef fish permit holders can vote on the issue.

Response: NMFS disagrees. The RS–IFQ and GT–IFQ programs were approved through referenda as required by the Magnuson-Stevens Act. However, there is no requirement that NMFS conduct a referendum before the Council revises the IFQ programs as implemented through this final rule. Federal Gulf reef fish permit holders as well as any other interested persons were provided opportunities to submit written comments or provide testimony at Council meetings and public hearings as part of the Council's decision-making process. Further, NMFS provided opportunities for public comment on Amendment 36A and the proposed rule. These opportunities for comment were solicited not only through the **Federal Register**, but also through Council and NMFS outreach materials. All comments received were considered by the Council and NMFS in the development of Amendment 36A and implementation of the associated regulations.

Comment 2: The landing notification requirement for trips with non-IFQ reef fish species is unnecessary, because VMS already documents vessel position, and there are already reporting requirements in place for fishermen and dealers. The landing notification requirement creates an additional burden for commercial fishermen that make only 1-day trips and will make landings more difficult.

Response: NMFS disagrees that the notification requirement is unnecessary. The 5-year review of the RS–IFQ program identified improving enforcement as a priority, and the landing notification is designed to aid enforcement of both IFQ programs. Requiring additional notification in advance of landing non-IFQ reef fish species or Florida Keys/East Florida hogfish harvested in the Gulf means that law enforcement will be alerted in advance of all reef fish trips returning to port, and therefore can meet vessels to inspect landings. This is expected to help to deter fishermen from illegally landing IFQ species or reporting IFQ species as another species (*e.g.,* red snapper reported as vermilion snapper). NMFS does not expect this requirement to result in a significant burden to fishermen. As described in Amendment 36A, from 2007 to 2015, 80 to 91 percent of trips landing reef fish species also landed IFQ species. Trips with IFQ species on board already have to provide an advance notice of landing under the regulations for the applicable IFQ program. Thus, this new

requirement will apply to a relatively small percentage of additional trips.

NMFS estimates that an advance notice of landing will take approximately 3 minutes to complete for each trip. Therefore, NMFS does not expect the advance landing notification to substantially affect fishing operations for Gulf reef fish. The landing notification may be amended, if necessary, as provided for in the regulatory text of this final rule at 50 CFR 622.26(a)(2)(iv). In addition, because the window for an advance landing notification is from 3 to 24 hours prior to landing, flexibility is provided for fishermen that make only daily trips to complete the advance landing notification when time permits.

Comment 3: Shares from non-activated RS–IFQ and GT–IFQ shareholder accounts returned to NMFS should be redistributed by auction or issued to owners of commercial Gulf reef fish permitted vessels who do not have shares or allocation.

Response: As stated in the NOA and proposed rule for Amendment 36A, the method for redistribution of the shares returned to NMFS is being considered in Amendment 36B. Amendment 36B is under development by the Council, which is currently considering alternatives for determining how shares should be redistributed and who should receive those shares.

Classification

The Regional Administrator for the NMFS Southeast Region has determined that this final rule is consistent with Amendment 36A, the FMP, the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. A description of this final rule, why it is being implemented, and the purposes of this final rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this preamble. The objectives of this rule are to prevent overfishing; to achieve, on a continuing basis, the OY from federally managed reef fish stocks; and to rebuild the red snapper stock that has been determined to be overfished.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) during the proposed rule stage that this final rule, if adopted, would not have a significant economic impact on a substantial number of small entities. NMFS did not receive any comments from SBA's Office of Advocacy or the public regarding the economic analysis of Amendment 36A or the certification in the proposed rule. No changes to this final rule were made in response to public comments. The factual basis for the certification was published in the proposed rule and is not repeated here. Because this final rule is not expected to have a significant economic impact on a substantial number of small entities, a final regulatory flexibility analysis is not required and none has been prepared.

This final rule contains a collection-of-information requirement that has been approved by OMB under the Paperwork Reduction Act (PRA), temporary control number 0648–0761. NMFS will merge the collection-of-information requirement implemented by this final rule with the existing, approved information collection under OMB Control Number 0648–0551, Southeast Region IFQ Programs. This final rule requires an owner or operator of a vessel with a commercial Gulf reef fish permit to submit a notification to NMFS on each trip prior to landing exclusively non-IFQ Gulf reef fish species or Florida Keys/East Florida hogfish harvested in the Gulf. Public reporting burden for the requirement is estimated to average 3 minutes per applicable trip, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Send comments on this burden estimate or any other aspects of the collection of information, including suggestions for reducing the burden, to the NMFS Southeast Regional Office at the **ADDRESSES** above; or to OMB by email to *OIRA_submission@omb.eop.gov,* or by fax to 202–395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, and no person will be subject to 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. All currently approved collections of information may be viewed at *http://www.cio.noaa.gov/services_programs/prasubs.html.*

Changes to Codified Text From the Proposed Rule

In this final rule, NMFS modifies the language in §§ 622.21(a)(4) and 622.22(a)(4) to more succinctly explain the amount of IFQ allocation that NMFS may withhold at the beginning of a fishing year if a reduction in the commercial quota of an IFQ species or multi-species share category is expected to be implemented between January 1 and June 1 in the same fishing year. If this situation is expected to occur, then the amount withheld will be equal to the expected reduction of the commercial quota.

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Grouper, Gulf of Mexico, Individual fishing quota, Red snapper, Tilefish.

Dated: June 6, 2018.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.21, revise paragraph (a)(4) and add paragraph (a)(6) to read as follows:

§ 622.21 Individual fishing quota (IFQ) program for Gulf red snapper.

(a) * * *

(4) *IFQ allocation.* IFQ allocation is the amount of Gulf red snapper, in pounds gutted weight, an IFQ shareholder or allocation holder is authorized to possess, land, or sell during a given fishing year. IFQ allocation is derived at the beginning of each year by multiplying a shareholder's IFQ share times the annual commercial quota for Gulf red snapper. If the quota is increased after the beginning of the fishing year, then IFQ allocation is derived by multiplying a shareholder's IFQ share at the time of the quota increase by the amount the annual commercial quota for red snapper is increased. If a reduction in the commercial quota specified in § 622.39(a)(1)(i) is expected to occur after January 1, the beginning of the fishing year, but before June 1 in that same fishing year, NMFS will withhold distribution of IFQ allocation on January 1 in the amount equal to that reduction. If a final rule to implement the commercial quota reduction is not published in the **Federal Register** and effective by June 1, NMFS will distribute withheld IFQ allocation of red snapper commercial quota to current

shareholders based on shareholdings on the date the withheld IFQ allocation is distributed.

* * * * *

(6) *Returning IFQ shares.* Any shares contained in IFQ accounts that have never been activated since January 1, 2010, in the IFQ program are returned permanently to NMFS on July 12, 2018.

* * * * *

■ 3. In § 622.22, revise paragraph (a)(4) and add paragraph (a)(9) to read as follows:

§ 622.22 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.

(a) * * *

(4) *IFQ allocation.* IFQ allocation is the amount of Gulf groupers and tilefishes, in pounds gutted weight, an IFQ shareholder or allocation holder is authorized to possess, land, or sell during a given fishing year. IFQ allocation is derived at the beginning of each year by multiplying a shareholder's IFQ share times the annual commercial quota for Gulf groupers and tilefishes. If the quota is increased after the beginning of the fishing year, then IFQ allocation is derived by multiplying a shareholder's IFQ share at the time of the quota increase by the amount the annual commercial quota for groupers and tilefishes is increased. If a reduction in the applicable commercial quota specified in § 622.39(a)(1) is expected to occur after January 1, the beginning of the fishing year, but before June 1 in that same fishing year, NMFS will withhold distribution of IFQ allocation of the applicable groupers and tilefishes commercial quota on January 1 in the amount equal to that reduction. If a final rule to implement the commercial quota reduction is not published in the **Federal Register** and effective by June 1, NMFS will distribute withheld IFQ allocation of the applicable groupers and tilefishes commercial quota to current shareholders based on the date the withheld IFQ allocation is distributed.

* * * * *

(9) *Returning IFQ shares.* Any shares contained in IFQ accounts that have never been activated since January 1, 2010, in the IFQ program are returned permanently to NMFS on July 12, 2018.

* * * * *

■ 4. In § 622.26, revise paragraph (a) to read as follows:

§ 622.26 Recordkeeping and reporting.

(a) *Commercial vessel owners and operators.* (1) The owner or operator of a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.20(a)(1), or whose vessel fishes for or lands reef fish in or from state waters adjoining the Gulf EEZ, who is selected to report by the SRD must maintain a fishing record on a form available from the SRD. These completed fishing records must be submitted to the SRD postmarked no later than 7 days after the end of each fishing trip. If no fishing occurred during a calendar month, a report so stating must be submitted on one of the forms postmarked no later than 7 days after the end of that month. Information to be reported is indicated on the form and its accompanying instructions.

(2) *Advance notice of landing*—(i) *General requirement.* For the purpose of this paragraph (a)(2), landing means to arrive at a dock, berth, beach, seawall, or ramp. The owner or operator of a vessel landing Gulf reef fish not managed under an IFQ program or Florida Keys/East Florida hogfish harvested in the Gulf is responsible for ensuring that NMFS is contacted at least 3 hours, but no more than 24 hours, in advance of landing to report the time, date, and location of landing, and the vessel identification number (*e.g.,* Coast Guard registration number or state registration number). The vessel must land at an approved landing location and within 1 hour after the time given in the landing notification, except as provided in paragraph (a)(2)(iii) of this section. A vessel landing Gulf reef fish managed under an IFQ program must also comply with the requirements in §§ 622.21 and 622.22, as applicable.

(ii) *Submitting an advance landing notification.* Authorized methods for contacting NMFS and submitting a completed landing notification include the VMS unit, or another contact method approved by NMFS.

(iii) *Landing prior to the notification time.* The owner or operator of a vessel that has completed a landing notification and submitted it to NMFS may land prior to the notification time, only if an authorized officer is present at the landing site, is available to meet the vessel, and has authorized the owner or operator of the vessel to land prior to the notification time.

(iv) *Changes to a landing notification.* The owner or operator of a vessel who has submitted a landing notification to NMFS may make changes to the notification by submitting a superseding notification. If the initial superseding notification makes changes to the time of landing that is later than the original time in the notification, the vessel does not need to wait an additional 3 hours to land. If the initial superseding notification makes changes to the landing location, the time of landing is earlier than previously specified, or more than one superseding notification is submitted on a trip, the vessel must wait an additional 3 hours to land, except as provided in paragraph (a)(2)(iii) of this section.

(v) *Approved landing locations.* Gulf reef fish not managed under an IFQ program, and Florida Keys/East Florida hogfish harvested in the Gulf, must be landed at an approved landing location. Landing locations must be approved by the NOAA Office of Law Enforcement prior to a vessel landing these species at these sites. Proposed landing locations may be submitted to NMFS; however, new landing locations will be approved only at the end of each calendar-year quarter. To have a landing location approved by the end of the calendar-year quarter, it must be submitted at least 45 days before the end of the calendar-year quarter. NMFS will evaluate the proposed sites based on, but not limited to, the criteria at §§ 622.21(b)(5)(v) and 622.22(b)(5)(v).

* * * * *

[FR Doc. 2018–12548 Filed 6–11–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 141107936–5399–02]

RIN 0648–XG286

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2018 Commercial Accountability Measure and Closure for South Atlantic Gray Triggerfish; January Through June Season

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures for commercial gray triggerfish in the exclusive economic zone (EEZ) of the South Atlantic. NMFS projects commercial landings for gray triggerfish will reach the commercial annual catch limit (ACL) for the January through June period by June 13, 2018. Therefore, NMFS is closing the commercial sector for gray triggerfish in the South Atlantic EEZ on June 13, 2018. This closure is necessary to protect the gray triggerfish resource.

DATES: This rule is effective 12:01 a.m., local time, June 13, 2018, until July 1, 2018.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes gray triggerfish and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The commercial ACL (equal to the commercial quota) for gray triggerfish in the South Atlantic is divided into two 6-month fishing seasons and allocates 50 percent, 156,162 lb (70,834 kg), round weight, of the total commercial ACL of 312,324 lb (141,668 kg), round weight, to each fishing season, January through June, and July through December, as specified in 50 CFR 622.190(a)(8)(i) and (ii).

Under 50 CFR 622.193(q)(1)(i), NMFS is required to close the commercial sector for gray triggerfish when either commercial quota specified in § 622.190(a)(8)(i) or (ii) is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the commercial quota for South Atlantic gray triggerfish for the January through June fishing season will be reached by June 13, 2018. Accordingly, the commercial sector for South Atlantic gray triggerfish is closed effective at 12:01 a.m., local time, June 13, 2018, until the start of the July through December fishing season on July 1, 2018.

The operator of a vessel with a valid Federal commercial vessel permit for South Atlantic snapper-grouper having gray triggerfish on board must have landed and bartered, traded, or sold such gray triggerfish prior to 12:01 a.m., local time, June 13, 2018. During the closure, the bag limit specified in 50 CFR 622.187(b)(8), and the possession limits specified in 50 CFR 622.187(c), apply to all harvest or possession of gray triggerfish in or from the South Atlantic EEZ. Also, during the closure, the sale or purchase of gray triggerfish taken from the South Atlantic EEZ is prohibited. The prohibition on the sale or purchase does not apply to gray triggerfish that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, June 13, 2018, and were held in cold storage by a dealer or processor.

For a person on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the bag and possession limits and sale and purchase provisions of the commercial closure for gray triggerfish apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.190(c)(1)(ii).

Classification

The Regional Administrator, NMFS Southeast Region, has determined this temporary rule is necessary for the conservation and management of gray triggerfish and the South Atlantic snapper-grouper fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.193(q)(1)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA), finds that the need to immediately implement this action to close the commercial sector for gray triggerfish constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule that established the split commercial season for gray triggerfish and the rule that established the closure provisions have already been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because of the need to immediately implement this action to protect gray triggerfish since the capacity of the fishing fleet allows for rapid harvest of the commercial quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established commercial quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: June 7, 2018.

Jennifer M. Wallace,

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

[FR Doc. 2018–12590 Filed 6–8–18; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 113
Tuesday, June 12, 2018

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 THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106977–18]

RIN 1545–BO77

Arbitrage Investment Restrictions on Tax-Exempt Bonds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding the arbitrage investment restrictions under section 148 of the Internal Revenue Code (Code) applicable to tax-exempt bonds and other tax-advantaged bonds issued by State and local governments. The proposed regulations would clarify existing regulations regarding the definition of ''investment-type property'' covered by arbitrage restrictions by expressly providing an exception for investments in capital projects that are used in furtherance of the public purposes of the bonds. The proposed regulations affect State and local governmental issuers of these bonds and potential investors in capital projects financed with these bonds.

DATES: Comments and requests for a public hearing must be received by September 10, 2018.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–106977–18), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–106977–18), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (REG–106977–18).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Spence Hanemann, (202) 317–6980; concerning submissions of comments and requesting a hearing, Regina L. Johnson, (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) on the arbitrage investment restrictions under section 148 of the Code (Proposed Regulations).

1. In General

In general, under section 103, interest received by holders of eligible bonds issued by State and local governments is exempt from Federal income tax. As a result, tax-exempt State or local bonds generally have lower borrowing costs. To qualify for the tax exemption, State or local bonds must satisfy various eligibility requirements under sections 141 to 150, including the arbitrage investment restrictions under section 148. The arbitrage investment restrictions under section 148 limit the investment of proceeds of tax-exempt bonds in higher yielding investments and require rebate to the Federal government of certain excess earnings on higher yielding investments.

On June 18, 1993, the Department of the Treasury (Treasury Department) and the IRS published comprehensive final regulations in the **Federal Register** (TD 8476, 58 FR 33510) on the arbitrage investment restrictions and related provisions for tax-exempt bonds under sections 103, 148, 149, and 150 and, since that time, those final regulations have been amended in certain limited respects (these 1993 regulations and the amendments thereto collectively are referred to as the Existing Regulations).

2. Investment Property Covered by Arbitrage Restrictions

Section 148(a) defines a taxable ''arbitrage bond'' generally to mean any bond issued as part of an issue any portion of the proceeds of which are reasonably expected to be used or are intentionally used to acquire ''higher yielding investments'' or to replace funds so used. Section 148(b)(1) defines the term ''higher yielding investments'' to mean any ''investment property'' that produces a yield over the term of the issue that is materially higher than the yield on the issue. Section 148(b)(2) defines the term ''investment property'' to include any security (within the meaning of section 165(g)(2)(A) or (B)), any obligation, any annuity contract, certain residential real property for family units located outside the jurisdiction of the issuer that is financed with bonds other than private activity bonds, and any ''investment-type property.''

Section 1.148–1(e)(1) of the Existing Regulations defines a catch-all category of ''investment-type property'' to include any property (other than securities, obligations, annuity contracts, and covered residential real property for family units under section 148(b)(2)(A), (B), (C), and (E)) ''that is held principally as a passive vehicle for the production of income.'' For this purpose, § 1.148–1(e)(1) of the Existing Regulations provides that the production of income includes any benefit based on the time value of money.

Explanation of Provisions

1. Proposed § 1.148–1(e)(4): Exception to Investment-Type Property Definition for Certain Capital Projects

Institutional investors have suggested clarification of the scope of the regulatory definition of investment-type property under § 1.148–1(e)(1) to ensure that the definition does not impede greater capital investment in public infrastructure.

The legislative history to the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085, indicates that Congress intended to limit the scope of the arbitrage restriction on investment-type property so that it did not extend to investments in capital projects in furtherance of the public purposes of the bonds. In this regard, the House Report to the Tax Reform Act of 1986 included the following statement about the intended scope of the definition of investment-type property: ''The restriction would not apply, however, to real or tangible personal property acquired with bond proceeds for reasons other than investment (*e.g.,* courthouse facilities financed with bond proceeds).'' H.R. Rep. No. 99–426, at 552 (1985), 1986–3 (vol. 2) C.B. 457; *see also* S. Rep. No. 99–313, at 844 (1986), 1986–3 (vol. 3) C.B. 682 (containing a statement substantially identical to that in the House report); H.R. Rep. No. 99–

841, at II–747 (1986) (Conf. Rep.), 1986–3 (vol. 4) C.B. 608 (stating that the conference agreement follows the House bill and the Senate amendment on this restriction).

To clarify the scope of the investment-type property definition consistent with Congressional intent reflected in the legislative history, the Proposed Regulations would provide an express exception to the definition of investment-type property for capital projects that further the public purposes for which the tax-exempt bonds were issued. For example, investment-type property does not include a courthouse financed with governmental bonds or an eligible exempt facility under section 142, such as a public road, financed with private activity bonds.

2. Applicability Dates and Reliance

The proposed amendments to the definition of investment-type property in the Proposed Regulations are proposed to apply to bonds sold on or after the date that is 90 days after the date of publication of a Treasury Decision adopting these rules as final regulations in the **Federal Register**. Issuers may apply the Proposed Regulations to bonds that are sold before the applicability date provided in a Treasury Decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations. Because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small entities.

Comments and Requests for Public Hearing

Before the Proposed Regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Spence Hanemann of the Office of Associate Chief Counsel (Financial Institutions and Products) and Vicky Tsilas, formerly of the Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.148–0(c) is amended by adding entries for §§ 1.148–1(e)(4) and 1.148–11(n) to read as follows:

§ 1.148–0 Scope and table of contents.

* * * * *

(c) * * *

§ 1.148–1 Definitions and elections.

* * * * *

(e) * * *

(4) Exception for certain capital projects.

* * * * *

§ 1.148–11 Effective/applicability dates.

* * * * *

(n) Investment-type property.

■ **Par. 3.** Section 1.148–1 is amended by:

■ 1. Revising the first sentence of paragraph (e)(1).

■ 2. Adding paragraph (e)(4).

The revision and addition read as follows:

§ 1.148–1 Definitions and elections.

* * * * *

(e) *Investment-type property*—(1) *In general.* Except as otherwise provided in this paragraph (e), investment-type property includes any property, other than property described in section 148(b)(2)(A), (B), (C), or (E), that is held principally as a passive vehicle for the production of income. * * *

* * * * *

(4) *Exception for certain capital projects.* Investment-type property does not include real property or tangible personal property (for example, land, buildings, and equipment) that is used in furtherance of the public purposes for which the tax-exempt bonds are issued. For example, investment-type property does not include a courthouse financed with governmental bonds or an eligible exempt facility under section 142, such as a public road, financed with private activity bonds.

* * * * *

■ **Par. 4.** Section 1.148–11 is amended by adding paragraph (n) to read as follows:

§ 1.148–11 Effective/applicability dates.

* * * * *

(n) *Investment-type property.* Section 1.148–1(e)(1) and (4) apply to bonds sold on or after the date that is 90 days after the date of publication of a Treasury Decision adopting these rules as final regulations in the **Federal Register**.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2018–12565 Filed 6–11–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAR Case 2017–006; Docket No. 2017–0006, Sequence No. 1]

RIN 9000–AN53

Federal Acquisition Regulation: Exception From Certified Cost or Pricing Data Requirements—Adequate Price Competition

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to provide guidance to DoD, NASA, and the Coast Guard, consistent with a section of the National Defense Authorization Act for

Fiscal Year 2017 that addresses the exception from certified cost or pricing data requirements when price is based on adequate price competition.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before August 13, 2018 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2017–006 by any of the following methods:

Regulations.gov: http://www.regulations.gov. Submit comments via the Federal eRulemaking portal by entering ''FAR Case 2017–006'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''FAR Case 2017–006''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FAR Case 2017–006'' on your attached document.

Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Lois Mandell, 1800 F Street NW, 2nd Floor, Washington, DC 20405–0001.

Instructions: Please submit comments only and cite ''FAR Case 2017–006'' in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at 202–208–4949 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAR Case 2017–006.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to provide a separate standard for ''adequate price competition'' in the FAR, applicable only to DoD, NASA, and the Coast Guard, consistent with the requirements of section 822 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328). Setting forth the separate standard for DoD, NASA, and the Coast Guard in the FAR provides a top-level framework to facilitate consistent implementation of section 822 at the agency level by DoD, NASA, and the Coast Guard. Section 822 modifies 10 U.S.C. 2306a, the Truth in Negotiations Act, which is applicable only to DoD, NASA, and the Coast Guard. Section 822 limits the exception for price based on adequate price competition to circumstances in which there is adequate competition that results in at least two or more responsive and viable competing bids.

II. Discussion and Analysis

This proposed rule modifies the standard for adequate price competition at FAR 15.403–1(c)(1), to provide a separate standard for DoD, NASA, and the Coast Guard. There are also conforming changes to the cross references at FAR 15.305(a)(1) and 15.404–1(b)(2)(i).

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not contain any provision or clause that applies to contracts or subcontracts at or below the simplified acquisition threshold or contracts or subcontracts for the acquisition of commercial items, including commercially available off-the-shelf items.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This proposed rule is not expected to be an E.O. 13771 regulatory action, because this proposed rule is not significant under E.O. 12866.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

This rule proposes to provide a separate standard for ''adequate price competition'' in the FAR for DoD, NASA, and the Coast Guard, consistent with the requirements of section 822 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328).

The objective of this rule is to clarify that there is a different standard applicable to DoD, NASA, and the Coast Guard, and to provide a top-level framework to facilitate consistent implementation of section 822 at the agency level by DoD, NASA, and the Coast Guard. The statutory basis is 10 U.S.C. 2306a, as amended by section 822 of the NDAA for FY 2017.

This rule only provides a statement of internal guidance to DoD, NASA, and the Coast Guard, *i.e.,* ''For DoD, NASA, and the Coast Guard, a price is based on adequate price competition only if two or more offerors, competing independently, submit responsive and viable offers.'' This principle will not have impact on small entities until implemented at the agency level by DoD, NASA, and the Coast Guard.

There are no projected reporting, recordkeeping, or other compliance requirements of the rule. The rule amends the standards for adequate price competition for DoD, NASA, and the Coast Guard. However, the corollary of this FAR change is that DoD, NASA, and the Coast Guard will be required to obtain certified cost or pricing data from an offeror when only one offer is received and no other exception applies. The rule does not duplicate, overlap, or conflict with any other Federal rules.

Since this rule does not impose a burden on small entities, DoD, GSA, and NASA were unable to identify any alternatives that would reduce burden on small business and still meet the requirements of the statute.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2017–006), in correspondence.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: June 6, 2018.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA proposes to amend 48 CFR part 15 as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

■ 1. The authority citation for 48 CFR part 15 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

15.305 [Amended]

■ 2. Amend section 15.305 by removing from paragraph (a)(1) in the fourth sentence ''(see 15.403–1(c)(1)(i)(B))'' and adding ''(see 15.403–1(c)(1)(i)(A)(2))'' in its place.

■ 3. Amend section 15.403–1 by—

■ a. Revising the heading of paragraph (c); and

■ b. Revising paragraph (c)(1) to read as follows:

15.403–1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. chapter 35).

* * * * *

(c) *Standards for exceptions from certified cost or pricing data requirements.*

(1) *Adequate price competition.* (i) For agencies other than DoD, NASA, and the Coast Guard, a price is based on adequate price competition if—

(A) Two or more responsible offerors, competing independently, submit priced offers that satisfy the Government's expressed requirement and if—

(*1*) Award will be made to the offeror whose proposal represents the best value (see 2.101) where price is a substantial factor in source selection; and

(*2*) There is no finding that the price of the otherwise successful offeror is unreasonable. Any finding that the price is unreasonable must be supported by a statement of the facts and approved at a level above the contracting officer;

(B) There was a reasonable expectation, based on market research or other assessment, that two or more responsible offerors, competing independently, would submit priced offers in response to the solicitation's expressed requirement, even though only one offer is received from a responsible offeror and if—

(*1*) Based on the offer received, the contracting officer can reasonably conclude that the offer was submitted with the expectation of competition, *e.g.,* circumstances indicate that—

(*i*) The offeror believed that at least one other offeror was capable of submitting a meaningful offer; and

(*ii*) The offeror had no reason to believe that other potential offerors did not intend to submit an offer; and

(*2*) The determination that the proposed price is based on adequate price competition and is reasonable has been approved at a level above the contracting officer; or

(C) Price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items, adjusted to reflect changes in market conditions, economic conditions, quantities, or terms and conditions under contracts that resulted from adequate price competition.

(ii) For DoD, NASA, and the Coast Guard, a price is based on adequate price competition only if two or more responsible offerors, competing independently, submit responsive and viable offers. (10 U.S.C. 2306a(b)(1)(A)(i)).

* * * * *

15.404–1 [Amended]

■ 4. Amend section 15.404–1 by removing from paragraph (b)(2)(i) ''(see 15.403–1(c)(1)(i))'' and adding ''(see 15.403–1(c)(1)(i) and (ii))'' in its place.

[FR Doc. 2018–12539 Filed 6–11–18; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 180202124–8124–01]

RIN 0648–BH59

International Fisheries; Eastern Pacific Tuna Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Area of Overlap Between the Convention Areas of the Inter-American Tropical Tuna Commission and the Western and Central Pacific Fisheries Commission

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

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: NMFS is considering whether to continue, or to revise, the management regime for fishing vessels that target tuna and other highly migratory fish species (HMS) in the area of overlapping jurisdiction between the Inter-American Tropical Tuna Commission (IATTC) and the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC) in the tropical Pacific Ocean. To that end, we are issuing this advance notice of proposed rulemaking to seek public input about whether U.S. fishing vessels fishing in that area should be governed by conservation measures adopted by IATTC or conservation measures adopted by WCPFC.

DATES: Comments on this advance notice of proposed rulemaking must be submitted in writing by July 12, 2018.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2018–0049, by any of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0049,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.
- *Fax:* (808) 725–5215; Attn: Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, might not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name and address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

SUPPLEMENTARY INFORMATION:

Background

The United States is a member of both the IATTC and WCPFC. The convention areas for the IATTC and WCPFC overlap in the Pacific Ocean waters within a rectangular area bounded by 50° S latitude, 150° W longitude, 130° W longitude, and 4° S latitude (''overlap area''). Historically, regulations implementing the conservation measures adopted by the IATTC (see 50

CFR part 300, subpart C) and the WCPFC (see 50 CFR part 300, subpart O) both applied to U.S. vessels fishing for HMS in the overlap area. In 2012, the IATTC and the WCPFC adopted recommendations/decisions that provide that each member belonging to both commissions is to decide, for a period of not less than 3 years, whether IATTC or WCPFC conservation and management measures will apply to vessels of that member listed in both WCPFC Record of Fishing Vessels (record) and IATTC Regional Vessel Register List (register) while fishing in the overlap area.

In accordance with the WCPFC decision and IATTC recommendation regarding the overlap area, NMFS issued a final rule on April 26, 2016 (see 81 FR 24501, effective May 26, 2016; hereafter ''2016 final rule''), excluding the overlap area from the description of the IATTC Convention Area for the purpose of the regulations implementing conservation measures of the IATTC (50 CFR part 300, subpart C), except that IATTC Regional Vessel Register regulations at 50 CFR 300.22(b) continue to apply in the overlap area. Under the 2016 final rule regulations implementing conservation measures of the WCPFC continue to apply in the overlap area to vessels of all gear types listed in both WCPFC record and IATTC register. The requirement for U.S. vessels that fish for tuna and other HMS to be listed on the IATTC Regional Vessel Register continues to apply in the overlap area because the IATTC Regional Vessel Register is used to implement the Agreement on the International Dolphin Conservation Program (AIDCP), which is a separate international agreement that applies to purse seine vessels that fish in the eastern Pacific, including the overlap area. The AIDCP has not adopted a decision that would allow the United States to exempt vessels from AIDCP requirements even if only WCPFC requirements apply in the overlap area.

Before the 2016 final rule was issued, NMFS evaluated the expected impacts of the rule by reviewing fishing activity in the overlap area and concluded that U.S. vessels did not often fish for HMS in the overlap area. The rule simplified regulations for U.S. vessels fishing in the area because, aside from the IATTC Regional Vessel Register requirements, affected vessels would be required to follow only the measures of the WCPFC rather than those of both the WCPFC and the IATTC.

Advance Notice of Proposed Rulemaking

NMFS implements decisions of the WCPFC under the authority of the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 *et seq.*), and decisions of the IATTC under the authority of the Tuna Conventions Act (16 U.S.C. 951 *et seq.*). In the preamble to the 2016 final rule, NMFS indicated that within the next 3 years, it may reevaluate the spatial distribution of fishing effort by U.S. fishing vessels fishing under the IATTC and WCPFC Conventions, especially with respect to the differences and similarities between fishing in the eastern Pacific Ocean (EPO) and the western and central Pacific Ocean (WCPO).

NMFS seeks to better understand the effects of the 2016 final rule and the potential effects of applying the IATTC versus the WCPFC management measures for the overlap area. NMFS is interested in public comment on whether and, if so, how fishing effort by U.S. vessels fishing under the IATTC and WCPFC convention areas has changed since the 2016 final rule was issued and whether and how fishing effort might change in the foreseeable future. NMFS is interested in receiving any information, including but not limited to the impacts of the 2016 final rule on the fishing patterns of U.S.-flagged fishing vessels, their costs of fishing, the expected locations of fishing grounds in the foreseeable future, particularly with respect to the WCPO versus the EPO, and the expected costs to U.S. fishing businesses of applying IATTC versus WCPFC management measures to the overlap area.

This advance notice of proposed rulemaking solicits information from the public that would be useful in evaluating the effects of the IATTC versus the WCPFC management measures for the overlap area. If warranted by the findings of this examination, NMFS may propose re-applying IATTC management measures in the overlap area while removing WCPFC management measures.

Classification

This advance notice of proposed rulemaking has been determined to be not significant for the purposes of Executive Order 12866.

Authority: 16 U.S.C. 6901 *et seq.,* 16 U.S.C. 951 *et seq.*

Dated: June 6, 2018.

Samuel D. Rauch, III,

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

[FR Doc. 2018–12554 Filed 6–11–18; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 83, No. 113
Tuesday, June 12, 2018

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

June 7, 2018.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (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 this information collection received by July 12, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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.

Animal & Plant Health Inspection Service

Title: Importation of Poultry Meat and Other Poultry Products from Sinaloa and Sonora, Mexico; Poultry and Pork Transiting the United States From Mexico.

OMB Control Number: 0579–0144.

Summary of Collection: The Animal Health Protection Act of 2002 (Title X, Subtitle E, Sec. 10401–18 of Pub. L. 107–171) is the primary Federal law governing the protection of animal health. Disease prevention is the most effective method for maintaining a healthy animal population and for enhancing the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS), Veterinary Services' ability to allow United States animal producers to compete in the world market of animal and animal product trade. APHIS currently has regulations in place that restrict the importation of poultry meat and other poultry products from Mexico due to the presence of Newcastle Disease (ND) in that country. However, APHIS allows the importation of poultry meat and poultry products from the Mexican States of Sinaloa and Sonora because APHIS has determined that poultry meat and products from these two Mexican States pose a negligible risk of introducing ND into the United States. To ensure that these items are safe for importation, APHIS requires that certain data appear on the foreign meat inspection certificate that accompanies the poultry meat and other poultry products from Sinaloa and Sonora to the United States. APHIS also requires that serial numbered seals be applied to containers carrying the poultry meat and other poultry products. In addition there is an application and approval process required for the transit of pork and pork products and poultry carcasses, parts, or products (except eggs and egg products). APHIS also requires a pre-arrival notification to alert Customs & Boarder Protection Inspectors, along with an emergency action notice.

Need and Use of the Information: APHIS will collect information to certify that the poultry meat or other poultry products were (1) derived from poultry born and raised in commercial breeding establishments in Sinaloa and Sonora; (2) derived from poultry that were slaughtered in Sinaloa or Sonora in a Federally-inspected slaughter plant approved to export these commodities to the United States in accordance with Food Safety & Inspection regulations; (3) processed at a Federally inspected processing plant in Sinaloa or Sonora; and (4) kept out of contact with poultry from any other State within Mexico. APHIS will also collect information to ensure that the poultry meat or poultry products from Sinaloa and Sonora pose the most negligible risk possible for introducing ND into the United States.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 400.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 558.

Animal and Plant Health Inspection Service

Title: Control of Chronic Wasting Disease.

OMB Control Number: 0579–0189.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, and eradicate pests or diseases of livestock or poultry, and to pay claims arising from destruction of animals. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection Service (APHIS) ability to complete in exporting animals and animal products. Chronic wasting disease (CWD) is a transmissible spongiform encephalopathy (TSE) of elk, deer and moose typified by chronic weight loss leading to death. The presence of CWD disease in cervids causes significant economic and market losses to U.S. producers. In an effort to accelerate the control and limit the spread of this disease in the United States, APHIS created a cooperative, voluntary Federal-State-private sector CWD Herd Certification Program designed to identify farmed or captive herds infected with CWD and provided for the management of these herds in a way that reduces the risk of spreading CWD.

Need and Use of the Information: APHIS will collect information from owners of elk, deer, and moose herds who choose to participate in the CWD Herd Certification program. They would need to follow program requirements for animal identification, testing, herd management, and movement of animals into and from herds. APHIS also established requirements for the interstate movement of cervids to prevent movement of elk, deer, and moose that pose a risk of spreading CWD. Carrying out this program will entail the use of several information collection activities: Memoranda of understandings; participation requests/applications; sample collections and lab submissions; inspections, inventories, and herd records; cervid identification; reports of cervid disappearances, escapes, and deaths; herd plans; annual reports; consistent State reviews; epidemiological investigations; appraisal, destruction, and payment of indemnity; letter to appeal suspension; Interstate Certificates of Veterinary Inspection (ICVI); and wild cervid ICVI, and surveillance data. Failure to collect this information would cripple APHIS' ability to effectively sustain its CWD control program.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 4,532.

Frequency of Responses: Reporting and Recordkeeping: On occasion.

Total Burden Hours: 347,163.

Animal and Plant Health Inspection Service

Title: Infectious Salmon Anemia (ISA)—Payment of Indemnity.

OMB Control Number: 0579–0192.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pest or diseases of livestock or poultry. Infectious Salmon Anemia (ISA) is a clinical disease resulting from infection with the ISA virus; signs include hemorrhaging, anemia, and lethargy. ISA poses a substantial threat to the economic viability and sustainability of salmon aquaculture in the United States and abroad. The Animal and Plant Health Inspection Service (APHIS) will collect information using VS Form 1–22 ISA Program Enrollment Form, VS Form 1–23 All Species Appraisal and Indemnity Claim Form, VS Form 1–24 Proceeds from Animals Sold for Slaughter Form, and VS Form 1–26 Appraisal and Indemnity Request for Affected Premises Using Contract Growers Form.

Need and Use of the Information: APHIS uses the following information activities to reimburse aquaculture industry businesses; conduct biosecurity, protocols and audits; develop site-specific ISA action plans; compile fish inventories and mortality reports (and keep records of the inventories and reports); and conduct disease surveillance. Each program participant must sign an ISA Program Enrollment Form in which they agree to participate fully in USDA's and the State of Maine's ISA Program. APHIS will collect the owner's name and address, the number of fish for which the owner is seeking payment, and the appraised value of each fish.

The owner must also certify as to whether the fish are subject to a mortgage. Without the information it would be impossible for APHIS to launch its program to contain and prevent ISA outbreaks in the United States.

Description of Respondents: Business or other for-profit.

Number of Respondents: 13.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 547.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–12585 Filed 6–11–18; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2018–0029]

Notice of Request for Reinstatement of an Information Collection; National Animal Health Monitoring System; Goat 2019 Study

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reinstatement of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request the reinstatement of an information collection to conduct the National Animal Health Monitoring System's Goat 2019 Study.

DATES: We will consider all comments that we receive on or before August 13, 2018.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0029.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2018–0029, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0029* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the Goat 2019 Study, contact Mr. Bill Kelley, Program Analyst, Science, Technology, and Analysis Services, VS, 2150 Centre Avenue, Building B, Fort Collins, CO 80524; (970) 494–7207. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: National Animal Health Monitoring System; Goat 2019 Study.

OMB Control Number: 0579–0354.

Type of Request: Reinstatement of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Secretary of Agriculture is authorized to protect the health of the livestock, poultry, and aquaculture populations in the United States by preventing the introduction and interstate spread of serious diseases and pests of livestock and for eradicating such diseases from the United States when feasible. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS).

In connection with this mission, APHIS operates the National Animal Health Monitoring System (NAHMS), which collects, on a national basis, statistically valid and scientifically sound data on the prevalence and economic importance of livestock, poultry, and aquaculture disease risk factors.

NAHMS' studies have evolved into a collaborative industry and government initiative to help determine the most effective means of preventing and controlling diseases of livestock. APHIS

is the only agency responsible for collecting data on livestock health. Participation in any NAHMS study is voluntary, and all data are confidential.

APHIS plans to conduct the Goat 2019 Study as part of an ongoing series of NAHMS studies on the U.S. livestock population. The purpose of the study is to collect information to describe changes in animal health, nutrition, and management practices in the U.S. goat industry from 2009–2019; describe practices producers use to control internal parasites and reduce anthelmintic resistance; describe antimicrobial stewardship on goat operations and provide information on the prevalence of enteric pathogens and antimicrobial resistance patterns; describe management practices associated with, and producer-reported occurrence of, economically important goat diseases; and provide a serologic bank to meet the future research needs of the goat industry.

The study will consist of two phases. In Phase I, a National Agricultural Statistics Service (NASS) enumerator will contact and conduct interviews with goat producers from 26 States who have 5 or more goats. These respondents will be asked to sign a consent form allowing NASS to present their names to APHIS-designated data collectors for further consideration in the study. In Phase II, which we consider the APHIS phase, the respondents will complete the producer agreement and up to three on-farm questionnaires. In addition, biologic sampling will be available to selected participants that complete the initial visit questionnaire.

The information collected through the Goat 2019 Study will be analyzed and organized into descriptive reports. Several information sheets will be derived from these reports and disseminated by APHIS to producers, stakeholders, academia, veterinarians, and other interested parties. The collected data will be used to establish national and regional production measures for producer, veterinary, and industry references; predict or detect national and regional trends in disease emergence and movement; address emerging issues; examine the economic impact of health management practices; provide estimates of both outcome (disease or other parameters) and exposure (risks and components) variables that can be used in analytic studies in the future by APHIS; provide input into the design of surveillance systems for specific diseases; and provide parameters for animal disease spread models.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.51 hours per response.

Respondents: Goat producers from 26 States who have 5 or more goats.

Estimated annual number of respondents: 4,770.

Estimated annual number of responses per respondent: 4.

Estimated annual number of responses: 17,668.

Estimated total annual burden on respondents: 8,947 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 6th day of June 2018.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2018–12589 Filed 6–11–18; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Rural Utilities Service (RUS) invites comments on this information collection for which the RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by August 13, 2018.

FOR FURTHER INFORMATION CONTACT: Thomas P. Dickson, Acting Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Avenue SW, STOP 1522, Room 5164 South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. Fax: (202) 720–8435 or email to: *Thomas.Dickson@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB as extension to an existing collection with Agency adjustment.

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 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. Comments may be sent to: Thomas P. Dickson, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, Room 5164, 1400 Independence Avenue SW, Washington, DC 20250–1522. Telephone: (202) 690–4492; Fax: (202) 720–8435.

Title: 7 CFR 1773, Policy on Audits of RUS Borrowers and Grantees.

OMB Control Number: 0572–0095.

Type of Request: Extension of a currently approved collection.

Abstract: The Rural Utilities Service relies on the information provided by the borrowers in their financial

statements to make lending decisions as to borrowers' credit worthiness and to assure that loan funds are approved, advanced and disbursed for proper RE Act purposes. These financial statements are audited by a certified public accountant to provide independent assurance that the data being reported are properly measured and fairly presented.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 8.08 hours per response.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents and Recordkeepers: 1,300.

Estimated Number of Responses per Respondent: 1.3746.

Estimated Total Annual Burden on Respondents: 14,439 hours.

Copies of this information collection can be obtained from Rebecca Hunt, Program Development and Regulatory Analysis, Telephone: (202) 205–3660, Fax: (202) 720–8435.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Kenneth L. Johnson,

Administrator, Rural Utilities Service.

[FR Doc. 2018–12544 Filed 6–11–18; 8:45 am]

BILLING CODE

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–982]

Utility Scale Wind Towers From the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding its administrative review of the countervailing duty (CVD) order on utility scale wind towers (wind towers) from the People's Republic of China (China) for the period January 1, 2016, through December 31, 2016.

DATES: Applicable June 12, 2018.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, 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) 482–4793.

SUPPLEMENTARY INFORMATION:

Background

Commerce initiated an administrative review of the CVD order on wind towers from China with respect to 56 companies for the period January 1, 2016, through December 31, 2016,[1] based on a request by the petitioner.[2] On May 31, 2017, the petitioner timely withdrew its request for an administrative review of all 56 companies.[3] No other party requested a review.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review in whole or in part, if the party that requested a review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. In this case, the petitioner withdrew its request for review within the 90-day deadline, and no other party requested an administrative review of the CVD order. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess CVDs on all entries of wind towers from China during the period January 1, 2016, through December 31, 2016, at rates equal to the cash deposit of estimated CVDs required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice in the **Federal Register**.

Notifications

This notice serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO, in accordance with 19 CFR 351.305(a)(3). 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 which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: June 7, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2018–12595 Filed 6–11–18; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 17188 (April 10, 2017) (*Initiation Notice*).

[2] The petitioner is the Wind Tower Trade Coalition.

[3] *See* Petitioner's May 31, 2017 Withdrawal of Request for Administrative Review.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–552–813]

Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Rescission of Countervailing Duty Administrative Review; 2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the countervailing duty order (CVD) on steel wire garment hangers from the Socialist Republic of Vietnam (Vietnam) for the period January 1, 2017 through December 31, 2017.

DATES: Applicable June 12, 2018.

FOR FURTHER INFORMATION CONTACT: John Conniff, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1009.

SUPPLEMENTARY INFORMATION:

Background

On April 16, 2018, based on a timely request for review by M&B Metal Products Company, Inc. (the petitioner),[1] Commerce published in the **Federal Register** a notice of initiation of an administrative review of the CVD order on steel wire garment hangers from Vietnam covering the period January 1, 2017, through December 31, 2017.[2] On April 24, 2018, the petitioner withdrew its request for all companies listed in its request and the *Initiation Notice*.[3] No other party requested a

[1] *See Letter from Vorys, Sater, Seymour and Pease LLP to the U.S. Department of Commerce, regarding Steel Wire Garment Hangers from Vietnam: Request for Fifth Administrative Review,*'' dated February 28, 2018.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 16,298 (April 16, 2018) (*Initiation Notice*).

[3] *See* Letter from the petitioner, ''Fifth Administrative Review of Steel Wire Garment Hangers from Vietnam—Petitioner's Withdrawal of Review Request,'' dated April 24, 2018.

review of these producers and/or exporters of subject merchandise.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review. In this case, the petitioner timely withdrew its request by the 90-day deadline, and no other party requested an administrative review of the CVD order. As a result, pursuant to 19 CFR 351.213(d)(1), we are rescinding the administrative review of the CVD order on steel wire garment hangers from Vietnam for the period January 1, 2017, through December 31, 2017, in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess CVDs on all appropriate entries. Because Commerce is rescinding this administrative review in its entirety, the entries to which this administrative review pertained shall be assessed CVDs at rates equal to the cash deposit of estimated CVDs required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice in the **Federal Register**.

Notification Regarding Administrative Protective Orders

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: June 7, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2018–12592 Filed 6–11–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–008]

Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Shin Yang Steel Co., Ltd. (Shin Yang), a producer/exporter of merchandise subject to this administrative review, made sales of subject merchandise at less than normal value. Interested parties are invited to comment on these preliminary results of review.

DATES: Applicable June 12, 2018.

FOR FURTHER INFORMATION CONTACT: Scott Hoefke or Erin Kearney, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4947 or (202) 482–0167, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce is conducting an administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan. The period of review (POR) is May 1, 2016, to April 30, 2017. This review covers Shin Yang Steel Co., Ltd. (Shin Yang) and Yieh Hsing Enterprise Co., Ltd. (Yieh Hsing). Commerce published the notice of initiation of this administrative review [1] on July 7, 2017.[2] The preliminary results are listed below in the section titled ''Preliminary Results of Review.''

On January 23, 2018, Commerce exercised its discretion to toll all deadlines for the duration of the closure of the Federal Government from January 20, 2018, through January 22, 2018.[3] The revised deadline for the final results of this review became February 5, 2018. On January 31, 2018, we extended the deadline for the preliminary results to May 14, 2018.[4] On May 8, 2018, we further extended the deadline for the preliminary results, until June 4, 2018.[5]

For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum.[6]

Scope of the Order

The merchandise subject to the order is certain circular welded carbon steel pipes and tubes from Taiwan. The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.5025, 7306.30.5032, 7306.30.5040, and 7306.30.5055. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive.[7]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our

[1] Wheatland Tube Company (the petitioner) requested the instant administrative review. *See* Petitioner's Letter, ''Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan Request for Administrative Review,'' dated May 31, 2017.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 31292, 31297 (July 6, 2017) (*Initiation Notice*).

[3] *See* Memorandum, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

[4] *See* Memorandum, ''Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,'' dated January 31, 2017.

[5] *See* Memorandum, ''Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,'' dated May 8, 2018.

[6] *See* Memorandum, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan; 2016–2017,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[7] The complete description of the scope of the order appears in the memorandum, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan; 2016–2017'' (dated concurrently with this notice) (Preliminary Decision Memorandum), which is hereby adopted by this notice.

conclusions, *see* the Preliminary Decision Memorandum. The Preliminary 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 *http://access.trade.gov* and is available to all parties in the Central Records Unit, Room B–8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

Preliminary Determination of No Shipments

On July 21, 2017, Yieh Hsing reported that it made no shipments of subject merchandise to the United States during the POR.[8] To confirm Yieh Hsing's claim of no shipments, Commerce issued an inquiry to CBP, requesting that it review Yieh Hsing's no-shipment claim.[9] CBP did not report that it had any information to contradict Yieh Hsing's claim of no shipments during the POR.

Given that Yieh Hsing certified that it made no shipments of subject merchandise to the United States during the POR, and there is no information calling its claim into question, we preliminarily determine that Yieh Hsing did not have any reviewable transactions during the POR. Consistent with Commerce's practice, we will not rescind the review with respect to Yieh Hsing but, rather, will complete the review and issue instructions to CBP based on the final results.[10]

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists for the period May 1, 2016, through April 30, 2017:

Producer/exporter	Dumping margin (percent)
Shin Yang Steel Co., Ltd	6.26

Disclosure and Public Comment

Commerce intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.[11] Interested parties may submit cases briefs no later than 30 days after the date of publication of this notice.[12] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the due date for filing case briefs.[13] Parties who submit case briefs or rebuttal briefs in this proceeding 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.[14] Case and rebuttal briefs should be filed using ACCESS.[15] In order to be properly filed, ACCESS must successfully receive an electronically filed document in its entirety by 5 p.m. Eastern Time.

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, filed electronically via ACCESS, within 30 days after the date of publication of this notice.[16] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries in accordance with 19 CFR 351.212(b)(1). We intend to issue instructions to CBP 15 days after the date of publication of the final results of this review.

If the weighted-average dumping margin for Shin Yang is not zero or *de minimis* in the final results, then Commerce will calculate importer-specific assessment rates. Because Shin Yang did not report the entered value of its sales, we will calculate importer-specific per-unit duty assessment rates by aggregating the total amount of dumping calculated for the examined sales of each importer and dividing each of these amounts by the total quantity (*i.e.,* weight) associated with those sales. To determine whether the importer-specific per-unit assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-specific *ad valorem* rates based on estimated entered values. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties all entries for which the importer-specific *ad valorem* rate is zero or *de minimis.*

With respect to Yieh Hsing, if we continue to find that Yieh Hsing had no shipments of subject merchandise in the final results, we will instruct CBP to liquidate any existing entries of merchandise produced by Yieh Hsing, but exported by other parties, at the rate for the intermediate reseller, if available, or at the all-others rate.[17]

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 the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Shin Yang will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for other manufacturers and

[8] *See* Yieh Hsing's Letter, ''Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan; No Shipment Certification,'' dated July 21, 2017.

[9] *See* ''No Shipments Inquiry for Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan Produced and/or Exported by Yieh Hsing (A–583–008–003),'' message number 7264308 (September 21, 2017).

[10] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR at 51306 (August 28, 2014).

[11] *See* 19 CFR 351.224(b).

[12] *See* 19 CFR 351.309(c)(1)(ii).

[13] *See* 19 CFR 351.309(d).

[14] *See* 19 CFR 351.309(c)(2) and (d)(2).

[15] *See* 19 CFR 351.303.

[16] *See* 19 CFR 351.310(c).

[17] *See, e.g., Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

exporters covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 9.70 percent, the all-others rate in the LTFV investigation.[18] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notifications

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 4, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Preliminary Determination of No Shipments
5. Comparisons to Normal Value
6. Date of Sale
7. Export Price
8. Normal Value
9. Currency Conversion
10. Recommendation

[FR Doc. 2018–12594 Filed 6–11–18; 8:45 am]

BILLING CODE 3510–DS–P

[18] *See Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Antidumping Duty Order,* 49 FR 19369 (May 7, 1984).

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 180124068–8068–01]

RIN 0660–XC041

International Internet Policy Priorities

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice; Extension of comment period.

SUMMARY: In response to requests for additional time, the Department of Commerce is extending the closing deadline for submitting comments to a request for public comments entitled ''International Internet Policy Priorities'' published in the **Federal Register** on June 5, 2018. Through this notice, the Department extends the comment period to July 17, 2018.

DATES: Comments are due on July 17, 2018, at 5:00 p.m. Eastern Daylight Time (EDT).

ADDRESSES: Written comments may be submitted by email to *iipp2018@ntia.doc.gov.* Comments submitted by email should be machine-readable and should not be copy-protected. Written comments also may be submitted by mail to the National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4725, Attn: Fiona Alexander, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Fiona Alexander, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4706, Washington, DC 20230; telephone (202) 482–1866; email *falexander@ntia.doc.gov.* Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002, or at *press@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION: On June 5, 2018, NTIA published a Notice of Inquiry seeking comments and recommendations from all interested stakeholders on its international Internet policy priorities for 2018 and beyond. See NTIA, Notice of Inquiry, International Internet Policy Priorities, 83 FR 26036 (June 5, 2018). These comments will help inform NTIA to identify priority issues and help NTIA effectively leverage its resources and expertise to address those issues. The original deadline for submission of comments was July 2, 2018. With this notice, NTIA announces the extension of the closing deadline for submission of comments until July 17, 2018, at 5:00 p.m. EDT. All other instructions to commenters provided in the original notice remain unchanged.

Dated: June 7, 2018.

Kathy Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2018–12613 Filed 6–11–18; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Opportunity To Seek Partners for a Cooperative Research and Development Agreement and Licensing Opportunity for Patent No. 9,303,932 B1, Issued April 5, 2016 Entitled ''Firearm With Both Gas Delayed and Stroke Piston Action''

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Aviation and Missile Command (AMRDEC) is seeking Cooperative Research and Development Agreement (CRADA) partners to collaborate in transitioning firearm with both gas delayed and stroke piston action into commercial and/or government application(s). Interested potential CRADA collaborators will receive detailed information on the current status of the project after signing a confidentiality disclosure agreement (CDA) with AMRDEC.

Under the CRADA, further research, development and testing will be conducted to further refine the principles and prototypes. Based on the results of these experiments a refined fully functioning firearm action could be designed and manufactured. The developed principles and designs might be further modified for other uses outside of the firearms industry.

DATES: Interested candidate partners must submit a statement of interest and capability to the AMRDEC point of contact before July 13, 2018 for consideration.

ADDRESSES: Comments and questions may be submitted to: Department of the Army, U.S. Army Research Development and Engineering Command, Aviation and Missile Research Development, and Engineering Center, ATTN: RDMR–CST (Ms. Wallace—Rm B300Q), 5400 Fowler Road, Redstone Arsenal, AL 35898–5000, or Email: *usarmy.redstone.rdecom-amrdec.mbx.orta@mail.mil.*

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action can be directed to Ms. Cindy Wallace, (256) 313–0895, Office of Research and Technology Applications, email: *cindy.s.wallace.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: Collaborators should have experience in the development and testing of firearms. The target end products include government and commercial applications and unique applications identified by the CRADA partner.

The full CRADA proposal should include a capability statement with a detailed description of collaborators' expertise in the following and related technology areas: (1) Gas and/or blowback operated automatic firearms; (2) collaborators' expertise in successful technology transition; and (3) collaborator's ability to provide adequate funding to support some project studies is strongly encouraged. A preference will be given to collaborators who shall manufacture automatic or semi-automatic firearms in the United States. Collaborators are encouraged to properly label any proprietary material in their CRADA proposal as PROPRIETARY. Do not use the phrase ''company confidential.''

Guidelines for the preparation of a full CRADA proposal will be communicated shortly thereafter to all respondents with whom initial confidential discussions will have established sufficient mutual interest. CRADA applications submitted after the due date may be considered if a suitable CRADA collaborator has not been identified by AMRDEC among the initial by AMRDEC are expeditiously commercialized and brought to practical use. The purpose of a CRADA is to find partner(s) to facilitate the development and commercialization of a technology that is in an early phase of development. Respondents interested in submitting a CRADA proposal should be aware that it may be necessary for them to secure a patent license to the above-mentioned patent pending technology in order to be able to commercialize products arising from a CRADA. CRADA partners are afforded an option to negotiate an exclusive license from the AMRDEC for inventions arising from the performance of the CRADA research plan.

Technology Overview. Most conventional high powered automatic firearms function using a variation of long, short piston or direct impingement gas operation. The locking/unlocking mechanisms used in these firearms require extensive machining and manufacturing costs. A solution for delaying case extraction without the use of elaborate locking mechanisms or heavy bolts would allow for a simpler design.

By utilizing the principles of a gas delayed system to retain the bolt until safe extraction is possible and a stroke piston action to facilitate case extraction/ejection a simpler mechanism may be used for a high-powered automatic firearm. Two separate barrel ports, one near the chamber for the gas delaying function and the other near the muzzle for the stroke piston action, allow propellant gasses to act upon one piston. The piston is directly connected to the firearm's bolt via a linkage. Upon firing, the port near the chamber is utilized first causing gasses to hold the piston forward. Once propellant gasses reach the port near the muzzle the piston is forced rearward. The barrel port diameters will determine the forces acting upon the piston and bolt. Two prototypes of advancing design, detailed within the patent, were developed for initial testing and showed promising results.

Publications. P. Jackson: ''Firearm with Both Gas Delayed and Stroke Piston Action,'' U.S. Patent 9,303,932 B1, April 5, 2016.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2018–12587 Filed 6–11–18; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF ENERGY

Study on Macroeconomic Outcomes of LNG Exports

	FE Docket No.
Gulf Coast LNG Export, LLC	12–05–LNG
Jordan Cove Energy Project, L.P	12–32–LNG
Gulf LNG Liquefaction Company, LLC	12–101–LNG
CE FLNG, LLC	12–123–LNG
Freeport-McMoRan Energy LLC	13–26–LNG
Venture Global Calcasieu Pass, LLC	13–69–LNG
Eos LNG LLC	13–116–LNG
Barca LNG LLC	13–118–LNG
Waller LNG Services, LLC	13–153–LNG
Gasfin Development USA, LLC	13–161–LNG
Venture Global Calcasieu Pass, LLC	14–88–LNG
SCT&E LNG, LLC	14–98–LNG
Venture Global Calcasieu Pass, LLC	15–25–LNG
G2 LNG LLC	15–45–LNG
Texas LNG Brownsville LLC	15–62–LNG
Strom Inc	15–78–LNG
Port Arthur LNG, LLC	15–96–LNG
Corpus Christi Liquefaction, LLC	15–97–LNG
Rio Grande LNG, LLC	15–190–LNG
Eagle LNG Partners Jacksonville, LLC	16–15–LNG
Venture Global Plaquemines LNG, LLC	16–28–LNG
Driftwood LNG, LLC	16–144–LNG
Fourchon LNG, LLC	17–105–LNG
Galveston Bay LNG, LLC	17–167–LNG
Freeport LNG Expansion L.P., and FLNG Liquefaction 4, LLC	18–26–LNG

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of availability of the 2018 LNG Export Study and request for comments.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice (Notice) of the availability

of a study, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (2018 LNG Export Study or Study), in the above-referenced proceedings and invites the submission of comments on the Study. DOE commissioned the 2018 LNG Export Study to inform DOE/FE's decisions on applications seeking authorization to export domestically produced liquefied natural gas (LNG) from the lower-48 states to countries with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries). The purpose of this Notice is to enter the 2018 LNG Export Study into the administrative record of the 25 pending non-FTA export proceedings (listed above) and to invite comments on the Study for use in the pending and future non-FTA application proceedings. The 2018 LNG Export Study is posted on the DOE/FE website at: *https://fossil.energy.gov/app/docketindex/docket/index/10.*

DATES: Comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, July 27, 2018. DOE will not accept reply comments.

ADDRESSES:

Electronic Filing of Comments Using Online Form: https://fossil.energy.gov/app/docketindex/docket/index/10.

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (*e.g.,* FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Robert Smith or Amy Sweeney, U.S. Department of Energy (FE–34), Office of Oil and Natural Gas, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–7241; (202) 586–2627.

Cassandra Bernstein or Ronald (R.J.) Colwell, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793; (202) 586–8499.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Overview

Pursuant to section 3 of the Natural Gas Act (NGA), 15 U.S.C. 717b, exports of natural gas, including LNG, must be authorized by DOE/FE.[1] Under NGA section 3(a), 15 U.S.C. 717b(a), applications that seek authority to export natural gas to non-FTA countries are presumed to be in the public interest unless, after opportunity for hearing, DOE finds that the authorization would not be consistent with the public interest.[2]

In evaluating the public interest under NGA section 3(a), DOE reviews factors including economic impacts, international impacts, security of natural gas supply, and environmental impacts, among others.[3] Additionally, DOE/FE has explained that, in deciding whether to grant a non-FTA export application, it considers the cumulative impacts of the total volume of all final non-FTA export authorizations.[4] DOE/FE has further stated that it will assess the cumulative impacts of each succeeding request for export authorization on the public interest with due regard to the effect on domestic natural gas supply and demand fundamentals.[5]

To date, DOE/FE has issued 29 final long-term authorizations to export LNG and compressed natural gas to non-FTA countries in a cumulative volume totaling 21.35 billion cubic feet (Bcf) per day (Bcf/d) of natural gas (approximately 7.79 trillion cubic feet per year).[6] With one early exception,[7] DOE/FE issued all of these authorizations based, in part, on its consideration of one or more of the LNG export studies described below.

B. LNG Export Studies

To date, DOE/FE has commissioned five studies to examine the effects of U.S. LNG exports on the U.S. economy and energy markets.[8] The first study, *Effect of Increased Natural Gas Exports on Domestic Energy Markets,* was performed by EIA and published in January 2012 (EIA Study).[9] The second study, *Macroeconomic Impacts of LNG Exports from the United States,* was performed by NERA and published in December 2012 (NERA Study and, together with the EIA Study, the 2012 LNG Export Study).[10] The third study, *Effect of Increased Levels of Liquefied Natural Gas Exports on U.S. Energy Markets,* was performed by EIA and published in October 2014 (2014 LNG Export Study).[11] The fourth study, *The Macroeconomic Impact of Increasing U.S. LNG Exports,* was performed jointly by the Center for Energy Studies at Rice University's Baker Institute and Oxford Economics and published in October 2015 (2015 LNG Export Study).[12] The study subject to this Notice—the 2018 LNG Export Study—is the fifth economic study commissioned by DOE.

DOE/FE invited public comment on each of the four prior studies, and received comments representing a diverse range of interests and perspectives. DOE/FE considered the comments received on each study, as applicable, in its review of the non-FTA export applications then-pending before it. As noted above, DOE/FE has relied

[1] The authority to regulate the imports and exports of natural gas, including LNG, under section 3 of the NGA (15 U.S.C. 717b) has been delegated to the Assistant Secretary for FE in Redelegation Order No. 00–006.02 (issued November 17, 2014).

[2] With regard to exports to FTA countries, NGA section 3(c) was amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102–486) to require that FTA applications ''shall be deemed to be consistent with the public interest'' and granted ''without modification or delay.'' 15 U.S.C. 717b(c). Accordingly, this Notice does not apply to FTA export proceedings.

[3] *See generally Sierra Club* v. *U.S. Dep't of Energy,* 867 F.3d 189 (D.C. Cir. 2017). Before reaching a final decision on any non-FTA application, DOE must also comply with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*

[4] *See, e.g., Eagle LNG Partners Jacksonville II LLC,* DOE/FE Order No. 4078, FE Docket No. 17–79–LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas in ISO Containers Loaded at the Eagle Maxville Facility in Jacksonville, Florida, and Exported by Vessel to Free Trade Agreement and Non-Free Trade Agreement Nations, 34–38 (Sept. 15, 2017).

[5] *See id.* at 37–38.

[6] *See id.* at 34–38.

[7] DOE acted on the first application—Sabine Pass Liquefaction, LLC in FE Docket No. 10–111–LNG—at approximately the same time that DOE/FE commenced the first LNG export study.

[8] Because there is no natural gas pipeline interconnection between Alaska and the lower 48 states, DOE/FE generally views those LNG export markets as distinct. DOE/FE therefore focuses on LNG exports from the lower-48 states for purposes of determining macroeconomic impacts.

[9] *See* 2012 LNG Export Study, 77 FR. 73627 (Dec. 11, 2012), *available at: http://energy.gov/sites/prod/files/2013/04/f0/fr_notice_two_part_study.pdf* (notice of availability of the 2012 LNG Export Study).

[10] *See id.*

[11] U.S. Energy Info. Admin., *Effect of Increased Levels of Liquefied Natural Gas Exports on U.S. Energy Markets* (Oct. 2014), *available at: https://www.eia.gov/analysis/requests/fe/pdf/lng.pdf.*

[12] Center for Energy Studies at Rice University Baker Institute and Oxford Economics, *The Macroeconomic Impact of Increasing U.S. LNG Exports* (Oct. 29, 2015), *available at: http://energy.gov/sites/prod/files/2015/12/f27/20151113_macro_impact_of_lng_exports_0.pdf; see also* U.S. Dep't of Energy, Macroeconomic Impacts of LNG Exports Studies; Notice of Availability and Request for Comments, 80 F R 81300 (Dec. 29, 2015) (notice of availability of the 2014 and 2015 LNG Export Studies).

on these studies to better inform its public interest review under section 3(a) of the NGA.

The two most recent studies, the 2014 and 2015 LNG Export Studies, examined the domestic macroeconomic impacts of increasing exports of LNG at levels from 12 to 20 Bcf/d of natural gas. Specifically, the 2014 LNG Export Study served as an update of EIA's 2012 Study and used baseline cases from EIA's *Annual Energy Outlook 2014.* Whereas the 2012 study was based off of a Reference case with no LNG exports, the 2014 study assumed higher LNG exports as it was based off of 9.4 Bcf/d Reference case export levels.[13] The 2015 Study was a scenario-based assessment of the macroeconomic impact of levels of U.S. LNG exports, sourced from the lower-48 states, under different assumptions including U.S. resource endowment, U.S. natural gas demand, and international LNG market dynamics. The 2015 LNG Export Study included a case examining export volumes up to 28 Bcf/d of natural gas. The analysis covered the 2015 to 2040 time period.

C. The 2018 LNG Export Study

The 2018 LNG Export Study, performed by NERA Economic Consulting (NERA), examines the probability and macroeconomic impact of various U.S. LNG export scenarios and includes alternative baseline scenarios based on the U.S. Energy Information Administration's (EIA) *Annual Energy Outlook 2017.* The 2018 LNG Export Study will allow DOE/FE to: (i) Evaluate the cumulative impacts of each additional non-FTA application to export LNG on the U.S. economy and energy markets, and (ii) assess the likelihood (or probability) of different levels of LNG exports. The 2018 LNG Export Study is posted on the DOE/FE website at: *https://fossil.energy.gov/app/docketindex/docket/index/10.* DOE may use the 2018 LNG Export Study to inform its decisions in the pending non-FTA docket proceedings (listed above), in future non-FTA application proceedings, and for other purposes. Comments submitted in compliance with the instructions in this Notice will be placed in the administrative record for all of the above-listed proceedings and need only be submitted once.

The 25 proceedings identified above involve pending applications seeking authorization to export domestically produced LNG to non-FTA countries. In light of both the cumulative volume of exports to non-FTA countries authorized to date (equivalent to 21.35 Bcf/d of natural gas) and the volume of LNG requested for export in those pending applications, DOE/FE determined that a new macroeconomic study was warranted. DOE therefore commissioned NERA to conduct the 2018 LNG Export Study.

Like the four prior studies, the 2018 LNG Export Study examines the impacts of varying levels of LNG exports on domestic energy markets. The 2018 LNG Export Study also assesses the likelihood of different levels of ''unconstrained'' LNG exports (defined as market determined levels of exports), and analyzes the outcomes of different LNG export levels on the U.S. natural gas markets and the U.S. economy as a whole, over the 2020 to 2050 time period.

Specifically, the 2018 LNG Export Study develops 54 scenarios by identifying various assumptions for domestic and international supply and demand conditions to capture a wide range of uncertainty in the natural gas markets.[14] The scenarios include three baseline cases based on EIA's *Annual Energy Outlook 2017* (AEO 2017) projections (the most recent EIA projections available at the time), with varying assumptions about U.S. natural gas supply. Alternative scenarios add other assumptions about both future U.S. natural gas demand and the international outlook. International assumptions are based on EIA's *International Energy Outlook 2017* and the International Energy Agency's *World Energy Outlook 2016.*

As part of this analysis, the 2018 LNG Export Study examines the likelihood of conditions leading to various export scenarios—making it the first DOE macroeconomic study to consider this issue. Specifically, the 2018 LNG Export Study includes peer-reviewed probabilities of uncertainties surrounding developments in the international and domestic natural gas markets that were, in turn, combined to develop the 54 export scenarios and their associated macroeconomic impacts.

To summarize, the 2018 LNG Export Study differs from DOE/FE's previous macroeconomic studies in the following ways:

(i) Includes a larger number of scenarios (54 scenarios) to capture a wider range of uncertainty in four natural gas market conditions than examined in the previous studies;

(ii) Includes LNG exports in all 54 scenarios that are market-determined levels, including the three alternative baseline scenarios that are based on the AEO 2017 projections;

(iii) Examines unconstrained LNG export volumes beyond the levels examined in the previous studies;

(iv) Examines the likelihood of those market-determined LNG export volumes; and

(v) Provides macroeconomic projections associated with several of the scenarios lying within the more likely range.

II. Invitation To Comment

The 2018 LNG Export Study and the comments that DOE/FE receives in response to this Notice will help to inform DOE/FE's determination of the public interest in pending and future non-FTA application proceedings. Comments must be limited to the methodology, results, and conclusions of the 2018 LNG Export Study on the factors evaluated. These factors include the potential impact of LNG exports on domestic energy consumption, production, and prices; the macroeconomic factors identified in the Study, including gross domestic product, consumption, U.S. economic sector analysis, and U.S. LNG export feasibility analysis; and any other factors included in the Study. In addition, comments may be directed toward the feasibility of various scenarios used in the Study. While this invitation to comment covers a broad range of issues, DOE may disregard comments that are not germane to the present inquiry. Due to the complexity of the issues raised in the 2018 LNG Export Study, interested parties will be provided 45 days from the date of publication of this Notice in which to submit their comments.

III. Public Comment Procedures

DOE is not establishing a new proceeding or docket in this Notice, and the submission of comments in response to this Notice will not make commenters parties to any of the 25 export proceedings identified by docket number above. Persons with an interest in the outcome of one or more of those proceedings have been given an opportunity to comment, protest, and/or intervene in those applications by complying with the procedures established in the respective notices of application published in the **Federal**

[13] Each Annual Energy Outlook (AEO) presents EIA's long-term projections of energy supply, demand, and prices. It is based on results from EIA's National Energy Modeling System (NEMS) model.

[14] The four major sources of uncertainty affecting U.S. LNG exports identified by the Study are: Natural gas supply conditions in the United States, natural gas demand in the United States, natural gas supply availability in the rest of the world, and natural gas demand in the rest of the world.

Register.[15] The record in those 25 proceedings will include all comments received in response to this Notice. Comments will be reviewed on a consolidated basis, and decisions on each application will be issued on a case-by-case basis. In addition to the procedures established by this Notice, all comments must meet the requirements specified by the regulations in 10 CFR part 590, as supplemented below.

Comments may be submitted using one of the following supplemental methods:

(1) Submitting the comments using the online form at *https://fossil.energy.gov/app/docketindex/docket/index/10;*

(2) Mailing an original and three paper copies of the filing to the Office of Regulation and International Engagement at the address listed in **ADDRESSES**; or

(3) Hand delivering an original and three paper copies of the filing to the Office of Regulation and International Engagement at the address listed in **ADDRESSES**.

For administrative efficiency, DOE/FE prefers comments to be filed electronically using the online form (method 1). All comments must include a reference to the ''2018 LNG Export Study'' in the title line.

The 2018 LNG Export Study is available for inspection and copying in the Division of Natural Gas Regulation docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Study and any comments filed in response to this Notice will be available electronically at the following DOE/FE website: *https://fossil.energy.gov/app/docketindex/docket/index/10.*

Issued in Washington, DC, on June 7, 2018.

Amy Sweeney,

Director, Division of Natural Gas Regulation, Office of Fossil Energy.

[FR Doc. 2018–12621 Filed 6–11–18; 8:45 am]

BILLING CODE 6450–01–P

[15] Notices of application in the 25 proceedings were published in the **Federal Register** as follows: *Gulf Coast LNG Export, LLC,* FE Docket No. 12–05–LNG, 77 FR 32962 (June 4, 2012); *Jordan Cove Energy Project, L.P.,* FE Docket No. 12–32–LNG, 77 FR 33446 (June 6, 2012); *Gulf LNG Liquefaction Co., LLC,* FE Docket No. 12–101–LNG, 77 FR 66454 (Nov. 5, 2012); *CE FLNG, LLC,* FE Docket No. 12–123–LNG, 77 FR 72840 (Dec. 6, 2012); *Freeport-McMoRan Energy LLC,* FE Docket No. 13–26–LNG, 78 FR 34084 (June 6, 2013); *Venture Global Calcasieu Pass, LLC,* FE Docket No. 13–69–LNG, 79 FR 30109 (May 27, 2014); *Eos LNG LLC,* FE Docket No. 13–116–LNG, 78 FR 75337 (Dec. 11, 2013); *Barca LNG LLC,* FE Docket No. 13–118–LNG, 78 FR 75339 (Dec. 11, 2013); *Waller LNG Svs., LLC,* FE Docket No. 13–153–LNG, 79 FR 41685 (July 17, 2014); *Gasfin Development USA, LLC,* FE Docket No. 13–161–LNG, 79 FR 44439 (July 31, 2014); *Venture Global Calcasieu Pass, LLC,* FE Docket No. 14–88–LNG, 79 FR 66707 (Nov. 10, 2014); *SCT&E LNG, LLC,* FE Docket No. 14–98–LNG, 79 FR 75796 (Dec. 19, 2014); *Venture Global Calcasieu Pass, LLC,* FE Docket No. 15–25–LNG, 80 FR 36977 (June 29, 2015); *G2 LNG LLC,* FE Docket No. 15–45–LNG, 80 FR 44091 (July 24, 2015); *Texas LNG Brownsville LLC,* FE Docket No. 15–62–LNG, 80 FR 46966 (Aug. 6, 2015); *Strom Inc.,* FE Docket No. 15–78–LNG, 80 FR 51793 (Aug. 26, 2015); *Port Arthur LNG, LLC,* FE Docket No. 15–96–LNG, 80 FR 51795 (Aug. 26, 2015); *Corpus Christi Liquefaction, LLC,* FE Docket No. 15–97–LNG, 80 FR 51790 (Aug. 26, 2015); *Rio Grande LNG, LLC,* FE Docket No. 15–190–LNG, 81 FR 46318 (July 19, 2016); *Eagle LNG Partners Jacksonville, LLC,* FE Docket No. 16–15–LNG, 81 FR 43192 (July 1, 2016); *Venture Global Plaquemines LNG, LLC,* FE Docket No. 16–28–LNG, 81 FR 39603 (June 8, 2016); *Driftwood LNG, LLC,* FE Docket No. 16–144–LNG, 82 FR 3760 (Jan. 12, 2017); *Fourchon LNG, LLC,* FE Docket No. 17–105–LNG, 82 FR 49201 (Oct. 24, 2017); *Galveston Bay LNG, LLC,* FE Docket No. 17–167–LNG, 83 FR 4473 (Jan. 31, 2018); *Freeport LNG Expansion, L.P. and FLNG Liquefaction 4, LLC,* FE Docket No. 18–26–LNG, 83 FR 23909 (May 23, 2018).

DEPARTMENT OF ENERGY

State Energy Advisory Board

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

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: July 12, 2018, 9:00 a.m. to 5:30 p.m. ET, July 13, 2018, 9:00 a.m. to 3:30 p.m. ET.

ADDRESSES: The meeting will be held at the U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Michael Li, Senior Policy Advisor, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585. Phone number 202–287–5189, and email: *Michael.Li@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Meet with and hear from the Principal Deputy Assistant Secretary of the Office of Energy Efficiency and Renewable Energy, and other staff regarding programs and priorities of the Office of Energy Efficiency and Renewable Energy. The meeting is also expected to discuss the relevant work of the Building Technologies Office and the Weatherization and Intergovernmental Programs Office. The Board is expected to develop recommendations for the Assistant Secretary, Office of Energy Efficiency and Renewable Energy.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Michael Li at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. Anyone attending the meeting will be required to present government-issued identification.

The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 90 days on the STEAB website, *http://www.energy.gov/eere/steab/state-energy-advisory-board.*

Issued in Washington, DC, on June 6, 2018.

Latanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2018–12543 Filed 6–11–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Nuclear Energy Advisory Committee

AGENCY: Office of Nuclear Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Nuclear Energy Advisory Committee (NEAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday July 9, 2018, 9:00 a.m.–4:30 p.m.

ADDRESSES: Crowne Plaza Washington National Airport, 1480 Crystal Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Bob Rova, Designated Federal Officer, U.S. Department of Energy, 19901

Germantown Rd., Germantown, MD 20874; telephone (301) 903–9096; email: *robert.rova@nuclear.energy.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Nuclear Energy Advisory Committee (NEAC), formerly the Nuclear Energy Research Advisory Committee (NERAC), was established in 1998 by the U.S. Department of Energy (DOE) to provide advice on complex scientific, technical, and policy issues that arise in the planning, managing, and implementation of DOE's civilian nuclear energy research programs. The committee is composed of 25 individuals of diverse backgrounds selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues that pertain to nuclear energy.

Purpose of the Meeting: To inform the committee of recent developments and current status of research programs and projects pursued by the Department of Energy's Office of Nuclear Energy and receive advice and comments in return from the committee.

Tentative Agenda: The meeting is expected to include presentations that provide the committee updates on activities for the Office of Nuclear Energy. The agenda may change to accommodate committee business. For updates, one is directed the NEAC website: *https://www.energy.gov/ne/services/nuclear-energy-advisory-committee.*

Public Participation: Please register at *https://www.eventbrite.com/e/nuclear-energy-advisory-committee-neac-meeting-tickets-46775873898.* Individuals and representatives of organizations who would like to offer comments and suggestions may do so on the day of the meeting, Monday, July 9, 2018. Approximately thirty minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but is not expected to exceed 5 minutes. Anyone who is not able to make the meeting or has had insufficient time to address the committee is invited to send a written statement to Bob Rova, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, or email: *robert.rova@nuclear.energy.gov.*

Minutes: The minutes of the meeting will be available by contacting Mr. Rova at the address above or on the Department of Energy, Office of Nuclear Energy website at *https://www.energy.gov/ne/services/nuclear-energy-advisory-committee.*

Issued in Washington, DC, on June 6, 2018.

Latanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2018–12542 Filed 6–11–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD18–11–000]

Supplemental Notice of Technical Conference: Reliability Technical Conference

Take notice that the Federal Energy Regulatory Commission (Commission) will hold a Technical Conference on Tuesday, July 31, 2018, from 9:00 a.m. to 5:00 p.m. This Commissioner-led conference will be held in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The purpose of the conference is to discuss policy issues related to the reliability of the Bulk-Power System. Attached is an agenda for this event.

The conference will be open for the public to attend. There is no fee for attendance. However, members of the public are encouraged to preregister online at: *https://www.ferc.gov/whats-new/registration/07-31-18-form.asp.*

Information on this event will be posted on the Calendar of Events on the Commission's website, *http://www.ferc.gov,* prior to the event. The conference will also be webcast and transcribed. Anyone with internet access who desires to listen to this event can do so by navigating to the Calendar of Events at *http://www.ferc.gov* and locating this event in the Calendar. The event will contain a link to the webcast. The Capitol Connection provides technical support for webcasts and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call (703) 993–3100. Transcripts of the technical conference will be available for a fee from Ace-Federal Reporters, Inc. at (202) 347–3700.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1 (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this technical conference, please contact Lodie White (202) 502–8453, *Lodie.White@ferc.gov.* For information related to logistics, please contact Sarah McKinley at (202) 502–8368, *Sarah.Mckinley@ferc.gov.*

Dated: June 1, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–12597 Filed 6–11–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1432–014]

PB Energy, Inc.; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Intent To Waive Second Stage Consultation

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent license.

b. *Project No.:* P–1432–014.

c. *Date filed:* May 30, 2018.

d. *Applicant:* PB Energy, Inc.

e. *Name of Project:* Dry Spruce Bay Project.

f. *Location:* On an unnamed creek near Port Bailey in Kodiak Island Borough, Alaska. The projects occupies 44 acres of land managed by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* David and Nickie Sutherlin, 685 Spring St., PMB 296, Friday Harbor, WA 98250, (305) 898–3223.

i. *FERC Contact:* Ryan Hansen, 888 1st St. NE, Washington, DC 20426, (202) 502–8074, *ryan.hansen@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis

for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: July 30, 2018.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–14795–002.

m. Due to the small size and remote location of this project, the applicant's coordination with tribal, state, and federal agencies during the preparation of the application, and the lack of interest during pre-filing consultation, we intend to accept the consultation that has occurred on this project during the pre-filing period as satisfying our requirements for the standard 3-stage consultation process under 18 CFR 4.38.

n. The application is not ready for environmental analysis at this time.

o. The hydroelectric project includes: A 920-foot-long, 50-foot-wide ditch diverting water from an unnamed stream to an upper pond; a 12.59-acre upper pond created by A 200-foot-long, 50-foot-wide, 5-foot-high earthen dam with a spillway and a 200-foot-long overflow ditch; a short metal flume and a 275-foot-long, 12-inch-diameter wood stave pipe conveying water from the upper pond to the lower pond; a 1000-foot-long, 50-foot-wide ditch diverting water from an unnamed stream to the lower pond; a 2.2-acre lower pond created by a 200-foot-long, 50-foot-wide, 5-foot-high earthen dam; a 6,772-foot-long PVC and steel penstock conveying water from the lower pond to the powerhouse; a steel powerhouse with a 75-kilowatt Pelton turbine; a short transmission line; and appurtenant facilities. The annual generation is 3,000 megawatt-hours.

p. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

q. *Procedural schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Notice of Acceptance	August 2018.
Issue Scoping Document 1 for comment	September 2018.
Comments on Scoping Document 1due	October 2018.
Issue notice of ready for environmental analysis	December 2018.
Commission issues EA	April 2019.
Comments on EA	May 2019.

Dated: June 6, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–12583 Filed 6–11–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG18–96–000.

Applicants: Rush Springs Energy Storage, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Rush Springs Energy Storage, LLC.

Filed Date: 6/6/18.

Accession Number: 20180606–5035.

Comments Due: 5 p.m. ET 6/27/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–1222–002.

Applicants: PSEG Energy Resources & Trade LLC.

Description: Tariff Amendment: Amendment to Filing in Docket ER18–1222 to be effective 6/7/2018.

Filed Date: 6/6/18.

Accession Number: 20180606–5002.

Comments Due: 5 p.m. ET 6/27/18.

Docket Numbers: ER18–1594–001.

Applicants: Public Service Company of Colorado.

Description: Compliance filing: OATT_LGIA–SGIA Order 842 Compl-Att N–P to be effective 5/15/2018.

Filed Date: 6/6/18.

Accession Number: 20180606–5030.

Comments Due: 5 p.m. ET 6/27/18.

Docket Numbers: ER18–1747–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1518R15 Arkansas Electric Cooperative Corp NITSA NOA to be effective 7/1/2018.

Filed Date: 6/5/18.

Accession Number: 20180605–5132.

Comments Due: 5 p.m. ET 6/26/18.

Docket Numbers: ER18–1748–000.

Applicants: Elk City II Wind, LLC.

Description: Tariff Cancellation: Elk City II Wind, LLC Notice of Cancellation of Market-Based Rate Tariff to be effective 6/6/2018.

Filed Date: 6/5/18.

Accession Number: 20180605–5149.

Comments Due: 5 p.m. ET 6/26/18.

Docket Numbers: ER18–1749–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of Service Agreement No. 4772; Queue No. AC1–013 to be effective 7/2/2018.

Filed Date: 6/6/18.

Accession Number: 20180606–5092.

Comments Due: 5 p.m. ET 6/27/18.

Docket Numbers: ER18–1750–000.

Applicants: ITC Midwest LLC.

Description: § 205(d) Rate Filing: Filing of a Master JUA for Distribution Underbuild with Midland Power Coop to be effective 8/6/2018.

Filed Date: 6/6/18.

Accession Number: 20180606–5093.

Comments Due: 5 p.m. ET 6/27/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211

and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 6, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–12581 Filed 6–11–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–186–000]

Notice of Intent To Prepare an Environmental Assessment for the Proposed Transcontinental Gas Pipe Line Company, LLC Southeastern Trail Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Sessions

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Southeastern Trail Project involving construction and operation of facilities by Transcontinental Gas Pipe Line Company, LLC (Transco) across Virginia, South Carolina, Georgia, and Louisiana. The Commission will use this EA 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 on the project. You can make a difference by providing us with your specific comments or concerns about the project. 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 EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Daylight Time on July 2, 2018.

If you sent comments on this project to the Commission before the opening of this docket on April 11, 2018, you will need to file those comments in Docket No. CP18–186–000 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.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

Transco provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC website (*www.ferc.gov*).

Public Participation

For your convenience, there are four methods you can use to submit your comments to the Commission. The Commission will provide equal consideration to all comments received, whether filed in written form or provided verbally. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* This 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 on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP18–186–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

(4) In lieu of sending written or electronic comments, the Commission invites you to attend one of the public scoping sessions its staff will conduct in the project area, scheduled as follows:

Date and time	Location
Monday, June 18, 2018, 4:30–8:00 p.m	Brentsville High School, 12109 Aden Rd., Nokesville, VA 20181, (703) 594–2161.
Tuesday, June 19, 2018, 4:30–8:00 p.m	Scottsville Public Library, 330 Bird Street, Scottsville, VA 24590–0759, (434) 286–3541.
Wednesday, June 20, 2018, 4:30–8:00 p.m	Old Dominion Education Center, 19783 U.S. Hwy. 29 South, Chatham, VA 24531, (434) 432–8026.

The primary goal of these scoping sessions is to have you identify the specific environmental issues and concerns that should be considered in the EA to be prepared for this Project. Individual verbal comments will be taken on a one-on-one basis with a court reporter. This format is designed to receive the maximum amount of verbal comments, in a convenient way during the timeframe allotted.

Each scoping session is scheduled from 4:30 p.m. to 8:00 p.m. EDT. You may arrive at any time after 4:30 p.m. There will not be a formal presentation by Commission staff when the session opens. If you wish to speak, the Commission staff will hand out numbers in the order of your arrival. Comments will be taken until 8:00 p.m. However, if no additional numbers have been handed out and all individuals who wish to provide comments have had an opportunity to do so, staff may conclude the session at 7:30 p.m. Please see appendix 1 for additional information on the session format and conduct.[1]

Your scoping comments will be recorded by the court reporter (with FERC staff or representative present) and become part of the public record for this proceeding. Transcripts will be publicly available on FERC's eLibrary system (see below for instructions on using eLibrary). If a significant number of people are interested in providing verbal comments in the one-on-one settings, a time limit of 5 minutes may be implemented for each commentor.

It is important to note that verbal comments hold the same weight as written or electronically submitted comments. Although there will not be a formal presentation, Commission staff will be available throughout the comment session to answer your questions about the environmental review process. Representatives from Transco will also be present to answer project-specific questions.

Please note this is not your only public input opportunity; please refer to the review process flow chart in appendix 2.[2]

Summary of the Proposed Project

Transco proposes to construct and operate about 7.7 miles of new natural gas pipeline (Manassas Loop) located along the existing Transco Mainline, expand three existing compressor stations in Virginia (Stations 185, 175, and 165), and modify 21 existing facilities in South Carolina, Georgia, and Louisiana as part of the Southeastern Trail Project. According to Transco, its project would provide 296.4 million standard cubic feet of natural gas per day (MMcf/d) of additional firm transportation capacity from the Pleasant Valley Interconnect facility in Fairfax County, Virginia to the existing Station 65 pooling point in St. Helena Parish, Louisiana, to serve the following customers: Public Service Company of North Carolina Incorporated (60 MMcf/d), South Carolina Electric and Gas (215 MMcf/d), Virginia Natural Gas (14.6 MMcf/d), and the cities of Buford (3.8 MMcf/d) and LaGrange (3 MMcf/d) in Georgia.

The specific facilities proposed as part of the Southeastern Trail Project are as follows:

- Construction of approximately 7.7 miles of new 42-inch-diameter pipeline loop [3] (referred to as the Manassas Loop) in Fauquier and Prince William Counties, Virginia. The Manassas Loop would be collocated along the Transco Mainline from milepost 1568.13 to 1575.85 between Station 180 and Station 185.
- Expansion of existing compressor stations in Virginia
  - Uprating the existing electric-driven compression unit driver from 25,000 to 30,000 horsepower (HP) and re-gearing the associated variable speed drive at Station 185 in Prince William County.
  - Addition of one new 22,490 HP turbine-driven compression unit and station cooling, and uprating of the existing electric driven compression unit driver from 33,000- to 41,250-HP and rewheeling the associated centrifugal compressor at Station 175 in Fluvanna County.
  - Addition of two new 22,490 HP turbine-driven compression units, station cooling, and miscellaneous piping modifications; the abandonment and removal of ten reciprocating compressor units totaling 20,000 HP; and demolition of an existing compressor building at Station 165 in Pittsylvania County.
- Mainline Facility Modifications in South Carolina, Georgia, and Louisiana
  - Flow reversal modifications to existing Station 65 in St. Helena Parish, Louisiana and existing Station 140 in Spartanburg County, South Carolina.
  - Flow reversal modifications and installation of deodorization at existing Station 130 in Madison County, Georgia and existing Station 115 in Coweta County, Georgia.
  - Installation of deodorization at existing Stations 116, 120, and 125 in Carroll, Henry, and Walton Counties, Georgia and Station 135 in Anderson County, South Carolina.
  - Installation of deodorization at 13 existing mainline valve facilities in South Carolina and Georgia along the Transco Mainline.

The general location of the project facilities is shown in appendix 3.

Land Requirements for Construction

Construction of the proposed facilities would disturb about 185 acres of land for the aboveground facilities and the pipeline, the majority of which is associated with the Manassas Loop (76.4 acres) in Fauquier and Prince William Counties, Virginia, and the Station 165 expansion (72.8 acres) in Pittsylvania County, Virginia. About 96 percent of the proposed Manassas Loop pipeline route would be co-located at a 25-foot offset from the existing Transco Mainline C pipeline, expanding the existing permanent right-of-way by 25 feet. In addition, one new permanent access road would be constructed and maintained to provide access to the new mainline valve for the Manassas Loop at Station 180. In total, Transco would maintain about 34.2 acres for permanent operation of the project's facilities, including 24.0 acres for the Manassas Loop and 10.0 acres for the Station 165 expansion. The remaining acreage would be restored and revert to former uses.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [4] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;

[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'' or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

[4] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species;
- Public safety; and
- Cumulative impacts

We 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.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. We will publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[5] 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.

Consultations 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, we are using this notice to initiate consultation with the applicable State Historic Preservation Offices (SHPO), 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.[6] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPOs as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our 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. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

Copies of the EA will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Notice of Onsite Review

On June 18–20, 2018, the Office of Energy Projects staff will be in Fauquier, Prince William, Fluvanna, and Pittsylvania Counties, Virginia to gather data related to the environmental analysis of the Southeastern Trail Project. Staff will review environmental resources on the proposed Manassas Loop and visit Stations 175 and 165 to review the extent of proposed ground-disturbing activities. This will assist staff in completing its comparative evaluation of environmental impacts of the proposed project. Viewing of these facilities is anticipated to be from existing Transco right-of-way and at existing Transco stations.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP18–186). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: June 1, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–12598 Filed 6–11–18; 8:45 am]

BILLING CODE 6717–01–P

[5] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[6] 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.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–491–000]

Notice of Request Under Blanket Authorization: National Fuel Gas Supply Corporation

Take notice that on May 24, 2018, National Fuel Gas Supply Corporation (National Fuel), 6363 Main Street, Williamsville, New York 14221, filed in the above referenced docket, a prior notice request pursuant to sections 157.205, 157.208, and 157.210 of the Commission's regulations under the Natural Gas Act (NGA) and National Fuel's blanket certificate issued in Docket No. CP83–4–000, for authorization to (1) increase certificated maximum allowable operating pressure (MAOP) of a 10.6-mile-long portion of existing 16-inch-diameter Line KNYS, (2) install a new Over Pressure Protection Station, and (3) install appurtenances, all located in Cattaraugus County, New York and McKean County, Pennsylvania (Line KNYS Update Project). Increasing MAOP from 335 pounds per square inch

gauge (psig) to 454 psig will allow National Fuel to transport an additional 15,000 dekatherms per day of firm transportation capacity under EFT Rate Schedule, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding this application may be directed to Margaret Sroka, Attorney, National Fuel Gas Supply Corporation, 6363 Main Street, Williamsville, New York 14221, by telephone at (716) 857–7066 or by email at *srokam@natfuel.com;* or Janet R. Bayer, Senior Regulatory Analyst, National Fuel Gas Supply Corporation, 6363 Main Street, Williamsville, New York 14221, by telephone at (716) 857–7429 or by email at *jrbferc@natfuel.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website (*www.ferc.gov*) under the ''e-Filing'' link.

Dated: June 1, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–12600 Filed 6–11–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3407–086]

Magic Reservoir Hydroelectric, Inc., Big Wood Canal Company; Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On May 10, 2018, Magic Reservoir Hydroelectric, Inc. (transferor) and Big Wood Canal Company (transferee) filed an application for the transfer of license of the Magic Dam Project No. 3407. The project is located on the Big Wood River in Blaine and Camas counties, Idaho and occupies Federal lands managed by the Bureau of Land Management.

The applicants seek Commission approval to transfer the license for the Magic Dam Project from the transferor to the transferee.

Applicants Contact: For transferor: Mr. James B. Alderman, Secretary, Magic Reservoir Hydroelectric Inc., c/o J.R. Simplot Company, 1099 W Front Street, Boise, ID 83702, Phone: 208–780–7316.

For transferee: Mr. Carl Pendleton, Chairman of the Board, Big Wood Canal Company, 409 North Apple Street, Shoshone, ID 83352, Phone: 208–420–6401 and Mr. Ted S. Sorenson, 1032 Grandview Drive, Ivins, UT 84738.

FERC Contact: Patricia W. Gillis, (202) 502–8735, *patricia.gillis@ferc.gov.*

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–3407–086.

Dated: June 6, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–12584 Filed 6–11–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–168–000]

Notice of Complaint: North Carolina Electric Membership Corporation v. Duke Energy Progress, LLC

Take notice that on May 31, 2018, pursuant to sections 206, 306, and 309 of the Federal Power Act, 16 U.S.C. 824e, 825e, and 825h and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, North Carolina Electric Membership Corporation (Complainant) filed a formal challenge and complaint against Duke Energy Progress, LLC (Respondent) alleging that Respondent is violating its formula rate, its Joint Open Access Transmission Tariff and Commission orders, regulations and generally applicable ratemaking policies by failing to reflect in its Annual Updates of wholesale transmission charges, the reduction in the federal corporate income tax rate that went into effect January 1, 2018 and the adjustments to the Accumulated Deferred Income Tax balances, as more fully explained in the complaint.

Complainant certifies that copies of the complaint were served on contacts for the Respondent listed on the Commission's list of Corporate Officials and the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and

Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondents' answer and all interventions, or protests must be filed on or before the comment date. The Respondents' answer, motions to intervene, and protests must be served on the Complainant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on June 20, 2018.

Dated: June 1, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–12601 Filed 6–11–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–489–000]

Notice of Request Under Blanket Authorization: Equitrans, LP

Take notice that on May 23, 2018, Equitrans, L.P. (Equitrans), 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222, filed in Docket No. CP18–489–000, a prior notice request pursuant to sections 157.205, 157.208(c) and 157.210 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act (NGA) and Equitrans' blanket authorizations issued in Docket No. CP96–523–000. Equitrans seeks authorization to construct and operate its H–320 Pipeline Project (Project) located in Harrison County, West Virginia. Specifically, Equitrans proposes to install five miles of 12-inch-diameter pipeline to provide 85,000 dekatherms per day of increased capacity to the proposed ESC Harrison Country Power Plant. Equitrans estimates the cost of the Project to be $21,000,000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to Paul W. Diehl, Senior Counsel—Midstream, Equitrans, L.P., 625 Liberty Avenue, Suite 1700, Pittsburgh, Pennsylvania 15222, by phone (412) 395–5540 or by email at *PDiehl@eqt.com*.

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: June 1, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–12599 Filed 6–11–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–170–000]

DC Energy, LLC v. PJM Interconnection, L.L.C.; Notice of Complaint

Take notice that on June 4, 2018, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e (2018) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2018), DC Energy, LLC (Complainant) filed a formal complaint against PJM

Interconnection, L.L.C., (Respondent) alleging that, Respondent's Tariff provisions governing collateral and minimum capitalization requirements for Financial Transmission Right (FTR) auction participants are unjust and unreasonable because they fail to adequately protect the FTR market, all as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on the contacts for Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC there is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on June 25, 2018.

Dated: June 6, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–12582 Filed 6–11–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–169–000]

Notice of Complaint: CPV Power Holdings, LP, Calpine Corporation, Eastern Generation, LLC v. PJM Interconnection, LLC

Take notice that on May 31, 2018, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e, 825e (2012), and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2017), CPV Power Holdings, L.P., Calpine Corporation and Eastern Generation, LLC (collectively, Complainants), filed a formal complaint against PJM Interconnection, L.L.C. (Respondent) alleging that Respondent's Open Access Transmission Tariff is unjust and unreasonable because it does not include any provisions to effectively prevent the suppression of prices by resources receiving state subsidies, all as more fully explained in the complaint.

Complainants certify that copies of the complaint were served on the contacts for Respondent, as listed on the Commission's list of Corporate Officials, and on persons listed on the official service lists compiled by the Secretary in Docket Nos. EL16–49 and ER18–1314.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on June 20, 2018.

Dated: June 1, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–12602 Filed 6–11–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC18–5–000]

Errata Notice

AGENCY: Federal Energy Regulatory Commission.

ACTION: Errata and comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act (PRA) of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is submitting the information collections FERC–917 (Non-discriminatory Open Access Transmission Tariff) and FERC–918 (Information to be posted on OASIS & Auditing Transmission Service Information) to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below.

DATES: Comments on the collections of information are due by June 27, 2018.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0233 (FERC–917 and FERC–918) should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov,* Attention: Federal Energy Regulatory Commission Desk Officer.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission, identified by the Docket No. IC18–5–000, by one of the following methods:

• *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*

• *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The Commission published 60-day [1] and 30-day [2] notices, for the renewal of the FERC–917 and FERC–918 information collections. Both notices requested comments on FERC–917 and FERC–918 and indicated the Commission will submit the information collections to the Office of Management and Budget (OMB) for review. The cost information was inadvertently omitted from the Notices. Due to this oversight, we are providing an additional 15 days for comment. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. (There are no changes to the information collections.)

Title: FERC–917 Non-discriminatory Open Access Transmission Tariff and FERC–918 (Information to be posted on OASIS & Auditing Transmission Service Information).

OMB Control No.: 1902–0233.

Type of Request: Three-year extension of the FERC–917 and FERC–918 information collection requirements with no changes to the reporting requirements.

Type of Respondents: Public Utilities transmission providers.

Estimate of Annual Burden: This Errata Notice adds the cost data missing from the Notices for FERC–917 and FERC–918 and provides an additional 15 days for comment.

The corrected table follows.[3]

FERC–917 (NON-DISCRIMINATORY OPEN ACCESS TRANSMISSION TARIFF) AND FERC–918 (INFORMATION TO BE POSTED ON OASIS & AUDITING TRANSMISSION SERVICE INFORMATION)

	Number of respondents	Annual number of responses per respondent	Annual number of responses	Average burden hours and cost [4] per response ($)	Total annual burden hour and total annual cost ($)	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) = (6)
18 CFR 35.28 (FERC–917)						
Conforming tariff changes (Reporting) [3]	0	0	0	0	0	0
Revision of Imbalance Charges (Reporting) [3].	0	0	0	0	0	0
ATC revisions (Reporting) [3]	0	0	0	0	0	0
Planning (Attachment K) (Reporting)	134	1	134	100 hrs., $7,200.00	13,400 hrs., $964,800	$7,200.00
Congestion studies (Reporting)	134	1	134	300 hrs., $21,600	40,200 hrs., $2,894,400	21,600.00
Attestation of network resource commitment (Reporting).	134	1	134	1 hrs., $72.00	134 hrs., $9,648.00	72.00
Capacity reassignment (Reporting)	134	1	134	100 hrs., $7,200.00	13,400 hrs., $964,800.00	7,200
Operational Penalty annual filing (Record Keeping).	134	1	134	10 hrs., $327.40	1,340 hrs., $43,871.60	327.40
Creditworthiness—include criteria in the tariff (Reporting) [3].	0	0	0	0	0	0
FERC–917, Sub-Total of Record Keeping Requirements.					1,340 hrs., $43,871.60	
FERC–917, Sub-Total of Reporting Requirements.					67,134 hrs., $4,833,648.00.	
FERC–917, Sub Total of Reporting and Recordkeeping Requirements.					68,474 hrs., $4,877,519.60.	
18 CFR 37.6 & 37.7 (FERC–918)						
Implementation by each utility [5] (Reporting) [3]	0	0	0	0	0	0
NERC/NAESB Team to develop [5] (Reporting) [3].	0	0	0	0	0	0
Review and comment by utility [5] (Reporting) [3].	0	0	0	0	0	0
Mandatory data exchanges (Reporting)	134	1	134	80 hrs., $5,760.00	10,720 hrs., $771,840.00	5,760.00
Explanation of change of ATC values (Reporting).	134	1	134	100 hrs., $7,200.00	13,400 hrs., $964,800.00	7,200.00
Reevaluate CBM and post quarterly (Record Keeping).	134	1	134	20 hrs., $4,387.16	2,680 hrs., $687,879.44	4,654.80
Post OASIS metrics; requests accepted/denied (Reporting).	134	1	134	90 hrs., $6,480.00	12,060 hrs., $868,320.00	6,480.00
Post planning redispatch offers and reliability redispatch data (Record Keeping).	134	1	134	20 hrs., $4,387.16	2,680 hrs., $587,879.44	387.16
Post curtailment data (Reporting)	134	1	134	1 hrs., $72.00	134 hrs., $9,648.00	72.00
Post Planning and System Impact Studies (Reporting).	134	1	134	5 hrs., $360.00	670 hrs., $48,240.00	360.00

[1] 83 FR 5255, 2/6/2018.

[2] 83 FR 21288, 5/9/2018.

[3] The zeroes for respondents and responses are based on having no filings of this type over the past four years. In addition, we estimate no filings during the next three years. The requirements remain in the regulations and are included as part of the OMB Control Number.

FERC–917 (NON-DISCRIMINATORY OPEN ACCESS TRANSMISSION TARIFF) AND FERC–918 (INFORMATION TO BE POSTED ON OASIS & AUDITING TRANSMISSION SERVICE INFORMATION)—Continued

	Number of respondents (1)	Annual number of responses per respondent (2)	Annual number of responses (1) * (2) = (3)	Average burden hours and cost[4] per response ($) (4)	Total annual burden hour and total annual cost ($) (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1) = (6)
Posting of metrics for System Impact Studies (Reporting).	134	1	134	100 hrs., $7,200.00	13,400 hrs.; $964,800.00	7,200.00
Post all rules to OASIS (Record Keeping)	134	1	134	5 hrs., $163.70	670 hrs., $21,935.80	163.22
FERC–918, Sub-Total of Record Keeping Requirements.					6,030 hrs., $1,197,694.68	
FERC–918, Sub-Total of Reporting Requirements.					50,384.00 hrs., $3,627,648.	
FERC–918, Sub Total of Reporting and Recordkeeping Requirements.					56,414 hrs., $4,825,342.68.	
Total FERC–917 and FERC–918 (Reporting and Recordkeeping Requirements).					124,888 hrs., $9,702,862.28.	
Off-site storage cost					$7,400,000	

Dated: June 5, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–12466 Filed 6–11–18; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0999]

Information Collection Approved by the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for a revision of a currently approved public information collection pursuant to the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid control number. Comments concerning the accuracy of the burden estimates and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Cathy Williams, Office of the Managing Director, at (202) 418–2918, or email: *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–0999.

OMB Approval Date: June 5, 2018.

OMB Expiration Date: June 30, 2021.

Title: Hearing Aid Compatibility Status Report and Section 20.19, Hearing Aid-Compatible Mobile Handsets (Hearing Aid Compatibility Act).

Form Number: FCC Form 655.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 934 respondents; 934 responses.

Estimated Time per Response: 13 hours per response (average).

Frequency of Response: On occasion and annual reporting requirements and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 308, 309(j), 310 and 610 of the Communications Act of 1934, as amended.

Total Annual Burden: 12,140 hours.

Total Annual Cost: No costs.

Nature and Extent of Confidentiality: Information requested in the reports may include confidential information. However, covered entities are allowed to request that such materials submitted to the Commission be withheld from public inspection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: The revision of this collection implements the final rules promulgated in the 2015 Fourth Report and Order, FCC 15–155 (Fourth Report and Order), which expanded the scope of the rules due to a shift from Commercial Mobile Radio Services (CMRS) to digital mobile service. We estimate that there will be a small increase in the number of respondents/responses, total annual burden hours, and total annual cost from the previously approved estimates.

This collection is necessary to implement certain disclosure requirements that are part of the Commission's wireless hearing aid compatibility rule. In a Report and Order in WT Docket No. 01–309, FCC 03–168, adopted and released in September 2003, implementing a mandate under the Hearing Aid Compatibility Act of 1988, the Commission required digital wireless phone manufacturers and service providers to make certain digital wireless phones capable of effective use with hearing aids, label certain phones they sold with information about their compatibility with hearing aids, and report to the Commission (at first every six months, then on an annual basis) on the numbers and types of hearing aid-compatible phones they were producing or offering to the public. These reporting requirements were subsequently amended on several occasions, and the previous OMB-approved collection under this OMB control number included these modifications.

[4] The estimated hourly cost (salary plus benefits) provided in this section is based on the salary figures for May 2017 posted by the Bureau of Labor Statistics for the Utilities sector (available at *http://www.bls.gov/oes/current/naics2_22.htm*) and benefits May 2017 (available at *https://www.bls.gov/oes/current/naics2_22.htm*):

Legal (Occupation Code: 23–0000): $143.68.

Consulting (Occupation Code: 54–1600): $89.00.

Management Analyst (Occupation Code: 13–1111): $63.49.

Office and Administrative Support (Occupation Code: 43–000): $40.89.

Electrical Engineer (Occupation Code: 17–2071): $68.12.

Information Security Analyst (Occupation Code: 15–1122): $66.34.

File Clerk (Occupation Code: 43–4071): $32.74.

The skill sets are assumed to contribute equally, so the hourly cost is an average [($143.68 + $89.00 + $63.49 + $40.89 + $68.12 + $66.34 + 32.74) ÷ 7 = $72.04]. The figure is rounded to $72.00 per hour.

[5] ATC-related standards.

On November 19, 2015, the Commission adopted final rules in a Fourth Report and Order, FCC 15–155 (Fourth Report and Order), that, among other changes, expanded the scope of the Commission's hearing aid compatibility provisions to cover handsets used with any digital terrestrial mobile service that enables two-way real-time voice communications among members of the public or a substantial portion of the public, including through the use of pre-installed software applications. Prior to 2018, the hearing aid compatibility provisions were limited only to handsets used with two-way switched voice or data services classified as Commercial Mobile Radio Service, and only to the extent they were provided over networks meeting certain architectural requirements that enable frequency reuse and seamless handoff. As a result of the Fourth Report and Order, beginning January 1, 2018, all device manufacturers and Tier I carriers that offer handsets falling under the expanded scope of covered handsets are required to comply with the Commission's hearing aid compatibility provisions, including annual reporting requirements on FCC Form 655. For other service providers that are not Tier I carriers, the expanded scope of the Commission's hearing aid compatibility provisions applies beginning April 1, 2018.

Following release of the Fourth Report and Order, the Commission was required to amend FCC Form 655 to reflect the newly expanded scope of handsets covered by the hearing aid compatibility provisions, as well as to capture information regarding existing disclosure requirements clarified by the Commission in the Fourth Report and Order. As a consequence of the Fourth Report and Order, FCC Form 655 filing and other requirements will apply to those newly-covered handsets offered by device manufacturers and service providers that have already been reporting annually on their compliance with the Commission's hearing aid compatibility provisions, as well to any device manufacturers and service providers that were previously exempt because they did not offer any covered handsets or services prior to 2018.

As a result, the Commission requested a revision of this collection in order to implement the final rules promulgated in the Fourth Report and Order, which expanded the scope of the rules due to a shift from Commercial Mobile Radio Services (CMRS) to digital mobile service. We estimate that the expanded scope will increase the potential number of respondents subject to this collection and correspondingly increase the responses and burden hours. The minor language changes to the instructions to FCC Form 655 and to the form itself clarifying this expanded scope will help the Commission compile data and monitor compliance with the current version of the hearing aid compatibility rules while making more complete and accessible information available to consumers.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–12627 Filed 6–11–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0819]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, 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.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before July 12, 2018. 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 contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), 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.

OMB Control Number: 3060–0819.

Title: Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund.

Form Numbers: FCC Form 555, FCC Form 481, FCC Form 497, FCC Form 5629, FCC Form 5630, FCC Form 5631.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households and business or other for-profit.

Number of Respondents and Responses: 17,547,843 respondents; 20,317,788 responses.

Estimated Time per Response: .0167 hours–253 hours.

Frequency of Response: Annual, biennial, monthly, daily and on occasion reporting requirements, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority is contained in Sections 1, 4(i), 5, 201, 205, 214, 219, 220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and section 706 of the Communications Act of 1996, as amended; 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302.

Total Annual Burden: 10,972,641 hours.

Total Annual Cost: $937,500.

Privacy Act Impact Assessment: Yes. The Commission completed a Privacy Impact Assessment (PIA) for some of the information collection requirements contained in this collection. The PIA was published in the **Federal Register** at 82 FR 38686 on August 15, 2017. The PIA may be reviewed at: *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.*

Nature and Extent of Confidentiality: Some of the requirements contained in this information collection affect individuals or households, and thus, there are impacts under the Privacy Act. The FCC's system of records notice (SORN) associated with this collection is FCC/WCB–1, ''Lifeline Program.''

The Commission will use the information contained in FCC/WCB–1 to cover the personally identifiable information (PII) that is required as part of the Lifeline Program (''Lifeline''). As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Commission published FCC/WCB–1 ''Lifeline Program'' in the **Federal Register** on August 15, 2017 (82 FR 38686).

Also, respondents may request materials or information submitted to the Commission or to the Universal Service Administrative Company (USAC or Administrator) be withheld from public inspection under 47 CFR 0.459 of the FCC's rules. We note that USAC must preserve the confidentiality of all data obtained from respondents; must not use the data except for purposes of administering the universal service programs; and must not disclose data in company-specific form unless directed to do so by the Commission.

Needs and Uses: The Commission will submit this information collection after this 60-day comment period to obtain approval from the Office of Management and Budget (OMB) of revisions to this information collection.

On November 16, 2017, the Commission adopted the *Bridging the Digital Divide for Low-Income Consumers,* WC Docket Nos, 17–287, 11–42, 09–197, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17–155 (2017) (*Lifeline Fourth Report and Order*), which limited enhanced Tribal Lifeline support to facilities-based carriers on Tribal lands to more efficiently utilize Universal Service funds. This revision implements the requirement that ETCs provide written notice to their customers who are currently receiving enhanced support who will no longer be eligible for enhanced Tribal support. In addition, the Commission seeks to update the number of respondents for most of the existing information collection requirements, thus increasing the total burden hours for some requirements and decreasing the total burden hours for other requirements.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–12626 Filed 6–11–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Interagency Coordination of Formal Corrective Action by the Federal Bank Regulatory Agencies; Rescission of Policy Statement

AGENCY: Federal Financial Institutions Examination Council (FFIEC).

ACTION: Rescission of policy statement.

SUMMARY: The FFIEC is rescinding its policy statement titled ''Interagency Coordination of Formal Corrective Action by the Federal Bank Regulatory Agencies'' that was issued on February 20, 1997 (the ''1997 Policy Statement''). This action is being coordinated with the publication of a new policy statement in the **Federal Register** by the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC), which reflects the current practices of the federal banking agencies with respect to the coordination of formal enforcement actions against federally regulated financial institutions and institution-affiliated parties.

DATES: The policy is rescinded as of June 12, 2018.

FOR FURTHER INFORMATION CONTACT:

Board of Governors of the Federal Reserve Board (FRB): Jason Gonzalez, Special Counsel, Legal Division, (202) 452–3275; Jodi Remer, Senior Counsel (202) 452–6403, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. For the hearing impaired or users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

Federal Deposit Insurance Corporation (FDIC): Sam Ozeck, Supervisory Counsel, Legal Division, *SOzeck@FDIC.gov,* (202) 898–6736; George Parkerson, Acting Chief, Division of Risk Management Supervision, *GParkerson@FDIC.gov,* (202) 898–3648.

Office of the Comptroller of the Currency (OCC): Jessica Burrell, Counsel, Enforcement and Compliance, (202–649–6200); William Jauquet, Assistant Director, Enforcement and Compliance, (202–649–6200). For persons who are deaf or hearing impaired, TTY (202) 649–5597.

SUPPLEMENTARY INFORMATION: The 1997 Policy Statement principally addressed the requirement for each federal banking agency that proposed to take a formal enforcement action against a federally regulated financial institution, or institution-affiliated party, to provide written notice of such action to the other federal and state banking agencies.[1] Such notice was to be provided prior to or at the initiation of any such formal enforcement action. In the event that a complementary action (such as an action involving a bank and its parent holding company) was considered appropriate by two or more federal banking agencies, the 1997 Policy Statement also encouraged coordination between the involved agencies regarding preparation, processing, presentation, service, and follow-up of the related enforcement

[1] 62 FR 7782, 7783 (Feb. 20, 1997).

actions. It should be noted that the 1997 policy statement was created at a time when electronic communication was much less common than it is today and no longer reflects the current practices of the federal banking agencies in coordinating formal enforcement actions. Importantly, the formal enforcement actions taken by the federal banking agencies are now published on the individual agencies' public websites, making it no longer necessary for the agencies to provide written notice of all such actions to each other. Moreover, the FRB, FDIC, and OCC have adopted a new policy that encourages notification to other interested federal banking agencies at the earliest practicable date and promotes coordination among the FBAs related to formal enforcement actions as appropriate. For the above reasons, the 1997 Policy Statement is being rescinded.

Dated at Washington, DC, this 22nd day of May 2018.

Federal Financial Institutions Examination Council.

Judith E. Dupre,

Executive Secretary.

[FR Doc. 2018–12557 Filed 6–11–18; 8:45 am]

BILLING CODE 7535–01– 6714–01– 6210–01–4810–33–4810–AM–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 5, 2018.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Midwest Banc Holding Co., Pierce, Nebraska;* to acquire up to 100 percent of the voting shares of Redstone Bank, Centennial, Colorado.

Board of Governors of the Federal Reserve System, June 6, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–12596 Filed 6–11–18; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 6, 2018.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23219. Comments can also be sent electronically to or *Comments.applications@rich.frb.org:*

1. *CBM Bancorp Inc., Parkville, Maryland;* to become a savings and loan holding company by merging with Banks of Chesapeake, M.H.C. Parkville, Maryland, and thereby indirectly acquire Chesapeake Bank of Maryland, Parkville, Maryland.

In connection with the proposal, Banks of Chesapeake M.H.C will convert from mutual to stock form.

Board of Governors of the Federal Reserve System, June 6, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–12537 Filed 6–11–18; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1164]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Qualified Facility Attestation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 12, 2018.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910—NEW and title ''Qualified Facility Attestation.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three

White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Qualified Facility Attestation

OMB Control Number 0910—NEW

The FDA Food Safety Modernization Act (FSMA) (Pub. L. 111–353) enables FDA to better protect public health by helping to ensure the safety and security of the food supply. It enables FDA to focus more on preventing food safety problems rather than relying primarily on reacting to problems after they occur. FSMA recognizes the important role industry plays in ensuring the safety of the food supply, including the adoption of modern systems of preventive controls in food production.

Section 103 of FSMA amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) by adding section 418 (21 U.S.C. 350g) with requirements for hazard analysis and risk-based preventive controls for facilities that produce food for humans or animals. We have established regulations to implement these requirements primarily within subparts C and G, with associated requirements in subparts A, D, E, and F, of the rule entitled ''Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food'' (Preventive Controls for Human Food Rule) (21 CFR part 117) and primarily within subparts C and E, with associated requirements in subparts A, D, and F, of the rule entitled ''Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals'' (Preventive Controls for Animal Food Rule) (21 CFR part 507). A business that meets the definition of a ''qualified facility'' (see 21 CFR 117.3 or 21 CFR 507.3) is subject to modified requirements in § 117.201 of the Preventive Controls for Human Food Rule or in § 507.7 of the Preventive Controls for Animal Food Rule. These modified requirements require the business to submit a form to FDA, attesting to its status as a qualified facility.

Section 418(*l*)(2)(B)(ii) of the FD&C Act directs FDA to issue guidance on the documents a business is required to submit to FDA to show its status as a qualified facility. FDA issued a draft guidance for industry entitled, ''Qualified Facility Attestation Using Form FDA 3942a (for Human Food) or Form FDA 3942b (for Animal Food): Guidance for Industry.'' This draft guidance explains FDA's current thinking on how to determine whether a business is a qualified facility, and describes FDA procedures regarding the submission of attestations as established under both the Preventive Controls for Human Food Rule and the Preventive Controls for Animal Food Rule. FDA has developed proposed Forms FDA 3942a and FDA 3942b for use by a business in reporting its status as a ''qualified facility'' under the applicable regulations.

Description of Respondents: Respondents to the collection of information are owners, operators, or agents in charge of domestic or foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States, are required to register with FDA, and attest that a facility is a ''qualified facility'' under applicable FDA regulations.

In the **Federal Register** of May 16, 2016 (81 FR 30219), FDA published a 60-day notice requesting public comment on the proposed collection of information. One individual submitted several comments.

(Comment 1) One comment suggests that Forms FDA 3942a and FDA 3942b could be organized differently to help respondents. Specifically, the suggestion offered that the forms themselves should follow the submission type order as provided in section 2 of both forms so that the ''Status Change'' section is at the end of each form.

(Response) FDA agrees and will reorganize Forms FDA 3942a and FDA 3942b so that the ''Status Change'' section will now be section 6.

(Comment 2) One comment recommends changing the term ''Biennial Submission'' to ''Biennial (Renewal) Submission'' or in some way to indicate that biennial submission happens in the years after the ''Initial Submission.''

(Response) FDA agrees and will change ''Biennial Submission'' to ''Biennial (Renewal) Submission'' for both forms.

(Comment 3) One comment suggests that any revisions applied to either the forms or instructions should be consistent between all the documents.

(Response) FDA agrees and will make sure that revisions to the forms and instructions are consistent.

(Comment 4) One comment suggests that, for clarity, the instructions direct respondents to the guidance for additional reference.

(Response) FDA agrees and will include a reference to the guidance document in each section of the instruction document.

(Comment 5) One comment suggests that, for clarity, Question II.A.1 (and III.A. 1) of the guidance should advise respondents that the definition for ''very small business'' is forthcoming in the next question.

(Response) FDA agrees, and for clarity, will revise the final guidance to indicate that the definition for ''very small business'' is provided in the next question in the guidance.

(Comment 6) One comment suggests that Question II.A. 2 (and III.A.2) in the guidance should provide clarity as to the two options for meeting the qualified facility definition.

(Response) FDA agrees and will revise the final guidance to provide clarity as to the two options for meeting the qualified facility definition.

(Comment 7) One comment suggests that the guidance should provide more details about what other documentation FDA would accept as to support the first and second attestation options.

(Response) FDA agrees and will provide more details about the types of documentation FDA would accept to support the first attestation option. FDA will also include a list of examples of documents that FDA would accept to support the second attestation option consistent with the preamble discussions for §§ 117.201(a)(2)(ii) and 507.7(a)(2)(ii).

(Comment 8) One comment suggests that Question II.C.6 (and III.C.6) of the guidance oversimplifies the definition of farm and should clarify that farms that satisfy FDA's definition of ''farm'' need not submit Form FDA 3942a.

(Response) FDA agrees and will revise our responses to clarify that farms that satisfy FDA's definition of ''farm'' need not submit Form FDA 3942a or Form FDA 3942b.

(Comment 9) One comment suggests that Question II.C.7 (and III.C 7) of the guidance related to farm mixed-type facilities is missing certain information to assist farm mixed-type facilities to determine their level of coverage and compliance under regulations.

(Response) FDA agrees and will revise our response to provide greater clarity for farm mixed-type facilities to determine their level of coverage and compliance under the regulations.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Guidance section	FDA form	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Section II; Human Food	3942a	37,134	.5	18,567	.5 (30 minutes)	9,284
Section III; Animal Food	3942b	1,120	.5	560	.5 (30 minutes)	280
Total						9,564

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Consistent with the estimates found in our Preventive Controls for Human Food Rule, we estimate that approximately 37,134 human food facilities will each spend approximately 30 minutes (0.5 hour) reporting their status as a qualified facility to FDA every 2 years. Thus, dividing this figure by two to determine the annual burden, we estimate there will be 18,567 responses and 9,284 burden hours associated with this information collection element.

Similarly, and consistent with the estimates found in our Preventive Controls for Animal Food Rule, we estimate that approximately 1,120 animal food facilities will each spend approximately 30 minutes (0.5 hour) reporting their status as a qualified facility to FDA every 2 years. Thus, dividing this figure by two to determine the annual burden, we estimate there will be 560 responses and 280 burden hours associated with this information collection element.

The draft guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR part 117 have been approved under OMB control number 0910–0751. The collections of information in 21 CFR part 507 have been approved under OMB control number 0910–0789.

Dated: June 7, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–12615 Filed 6–11–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–0073]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 12, 2018.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0186. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Irradiation in the Production, Processing, and Handling of Food

OMB Control Number 0910–0186—Extension

This information collection supports FDA regulations. Specifically, under sections 201(s) and 409 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321(s) and 348), food irradiation is subject to regulation under the food additive premarket approval provisions of the FD&C Act. The regulations providing for uses of irradiation in the production, processing, and handling of food are found in part 179 (21 CFR part 179). To ensure safe use of a radiation source, § 179.21(b)(1) requires that the label of sources bear appropriate and accurate information identifying the source of radiation and the maximum (or minimum and maximum) energy of the emitted radiation. Section 179.21(b)(2) requires that the label or accompanying labeling bear adequate directions for installation and use and a statement supplied by FDA that indicates maximum dose of radiation allowed. Section 179.26(c) requires that the label or accompanying labeling bear a logo and a radiation disclosure statement. Section 179.25(e) requires that food processors who treat food with radiation make and retain, for 1 year past the expected shelf life of the products up to a maximum of 3 years, specified records relating to the irradiation process (*e.g.,* the food treated, lot identification, scheduled process, etc.). The records required by § 179.25(e) are used by FDA inspectors to assess compliance with the regulation that establishes limits within which radiation may be safely used to treat food. We cannot ensure safe use without a method to assess compliance with the dose limits, and there are no practicable methods for analyzing most foods to determine whether they have been treated with ionizing radiation and are within the limitations set forth in part 179. Records inspection is the only way to determine whether firms are complying with the regulations for treatment of foods with ionizing radiation.

In the **Federal Register** of January 26, 2018, (83 FR 3734), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
179.25(e); records for large processors	4	300	1,200	1	1,200
179.25(e); records for small processors	4	30	120	1	120
Total					1,320

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Upon review of the information collection we have retained the currently approved burden estimate. FDA's estimate of the recordkeeping burden under § 179.25(e) is based on experience regulating the safe use of radiation as a direct food additive. The number of firms who process food using irradiation is extremely limited. We estimate that there are four irradiation plants whose business is devoted primarily (*i.e.,* approximately 100 percent) to irradiation of food and other agricultural products. Four other firms also irradiate small quantities of food. We estimate that this irradiation accounts for no more than 10 percent of the business for each of these firms. Therefore, the average estimated burden is based on four facilities devoting 100 percent of their business to food irradiation (4 × 300 hours = 1,200 hours for recordkeeping annually), and four facilities devoting 10 percent of their business to food irradiation (4 × 30 hours = 120 hours for recordkeeping annually). No burden has been estimated for the labeling requirements in §§ 179.21(b)(1), 179.21(b)(2), and 179.26(c) because the disclosures are supplied by FDA. Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not subject to review by the OMB under the Paperwork Reduction Act of 1995.

Dated: June 7, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–12614 Filed 6–11–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2005–D–0155]

General Principles for Evaluating the Human Food Safety of New Animal Drugs Used in Food-Producing Animals; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry (GFI) #3 entitled ''General Principles for Evaluating the Human Food Safety of New Animal Drugs Used in Food-Producing Animals.'' This guidance describes the type of information that the FDA's Center for Veterinary Medicine (CVM) recommends sponsors provide to address the human food safety of new animal drugs used in food-producing animals. The human food safety evaluation of new animal drugs used in food-producing animals helps ensure that food derived from treated animals is safe for human consumption. CVM developed this guidance to inform sponsors of the scientific data and/or information that may provide an acceptable basis to determine that the residue of a new animal drug in or on food, when consumed, presents a reasonable certainty of no harm to humans.

DATES: The announcement of the guidance is published in the **Federal Register** on June 12, 2018.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2005–D–0155 for ''General Principles for Evaluating the Human Food Safety of New Animal Drugs Used in Food-Producing Animals.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly

viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Julia Oriani, Center for Veterinary Medicine (HFV–151), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0788, *julia.oriani@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 21, 2016 (81 FR 47397), FDA published the notice of availability for a draft revised GFI #3 entitled ''General Principles for Evaluating the Human Food Safety of New Animal Drugs Used in Food-Producing Animals'' giving interested persons until September 19, 2016, to comment on the draft revised GFI. FDA received several comments on the draft revised GFI, and those comments were considered as the guidance was finalized. Revisions to the document were made for accuracy and clarification based on comments received from the public, including reinsertion of information specific to endogenous sex steroids, and minor editorial edits. The guidance announced in this notice finalizes the draft revised GFI dated July 2016.

II. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''General Principles for Evaluating the Human Food Safety of New Animal Drugs Used in Food-Producing Animals.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 514 have been approved under OMB control number 0910–0032.

IV. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *https://www.regulations.gov.*

Dated: June 7, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–12607 Filed 6–11–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine: Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, Lister Hill National Center for Biomedical Communications.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, 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, Lister Hill National Center for Biomedical Communications.

Date: September 6–7, 2018.

Open: September 6, 2018, 9:00 a.m. to 12:00 p.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: September 6, 2018, 12:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate personal qualifications, performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: September 7, 2018, 9:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate personal qualifications, performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Karen Steely, Program Assistant, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Building 38A, Room 7S707, Bethesda, MD 20892, 301–827–4385, *ksteely@mail.nih.gov.*

Open: September 7, 2018, 10:00 a.m. to 11:30 a.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Karen Steely, Program Assistant, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Building 38A, Room 7S707, Bethesda, MD 20892, 301–827–4385, *ksteely@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: June 6, 2018.

Michelle D. Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–12534 Filed 6–11–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the 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 materials, 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: Biomedical Informatics, Library and Data Sciences Review Committee.

Date: November 15–16, 2018.

Time: November 15, 2018, 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Hyatt, 1 Bethesda Metro Center, Bethesda, MD 20814.

Time: November 16, 2018, 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Contact Person: Zoe E. Huang, MD, Acting Chief Scientific Review Officer, Scientific Review Office, Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–594–4937, *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: June 6, 2018.

Michelle D. Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–12536 Filed 6–11–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Planning for Non-Communicable Diseases and Disorders Research Training Programs in Low and Middle Income Countries (D71).

Date: June 21, 2018.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Fungai Chanetsa, MPH, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–408–9436, *fungai.chanetsa@nih.hhs.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Research on Current Topics in Alzheimer's Disease and Its Related Dementias.

Date: July 2–3, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michael Selmanoff, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5164, MSC 7844, Bethesda, MD 20892, 301–435–1119, *selmanom@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Computational Structural Biology.

Date: July 9, 2018.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sergei Ruvinov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Cell Biology, Developmental Biology, and Bioengineering.

Date: July 10–11, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alexander Gubin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892, 301–435–2902, *gubina@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS-associated Opportunistic Infections and Cancer Study Section.

Date: July 10, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Eduardo A. Montalvo, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Health Services Research on Minority Health and Health Disparities.

Date: July 10, 2018.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Gabriel B. Fosu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, MSC 7808, Bethesda, MD 20892, (301) 435–3562, *fosug@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Eukaryotic Parasites and Vectors.

Date: July 10–11, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Fouad A. El-Zaatari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7808, Bethesda, MD 20892, (301) 435–1149, *elzaataf@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 6, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–12527 Filed 6–11–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Literature Selection Technical Review Committee.

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 portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: October 25–26, 2018.

Open: October 25, 2018, 8:30 a.m. to 10:45 a.m.

Agenda: Administrative.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: October 25, 2018, 10:45 a.m. to 5:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: October 26, 2018, 8:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Joyce Backus, M.S.L.S., Associate Director, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Building 38, Room 2W04A, Bethesda, MD 20894, 301–827–4281, *joyce.backus@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: June 6, 2018.

Michelle D. Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–12535 Filed 6–11–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Research Project Grant Applications (R21).

Date: July 17–18, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Brian Hoshaw, Ph.D., Scientific Review Officer, National Eye Institute, National Institutes of Health, Division of Extramural Research, 5635 Fishers Lane, Suite 1300, Rockville, MD 20892, 301–451–2020, *hoshawb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: June 6, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–12528 Filed 6–11–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, National Center for Biotechnology Information.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and

need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, 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 Center for Biotechnology Information.

Date: November 13, 2018.

Open: 8:30 a.m. to 12:00 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Open: 2:00 p.m. to 3:00 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Jim Ostell, Ph.D., Director, National Center for Biotechnology Information, National Library of Medicine, Building 38A, Room 8N807, Bethesda, MD 20892, 301–435–5978, *ostell@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: June 6, 2018.

Michelle D. Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–12533 Filed 6–11–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute, Special Emphasis Panel; Late Phase Clinical Trial Design (X01).

Date: June 26, 2018.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Room 7182, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Susan Wohler Sunnarborg, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National, Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892, *susan.sunnarborg@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Late Phase Clinical Trial Design and Planning (U34).

Date: June 26, 2018.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Susan Wohler Sunnarborg, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National, Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892, *susan.sunnarborg@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 5, 2018.

Michelle D. Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–12529 Filed 6–11–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group.

Date: July 9, 2018.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Cathy J. Wedeen, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Room, Bethesda, MD 20892, 301–435–6878, *wedeenc@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel: Early Career R03 Applications.

Date: July 11, 2018.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Rd. NW, Washington, DC 20015.

Contact Person: Joanna Kubler-Kielb, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Room, Bethesda, MD 20892, 301–435–6916, *kielbj@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel: DIPHR Population Health Research Study.

Date: July 11, 2018.
Time: 1:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate contract proposals.
Place: National Institutes of Health, 6710B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Room, Bethesda, MD 20892, 301–435–6680, *skandasa@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel: Limb loss and Preservation Registry.
Date: July 18, 2018.
Time: 1:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate contract proposals.
Place: National Institutes of Health, 6710B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Room, Bethesda, MD 20892, 301–435–6680, *skandasa@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel: Non-invasive Diagnostics to Improve Gynecologic Health (R43/34).
Date: July 25, 2018.
Time: 1:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate contract proposals.
Place: National Institutes of Health, 6710B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Room, Bethesda, MD 20892, 301–435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 5, 2018.

Michelle D. Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–12531 Filed 6–11–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Grant Review NHLBI K Award Recipients.
Date: June 22, 2018.
Time: 8:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
Contact Person: Melissa E. Nagelin, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892, 301–435–0297, *nagelinmh2@nhlbi.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Basic Research on E-Cigarette Physiology and Pathophysiology.
Date: June 22, 2018.
Time: 8:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Crystal City, 2399 Jefferson Davis Hwy., Arlington, VA 22202.
Contact Person: David A. Wilson, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7204, Bethesda, MD 20892–7924, 301–435–0299, *wilsonda2@nhlbi.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Molecular Landscape of Lung Aging.
Date: June 26, 2018.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Crowne Plaza Washington National Airport, 1489 Jefferson Davis Hwy., Arlington, VA 22202.
Contact Person: William J. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–827–7938, *johnsonwj@nhlbi.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Heart, Lung, and Blood Institute, Special Emphasis Panel; NHLBI Emerging Investigator Award (EIA).
Date: June 26, 2018.
Time: 2:00 p.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Kristen Page, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7185, Bethesda, MD 20892, 301–827–7953, *kristen.page@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Heart, Lung, and Blood Institute, Special Emphasis Panel; NHLBI Outstanding Investigator Award (OIA)—Heart, Lung and Sleep.
Date: June 27, 2018.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Kristen Page, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7185, Bethesda, MD 20892, 301–827–7953, *kristen.page@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Outstanding Investigator Award (OIA)—Blood Vascular.
Date: June 27, 2018.
Time: 8:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Melissa E. Nagelin, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892, 301–435–0297, *nagelinmh2@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Maximizing the Scientific Value of the NHLBI Biorepository: Scientific Opportunities for Exploratory Research.
Date: June 29, 2018.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Tony L. Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892–7924, 301–827–7913, *creazzotl@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 6, 2018.

Michelle D. Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–12530 Filed 6–11–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Regents of the National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, 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: Board of Regents of the National Library of Medicine Extramural Programs Subcommittee.

Date: September 25, 2018.

Closed: 7:45 a.m. to 8:45 a.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Christine Ireland, Committee Management Officer, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, 301–594–4929, *irelanc@mail.nih.gov.*

Name of Committee: Board of Regents of the National Library of Medicine.

Date: September 25–26, 2018.

Open: September 25, 2018, 9:00 a.m. to 4:00 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: September 25, 2018, 4:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Open: September 26, 2018, 9:00 a.m. to 12:00 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Christine Ireland, Committee Management Officer, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, 301–594–4929, *irelanc@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nlm.nih.gov/od/bor/bor.html,* where an agenda and any additional information for the meeting will be posted when available. This meeting will be broadcast to the public, and available for viewing at *http://videocast.nih.gov* on September 25–26, 2018.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: June 6, 2018.

Michelle D. Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–12532 Filed 6–11–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment: Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA's) Center for Substance Abuse Treatment (CSAT) National Advisory Council will meet on July 16, 2018, 2:00 p.m.–3:00 p.m. (EDT) in a closed teleconference meeting.

The meeting will include discussions and evaluations of grant applications reviewed by SAMHSA's Initial Review Groups, and involve an examination of confidential financial and business information as well as personal information concerning the applicants. Therefore, the meeting will be closed to the public as determined by the SAMHSA Assistant Secretary for Mental Health and Substance Use in accordance with Title 5 U.S.C. 552b(c)(4) and (6) and Title 5 U.S.C. App. 2, 10(d).

Meeting information and a roster of Council members may be obtained by accessing the SAMHSA Committee website at *http://www.samhsa.gov/about-us/advisory-councils/csat-national-advisory-council* or by contacting the CSAT National Advisory Council Designated Federal Officer; Tracy Goss (see contact information below).

Council Name: SAMHSA's Center for Substance Abuse Treatment National Advisory Council.

Date/Time/Type: July 16, 2018, 2:00 p.m.–3:00 p.m. EDT, Closed.

Place: SAMHSA, 5600 Fishers Lane, Rockville, Maryland 20857.

Contact: Tracy Goss, Designated Federal Officer, CSAT National Advisory Council, 5600 Fishers Lane, Rockville, Maryland 20857 (mail), Telephone: (240) 276–0759, Fax: (240) 276–2252, Email: *tracy.goss@samhsa.hhs.gov.*

Carlos Castillo,

Committee Management Officer, SAMHSA.

[FR Doc. 2018–12570 Filed 6–11–18; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0109]

Agency Information Collection Activities: Guam-CNMI Visa Waiver Information

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; revision and extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than August 13, 2018) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0109 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov*.

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number (202) 325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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 responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Guam-CNMI Visa Waiver Information.

OMB Number: 1651–0109.

Form Number: CBP Form I–736.

Type of Review: Revision and Extension (with change).

Action: CBP proposes to revise and extend the expiration date of this information collection with an increase to the burden hours due to the proposed changes to the information collected.

Proposed Changes (Items in italics were previously approved under this information collection):

1. *Surname/Family Name (exactly as in passport).*
2. *(Given) Name and Middle Name.*
3. *Are you known by any other names or aliases? (y/n) If yes:*

Alias Surname/Family Name.
Alias First (Given) Name.

4. *Date of Birth (mm/dd/yyyy).*
5. *City of Birth.*
6. *Country of Birth.*
7. Gender.
8. Country of Citizenship.
9. What is your National Identification Number?
10. *Passport Number.*

—Issuing Country
—*Passport Issuing Date, (mm/dd/yyyy)*
—Passport Expire Date, (mm/dd/yyyy)

11. Have you ever been a citizen or national of any other country? (Y/N) If yes:

—provide the Country of Citizenship/Nationality.

12. Have you ever been issued a passport or national identity card for travel by any other country? (Y/N) If yes;

—provide Issuing Country, Document Type, Document Number, and Expiration Date (mm/dd/yyyy)

13. Are you now a citizen or national of any other country? (Y/N) If yes, then

—provide the Country of Citizenship/Nationality

14. How did you acquire citizenship/nationality from this country?

15. *Have you applied for an immigrant or nonimmigrant U.S. visa before? If yes, then:*

—*Place you applied*
—*Date you applied (mm/dd/yyyy)*
—*Type of visa Requested*
—*Was visa Issued? (Y/N*) If no, then: was application withdrawn or denied (Y/N). If yes, then

has your Visa ever been cancelled? (Y/N).

16. Are you a member of the CBP Global Entry Program? (Y/N) If yes, provide the PASSID/Membership Number.

17. Are you under the age of fourteen (14)? (Y/N) If yes:

—Father First (Given) Name
—Father Surname/Family Name
—Mother First (Given) Name
—Mother Surname/Family Name

18. PERSONAL CONTACT INFORMATION.

—Email
—Country Code and Phone Number
—Home Address
—City
—State/Province/Region
—Country

19. ADDRESS WHILE IN Guam/CNMI.

—Address
—City
—Guam or CNMI
—Phone Number

20. EMERGENCY CONTACT INFORMATION IN OR OUT OF THE United States.

—Surname/Family Name
—First (Given) Name
—Email Address
—Country Code
—Phone
—Country Name

21. Do you have a physical or mental disorder; or are you a drug abuser or addict; or do you currently have any of

the following diseases? Communicable diseases are specified pursuant to section 361(b) of the Public Health Service Act: Cholera, Diphtheria, Tuberculosis infectious, Plague, Smallpox, Yellow Fever, Viral Hemorrhagic Fevers, including Ebola, Lassa, Marburg, Crimean-Congo, Severe acute respiratory illnesses capable of transmission to other persons and likely to cause mortality. (Y/N)

22. Have you ever been arrested or convicted for a crime that resulted in serious damage to property, or serious harm to another person or government authority? (Y/N)

23. Have you ever violated any law related to possessing, using, or distributing illegal drugs? (Y/N)

24. Do you seek to engage in or have you ever engaged in terrorist activities, espionage, sabotage, or genocide? (Y/N)

25. Have you ever committed fraud or misrepresented yourself or others to obtain, or assist others to obtain, a visa or entry into the United States? (Y/N)

26. Have you ever stayed in the United States longer than the admission period granted to you by the U.S. government? (Y/N)

27. Are you currently seeking employment in Guam or CNMI? (Y/N)

28. Were you previously employed in the United States without prior permission from the U.S. government? (Y/N)

29. Have you traveled to, or been present in Iraq, Syria, Iran, Sudan, Libya, Somalia, or Yemen on or after March 1, 2011? (Y/N)

Affected Public: Individuals.

Abstract: Public Law 110–229 provides for certain aliens to be exempt from the nonimmigrant visa requirement if seeking entry into Guam or the Commonwealth of the Northern Mariana Islands (CNMI) as a visitor for a maximum stay of 45 days, provided that no potential threat exists to the welfare, safety, or security of the United States or its territories, and other criteria are met. Upon arrival at a Guam or CNMI Port-of-Entry, each applicant for admission presents a completed I–736 to CBP. CBP Form I–736 is provided for by 8 CFR 212.1(q) and is accessible at: *http://www.cbp.gov/newsroom/publications/forms?title=736&=Apply* or *https://i736.cbp.dhs.gov/I736/#/home.*

Estimated Number of Respondents: 1,560,000.

Estimated Time per Respondent: 19 minutes.

Estimated Total Annual Burden Hours: 492,960.

Dated: June 7, 2018.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2018–12586 Filed 6–11–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6099–C–02]

Section 8 Housing Assistance Payments Program—Fiscal Year 2018 Inflation Factors for Public Housing Agency Renewal Funding; Correction and Extension of Public Comment Due Date

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice; correction and extension of public comment due date.

SUMMARY: On May 30, 2018, HUD published a notice establishing Renewal Funding Inflation Factors (RFIFs) to adjust Fiscal Year 2018 renewal funding for the Housing Choice Voucher (HCV) program of each public housing agency (PHA), as required by the Consolidated Appropriations Act, 2018. HUD requested comments on potential RFIF methodology changes related to the use of ad hoc surveys conducted for purposes of reevaluating FMRs and their effect on the calculation of RFIFs. HUD did not include information directing the public where to submit public comments. This document extends the public comment deadline by one week and provides the instructions for submitting public comments.

DATES: The comment due date for the notice published at 83 FR 24815 on May 30, 2018, is July 6, 2018. The applicability date remains May 30, 2018.

FOR FURTHER INFORMATION CONTACT: With respect to this supplementary document, contact Aaron Santa Anna, Assistant General Counsel for Regulations, Department of Housing and Urban Development, 451 7th Street SW, Room 10238, Washington, DC 20410; telephone number 202–708–1793 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Correction

In notice FR Doc. 2018–11587, beginning on page 24815 in the **Federal Register** of Wednesday, May 30, 2018, the instructions for and location to submit public comments was missing. This notice provides the missing information and extends the public comment deadline by one week. This notice does not change the original applicability date of May 30, 2018. The following information should have been included in the notice publish May 30, 2018, at 83 FR 24815:

DATES: *Comments due date:* July 6, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Communications must refer to the original docket number and title. There are two methods for submitting public comments. All submissions must refer to the original docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in

advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

Dated: *June 7, 2018.*

Aaron Santa Anna,

Assistant General Counsel for Regulations.

[FR Doc. 2018–12591 Filed 6–11–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GR.18.DJ52.CDQ03.00; OMB Control Number 1028–0122]

Agency Information Collection Activities; Yukon-Kuskokwim Delta Berry Outlook

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the U.S. Geological Survey (USGS) is proposing to renew an information collection (IC) with revisions.

DATES: Interested persons are invited to submit comments on or before August 13, 2018.

ADDRESSES: Send your comments on the information collection request (ICR) by mail to the U.S. Geological Survey, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0122 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nicole Herman-Mercer by email at *nhmercer@usgs.gov,* or by telephone at 303–236–5031.

SUPPLEMENTARY INFORMATION: We, the U.S. Geological Survey, in accordance with the Paperwork Reduction Act of 1995, provide the general public and other Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you 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.

Abstract: The Yukon-Kuskokwim (YK) Delta Berry Outlook is a data and observer driven ecological monitoring and modeling framework that forecasts changes in berry habitat and abundance with environmental change. To create a berry monitoring protocol and modeling framework we will solicit local knowledge of berry distribution and abundance from members of YK delta communities using a survey instrument. This survey is comprised of two parts, Part A and Part B. Part A consists of propositions that respondents are asked to agree or disagree with using a Likert scale. Propositions are on the subject of timing, abundance, and distribution of four types of berries prevalent in the region. Part B consists of questions concerning the abundance of that year's berry harvest.

Personally Identifiable Information (PII) will be limited to four elements: Names, phone numbers, emails, and the name of the village they reside in. This PII will be collected so that researchers may communicate project results and solicit feedback on the project itself for evaluation purposes. Statistical analysis will be performed on the survey responses in to ascertain if a consensus exists among participants within villages and among villages.

The USGS mission is to serve the Nation by providing reliable scientific information to describe and understand the Earth. This project will collect information from individuals to better understand the abundance, distribution, and variability of berry resources in the Yukon-Kuskokwim Delta region of Alaska. The people of the YK delta hold information about the long-term distribution and abundance of berries that is useful for understanding current and future changes to berry habitat that has the potential to impact wildlife populations of the Yukon Delta region and the Yukon Delta National Wildlife Refuge.

Title of Collection: Yukon-Kuskokwim Delta Berry Outlook.

OMB Control Number: 1028–0122.

Form Number: None.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals residing in Alaska Native Villages.

Total Estimated Number of Annual Respondents: 150.

Total Estimated Number of Annual Responses: 150.

Estimated Completion Time per Response: Twenty-five minutes.

Total Estimated Number of Annual Burden Hours: 62.5 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: Part A one-time; Part B annually for three years.

Total Estimated Annual Non-hour Burden Cost: None.

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 authorities for this action are the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Pierre Glynn,

Chief, Water Cycle Branch.

[FR Doc. 2018–12560 Filed 6–11–18; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[18XD4523WS, DS61500000, DWSN00000.000000, DP.61501]

National Invasive Species Council; Notice of Public Meeting

AGENCY: Policy and International Affairs, Interior.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of a meeting of the Invasive Species Advisory Committee.

DATES: Teleconference Meeting of the Invasive Species Advisory Committee: Thursday, July 19, 2018; 1:00–3:00 p.m. (EDT).

ADDRESSES: U.S. Department of the Interior, Stuart Udall Building (MIB), 1849 C Street NW, Rachel Carson Room (basement level), Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Kelsey Brantley, Coordinator for NISC and ISAC Operations, National Invasive Species Council Secretariat, (202) 208–4122; Fax: (202) 208–4118, email: *kelsey_brantley@ios.doi.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the Advisory Committee (ISAC) is to provide advice to the National Invasive Species Council (NISC), as authorized by Executive Orders 13112 and 13751, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The duty of the Council is to provide national leadership regarding invasive species issues. The purpose of a meeting on Thursday, July 19, 2018 *via teleconference,* in lieu of physical travel, is to convene the full ISAC to enable NISC leadership and ISAC membership to discuss the recommendations arising from the ISAC annual meeting held February 27–March 1, 2018 in Washington, DC. Members of the public are welcome to participate by accessing the teleconference. The toll-free conference phone number and access code can be obtained through online registration at *https://goo.gl/forms/iitamLBa FYuvdeYB2.* Alternatively, members of the public can listen to the teleconference in person at the U.S. Department of the Interior Stuart Udall Building in Washington, DC (see **ADDRESSES** section above). All visiting members of the public must be cleared through building security prior to being escorted to the meeting room. *Note:* Other than during the public comment period, public participation is in an observer capacity. The maximum capacity of the teleconference is 100 participants. For record keeping purposes, participants will be required to provide their name and contact information to the operator before being connected.

Authority: 5 U.S.C. Appendix 2.

Jamie K. Reaser,

Executive Director, National Invasive Species Council.

[FR Doc. 2018–12608 Filed 6–11–18; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMF00000.L13100000.PP0000 18X LXSSG0860000]

Notice of Public Meeting, Farmington District Resource Advisory Council, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Farmington District Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Farmington District RAC will hold a public meeting on Tuesday, July 10, 2018, from 8:00 a.m. to 4:00 p.m., and a field trip on Wednesday, July 11, 2018, from 8:00 a.m. to 12:00 p.m.

ADDRESSES: The Farmington District RAC will meet at the Kit Carson Electrical Cooperative Boardroom at 118 Cruz Alta Road, Taos, NM 87571. The field trip participants will depart from the BLM Taos Field Office at 226 Cruz Alta Road, Taos, NM 87571.

FOR FURTHER INFORMATION CONTACT: Zach Stone, Public Affairs Specialist, BLM Farmington District Office, 6251 College Blvd., Suite A, Farmington, NM 87402, (505) 564–7677, or *zstone@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at (800) 877–8339. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with Mr. Stone. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Farmington District RAC consists of 10 members chartered and appointed by the Secretary of the Interior. Their diverse perspectives are represented in commodity, conservation, and general interests. They provide advice to BLM resource managers regarding management plans and proposed resource actions on public land in the BLM's Farmington District. Both the field trip and meeting are open to the public. However, the public is required to provide its own transportation for the field trip. Information to be distributed to the Farmington District RAC is requested prior to the start of each meeting.

Agenda items for the July 10 meeting include updates on: The 2017/2018 RAC nominations; the RAC charter; Farmington Field Office Resource Management Plan Amendment; updates in the Taos planning area; general recreation planning for the Taos and Farmington Field Offices; updates in the San Pedro Area; BLM efforts to gather additional cultural/ethnographic data for cultural site protection; the postponement of the 2018 spring oil and gas leasing in the Farmington Field Office area; and the methane emission rules. There will be a discussion on the Rio Grande Trail/State Partnership and a potential event scheduled for October 2, 2018, to celebrate the 50th Anniversary of the National Trails System Act of 1968; and any other topics that may reasonably come before the Farmington District RAC may also be addressed. On July 11, the RAC will participate in a field trip to the Rio Grande Trail improvement areas. More information is available at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/new-mexico/farmington-district-rac.*

The July 10, 2018, meeting will include a public comment period from 3:00 p.m. to 3:30 p.m. Depending on the number of persons wishing to comment and time available, the amount of time for individual oral comments may be limited. The public may also submit written comments to Zach Stone, Farmington District, New Mexico, 6251 College Blvd., Suite A, Farmington, NM 87402; or by email at *zstone@blm.gov,* or by telephone (505) 564–7677, no later than July 9, 2018, to be made available to the RAC at the July 10, 2018, meeting. All written comments received prior to the meeting will be provided to the council members.

Before including your address, phone number, email address, or other personal identifying information in your comments, please 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. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided above.

Authority: 43 CFR 1784.4–2.

Melanie Barnes,

Deputy State Director, Lands and Resources.

[FR Doc. 2018–12610 Filed 6–11–18; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV912000 L10200000.PH0000 LXSS0006F0000; 12–08807; MO#4500120116; TAS: 14X1109]

Notice of Public Meeting: Sierra Front-Northwestern Great Basin Resource Advisory Council, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, the Bureau of Land Management (BLM) Sierra Front-Northwestern Great Basin Resource Advisory Council (RAC) will meet as indicated below.

DATES: The SFNW RAC will hold a public meeting on Thursday, July 26, 2018, from 8 a.m. to 4 p.m. and a field trip to the Pine Forest Wilderness on Friday, July 27, 2018, from 7:00 a.m. to 4 p.m. Public comment periods will be held on July 26 at 8:05 a.m. and 3:30 p.m.

ADDRESSES: The July 26, 2018, meeting will be held at the BLM Winnemucca District Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada, 89445. Field trip participants will meet at the BLM Winnemucca District Office at 7:00 a.m. on July 27, 2018.

FOR FURTHER INFORMATION CONTACT: Lisa Ross, Public Affairs Specialist, at 775–885–6107, Carson City District Office, 5665 Morgan Mill Road, Carson City, NV 89701, or *lross@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member Sierra Front-Northwestern Great Basin RAC was chartered to serve in an advisory capacity concerning the planning and management of the public land resources located within Nevada. Members represent an array of stakeholder interests in the land and resources from within the local area and statewide. Both the meeting and field trip are open to the public. However, the public is required to provide its own transportation for the field trip.

Topics for discussion at each meeting will include, but are not limited to:

- July 26, 2018—Planned agenda items at the meeting include, but are not limited to district manager and subcommittee reports, wildlife management, and updates on energy and mineral development and Burning Man.
- July 27, 2018—Field trip to the Pine Forest Wilderness.

The RAC may raise other topics at the meetings. Final agendas are posted online two weeks prior to the meeting on the BLM Sierra Front-Northwestern Great Basin RAC website at *https://go.usa.gov/xQTsA*.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, or who wish to receive a copy of each agenda, may contact the person listed above no later than 10 days prior to the meeting.

Persons wishing to make comments during the public comment period of the meeting should register in person with the BLM, at the meeting location, before the meeting's public comment period. Depending on the number of persons wishing to comment, the amount of time for individual oral comments may be limited. The public may also submit written comments to the person listed above no later than July 20 to be made available to the RAC at the July 26, 2018, meeting. All written comments received will be provided to the council members. Before including your address, phone number, email address, or other personal information in your comments, please 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 information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 1784.4–2.

Rudy Evenson,

Deputy Chief, Office of Communications.

[FR Doc. 2018–12611 Filed 6–11–18; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

Renewals of Information Collections and Request for New Collection Under the Paperwork Reduction Act

AGENCY: National Indian Gaming Commission.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Indian Gaming Commission (NIGC or Commission) is seeking comments on the renewal of information collections for the following activities: Indian gaming management contract-related submissions, as authorized by Office of Management and Budget (OMB) Control Number 3141–0004 (expires on November 30, 2018); Indian gaming fee payments-related submissions, as authorized by OMB Control Number 3141–0007 (expires on November 30, 2018); minimum internal control standards for class II gaming submission and recordkeeping requirements, as authorized by OMB Control Number 3141–0009 (expires on November 30, 2018); facility license-related submission and recordkeeping requirements, as authorized by OMB Control Number 3141–0012 (expires on November 30, 2018); and minimum technical standards for class II gaming systems and equipment submission and recordkeeping requirements, as authorized by OMB Control Number 3141–0014 (expires on November 30, 2018).

DATES: Submit comments on or before August 13, 2018.

ADDRESSES: Comments can be mailed, faxed, or emailed to the attention of: Tim Osumi, National Indian Gaming Commission, 1849 C Street NW, Mail Stop #1621, Washington, DC 20240. Comments may be faxed to (202) 632–7066 and may be sent electronically to *info@nigc.gov,* subject: PRA renewals.

FOR FURTHER INFORMATION CONTACT: Tim Osumi at (202) 632–7054; fax (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Request for Comments

You are invited to comment on these collections concerning: (i) Whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) the accuracy of the agency's estimates of the burdens (including the hours and cost) of the proposed collections of information,

including the validity of the methodologies and assumptions used; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; (iv) ways to minimize the burdens of the information collections on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or forms of information technology. Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB control number.

It is the Commission's policy to make all comments available to the public for review at its headquarters, located at 90 K Street NE, Suite 200, Washington, DC 20002. 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 in your comment that the Commission withhold your personal identifying information from public review, the Commission cannot guarantee that it will be able to do so.

II. Data

Title: Management Contract Provisions.

OMB Control Number: 3141–0004.

Brief Description of Collection: The Indian Gaming Regulatory Act (IGRA or the Act), Public Law 100–497, 25 U.S.C. 2701, *et seq.,* established the National Indian Gaming Commission (NIGC or Commission) and laid out a comprehensive framework for the regulation of gaming on Indian lands. Amongst other actions necessary to carry out the Commission's statutory duties, the Act requires the NIGC Chairman to review and approve all management contracts for the operation and management of class II and/or class III gaming activities, and to conduct background investigations of persons with direct or indirect financial interests in, and management responsibility for, management contracts. 25 U.S.C. 2710, 2711. The Commission is authorized to ''promulgate such regulations and guidelines as it deems appropriate to implement'' IGRA. 25 U.S.C. 2706(b)(10). The Commission has promulgated parts 533, 535, and 537 of title 25, Code of Federal Regulations, to implement these statutory requirements.

Section 533.2 requires a tribe or management contractor to submit a management contract for review within 60 days of execution, and to submit all of the items specified in § 533.3. Section 535.1 requires a tribe to submit an amendment to a management contract within 30 days of execution, and to submit all of the items specified in § 535.1(c). Section 535.2 requires a tribe or a management contractor, upon execution, to submit the assignment by a management contractor of its rights under a previously approved management contract. Section 537.1 requires a management contractor to submit all of the items specified in § 537.1(b),(c) in order for the Commission to conduct background investigations on: Each person with management responsibility for a management contract; each person who is a director of a corporation that is a party to a management contract; the ten persons who have the greatest direct or indirect financial interest in a management contract; any entity with a financial interest in a management contract; and any other person with a direct or indirect financial interest in a management contract, as otherwise designated by the Commission. This collection is mandatory, and the benefit to the respondents is the approval of Indian gaming management contracts, and any amendments thereto.

Respondents: Tribal governing bodies and management contractors.

Estimated Annual Responses: 43 (submissions of contracts, contract amendments, contract assignments, and background investigation material).

Estimated Time per Response: Depending on the type of submission, the range of time can vary from 10.0 burden hours to 20.0 burden hours for one item.

Frequency of Response: Usually no more than once per year.

Estimated Total Annual Burden Hours on Respondents: 692.

Estimated Total Non-Hour Cost Burden: $500,000.

Title: Fees.

OMB Control Number: 3141–0007.

Brief Description of Collection: The Indian Gaming Regulatory Act (IGRA or the Act), 25 U.S.C. 2701, *et seq.,* laid out a comprehensive framework for the regulation of gaming on Indian lands. Amongst other actions necessary to carry out the Commission's statutory duties, the Act requires Indian tribes that conduct a class II and/or class III gaming activity to pay annual fees to the Commission on the basis of the assessable gross revenues of each gaming operation using rates established by the Commission. 25 U.S.C. 2717. The Commission is authorized to ''promulgate such regulations and guidelines as it deems appropriate to implement'' IGRA. 25 U.S.C. 2706(b)(10). The Commission has promulgated part 514 of title 25, Code of Federal Regulations, to implement these statutory requirements.

Section 514.6 requires a tribe to submit, along with its fee payments, quarterly fee statements (worksheets) showing its assessable gross revenues for the previous fiscal year in order to support the computation of fees paid by each gaming operation. Section 514.7 requires a tribe to submit a notice within 30 days after a gaming operation changes its fiscal year. Section 514.15 allows a tribe to submit fingerprint cards to the Commission for processing by the Federal Bureau of Investigation (FBI), along with a fee to cover the NIGC's and FBI's cost to process the fingerprint cards on behalf of the tribes. Part of this collection is mandatory and the other part is voluntary. The required submission of the fee worksheets allows the Commission to both set and adjust fee rates, and to support the computation of fees paid by each gaming operation. In addition, the voluntary submission of fingerprint cards allows a tribe to conduct statutorily mandated background investigations on applicants for key employee and primary management official positions.

Respondents: Indian gaming operations.

Estimated Number of Respondents: 651.

Estimated Annual Responses: 71,375.

Estimated Time per Response: Depending on the type of submission, the range of time can vary from 0.5 burden hours to 2.0 burden hours for one item.

Frequency of Response: Quarterly (for fee worksheets); varies (for fingerprint cards and fiscal year change notices).

Estimated Total Annual Burden on Respondents: 38,292.

Estimated Total Non-Hour Cost Burden: $1,467,585.

Title: Minimum Internal Control Standards for Class II Gaming.

OMB Control Number: 3141–0009.

Brief Description of Collection: The Indian Gaming Regulatory Act (IGRA or the Act), 25 U.S.C. 2701, *et seq.,* laid out a comprehensive framework for the regulation of gaming on Indian lands. Amongst other actions necessary to carry out the Commission's statutory duties, the Act directs the Commission to monitor class II gaming conducted on Indian lands on a continuing basis in order to adequately shield Indian gaming from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly

by both the operator and players. 25 U.S.C. 2702(2), 2706(b)(1). The Commission is also authorized to ''promulgate such regulations and guidelines as it deems appropriate to implement'' IGRA. 25 U.S.C. 2706(b)(10). The Commission has promulgated part 543 of title 25, Code of Federal Regulations, to aid it in monitoring class II gaming on a continuing basis.

Section 543.3 requires a tribal gaming regulatory authority (TGRA) to submit to the Commission a notice requesting an extension to the deadline (by an additional six months) to achieve compliance with the requirements of the new tier after a gaming operation has moved from one tier to another. Section 543.5 requires a TGRA to submit a detailed report after the TGRA has approved an alternate standard to any of the NIGC's minimum internal control standards, and the report must contain all of the items specified in § 543.5(a)(2). Section 543.23(c) requires a tribe to maintain internal audit reports and to make such reports available to the Commission upon request. Section 543.23(d) requires a tribe to submit two copies of the agreed-upon procedures (AUP) report within 120 days of the gaming operation's fiscal year end. This collection is mandatory and allows the NIGC to confirm tribal compliance with the minimum internal control standards in the AUP reports.

Respondents: Tribal governing bodies.

Estimated Number of Respondents: 466.

Estimated Annual Responses: 834.

Estimated Time per Response: Depending on the tier level of the gaming facility, the range of time can vary from 1 burden hour to 108 burden hours for one AUP audit report.

Frequency of Response: Annually.

Estimated Total Annual Hourly Burden to Respondents: 11,340.

Estimated Total Non-Hour Cost Burden: $8,736,040.

Title: Facility License Notifications and Submissions.

OMB Control Number: 3141–0012.

Brief Description of Collection: The Indian Gaming Regulatory Act (IGRA or the Act), 25 U.S.C. 2701, *et seq.,* laid out a comprehensive framework for the regulation of gaming on Indian lands. Amongst other actions necessary to carry out the Commission's statutory duties, the Act requires Indian tribes that conduct class II and/or class III gaming to issue ''a separate license . . . for each place, facility, or location on Indian lands at which class II [and class III] gaming is conducted,'' 25 U.S.C. 2710(b)(1), (d)(1), and to ensure that ''the construction and maintenance of the gaming facilities, and the operation of that gaming is conducted in a manner which adequately protects the environment and public health and safety.'' 25 U.S.C. 2710(b)(2)(E). The Commission is authorized to ''promulgate such regulations and guidelines as it deems appropriate to implement'' IGRA. 25 U.S.C. 2706(b)(10). The Commission has promulgated part 559 of title 25, Code of Federal Regulations, to implement these requirements.

Section 559.2 requires a tribe to submit a notice (that a facility license is under consideration for issuance) at least 120 days before opening any new facility on Indian lands where class II and/or class III gaming will occur, with the notice containing all of the items specified in § 559.2(b). Section 559.3 requires a tribe to submit a copy of each newly issued or renewed facility license within 30 days of issuance. Section 559.4 requires a tribe to submit an attestation certifying that by issuing the facility license, the tribe has determined that the construction, maintenance, and operation of that gaming facility is conducted in a manner that adequately protects the environment and the public health and safety. Section 559.5 requires a tribe to submit a notice within 30 days if a facility license is terminated or expires or if a gaming operation closes or reopens. Section 559.6 requires a tribe to maintain and provide applicable and available Indian lands or environmental and public health and safety documentation, if requested by the NIGC. This collection is mandatory and enables the Commission to perform its statutory duty by ensuring that tribal gaming facilities on Indian lands are properly licensed by the tribes.

Respondents: Indian tribal gaming operations.

Estimated Annual Responses: 110.

Estimated Annual Responses: 269.

Estimated Time per Response: Depending on the type of submission, the range of time can vary from 0.5 burden hours to 13.0 burden hours for one item.

Frequency of Response: Varies.

Estimated Total Annual Hourly Burden to Respondents: 2,232.

Estimated Total Non-Hour Cost Burden: $6,663.

Title: Minimum Technical Standards for Class II Gaming Systems and Equipment.

OMB Control Number: 3141–0014.

Brief Description of Collection: The Indian Gaming Regulatory Act (IGRA or the Act), 25 U.S.C. 2701, *et seq.,* laid out a comprehensive framework for the regulation of gaming on Indian lands. Amongst other actions necessary to carry out the Commission's statutory duties, the Act directs the Commission to monitor class II gaming conducted on Indian lands on a continuing basis in order to adequately shield Indian gaming from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players. 25 U.S.C. 2702(2), 2706(b)(1). The Act allows Indian tribes to use ''electronic, computer, or other technologic aids'' to conduct class II gaming activities. 25 U.S.C. 2703(7)(A). The Commission is authorized to ''promulgate such regulations and guidelines as it deems appropriate to implement'' IGRA. 25 U.S.C. 2706(b)(10). The Commission has promulgated part 547 of title 25, Code of Federal Regulations, to aid it in monitoring class II gaming facilities that are using electronic, computer, or other technologic aids to conduct class II gaming.

Section 547.5(a)(2) requires that, for any grandfathered class II gaming system made available for use at any tribal gaming operation, the tribal gaming regulatory authority (TGRA): Must retain copies of the gaming system's testing laboratory report, the TGRA's compliance certificate, and the TGRA's approval of its use; and must maintain records identifying these grandfathered class II gaming systems and their components. Section 547.5(b)(2) requires that, for any class II gaming system generally, the TGRA must retain a copy of the system's testing laboratory report, and maintain records identifying the system and its components. As long as a class II gaming system is available to the public for play, section 547.5(c)(3) requires a TGRA to maintain records of any modification to such gaming system and a copy of its testing laboratory report. Section 547.5(d)(3) requires a TGRA to maintain records of approved emergency hardware and software modifications to a class II gaming system (and a copy of the testing laboratory report) so long as the gaming system remains available to the public for play, and must make the records available to the Commission upon request. Section 547.5(f) requires a TGRA to maintain records of its following determinations: (i) Regarding a testing laboratory's (that is owned or operated or affiliated with a tribe) independence from the manufacturer and gaming operator for whom it is providing the testing, evaluating, and

reporting functions; (ii) regarding a testing laboratory's suitability determination based upon standards no less stringent than those set out in 25 CFR 533.6(b)(1)(ii) through (v) and based upon no less information than that required by 25 CFR 537.1; and/or (iii) the TGRA's acceptance of a testing laboratory's suitability determination made by any other gaming regulatory authority in the United States. The TGRA must maintain said records for a minimum of three years and must make the records available to the Commission upon request. Section 547.17 requires a TGRA to submit a detailed report for each enumerated standard for which the TGRA approves an alternate standard, and the report must include: (i) An explanation of how the alternate standard achieves a level of security and integrity sufficient to accomplish the purpose of the standard it is to replace; and (ii) the alternate standard as approved and the record on which the approval is based. This collection is mandatory and allows the NIGC to confirm tribal compliance with NIGC regulations on ''electronic, computer, or other technologic aids'' to conduct class II gaming activities.

Respondents: Tribal governing bodies.

Estimated Number of Respondents: 492.

Estimated Annual Responses: 500.

Estimated Time per Response: Depending on the type of submission, the range of time can vary from 2.0 burden hours to 6.0 burden hours for one item.

Frequency of Response: Annually.

Estimated Total Annual Hourly Burden to Respondents: 2,456.

Estimated Total Non-Hour Cost Burden: $0.

Dated: May 31, 2018.

Christinia Thomas,

Chief of Staff (A).

[FR Doc. 2018–12498 Filed 6–11–18; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–GATE–25299; PPNEGATEB0, PPMVSCS1Z.Y00000]

Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Notice of renewal.

SUMMARY: The Secretary of the Interior is giving notice of renewal of the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee. The Committee provides advice on the development of a specific reuse plan and on matters relating to the future uses of the Fort Hancock Historic Landmark District within the Sandy Hook Unit of Gateway National Recreation Area.

FOR FURTHER INFORMATION CONTACT: Daphne Yun, Acting Public Affairs Officer, Gateway National Recreation Area, 210 New York Avenue, Staten Island, New York 10305, or by telephone (718) 354–4602, or by email *daphne_yun@nps.gov.*

SUPPLEMENTARY INFORMATION: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463, as amended). The certification of renewal is published below.

Certification Statement: I hereby certify that the renewal of the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by the National Park Service Organic Act (54 U.S.C. 100101(a) *et seq.*), and other statutes relating to the administration of the National Park Service.

Authority: 54 U.S.C. 100906; 54 U.S.C. 100101(a) *et seq.*

Ryan K. Zinke,

Secretary of the Interior.

[FR Doc. 2018–12559 Filed 6–11–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR03510000, XXXR0680R1, RR171260120019400]

Notice of Intent To Prepare an Environmental Impact Statement, New Mexico Unit of the Central Arizona Project; Catron, Grant, and Hidalgo Counties, New Mexico

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent; request for comments.

SUMMARY: The Bureau of Reclamation (Reclamation), as the lead Federal agency, and the New Mexico Interstate Stream Commission (ISC), as joint lead agency, intend to gather information necessary for preparing an Environmental Impact Statement (EIS) to evaluate the effects of the construction and operation of a New Mexico Unit (NM Unit) of the Central Arizona Project (CAP). Reclamation and the ISC will work with land owners that may be impacted by construction and operation of the NM Unit. Reclamation and the ISC will evaluate and disclose the potential environmental effects on these lands to determine consistency with any applicable land use plans or other guiding documents. This notice also opens public scoping to identify potential issues, concerns, and alternatives to be considered in the EIS.

DATES: Comments on the scope of the EIS are due 30 days after publication of this notice in the **Federal Register**.

Eight public scoping meetings will be held to solicit comments on the scope of the EIS and the issues and alternatives that should be analyzed. The dates and locations of the scoping meetings will be announced at least 15 days in advance through local media, newspapers, and the project website at: *https://www.nmuniteis.com.* At the time of this publication, the dates and locations of the scoping meetings will be on the project website.

ADDRESSES: Send written comments on the scope of the EIS to the Phoenix Area Office, Bureau of Reclamation (ATTN: NM Unit EIS), 6150 West Thunderbird Road, Glendale, Arizona 85306, or by email to *NMUnitEIS@empsi.com.* If emailing comments, please use ''NM Unit EIS'' as the subject of your email.

FOR FURTHER INFORMATION CONTACT: Mr. Sean Heath at (623) 773–6250, or by email at *NMUnitEIS@empsi.com.* Additional information is available online at *https://www.nmuniteis.com.*

SUPPLEMENTARY INFORMATION: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4231–4347; the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR parts 1500 through 1508; and the Department of the Interior's regulations, 43 CFR part 46, Reclamation and the ISC, as joint lead agencies, intend to prepare an EIS on the NM Unit of the CAP. The Proposed Action would develop a NM Unit of the CAP to permit the consumptive use of Gila River water, diverted in accordance with the Consumptive Use and Forbearance Agreement (CUFA), and pursuant to the terms of the Arizona Water Settlements Act, Public Law 108–451 (AWSA).

Background

The Colorado River Basin Project Act of 1968, Public Law 90–537, 43 U.S.C. Ch. 32, as amended by the AWSA, authorizes the Secretary of the Interior (Secretary) to contract with water users in New Mexico for water from the Gila River, its tributaries and underground

water sources. New Mexico may divert, in any period of 10 consecutive years, up to an annual average of 14,000 acre-feet, including a maximum of 4,000 acre-feet per year that may be diverted from the San Francisco River pursuant to the CUFA and the NM Unit Agreement. Use of this water under the AWSA is conditioned on satisfying a variety of laws and agreements related to its use in New Mexico and Arizona. These laws and agreements generally require that additional CAP water be delivered to the downstream users in Arizona to replace diversions in New Mexico under the AWSA and the CUFA.

A NM Unit is the infrastructure that would divert Gila River water in New Mexico for this purpose. The AWSA contains specific requirements for the Secretary regarding the possible construction, operation, and maintenance of a NM Unit on the Gila River.

The Secretary is authorized to design, build, operate, and maintain a NM Unit. A NM Unit is defined in the New Mexico Unit Agreement, which the Secretary executed on November 23, 2015. The Secretary is directed to carry out all necessary environmental compliance required by Federal law in implementing the CUFA and the New Mexico Unit Agreement. Reclamation and the ISC are the joint lead agencies for environmental compliance regarding the Unit pursuant to Section 212(h) of the AWSA.

Purpose and Need for Action

The purpose of the Proposed Action is to develop a NM Unit of the CAP to allow for consumptive use of water from the Gila River, its tributaries or underground water sources in southwestern New Mexico, diverted in accordance with the CUFA, and pursuant to the terms of the AWSA. The water developed via a NM Unit pursuant to the AWSA and the CUFA is for the benefit of the New Mexico CAP Entity.

The needs for the Proposed Action are as follows: (a) To develop water for delivery at the times, locations, and in quantities that will improve agricultural use within the Cliff-Gila, Virden, and/or San Francisco River valleys; and (b) to provide capability for future expansion for the beneficial purposes authorized by the Colorado River Basin Project Act of 1968 and the AWSA. The Proposed Action identified in this EIS is needed for agricultural use and does not include or preclude the independent development of subsequent projects to address these future needs; however, future projects involving water developed pursuant to the AWSA and the CUFA will be subject to all environmental compliance required by law.

Reclamation has concluded that an EIS is required for the proposed project, pursuant to the statutory requirements of the AWSA. The EIS will evaluate direct, indirect, and cumulative effects of the Proposed Action. In addition, the EIS will include a No Action alternative. For purposes of analysis and scoping, the No Action alternative represents the conditions that exist in the absence of the Federal action. It will provide the basis for comparison with the Proposed Action that includes the construction and operation of a NM Unit.

Proposed Action

The NM Unit would be a water diversion, storage, conveyance, and delivery system for agricultural use and to provide capability for future expansion for other beneficial purposes as authorized by the Colorado River Basin Project Act of 1968 and the AWSA. The study area for the EIS comprises portions of Catron, Grant, and Hidalgo counties in southwest New Mexico. The Project would divert AWSA water from the Gila River or its tributaries in New Mexico pursuant to the provisions of the AWSA and the CUFA, convey it for storage in off-stream storage sites in the Upper Gila Valley, along the San Francisco River and in the Virden Valley, and deliver it to the target water users. The Proposed Action would only use a portion of the 14,000 acre-feet allowed under the AWSA, while not precluding the future development of the full amount. The exact amounts of water that would be diverted are unknown at this time and will be determined as the Proposed Action is refined prior to the publication of the Draft EIS. The Proposed Action includes diverting, conveying, and storing other water rights, except for Globe Equity water rights. Possible components of the NM Unit include the following:

- A surface water diversion structure on the Gila River, in the Cliff-Gila Valley;
- Storage ponds in the Gila River floodplain and in a side drainage of the Cliff-Gila Valley, providing approximately 4,000 acre-feet of storage;
- Aquifer storage with recovery wells in the Cliff-Gila Valley;
- Gravity flow and pumped delivery of diverted water to storage facilities in the Cliff-Gila Valley;
- Pumping facilities associated with delivery of stored water in the Cliff-Gila Valley;
- Ditch improvements, including increased capacity and lining of about one-third of existing ditches in the Cliff-Gila Valley;
- Surface storage ponds in the Gila River floodplain or side channels, providing approximately 500 acre-feet of storage in the Virden Valley;
- Improvements to existing ditches for water conveyance in the Virden Valley;
- Pumping facilities associated with delivery of stored water in the Virden Valley;
- A surface water diversion structure on the San Francisco River, near Alma;
- Pumping facility for delivery of diverted water to the proposed reservoir near Alma;
- Conveyance (*i.e.,* open ditch, box culvert, or pipeline) construction and improvements to existing ditches for water conveyance from a proposed diversion on the San Francisco River;
- Construction of an approximately 1,900 acre-foot off-stream reservoir near Alma, to store water diverted from the San Francisco River;
- Construction of water conveyance facilities from the reservoir to points of use.

Reclamation and the ISC will use the public scoping period, previous studies, and stakeholder input to fully identify the range of potentially significant issues, actions, alternatives, and impacts to be considered in the EIS.

Resource areas analyzed in the EIS may include air quality; cultural resources; geology and soils; hazardous substances and waste; land use; noise; socioeconomics; recreation; utilities and infrastructure; vegetation; water; wetlands and floodplains; fisheries and wildlife; and special status species. The range of issues and alternatives addressed in the EIS may be expanded or reduced based on comments received in response to this notice and at the public scoping meetings. Additional information is available by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Principles, Requirements, and Guidelines

As part of the environmental analysis process, the Federal Principles, Requirements, and Guidelines for Water and Land Related Resources Implementation Studies (PR&Gs) will be applied to examine the various technical, economic, hydrologic, recreation and ecosystem services considerations of each alternative, as well as a No Action alternative. The requirements of a PR&G analysis are unique to that process and are not included in the Council of Environmental Quality or Department of

the Interior NEPA implementing regulations. Additional information regarding the PR&Gs is available online at the website provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Cooperating Agency Status

If, based on the Proposed Action, your agency believes it has special expertise or jurisdiction by law, as defined in 40 CFR 1508.15 and 1508.26, please respond within 30 days of the date of publication of this notice to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Special Assistance for Public Scoping Meetings

If special assistance is required at the scoping meetings, please contact Mr. Sean Heath at (623) 773–6250, or email your assistance needs to *NMUnitEIS@empsi.com,* along with your name and telephone number. Please indicate your needs at least two weeks in advance of the meeting to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified.

Public Disclosure

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.

Dated: June 7, 2018.

Terrance J. Fulp,

Regional Director, Lower Colorado Region.

[FR Doc. 2018–12575 Filed 6–11–18; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1119]

Certain Infotainment Systems, Components Thereof, and Automobiles Containing the Same: Institution of investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 7, 2018, under section 337 of the Tariff Act of 1930, as amended, on behalf of Broadcom Corporation of San Jose, California. Supplements to the complaint were filed on May 18, 2018 and May 30, 2018. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain infotainment systems, component thereof, and automobiles containing the same by reason of infringement of U.S. Patent No. 6,937,187 (''the '187 patent''); U.S. Patent No. 8,902,104 (''the '104 patent''); U.S. Patent No. 7,512,752 (''the '752 patent''); U.S. Patent No. 7,530,027 (''the '027 patent''); U.S. Patent No. 8,284,844 (''the '844 patent''); and U.S. Patent No. 7,437,583 (''the '583 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Katherine Hiner, The Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2018).

Scope of investigation: Having considered the complaint, the U.S. International Trade Commission, on June 6, 2018, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of products identified in paragraph (2) by reason of infringement of one or more of claims 1–10 of the '187 patent; claims 1, 2, 5–13, 15, and 16 of the '104 patent; claims 1–10 of the '752 patent; claims 11–20 of the '027 patent; claims 1–14 of the '844 patent; and claims 17–26 of the '583 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''head units, rear seat entertainment units, units for displaying information or entertainment, and cameras, controllers, processing components, modules, chips, GNSS processing devices, and circuits used therein or therewith and automobiles that contain such infotainment systems and components'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Broadcom Corporation, 1320 Ridder Park Drive, San Jose, CA 95131.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Toyota Motor Corporation, 1 Toyota-cho, Toyota City, Aichi Prefecture 471–8571, Japan

Toyota Motor North America, Inc., 6565 Headquarters Dr., Plano, TX 75024

Toyota Motor Sales, U.S.A., Inc., 6565 Headquarters Dr., Plano, TX 75024

Toyota Motor Engineering & Manufacturing North America, Inc., 6565 Headquarters Dr., Plano, TX 75024

Toyota Motor Manufacturing, Indiana, Inc., 4000 Tulip Tree Drive, Princeton, IN 47670

Toyota Motor Manufacturing, Kentucky, Inc., 25 Atlantic Avenue, Erlanger, KY 41018

Toyota Motor Manufacturing, Mississippi, Inc., 398 E Main Street, Tupelo, MS 38804

Toyota Motor Manufacturing, Texas, Inc., 1 Lone Star Pass, San Antonio, TX 78264

Panasonic Corporation, 1006, Oaza Kadoma, Kadoma-shi, Osaka 571–8501, Japan

Panasonic Corporation of North America, Two Riverfront Plaza, 828 McCarter Highway, Newark, NJ 07102

Denso Ten Limited, 2–28, Gosho-dori, 1-chome, Hyogo-ku, Kobe City, Japan

Denso Ten America Limited, 20100 Western Avenue, Torrance, CA 90501

Renesas Electronics Corporation, Toyosu Foresia 3–2–24 Toyosu, Koto-ku, Tokyo 135–0061, Japan

Renesas Electronics America, Inc., 1001 Murphy Ranch Road, Milpitas, CA 95035

Japan Radio Co., Ltd., Nakano Central Park East, 10–1, Nakano 4-chome, Nakano-ku, Tokyo 164–8570, Japan

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not be named as a party to this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: June 7, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–12609 Filed 6–11–18; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Second Amended Consent Decree Under the Clean Water Act

On June 5, 2018, the Department of Justice lodged a proposed Second Amended Consent Decree with the United States District Court for the Northern District of Ohio in the lawsuit entitled *United States* v. *City of Akron, Ohio, et al.,* Civil Action No. 09–cv–00272.

In this action the United States, and the State of Ohio in a cross-claim, sought civil penalties and injunctive relief for violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.,* in connection with the City of Akron's (''Akron's'' or ''City's'') operation of its municipal wastewater treatment facility and sewer system. Under the Consent Decree, which was approved by the Court in January 2014, Akron was required to develop and implement a comprehensive plan to address overflows from its combined sewer system and bypasses around secondary treatment at the wastewater treatment facility. That plan, known as the ''Long Term Control Plan Update'' (''LTCP Update''), which was approved by the United States in November 2011 and the State of Ohio in April 2012, sets forth specific projects that the City is required to implement, and identifies dates for completion of these projects.

The proposed amendment modifies provisions of the 2014 Consent Decree that are set forth in the City's LTCP Update. Specifically, the proposed amendment would permit the City to install a different biologically enhanced high rate treatment technology to address remaining secondary bypasses at its wastewater treatment plant; the 2014 Consent Decree requires the City to use a BioActiflo system, whereas the proposed amendment would allow it to use a BioCEPT system instead. The proposed amendment also addresses requirements for four storage basins in the City's sewer collection system. The City would increase the size of one of the storage basins, and would not be required to build the remaining basins. Instead, it would expand existing ''underflow'' pipes at those combined sewer overflow (''CSO'') locations, which would allow it to optimize flow, increasing the amount of wastewater that it sends to the wastewater treatment plant. In addition, at three of the CSO locations, the City would install a variety of green infrastructure projects that are collectively capable of addressing specified volumes of stormwater.

The publication of this notice opens a period for public comment on the Second Amended Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *City of Akron, Ohio, et al.,* D.J. Ref. No. 90–5–1–1–3144/2. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Second Amendment to the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed amendment to the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $7.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Randall M. Stone,

Acting Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2018–12521 Filed 6–11–18; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

[NARA–2018–042]

State, Local, Tribal, and Private Sector Policy Advisory Committee (SLTPS–PAC)

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and implementing regulation 41 CFR 101–6, NARA announces the following committee meeting.

DATES: The meeting will be on July 25, 2018, from 10:00 a.m. to 12:00 p.m.

ADDRESSES: National Archives and Records Administration; 700 Pennsylvania Avenue NW, Jefferson Room; Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Robert J. Skwirot, Senior Program Analyst, by mail at ISOO, National Archives Building; 700 Pennsylvania Avenue NW; Washington, DC 20408, by telephone at (202) 357–5398, or by email at *robert.skwirot@nara.gov.* Contact ISOO at *ISOO@nara.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss matters relating to the Classified National Security Information Program for State, Local, Tribal, and Private Sector entities.

The meeting will be open to the public. However, due to space limitations and access procedures, you must submit the name and telephone number of individuals planning to attend to the Information Security Oversight Office (ISOO) no later than Wednesday, July 18, 2018. ISOO will provide additional instructions for accessing the meeting's location.

Patrice Little Murray,

Alternate Committee Management Officer.

[FR Doc. 2018–12604 Filed 6–11–18; 8:45 am]

BILLING CODE 7515–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Office of Government Information Services (OGIS)

[NARA 2018–041]

Freedom of Information Act Advisory Committee

AGENCY: National Archives and Records Administration.

ACTION: Charter Renewal of the Freedom of Information Act Advisory Committee.

SUMMARY: The National Archives and Records Administration (NARA) has renewed the Freedom of Information Act (FOIA) Advisory Committee charter. The FOIA Advisory Committee is a Federal advisory committee established in accordance with section 9(a)(2) of the Federal Advisory Committee Act to advise NARA's Office of Government Information Services (OGIS) on improvements to the FOIA and to study the current FOIA landscape across the executive branch.

DATES: The charter will be applicable for two years from May 20, 2018, unless otherwise extended.

FOR FURTHER INFORMATION CONTACT: Amy Bennett by phone at 202–741–5782, by mail at National Archives and Records Administration; Office of Government Information Services, 8601 Adelphi Road, College Park, MD 20740–6001, or by email at *foia-advisory-committee@nara.gov.*

Patrice Little Murray,

Alternate Committee Management Officer.

[FR Doc. 2018–12580 Filed 6–11–18; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB Review, Comment Request, Proposed Collection: IMLS 2019–2021 Museum Grants for African American Culture Program/Native American Native Hawaiian Program Notice of Funding Opportunity

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Submission for OMB review, comment request.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This program helps to ensure that 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 on respondents can be properly assessed. This notice proposes the clearance of the instructions for the IMLS Museum Grants for African American Culture Program/Native American Native Hawaiian Program Notice of Funding Opportunity.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Comments must be submitted to the office listed in the **FOR FURTHER INFORMATION CONTACT** section below on or before July 11, 2018.

OMB is particularly interested in comments that help the agency to:

- 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;
- 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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).

ADDRESSES: Comments should be sent to Office of Information and Regulatory Affairs, *Attn.:* OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316.

FOR FURTHER INFORMATION CONTACT: Dr. Sandra Webb, Director of Grant Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Webb can be reached by Telephone: 202–653–4718, Fax: 202–653–4608, or by email at *swebb@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to transform the lives of individuals and communities. To learn more, visit *www.imls.gov.*

Current Actions: The goals of Museums Grants for African American History and Culture (AAHC) are to support projects that improve the operations, care of collections, and development of professional management at African American museums. The goal of Native American/Native Hawaiian Museum Services

(NANH) grants is to support Indian tribes and organizations that primarily serve and represent Native Hawaiians. They are intended to provide opportunities to sustain heritage, culture, and knowledge through strengthened activities in areas such as exhibitions, educational services and programming, professional development, and collections stewardship. This action is to renew the forms and instructions for the Notice of Funding Opportunities for the next three years.

Agency: Institute of Museum and Library Services.

Title: 2019–2021 IMLS Museum Grants for African American Culture Program/Native American Native Hawaiian Program Notice of Funding Opportunity.

OMB Number: 3137–0095.

Frequency: Once per year.

Affected Public: Museum organization applicants.

Number of Respondents: 75.

Estimated Average Burden per Response: 35 hours.

Estimated Total Annual Burden: 2,625 hours.

Total Annualized Capital/Startup Costs: n/a.

Total Annual Costs: $59,613.75.

Dated: June 6, 2018.

Kim Miller,

Grants Management Specialist, Office of Grants Policy and Management.

[FR Doc. 2018–12526 Filed 6–11–18; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB Review, Comment Request, Proposed Collection: IMLS ''2019–2022 National Leadership Grants for Museums and Museums for America Grants''

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Submission for OMB review, comment request.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This program helps to ensure that 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 on respondents can be properly assessed. This notice proposes the clearance of the instructions for the ''IMLS National Leadership Grants for Museums and Museums for America Grants.''

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Comments must be submitted to the office listed in the **FOR FURTHER INFORMATION CONTACT** section below on or before July 11, 2018.

OMB is particularly interested in comments that help the agency to:

- 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;
- 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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).

ADDRESSES: Comments should be sent to Office of Information and Regulatory Affairs, *Attn.:* OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316.

FOR FURTHER INFORMATION CONTACT: Dr. Sandra Webb, Director of Grant Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Webb can be reached by Telephone: 202–653–4718 Fax: 202–653–4608, or by email at *swebb@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to transform the lives of individuals and communities. To learn more, visit *www.imls.gov.*

Current Actions: The goals of National Leadership Grants (NLG) for Museums are to support projects that address critical needs of the museum field and that have the potential to advance practice in the profession so that museums can improve services for the American public. Museums, institutions of higher education, and certain nonprofits who support museum operations or well-being are eligible to apply under this grant program. The goal of Museums for America (MFA) grants is to support projects that strengthen the ability of an individual museum to serve its public. The program supports museums by investing in high-priority activities that are clearly linked to an institution's strategic plan and enhance its value to its community. This action is to renew the forms and instructions for the Notice of Funding Opportunities for the next three years.

Agency: Institute of Museum and Library Services.

Title: 2019–2021 IMLS National Leadership Grants for Museums/ Museums for America Notice of Funding Opportunity.

OMB Number: 3137–0094.

Frequency: Once per year.

Affected Public: Museum organization applicants.

Number of Respondents: 630.

Estimated Average Burden per Response: 45 hours.

Estimated Total Annual Burden: 28,350 hours.

Total Annualized Capital/Startup Costs: n/a.

Total Annual Costs: $643,828.50.

Dated: June 6, 2018.

Kim Miller,

Grants Management Specialist, Office of Grants Policy and Management.

[FR Doc. 2018–12525 Filed 6–11–18; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

National Council on the Arts 194th Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that a meeting of the

National Council on the Arts will be held. Open to the public on a space available basis.

DATES: See the **SUPPLEMENTARY INFORMATION** section for meeting times and dates. All activities are Eastern time and ending times are approximate.

ADDRESSES: Huntington Museum of Art, 2033 McCoy Road, Huntington, West Virginia 25701; Keith-Albee Theater, 925 Fourth Avenue, Huntington, West Virginia 25701; West Virginia State Museum, 1900 Kanawha Boulevard East, Charleston, West Virginia 25305.

FOR FURTHER INFORMATION CONTACT: Victoria Hutter, Office of Public Affairs, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

SUPPLEMENTARY INFORMATION: If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b, and in accordance with the July 5, 2016 determination of the Chairman. Additionally, discussion concerning purely personal information about individuals, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, to Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact Beth Bienvenu, Office of Accessibility, National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506, 202/682–5733, Voice/T.T.Y. 202/682–5496, at least seven (7) days prior to the meeting.

The Upcoming Meeting is:

National Council on the Arts 194th Meeting

This meeting and activities will be open.

Dates and Times:

Site Visit to Huntington Museum of Art in Huntington, WV

June 28, 2018; 12:00 p.m. to 12:20 p.m.

Site Visit to Keith-Albee Theater in Huntington, WV

June 28, 2018; 12:30 p.m. to 1:30 p.m.

Council meeting at West Virginia State Museum in Charleston, WV

June 29, 2018; 9:00 a.m. to 11:30 a.m.

There will be opening remarks and voting on recommendations for grant funding and rejection, followed by updates from the Acting Chairman and guest presentations.

Dated: June 7, 2018.

Sherry Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2018–12612 Filed 6–11–18; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Establish an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request establishment and clearance of this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than one year.

DATES: Written comments on this notice must be received by August 13, 2018 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR ADDITIONAL INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Room W18000, Alexandria, Virginia 22314; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and collection name identified above for this information collection. Commenters are strongly encouraged to transmit their comments electronically via email. Comments, including any personal information provided become a matter of public record. They will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request.

SUPPLEMENTARY INFORMATION:

Title of Collection: Survey of NSF INCLUDES Principal Investigators and Program Participants.

OMB Control Number: 3145—NEW.

Type of Request: Intent to seek approval to establish an information collection.

Abstract: The primary objective of the survey is to collect data on the formation of partnerships between Alliance grantees and collaborating organizations for the National Science Foundation (NSF) Inclusion Across the Nation of Communities of Learners of Underrepresented Discoverers in Engineering and Science (INCLUDES) initiative. These data will be used to understand how these partnerships form a network infrastructure for leveraging innovative strategies and approaches to eradicate the persistent lack of diversity and underrepresentation in science, technology, engineering, and mathematics (STEM) fields. The goal of NSF INCLUDES is to support pioneering models, networks, partnerships, and research that enable the U.S. STEM workforce to thrive by ensuring all groups are represented in percentages comparable to their representation in the U.S. population. NSF INCLUDES Alliances leverage the collective efforts of launch pilot grantees, which have proposed and implemented diverse change strategies at a small scale, to catalyze NSF's broadening participation (BP) investments. Alliances build on the activities of launch pilot grantees, partners, collaborators, and networks to propose and implement solutions to address the barriers that result in underrepresentation in the STEM enterprise.

Data from the survey will provide NSF with critical information about the impact of networked, collaborative approaches on broadening participation in STEM. These data will also provide an understanding of the specific ways in which the change process of a networked, collaborative approach meets NSF's goal of scaling innovative solutions to this pervasive and complex problem. Additionally, these data will provide an understanding for how the NSF INCLUDES approach can be used by other federal agencies to address similarly difficult problems. This survey is one component of a research design that includes extensive analysis of secondary data; however, an understanding of network formation and interaction requires primary data collection from network participants. This type of data is not currently being collected elsewhere and is critical to developing a real-world understanding of how organizations work together within a federally funded collaborative.

The survey will collect the following data on entities within the Alliances:

- Partnerships and partnership history
- Frequency of interactions
- Types of interactions (goal alignment, activity coordination, etc.)

Respondents will be informed in advance that they will be receiving surveys, and they will be sent URL information for completing the surveys through email communication.

Need and Use of the Information: The primary purpose of this survey is to inform NSF about how organizations network and collaborate within the NSF INCLUDES initiative to leverage expertise and strategies to eliminate barriers to access to STEM for underrepresented minorities. These data will be used in conjunction with secondary data by the NSF INCLUDES contractor for program evaluation in conducting a social network analysis (SNA) of Alliance grantees and their partners. From the survey and SNA, NSF will gain an understanding of how participants in the NSF INCLUDES initiative have formed a ''network of networks'' to implement programs to increase diversity in STEM. Further, the data will show the strength and health of the network, indicating if and how participants increase capacity to address the problem by developing partnerships with other organizations. Through understanding how a networked, collaborative approach works to reduce the pervasive impact of a lack of diversity in STEM, NSF and other federal agencies can learn from and utilize similar strategies to address persistently difficult and complex issues.

Affected Public: The population for the survey includes all organizations that are NSF INCLUDES Alliance grantees. These organizations represent a variety of organization types, including universities, federal research laboratories, PreK–12 schools, and nonprofits. The survey requests that one individual from each organization provide responses that represent the networking activities of that organization.

Total Respondents: Approximately 100 individuals representing the universe of participating NSF INCLUDES Alliance organizations.

Frequency: Twice within a time period of approximately 5 months. The participating organizations will be surveyed twice to capture networking activity at early and later stages of grants.

Total Responses: 200.

Average Time per Response: There are 12 items that a respondent needs to answer for each organization in their Alliance. It will take approximately 20 seconds to respond to each of these 12 items (4 minutes/Alliance organization). The total burden is calculated based on the time for an Alliance with the average number of 30 organizations (30 $\times$ 4 = 120 minutes/per administration). Each of the approximately 100 individuals will take the survey twice for a burden of 240 minutes each.

The survey will take an estimated 120 minutes for each respondent to complete. Surveys will be tailored to each of the three Alliances to only include the portion of the approximately 100 organizations with which the respondent organization has partnered. Each Alliance is composed of an estimated 30 organizations.

Total Burden Hours (annual estimate): 400.

Dated: June 6, 2018.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–12616 Filed 6–11–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Extend a Current Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewal of the National Survey of College Graduates (OMB Control Number 3145–0141). In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for three years.

DATES: Written comments on this notice must be received by August 13, 2018 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Ave., Suite W18253, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the NSF, including whether the information will have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology.

Title of Collection: 2019 National Survey of College Graduates.

OMB Approval Number: 3145–0141.

Expiration Date of Approval: February 29, 2020

Type of Request: Intent to seek approval to renew an information collection for three years.

Abstract: The National Survey of College Graduates (NSCG) has been conducted biennially since the 1970s. The 2019 NSCG sample will be selected from the 2017 American Community Survey (ACS) and the 2017 NSCG. By selecting sample from these two sources, the 2019 NSCG will provide coverage of the college graduate population residing in the United States. The purpose of the NSCG, a longitudinal survey, is to collect data that will be used to provide national estimates on the science and engineering workforce and changes in their employment, education, and demographic characteristics.

The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to ''. . . provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government.'' The NSCG is designed to comply with these mandates by providing information on the supply and utilization of the nation's scientists and engineers.

The U.S. Census Bureau, as the agency responsible for the ACS, will serve as the NSCG data collection contractor for NSF. The survey data collection will begin in February 2019 using web and mail questionnaires.

Nonrespondents to the web or mail questionnaire will be followed up by computer-assisted telephone interviewing. The individual's response to the survey is voluntary. The survey will be conducted in conformance with Census Bureau statistical quality standards and, as such, the NSCG data will be afforded protection under the applicable Census Bureau confidentiality statutes.

Use of the Information: The NSF uses the information from the NSCG to prepare congressionally mandated reports such as *Women, Minorities and Persons with Disabilities in Science and Engineering* and *Science and Engineering Indicators.* A public release file of collected data, designed to protect respondent confidentiality, will be made available to researchers on the internet.

Expected Respondents: A statistical sample of approximately 130,000 individuals will be contacted in 2019. NSF expects the response rate to be 70 to 80 percent.

Estimate of Burden: The amount of time to complete the questionnaire may vary depending on an individual's circumstances; however, on average it will take approximately 30 minutes to complete the survey. NSF estimates that the total annual burden will be no more than 52,000 hours (=130,000 individuals × 80% response × 30 minutes) during the 2019 survey cycle.

Dated: June 7, 2018.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–12622 Filed 6–11–18; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0001]

Sunshine Act Meeting Notice

TIME AND DATE: Weeks of June 11, 18, 25, July 2, 9, 16, 2018.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of June 11, 2018

There are no meetings scheduled for the week of June 11, 2018.

Week of June 18, 2018—Tentative

Tuesday, June, 19, 2018

9:00 a.m. Briefing on Results of the Agency Action Review Meeting (Public Meeting) (Contact: Joanna Bridge: 301–415–4052)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, June 21, 2018

10:00 a.m. Meeting with the Organization of Agreement States and the Conference of Radiation Control Program Directors (Public Meeting) (Contact: Paul Michalak: 301–415–5804)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of June 25, 2018—Tentative

There are no meetings scheduled for the week of June 25, 2018.

Week of July 2, 2018—Tentative

There are no meetings scheduled for the week of July 2, 2018.

Week of July 9, 2018—Tentative

There are no meetings scheduled for the week of July 9, 2018.

Week of July 16, 2018—Tentative

There are no meetings scheduled for the week of July 16, 2018.

* * * * *

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

* * * * *

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

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 notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or you may email *Patricia.Jimenez@nrc.gov* or *Wendy.Moore@nrc.gov.*

Dated: June 7, 2018.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2018–12654 Filed 6–8–18; 11:15 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83390; File No. SR–CboeBZX–2017–005]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade Shares of Each Series of the Cboe Vest S&P 500 Buffer Protect Strategy ETF Under the ETF Series Solutions Trust Under Rule 14.11(c)(3), Index Fund Shares

June 6, 2018.

On November 21, 2017, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of each series of the Cboe Vest S&P 500® Buffer Protect Strategy ETF under Exchange Rule 14.11(c)(3), Index Fund Shares. The proposed rule change was published for comment in the **Federal Register** on December 11, 2017.[3] On January 22, 2018, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[4] On March 9, 2018, the Commission initiated proceedings to determine whether to disapprove the proposed rule change.[5] On April 13, 2018, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and superseded the proposed rule change as originally

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82217 (December 5, 2017), 82 FR 58243.

[4] *See* Securities Exchange Act Release No. 82558, 83 FR 3820 (January 26, 2018). The Commission designated March 11, 2018 as the date by which the Commission shall approve, disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[5] *See* Securities Exchange Act Release No. 82842, 83 FR 11273 (March 14, 2018).

filed.[6] The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act[7] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on December 11, 2017. June 9, 2018 is 180 days from that date, and August 8, 2018 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 1. Accordingly, pursuant to Section 19(b)(2) of the Act,[8] the Commission designates August 8, 2018 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–CboeBZX–2017–005), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Brent J. Fields,

Secretary.

[FR Doc. 2018–12555 Filed 6–11–18; 8:45 am]

BILLING CODE 8011–01–P

[6] Amendment No. 1, which amended and replaced the proposed rule change in its entirety, is available at: *https://www.sec.gov/comments/sr-cboebzx-2017-005/cboebzx2017005-3458514-162203.pdf.*

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83388; File No. SR–CboeBZX–2017–006]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade Shares of Series of the Cboe Vest S&P 500 Enhanced Growth Strategy ETF Under the ETF Series Solutions Trust Under Rule 14.11(c)(3)

June 6, 2018.

On November 21, 2017, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of series of the Cboe Vest S&P 500® Enhanced Growth Strategy ETF under Exchange Rule 14.11(c)(3), which governs the listing and trading of Index Fund Shares. The proposed rule change was published for comment in the **Federal Register** on December 11, 2017.[3] On January 19, 2018, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[4] On March 9, 2018, the Commission initiated proceedings to determine whether to disapprove the proposed rule change.[5]

On April 13, 2018, the Exchange filed Amendment No. 1 to the proposed rule change.[6] The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act[7] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on December 11, 2017. June 9, 2018, is 180 days from that date, and August 8, 2018, is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 1. Accordingly, pursuant to Section 19(b)(2) of the Act,[8] the Commission designates August 8, 2018, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–CboeBZX–2017–006), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–12552 Filed 6–11–18; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82216 (December 5, 2017), 82 FR 58235.

[4] *See* Securities Exchange Act Release No. 82552, 83 FR 3819 (January 26, 2018).

[5] *See* Securities Exchange Act Release No. 82843, 83 FR 11264 (March 14, 2018).

[6] In Amendment No. 1, which amended and replaced the proposed rule change in its entirety, the Exchange: (a) Clarified the requirements and applicability of BZX Rule 14.11(c)(3) as it pertains to the Shares; (b) supplemented its description of the indexes; (c) supplemented its description of outcome periods; (d) clarified its assertions relating to susceptibility of manipulation of the Shares; (e) made certain corrections to maintain consistency with defined terms; (f) provided a description of the suitability requirements with respect to Exchange members; and (g) made other technical and non-substantive corrections and updates. Because Amendment No. 1 does not materially alter the substance of the proposal or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment. Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-cboebzx-2017-006/cboebzx2017006-3458512-162202.pdf.*

[7] 15 U.S.C. 78s(b)(2).

[8] *Id.*

[9] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83389; File No. SR–ICEEU–2018–006]

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to the ICE Clear Europe CDS End-of-Day Price Discovery Policy

June 6, 2018.

I. Introduction

On April 5, 2018, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange

Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change (SR–ICEEU–2018–006) to amend ICE Clear Europe's CDS End-of-Day Price Discovery Policy (''Price Discovery Policy'') to implement a revised methodology used to determine bid-offer widths for credit defaults swap (''CDS'') contracts. The proposed rule change was published for comment in the **Federal Register** on April 25, 2018.[3] The Commission did not receive comments regarding the proposed changes. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

As part of its pricing process, on a daily basis, ICE Clear Europe uses intraday quotes submitted by its CDS Clearing Members to determine the bid-offer width (''BOW'') for each eligible CDS instrument. The BOW is then used in ICE Clear Europe's price discovery process as an input to determine, among other things, end-of-day price levels. These levels are, in turn, used for mark-to-market and risk management purposes.[4] Under its current methodology, ICE Clear Europe begins its price discovery process by calculating a ''consensus BOW'' for each relevant CDS instrument based on specified averages of the quotes provided by CDS Clearing Members. ICE Clear Europe then compares this consensus BOW with three pre-defined BOWs that correspond to three specific market regimes, which ICE Clear Europe denotes as Regime 1, Regime 2, and Regime 3. The BOW for Regime 1 is the smallest, and the BOW for Regime 3 is the largest. Depending on where the consensus BOW falls in comparison to the three predefined market regime BOWs, ICE Clear Europe selects one of the market regime BOWs as the end-of-day BOW for a given risk factor based on that risk factor's most actively traded instrument (''MATI'').[5]

ICE Clear Europe's clearing risk department is permitted to make adjustments to the calculated end-of-day BOWs based on volatile or ''fast-moving'' market conditions that may cause BOWs, according to ICE Clear Europe, to be temporarily wider than those observed in intraday quotes.[6] In order to systematically capture the volatile market conditions and obviate the need for ICE Clear Europe's clearing risk department to make manual adjustments to the calculated BOWs, ICE Clear Europe proposes to revise its Price Discovery Policy to incorporate a new methodology that would automatically widen the selected BOWs based on observed market conditions. Specifically, ICE Clear Europe proposes to introduce a new ''variability level'' calculation.

For index CDS instruments, this new calculation would take a time series of intraday mid-levels from member quotes and compare the last mid-level for the most actively traded instrument for a considered risk factor to the end-of-day level from the prior day.[7] Under the proposed methodology, where the last mid-level of the time series for an index CDS instrument is below the prior day's end-of-day level by more than the pre-defined BOW for Regime 3 (*i.e.,* by more than one Regime 3 BOW), ICE Clear Europe will calculate the variability level as the difference between the prior day's end-of-day level and the minimum mid-level of the time series, divided by the Regime 3 BOW. Where the last mid-level is above the prior day's end-of-day level by more than one Regime 3 BOW, ICE Clear Europe would calculate the variability level as the difference between the maximum mid-level of the time series and the prior day's end-of-day level, divided by the Regime 3 BOW. In cases where the last mid-level in the time series is within one Regime 3 BOW of the prior day's end-of-day level, then ICE Clear Europe will set the variability level based on the range of intraday mid-levels. Where the range of mid-levels is less than or equal to the Regime 3 BOW, the variability level would be set to 1. Where the range of mid-levels is greater than the Regime 3 BOW, ICE Clear Europe would set the variability level at 1.2.[8]

In addition to proposing to implement a new variability level calculation, ICE Clear Europe also proposes to group CDS risk factors into ''market proxy groups.'' The market proxy groups for CDS index instruments would consist of CDX, which would cover North American Investment Grade and High Yield indices, and iTraxx, which could cover the iTraxx Main, Crossover, Senior Financial, Sub Financials, and High Volatility indices. In connection with establishing these market proxy groups, ICE Clear Europe also proposes to implement ''variability bands'' that would apply to the market proxy groups and correspond to specified ranges of variability level determined by the new variability level calculation described above. Under the proposed changes, the variability band applicable to a market proxy group would be equal to the largest variability band of the individual risk factors within the group. Depending on the market proxy group variability band, ICE Clear Europe would adjust the selected market Regime BOW by increasing it either one or two Regimes (*i.e.,* from Regime 1 to Regime 2, from Regime 2 to Regime 3, or from Regime 1 to Regime 3), with larger variability bands corresponding to the larger adjustment.[9] The resulting Regime BOW (*i.e.,* Regime 1, Regime 2, or Regime 3) will serve as the end-of-day BOW.

With respect to single name CDS instruments, ICE Clear Europe proposes to adopt a new scaling factor, denoted the ''SN variability factor,'' that would be applied to the consensus BOW for single name CDS instruments. The SN variability factor applied to the consensus BOW is determined using the same new variability calculation methodology described above, and the variability factor for single name instruments will range from 1 to 1.5 depending on the applicable market proxy variability band. As with the index instruments, ICE Clear Europe proposes to group single name instruments into market proxy groups (the CDX market proxy group for Standard North American Corporate Single Names, and the iTraxx market proxy group for European Corporate and Standard Western European Sovereign Single Names). ICE Clear Europe would then apply variability bands to the market proxy groups for single names in the same way that such variability bands are determined for index instruments.[10]

ICE Clear Europe also proposes to make certain typographical corrections, as well as updates to cross-references, and other minor clarifications.[11]

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–83072 (April 19, 2018), 83 FR 18106 (April 25, 2018) (SR–ICEEU–2018–006) (''Notice'').

[4] Notice, 83 FR at 18106.

[5] *Id.* at 18106–07.

[6] *Id.* at 18106.

[7] *Id.*

[8] *Id.*

[9] *Id.* at 18106–07.

[10] *Id.* at 18107.

[11] *Id.*

applicable to such organization.[12] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F),[13] and Rules 17Ad–22(e)(6)(iv) and (e)(17)(i).[14]

A. Consistency With Section 17A(b)(3)(F)

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a registered clearing be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivatives agreements, contracts and transactions, and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[15] The Commission believes that the proposed changes, taken as a whole, should improve ICE Clear Europe's ability to determine appropriate end-of-day BOWs for its CDS instruments in a number of ways, including but not limited to (i) incorporating a new systematic method for evaluating market variability and automatically widening the selected BOWs for index CDS instruments; and (ii) incorporating a new variability scaling factor for single name instruments to account for greater variability in end-of-day BOWs than that which appears in intraday quotes.

By automating the process for widening BOWs through applying pre-determined and well-defined criteria for evaluating and responding to market volatility that will be consistently applied over time for each CDS instrument that ICE Clear Europe clears, the Commission believes that the proposed rule changes will reduce the risk of human error associated with ICE Clear Europe's determination of BOWs. As a result of the likely reduction in human error and the more consistent application over time and across CDS instruments of the BOW widening process, the Commission believes the proposed rule change will promote the prompt and accurate clearance and settlement of CDS instruments by ICE Clear Europe.

Moreover, by systematically taking into account market variability and automatically widening BOWs in response, the Commission believes that the proposed changes will enhance ICE Clear Europe's ability to more consistently and efficiently determine appropriate end-of-day BOWs for the CDS instruments it clears. This improvement in determining end-of-day BOWs for CDS instruments, in turn, should improve ICE Clear Europe's ability to determine more accurate end-of-day price levels for the purposes of mark-to-market and risk management of positions it clears in CDS instruments, thereby improving ICE Clear Europe's ability to safeguard the securities and funds which are in its custody or control or for which it is responsible. Therefore, the Commission finds that the proposed rule changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act.

B. Consistency With Rule 17Ad–22(e)(6)(iv)

Rule 17Ad–22(e)(6)(iv) requires, in relevant part, that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that uses reliable sources of timely price data and uses procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable.[16] As described above, ICE Clear Europe currently uses intra-day quotes to determine end-of-day BOWs for the CDS instruments that it clears. However, under certain volatile or fast moving market conditions BOWs may be wider than observed in intraday quotes.[17] To address this issue, ICE Clear Europe proposes to implement a systematic approach for evaluating market volatility and automatically widening the selected end-of-day BOWs such that the end-of-day BOWs more reliably reflect current market conditions. As a result, the Commission finds that the proposed rule change is consistent with the requirements of Rule 17Ad–22(e)(6)(iv).

C. Consistency With Rule 17Ad–22(e)(17)(i)

Rule 17Ad–22(e)(17)(i) requires a covered clearing agency, in relevant part, to establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risk by, among other things, identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.[18] As described above, ICE Clear Europe's clearing risk department currently is tasked with monitoring market conditions in order to assess volatility and, if appropriate, manually adjust the selected end-of-day BOWs to reflect such volatility. As described above, by implementing a systematic approach to assessing volatility and an automatic widening of BOWs in appropriate instances, the Commission believes that the proposed rule change will reduce the level of operational risk in ICE Cleary Europe's end-of-day pricing methodology because it will establish pre-determined and well-defined criteria that can be quickly and consistently applied to widen the BOWs with minimal human intervention. As a result, the Commission believes that the risk of error associated with observation of market volatility and manual adjustment of the end-of-day BOWs will be mitigated. Therefore, the Commission finds that the proposed rule change is consistent with the requirements of Rule 17Ad–22(e)(17)(i).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of Section 17A of the Act,[19] and Rules 17Ad–22(e)(6)(iv) and (e)(17)(i)[20] thereunder.

It is therefore ordered pursuant to Section 19(b)(2) of the Act[21] that the proposed rule change be, and hereby is, approved.[22]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–12553 Filed 6–11–18; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(2)(C).

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 17 CFR 240.17Ad–22(e)(6)(iv) and (e)(17)(i).

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 17 CFR 240.17Ad–22(e)(6)(iv).

[17] Notice, 83 FR at 18106.

[18] 17 CFR 240.17Ad–22(e)(17)(i).

[19] 15 U.S.C. 78q–1.

[20] 17 CFR 240.17Ad–22(e)(6)(iv) and (e)(17)(i).

[21] 15 U.S.C. 78s(b)(2).

[22] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83387; File No. SR–ICC–2018–005]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amendments to the ICC Clearing Rules To Implement the European Union General Data Protection Regulation

June 6, 2018.

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 25, 2018, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which Items have been prepared by ICC. ICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder [4] so that the proposal was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed change is to make changes to the ICC Clearing Rules (the ''ICC Rules'') to comply with certain requirements of the European Union (''EU'') General Data Protection Regulation (''GDPR'').[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICC proposes revisions to Rule 407 to update its policies on data protection to facilitate compliance with the requirements of the GDPR, which took effect on May 25, 2018. The proposed revisions are described in detail as follows.

The amendments reflect that ICC's policies on use of personal data will now primarily be stated in a privacy notice made available to Clearing Participants (''CPs'') and other market participants, and accordingly certain existing provisions in the Rules relating to personal data will be removed or modified, as discussed herein. ICC proposes minor changes to terminology in Rule 407(a)(iv) to replace the term Data Protection Directive with Data Protection Regulation, which will refer to the GDPR. ICC proposes corresponding changes throughout the document. Under the proposed revisions, Rule 407(i) states that subsections (i) through (m) apply to the extent that ICC is within scope of the GDPR, and notes ICC's right to process ''Personal Data'' (as defined in the GDPR) [6] for purposes permitted under the GDPR. The proposed amendments also remove existing subsections (j) and (k), as the relevant provisions containing ICC's obligations with respect to Personal Data will now be set out in a privacy notice, and, instead, include ICC's commitment to keeping Personal Data confidential in a new subsection (j) and intentionally omit subsection (k). The proposed updates to Rule 407(l) specify that CPs must ensure they have a lawful basis for processing Personal Data provided to ICC. ICC also proposes including references to defined terms used in the GDPR in Rule 407(m). The proposed new Rule 407(n) states that recording telephone conversations with ICC will take place to the extent permitted or required under applicable law.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act [7] requires, among other things, that the rules of a clearing agency be designed to protect investors and the public interest and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17A(b)(3)(F),[8] because ICC believes that the proposed rule change will protect investors and the public interest, as the proposed revisions provide additional clarity on the rights and obligations of ICC and its CPs relating to Personal Data and facilitate ICC's compliance with the GDPR. As such, the proposed rule change is designed to protect investors and the public interest within the meaning of Section 17(A)(b)(3)(F) [9] of the Act.

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are being adopted to facilitate compliance with EU requirements applicable to Personal Data under the GDPR, and apply to all CPs and market participants. Although the amendments could impose certain additional costs on CPs, these result from the requirements imposed by the GDPR, and are generally applicable throughout the EU. As a result, ICC does not believe the amendments would adversely affect competition among CPs, the market for clearing services generally or access to clearing in cleared products by CPs or other market participants.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016.

[6] Personal Data is defined in the GDPR as information related to a natural person that would identify that person, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78q–1(b)(3)(F).

investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,[10] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) [12] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative prior to 30 days after the date of its filing. Pursuant to Rule 19b–4(f)(6)(iii),[14] however, the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. ICC has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that ICC may implement the proposed rule change by the effective date of the GDPR (May 25, 2018). The Commission notes that the proposed rule change is limited to revising Rule 407 to facilitate compliance with the requirements of the GDPR, including committing ICC to keeping Personal Data confidential and clarifying that ICC's policies on use of personal data will now primarily be stated in a privacy notice. The proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) affect the safeguarding of funds or securities in the custody or control of ICC or for which it is responsible. Waiver of the five-day pre-filing requirement and the 30-day operative delay would allow ICC to implement the proposed rule change by the effective date of the GDPR and therefore comply with EU law. Therefore, the Commission believes that waiving the five-day pre-filing requirement and the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2018–005 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–ICC–2018–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2018–005 and should be submitted on or before July 3, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–12551 Filed 6–11–18; 8:45 am]

BILLING CODE 8011–01–P

[10] ICC has satisfied this requirement.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the five-day pre-filing requirement and the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83386; File No. SR–ICC–2018–004]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to Formalization of the ICC Model Validation Framework

June 6, 2018.

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 23, 2018, ICE Clear Credit LLC (''ICC'') 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 ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to formalize the ICC Model Validation Framework. This change does not require any revisions to the ICC Clearing Rules.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Summary of Proposed Changes

ICC proposes to formalize the ICC Model Validation Framework, which sets forth ICC's model validation procedures. ICC has developed a proprietary risk management system that models the risk of credit default swap based portfolios and determines appropriate Initial Margin and Guaranty Fund requirements. The risk management system is composed of risk modeling components (''Model Components'') which employ a combination of statistical analysis of credit spread time series and stress test simulation scenarios to address different risk drivers. The risk drivers addressed by the Model Components constitute the foundation of total Initial Margin and Guaranty Fund requirements for cleared portfolios. The ICC Model Validation Framework provides assurances as to the appropriateness of its risk requirements. ICC's Risk Oversight Officer is the ICC Model Validation Framework owner and is responsible to the ICC President for the successful operation and maintenance of the ICC Model Validation Framework.

ICC considers both new Model Components and enhancements to Model Components as part of its Model Validation Framework (collectively, ''Model Change''). New Model Components consider risk drivers that are not currently included in the risk management system; enhanced Model Components improve upon the methodologies used by the risk management system to consider a given risk driver or drivers. ICC classifies Model Changes as either Materiality A or Materiality B, depending on how substantially the Model Change affects the risk management system's assessment of risk for the related risk driver or drivers. The ICC Chief Risk Officer and the ICC Risk Oversight Officer will review all enhancements to ICC's risk management system and decide which enhancements qualify as Model Changes, and which qualifying enhancements should be classified as Materiality A versus Materiality B. Materiality A Model Changes receive a higher control standard than Materiality B Model Changes. The ICC Risk Committee reviews the materiality classifications and provides feedback as necessary.

The ICC Model Validation Framework sets forth the process for selecting Model Validators and describes the independent validator criteria, including technical expertise and independence requirements. The ICC Model Validation Framework also describes the Model Inventory which is maintained by the ICC Risk Department and which contains key information about all ICC Model Components and Model Changes. The ICC Risk Oversight Officer will review the model inventory at least quarterly to ensure that it contains accurate and up to date information relating to ICC's Model Components and Model Changes.

The ICC Model Validation Framework consists of four controls: Initial validation; ongoing monitoring and validation; investigation; and independent periodic review. Before going live with a Model Change, ICC must successfully complete an initial validation of the conceptual soundness of the methodology and the proposed ongoing monitoring and validation approach. All Model Changes are subject to internal initial validation. In addition, Materiality A Model Changes are subject to an additional independent initial validation.

Ongoing monitoring and validation provides assurances that ICC has appropriately configured and calibrated the risk management system, including any recent Model Change, and that the risk management system is achieving the desired level of performance. The ongoing monitoring and validation control consists of three areas: Parameter setting, execution monitoring, and outcome analysis.

If ongoing monitoring and validation identifies features of the risk management system that might indicate a Model Component weakness, ICC investigates and identifies the root cause. If a model weakness is discovered during investigation, the ICC Chief Risk Officer informs the ICC Risk Committee of the ongoing monitoring and validation results which triggered the investigation. If ICC is satisfied that the identified features do not represent a model weakness, the ICC Chief Risk Officer will present the results of the investigation demonstrating no model weakness exists. If ICC identifies a model weakness during the investigation, the ICC Chief Risk Officer will present the results of the investing demonstrating a model weakness, and ICC will remediate the identified weakness through an appropriate Model Change, which passes through the ICC Model Validation Framework starting with an Initial validation.

The ICC Chief Risk Officer provides support and information to allow the independent validators to perform periodic reviews of all ICC Model Components and related practices at least once in every calendar year. At ICC's choosing, the scope of an independent periodic review may cover all Model Components used by the risk management system, or a subset of Model Components, as long as all Model Components are included in one or more independent periodic reviews each year. The independent periodic review will demonstrate that the Model Components remain fit for purpose; that the Model Components assumptions are valid; that ICC has adequately addressed any medium priority open items from Model Change initial validations and any other implementation conditions; and that ICC has been complying with its ongoing monitoring and validation requirements and the Model Components are performing without any significant weakness. The deliverables from the independent periodic review must include a report from the independent validator providing a summary of the completed evaluation and details of any remaining open items, classified by priority. The ICC Chief Risk Officer will present the periodic review to the ICC Risk Committee and describe ICC's plans in relation to any open high or medium priority items in the report.

(b) Statutory Basis

Section 17A(b)(3)(F) of the ActHD1[3] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable, derivative agreements, contracts and transactions and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17A(b)(3)(F),[4] because ICC believes that the proposed rule change will promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions. The ICC Model Validation Framework provides assurances as to the appropriateness of changes to ICC's risk models, including the appropriateness of risk requirements. As such, the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions within the meaning of

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] Id.

Section 17A(b)(3)(F) [5] of the Act. The proposed rule change will also satisfy the requirements of Rule 17Ad–22.[6] In particular, the proposed rule change sets forth ICC's model validation procedures, including the evaluation of the performance of ICC's risk models and related parameters and assumptions by a qualified and independent Model Validator, consistent with the requirements of Rule 17Ad–22(b)(4).[7]

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The ICC Model Validation Framework applies uniformly across all market participants. Therefore, ICC does not believe the proposed rule change impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2018–004 on the subject line.

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICC–2018–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.* All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2018–004 and should be submitted on or before July 3, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–12550 Filed 6–11–18; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 240.17Ad–22.

[7] 17 CFR 240.17Ad–22(b)(4).

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 10438]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: ''John Singer Sargent and Chicago's Gilded Age'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''John Singer Sargent and Chicago's Gilded Age,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Art Institute of Chicago, in Chicago, Illinois, from on or about July 1, 2018, until on or about September 30, 2018, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Marie Therese Porter Royce,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 2018–12588 Filed 6–11–18; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 10441]

30-Day Notice of Proposed Information Collection: Six DDTC Information Collections

ACTION: Notice of request for public comments.

SUMMARY: The Department of State has submitted the information collection

described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to July 12, 2018.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Andrea Battista, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political Military Affairs, U.S. Department of State, Washington, DC 20522–0112, via phone at (202) 663–3136, or via email at *battistaal@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data.
- *OMB Control Number:* 1405–0003.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
- *Form Number:* DSP–5.
- *Respondents:* Business, Nonprofit Organizations, and Individuals.
- *Estimated Number of Respondents:* 1,405.
- *Estimated Number of Responses:* 26,253.
- *Average Time per Response:* 1 hour.
- *Total Estimated Burden Time:* 26,253 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

- *Title of Information Collection:* Application/License for Temporary Import of Unclassified Defense Articles.
- *OMB Control Number:* 1405–0013.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
- *Form Number:* DSP–61.
- *Respondents:* Business, Nonprofit Organizations, and Individuals.
- *Estimated Number of Respondents:* 204.
- *Estimated Number of Responses:* 1,103.
- *Average Time per Response:* 30 minutes.
- *Total Estimated Burden Time:* 552 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required in Order to Obtain or Retain Benefits.

- *Title of Information Collection:* Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Related Classified Technical Data.
- *OMB Control Number:* 1405–0022.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
- *Form Number:* DSP–85.
- *Respondents:* Business, Nonprofit Organizations, and Individuals.
- *Estimated Number of Respondents:* 100.
- *Estimated Number of Responses:* 419.
- *Average Time per Response:* 30 minutes.
- *Total Estimated Burden Time:* 210 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required in Order to Obtain or Retain Benefits.

- *Title of Information Collection:* Application/License for Temporary Export of Unclassified Defense Articles.
- *OMB Control Number:* 1405–0023.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
- *Form Number:* DSP–73.
- *Respondents:* Business and Nonprofit Organizations.
- *Estimated Number of Respondents:* 470.
- *Estimated Number of Responses:* 3,222.
- *Average Time per Response:* 1 hour.
- *Total Estimated Burden Time:* 3,222 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required in Order to Obtain or Retain Benefits.

- *Title of Information Collection:* Application for Amendment to License for Export or Import of Classified or Unclassified Defense Articles and Related Classified Technical Data.
- *OMB Control Number:* 1405–0092.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
- *Form Number:* DSP–6; DSP–62; DSP–74.
- *Respondents:* Business, Nonprofit Organizations, and Individuals.
- *Estimated Number of Respondents:* 591.
- *Estimated Number of Responses:* 3,022.
- *Average Time per Response:* 30 minutes.
- *Total Estimated Burden Time:* 1,511 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required in Order to Obtain or Retain Benefits.

- *Title of Information Collection:* Nontransfer and Use Certificate.
- *OMB Control Number:* 1405–0021.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
- *Form Number:* DSP–83.
- *Respondents:* Business, Nonprofit Organizations, and Individuals.
- *Estimated Number of Respondents:* 2,400.
- *Estimated Number of Responses:* 8,800.
- *Average Time per Response:* 1 hour.
- *Total Estimated Burden Time:* 8,800 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required in Order to Obtain or Retain Benefits.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- 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.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted,

including your personal information, will be available for public review.

Abstract of Proposed Collections

The export, temporary import, and brokering of defense articles, including technical data, and defense services are authorized by The Department of State, Directorate of Defense Trade Controls (DDTC) in accordance with the International Traffic in Arms Regulations (''ITAR,'' 22 CFR parts 120–130) and section 38 of the Arms Export Control Act. Those who manufacture, broker, export, or temporarily import defense articles, including technical data, or defense services must register with the Department of State and obtain a decision from the Department as to whether it is in the interests of U.S. foreign policy and national security to approve covered transactions. Also, registered brokers must submit annual reports regarding all brokering activity that was transacted, and registered manufacturers and exporter must maintain records of defense trade activities for five years.

• *1405–0003, Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data:* In accordance with part 123 of the ITAR, any person who intends to permanently export unclassified defense articles or unclassified technical data must obtain authorization from DDTC prior to export. ''Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data'' (Form DSP–5) is the licensing vehicle typically used to obtain permission for the permanent export of unclassified defense articles, including unclassified technical data, enumerated on the USML. This form is an application that, when approved by PM/DDTC, Department of State, constitutes the official record and authorization for the permanent commercial export of unclassified U.S. Munitions List articles, pursuant to the Arms Export Control Act and the International Traffic in Arms Regulations.

• *1405–0013, Application/License for Temporary Import of Unclassified Defense Articles:* In accordance with part 123 of the ITAR, any person who intends to temporarily import unclassified defense articles must obtain DDTC authorization prior to import. ''Application/License for Temporary Import of Unclassified Defense Articles'' (Form DSP–61) is the licensing vehicle typically used to obtain permission for the temporary import of unclassified defense articles covered by USML. This form is an application that, when approved by PM/DDTC, Department of State, constitutes the official record and authorization for the temporary commercial import of unclassified U.S. Munitions List articles, pursuant to the Arms Export Control Act and the International Traffic in Arms Regulations.

• *1405–0022, Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Related Classified Technical Data:* In accordance with part 123 of the ITAR, any person who intends to permanently export, temporarily export, or temporarily import classified defense articles, including classified technical data must first obtain DDTC authorization. ''Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Related Classified Technical Data'' (Form DSP–85) is used to obtain permission for the permanent export, temporary export, or temporary import of classified defense articles, including classified technical data, covered by the USML. This form is an application that, when approved by PM/DDTC, Department of State, constitutes the official record and authorization for all classified commercial defense trade transactions, pursuant to the Arms Export Control Act and the International Traffic in Arms Regulations.

• *1405–0023, Application/License for Temporary Export of Unclassified Defense Articles:* In accordance with part 123 of the ITAR, any person who intends to temporarily export unclassified defense articles must obtain DDTC authorization prior to export. ''Application/License for Temporary Export of Unclassified Defense Articles'' (Form DSP–73) is the licensing vehicle typically used to obtain permission for the temporary export of unclassified defense articles covered by the USML. This form is an application that, when approved by PM/DDTC, Department of State, constitutes the official record and authorization for the temporary commercial export of unclassified U.S. Munitions List articles, pursuant to the Arms Export Control Act and the International Traffic in Arms Regulations.

• *1405–0092, Application for Amendment to License for Export or Import of Classified or Unclassified Defense Articles and Related Classified Technical Data:* In accordance with part 123 of the ITAR, any person who intends to permanently export, temporarily import, or temporarily export unclassified or classified defense articles or related technical data must obtain DDTC authorization. ''Application for Amendment to License for Export or Import of Classified or Unclassified Defense Articles and Related Classified Technical Data'' is used to obtain permission for certain changes to previously approved licenses. This form is an application that, when +approved by PM/DDTC, Department of State, constitutes the official record and authorization for all requests to amend existing defense trade authorizations made pursuant to the Arms Export Control Act and the International Traffic in Arms Regulations.

• *1405–0021, Nontransfer and Use Certificate:* Pursuant to § 123.10 of the ITAR, a completed Nontransfer and Use Certificate'' (Form DSP–83) must accompany an export license application to export significant military equipment and classified articles and technical data. Pursuant to § 124.10 of the ITAR, a completed ''Nontransfer and Use Certificate'' must be submitted with any request for a manufacturing license agreement or technical assistance agreement that relates to significant military equipment or classified defense articles and technical data. The foreign consignee (if applicable), foreign end-user, and applicant execute this form. By signing the certificate the foreign end-user certifies that they will not, except as specifically authorized by prior written approval of the Department of State, re-export, resell or otherwise dispose of the defense articles enumerated in the application (1) outside the foreign country named as the country of ultimate destination; or (2) to any other person. With respect to agreements that involve classified articles or classified technical data, an authorized representative of the foreign government must also sign the form.

Methodology: This information collection may be sent to the Directorate of Defense Trade Controls via the following methods: Electronically or mail.

Anthony M. Dearth,

Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. 2018–12617 Filed 6–11–18; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2018–53]

Petition for Exemption; Summary of Petition Received; John D. Odegard School of Aerospace of the University of North Dakota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before July 2, 2018.

ADDRESSES: Send comments identified by docket number FAA–2018–0400 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://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 (DOT), 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.

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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the 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.

FOR FURTHER INFORMATION CONTACT: Keira Jones (202) 267–9677, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on June 5, 2018.

Lirio Liu,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2018–0400.

Petitioner: John D. Odegard School of Aerospace of the University of North Dakota.

Section(s) of 14 CFR Affected: §§ 61.195(h)(2) and (3).

Description of Relief Sought: The petitioner seeks relief to allow it to provide flight training for a first time flight instructor applicant with flight instructors that do not meet § 61.195(h) but are qualified to provide training for an additional flight instructor rating.

[FR Doc. 2018–12606 Filed 6–11–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Reduced Vertical Separation Minimum

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 30, 2018. Aircraft Operators seeking operational approval to conduct Reduced Vertical Separation Minimum (RVSM) operations must submit application to the FAA.

DATES: Written comments should be submitted by July 12, 2018.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Barbara Hall at (940) 594–5913, or by email at: *Barbara.L.Hall@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0679.

Title: Reduced Vertical Separation Minimum.

Form Numbers: N/A.

Type of Review: Renewal.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 30, 2018 (83 FR 13810). Aircraft operators seeking operational approval to conduct RVSM operations within the 48 contiguous states of the United States (U.S.), Alaska, and that portion of the Gulf of Mexico where the FAA provides air traffic services must submit their application to the Certificate Holding District Office (CHDO). The CHDO registers RVSM approved airframes in the FAA RVSM Approvals Database to track the approval status for operator airframes. Application information includes evidence of aircraft equipment and RVSM qualification information along with operational training and program elements.

Respondents: Operators wishing to operate in RVSM airspace are required to submit application to the FAA. The FAA estimates processing 1,426 initial applications annually and 3,330 updates to existing approvals.

Frequency: An operator must make application for initial approval to operate in RVSM airspace, or whenever

requesting an update to an existing approval.

Estimated Average Burden per Response: 4.00 hours for updates to existing applications and 6.8 hours for application for initial approvals.

Estimated Total Annual Burden: 23,017 hours.

Issued in Washington, DC, on June 6, 2018.

Barbara Hall,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2018–12618 Filed 6–11–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Special Awareness Training for the Washington DC Metropolitan Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 3, 2018. This collection of information is required of persons who must receive training and testing in order to fly within 60 nautical miles (NM) of the Washington, DC omni-directional range/distance measuring equipment (DCA VOR/DME).

DATES: Written comments should be submitted by July 12, 2018.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Barbara Hall at (940) 594–5913, or by email at: *Barbara.L.Hall@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0734.

Title: Special Awareness Training for the Washington DC Metropolitan Area.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 3, 2018 (83 FR 14310). No public comments were received. The collection of information is solicited by the FAA in order to maintain a National database registry for those persons who are required to receive training and be tested for flying in the airspace that is within 60 NM of the DCA VOR/DME. This National database registry provides the FAA with information on how many persons and the names of those who have completed this training.

Respondents: Approximately 366 pilots.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden: 122 hours.

Issued in Washington, DC, on June 6, 2018.

Barbara Hall,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2018–12619 Filed 6–11–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Aviation Maintenance Technician Schools

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to revise an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 3, 2018. The information collected determines compliance with applicant eligibility and ensures that certificated AMTSs meet the minimum requirements for procedures and curriculum set forth by the FAA.

DATES: Written comments should be submitted by July 12, 2018.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Barbara Hall at (940) 594–5913, or by email at: *Barbara.L.Hall@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0040.

Title: Aviation Maintenance Technician Schools.

Form Numbers: FAA Form 8310–6 Aviation Maintenance Technician School Certificate and Ratings Application.

Type of Review: This is a revision and correction of the information collection approved on September 30, 2016, supporting statement for part 147.

Background: The **Federal Register** Notice with a 60-day comment period

soliciting comments on the following collection of information was published on April 3, 2018 (83 FR 14309). The FAA program office for part 147, the General Aviation Branch of Flight Standards, Aircraft Maintenance Division recognizes there were some discrepancies in the 2016 filing. This revised information collection corrects the September 30, 2016, supporting statement approved for part 147. The information collection burden hours and costs will be noticeably higher than posted in the 2016 supporting statement for three primary reasons:

- First, due to program changes implemented by FAA Notice N 8900.278, dated November 21, 2014, operations specifications (OpSpecs) were introduced to Title 14 of the Code of Federal Regulations (14 CFR) part 147 AMTSs. OpSpecs must be issued to institutions with part 147 certificates by July 21, 2015. This correction includes the burden added by OpSpecs not addressed in the 2016 information collection.
- Second, the current enrollment figures cited in 2016 were 12,500 students but are now 17,800 students.
- Third, some sections of part 147 were not represented as collecting information and to correct the record, the FAA is including them in this revised report.

The respondents to this information collection are part 147 certificate holders or applicants. Currently, there are 177 FAA certificated AMTSs. The information collected determines compliance with applicant eligibility and ensures that certificated AMTSs meet the minimum requirements of part 147. The information collected is focused on an AMTS' initial curriculum, instructor's qualifications, maintenance of curriculum, facilities, instructional equipment, and change of location, if applicable. Recordkeeping requirements address student attendance, tests, grades, any instruction credited under section 147.31(c), and authenticated transcripts of student's grades when credit was given based on training from a previous school. An AMTS must also keep a current progress chart for each student showing practical projects completed or to be completed in each subject.

Respondents: Part 147 AMTS Certificate applicants and Certificate holders. Currently, there are 177 AMTS Certificate holders across the country.

Frequency: Initial certification, on occasion if changes made by AMTS, and ongoing (*i.e.* recordkeeping).

Estimated Average Burden per Response and Estimated Total Annual Burden:

SUMMARY TABLE OF ESTIMATED ANNUAL BURDEN

[177 AMTS, 17,800 students]

§ 147	Basis	Director @$56/hour est. annual hours	Instructor @$28/hour est. annual hours	Administrative @$23/hour est. annual hours	Estimated annual cost
§ 147.5	Initial Certification	725	0	40	$41,520
§ 147.5	Post Certification	93	0	8	5,392
§ 147.21	Initial Certification	1,200	900	300	99,300
§ 147.23	Initial Certification	20	0	10	1,350
§ 147.23	Post Certification	90	0	45	6,075
§ 147.33(a)	Post Certification	0	35,600	17,800	1,406,200
§ 147.33(b)	Post Certification	0	17,800	8,900	703,100
§ 147.37	Post Certification	10	10	2	886
§ 147.38	Post Certification	672	168	84	44,268
§ 147.41	Post Certification	32	0	0	1,792
Total annual estimated part 147 burden	Initial Cert hours	1,945	900	350	142,170
	Post Cert hours	897	53,578	26,839	2,167,713
	Total hours burden	2,842	54,478	27,189	2,309,883

Issued in Washington, DC, on June 5, 2018.

Barbara Hall,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2018–12564 Filed 6–11–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee—Transport Airplane and Engine Subcommittee; Meeting

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) Transport Airplane and Engine (TAE) Subcommittee to discuss TAE issues.

DATES: The meeting will be held on Wednesday, July 25, 2018, starting at 1:00 p.m. Eastern Daylight Time.

ADDRESSES: This is a public teleconference.

FOR FURTHER INFORMATION CONTACT: Lakisha Pearson, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue SW, Washington, DC 20591, Telephone (202) 267–4191, Fax (202) 267–5075, or email at *9-awa-arac@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC Subcommittee meeting to be held on July 25, 2018.

The agenda for the teleconference is as follows:

- Transport Airplane Metallic and Composite Structures workgroup final report.
- Avionics Systems Harmonization workgroup work plan.
- Flight Test Harmonization workgroup One Engine Inoperative Controllability on Slippery Surfaces final report.
- Transport Airplane Crashworthiness and Ditching workgroup Final Report Executive Summary.

Participation is open to the public, but will be limited to the availability of teleconference lines. Participation will

be by teleconference only. Please confirm your participation with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than July 16, 2018. Please provide the following information: Full legal name and name of your industry association, or applicable affiliation.

To participate, please contact the person listed in **FOR FURTHER INFORMATION CONTACT** by email or phone for the teleconference call-in number and passcode. Participants are responsible for any telephone, data usage or other similar expenses related to this meeting.

The public must make arrangements by July 16, 2018, to present oral or written statements at the meeting. Written statements may be presented to the Subcommittee by providing a copy to the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Copies of the documents to be presented to the Subcommittee may be made available by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

If you need assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Issued in Washington, DC.

Lirio Liu,

Designated Federal Officer, Aviation Rulemaking Advisory Committee.

[FR Doc. 2018–12603 Filed 6–11–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Protection of Voluntarily Submitted Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 4, 2018 (83 FR 14714). To encourage people to voluntarily submit desired information, regulations were added to Title 49, United States Code, in the Federal Aviation Reauthorization Act of 1996. Section 40123 allows the Administrator, through FAA regulations, to protect from disclosure voluntarily provided information relating to safety and security issues. This rule imposes a negligible paperwork burden for certificate holders and fractional ownership programs that choose to submit a letter notifying the Administrator that they wish to participate in a current program.

DATES: Written comments should be submitted by July 12, 2018.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Barbara Hall at (940) 594–5913, or by email at: *Barbara.L.Hall@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0646.

Title: Protection of Voluntarily Submitted Information.

Form Numbers: There are no forms associated with this collection.

Type of Review: This is a renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 4, 2018 (83 FR 14714). Part 193 of the FAA regulations provides that certain information submitted to the FAA on a voluntary basis is not to be disclosed. Part 193 implements a statutory provision. Section 40123 was added to Title 49, United States Code, in the Federal Aviation Reauthorization Act of 1996 to encourage people to voluntarily submit desired information. Section 40123 allows the Administrator, through FAA regulations, to protect from disclosure voluntarily provided information relating to safety and security issues.

The purpose of part 193 is to encourage the aviation community to voluntarily share information with the FAA so that the agency may work cooperatively with industry to identify modifications to rules, policies, and procedures needed to improve safety, security, and efficiency of the National Airspace System. FAA programs that are covered under part 193 are Voluntary Safety Reporting Programs, Air Traffic and Technical Operations Safety Action programs, the Flight Operational Quality Assurance program, the Aviation Safety Action Program, and the Voluntary Disclosure Reporting Program. This rule imposes a negligible paperwork burden for certificate holders and factional ownership programs that choose to submit a letter notifying the Administrator that they wish to participate in a current program.

The number of respondents has greatly increased since the initial approval of this information collection. In order to accurately reflect the burden of this information collection going forward, the FAA has included total current participants in the programs.

Respondents: 930 certificate holders and fractional ownership programs.

Frequency: On occasion.

Estimated Average Burden per Response: One hour.

Estimated Total Annual Burden: 930 hours.

Issued in Washington, DC, on June 4, 2018.

Barbara Hall,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2018–12562 Filed 6–11–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0094]

Request for Comments on the Renewal of a Previously Approved Information Collection: U.S. Merchant Marine Academy Candidate Application for Admission

AGENCY: Maritime Administration.

ACTION: Notice and request for comments.

SUMMARY: The Maritime Administration (MARAD) invites public comments on

our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information to be collected will be used to apply for admission to the U.S. Merchant Marine Academy. Collection of information is completed digitally through an online candidate portal. Part I of the Candidate Application is used to establish initial eligibility. The Academic Information Request, Candidate Activities Record, School Official Evaluations and Biographical Essay are used by the USMMA admissions staff and its Candidate Evaluation Board to select the best qualified candidates for the Academy. Result from the administration of the Candidate Fitness Assessment are used to determine physical qualification. Candidates may also submit an optional resume and additional recommendation letters with their application. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Comments must be submitted on or before August 13, 2018.

ADDRESSES: You may submit comments identified by Docket No. MARAD–2018–0094 through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search using the above DOT docket number and follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: CDR Mike Bedryk, CDR USMS, Director of Admissions, 516.726.5641, U.S. Merchant Marine Academy, 300 Steamboat Road, New York, NY 11024, *www.usmma.edu/admissions.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Merchant Marine Academy Candidate Application for Admission.

OMB Control Number: 2133–0010.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: Regulations pertaining to the U.S. Merchant Marine Academy (USMMA) appeared in the **Federal Register** (Vol. 47, No. 98, p. 21811, dated May 20, 1982) as a final rule. Part 310.57(a) of 46 CFR provides for the collection of information from anyone who is a prospect for admission. It states that ''all candidates shall submit an application for admission to the Academy's Admissions Office.'' Thus, the collection of information through the use of a digital application is the primary means by which selections for admission are made. The information collection consists of Part I, the Academic Information Request, Candidate Activities Record, three School Official Evaluation and Biographical Essay and Candidate Fitness Assessment. Part I of the form is completed by individuals wishing to be admitted as students to the U.S. Merchant Marine Academy. The information from the Academic Information Request, Candidate Activities Record, School Official Evaluations and Biographical Essay is used by the USMMA admissions staff and its Candidate Evaluation Board to select the best qualified candidates for the Academy.

Respondents: Individuals desiring to become students at the U.S. Merchant Marine Academy.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2000.

Estimated Number of Responses: 2000.

Estimated Hours per Response: 5.

Annual Estimated Total Annual Burden Hours: 10,000.

Frequency of Response: Annually.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.)

* * * * *

By Order of the Maritime Administrator.

Dated: June 7, 2018.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–12573 Filed 6–11–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0086]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel CUT TO THE CHAISE; Invitation for Public Comments

AGENCY: Maritime Administration.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 12, 2018.

ADDRESSES: Comments should refer to docket number MARAD–2018–0086. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CUT TO THE CHAISE is:

—*Intended Commercial Use of Vessel:* ''Carry Passengers (sightseeing)''

—*Geographic Region:* ''Florida''

The complete application is given in DOT docket MARAD–2018–0086 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part

388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy*. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

By Order of the Maritime Administrator.

Dated: June 7, 2018.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–12572 Filed 6–11–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

National Advisory Committee on Travel and Tourism Infrastructure; Notice of Public Meeting

AGENCY: Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the National Advisory Committee on Travel and Tourism Infrastructure (NACTTI).

DATES: The meeting will be held on June 27, 2018, from 9:30 a.m. to 5:00 p.m., EDT.

ADDRESSES: The meeting will be held at the U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Individuals wishing for audio participation and any person requiring accessibility accommodations should contact the Official listed in the next section.

FOR FURTHER INFORMATION CONTACT: Laura Remo, Designated Federal Officer, U.S. Department of Transportation, at *NACTTI@dot.gov* or (202) 366–5347. Also visit the NACTTI internet website at *http://www.transportation.gov/NACTTI.*

SUPPLEMENTARY INFORMATION:

I. Background

NACTTI was created in accordance with Section 1431 of the *Fixing America's Surface Transportation* (FAST) *Act* (Pub. L. 114–94: Dec. 4, 2015; 129 Stat. 1312) to provide information, advice, and recommendations to the Secretary of Transportation on matters related to the role of intermodal transportation in facilitating mobility related to travel and tourism activities.

II. Agenda

At the June 27, 2018, meeting, the agenda will cover the following topics:

- Recap of December meeting
- Discussion and Formation of Subcommittees
- Public Participation
- Subcommittee Meetings
- Discussion of Next Steps

III. Public Participation

The meeting will be open to the public on a first-come, first served basis, as space is limited. Members of the public who wish to attend in-person are asked to register, including name and affiliation, to *NACTTI@dot.gov* by June 18, 2018. Individuals requesting accessibility accommodations, such as sign language, interpretation, or other ancillary aids, may do so via email at: *NACTTI@dot.gov* by June 18, 2018.

There will be 30 minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for public comments may be limited to five minutes per person. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name, address, and organizational affiliation of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the Office of the Secretary may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared remarks by 5:00 p.m. EDT on June 18, 2018, for inclusion in the meeting records and for circulation to NACTTI members.

Persons who wish to submit written comments for consideration by NACTTI during the meeting must submit them no later than 5:00 p.m. EDT on June 18, 2018, to ensure transmission to NACTTI prior to the meeting. Comments received after that date and time will be distributed to the members but may not be reviewed prior to the meeting.

Copies of the meeting minutes will be available on the NACTTI internet website at *http://www.transportation.gov/NACTTI.*

Joel Szabat,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2018–12571 Filed 6–11–18; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunity Title: Revised Notice of Guarantee Availability (NOGA) Inviting Qualified Issuer Applications and Guarantee Applications for the Community Development Financial Institutions (CDFI) Bond Guarantee Program.

Announcement Type: Announcement of opportunity to submit Qualified Issuer Applications and Guarantee Applications.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.011.

DATES: Qualified Issuer Applications and Guarantee Applications may be submitted to the CDFI Fund starting on the date of publication of this Notice of Guarantee Availability (NOGA). In order to be considered for the issuance of a Guarantee in fiscal year (FY) 2018, Qualified Issuer and Guarantee Applications must be submitted by 11:59 p.m. EST on July 12, 2018. If applicable, CDFI Certification Applications must be received by the CDFI Fund by 11:59 p.m. EST on July 12, 2018. Under the Congressional authorization in the Consolidated Appropriations Act, 2018, the amount of FY 2018 Guarantee Authority available is up to $500 million. Bond Documents and Bond Loan documents must be executed, and Guarantees will be provided, in the order in which Guarantee Applications are approved or by such other criteria that the CDFI Fund may establish, in its sole

discretion, and in any event by December 31, 2018.

Executive Summary: This revised NOGA is published in connection with the CDFI Bond Guarantee Program, administered by the Community Development Financial Institutions Fund (CDFI Fund), the U.S. Department of the Treasury (Treasury). Through this NOGA, the CDFI Fund announces the availability of up to $500 million of Guarantee Authority in FY 2018. On November 2, 2017, the Community Development Financial Institutions Fund (CDFI Fund) announced the opportunity for the submission of Qualified Issuer Applications and Guarantee Applications for the CDFI Bond Guarantee Program (82 FR 50944). On January 18, 2018, the CDFI Fund published a revised NOGA extending the deadline for the submission of Guarantee Applications under the CDFI Bond Guarantee Program (83 FR 2724).

This revised NOGA is re-opening the FY 2018 Application round of the CDFI Bond Guarantee Program with an application submission deadline of 11:59 p.m. EST on July 12, 2018 to provide interested parties with the opportunity to participate in the CDFI Bond Guarantee Program. The NOGA published on November 2, 2017, (82 FR 50944) explains application submission and evaluation requirements and processes. Parties interested in being approved for a Guarantee under the CDFI Bond Guarantee Program must submit Qualified Issuer Applications and Guarantee Applications for consideration in accordance with this NOGA.

Capitalized terms used in this NOGA and not defined elsewhere are defined in the CDFI Bond Guarantee Program regulations (12 CFR 1808.102) and the CDFI Program Regulations (12 CFR 1805.104).

All other information and requirements set forth in the NOGA published November 2, 2017, (82 FR 50944) as amended, shall remain effective, as published.

I. Guarantee Opportunity Description

A. *Authority.* The CDFI Bond Guarantee Program was authorized by the Small Business Jobs Act of 2010 (Pub. L. 111–240; 12 U.S.C. 4713a) (the Act). Section 1134 of the Act amended the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701, *et seq.*) to provide authority to the Secretary of the Treasury (Secretary) to establish and administer the CDFI Bond Guarantee Program.

B. *Application Deadlines.* In order to be considered for the issuance of a Guarantee under FY 2018 program authority, Qualified Issuer and Guarantee Applications must be submitted by 11:59 p.m. EST on July 12, 2018. If applicable, CDFI Certification Applications must be received by the CDFI Fund by 11:59 p.m. EST on July 12, 2018.

II. Agency Contacts

A. *General information on questions and CDFI Fund support.* The CDFI Fund will respond to questions and provide support concerning this revised NOGA and Qualified Issuer and Guarantee Applications between the hours of 9:00 a.m. and 5:00 p.m. ET, starting with the date of the publication of this revised NOGA. The final date to submit questions is [28 days after the publication of the NOGA]. Applications and other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's website at *http://www.cdfifund.gov.* The CDFI Fund will post on its website responses to questions of general applicability regarding the CDFI Bond Guarantee Program.

B. *The CDFI Fund's contact information is as follows:*

CONTACT INFORMATION

Type of question	Telephone number (not toll free)	Email addresses
CDFI Bond Guarantee Program	(202) 653–0421, Option 5	*bgp@cdfi.treas.gov.*
CDFI Certification	(202) 653–0423	*ccme@cdfi.treas.gov.*
Compliance Monitoring and Evaluation	(202) 653–0423	*ccme@cdfi.treas.gov.*
Information Technology Support	(202) 653–0422	*AMIS@cdfi.treas.gov.*

C. *Communication with the CDFI Fund.* The CDFI Fund will use the AMIS internet interface to communicate with applicants, Qualified Issuers, Program Administrators, Servicers, Certified CDFIs and Eligible CDFIs, using the contact information maintained in their respective AMIS accounts. Therefore, each such entity must maintain accurate contact information (including contact person and authorized representative, email addresses, fax numbers, phone numbers, and office addresses) in its respective AMIS account. For more information about AMIS, please see the AMIS Landing Page at *https://amis.cdfifund.gov.*

Authority: Pub. L. 111–240; 12 U.S.C. 4701, *et seq.;* 12 CFR part 1808; 12 CFR part 1805; 12 CFR part 1815.

Mary Ann Donovan,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2018–12605 Filed 6–11–18; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2018–0012]

FEDERAL RESERVE SYSTEM

[Docket No. OP–1609]

FEDERAL DEPOSIT INSURANCE CORPORATION

Policy Statement on Interagency Notification of Formal Enforcement Actions

AGENCIES: Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice of policy statement.

SUMMARY: The Federal Financial Institutions Examination Council has rescinded its Revised Policy Statement on ''Interagency Coordination of Formal Corrective Action by the Federal Bank Regulatory Agencies'' dated February 20, 1997. To assure onging coordination, the Board, the FDIC, and the OCC (collectively, ''the Federal Banking Agencies'' or ''FBAs'') are issuing this policy statement concerning Federal Banking Agency coordination of formal corrective action.

DATES: Applicable on June 12, 2018.

FOR FURTHER INFORMATION CONTACT:

OCC: Jessica Burrell, Counsel, Enforcement and Compliance, (202–649–6200); William Jacquet, Assistant Director, Enforcement and Compliance, (202–649–6200). For the hearing impaired, TTY (202) 649–5597.

Board: Jason Gonzalez, Special Counsel, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. For the hearing impaired or users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

FDIC: Sam Ozeck, Legal Division (202) 898–6736; George Parkerson, Division of Risk Management Supervision, (202) 898–3648.

SUPPLEMENTARY INFORMATION: The Federal Banking Agencies are issuing this policy statement concerning their coordination of formal corrective action.

The text of the policy statement is as follows:

Policy Statement on Interagency Notification of Formal Enforcement Actions

The FBAs are issuing this policy statement to promote notification of, and coordination on, formal enforcement actions among the FBAs at the earliest practicable date. This statement replaces the existing policy statement [1] to incorporate and reflect current practices and is not intended as a substitute for informal communication that routinely occurs among the FBAs in advance of an enforcement action, including verbal notification of pending enforcement matters to officials and staff with supervisory and enforcement responsibility for the affected institution.

When an FBA determines it will take a formal enforcement action against any federally insured depository institution, depository institution holding company, non-bank affiliate, or institution-affiliated party, it should evaluate whether the enforcement action involves the interests of another FBA. Examples of such interests include unsafe or unsound practices or significant violations of law by an insured depository institution, non-bank affiliate, or depository institution holding company or misconduct by an institution-affiliated party that may have significant connections with an institution regulated by another FBA.

If it is determined that one or more other FBAs have an interest in the enforcement action, the FBA proposing the enforcement action should notify the other FBA(s). Notification should be provided at the earlier of the FBA's written notification to the federally insured depository institution, depository institution holding company, non-bank affiliate, or institution-affiliated party against which the FBA is considering an enforcement action or when the appropriate responsible agency official, or group of officials, determines that formal enforcement action is expected to be taken.

The scope of the information shared by the notification may depend on the gravity of the interests of the other FBA(s) and be determined on a case-by-case basis by the FBA providing the notification. The information shared, however, should be appropriate to allow the other FBA(s) to take necessary action in examining or investigating the financial institution or institution-affiliated party over which they have jurisdiction.

If two or more FBAs consider bringing a complementary action (*e.g.,* action involving a bank and its parent holding company), those FBAs should coordinate the preparation, processing, presentation, potential penalties, service, and follow-up of the enforcement action.

Dated: June 6, 2018.

Joseph M. Otting,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, June 4, 2018.

Anne E. Misback,

Secretary of the Board.

Dated at Washington, DC, this day of March 20, 2018.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2018–12556 Filed 6–11–18; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

[1] *See* 62 FR 7782 (Feb. 20, 1997).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2003–33

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Section 9100 Relief for 338 Elections.

DATES: Written comments should be received on or before August 13, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION: Requests for additional information or copies of the Rev. Proc. should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Section 9100 Relief for 338 Elections.

OMB Number: 1545–1820.

Rev. Proc. Number: 2003–33.

Abstract: Revenue Procedure 2003–33 provides qualifying taxpayers with an extension of time pursuant to § 301.9100–3 of the Procedure and Administration Regulations to file an election described in § 338(a) or § 338(h)(10) of the Internal Revenue Code to treat the purchase of the stock of a corporation as an asset acquisition.

Current Actions: There are no changes being made to the Rev. Proc. at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Responses: 60.

Estimated Time per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 4, 2018.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2018–12578 Filed 6–11–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Excise Tax Relating to Gain or Other Income Realized by Any Person on Receipt of Greenmail.

DATES: Written comments should be received on or before August 13, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION: Requests for additional information or copies of the regulation should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Excise Tax Relating to Gain or Other Income Realized by Any Person on Receipt of Greenmail.

OMB Number: 1545–1049.

Regulation Project Number: TD 8379 (final); TD 9407 (final).

Form Number: 8725.

Abstract: The regulations provide rules relating to the manner and method of reporting and paying the nondeductible 50 percent excise tax imposed by section 5881 of the Internal Revenue Code with respect to the receipt of greenmail. The reporting requirements will be used to verify that the excise tax imposed under section 5881 is properly reported and timely paid. Form 8725 is used by persons who receive ''greenmail'' to compute and pay the excise tax on greenmail imposed under Internal Revenue Code section 5881. IRS uses the information to verify that the correct amount of tax has been reported.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Responses: 12.

Estimated Time per Response: 7 hours., 37 minutes.**

Estimated Total Annual Burden Hours: 92.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 5, 2018.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2018–12566 Filed 6–11–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 911

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order).

DATES: Written comments should be received on or before August 13, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order).

OMB Number: 1545–1504.

Form Number: 911.

Abstract: This form is used by taxpayers to apply for relief from a significant hardship which may have already occurred or is about to occur if the IRS takes or fails to take certain actions. This form is submitted to the IRS Taxpayer Advocate Office in the district where the taxpayer lives.

Current Actions: There are no changes being made to Form 911 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms and state, local or tribal governments.

Estimated Number of Responses: 93,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 46,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 5, 2018.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2018–12567 Filed 6–11–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8864

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 8864, Biodiesel and Renewable Diesel Fuels Credit.

DATES: Written comments should be received on or before August 13, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Roberto Mora-Figueroa, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or at (202) 317–6038 or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Biodiesel and Renewable Diesel Fuels Credit.

OMB Number: 1545–1924.

Form Number: 8864.

Abstract: The biodiesel and renewable diesel fuels credit isn't available for fuel sold or used after 2017. However, a partner in a fiscal year partnership, shareholder in a fiscal year S corporation, or beneficiary of a fiscal year trust or estate may receive a biodiesel and renewable diesel fuels credit that must be reported on a 2018 return.

Current Actions: There are changes being made to form at this time, however these changes will not affect the burden estimates.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 26.

Estimated Time per Respondent: 4 hrs., 13 mins.

Estimated Total Annual Burden Hours: 110.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 4, 2018.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2018–12568 Filed 6–11–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Guidance regarding Charitable

Remainder Trusts and Special Valuation Rules for Transfers of Interests and Trusts.

DATES: Written comments should be received on or before August 13, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Roberto Mora-Figueroa, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION: Requests for additional information or copies of this regulation should be directed to Sara Covington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or at (202) 317–6038 or through the internet at *Sara.L.Covington@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Guidance Regarding Charitable Remainder Trusts and Special Valuation Rules for Transfers of Interests and Trusts.

OMB Number: 1545–1536.

Regulation Project Number: TD 8791.

Abstract: This regulation provides guidance relating to charitable remainder trusts and to special valuation rules for transfers of interests in trusts. Section 1.664–1(a)(7) of the regulation provides that either an independent trustee or qualified appraiser using a qualified appraisal must value a charitable remainder trust's assets that do not have an objective, ascertainable value.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 150.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 75.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 4, 2018.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2018–12576 Filed 6–11–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee: Change

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting: Change.

SUMMARY: In the **Federal Register** notice that was originally published on May 8, 2018, (Volume 83, Number 89, Page 20913) the meeting date has changed. The date is changed from Wednesday, June 27, 2018 to Thursday, June 28, 2018.

DATES: The meeting will be held Thursday, June 28, 2018.

FOR FURTHER INFORMATION CONTACT: Lisa Billups at 1–888–912–1227 or (214) 413–6523.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Thursday, June 28, 2018, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. For more information please contact Lisa Billups at 1–888–912–1227 or (214) 413–6523, or write TAP Office, 1114 Commerce Street, Dallas, TX 75242–1021, or post comments to the website: *http://www.improveirs.org*.

The agenda will include various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

Dated: June 6, 2018.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2018–12579 Filed 6–11–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 1098, Mortgage Interest Statement and TD 8571 (IA–17–90), Reporting Requirements for Recipients of Points Paid on Residential Mortgages.

DATES: Written comments should be received on or before August 13, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this form and regulation should be directed to Sara Covington, at (202) 317 6038, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Reporting Requirements for Recipients of Points Paid on Residential Mortgages and Mortgage Interest Statement.

OMB Number: 1545–1380.

Form Number: 1098.

Regulation Project Number: TD 8571.

Abstract: T.D. 8571 regulations require the reporting of certain information relating to payments of mortgage interest. Form 1098 is used to report $600 or more of mortgage interest received from an individual in the course of the mortgagor's trade or

business. Taxpayers must separately state on Form 1098 the amount of points and the amount of interest (other than points) received during the taxable year on a single mortgage and must provide to the payer of the points a separate statement setting forth the information being reported to the IRS.

Current Actions: There are no change to the form or existing regulation, however Form 1098 and TD 8571 have been consolidated under this collection.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 77,908,660.

Estimated Time per Respondent: .23 hrs.

Estimated Total Annual Burden Hours: 17,913,039.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 4, 2018.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2018–12574 Filed 6–11–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8858

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Information Return of U.S. Persons With Respect To Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs).

DATES: Written comments should be received on or before August 13, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Information Return of U.S. Persons With Respect To Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs).

OMB Number: 1545–1910.

Form Number: Form 8858 and Schedule M (Form 8858).

Abstract: Form 8858 and Schedule M are used by certain U.S. persons that own a foreign disregarded entity (FDE) directly or, in certain circumstances, indirectly or constructively. These forms also now implement the relevant provisions of Public Law 115–97 (Schedule M (Form 8858)). Section 14302 of Public Law 115–97 (IRC 904(d)(1)(B)—FTC category for foreign branch income) requires additional reporting by a foreign branch (FB) owned by a U.S. person.

Form 8858

Current Actions: (1) On page 1, we changed the title to include foreign branches as Form 8858 will be used to collect information from foreign branches as required by new sections 91 and 904(d)(1)(B). References to foreign branches are added throughout the Form 8858, and foreign disregarded entities and foreign branches are abbreviated as FDE and FB; (2) Also, on page 1, for purposes of filtering, we added checkboxes to identify whether the FB or FDE is owned by a U.S. person, controlled foreign corporation (CFC), or controlled foreign partnership (CFP), and whether this is the initial or final Form 8858 filed; (3) On page 2, Schedule C, we added several additional income line items, and one for income tax expense, to correspond to items reflected on Form 1118, as modified, for FTC reporting by FBs pursuant to section 14302 of Public Law 115–97; (4) Also, on page 2, Schedule C–1, we made changes requested by CC:INTL to clarify reporting of gains and losses on remittances by FDEs and FBs; (5) On page 3, Schedule G, we deleted old questions 4 and 5a to 5c, and added new questions 6 to 8, and 10 to 13. Questions 6 and 7 were added to address base erosion under sections 59A(d) and 59(c)(2). Question 8 was added to identify whether the FB or FDE was a qualified business unit under IRC 989(a), which will enhance reporting of FB activities and remittances under IRC 987. Questions 10 to 13 are modifications of old questions 4 and 5a to 5c, regarding dual consolidated losses, to provide more transparent and accurate reporting of DCLs incurred by FBs or FDEs of a U.S. owner; (6) On page 4, we added Schedule I, Transferred Loss Amounts, which will indicate whether section 91 (section 14102 of Pub. L. 115–97) applies. Also, Schedule I will indicate whether a domestic corporation transferred foreign branch assets to a foreign corporation, which would invoke section 91, and require the inclusion of the transferred loss amount into income; (7) Also, on page 4, we added Schedule J, Income Taxes Paid or Accrued, which will provide additional information on the foreign taxes paid or accrued by the FB or FDE, converted to U.S. dollars and classified into separate FTC categories, including the new category under section 904(d)(1)(B) (section 14302 of Pub. L. 115–97).

Schedule M (Form 8858)

A third column heading was added to report transactions of an FDE or FB of a U.S. tax owner with corresponding changes to columns (a)–(e). The instructions will clarify that the Schedule M (Form 8858) must be completed and attached to the Form 8858 to report transactions between the FB or FDE and the filer of Form 8858 or other related entity, regardless of the tax owner of the FB or FDE.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Form 8858

Estimated Number of Respondents: 20,000.

Estimated Time per Respondent: 35.99 hours.

Estimated Total Annual Burden Hours: 719,800 hours.

Schedule M (Form 8858)

Estimated Number of Respondents: 8,000.

Estimated Time per Respondent: 24.75 hours.

Estimated Total Annual Burden Hours: 198,000 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 5, 2018.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2018–12577 Filed 6–11–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Multiemployer Pension Plan Application To Reduce Benefits

AGENCY: Department of the Treasury.

ACTION: Notice of availability; request for comments.

SUMMARY: The Board of Trustees of the Western States Office and Professional Employees Pension Fund (WSOPE Pension Fund), a multiemployer pension plan, has submitted an application to reduce benefits under the fund in accordance with the Multiemployer Pension Reform Act of 2014 (MPRA). The purpose of this notice is to announce that the application submitted by the Board of Trustees of the WSOPE Pension Fund has been published on the website of the Department of the Treasury (Treasury), and to request public comments on the application from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the WSOPE Pension Fund.

DATES: Comments must be received by July 27, 2018.

ADDRESSES: You may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions on that site. Electronic submissions through *www.regulations.gov* are encouraged.

Comments may also be mailed to the Department of the Treasury, MPRA Office, 1500 Pennsylvania Avenue NW, Room 1224, Washington, DC 20220, Attn: Danielle Norris. Comments sent via facsimile and email will not be accepted.

Additional Instructions: All comments received, including attachments and other supporting materials, will be made available to the public. Do not include any personally identifiable information (such as your Social Security number, name, address, or other contact information) or any other information in your comment or supporting materials that you do not want publicly disclosed. Treasury will make comments available for public inspection and copying on *www.regulations.gov* or upon request. Comments posted on the internet can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: For information regarding the application from the WSOPE Pension Fund, please contact Treasury at (202) 622–1534 (not a toll-free number).

SUPPLEMENTARY INFORMATION: MPRA amended the Internal Revenue Code to permit a multiemployer plan that is projected to have insufficient funds to reduce pension benefits payable to participants and beneficiaries if certain conditions are satisfied. In order to reduce benefits, the plan sponsor is required to submit an application to the Secretary of the Treasury, which must be approved or denied in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Department of Labor.

On May 15, 2018, the Board of Trustees of the WSOPE Pension Fund submitted an application for approval to reduce benefits under the fund. As required by MPRA, that application has been published on Treasury's website at *https://www.treasury.gov/services/Pages/Plan-Applications.aspx.* Treasury is publishing this notice in the **Federal Register**, in consultation with PBGC and the Department of Labor, to solicit public comments on all aspects of the WSOPE Pension Fund application.

Comments are requested from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the WSOPE Pension Fund. Consideration will be given to any comments that are timely received by Treasury.

Dated: June 4, 2018.

David Kautter,

Assistant Secretary for Tax Policy.

[FR Doc. 2018–12558 Filed 6–11–18; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

VA Prevention of Fraud, Waste, and Abuse Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, that the VA Prevention of Fraud, Waste, and Abuse Advisory Committee will meet virtually on July 19, 2018 from 9:00 a.m. until 12:00 p.m. (EST). The toll-free telephone number for this meeting is (844) 825–8490, access code: 332244674#. *Note: The telephone line will be muted except for the Committee and VA Executives.* This meeting will be open the the public.

The purpose of the Committee is to advise the Secretary, through the Assistant Secretary for Management and Chief Financial Officers, on matters relating to improving and enhancing VA's efforts to identify, prevent, and mitigate fraud, waste, and abuse across VA in order to improve the integrity of

VA's payments and the efficiency of its programs and activities.

The agenda will include detailed discussions on Committee recommendations surrounding VA's community care programs.

No time will be allocated at this meeting for receiving oral presentations from the public. Members of the public may submit written statements for the Committee's review to Karida Palmer via email at *PFWAAC2@va.gov.*

Dated: June 7, 2018.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2018–12561 Filed 6–11–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board; Notice of Meetings

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the subcommittees of the Rehabilitation Research and Development Service Scientific Merit Review Board will meet from 8:00 a.m. to 5:00 p.m. on the dates indicated below:

Subcommittee	Date(s)	Location
Brain Health and Injury	August 7–8, 2018	Crowne Plaza, Washington National Airport Hotel.
Behavioral Health & Social Reintegration	August 7, 2018	Crowne Plaza, Washington National Airport Hotel.
Rehabilitation Engineering & Prosthetics/Orthotics	August 7, 2018	Crowne Plaza, Washington National Airport Hotel.
Spinal Cord Injury/Disorders & Neuropathic Pain	August 8, 2018	Crowne Plaza, Washington National Airport Hotel.
Musculoskeletal Health & Function	August 8–9, 2018	Crowne Plaza, Washington National Airport Hotel.
Career Development Program	August 8–9, 2018	Crowne Plaza, Washington National Airport Hotel.
Sensory Systems & Disorders Communication	August 9, 2018	Crowne Plaza, Washington National Airport Hotel.
Regenerative Rehabilitation	August 10, 2018	Crowne Plaza, Washington National Airport Hotel.
Chronic Medical Conditions and Aging	August 10, 2018	Crowne Plaza, Washington National Airport Hotel.
Research Career Scientist	August 10, 2018	Crowne Plaza, Washington National Airport Hotel.

The address of the meetings site is: Crowne Plaza Washington National Airport Hotel, 1480 Crystal Drive, Arlington, VA 22202.

The purpose of the Board is to review rehabilitation research and development applications and advise the Director, Rehabilitation Research and Development Service, and the Chief Research and Development Officer on the scientific and technical merit, the mission relevance, and the protection of human and animal subjects.

The subcommittee meetings will be open to the public for approximately one-half hour at the start of each meeting to cover administrative matters and to discuss the general status of the program. Members of the public who wish to attend the open portion of the teleconference sessions may dial 1 (800) 767–1750, participant code 35847. The remaining portion of each subcommittee meeting will be closed to the public for the discussion, examination, reference to, and oral review of the research applications and critiques. During the closed portion of each subcommittee meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would likely compromise significantly the implementation of proposed agency action regarding such research projects). As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing the meeting is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

No oral or written comments will be accepted from the public for either portion of the meetings. Those who plan to attend (by phone or in person) the open portion of a subcommittee meeting must contact Kristy Benton-Grover, Designated Federal Officer, Rehabilitation Research and Development Service, at Department of Veterans Affairs (10P9R), 810 Vermont Avenue NW, Washington, DC 20420, or email *Kristy.Benton-Grover@va.gov,* at least five days before the meeting. For further information, please call Mrs. Benton-Grover at (202) 443–5728.

Dated: June 6, 2018.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2018–12546 Filed 6–11–18; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 83 Tuesday,
No. 113 June 12, 2018

Part II

Department of Homeland Security

U.S. Customs and Border Protection

19 CFR Parts 12, 113 et al.
Air Cargo Advance Screening (ACAS); Final Rule

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Parts 12, 113, 122, 141, 178, and 192

[Docket No. USCBP–2018–0019; CBP Dec. 18–05]

RIN 1651–AB04

Air Cargo Advance Screening (ACAS)

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Interim final rule; request for comments.

SUMMARY: To address ongoing aviation security threats, U.S. Customs and Border Protection (CBP) is amending its regulations pertaining to the submission of advance air cargo data to implement a mandatory Air Cargo Advance Screening (ACAS) program for any inbound aircraft required to make entry under the CBP regulations that will have commercial cargo aboard. The ACAS program requires the inbound carrier or other eligible party to electronically transmit specified advance cargo data (ACAS data) to CBP for air cargo transported onboard U.S.-bound aircraft as early as practicable, but no later than prior to loading of the cargo onto the aircraft. The ACAS program enhances the security of the aircraft and passengers on U.S.-bound flights by enabling CBP to perform targeted risk assessments on the air cargo prior to the aircraft's departure for the United States. These risk assessments will identify and prevent high-risk air cargo from being loaded on the aircraft that could pose a risk to the aircraft during flight.

DATES:

Effective date: This interim final rule is effective June 12, 2018.

Comment date: Comments must be received by August 13, 2018.

ADDRESSES: Please submit any comments, identified by docket number [USCBP–2018–0019], by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Border Security Regulations Branch, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Office of Trade, U.S. Customs and Border Protection, 90 K Street NE, 10th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Craig Clark, Cargo and Conveyance Security, Office of Field Operations, U.S. Customs and Border Protection, by telephone at 202–344–3052 and email at *craig.clark@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this interim final rule. The Department of Homeland Security (DHS) and CBP also invite comments that relate to the economic, environmental, or federalism effects that might result from this interim final rule. Comments that will provide the most assistance to CBP will reference a specific portion of the interim final rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

II. Executive Summary

Terrorist attacks on international aviation, particularly while the aircraft is in flight, are a very real threat. In the past few years, terrorists have made several significant attempts to attack commercial aircraft. These attempts include the Christmas Day 2009 attempt to bring down a U.S.-bound passenger plane via the use of plastic explosives hidden in a terrorist's underwear, the explosion aboard Russian Metrojet Flight 9268 above Egypt's Sinai Peninsula in October 2015, and the attempted onboard suicide attack on a commercial aircraft in February 2016 after takeoff in Mogadishu, Somalia. These incidents underscore the persistent threat to commercial aviation and emphasize the importance of aviation security.

The Department of Homeland Security (DHS) was established, in part, to prevent such attacks, and to ensure aviation safety and security. It is essential that DHS constantly adapt its policies and regulations and use shared intelligence to address these terrorist threats since terrorists continue to seek out and develop innovative ways to thwart security measures. Global terrorist organizations such as Al Qaeda and the Islamic State of Iraq and the Levant (ISIL), as well as their offshoots and associates, remain committed to targeting international commercial airline operations in order to maximize the effects of their terror campaigns. They aim to exploit any security vulnerability.

In October 2010, a new aviation security vulnerability was exposed. Terrorists placed concealed explosive devices in cargo onboard two aircraft destined to the United States. The explosive devices were expected to explode mid-air over the continental United States, which could have caused catastrophic damage to the aircraft, the passengers, crew, and persons and property on the ground. In materials published by a terrorist organization shortly after the October 2010 incident, it was noted that due to the increased

passenger screening implemented after the Christmas Day 2009 attempt, the terrorist organization decided to employ explosive devices sent via air cargo. While the 2010 potential terrorist attack was thwarted by multiple foreign governments working together to share intelligence and intercept the shipments before they detonated, the explosive devices were flown aboard several flights before they were discovered. Recently, Australian authorities thwarted a plot to place an Improvised Explosive Device (IED) on an Etihad Airways flight, using components that had been shipped to Australia by an Islamic State in Syria (ISIS) commander via air cargo. Additionally, DHS has received specific, classified intelligence that certain terrorist organizations seek to exploit vulnerabilities in international air cargo security to cause damage to infrastructure, injury, or loss of life in the United States or onboard aircraft. DHS must ensure that terrorists cannot exploit vulnerabilities in air cargo supply chain security to introduce dangerous cargo that could cause catastrophic effect to the aircraft.

In order to deter and disrupt terrorist threats to U.S.-bound aircraft via air cargo, DHS must ensure that high-risk cargo is identified prior to the aircraft's departure for the United States. Within DHS, two components, U.S. Customs and Border Protection (CBP) and the Transportation Security Administration (TSA), have responsibilities for securing inbound air cargo bound for the United States. CBP and TSA employ a layered security approach to secure inbound air cargo, including using various risk assessment methods to identify high-risk cargo and to mitigate any risks posed.

For the reasons discussed below, DHS believes that the current regulatory requirements should be enhanced to address the ongoing threats to in-flight aviation security, particularly concerning air cargo. DHS is making regulatory changes to ensure that DHS has the necessary tools to address these threats and ensure the safety of U.S.-bound flights.

TSA regulations require carriers to apply security measures, including screening, to all cargo inbound to the United States from the last point of departure. *See* 49 CFR parts 1544 and 1546. Through TSA's regulatory framework, TSA issues security programs for carriers to adopt at last points of departure for cargo inbound to the United States. These security programs require aircraft operators and foreign air carriers to determine the appropriate level of screening (baseline versus enhanced) to apply to each cargo shipment in accordance with risk-based criteria contained within their TSA security program. TSA regulations require the carrier to perform enhanced air cargo screening on cargo deemed high-risk prior to the cargo departing for the United States.[1] TSA has authority to impose penalties for violations of these regulations pursuant to 49 U.S.C. 144(d) and 49 CFR part 1503.

CBP performs an additional risk assessment to identify inbound cargo that may pose a security risk using advance air cargo data and intelligence related to specific air cargo. Under current CBP regulations, an inbound air carrier or other eligible party must transmit specified advance air cargo data to CBP for any inbound aircraft required to make entry under 19 CFR 122.41 that will have commercial cargo aboard.[2] *See* 19 CFR 122.48a. In most cases, advance data pertaining to air cargo must be transmitted to CBP four hours prior to arrival of the aircraft in the United States. For specified short flights, the advance data must be transmitted to CBP no later than the time of departure of the aircraft.[3] Upon receipt of the advance air cargo data, CBP analyzes the data using its Automated Targeting System (ATS) and other relevant intelligence at each U.S. port of entry to identify potential threats. Upon the arrival of the cargo at the U.S. port of entry, CBP inspects all air cargo identified as high-risk to ensure that dangerous cargo does not enter the United States.

Under the current CBP regulatory time frames for transmitting air cargo data, CBP may not be able to identify high-risk cargo such as unauthorized weapons, explosives, chemical and/or biological weapons, WMDs, or other destructive substances or items in the cargo until it is already en route to the United States. This is because the 19 CFR 122.48a time frames do not provide CBP adequate time to perform targeted risk assessments on the air cargo *before* the aircraft departs for the United States. Terrorists have already exploited this security vulnerability by placing explosive devices aboard aircraft destined to the United States. Explosives and/or weapons contained in air cargo could potentially be detonated during flight. Such a terrorist attack could result in destruction of the aircraft, serious injuries or death to passengers and crew, and potential ground-level victims or targets.

To address this situation, CBP and TSA determined that, in order to best identify high-risk air cargo, it is essential to perform a risk assessment earlier in the air cargo supply chain, prior to the aircraft's departure. This risk assessment must be based on real-time data and intelligence available to determine if the cargo posed a risk to the aircraft in flight. CBP and TSA concluded that such a risk assessment should be performed at a centralized location and with input from both CBP and TSA, rather than at individual U.S. ports of entry. As a result, CBP and TSA formed a joint CBP–TSA targeting operation in a centralized location to allow collaboration between the DHS components. The joint CBP–TSA targeting operation utilizes CBP's ATS and other available intelligence as a risk targeting tool to leverage data and information already collected in order to secure international inbound air cargo. This allows CBP and TSA to address specific threat information in real time.

In addition, CBP, in collaboration with TSA and the air cargo industry, began operating a voluntary Air Cargo Advance Screening (ACAS) pilot in December 2010 to collect certain advance air cargo data earlier in the supply chain. Pilot participants voluntarily provide CBP with a subset of the 19 CFR 122.48a data, (referred to hereafter as the ''ACAS pilot data'') as early as practicable prior to loading the cargo onto the aircraft. This allows sufficient time for targeting before the departure of the aircraft. Based on the ACAS pilot data, when CBP determines that cargo is high-risk, that cargo will require screening pursuant to TSA-approved screening methods for high-risk cargo.[4]

The ACAS pilot has been successful in enabling CBP to identify a substantial amount of high-risk cargo. Significantly, CBP has identified a substantial number of air cargo shipments that have potential ties to terrorism and, therefore, may represent a threat. When this high-

[1] The screening methods are contained within the carrier's respective security program. The specific security measures are Sensitive Security Information, the public disclosure of which is prohibited by law to the extent that such disclosure would be detrimental to transportation security. *See* 49 U.S.C. 114(r), 49 CFR part 1520.

[2] 19 CFR 122.41 requires that all aircraft coming into the United States from a foreign area must make entry, subject to specified exceptions.

[3] *See* 19 CFR 122.48a(b) which provides that CBP must electronically receive the required advance air cargo data no later than the time of departure of the aircraft for the United States from any foreign port or place in North America, including locations in Mexico, Central America, South America (from north of the Equator only), the Caribbean, and Bermuda; or no later than four hours prior to the arrival of the aircraft in the United States for aircraft departing for the United States from any other foreign area.

[4] The ACAS pilot utilizes TSA authority to require enhanced screening for air cargo identified as high-risk pursuant to TSA-approved screening methods.

risk cargo is identified, enhanced cargo screening is performed pursuant to TSA-approved or accepted security programs.

During the ACAS pilot, air cargo that may have only received baseline screening per the carriers' TSA-approved or accepted security programs could be identified as high-risk through ACAS, triggering enhanced screening under the air carrier's security program-requirements. Through joint agency management and information sharing, the ACAS pilot uses tactical and real-time data to enhance the security of the air cargo supply chain. However, because the pilot is voluntary, it does not completely address the existing security vulnerability.

To address the continuing security threats, DHS is amending the CBP regulations to add a new section, 19 CFR 122.48b, to implement a mandatory ACAS program. CBP's objective for the ACAS program is to obtain the most accurate data at the earliest time possible with as little impact to the flow of commerce as possible. The new ACAS requirements apply to any inbound aircraft required to make entry under 19 CFR 122.41 that will have commercial cargo aboard. These are the same aircraft that are subject to the current 19 CFR 122.48a requirements. Under the amendments, an inbound air carrier and/or other eligible ACAS filer [5] must transmit specified air cargo data (hereafter referred to as ''ACAS data'') to CBP earlier in the supply chain so that CBP, can perform the necessary risk assessments prior to the aircraft's departure for the United States. The ACAS data must be transmitted as early as practicable, but no later than prior to loading of the cargo onto the aircraft.

Under the new time frame, CBP will have sufficient time before the aircraft departs to analyze the data, identify if the cargo has a nexus to terrorism, and, with TSA, take the necessary action to thwart a potential terrorist attack or other threat. Just like the ACAS pilot, the ACAS program will allow CBP to issue referrals and/or Do-Not-Load (DNL) instructions. Specifically, under the ACAS program, CBP will issue ACAS referrals when clarifying information and/or enhanced screening of high-risk cargo is needed to mitigate any risk. Referrals for screening will be issued pursuant to CBP authorities and resolved using TSA-approved or accepted security programs. The ACAS program will enable CBP to issue DNL instructions when a combination of ACAS data and intelligence points to a threat or terrorist plot in progress. As with the pilot, this rule and corresponding TSA-approved or accepted security program requirements will enhance the ability to prevent air cargo that may contain a potential bomb, improvised explosive device, or other material that may pose an immediate, lethal threat to the aircraft and/or its vicinity from being loaded aboard the aircraft and will allow law enforcement authorities to coordinate with necessary parties. Under the new regulations, CBP will be able to take appropriate enforcement action against ACAS filers who do not comply with the ACAS requirements. Upon issuance of changes to security program requirements under 49 CFR parts 1544 and 1546, TSA will enforce implementation of enhanced screening methods in response to an ACAS referral.

The new 19 CFR 122.48b specifies the general ACAS requirements, the eligible filers, the ACAS data, the time frame for providing the data to CBP, and the responsibilities of the filers, and explains the process regarding ACAS referrals and DNL instructions. The ACAS data is a subset of the data currently collected under 19 CFR 122.48a and is generally the same data that is currently collected in the ACAS pilot. However, the new regulation adds a new conditional data element, the master air waybill number, which is not required in the ACAS pilot. This data element will provide the location of the high-risk cargo and will allow CBP to associate the cargo with an ACAS submission.

CBP is also amending 19 CFR 122.48a to reference the ACAS requirements and to incorporate a few additional changes. Specifically, CBP is amending 19 CFR 122.48a to revise the definition of one of the data elements (consignee name and address) to provide a more accurate and complete definition, and to add a new data element requirement, the flight departure message (FDM), to enable CBP to determine the timeliness of ACAS submissions. CBP is also amending the applicable bond provisions in 19 CFR part 113 to incorporate the ACAS requirements.

In order to provide the trade sufficient time to adjust to the new requirements and in consideration of the business process changes that may be necessary to achieve full compliance, CBP will show restraint in enforcing the data submission requirements of this rule for twelve months after the effective date. While full enforcement will be phased in over this twelve month period, willful and egregious violators will be subject to enforcement actions at all times. In accordance with TSA regulations, inbound air carriers will be required to comply with their respective TSA-approved or accepted security program, including the changes being implemented for purposes of the ACAS program.

The chart below includes a summary of the current 19 CFR 122.48a advance air cargo data requirements, the requirements under the ACAS pilot, and the regulatory changes that are being promulgated by this rulemaking.

SUMMARY OF ACAS CHANGES TO CBP REQUIREMENTS

	Current requirements (19 CFR 122.48a)	ACAS pilot	ACAS IFR (new 19 CFR 122.48b requirements in addition to the current requirements in 19 CFR 122.48a)
Timing of Data Submission.	Time of departure or 4 hours prior to arrival depending on port of departure.	At the earliest point practicable prior to loading of the cargo onto the aircraft. No changes to the timing of 19 CFR 122.48a requirements.	As early as practicable, but no later than prior to loading of the cargo onto the aircraft. No changes to the timing of 19 CFR 122.48a requirements.

[5] See Section IV.B. for more information about the parties that may voluntarily provide the ACAS data and the eligibility requirements for these parties.

SUMMARY OF ACAS CHANGES TO CBP REQUIREMENTS—Continued

	Current requirements (19 CFR 122.48a)	ACAS pilot	ACAS IFR (new 19 CFR 122.48b requirements in addition to the current requirements in 19 CFR 122.48a)
Data	17 data elements[6] Mandatory: • Air waybill number(s)—master and house, as applicable. • Shipper name and address. • Consignee name and address. • Cargo description. • Total quantity based on the smallest external packing unit. • Total weight of cargo. • Trip/flight number. • Carrier/ICAO code. • Airport of arrival. • Airport of origin. • Scheduled date of arrival. Conditional: • Consolidation identifier. • Split shipment indicator. • Permit to proceed information. • Identifier of other party which is to submit additional air waybill information. • In-bond information. • Local transfer facility.	6 data elements (subset of 19 CFR 122.48a data elements) transmitted at the lowest air waybill level[7]. Mandatory: • Air waybill number. • Shipper name and address. • Consignee name and address. • Cargo description. • Total quantity based on the smallest external packing unit. • Total weight of cargo.	6 mandatory data elements (subset of 19 CFR 122.48a data elements and same as ACAS pilot) at the lowest air waybill level, plus one conditional and one optional data element. Mandatory: • Air waybill number. • Shipper name and address. • Consignee name and address. • Cargo description. • Total quantity based on the smallest external packing unit. • Total weight of cargo. Conditional: • Master air waybill number. Optional: • Second notify party. Addition of the Flight Departure Message (FDM) to the current 19 CFR 122.48a data elements.
Eligible Filers	Inbound air carriers, other filers eligible under 19 CFR 122.48a[8].	Inbound air carriers, other filers eligible under 19 CFR 122.48a, and freight forwarders.	Inbound air carriers, other filers eligible under 19 CFR 122.48a, and freight forwarders.
Bond requirements	All 19 CFR 122.48a filers are required to have an appropriate bond.	Parties are not required to have a bond to participate in pilot.	All ACAS filers are required to have an appropriate bond. Eligible filers include inbound air carriers, other eligible 19 CFR 122.48a filers,[9] and freight forwarders.

SUMMARY OF ACAS IMPACT ON TSA REQUIREMENTS

	Current requirements (49 CFR parts 1544 and 1546)	ACAS pilot	ACAS IFR (new 19 CFR 122.48b)
TSA Screening	Per TSA regulations, inbound air carriers are required to comply with the baseline and enhanced air cargo screening protocols contained within their respective TSA security programs[10].	Per TSA regulations, inbound air carriers are required to comply with the baseline and enhanced screening methods contained within their respective TSA security programs; under the ACAS pilot, enhanced screening methods as outlined in the carrier's security program apply to all ACAS referrals for screening.	Per TSA regulations, inbound air carriers are required to comply with the screening methods contained within their respective TSA-approved or accepted security programs. These security programs already include requirements to implement enhanced screening procedures for certain cargo, including cargo designated as elevated risk cargo because it meets any of the criteria set forth in the security programs. TSA will implement corresponding changes in these programs requiring implementation of enhanced screening methods for ACAS referrals.

III. Background and Purpose

The Homeland Security Act of 2002 established DHS to prevent terrorist attacks within the United States and to reduce the vulnerability of the United States to terrorism. *See* Public Law 107–296, 116 Stat. 2142. Terrorist threats to the aviation transportation system continue to represent a meaningful risk given the expressed intentions of terrorists, their persistent attempts to thwart security and target aviation, and the perceived fiscal and human consequences of a successful attack. In response to these aviation threats, DHS has created a comprehensive, coordinated policy for securing air cargo entering, transiting within, and departing the United States.

Within DHS, two components, CBP and TSA, have responsibilities for securing inbound air cargo bound for the United States. Under the current regulatory framework, TSA has responsibility for ensuring the security of the nation's transportation of cargo by air into the United States while CBP has responsibility for securing the nation's borders by preventing high-risk cargo

[6] 19 CFR 122.48a specifies, based on the type of shipment, what data the inbound air carrier must transmit to CBP and what data other eligible filers may transmit to CBP. For non-consolidated shipments, the inbound air carrier must transmit to CBP the 17 data elements (11 mandatory, 6 conditional) applicable for the air waybill record. For consolidated shipments, the inbound air carrier must transmit to CBP the 17 data elements (11 mandatory, 6 conditional) that are applicable to the master air waybill, and the inbound air carrier must transmit a subset of the data (7 mandatory, 1 conditional) for all associated house air waybills, unless another eligible filer transmits this data to CBP. For split shipments, the inbound air carrier must submit an additional subset of this data (9 mandatory, 3 conditional) for each house air waybill.

[7] The six ACAS data elements have been referred to by the trade as ''7+1'' data by considering ''shipper name and address'' and ''consignee name and address'' to be four data elements instead of two. As this data is included in 19 CFR 122.48a as two data elements, CBP will continue to refer to ''six ACAS data elements'' and not ''7+1.''

[8] Other filers eligible under 19 CFR 122.48a include Automated Broker Interface (ABI) filers (importers and brokers), Container Freight Stations/deconsolidators, Express Consignment Carrier Facilities, and air carriers that arranged to have the inbound air carrier transport the cargo to the United States.

[9] The inbound air carrier and other eligible 19 CFR 122.48a filers will already have a CBP bond to file the 19 CFR 122.48a data and that bond will be expanded under the ACAS program through no action on their part. This is because CBP is amending the various CBP bonds to incorporate the ACAS requirements as a condition of the bonds.

[10] Note that TSA screening occurs prior to the aircraft's departure for the United States. Under 19 CFR 122.48a, CBP usually identifies high-risk cargo on the basis of the submitted data when the aircraft is in flight and CBP performs inspections of air cargo identified as high-risk upon its arrival at a U.S. port of entry.

from entering the United States. CBP and TSA's current regulatory requirements are described below.

A. Current Regulatory Requirements

1. CBP Regulatory Requirements

Section 343(a) of the Trade Act of 2002, Public Law 107–210, 116 Stat. 981 (August 6, 2002), as amended (Trade Act) (19 U.S.C. 2071 note), authorizes CBP to promulgate regulations providing for the mandatory transmission of cargo information by way of a CBP-approved electronic data interchange (EDI) system before the cargo is brought into or departs the United States by any mode of commercial transportation. The required cargo information is that which is reasonably necessary to enable high-risk cargo to be identified for purposes of ensuring cargo safety and security pursuant to the laws enforced and administered by CBP.

On December 5, 2003, CBP published a final rule in the **Federal Register** (68 FR 68140) to effectuate the provisions of the Trade Act. Among other amendments, a new § 122.48a (19 CFR 122.48a) was added to title 19 of the CFR to implement advance reporting requirements for cargo brought into the United States by air. As provided in 19 CFR 122.48a, for any inbound air carrier required to make entry under 19 CFR 122.41 that will have commercial cargo aboard,[11] CBP must electronically receive certain data regarding that cargo through a CBP-approved EDI system no later than the time of departure of the aircraft for the United States (from specified locations) or four hours prior to arrival in the United States for all other locations.

Under 19 CFR 122.48a, the following advance air cargo data is required to be transmitted to CBP no later than the specified time frames:

(1) Air waybill number(s) (master and house, as applicable)
(2) Trip/flight number
(3) Carrier/ICAO (International Civil Aviation Organization) code
(4) Airport of arrival
(5) Airport of origin
(6) Scheduled date of arrival
(7) Total quantity based on the smallest external packing unit
(8) Total weight
(9) Precise cargo description
(10) Shipper name and address
(11) Consignee name and address
(12) Consolidation identifier (conditional)
(13) Split shipment indicator (conditional)
(14) Permit to proceed information (conditional)
(15) Identifier of other party which is to submit additional air waybill information (conditional)
(16) In-bond information (conditional)
(17) Local transfer facility (conditional)

Paragraph (d) of 19 CFR 122.48a specifies, based on the type of shipment, what data the inbound carrier must transmit to CBP and what data other eligible filers may elect to transmit to CBP. There are different requirements for consolidated and non-consolidated shipments. A consolidated shipment consists of a number of separate shipments that have been received and consolidated into one shipment by a party such as a freight forwarder for delivery as a single shipment to the inbound carrier. Each of the shipments in the consolidated shipment has its own air waybill, referred to as the house air waybill (HAWB). The HAWB provides the information specific to the individual shipment that CBP needs for targeting purposes. The HAWB does not include the flight and routing information for the consolidated shipment. Generally speaking, a master air waybill (MAWB) is an air waybill that is generated by the inbound carrier for a consolidated shipment. For consolidated shipments, the inbound carrier must transmit to CBP the above cargo data that is applicable to the MAWB, and the inbound carrier must transmit a subset of the above data for all associated HAWBs, unless another eligible filer transmits this data to CBP. For non-consolidated shipments, the inbound carrier must transmit to CBP the above cargo data for the air waybill record. For split shipments, *i.e.,* shipments that have been divided into two or more smaller shipments, either sent together or separately, the inbound carrier must transmit an additional subset of this data for each HAWB.

The method and time frames for presenting the data are specified in 19 CFR 122.48a(a) and (b). These provisions specify that CBP must electronically receive the above data through a CBP-approved EDI system no later than the time of the departure of the aircraft for the United States from any foreign port or place in North America, including locations in Mexico, Central America, South America (from north of the Equator only), the Caribbean, and Bermuda; or no later than four hours prior to the arrival of the aircraft in the United States for aircraft departing for the United States from any other foreign area.

CBP uses a risk assessment strategy to target cargo that may pose a security risk. Upon receipt of the advance air cargo data in the specified time frames, CBP analyzes the data at the U.S. port of entry where the cargo is scheduled to arrive utilizing ATS to identify potential threats. Upon the arrival of the cargo at the U.S. port of entry, CBP inspects all air cargo identified as high-risk to ensure that dangerous cargo does not enter the United States.

2. TSA Requirements

With respect to air cargo security, TSA is charged, among other things, with ensuring and regulating the security of inbound air cargo, including the screening of 100% of international air cargo inbound to the United States on passenger aircraft. This screening mandate, established by the Implementing Recommendations of the 9/11 Commission Act (9/11 Act) of August 2007, requires that TSA ensure all cargo transported onboard passenger aircraft operating to, from, or within the United States is physically screened at a level commensurate with the screening of passenger checked baggage. To achieve this, TSA is authorized to issue security requirements for U.S. and foreign air carriers at non-U.S. locations for flights inbound to the United States.[12]

TSA's regulatory framework consists of security programs that TSA issues and the air carriers adopt to carry out certain security measures, including screening requirements for cargo inbound to the United States from non-U.S. locations. Details related to the security programs are considered Sensitive Security Information (SSI),[13]

[11] Under 19 CFR 122.41, subject to specified exceptions, all aircraft coming into the United States from a foreign area must make entry.

[12] TSA regulations are found in 49 CFR chapter XII (parts 1500 through 1699). Parts 1544 and 1546 are specific to U.S. aircraft operators (*i.e.,* domestic or U.S. flagged air carriers) and foreign air carriers. Sections 1544.205(f) and 1546.205(f) provide that U.S. aircraft operators and foreign air carriers, respectively, must ensure that cargo loaded onboard an aircraft outside the U.S., destined to the U.S., is screened in accordance with the requirements in their security program. Sections 1544.101 and 1546.101 require that certain U.S. aircraft operators, and certain foreign air carriers landing or taking off in the U.S., must adopt and implement a security program in the form and with the content approved or accepted by TSA pursuant to the provisions in §§ 1544.103 and 1546.103. In addition, when TSA determines pursuant to § 1544.305 that additional security measures are necessary, it will issue Security Directives to U.S. aircraft operators. TSA may also issue Emergency Amendments to the security programs of U.S. aircraft operators and foreign air carriers as provided in §§ 1544.105(d) and 1546.105(d).

[13] ''Sensitive Security Information'' or ''SSI'' is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of

and are made available to carriers as necessary. Within this framework, TSA has the flexibility to modify its air cargo screening requirements as needed based on changing security environments, intelligence, and emergency situations through Emergency Amendments/Security Directives (EAs/SDs). Carriers may also request amendments to their respective security programs in response to changing market and industry conditions.[14] Additionally, carriers may request TSA approval to follow recognized National Cargo Security Program (NCSP) Recognition procedures in lieu of their TSA security programs.

NCSP Recognition is a key component of TSA's effort to achieve 100% screening of inbound cargo. NCSP Recognition is TSA's process that recognizes a partner country's air cargo supply chain security system as being commensurate with TSA's domestic and international air cargo security requirements. NCSP Recognition reduces the burden on industry resulting from applying essentially duplicative measures under two different security programs (*i.e.,* TSA's and the host country's programs), among other benefits. When approved by TSA, air carriers are able to follow the air cargo security measures of an NCSP recognized country in lieu of specific measures required by their security program.

TSA regulations and security programs require carriers to perform screening procedures and security measures on all cargo inbound to the United States. TSA requires aircraft operators and foreign air carriers to determine the appropriate level of screening (baseline versus enhanced) to apply to the cargo, in accordance with the cargo acceptance methods and risk determination criteria contained within their TSA security programs. The difference between baseline and enhanced screening is the level to which the cargo must be screened and the procedures by which the specific screening technology must be applied as outlined in the carrier's security program.

Baseline air cargo screening requirements (standard screening) depend on multiple factors, outlined in the carrier's security program. Baseline screening procedures for passenger air carriers require that 100% of cargo loaded onboard the aircraft must be screened by TSA-approved methods. These TSA-approved methods are set forth in the carrier's security program. Baseline screening procedures for all-cargo operations of inbound air cargo are different from the baseline screening procedures applied to air cargo in passenger operations because of the differing level of risk associated with all-cargo flights. The baseline screening measures applied to cargo on an all-cargo aircraft are dependent on the types of cargo, among other factors. Enhanced security screening measures are for higher risk cargo. Cargo that the carrier determines is higher risk pursuant to the risk determination criteria in their security program must be screened via TSA-approved enhanced screening methods as set forth in the carrier's security program.

TSA periodically inspects carriers' cargo facilities to ensure compliance with the required measures of the carriers' security programs. If TSA determines that violations of the requirements have occurred, appropriate measures will be taken and penalties may be levied.

B. Air Cargo Security Risks

A terrorist attack on an international commercial flight via its air cargo continues to be a very real threat. DHS has received specific, classified intelligence that certain terrorist organizations seek to exploit vulnerabilities in international air cargo security to cause damage to infrastructure, injury, or loss of life in the United States or onboard aircraft. Enhancements to the current CBP regulations and TSA security programs will help address the in-flight risk and evolving threat posed by air cargo. While TSA requires carriers to perform air cargo screening in accordance with their security program prior to the cargo departing for the United States, ACAS enables an analysis of data and intelligence pertaining to a particular cargo shipment. As a result, additional high-risk cargo may be identified. Under current CBP regulations, a 19 CFR 122.48a filer is not required to transmit data to CBP until the aircraft departs for the United States or four hours prior to arrival in the United States. While this requirement provides CBP with the necessary data to target high-risk cargo prior to the aircraft's arrival in the United States, it does not allow sufficient time for targeting prior to the cargo being loaded onto a U.S.-bound aircraft. Therefore, additional time to target air cargo shipments would increase the ability of CBP and TSA to identify high-risk cargo that otherwise might not be identified until it was already en route to the United States.

As explained in detail in the Executive Summary, terrorists have already exploited this security vulnerability by placing explosive devices aboard aircraft destined to the United States. After the October 2010 incident in which explosive devices concealed in two shipments of Hewlett-Packard printers addressed for delivery to Jewish organizations in Chicago, Illinois were discovered in cargo onboard aircraft destined to the United States, CBP and TSA determined that these evolving terrorist threats require a more systematic and targeted approach to identify high-risk cargo. With the existing security vulnerability, unauthorized weapons; explosive devices; WMDs; chemical, biological or radiological weapons; and/or other destructive items could be placed in air cargo on an aircraft destined to the United States, and potentially, be detonated in flight. The resulting terrorist attack could cause destruction of the aircraft, loss of life or serious injuries to passengers and crew, additional casualties on the ground, and disruptions to the airline industry.

Since terrorists continue to seek out and develop innovative ways to thwart security measures, it is essential that CBP and TSA adapt their policies and use shared intelligence to address these evolving terrorist threats. To address the terrorist threat in 2010, CBP and TSA determined that it was essential to combine efforts to establish a coordinated policy to address aviation security. After consulting industry representatives and international partners, they decided that a risk-based assessment strategy utilizing real-time data and intelligence to target high-risk cargo earlier in the supply chain was essential. Such a strategy would deter terrorists from placing high-risk, dangerous cargo on an aircraft, enable CBP and TSA to detect explosives, WMDs, chemical and/or biological weapons before they are loaded aboard aircraft, and reduce the threat of a terrorist attack from occurring in-flight.

Specifically, CBP and TSA determined that certain advance air cargo data needs to be transmitted to CBP at the earliest point practicable in the supply chain, before the cargo is loaded onto the aircraft. This earlier time frame would provide sufficient time to target and identify high-risk cargo so that the relevant parties can take action as directed to mitigate the risk prior to the aircraft's departure. It was concluded that TSA's screening authority could be utilized to mitigate these risks. Therefore, in 2010, CBP and TSA established a joint CBP–TSA targeting operation and launched an

transportation. The protection of SSI is governed by 49 CFR part 1520.

[14] Amendment procedures are in §§ 1544.105(b), (c), and (d) and 1546.105(b), (c), and (d).

ACAS pilot to collect the necessary data from pilot participants earlier in the process. The ACAS pilot is discussed in detail in Section III.C.

The joint CBP–TSA targeting operation utilizes CBP's ATS and other available intelligence as a dynamic risk targeting tool to leverage the data and information already collected in order to secure inbound air cargo. This allows CBP and TSA to address specific threat information in real time and identify any cargo that has a nexus to terrorism. This cooperative targeting, in combination with the existing CBP and TSA air cargo risk assessment measures, increases the security of the global supply chain. The CBP–TSA joint targeting operation continues to operate today and together with the ACAS pilot, and now this rule, serves as an important additional layer of security to address the new and emerging threats to air cargo.

C. ACAS Pilot

To collect advance air cargo data earlier in the supply chain, CBP, in collaboration with TSA and the air cargo industry, established the ACAS pilot in December 2010.[15] The pilot was created to explore the feasibility of collecting data on inbound air cargo prior to loading, to determine the time frame under which participants could provide reasonably reliable and accurate data, and to test the technological aspects of transmitting the ACAS data and the operational logistics of resolving ACAS referrals.

Many different entities are participating in the pilot including express consignment air courier companies, passenger carriers, all-cargo carriers, and freight forwarders. Pilot participants volunteer to electronically provide CBP with a specified subset of 19 CFR 122.48a data (ACAS pilot data) as early as possible prior to loading of the cargo onto an aircraft destined to the United States.

To determine what data would be effective to target, identify, and mitigate high-risk cargo prior to loading, CBP evaluated the advance air cargo data that is currently transmitted under 19 CFR 122.48a. While the 19 CFR 122.48a data and the ACAS pilot data are used in conjunction to ensure the safety and security of air cargo throughout the supply chain, they are collected at different time frames for different risk assessments. The 19 CFR 122.48a data is used to evaluate risk prior to arrival at a U.S. port of entry to prevent high-risk cargo from entering the United States. ACAS pilot data is essential to ensure that high-risk cargo that poses a risk to the aircraft during flight is not loaded. Accordingly, CBP evaluated each 19 CFR 122.48a data element to determine whether the data would be effective in assessing the cargo's risk prior to loading of the cargo onto the aircraft, and whether the data was consistently available and predictable early in the lifecycle of the cargo in the global supply chain. CBP also consulted with the industry about what data would be available and predictable at an earlier time frame. CBP concluded that some of the 19 CFR 122.48a data, including the mandatory flight and routing information, was too unpredictable to effectively target high-risk cargo under the earlier time frame.

CBP determined that six of the mandatory 19 CFR 122.48a data elements, when viewed together, met its criteria and would be included in the ACAS pilot. This subset of 19 CFR 122.48a is the ACAS pilot data. The ACAS pilot data elements are: Air waybill number, total quantity based on the smallest external packing unit, total weight of cargo, cargo description, shipper name and address, and consignee name and address.[16] These data elements must be provided to CBP at the lowest air waybill level (*i.e.,* house air waybill level for consolidated shipments or regular air waybill level for non-consolidated shipments).

CBP determined that the data described above would enable the agency to more effectively conduct database searches aimed at identifying possible discrepancies and high-risk cargo. When taken together, the six data elements would provide CBP with pertinent information about the cargo and enable CBP to better evaluate the cargo's threat level prior to loading.

While the ACAS pilot data only consists of six elements, CBP encourages participants to provide any additional available data. Any additional available data that is provided enhances the accuracy of the targeting.

Upon receipt of the ACAS pilot data, the joint CBP–TSA targeting operation utilizes CBP's ATS and other intelligence to analyze the ACAS data to better identify cargo that has a nexus to terrorism and poses a high security risk. CBP issues an ACAS referral for any air cargo identified as high-risk and specifies what action the ACAS filer needs to take to address the referral and mitigate the risk. There are two types of referrals that may be issued after a risk assessment of the ACAS pilot data: Referrals for information and referrals for screening. The mitigation of these referrals depends on the directions provided by CBP and/or TSA. A referral for information is usually mitigated when the ACAS filer provides clarifying information related to the required ACAS pilot data. Referrals for screening are issued pursuant to CBP authorities and resolved using TSA-approved or accepted security programs.[17] A referral for screening is mitigated by confirmation that enhanced screening has been performed pursuant to the appropriate TSA-approved screening methods contained in the carrier's security program.[18] The inbound air carrier is prohibited from loading cargo

[15] On October 24, 2012, CBP published a general notice in the **Federal Register** (77 FR 65006) announcing the formalization and expansion of the ACAS pilot. Since then, CBP has published several additional **Federal Register** notices. The email address for the submission of applications and comments was corrected in 77 FR 65395 (Oct. 26, 2012); the application period was reopened for 15 days in 77 FR 76064 (Dec. 26, 2012); and the date of the close of the reopened application period was corrected in 78 FR 315 (Jan. 3, 2013). On April 23, 2013, CBP published a notice in the **Federal Register** (78 FR 23946) extending the ACAS pilot period through October 26, 2013, and reopening the application period through May 23, 2013. On October 23, 2013, CBP published a notice in the **Federal Register** (78 FR 63237) extending the ACAS pilot program through July 26, 2014, and reopening the application period to accept applications from new ACAS pilot participants through December 23, 2013. On July 28, 2014, CBP published a notice in the **Federal Register** (79 FR 43766) extending the ACAS pilot program through July 26, 2015, and reopening the application period to accept applications from new ACAS pilot participants through September 26, 2014. On July 27, 2015, CBP published a notice in the **Federal Register** (80 FR 44360) extending the ACAS pilot program through July 26, 2016, and reopening the application period to accept applications from new ACAS pilot participants through October 26, 2015. On July 22, 2016, CBP published a notice in the **Federal Register** (81 FR 47812) extending the ACAS pilot program through July 26, 2017. On July 24, 2017, CBP published a notice in the **Federal Register** (82 FR 34319) extending the ACAS pilot program through July 26, 2018.

[16] The six ACAS data elements have been referred to by the trade as ''7+1'' data by considering ''shipper name and address'' and ''consignee name and address'' to be four data elements instead of two. As this data is included in 19 CFR 122.48a as two data elements, CBP will continue to refer to ''six ACAS data elements'' and not ''7+1.''

[17] TSA's involvement in ACAS is authorized under 49 U.S.C. 114(f) and (m), and 44901(g), as amended by the Implementing Recommendations of the 9/11 Commission Act, Public Law 110–53, 121 Stat. 266 (Aug. 3, 2007), and under authority of the Secretary of Homeland Security, as delegated to the Assistant Secretary of Homeland Security for TSA, under the Homeland Security Act of 2002, as amended (6 U.S.C. 112(b)).

[18] Under the ACAS pilot, industry participants regulated by TSA have been and will continue to be required to follow TSA's screening protocols as outlined in their respective security programs and applicable SDs/EAs. This includes baseline screening requirements for air cargo, as well as enhanced security screening measures for higher risk cargo. ACAS results may require that the carriers conduct enhanced screening procedures on certain cargo that otherwise would have received only baseline screening.

onto the aircraft destined for the United States until all ACAS referrals are resolved on that cargo.

Based on the risk assessment, if CBP and TSA determine that the cargo may contain a potential bomb, improvised explosive device, or other material that may pose an immediate, lethal threat to the aircraft and/or its vicinity, CBP issues a DNL instruction. Cargo receiving a DNL instruction must not be transported. Such cargo requires adherence to the appropriate protocols and directions provided by the applicable law enforcement authority.

The ACAS pilot has proven to be extremely beneficial. Most importantly, it has enabled CBP to identify numerous instances of high-risk cargo prior to the cargo being loaded onto an aircraft destined to the United States. Although to date CBP has not had to issue a DNL instruction, CBP has identified a significant number of air cargo shipments that have potential ties to terrorism and, therefore, may represent a threat to aviation security. In each instance, enhanced cargo screening pursuant to the TSA-approved screening methods was required to ensure that the cargo presented no risk to the safety and security of the aircraft.

Another benefit of the ACAS pilot is that an ACAS referral may require enhanced screening on cargo that otherwise would have received only baseline screening pursuant to TSA-approved screening methods in the carrier's security program. The ACAS pilot program is an additional layer of security in DHS's air cargo security approach. An additional benefit of the pilot is that it has allowed the industry to test the collection of the ACAS pilot data in the earlier time frame and the technological capacity to collect and transmit the data electronically.

Despite the benefits, the pilot has certain limitations which stem from the fact that it is a voluntary program. Because the pilot is voluntary, not all inbound air carriers participate; thus, there is a data collection gap. Also, because the pilot is voluntary, not all ACAS pilot data is transmitted in a timely manner and not all ACAS referrals are resolved prior to departure. This means that high-risk cargo may be transported aboard U.S.-bound aircraft, placing the aircraft, passengers and crew at risk. Finally, because the pilot is voluntary, CBP cannot take enforcement action against participants who fail to transmit ACAS data in a timely manner, do not address an ACAS referral, or otherwise fail to comply with the requirements. While ACAS pilot participants usually transmit ACAS data in a timely manner, and take the necessary action to comply with ACAS referrals and other requirements, voluntary compliance is not always sufficient to ensure aviation security. Due to these limitations, air cargo continues to pose a security threat that can be exploited by terrorists. Therefore, CBP is establishing a mandatory ACAS program.

IV. Mandatory ACAS Program

To fulfill the Trade Act mandate to ensure air cargo safety and security, CBP is establishing a mandatory ACAS program that will require the submission of certain advance air cargo data earlier than is required under 19 CFR 122.48a. This will enable CBP to identify, target and mitigate high-risk cargo before the cargo is transported aboard an aircraft destined to the United States. CBP's objective for the ACAS program is to obtain the most accurate data at the earliest time possible with as little impact to the flow of commerce as possible. CBP believes that the ACAS program, in conjunction with the current CBP 19 CFR 122.48a regulations and TSA's updated security programs, will significantly enhance air cargo safety and security as mandated by the Trade Act.

In order to implement ACAS as a mandatory program, CBP must adhere to the parameters applicable to the development of regulations under section 343(a) of the Trade Act. While aviation security and securing the air cargo supply chain are paramount, these Trade Act parameters require CBP to give due consideration to the concerns of the industry and the flow of commerce. These parameters include, among others, provisions requiring consultation with the industry and consideration of the differences in commercial practices and operational practices among the different parties. In addition, the parameters require that the information collected pursuant to the regulations be used for ensuring cargo safety and security, preventing smuggling, and commercial risk assessment targeting, and require CBP to balance the impact on the flow of commerce with the impact on cargo safety and security. The parameters also require that the obligations imposed must generally be upon the party most likely to have direct knowledge of the required information and if not, then mandate that the obligations imposed take into account ordinary commercial practices for receiving data and what the party transmitting the information reasonably believes to be true. In developing the ACAS regulations, CBP considered all of the parameters. The adherence to these parameters is noted throughout the document.

Throughout the development of the ACAS pilot and this interim final rule, CBP consulted extensively with the air cargo industry about their business practices and how to best formulate the ACAS program to take these business practices into consideration in developing a regulatory program that addressed the security concerns. As a result of these industry consultations, CBP has been able to develop ACAS regulations that, in accordance with the parameters of the Trade Act, balance the impact on the flow of commerce with the impact on cargo safety and security and take into consideration existing standard business practices and interactions among stakeholders. This allows CBP to target data earlier while minimizing negative impacts on operations, the air cargo business model, and the movement of legitimate goods.

In developing these regulations, CBP also considered international efforts to develop advance air cargo information security programs. The ACAS program is part of a global effort to develop advance cargo information programs with agreed-upon international standards that collect and analyze the information prior to loading. CBP has participated in the World Customs Organization (WCO) Technical Experts Group Meeting on Air Cargo Security, the WCO/ICAO Joint Working Group on Advance Cargo Information and the WCO SAFE [19] Working Groups meetings to inform foreign governments and trade associations on the progress of the ACAS pilot and to shape discussions on establishing global customs guidelines on air advance cargo information as well on identifying areas for collaboration between Customs and Aviation Security (AVSEC) authorities on air cargo security. In June 2015, the mandatory ACAS data established in this rule was incorporated into the WCO SAFE Framework of Standards.[20] CBP believes that the ACAS program is consistent with these international programs.

In developing the program, CBP also considered the results of the ACAS pilot. While the ACAS pilot has been operating successfully, CBP has noted a few areas for improvement. The ACAS program addresses these shortcomings. They include minor changes to the definition of consignee name and

[19] Acronym for Framework of Standards to Secure and Facilitate Global Trade (''SAFE Framework of Standards'').

[20] The shipper name and address (referred to as the consignor per the WCO guidelines), consignee name and address, cargo description, piece count, weight and the air waybill number.

address, adding the MAWB number as a conditional data element, requiring the submission of the FDM, and adding enforcement provisions. These issues are discussed in more detail in Sections IV.D., I., and J. below.

To implement the ACAS program, CBP is adding a new section, 19 CFR 122.48b, titled Air Cargo Advance Screening (ACAS), and making certain revisions to 19 CFR 122.48a. Additionally, CBP is revising the relevant bond provisions in 19 CFR part 113 to incorporate the ACAS requirements.

A. New 19 CFR 122.48b, Air Cargo Advance Screening (ACAS)

The new ACAS regulation provides that, pursuant to section 343(a) of the Trade Act, for any inbound aircraft required to make entry under 19 CFR 122.41 that will have commercial cargo aboard, CBP must electronically receive from the inbound air carrier and/or another eligible ACAS filer the ACAS data no later than the specified ACAS time frame.[21] The required ACAS data must be transmitted to CBP through a CBP-approved EDI as early as practicable, but no later than prior to loading of the cargo on the aircraft. The ACAS data will be used to determine whether the cargo is high-risk and may result in the issuance of an ACAS referral or a DNL instruction. Any ACAS referral must be resolved prior to departure of the aircraft. Any cargo that is issued a DNL instruction must not be loaded onto aircraft and requires immediate adherence to the protocols and directions from law enforcement authorities. Below, we describe the new program including the eligible ACAS filers, the ACAS data, the ACAS referrals, DNL instructions, the bonds required to file ACAS data, and available enforcement actions.

B. Eligible ACAS Filers

The new 19 CFR 122.48b(c) specifies which parties are eligible to file ACAS data. Eligible parties include the inbound air carrier and other parties as specified below. The inbound air carrier is required to file the ACAS data if no other eligible party elects to file. CBP is allowing parties other than the inbound air carrier to file because, in some cases, these other parties will have access to accurate ACAS data sooner. For effective targeting to occur prior to loading, it is essential that the most accurate ACAS data be filed at the earliest point possible in the supply chain. This approach is consistent with the Trade Act parameters that require CBP to obtain data from the party most likely to have direct knowledge of the data and to balance the impact on the flow of commerce with the impact on cargo safety and security.

In addition to the inbound air carrier, the other parties that may elect to file the ACAS data are all the parties eligible to elect to file advance air cargo data under 19 CFR 122.48a(c), as well as foreign indirect air carriers, a term which encompasses freight forwarders. Parties eligible to elect to file advance air cargo data under 19 CFR 122.48a(c) include an Automated Broker Interface (ABI) filer (importer or its Customs broker) as identified by its ABI filer code; a Container Freight Station/deconsolidator as identified by its FIRMS (Facilities Information and Resources Management System) code; an Express Consignment Carrier Facility as identified by its FIRMS code; or, an air carrier as identified by its carrier IATA (International Air Transport Association) code, that arranged to have the inbound air carrier transport the cargo to the United States.

Freight forwarders (also referred to as foreign indirect air carriers) are generally ineligible to directly file the advance air cargo data required under 19 CFR 122.48a. CBP decided to allow freight forwarders to participate in the ACAS pilot because HAWB data is generally available to the freight forwarder earlier than it is available to the inbound air carrier. CBP has concluded that the inclusion of freight forwarders in the ACAS pilot has resulted in CBP's receipt of the data earlier in some cases. Therefore, CBP is including freight forwarders as eligible filers under 19 CFR 122.48b.

For purposes of ACAS, foreign indirect air carrier (FIAC) is defined as any person, not a citizen of the United States, that undertakes indirectly to engage in the air transportation of property. This is consistent with the definitions in the regulations of the Department of Transportation (14 CFR 297.3(d)) and the TSA (*see* 49 CFR 1540.5, defining ''indirect air carrier''). This definition includes a foreign air freight forwarder, that is, a FIAC that is responsible for the transportation of property from the point of receipt to point of destination, and utilizes for the whole or any part of such transportation the services of a direct air carrier or its agent, or of another foreign indirect cargo air carrier. Certain FIACs, such as deconsolidators or ABI filers, may already be eligible to file ACAS data if they separately qualify as an eligible filer under 19 CFR 122.48a(c). FIACs who are not eligible 19 CFR 122.48a filers are still eligible to transmit ACAS only filings.

Under the new 19 CFR 122.48b(c)(3), all inbound air carriers and other eligible entities electing to be ACAS filers must meet the following prerequisites to file the ACAS data:

- Establish the communication protocol required by CBP for properly transmitting an ACAS filing through a CBP-approved EDI system.[22] As set forth in the new 19 CFR 122.48b(a), the ACAS data must be transmitted through such a system.
- Provide 24 hours/7 days a week contact information consisting of a telephone number and email address. CBP will use the 24 hours/7 days a week contact information to notify, communicate, and carry out response protocols for a DNL instruction, even if an electronic status message is sent.
- Report all of the originator codes that will be used to file ACAS data. (Originator codes are unique to each filer to allow CBP to know who initiated the filing and to identify the return address to provide status messages.) If, at any time, an ACAS filer wishes to utilize additional originator codes to file ACAS data, the originator codes must be reported to CBP prior to their use to ensure that CBP can link the ACAS data to the complete set of advance data transmitted pursuant to 19 CFR 122.48a. This will allow CBP to easily identify all the ACAS and 19 CFR 122.48a filers for one shipment.
- Possess the appropriate bond containing all the necessary provisions of 19 CFR 113.62, 113.63, or 113.64. CBP is amending the regulations covering certain bond conditions, as described in Section IV.I., to incorporate the ACAS requirements.

C. Time Frame for Filing ACAS Data

The new 19 CFR 122.48b(b) sets forth the time frame for submission of the ACAS data. As noted previously, the ACAS filing requirements are applicable to any inbound aircraft required to make entry under 19 CFR 122.41 that will have commercial cargo aboard. (These same aircraft are subject to the requirements in 19 CFR 122.48a). For such aircraft, the ACAS data must be transmitted as early as practicable, but no later than prior to loading of the cargo onto the aircraft.[23] Based on the

[21] As provided in 19 CFR 122.41, subject to specified exceptions, all aircraft coming into the United States from a foreign area must make entry.

[22] Instructions are currently set forth at *https://www.cbp.gov/trade/automated/interconnection-security-agreement/instructions.*

[23] If an aircraft en route to the United States stops at one or more foreign airports and cargo is loaded, an ACAS filing would be required for the cargo loaded on each leg of the flight prior to loading of that cargo.

operation of the ACAS pilot, CBP believes that the ACAS time frame provides CBP sufficient time to perform a risk assessment prior to loading of the cargo aboard the aircraft without unduly impacting the flow of commerce.

Although CBP has determined that it is not commercially feasible to require the submission of the ACAS data a specified number of hours prior to loading of the cargo onto the aircraft, CBP encourages filers to transmit the required data as early as practicable. The earlier the ACAS data is filed, the sooner CBP can perform its targeting and the more time the filer or other responsible party will have to address any ACAS referral or DNL instruction. If the ACAS data is transmitted at the last minute and CBP issues an ACAS referral or DNL instruction, the scheduled departure of the flight could be delayed.

D. ACAS Data

The ACAS data for the ACAS program is a subset of the 19 CFR 122.48a data.[24] It differs slightly from the ACAS pilot data. After an evaluation of the ACAS pilot, CBP determined that some improvements and additions to the data were needed. The ACAS data for the program is listed in the new 19 CFR 122.48b(d). As discussed below, some of the data is mandatory, one data element is conditional and other data elements are optional. ACAS data will only be used to the extent consistent with the Trade Act.

1. ACAS Data Definitions

The definitions of the ACAS data elements are set forth in 19 CFR 122.48a. The relevant definitions for non-consolidated shipments are set forth in 19 CFR 122.48a(d)(1) and the relevant definitions for consolidated shipments are set forth in both 19 CFR 122.48a(d)(1) and (d)(2).

2. Mandatory ACAS Data

The new 19 CFR 122.48b(d)(1) sets forth the mandatory ACAS data required in all circumstances. The mandatory ACAS data elements are the same six data elements as the ACAS pilot data. They are: shipper name and address, consignee name and address, cargo description, total quantity based on the smallest external packing unit, total weight of cargo, and air waybill number. As explained above in Section III.C., each of these six data elements provides CBP with crucial information needed to target and identify high-risk cargo before it is loaded onto an aircraft destined to the United States. CBP has determined that when taken together, these six data elements, if provided within the ACAS time frame, will enable CBP to perform an effective risk assessment. Based on the ACAS pilot, CBP believes that ACAS filers will be able to provide this data in a consistent, timely, and reasonably accurate manner.

The ACAS data is required to be transmitted at the lowest air waybill level (*i.e.,* at the HAWB level if applicable) by all ACAS filers. As explained in detail in Section IV.J.2., CBP is making minor changes to the definition of consignee name and address in 19 CFR 122.48a(d) for clarity. The mandatory ACAS data elements for the ACAS program with the revised definition are:

(1) *Shipper name and address.* The name and address of the foreign vendor, supplier, manufacturer, or other similar party is acceptable. The address of the foreign vendor, etc., must be a foreign address. The identity of a carrier, freight forwarder, or consolidator is not acceptable. (This definition is in 19 CFR 122.48a(d)(1)(x) for non-consolidated shipments and in 19 CFR 122.48a(d)(2)(vi) for consolidated shipments.)

(2) *Consignee name and address.* This is the name and address of the party to whom the cargo will be delivered regardless of the location of the party; this party need not be located at the arrival or destination port. (This definition is in revised 19 CFR 122.48a(d)(1)(xi) for non-consolidated shipments and in revised 19 CFR 122.48a(d)(2)(vii) for consolidated shipments.)

(3) *Cargo description.* A precise cargo description or the 6-digit Harmonized Tariff Schedule (HTS) number must be provided. Generic descriptions, specifically those such as ''FAK'' (''freight of all kinds''), ''general cargo,'' and ''STC'' (''said to contain'') are not acceptable. (This definition is in 19 CFR 122.48a(d)(1)(ix) for non-consolidated shipments and in 19 CFR 122.48a(d)(2)(iii) for consolidated shipments.)

(4) *Total quantity based on the smallest external packing unit.* For example, 2 pallets containing 50 pieces each would be considered 100, not 2. (This definition is in 19 CFR 122.48a(d)(1)(vii) for non-consolidated shipments and in 19 CFR 122.48a(d)(2)(iv) for consolidated shipments.)

(5) *Total weight of cargo.* This may be expressed in either pounds or kilograms. (This definition is in 19 CFR 122.48a(d)(1)(viii) for non-consolidated shipments and in 19 CFR 122.48a(d)(2)(v) for consolidated shipments.)

(6) *Air waybill number.* The air waybill number must be the same in the ACAS filing and the 19 CFR 122.48a filing. For non-consolidated shipments, the air waybill number is the International Air Transport Association (IATA) standard 11-digit number, as provided in 19 CFR 122.48a(d)(1)(i). For consolidated shipments, the air waybill number that is a mandatory data element for ACAS purposes is the HAWB number. As provided in 19 CFR 122.48a(d)(2)(i), the HAWB number may be up to 12 alphanumeric characters (each alphanumeric character that is indicated on the HAWB must be included in the electronic transmission; alpha characters may not be eliminated).

3. Conditional ACAS Data: Master Air Waybill Number

In addition to the mandatory ACAS data, CBP is adding the MAWB number as a conditional ACAS data element. As provided by 19 CFR 122.48a(d) and (d)(1)(i), the MAWB number is the IATA standard 11-digit number. Although the MAWB number is one of the required 19 CFR 122.48a data elements for consolidated shipments, it is not an ACAS pilot data element. Based on CBP's experience with the pilot, CBP is including the MAWB number as an ACAS data element in certain situations. The new 19 CFR 122.48b(d)(2) lists those situations. The inclusion of the MAWB number in the ACAS data will address several issues that have arisen during the pilot.

CBP has found that oftentimes the transmitted ACAS pilot data by itself is insufficient to fully analyze whether the required ACAS data has been transmitted for a particular flight. This is because the ACAS pilot data only requires the data at the HAWB level. As a result, it provides data about the cargo and the relevant parties for a specific shipment but does not provide any data about the flight and routing of that shipment. Without that information, it is difficult to link the ACAS data with a particular flight and to estimate the time and airport of departure to the United States. This makes it difficult to

[24] 19 CFR 122.48a specifies, based on the type of shipment, what data the inbound air carrier must transmit to CBP and what data other eligible filers may transmit to CBP. For non-consolidated shipments, the inbound air carrier must transmit to CBP the 17 data elements (11 mandatory, 6 conditional) applicable for the air waybill record. For consolidated shipments, the inbound air carrier must transmit to CBP the 17 data elements (11 mandatory, 6 conditional) that are applicable to the MAWB, and the inbound air carrier must transmit a subset of the data (7 mandatory, 1 conditional) for all associated HAWBs, unless another eligible filer transmits this data to CBP. For split shipments, the inbound air carrier must submit an additional subset of this data (9 mandatory, 3 conditional) for each HAWB.

locate the cargo for risk mitigation. The MAWB data provides the necessary information about the flight and routing of the shipment.

CBP also found that without the ability to link the HAWB number to a MAWB, the inbound air carrier might not be able to verify whether an ACAS assessment was performed for the cargo before it is accepted and loaded.

CBP is requiring the MAWB number in the following situations:

(1) When the ACAS filer is a different party from the party that will file the 19 CFR 122.48a data. The MAWB number is required in this situation because CBP needs a way to link the associated HAWBs transmitted as part of the ACAS data with the relevant MAWB provided by the 19 CFR 122.48a filer. To allow for earlier submission, an initial ACAS filing may be transmitted without the MAWB number, as long as the MAWB number is transmitted by the ACAS filer or the inbound air carrier according to the applicable ACAS time frame.

(2) When the ACAS filer transmits all the 19 CFR 122.48a data in the applicable ACAS time frame through a single filing. Since the MAWB number is required 19 CFR 122.48a data for consolidated shipments, the ACAS filer will be providing the MAWB number by default in this single filing.

(3) When the inbound air carrier would like to receive a status check from CBP on the ACAS assessment of specific cargo. If the MAWB number is transmitted, either by the ACAS filer or the inbound air carrier, CBP will be able to provide this information to the inbound air carrier upon request. If the MAWB number is not transmitted, CBP has no means of linking the ACAS data to a particular flight, as explained above, and cannot accurately respond to the query.

CBP believes that requiring the MAWB number in these three situations and encouraging it in other situations, best balances the need to collect this important data without negatively impacting trade operations.[25]

When the MAWB number is required, it must be provided for each leg of the flight for any inbound aircraft required to make entry under 19 CFR 122.41 that will have commercial cargo aboard.

4. Optional ACAS Data

The new 19 CFR 122.48b(d)(3) lists optional data that may be provided by ACAS filers. ACAS filers may choose to designate a ''Second Notify Party,'' which is any secondary stakeholder or interested party in the importation of goods to the United States, to receive shipment status messages from CBP. This party does not have to be the inbound air carrier or eligible ACAS filer. Allowing ACAS filers the option of electing a ''Second Notify Party'' enables other relevant stakeholders to receive shipment status messages from CBP. This functionality will increase the ability to respond expeditiously to DNL instructions by warning additional stakeholders of such a situation through direct contact and automated data.

ACAS filers are also encouraged to file additional information regarding any of the ACAS data (*e.g.,* telephone number, email address, and/or internet protocol address for shipper and/or consignee) or any data listed in 19 CFR 122.48a that is not ACAS data. This additional data will assist CBP in its risk assessment and may allow for a faster ACAS disposition.

CBP and/or TSA may also require additional information such as flight numbers and routing information to address ACAS referrals for screening. This information will be requested in a referral message, when necessary.

E. Filing and Updating the ACAS Data

CBP's objective for the ACAS program is to obtain the most accurate data at the earliest time possible with as little impact to the flow of commerce as possible. To achieve this objective, CBP is allowing multiple parties to file the ACAS data, allowing flexibility in how the ACAS data is filed, and requiring that the ACAS data be disclosed to the filer by the parties in the supply chain with the best knowledge of the data.

The eligible ACAS filers and the prerequisites to be an ACAS filer are described above in Section IV.B. If no other eligible filer elects to file, the inbound air carrier must file the ACAS data. Even if another eligible party does elect to file the ACAS data, the inbound air carrier may also choose to file.

CBP allows flexibility in how the ACAS data is filed. As explained above in Section IV.D.3, an ACAS filer, who is also a 19 CFR 122.48a eligible filer, may choose to file the 19 CFR 122.48a filing in accordance with the ACAS time frame. This would be a single filing and would satisfy both the 19 CFR 122.48a and the ACAS filing requirements. Regardless of which party chooses to file or how they choose to file, the ACAS data must be transmitted to CBP within the ACAS time frame.

To ensure that an ACAS filer has the most accurate ACAS data at the time of submission, CBP requires certain parties, with knowledge of the cargo, to provide the ACAS filer with the ACAS data.[26] Specifically, the new 19 CFR 122.48b(c)(4) provides that when an eligible ACAS filer, who arranges for and/or delivers the cargo, does not elect to file the ACAS data, that party must fully disclose and present the inbound air carrier with the ACAS data. The inbound air carrier must then present this data electronically to CBP. The new 19 CFR 122.48b(c)(5) provides that any other entity that is not an eligible ACAS filer, but is in possession of ACAS data must fully disclose and present the ACAS data to either the inbound air carrier or other eligible ACAS filer, as applicable. The inbound air carrier or other eligible ACAS filer must then transmit such data to CBP.

While CBP emphasizes the need for the ACAS data as early as possible in the supply chain, the ACAS filer is also responsible for updating the ACAS data, if any of the data changes or more accurate data becomes available. Updates are required up until the time the 19 CFR 122.48a filing is required.[27]

When the ACAS filing is transmitted to CBP, the ACAS filer receives a status message confirming the submission. If the ACAS filer designates a Second Notify Party, that party will also receive the status notification (and any subsequent status notifications).[28] After

[25] As mandated by the Trade Act, CBP consulted with the industry regarding the feasibility of including the MAWB number as ACAS data. Some industry representatives indicated that providing the MAWB number early in the supply chain was not operationally feasible and would inhibit the transmission of the ACAS data as early as possible in the supply chain. Some express carriers stated that their guaranteed on-time delivery service required flexibility in their transportation routes and that current business practices do not involve assigning a MAWB number until the very last minute prior to departure. As a result, CBP decided to only require the MAWB number in certain situations where it was needed and/or could be reasonably provided.

[26] This is in accordance with the Trade Act parameters. Section 343(a)(3)(B) provides that in general, the requirement to provide particular information shall be imposed on the party most likely to have direct knowledge of that information. It further provides that where requiring information from the party with direct knowledge of that information is not practicable, the regulations shall take into account how, under ordinary commercial practices, information is acquired by the party on which the requirement is imposed, and whether and how such party is able to verify the information. It provides that where information is not reasonably verifiable by the party on which a requirement is imposed, the regulations shall permit that party to transmit information on the basis of what it reasonably believes to be true.

[27] The 19 CFR 122.48a data must be transmitted to CBP no later than the time of departure of the aircraft for the United States (from specified nearby foreign locations) or four hours prior to arrival in the United States for all other foreign locations. See Section III.A.1. for additional information on the 19 CFR 122.48a time frames.

[28] If the inbound air carrier is neither the ACAS filer nor the Second Notify Party, the inbound air carrier can still obtain the ACAS status of a shipment if: (1) The ACAS filer submits the MAWB number, whether in the original ACAS filing or later. (This will allow the inbound air carrier to

the risk assessment of each cargo shipment is performed, the ACAS filer will receive either an ''ACAS assessment complete'' clearance message, an ACAS referral, or a DNL instruction.

F. ACAS Referrals

After CBP conducts a risk assessment of the ACAS filing, an ACAS referral may be issued for cargo deemed high-risk or determined to have insufficient data. An ACAS referral is a designation attached to cargo to indicate that CBP and TSA need more accurate or more complete information, and/or that the information provided indicates a risk that requires mitigation pursuant to TSA-approved enhanced screening methods. CBP will send a shipment status message to the ACAS filer about the referral. The new 19 CFR 122.48b(e)(1) describes two types of potential ACAS referrals: referrals for information and referrals for screening.

Referrals for information will be issued if a risk assessment of the cargo cannot be conducted due to non-descriptive, inaccurate, or insufficient data. This can be due to typographical errors, vague cargo descriptions, and/or unverifiable data. Referrals for screening will be issued if the potential risk of the cargo is deemed high enough to warrant enhanced security screening. The screening must be performed in accordance with the appropriate TSA-approved screening methods contained in the carrier's security program. For more information about TSA's screening requirements, see Section III.A.2.

G. Do-Not-Load (DNL) Instructions

A DNL instruction will be issued if it is determined, based on the risk assessment and other intelligence, that the cargo may contain a potential bomb, improvised explosive device, or other material that may pose an immediate, lethal threat to the aircraft, persons aboard, and/or the vicinity. Because a DNL instruction will be issued when it appears that a terrorist plot is in progress, all ACAS filers must provide a telephone number and email address that is monitored 24 hours/7 days a week. All ACAS filers must respond and fully cooperate when the entity is reached by phone and/or email when a DNL instruction is issued.

query CBP for any HAWBs under that MAWB number); or (2) The inbound air carrier submits a message to CBP containing the MAWB number and ACAS data from the HAWB that are exact matches to the ACAS data submitted by the original ACAS filer, allowing the inbound air carrier to receive the ACAS status of the HAWB; or (3) The inbound air carrier opts to resubmit the ACAS data previously filed by the other ACAS filer.

H. Responsibilities of ACAS Filers

Filing the ACAS data comes with certain responsibilities. Failure to fulfill these responsibilities could result in CBP issuing liquidated damages and/or assessing penalties. The inbound air carrier and/or the other eligible ACAS filer have the responsibility to provide accurate data to CBP in the ACAS filing and to update that data if necessary, to transmit the data within the ACAS time frame to CBP, to resolve ACAS referrals prior to departure of the aircraft and to respond to a DNL instruction in an expedited manner.

1. Responsibility To Provide Accurate and Timely Data

CBP needs accurate and timely data to perform effective targeting. To ensure this, the inbound air carrier and/or other eligible ACAS filer is liable for the timeliness and accuracy of the data that they transmit. Accurate data is the best data available at the time of filing. The same considerations will apply here as for the current Trade Act requirements.

As stated in the new 19 CFR 122.48b(c)(6), CBP will take into consideration how, in accordance with ordinary commercial practices, the ACAS filer acquired such data, and whether and how the filer is able to verify this data. Where the ACAS filer is not reasonably able to verify such information, CBP will permit the filer to electronically present the data on the basis of what that filer reasonably believes to be true. This is in accordance with the Trade Act parameters that require CBP to take these factors into account when promulgating regulations.

2. Responsibility To Resolve ACAS Referrals

The new 19 CFR 122.48b(e)(2) specifies the requirements for resolving ACAS referrals. This section describes the responsibilities of the inbound air carrier and/or other eligible ACAS filer to take the necessary action to respond to and address any outstanding ACAS referrals no later than prior to departure of the aircraft.

Each of the two types of ACAS referrals results in different responsibilities for the ACAS filer and/or inbound air carrier. The responsible party must address any ACAS referrals within the specified time frame. The new 19 CFR 122.48b(e)(3) specifies that the inbound air carrier is prohibited from transporting cargo on an aircraft destined to the United States until any and all referrals issued for that cargo have been resolved and CBP has provided an ''ACAS assessment complete'' clearance message.

a. Referral for Information

For referrals for information, the party who filed the ACAS data must resolve the referral by providing CBP with the requested clarifying data. This responsibility is imposed on the party who filed the ACAS data because they are in the best position to correct any data inconsistencies or errors. The last party to file the ACAS data must address the referral. For instance, when the inbound air carrier retransmits an original ACAS filer's data and a referral for information is issued after this retransmission, the inbound air carrier is responsible for taking the necessary action to address the referral.

b. Referral for Screening

All in-bound cargo must be screened in accordance with the TSA-approved or accepted enhanced screening methods contained in the carrier's security program. If operating under an approved amendment to the security program, the measures specified in that amendment will apply whether that be a NCSP amendment or other amendment. TSA will amend security program requirements to be consistent with ACAS. Upon receipt of a referral for screening, the ACAS filer and/or inbound air carrier is required to respond with information on how the cargo was screened in accordance with TSA-approved or accepted enhanced screening methods.

The ACAS filer can perform the necessary screening provided it is a party recognized by TSA to perform screening. If the filer chooses not to perform the screening or is not a party recognized by TSA to perform screening, the ACAS filer must notify the inbound air carrier of the referral for screening. Once the inbound air carrier is notified of the unresolved referral for screening, the inbound air carrier must perform the enhanced screening required, and/or provide the necessary information to TSA and/or CBP to resolve the referral for screening. The ultimate responsibility to resolve any outstanding referral for screening is placed on the inbound air carrier because that is the party with physical possession of the cargo prior to departure of the aircraft.

3. Responsibility To Address DNL Instructions

The new 19 CFR 122.48b(f) specifies the requirements for a DNL instruction. A DNL instruction cannot be mitigated or resolved because of its urgency and the grave circumstances under which it is issued. A DNL instruction will be issued if it is determined that the cargo

may contain a potential bomb, improvised explosive device, or other material that may pose an immediate, lethal threat to the aircraft and/or its vicinity. Accordingly, if a DNL is issued, the cargo must not be loaded onto the aircraft. The ACAS filer would be contacted by CBP and TSA using the 24/7 contact information provided, even if an electronic status message is sent, to notify, communicate, and carry out the necessary response protocols. The party in physical possession of the cargo at the time the DNL instruction is issued must adhere to the appropriate CBP and TSA protocols and the directions provided by the applicable law enforcement authority.

I. Amendments To Bond Conditions

As described above, all ACAS filers have certain responsibilities under the ACAS program including the timely submission of ACAS data, and addressing ACAS referrals and DNL instructions prior to departure, among others. Under the ACAS program, failure to adhere to the ACAS requirements may result in CBP assessing liquidated damages and/or penalties. To ensure a proper enforcement mechanism exists, CBP is amending the relevant bond provisions to incorporate the ACAS requirements and to require all ACAS filers to have a bond. Although 19 CFR 122.48a filers are already required to have a bond, freight forwarders, currently unregulated entities, will also be required to obtain a bond if they elect to file the ACAS data.

Accordingly, CBP is adding a new condition to the relevant bond provisions in 19 CFR 113.62 (basic importation and entry bond) and in 19 CFR 113.63 (basic custodial bond) to cover the ACAS requirements. Specifically, CBP is amending 19 CFR 113.62 and 113.63 to add a new paragraph that includes a bond condition whereby the principal agrees to comply with all ACAS requirements set forth in 19 CFR 122.48a and 122.48b including, but not limited to, providing ACAS data to CBP in the manner and in the time period prescribed by regulation and taking the necessary action to address ACAS referrals and DNL instructions as prescribed by regulation.

The amendments further provide that if the principal fails to comply with the requirements, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each violation. CBP may also assess penalties for violation of the new ACAS regulations where CBP deems that such penalties are appropriate, *e.g.,* pursuant to 19 U.S.C. 1436.

The amendments also add a new condition to those provisions in 19 CFR 113.64 required to be included in an international carrier bond. Specifically, CBP is amending 19 CFR 113.64 to add a new paragraph to include conditions whereby the principal, be it the inbound air carrier or other party providing ACAS data, agrees to comply with the ACAS requirements set forth in 19 CFR 122.48a and 122.48b including, but not limited to, providing ACAS data to CBP in the manner and in the time period prescribed by regulation and taking the necessary action to address ACAS referrals and DNL instructions as prescribed by regulation.

This new paragraph further provides that if the principal fails to comply with the requirements, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each violation, to a maximum of $100,000 per conveyance arrival. CBP may also assess penalties for violation of the new ACAS regulations where appropriate, *e.g.,* pursuant to 19 U.S.C. 1436. The regulations also amend 19 CFR 113.64 to provide that, if a party who elects to file ACAS data incurs a penalty (or duty, tax or other charge), the principal and surety (jointly and severally) agree to pay the sum upon demand by CBP. CBP notes that the regulations in 19 CFR 113.64 already provide that the principal and surety agree to pay the sum upon demand by CBP when other parties, including an aircraft, owner of an aircraft, or person in charge of an aircraft, incur a penalty (or duty, tax or other charge).

Due to the addition of the new ACAS paragraphs in 19 CFR 113.62, 113.63, and 113.64, some of the other paragraphs in those sections are redesignated. Specifically, 19 CFR 113.62(l) and (m) are redesignated as 19 CFR 113.62(m) and (n); 19 CFR 113.63(h) and (i) are redesignated as 19 CFR 113.63(i) and (j), and 19 CFR 113.64(i) through (l) are redesignated as 19 CFR 113.64(j) through (m). Conforming changes are also made to 19 CFR 12.3, 141.113 and 192.

J. Amendments to 19 CFR 122.48a

As discussed throughout this document, several revisions to 19 CFR 122.48a are required to properly implement the ACAS program. This is because the ACAS regulation cites to provisions in 19 CFR 122.48a including the definitions of the ACAS data and the parties that are eligible to file the ACAS data. Additionally, as described below in Section IV.J.1., a new 19 CFR 122.48a data element, the FDM, is necessary to enforce the ACAS program.

1. Flight Departure Message (FDM)

The FDM is an electronic message sent by the inbound air carrier to CBP when a flight leaves a foreign airport and is en route to the United States. Although neither the 19 CFR 122.48a regulations nor the ACAS pilot currently requires the submission of the FDM, some inbound air carriers voluntarily provide it.

CBP is requiring the FDM as a mandatory 19 CFR 122.48a data element. The inbound air carrier is required to transmit the FDM to CBP for each leg of a flight en route to the United States within the specified time frames for transmitting 19 CFR 122.48a data. CBP welcomes comments on the timing of the FDM submission.

The FDM is necessary for the proper enforcement of the ACAS program. It will provide CBP with the liftoff date and time from each foreign airport for a flight en route to the United States. This will allow CBP to easily assess whether an ACAS filing has been transmitted within the ACAS time frame and whether ACAS referrals and/or DNL instructions were addressed prior to the aircraft's departure. As a result, this will provide CBP with the information needed to determine whether an ACAS filer has complied with the ACAS requirements and responsibilities and whether to impose liquidated damages and/or assess penalties.

Specifically, CBP is adding a new paragraph 19 CFR 122.48a(d)(1)(xviii) that lists the FDM as a mandatory 19 CFR 122.48a data element. It further provides that the FDM includes the liftoff date and liftoff time using the Greenwich Mean Time (GMT)/Universal Time, Coordinated (UTC) at the time of departure from each foreign airport. It further provides that if an aircraft en route to the United States stops and cargo is loaded onboard at one or more foreign airports, the FDM must be provided for each departure.

2. Other Amendments to 19 CFR 122.48a

CBP is making several other revisions to 19 CFR 122.48a. These include revisions to 19 CFR 122.48a(a), (c), and (d). Specifically, in 19 CFR 122.48a(a), detailing general requirements, CBP is adding a sentence stating that the subset of data elements known as ACAS data is also subject to the requirements and time frame described in 19 CFR 122.48b. Also, in 19 CFR 122.48a(a), CBP is making a minor change to the language regarding the scope of the advance data requirement. The current text states that

for any inbound aircraft required to enter under § 122.41 that will have commercial cargo aboard, CBP must receive advance air cargo data. CBP is changing ''required to enter under § 122.41'' to ''required to make entry under § 122.41'' for clarity.

In 19 CFR 122.48a(c), in order to more accurately reflect the obligations of the parties, CBP is making a minor change in the text. The current text states that where the inbound carrier receives advance cargo information from certain nonparticipating parties, the inbound carrier, on behalf of the party, must present this information electronically to CBP. CBP is of the view that the clause ''on behalf of the party'' improperly implies that the carrier is acting as the agent for the nonparticipating party and is therefore removing this clause.

Additionally, in 19 CFR 122.48a(d), CBP is also adding the notation of an ''A'' next to any listed data element that is also an ACAS data element. This notated data is required during both the ACAS filing and the 19 CFR 122.48a filing.

As discussed in Section IV.D., based on the operation of the ACAS pilot, CBP is amending the definition of consignee in order to have more information for risk assessment purposes. The current definition asks for the name and address of the party to whom the cargo will be delivered, and makes an exception for ''FROB'' (Foreign Cargo Remaining On Board). In the case of consolidated shipments, the current definition asks specifically for the address of the party to whom the cargo will be delivered in the United States. Due to the FROB exception and the United States address limitation, CBP may not know the ultimate destination of some cargo transiting the United States. The amendment removes the FROB exception and United States address limitation, and requires the name and address of the consignee regardless of the location of the party. This will allow for better targeting because it provides more complete information about where the cargo is going.

K. Flexible Enforcement

In order to provide the trade sufficient time to adjust to the new requirements and in consideration of the business process changes that may be necessary to achieve full compliance, CBP will show restraint in enforcing the data submission requirements of the rule, taking into account difficulties that inbound air carriers and other eligible ACAS filers, particularly those that did not participate in the ACAS pilot, may face in complying with the rule, so long as inbound air carriers and other eligible ACAS filers are making significant progress toward compliance and are making a good faith effort to comply with the rule to the extent of their current ability. This CBP policy will last for twelve months after the effective date. While full enforcement will be phased in over this twelve month period, willful and egregious violators will be subject to enforcement actions at all times. CBP welcomes comments on this enforcement policy.

V. Statutory and Regulatory Reviews

A. Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires agencies to publish a notice of proposed rulemaking in the **Federal Register** (5 U.S.C. 553(b)) and provide interested persons the opportunity to submit comments (5 U.S.C. 553(c)). However, the APA provides an exception to these requirements ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). The implementation of this rule as an interim final rule, with provisions for post-promulgation public comments, is based on this good cause exception. As explained below, delaying the implementation of this ACAS rule pending the completion of notice and comment procedures would be contrary to the public interest.

DHS has determined that the potential exploitation by terrorists of existing inbound air cargo security arrangements exposes the United States to a significant new and emerging terrorist threat that would be effectively mitigated by the new ACAS rule. The intelligence community continues to acknowledge credible threats in the air environment, including the continued desire by terrorists to exploit the global air cargo supply chain. Moreover, DHS has received specific, classified intelligence that certain terrorist organizations seek to exploit vulnerabilities in international air cargo security to cause damage to infrastructure, injury, or loss of life in the United States or onboard aircraft. This ACAS rule mitigates these identified risks by providing CBP with the necessary data and additional time to perform necessary targeted risk assessments of air cargo before the aircraft departs for the United States. The rule strengthens DHS' ability to identify attempts by global terrorist organizations to exploit vulnerabilities in the air cargo as a means of conducting an attack. Delaying this rule to undertake notice and comment rulemaking would leave the United States unnecessarily vulnerable to a specific terrorist threat during the interval between the publication of the proposed and final rules and would be contrary to the public interest. Therefore, prompt implementation of this new ACAS rule is critical to reduce the terrorism risk to the United States and thereby protect the public safety. DHS has engaged in extensive consultation with stakeholders and has worked closely with the air cargo industry to address operational and logistical issues in the context of a voluntary pilot program in advance of this rulemaking, and has determined that this rule effectively addresses existing risks and emerging threats.

For the reasons stated above, DHS has determined that this rule is not subject to a 30-day delayed effective date requirement pursuant to 5 U.S.C. 553(d). Delaying this for 30 days after publication would leave the United States unnecessarily vulnerable to a specific terrorist threat and would be contrary to the public interest. Therefore, this rule is effective upon publication.

Accordingly, DHS finds that it would be contrary to the public interest to delay the implementation of this rule to provide for prior public notice and comment and delayed effective date procedures. As such, DHS finds that under the good cause exception, this rule is exempt from the notice and comment and delayed effective date requirements of the APA. DHS is providing the public with the opportunity to comment without delaying implementation of this rule. DHS will respond to the comments received when it issues a final rule.

B. Executive Orders 12866, 13563, and 13771

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs'') directs

agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

As this rule has an impact of over $100 million in the first year, this rule is a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has reviewed this rule. Although this rule is a significant regulatory action, it is a regulation where a cost benefit analysis demonstrates that the primary, direct benefit is national security and the rule qualifies for a ''good cause'' exception under 5 U.S.C. 553(b)(B). The rule is thus exempt from the requirements of Executive Order 13771. *See* OMB's Memorandum titled ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs' '' (April 5, 2017). A regulatory impact analysis, entitled *Regulatory Assessment and Initial Regulatory Flexibility Analysis for the Interim Final Rule: Air Cargo Advance Screening (ACAS) Rule,* has been included in the docket of this rulemaking (docket number [USCBP–2018–0019]). The following presents a summary of the aforementioned regulatory impact analysis.

1. Need and Purpose of the Rule

CBP has identified a notable threat to global security in the air environment—the potential for terrorists to use the international air cargo system to place high-risk cargo, such as unauthorized weapons, explosives, or chemical and/or biological weapons, on a United States-bound aircraft with the intent of bringing down the aircraft. In recent years, there have been several terrorist actions that highlighted this threat. In one notable incident in October 2010, concealed explosive devices that were intended to detonate during flight over the continental United States were discovered in cargo on board two aircraft destined to the United States. The exposure of international air cargo to such a threat requires a security strategy to detect, identify, and deter this threat at the earliest point in the international supply chain, before the cargo departs on an aircraft destined to the United States.

The ACAS rule represents an important component of the U.S. Department of Homeland Security (DHS's) evolving layered strategy for securing the cargo supply chain from terrorist-related activities. The rule is designed to extend security measures out beyond the physical borders of the United States so that domestic ports and borders are not the first line of defense, with the objective of having better and more detailed information about all cargo prior to loading. The principal security benefit of the new rule will be a targeted risk assessment using real-time data and intelligence to make a more precise identification of high-risk shipments at an earlier time in the supply chain, prior the aircraft's departure. This information will allow for better targeting of cargo with potential ties to terrorist activity, reducing the risk of in-flight terrorist attacks intended to cause extensive casualties and inflict catastrophic damage to aircraft and other private property, and allowing sufficient time to take the necessary action to thwart a potential terrorist attack.

2. Synopsis

In December 2010, CBP and TSA launched the Air Cargo Advance Screening (ACAS) pilot program. Participants in this pilot program transmit a subset of the 19 CFR 122.48a data as early as possible prior to loading of the cargo onto an aircraft destined to the United States. CBP and pilot participants believe this pilot program has proven successful by not only mitigating risks to the United States, but also minimizing costs to the private sector. As such, CBP is transitioning the ACAS pilot program into a permanent, mandatory program with only minimal changes from the pilot program.

To give the reader a full understanding of the impacts of ACAS so they can consider the effect of the ACAS program as a whole, our analysis separately considers the impacts of ACAS during the pilot period (2011–2017), the regulatory period (2018–2027), and the combined period. For each time period, the baseline scenario is defined as the ''world without ACAS.'' During the pilot period (2011–2017), the baseline includes non-ACAS-related costs incurred by industry and CBP in the absence of the pilot program. During the first ten years the interim final rule is likely to be in effect (2018–2027), the baseline similarly includes costs incurred by industry and CBP in the absence of any ACAS implementation (pilot program or interim final rule). For an accounting of the costs of the entire ACAS time period, including the pilot period and the regulatory period, see Table 3.

During the pilot period, CBP estimates that CBP and 38 pilot participants incurred costs totaling between $112.8 million and $122.7 million (in 2016 dollars) over the 6 years depending on the discount rate used (3 and 7 percent, respectively). CBP estimates that the rule will affect an estimated 215 entities and have an approximate total present value cost ranging from $245.7 million and $297.9 million (in 2016 dollars) over the 10-year period of analysis, depending on the discount rate used (seven and three percent, respectively). As shown below in Table 1, the estimated annualized costs of ACAS range from $25.2 million to $26.1 million (in 2016 dollars) depending on the discount rate used. The cost estimates include both the one-time, upfront costs and recurring costs of the activities undertaken by the affected entities to comply with the rule, both in the pilot and the post-pilot periods.

Due to data limitations, CBP is unable to monetize the benefits of the rule. Instead, CBP has conducted a ''break-even'' analysis, which shows how often a terrorist event must be avoided due to the rule for the benefits to equal or exceed the costs of the ACAS program. Table 1, below, shows the results of the break-even analysis under lower and higher consequence estimates of terrorist events. For the low cost consequence estimate, CBP estimates that ACAS must result in the avoidance of a terrorist attack event about every 7.7 to 8.0 months for the benefits of ACAS to equal the costs. For the higher cost consequence estimate, CBP estimates that the rule must result in the avoidance of a terrorist attack event about every 90.4 to 94 years for the benefits of ACAS to equal the costs.

TABLE 1—SUMMARY OF FINDINGS

Discount rate	Present value costs 2011–2027 (2016 dollars) (million)	Annualized costs 2011–2027 (2016 dollars) (million)	Economic consequences of terrorist attack [2]	Benefits of the regulation equal its costs if: [1]	
				Number of events that must be avoided in 17 years [3]	Critical event avoidance rate [4]
Three Percent	$410.8	$26.1	Lower Estimate	26.6	One event every 7.7 months.
			Higher Estimate	0.2	One event every 90.4 years.
Seven Percent	368.4	25.2	Lower Estimate	25.6	One event every 8.0 months.
			Higher Estimate	0.2	One event every 94.0 years.

Notes:

[1] Reflects the range of averted cost estimates associated with attack scenarios in TSA's TSSRA model involving the detonation of an explosive device on board a commercial passenger or one or multiple cargo aircraft destined to the United States that result in the destruction of the aircraft.

[2] Results assume regulation reduces risk of a single type of attack only. The rule will likely reduce the risk of multiple numbers and types of attacks simultaneously.

[3] Indicates the number of terrorist attack events that would have to be avoided in a single year for the avoided consequences of a successful terrorist attack to equal the costs of the rule.

[4] Indicates the frequency at which the event would need to be averted for the avoided consequences of a successful terrorist attack to equal the costs of the rule.

Table Source: Adapted from Exhibit ES–6 of the full regulatory impact analysis included in the docket of this rulemaking, entitled *Regulatory Assessment and Initial Regulatory Flexibility Analysis for the Interim Final Rule: Air Cargo Advance Screening (ACAS) Rule.*

Although the annualized costs of this rule are estimated to be less than $100 million dollars, the estimated first year costs are estimated to be approximately $104.1 million dollars. As such, the rule is considered an economically significant rulemaking, and, in accordance with OMB Circular A–4 and Executive Order 12866, CBP has provided accounting statements in Tables 2 and 3 reporting the estimated costs and benefits of the rule. Table 2 includes the costs and benefits for the post-pilot period (2018–2027) and Table 3 includes the costs and benefits across the entire ACAS period (2011–2027).

TABLE 2—A–4 ACCOUNTING STATEMENT: COST OF THE RULE, 2018–2027

[$2016]

	3% Discount rate	7% Discount rate
U.S. Costs		
Annualized monetized costs	$36.0 million	$37.4 million.
Annualized quantified, but non-monetized costs	None	None.
Qualitative (non-quantified) costs	Costs associated with issuing a ''do not load,'' which would jointly result from ACAS information and information obtained from intelligence agencies and the governments of other countries.	Costs associated with issuing a ''do not load,'' which would jointly result from ACAS information and information obtained from intelligence agencies and the governments of other countries.
U.S. Benefits		
Annualized monetized benefits	None	None.
Annualized quantified, but non-monetized benefits.	None	None.
Qualitative (non-quantified) benefits	Increased security through the targeting and mitigation of threats posed by air cargo prior to loading onboard aircraft destined to the United States.	Increased security through the targeting and mitigation of threats posed by air cargo prior to loading onboard aircraft destined to the United States.

TABLE 3—A–4 ACCOUNTING STATEMENT: COST OF THE ACAS PROGRAM (PILOT AND REGULATORY PERIOD), 2011–2027

[$2016]

	3% Discount rate	7% Discount rate
U.S. Costs		
Annualized monetized costs	$26.1 million	$25.2 million.
Annualized quantified, but non-monetized costs	None	None.

TABLE 3—A–4 ACCOUNTING STATEMENT: COST OF THE ACAS PROGRAM (PILOT AND REGULATORY PERIOD), 2011–2027—Continued

[$2016]

	3% Discount rate	7% Discount rate
Qualitative (non-quantified) costs	Costs associated with issuing a ''do not load,'' which would jointly result from ACAS information and information obtained from intelligence agencies and the governments of other countries.	Costs associated with issuing a ''do not load,'' which would jointly result from ACAS information and information obtained from intelligence agencies and the governments of other countries.
U.S. Benefits		
Annualized monetized benefits	None	None.
Annualized quantified, but non-monetized benefits.	None	None.
Qualitative (non-quantified) benefits	Increased security through the targeting and mitigation of threats posed by air cargo prior to loading onboard aircraft destined to the United States.	Increased security through the targeting and mitigation of threats posed by air cargo prior to loading onboard aircraft destined to the United States.

3. Background

In December 2010, CBP and TSA launched the Air Cargo Advance Screening (ACAS) pilot program. Participants in this pilot program transmit a subset of air manifest data elements (19 CFR 122.48a), as early as possible prior to loading of the cargo onto an aircraft destined to the United States. CBP believes this pilot program has proven successful by not only mitigating risks to the United States, but also minimizing costs to the private sector. CBP is, therefore, formalizing the pilot and making the ACAS program mandatory for any inbound aircraft required to make entry under 19 CFR 122.41 that will have commercial cargo aboard. CBP has, however, identified minor changes to the ACAS program that will increase the efficiency of targeting and mitigation of risks to air cargo destined to the United States. Specifically, CBP is making the following modifications from the pilot: (1) Minor modifications to the definition of the consignee name and address data element required under the pilot (see Table 4 for a description of each data element under the rule); (2) requiring the master air waybill (MAWB) number in certain circumstances (see Table 4 for a more detailed explanation); (3) requiring inbound air carriers to provide the flight departure message (FDM) under the 19 CFR 122.48a time frames; [29] and (4) requiring the filer to obtain a bond. CBP is amending the bond conditions to include an agreement to comply with ACAS requirements.

TABLE 4—ACAS DATA ELEMENTS

Data element	Description
(1) Shipper name and address.	The name and address of the foreign vendor, supplier, manufacturer, or other similar party is acceptable. The address of the foreign vendor, etc., must be a foreign address. The identity of a carrier, freight forwarder or consolidator is not acceptable.
(2) Consignee name and address.	The name and address of the party to whom the cargo will be delivered regardless of the location of the party; this party need not be located at the arrival or destination port.
(3) Cargo description	A precise cargo description or the 6-digit Harmonized Tariff Schedule (HTS) number. Generic descriptions, specifically those such as ''FAK'' (''freight of all kinds''), ''general cargo,'' and ''STC'' (''said to contain'') are not acceptable.
(4) Total quantity based on the smallest external packing unit.	For example, 2 pallets containing 50 pieces each would be considered as 100, not 2.
(5) Total weight of cargo	Weight of cargo expressed in either pounds or kilograms.
(6) Air waybill number	For non-consolidated shipments, the air waybill number is the International Air Transport Association (IATA) standard 11-digit number, as provided in 19 CFR 122.48a(d)(1)(i). For consolidated shipments, the air waybill number is the HAWB number. As provided in 19 CFR 122.48a(d)(2)(i), the HAWB number may be up to 12 alphanumeric characters (each alphanumeric character that is indicated on the HAWB must be included in the electronic transmission; alpha characters may not be eliminated). The air waybill number must be the same in the ACAS and 19 CFR 122.48a filings.
(7) Master air waybill number.	As provided in 19 CFR 122.48a(d)(1)(i), the MAWB number is the IATA standard 11-digit number.

[29] In addition to the ACAS data elements described above, the regulations also require inbound carriers to transmit a flight departure message (FDM) to CBP upon departure or four hours prior to arrival in the United States (*i.e.,* on the same timeframe as the 19 CFR 122.48a data). The FDM is used for ACAS enforcement (*i.e.,* to determine whether the ACAS filing was submitted on time), rather than targeting, and thus is not considered an ACAS data element. This information is already routinely provided by carriers on this timeframe and thus is not considered further in this analysis (Personal communication with Program Manager, Cargo and Conveyance Security Directorate, CBP, May 16, 2016.)

TABLE 4—ACAS DATA ELEMENTS—Continued

Data element	Description
	The MAWB number is required under the following circumstances: • The ACAS filer is also transmitting all the data elements required for the 19 CFR 122.48a filing under the ACAS time frame (i.e., in a single filing).[1] • The inbound carrier wants the ability to receive status checks from CBP on the ACAS assessment of a specific shipment (e.g., for which the ACAS data were transmitted by another party such as a freight forwarder).[2] • The ACAS filer is a different party from the party that will file the 19 CFR 122.48a data for the cargo.[3]
(8) Second notify party (optional).	This optional data element allows other relevant stakeholders to receive shipment status messages from CBP. The filing of this data element is likely to be rare.[4]

Notes:
[1] Based on interviews with the trade, simultaneous submission of the ACAS data and the 19 CFR 122.48a filing is unlikely (see discussion in Chapter 3 of the full regulatory impact analysis).
[2] In the latter two cases, the MAWB number does not need to be transmitted with the initial ACAS transmission and can be supplied later as long as it is under the ACAS time frame. For example, a freight forwarder can later transmit a carrier-issued MAWB number linking the MAWB and HAWB numbers, which then allows the carrier to receive status checks from CBP by referencing the MAWB number only. In addition to a freight forwarder updating an initial ACAS filing, an inbound carrier can be notified of the ACAS assessment of a shipment by transmitting the entire ACAS filing with MAWB and HAWB information. We note that based on our discussions with ACAS pilot participants, inbound carriers are unlikely to rely solely on an ACAS filing by a freight forwarder; rather, they will make their own ACAS transmission even if the data have previously been transmitted by a freight forwarder (see discussion in Chapter 3 of the full regulatory impact analysis).
[3] The MAWB number is generally not required for express consignment shipments since most, if not all, express carriers or operators transmit both ACAS and 19 CFR 122.48a filings for shipments transported on their own aircraft or tendered to other carriers (see discussion in Chapter 3 of the full regulatory impact analysis).
[4] Based on discussions with ACAS pilot participants.
Table Source: Adapted from Exhibit 1–1 of the full regulatory impact analysis included in the docket of this rulemaking, entitled *Regulatory Assessment and Initial Regulatory Flexibility Analysis for the Interim Final Rule: Air Cargo Advance Screening (ACAS) Rule.*

4. Baseline

To give the reader a full understanding of the impacts of ACAS so they can consider the effect of the ACAS program as a whole, our analysis separately considers the impacts of ACAS during the pilot period (2011–2017), the regulatory period (2018–2027), and the combined period. For each time period, the baseline scenario is defined as the ''world without ACAS.'' During the pilot period (2011–2017), the baseline includes non-ACAS-related costs incurred by industry and CBP in the absence of the pilot program. During the first ten years the interim final rule is likely to be in effect (2018–2027), the baseline similarly includes costs incurred by industry and CBP in the absence of any ACAS implementation (pilot program or interim final rule). For an accounting of the costs of the entire ACAS time period, including the pilot period and the regulatory period, see Table 3.

To estimate the number of businesses affected by the pilot program we use historic data pilot participation. Table 5 shows 2015 ACAS participation by entity type. As shown, in 2015, 32 pilot participants combined to file over 80 million ACAS filings.

TABLE 5—ESTIMATED NUMBER OF ENTITIES OR FILERS AND SHIPMENTS AFFECTED BY THE PILOT, BY ENTITY TYPE

[Calendar year 2015]

Entity type	Number of entities [1]	Total number of ACAS filings	Average number of ACAS filings per entity
Passenger Carriers	11	2,518,699	228,973
Cargo Carriers	4	643,693	160,923
Express Carriers	5	76,395,500	15,279,100
Freight Forwarders	12	1,438,884	119,907
Total	32	80,996,776	2,531,149

Notes:
[1] The number of entities includes both operational and data quality analysis pilot participants. It excludes one pilot participant that became inactive in 2016, and two participants whose entity types and operational status were unknown. CBP's 2013–2015 ACAS pilot program data listed a total of 35 entities; however, as of October 2016 CBP reports 32 operational and data quality participants.
Numbers may not sum due to rounding.
Table Source: Exhibit 3–4 of the full regulatory impact analysis included in the docket of this rulemaking, entitled *Regulatory Assessment and Initial Regulatory Flexibility Analysis for the Interim Final Rule: Air Cargo Advance Screening (ACAS) Rule.*

To estimate the number of filers who would be affected by ACAS in the post-pilot period, we use the data on 19 CFR 122.48a filings for any inbound aircraft required to make entry under 19 CFR 122.41 that will have commercial cargo aboard. As the ACAS filing is a subset of the 19 CFR 122.48a data, these data serve as a good representation of the number of entities that would be affected by the rule. As shown in Table 6 below, using 2015 19 CFR 122.48a data, CBP has identified 293 19 CFR 122.48a data filers that have filed approximately 93.6 million air waybills.[30]

[30] A small number of freight forwarders have participated in the ACAS pilot and may continue to make ACAS filings voluntarily when the rule is promulgated. Interviews with the trade, however, suggest that most freight forwarders who are not already participating are unlikely to begin participating in the future. For a more detailed

Continued

TABLE 6—ESTIMATED NUMBER OF ENTITIES OR FILERS AND SHIPMENTS POTENTIALLY AFFECTED BY THE RULE, BY ENTITY TYPE

[Calendar year 2015]

Entity type	Number of entities [1]	Number of air waybills, in millions [2]	Number of shipments, in millions [3]
Passenger Carriers	129	7.87	4.23
Cargo Carriers	56	2.26	1.74
Express Carriers	22	79.2	79.0
Freight Forwarders [4]	83	4.30	4.29
Unknown [5]	3	0.00	0.00
Total [6]	293	93.6	89.2

Notes:
[1] Number of entities represents the number of unique filers identified in the ACE data after aggregating filer names and associated originator codes.
[2] The number of air waybills may include master, house, and split air waybills filed under ACE, and is indicative of an entity's total volume of manifest transactions, rather than shipments.
[3] Number of shipments based on the number of HAWBs filed under ACE.
[4] Freight Forwarders included in this table are permitted to file the 19 CFR 122.48a data due to their additional classification by CBP as deconsolidators and broker/deconsolidators (71 entities with 4.03 million shipments). They also include those classified as brokers (12 entities with 0.27 million shipments).
[5] The 2013 ACE data includes three filers for which the name and entity type could not be identified. These three filers had a combined number of only 73 air waybills and 17 HAWBs in 2013.
[6] Numbers may not sum due to rounding.
Source: IEc analysis of ACE data provided by CBP's OFO on May 5, June 4, June 23, and July 3, 2014.
Table Source: Exhibit 2–2 of the full regulatory impact analysis included in the docket of this rulemaking, entitled *Regulatory Assessment and Initial Regulatory Flexibility Analysis for the Interim Final Rule: Air Cargo Advance Screening (ACAS) Rule.*

Please see chapter 2 of the full regulatory impact analysis included in the docket of this rulemaking for additional information on the baseline analysis.

5. Costs

During interviews with pilot program participants, key activities necessary for pilot participation were identified. As discussed in the full regulatory impact analysis, we developed a methodology for estimating associated pilot program costs, which are sunk costs for the purpose of deciding whether to continue the ACAS program in the future and are thus reported separately from costs in the 10-year period of analysis for the post-pilot period. These costs are useful when evaluating the effectiveness of the ACAS program as a whole, including the pilot and the post-pilot periods. Our methodology looked at the following activities: (1) Developing information and communication systems required to transmit the ACAS data elements as early as practicable; (2) training staff and providing outreach to trade partners on the ACAS requirements; (3) developing and implementing business protocols and operations to respond to and resolve ACAS referrals and address DNL instructions issued by CBP and establishing and providing 24×7 point of contact capabilities; and (4) responding to and resolving ACAS referrals issued by CBP (*i.e.,* identify, locate, and/or screen cargo) and providing requested data to CBP. Below, Table 7 presents the estimated costs of the ACAS pilot participants.

TABLE 7—TOTAL ESTIMATED COSTS OF THE ACAS PILOT PROGRAM FOR INDUSTRY BY ACAS-RELATED ACTIVITY ($2016, MILLIONS), 2013 TO 2017

Year	Upfront, one-time costs			Recurring costs		Total
	IT systems	Training/ outreach	Protocols/ operations	IT systems	Referral response	
2013	$3.4	$2.0	$7.6	$3.8	$0.7	$17.5
2014	0.0	0.0	0.0	3.8	0.7	4.5
2015	0.0	0.0	0.0	3.8	0.2	4.0
2016	0.0	0.0	0.0	3.8	0.2	4.0
2017	0.0	0.0	0.0	3.8	0.2	4.0
Total (undiscounted)	3.4	2.0	7.6	18.9	2.0	34.0
Total Present Value (3% Discount Rate)	3.7	2.2	8.3	19.5	2.1	35.9
Total Present Value (7% Discount Rate)	4.2	2.5	9.3	20.3	2.3	38.6

Note: Numbers may not sum due to rounding.
Table Source: Exhibit ES–3 of the full regulatory impact analysis included in the docket of this rulemaking, entitled *Regulatory Assessment and Initial Regulatory Flexibility Analysis for the Interim Final Rule: Air Cargo Advance Screening (ACAS) Rule.*

discussion, please see Chapter 3 of the full regulatory impact analysis included in the docket of this rulemaking (docket number [USCBP–2018–0019]).

Given that the requirements of the rule are similar to those of the pilot program, the methodology developed to assess pilot program costs is used to estimate the incremental costs of the rule for both pilot program participants and non-participants over a 10-year post-pilot period of analysis (2018–2027). The most significant costs are the one-time, upfront and recurring costs associated with developing and implementing the necessary protocols and operations to respond to and take the necessary action to address ACAS referrals. Total costs to industry are greatest for the passenger carriers, followed by cargo carriers, express carriers, and freight forwarders. The costs are greatest for passenger carriers, as a group, because they account for more than half of all regulated entities, and they tend not to be already fully operational under the ACAS pilot. In future years, express carriers and large freight forwarders are likely to experience higher costs on a per entity basis due to a higher transaction volume (*i.e.,* greater number of ACAS filings).

As shown in Table 8, CBP estimates that over a 10-year post-pilot period of analysis, the rule will approximately cost between a total present value of $245.7 million and $297.9 million (in 2016 dollars) assuming discount rates of seven and three percent, respectively. Annualized, it is estimated that this rule will cost between $36.0 million and $37.4 million (in 2016 dollars) depending on the discount rate used. The cost estimates include both the one-time, upfront costs and recurring costs of the activities undertaken by the affected entities to comply with the rule.

TABLE 8—TOTAL ESTIMATED COSTS OF THE ACAS RULE BY ENTITY TYPE ($2016, MILLIONS), 2018–2027

Entity type	Number of entities	Three percent discount rate		Seven percent discount rate	
		Total present value costs	Annualized costs	Total present value costs	Annualized costs
Passenger Carrier	129	$91.4	$11.0	$78.3	$11.9
Cargo Carrier	56	38.4	4.6	32.9	5.0
Express Carrier	22	34.0	4.1	28.2	4.3
Freight Forwarder	8	13.8	1.7	11.0	1.7
Government	N/A	120.3	14.5	95.3	14.5
Total	215	297.9	36.0	245.7	37.4

Table Source: Exhibit 3–27 of the full regulatory impact analysis included in the docket of this rulemaking, entitled *Regulatory Assessment and Initial Regulatory Flexibility Analysis for the Interim Final Rule: Air Cargo Advance Screening (ACAS) Rule.*

Please see chapter 3 of the full regulatory impact analysis included in the docket of this rulemaking for additional information on the cost analysis.

6. Benefits

The purpose and intended benefit of this rule is that it would help prevent unauthorized weapons, explosives, chemical and/or biological weapons, weapons of mass destruction (WMDs) and other dangerous items from being loaded onto aircraft destined to the United States. As mentioned above, several incidents over the last several years have demonstrated the continued focus of terrorist actors to exploit vulnerabilities within the global supply chain. In order to continue to meet this threat, CBP and TSA must combine capabilities and scopes of authority to implement a comprehensive and tactical risk assessment capability. CBP needs certain information earlier in the process so that it can work with TSA to identify high-risk cargo before it is loaded onto an aircraft. The ACAS program is intended to satisfy this need. The results of the ACAS pilot program demonstrate that CBP is receiving actionable information in time to prevent dangerous cargo from being loaded onto an aircraft. Since the inception of the ACAS pilot program, CBP has identified a significant number of air cargo shipments that have potential ties to terrorism and, therefore, may represent a threat to the safety and security of the aircraft. In each instance, CBP issued ACAS referrals and the inbound air carrier or other eligible ACAS filer performed or confirmed the prior performance of enhanced cargo screening pursuant to TSA-approved methods.[31]

Ideally, the quantification and monetization of the benefits of this regulation would involve estimating the current baseline level of risk of a successful terrorist attack, absent this regulation, and the incremental reduction in risk resulting from implementation of the regulation. We would then multiply the change by an estimate of the value individuals place on such a risk reduction to produce a monetary estimate of benefits. However, existing data limitations prevent us from quantifying the incremental risk reduction attributable to this rule. As a result, we performed a ''break-even'' analysis to inform decision-makers of the frequency at which an attack would need to be averted for the avoided consequences of a successful terrorist attack to equal the costs of the rule (also referred to as the critical event avoidance rate).

In the break-even analysis, we identified possible terrorist attack scenarios that may be prevented by the regulation. These scenarios and corresponding consequence data are identified using TSA's Transportation Sector Security Risk Assessment (TSSRA) 4.0 model. TSSRA 4.0 is a Sensitive Security Information (SSI) [32] report that was produced in response to DHS Appropriations legislation (Pub. L. 110–396/Division D and Pub. L. 111–83), which requires DHS through TSA to conduct a comprehensive risk assessment. CBP reviewed TSSRA scenarios that involve the detonation of an explosive device onboard commercial aircraft destined to United States. The consequences include deaths, nonfatal injuries, property loss, and rescue and clean-up costs. The break-even analysis compares the annualized costs of the regulation to the avoided direct costs of each event to

[31] If TSA's existing protocols identified a need for enhanced screening prior to the issuance of an ACAS referral, enhanced screening may have already been performed to satisfy the TSA requirements prior to the referral. In that case, the entity responsible for responding to the ACAS referral would resolve the referral for screening by confirming that enhanced screening had been performed.

[32] ''Sensitive Security Information'' or ''SSI'' is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

estimate the number of events that would have to be avoided in a single year for the avoided consequences of a successful terrorist attack to equal the costs of the rule. The break-even results are also described in terms of risk reduction required, for example, a 0.25 reduction in the probability of an event occurring in a single year implies that one additional event must be avoided in a four-year period.

To allow the reader to evaluate the benefits of ACAS against both the post-pilot costs of the rule and the ACAS program as a whole, we include two break even analyses. Table 9, below, indicates what would need to occur for the post-pilot costs of the rule to equal the avoided consequences of a successful terrorist attack, assuming the rule only reduces the risk of a single type of attack. For the lower consequence estimate, CBP estimates the regulation must result in the avoidance of a terrorist attack event about every 5.4 to 5.6 months for the avoided consequences of a successful terrorist attack to equal the costs of the rule. For the higher consequence estimate, CBP estimates that the regulation must result in the avoidance of a terrorist attack event in a time period of about every 63.1 years to 65.7 years for the avoided consequences of a successful terrorist attack to equal the costs of the rule. These estimates reflect property loss, nonfatal injuries, and fatalities assumed in the TSSRA model. The value of avoided fatalities substantially increases the consequence estimates relative to the value of the other consequences such as nonfatal injury and property loss. Table 10 shows the same information for the entire ACAS period (2011–2027).

TABLE 9—SUMMARY OF FINDINGS

Discount rate	Annualized costs 2018–2027 (2016 million dollars)	Economic consequences of terrorist attack[2]	Benefits of the regulation equal its costs if:[1]	
			Number of events that must be avoided in ten years[3]	Critical event avoidance rate[4]
Three Percent	$36.0	Lower Estimate	21.5	One event every 5.6 months.
		Higher Estimate	0.2	One event every 65.7 years.
Seven Percent	37.4	Lower Estimate	22.4	One event every 5.4 months.
		Higher Estimate	0.2	One event every 63.1 years.

Notes:
[1] Reflects the range of averted cost estimates associated with attack scenarios in TSA's TSSRA model involving the detonation of an explosive device on board a commercial passenger or one or multiple cargo aircraft destined to the United States where the aircraft is destroyed.
[2] Results assume regulation reduces risk of a single type of attack only. The rule will likely reduce the risk of multiple numbers and types of attacks simultaneously.
[3] Indicates the number of terrorist attack events that would have to be avoided in a single year for the avoided consequences of a successful terrorist attack to equal the costs of the rule.
[4] Indicates the frequency at which the event would need to be averted for the avoided consequences of a successful terrorist attack to equal the costs of the rule.
Results rounded to two significant digits.
Table Source: Adapted from Exhibit 4–1 of the full regulatory impact analysis included in the docket of this rulemaking, entitled *Regulatory Assessment and Initial Regulatory Flexibility Analysis for the Interim Final Rule: Air Cargo Advance Screening (ACAS) Rule.*

TABLE 10—SUMMARY OF FINDINGS

Discount rate	Annualized costs 2011–2027 (2016 dollars)	Economic consequences of terrorist attack[2]	Benefits of the regulation equal its costs if:[1]	
			Number of events that must be avoided in 17 years[3]	Critical event avoidance rate[4]
Three Percent	$26.1	Lower Estimate	26.6	One event every 7.7 months.
		Higher Estimate	0.2	One event every 90.4 years.
Seven Percent	25.1	Lower Estimate	25.6	One event every 8.0 months.
		Higher Estimate	0.2	One event every 94.0 years.

Notes:
[1] Reflects the range of averted cost estimates associated with attack scenarios in TSA's TSSRA model involving the detonation of an explosive device on board a commercial passenger or one or multiple cargo aircraft destined to the United States where the aircraft is destroyed.
[2] Results assume regulation reduces risk of a single type of attack only. The rule will likely reduce the risk of multiple numbers and types of attacks simultaneously.
[3] Indicates the number of terrorist attack events that would have to be avoided in a single year for the avoided consequences of a successful terrorist attack to equal the costs of the rule.
[4] Indicates the frequency at which the event would need to be averted for the avoided consequences of a successful terrorist attack to equal the costs of the rule.
Results rounded to two significant digits.
Table Source: Adapted from Exhibit 4–2 of the full regulatory impact analysis included in the docket of this rulemaking, entitled *Regulatory Assessment and Initial Regulatory Flexibility Analysis for the Interim Final Rule: Air Cargo Advance Screening (ACAS) Rule.*

Please see chapter 4 of the full regulatory impact analysis included in the docket of this rulemaking for additional information on the break-even analysis.

7. Alternatives

In accordance with Executive Order 12866, the following three alternatives have been considered:

(1) *Alternative 1 (the chosen alternative):* Six mandatory ACAS data elements and, as applicable, one conditional data element (the MAWB number) required no later than prior to loading of the cargo onto any inbound aircraft required to make entry under 19

CFR 122.41 that will have commercial cargo aboard;

(2) *Alternative 2:* Six mandatory ACAS data elements and, as applicable, one conditional data element (the MAWB number), required no later than two hours prior to the estimated time of departure of any inbound aircraft required to make entry under 19 CFR 122.41 that will have commercial cargo aboard; and

(3) *Alternative 3:* Same as Alternative 1, however, the one conditional ACAS data element, the MAWB number, is not required for any shipment.

These three alternatives represent adjusting the required timing for ACAS transmittal and excluding a particular ACAS data element, namely the MAWB number. In comparison to Alternative 1 (the preferred alternative), Alternative 2 advances (makes earlier) the required time frame for ACAS transmission, which would provide CBP more time to conduct its risk assessment and mitigate any identified risk prior to aircraft departure. In comparison to Alternative 1, Alternative 3 excludes the MAWB number data element for any shipment. In general, CBP needs to receive the MAWB number so that it can provide the location of the high-risk cargo and will allow CBP to associate the cargo with an ACAS submission. Some inbound carriers also prefer that the forwarder-issued HAWB and carrier-issued MAWB numbers be linked so that they can verify that an ACAS assessment for a particular shipment they accepted from an ACAS-filing freight forwarder has been completed. However, some freight forwarders expressed issues with providing the MAWB number in time for the ACAS filings because they may not be finalized until just prior to aircraft departure. By evaluating these three alternatives, CBP is seeking the most favorable balance between security outcomes and impacts to air transportation. Based on this analysis of alternatives, CBP has determined that Alternative 1 provides the most favorable balance between security outcomes and impacts to air transportation.

Please see chapter 5 of the full regulatory impact analysis included in the docket of this rulemaking for additional information on the alternatives analysis.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires federal agencies to examine the impact a rule would have on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people). Because this rule is being issued as an interim final rule under the good cause exception (5 U.S.C. 553(b)(B)), as set forth above, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 601–612).

Nonetheless, in the docket of this rulemaking (docket number [USCBP–2018–0019]), CBP has included a regulatory impact analysis entitled *Regulatory Assessment and Initial Regulatory Flexibility Analysis for the Interim Final Rule: Air Cargo Advance Screening (ACAS) Rule.* This document contains a threshold analysis that estimates the impacts of the rule on small entities.

The threshold analysis identified that out of 215 total affected entities, 86 are U.S. entities and 61 U.S. entities of the 86 U.S. entities affected by this rule may be small businesses. These small entities are in 4 distinct industries and generally represent 50 percent or more of their respective industries. As such, CBP believes that a substantial number of small entities may be affected by this rule. The threshold analysis also identified that the percentage of first-year costs relative to the average annual revenue of the small entities potentially affected by this rule range from a low of 0.4 percent to a high of 1.3 percent. CBP believes that impacts identified in the threshold analysis may be considered a significant economic impact.

CBP has prepared the following initial regulatory flexibility analysis. Please see chapter 5 of the full regulatory impact analysis included in the docket of this rulemaking for additional information on the threshold analysis.

1. A description of the reasons why action by the agency is being considered.

In October 2010, concealed explosive devices were discovered in cargo onboard two aircraft destined to the United States. This incident provides evidence of the potential for terrorists to use the international air cargo system to place high-risk cargo such as unauthorized weapons, explosives, chemical and/or biological weapons, WMDs, or other destructive substances or items in the cargo of a United States-bound aircraft with the intent of bringing down the aircraft. The exposure from international air cargo requires a security strategy to detect, identify, and deter this threat at the earliest point in the international supply chain, before the cargo departs for the United States.

2. A succinct statement of the objectives of, and legal basis for, the rule.

Current CBP regulations require air carriers to electronically transmit air manifest data in advance of their cargo's arrival in the United States (codified in 19 CFR 122.48a). These 19 CFR 122.48a data are required to be provided to CBP no later than the time of aircraft departure for the United States (from foreign ports in all of North America, including Mexico, Central America, the Caribbean, and Bermuda as well as South America north of the equator), or no later than four hours prior to aircraft arrival in the United States (from foreign ports located everywhere else). CBP determined, however, that it is necessary to receive a subset of the 122.48a data prior to loading of the cargo aboard the aircraft in order to more effectively complete its risk targeting and identification, and mitigate any identified risk, prior to aircraft departure.

The rule, which was developed by CBP in coordination with the trade, including consultation with the Commercial Customs Operations Advisory Committee (COAC), represents an important component of DHS's evolving layered strategy for securing the cargo supply chain from terrorist-related activities. The rule is designed to identify high-risk air cargo, such as unauthorized weapons, explosives, chemical and/or biological weapons, WMDs, or other destructive substances or items prior to the aircraft's departure for the United States through a targeted intelligence-based risk assessment. The principal security benefit of the new rule will be more precise identification and mitigation of at-risk shipments prior to the departure of the U.S.-bound aircraft. This information will allow for better targeting and will increase the safety of the aircraft during flight.

3. A description of, and, where feasible, an estimate of the number of small entities to which the rule will apply.

As discussed earlier in this section, the rule applies to 129 passenger carriers, 56 cargo carriers, 22 air express couriers, and 8 freight forwarders. Of these, 86 entities are U.S.-owned companies. Among the U.S.-owned companies, 61 meet SBA's definition of a small entity (See Table 11).

TABLE 11—ESTIMATED NUMBER OF POTENTIALLY AFFECTED U.S. ENTITIES THAT ARE SMALL

Affected industry (NAICS code)	Total number of affected entities [1]	Total number of affected U.S. entities	SBA small business size standard [2]	Number of U.S. entities that meet SBA'S definition of a small entity [3]	Proportion of U.S. entities that are small (%)
Scheduled Passenger Air Transportation (481111).	129	30	1,500 employees	18	60
Scheduled Freight Air Transportation (481112).	56	31	1,500 employees	27	87
Freight Transportation Arrangement (488510).	8	7	$15 million in average annual receipts.	3	43
Air Courier and Express Delivery Services (492110).	22	18	1,500 employees	13	72
Total	215	86	N/A	61	71

Notes:
[1] Some of the 215 entities are foreign-owned companies.
[2] "Table of Small Business Size Standards", U.S. Small Business Administration, accessed at *http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf* on October 3, 2016.
[3] If no data were available, we assume the entity is small. This may overstate the number of small entities. None of the small entities identified were non-profit organizations.
Table Source: Exhibit 5–2 of the full regulatory impact analysis included in the docket of this rulemaking, entitled *Regulatory Assessment and Initial Regulatory Flexibility Analysis for the Interim Final Rule: Air Cargo Advance Screening (ACAS) Rule.*

4. A description of the projected reporting, record-keeping and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The rule requires the transmission of six mandatory ACAS data elements to CBP as early as practicable, but no later than prior to loading of the cargo onto any inbound aircraft required to make entry under 19 CFR 122.41 that will have commercial cargo aboard. The six ACAS data elements include: (1) Shipper name and address; (2) consignee name and address; (3) cargo description; (4) total quantity based on the smallest external packing unit; (5) total weight of cargo; and (6) air waybill number. The rule also requires the ACAS filer to transmit a MAWB number under certain conditions, as described in Chapter 1 of the full regulatory impact analysis.[33] Filers will include passenger airlines (NAICS 481111), cargo-only airlines (NAICS 481112), freight forwarders (NAICS 488510), and air courier and express delivery services (NAICS 492110).

Generally, regulated entities will meet this requirement using existing information and communication systems; however, these systems, along with certain business processes, may require modification. In addition, some entities may purchase new systems or adopt new processes. In either case, new training will be required for existing staff (generally logistics professionals and support staff). In addition, entities will need to designate a 24/7 point of contact to respond to DNL instructions issued by CBP. Costs that may be incurred by these small entities in the first year of the rule are summarized in Table 12. For a detailed discussion of the derivation of the cost estimates, see Chapter 3 of the full regulatory impact analysis.

TABLE 12—FIRST YEAR COSTS OF THE INTERIM FINAL RULE RELATIVE TO AVERAGE ANNUAL SMALL ENTITY REVENUES

Affected industry (NAICS code)	Number of small U.S. entities	Cost per small entity for first year of rule ($2016) [1]	Average annual revenues of small entities ($2016) [2]	Percentage of first–year costs relative to average annual revenues [3 4] (%)
Scheduled Passenger Air Transportation (481111)	18	$420,000	$35,387,000	1.2
Scheduled Freight Air Transportation (481112)	27	420,000	120,408,000	0.3
Freight Transportation Arrangement (488510)	3	17,400	3,503,000	0.5
Air Courier and Express Delivery Services (492110)	13	325,000	48,845,000	0.7

Notes:
[1] We assume that many small passenger and cargo carriers (as defined by SBA) incur costs identical to carriers transmitting 100 or more AWBs per year, while some may submit less and incur fewer costs. We assume small freight forwarders (as defined by SBA) transmit between 1,000 and 100,000 AWBs per year. We also assume small express carriers (as defined by SBA) transmit fewer than 15,000 AWBs per year.
[2] Represents the average of the annual revenues of the entities that are small and for which we were able to obtain revenue data from Hoover's (26 small entities).
[3] We also calculate these percentages using the average annual cost (based on analysis and data presented in Chapter 3) instead of first-year costs, finding percentages of 0.2 percent for passenger carriers, 0.1 percent for cargo carriers, 0.5 percent for freight forwarders, and 0.1 percent for air express couriers.

[33] In addition to the ACAS data elements described above, the regulations also require inbound carriers to transmit a flight departure message (FDM) to CBP upon departure or four hours prior to arrival in the United States (*i.e.,* on the same timeframe as the 19 CFR 122.48a data). This information is already routinely provided by carriers on this timeframe and thus is not considered further in this analysis (Personal communication with Program Manager, Cargo and Conveyance Security Directorate, CBP, May 16, 2016.)

[4] As a sensitivity analysis, we also report the first-year cost impacts for small passenger and cargo carriers using the lower AWB volumes reported in Chapter 3. Assuming small passenger and cargo carriers transmit fewer than 100 AWBs annually, the average costs equal 0.6 percent and 0.2 percent of revenues, respectively.

[5] Costs are rounded to the nearest thousand. Totals may not calculate due to rounding.

Table Source: Exhibit 5–4 of the full regulatory impact analysis included in the docket of this, entitled *Regulatory Assessment and Initial Regulatory Flexibility Analysis for the Interim Final Rule: Air Cargo Advance Screening (ACAS) Rule.*

5. An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the rule.

The data elements required to be transmitted in this rule are, largely, already required under existing Federal rules (*i.e.,* 19 CFR 122.48a). The main impact of this rule is to advance (make earlier) the time frame at which a subset of the existing 19 CFR 122.48a data elements for air cargo are required. Refer to Chapter 1 of the full regulatory impact analysis for further detail.

6. An establishment of any significant alternatives to the rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the rule on small entities.

CBP does not identify any significant alternatives to the rule that specifically address small entities. Due to the security nature of the regulation, CBP is unable to provide an alternative regulatory framework for small entities that would not jeopardize the security of the United States. Excluding small entities would undermine the rule and increase in-flight security risks for aircraft operated by small entities. We evaluate two alternatives in our analysis, in addition to the chosen alternative; however as discussed in Chapter 3 of the full regulatory impact analysis, these alternatives affect all regulated entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. The regulation is exempt from these requirements under 2 U.S.C. 1503 (Exclusions) which states that the UMRA ''shall not apply to any provision in a bill, joint resolution, amendment, motion, or conference report before Congress and any provision in a proposed or final Federal regulation'' that ''is necessary for the national security or the ratification or implementation of international treaty obligations.''

E. Privacy

CBP will ensure that all Privacy Act requirements and policies are adhered to in the implementation of this rule, and will issue or update any necessary Privacy Impact Assessment and/or Privacy Act System of Records notice to fully outline processes that will ensure compliance with Privacy Act protections.

F. Paperwork Reduction Act

An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. The collection of information regarding electronic information for air cargo required in advance of arrival under 19 CFR 122.48a was previously reviewed and approved by OMB in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under OMB Control Number 1651–0001. When CBP began the ACAS pilot, however, CBP did not publish the collection of information specific to the pilot for notice and comment under the Paperwork Reduction Act because there is no new burden associated with ACAS, just a change in when the data is submitted. Any additional cost to file the ACAS subset of the 19 CFR 122.48a filing on the ACAS time frame was not captured under the OMB Control Number mentioned above. CBP requests comment on what, if any, additional burden ACAS represents. CBP notes that when this rule is implemented, carriers will have the option to file the full 19 CFR 122.48a filing withn the ACAS time frame to satisfy both requirements in a single filing. Many carriers are able to submit their 19 CFR 122.48a information well in advance of the flight and this would allow them to only file once, if they choose to do so. This document adds an additional data element, the flight departure message, to 19 CFR 122.48a and this collection. This data element is readily accessible for those filers for whom it is required and it is already routinely provided. The collection of information for ACAS under 19 CFR 122.48b is comprised of a subset of information already collected pursuant to 19 CFR 122.48a under this approval, but information for ACAS will be now be collected earlier. Filers will need to modify their systems in order to provide these data earlier in an automated manner, but as the only new required data element (the flight departure message) is already routinely provided on a voluntary basis and is readily available, CBP does not estimate any change in the burden hours as a result of this rule.

The resulting estimated burden associated with the electronic information for air cargo required in advance of arrival under this rule is as follows:

Estimated Number of Respondents: 215.

Estimated Number of Total Annual Responses: 1,466,400.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 366,600.

Comments concerning the accuracy of this cost estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of Homeland Security, Office of Information and Regulatory Affairs, at *DHSDeskOfficer@omb.eop.gov.* A copy should also be sent to Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, Attention: Border Security Regulations Branch, 90 K Street NE, 10th Floor, Washington, DC 20229 or by email at *CBP_PRA@cbp.dhs.gov.*

The list of approved information collections contained in 19 CFR part 178 is revised to add an appropriate reference to section 122.48b to reflect the approved information collection.

VI. Signing Authority

The signing authority for this document falls under 19 CFR 0.2(a). Accordingly, this document is signed by the Secretary of Homeland Security.

List of Subjects

19 CFR Part 12

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 113

Common carriers, Customs duties and inspection, Exports, Freight, Laboratories, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 122

Administrative practice and procedure, Air carriers, Aircraft, Airports, Alcohol and alcoholic beverages, Cigars and cigarettes, Customs duties and inspection, Drug traffic control, Freight, Penalties,

Reporting and recordkeeping requirements, Security measures.

19 CFR Part 141

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 178

Reporting and recordkeeping requirements.

19 CFR Part 192

Aircraft, Exports, Motor vehicles, Penalties, Reporting and recordkeeping requirements, Vessels.

Regulatory Amendments

For the reasons set forth above, CBP amends parts 12, 113, 122, 141, 178, and 192 of title 19 of the Code of Federal Regulations (19 CFR parts 12, 113, 122, 141, 178, and 192) as follows:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and specific authority citation for § 12.3 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Section 12.3 also issued under 7 U.S.C. 135h, 21 U.S.C. 381;

* * * * *

§ 12.3 [Amended]

■ 2. Amend § 12.3(b)(2) and (c) by removing the references to ''§ 113.62(m)(1)'' and adding in their place ''§ 113.62(n)(1)''.

PART 113—CBP BONDS

■ 3. The general authority citation for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

■ 4. Amend § 113.62 as follows:

■ a. Redesignate paragraphs (l) and (m) as paragraphs (m) and (n);

■ b. Add a new paragraph (l);

■ c. In redesignated paragraph (n)(1), remove the word ''or'' after the text ''(k)(2)'' and after the text ''(l)'', add '', or (m)'';

■ d. In redesignated paragraph (n)(4), remove the reference to ''paragraph (m)(1)'' and add in its place ''paragraph (n)(1)''; and

■ e. In redesignated paragraph (n)(5), remove the reference to ''paragraph (l)'' and add in its place ''paragraph (m)''.

The addition reads as follows:

§ 113.62 Basic importation and entry bond conditions.

* * * * *

(l) *Agreement to comply with Air Cargo Advance Screening (ACAS) requirements.* The principal agrees to comply with all ACAS requirements set forth in §§ 122.48a and 122.48b of this chapter including, but not limited to, providing ACAS data to U.S. Customs and Border Protection in the manner and in the time period prescribed by regulation and taking the necessary action to address ACAS referrals and Do-Not-Load (DNL) instructions as prescribed by regulation. If the principal defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each violation.

* * * * *

■ 5. Amend § 113.63 by redesignating paragraphs (h) and (i) as paragraphs (i) and (j) and adding a new paragraph (h) to read as follows:

§ 113.63 Basic custodial bond conditions.

* * * * *

(h) *Agreement to comply with Air Cargo Advance Screening (ACAS) requirements.* The principal agrees to comply with all ACAS requirements set forth in §§ 122.48a and 122.48b of this chapter including, but not limited to, providing ACAS data to U.S. Customs and Border Protection in the manner and in the time period prescribed by regulation and taking the necessary action to address ACAS referrals and Do-Not-Load (DNL) instructions as prescribed by regulation. If the principal defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each violation.

* * * * *

■ 6. Amend § 113.64 as follows:

■ a. In paragraph (a), add ''or § 122.48b(c)(2)'' after the words ''as specified in § 122.48a(c)(1)(ii)–(c)(1)(iv)'';

■ b. Redesignate paragraphs (i) through (l) as paragraphs (j) through (m); and

■ c. Add a new paragraph (i) to read as follows:

§ 113.64 International carrier bond conditions.

* * * * *

(i) *Agreement to comply with Air Cargo Advance Screening (ACAS) requirements.* (1) The inbound air carrier agrees to comply with all ACAS requirements set forth in §§ 122.48a and 122.48b of this chapter including, but not limited to, providing ACAS data to U.S. Customs and Border Protection (CBP) in the manner and in the time period prescribed by regulation and taking the necessary action to address ACAS referrals and Do-Not-Load (DNL) instructions as prescribed by regulation. If the inbound air carrier, as principal, defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each violation, to a maximum of $100,000 per conveyance arrival.

(2) If a party specified in § 122.48b(c)(2) of this chapter provides the ACAS data to CBP, that party, as principal under this bond, agrees to comply with all ACAS requirements set forth in §§ 122.48a and 122.48b of this chapter including, but not limited to, providing ACAS data to CBP in the manner and in the time period prescribed by regulation and taking the necessary action to address ACAS referrals and Do-Not-Load (DNL) instructions as prescribed by regulation. If the principal defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each violation, to a maximum of $100,000 per conveyance arrival.

* * * * *

PART 122—AIR COMMERCE REGULATIONS

■ 7. The general authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

* * * * *

■ 8. Amend § 122.48a as follows:

■ a. Revise the introductory text of paragraph (a);

■ b. In paragraph (c)(3), remove the phrase '', on behalf of the party,'';

■ c. In paragraph (d)(1) introductory text, add the phrase ''; and an ''A'' next to any listed data element indicates that the data element is an ACAS data element that is also subject to the requirements and time frame specified in § 122.48b'' before the closing parenthesis;

■ d. In paragraphs (d)(1)(i) and (d)(1)(vii)–(x), add the text ''(A)'' after the text ''(M)'';

■ e. Revise paragraph (d)(1)(xi);

■ f. In paragraph (d)(1)(xvi), remove the word ''and'' after the last semicolon;

■ g. In paragraph (d)(1)(xvii), remove the period and add in its place the text ''; and'';

■ h. Add paragraph (d)(1)(xviii);

■ i. In paragraph (d)(2) introductory text, add the phrase ''; and an ''A'' next to any listed data element indicates that the data element is an ACAS data

element that is also subject to the requirements and time frame specified in § 122.48b'' before the closing parenthesis;

■ j. In paragraphs (d)(2)(i) and (d)(2)(iii)–(vi), add the text ''(A)'' after the text ''(M)''; and

■ k. Revise paragraph (d)(2)(vii).

The revisions and additions read as follows:

§ 122.48a Electronic information for air cargo required in advance of arrival.

(a) *General requirement.* Pursuant to section 343(a), Trade Act of 2002, as amended (19 U.S.C. 2071 note), for any inbound aircraft required to make entry under § 122.41, that will have commercial cargo aboard, U.S. Customs and Border Protection (CBP) must electronically receive from the inbound air carrier and, if applicable, an approved party as specified in paragraph (c)(1) of this section, certain information concerning the inbound cargo, as enumerated, respectively, in paragraphs (d)(1) and (d)(2) of this section. CBP must receive such information according to the time frames prescribed in paragraph (b) of this section. However, a subset of these data elements known as ACAS data and identified in paragraph (d) of this section, is also subject to the requirements and time frame described in § 122.48b. The advance electronic transmission of the required cargo information to CBP must be effected through a CBP-approved electronic data interchange system.

* * * * *

(d) * * *

(1) * * *

(xi) Consignee name and address (M) (A) (for consolidated shipments, the identity of the container station (see 19 CFR 19.40–19.49), express consignment or other carrier is sufficient for the master air waybill record; for non-consolidated shipments, the name and address of the party to whom the cargo will be delivered is required regardless of the location of the party; this party need not be located at the arrival or destination port);

* * * * *

(xviii) Flight departure message (M) (this data element includes the liftoff date and liftoff time using the Greenwich Mean Time (GMT)/Universal Time, Coordinated (UTC) at the time of departure from each foreign airport en route to the United States; if an aircraft en route to the United States stops at one or more foreign airports and cargo is loaded on board, the flight departure message must be provided for each departure).

(2) * * *

(vii) Consignee name and address (M) (A) (the name and address of the party to whom the cargo will be delivered is required regardless of the location of the party; this party need not be located at the arrival or destination port); and

* * * * *

■ 9. Add § 122.48b to read as follows:

§ 122.48b Air Cargo Advance Screening (ACAS).

(a) *General requirement.* Pursuant to section 343(a), Trade Act of 2002, as amended (19 U.S.C. 2071 note), in addition to the advance filing requirements pursuant to § 122.48a, for any inbound aircraft required to make entry under § 122.41, that will have commercial cargo aboard, U.S. Customs and Border Protection (CBP) must electronically receive from the inbound air carrier and/or another eligible ACAS filer, as specified in paragraph (c) of this section, certain information concerning the inbound cargo, as enumerated in paragraph (d) of this section. CBP must receive such information, known as ACAS data, no later than the time frame prescribed in paragraph (b) of this section. The transmission of the required ACAS data to CBP (ACAS filing) must be effected through a CBP-approved electronic data interchange system. Any ACAS referrals must be resolved in accordance with the provisions and time frame prescribed in paragraph (e) of this section. Any Do-Not-Load (DNL) instruction must be addressed in accordance with the provisions prescribed in paragraph (f) of this section.

(b) *Time frame for presenting data.* (1) *Initial filing.* The ACAS data must be submitted as early as practicable, but no later than prior to loading of the cargo onto the aircraft.

(2) *Update of ACAS filing.* The party who submitted the initial ACAS filing pursuant to paragraph (a) of this section must update the initial filing if, after the filing is submitted, any of the submitted data changes or more accurate data becomes available. Updates are required up until the time frame specified in § 122.48a(b) for submitting advance information under § 122.48a(a).

(c) *Parties filing ACAS data*—(1) *Inbound air carrier.* If no other eligible party elects to file the ACAS data, the inbound air carrier must file the ACAS data. If another eligible party does elect to file ACAS data, the inbound air carrier may also choose to file the ACAS data.

(2) *Other filers.* The following entities can elect to be ACAS filers, provided they also meet the ACAS filer requirements in paragraph (c)(3) of this section:

(i) All parties eligible to elect to file advance electronic cargo data listed in § 122.48a(c); and

(ii) Foreign Indirect Air Carriers. For purposes of this section, ''foreign indirect air carrier'' (FIAC) is defined as any person, not a citizen of the United States, who undertakes indirectly to engage in the air transportation of property. A FIAC may volunteer to be an ACAS filer and accept responsibility for the submission of accurate and timely ACAS filings, as well as for taking the necessary action to address any referrals and Do-Not-Load (DNL) instructions when applicable.

(3) *ACAS filer requirements.* All inbound air carriers and other entities electing to be ACAS filers must:

(i) Establish the communication protocol required by CBP for properly transmitting an ACAS filing through a CBP-approved electronic data interchange system;

(ii) Possess the appropriate bond containing all the necessary provisions of § 113.62, § 113.63, or § 113.64 of this chapter;

(iii) Report all of the originator codes that will be used to file ACAS data. If at any time, ACAS filers wish to utilize additional originator codes to file ACAS data, the originator code must be reported to CBP prior to its use; and

(iv) Provide 24 hours/7 days a week contact information consisting of a telephone number and email address. CBP will use the 24 hours/7 days a week contact information to notify, communicate, and carry out response protocols for Do-Not-Load (DNL) instructions, even if an electronic message is sent.

(4) *Nonparticipation by other party.* If a party specified in paragraph (c)(2) of this section does not participate in an ACAS filing, the party that arranges for and/or delivers the cargo to the inbound air carrier must fully disclose and present to the inbound air carrier the required cargo data listed in paragraph (d) of this section; and the inbound air carrier must present this data electronically to CBP under paragraph (a) of this section.

(5) *Required information in possession of third party.* Any other entity in possession of required ACAS data that is not the inbound air carrier or a party described in paragraph (c)(2) of this section must fully disclose and present the required data for the inbound air cargo to either the inbound air carrier or other eligible ACAS filer, as applicable, which must present such data to CBP.

(6) *Party receiving information believed to be accurate.* Where the party electronically presenting the cargo data

required in paragraph (d) of this section receives any of this data from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present the data on the basis of what that party reasonably believes to be true.

(d) *ACAS data elements.* Some of the ACAS data elements are mandatory in all circumstances, one is conditional and is required only in certain circumstances, and others are optional. The definitions of the mandatory and conditional ACAS data elements are set forth in § 122.48a.

(1) *Mandatory data elements.* The following data elements are required to be submitted at the lowest air waybill level (*i.e.,* at the house air waybill level if applicable) by all ACAS filers:

(i) Shipper name and address;

(ii) Consignee name and address;

(iii) Cargo description;

(iv) Total quantity based on the smallest external packing unit;

(v) Total weight of cargo; and

(vi) Air waybill number. The air waybill number must be the same in the filing required by this section and the filing required by § 122.48a.

(2) *Conditional data element: Master air waybill number.* The master air waybill (MAWB) number for each leg of the flight is a conditional data element. The MAWB number is a required data element in the following circumstances; otherwise, the submission of the MAWB number is optional, but encouraged:

(i) When the ACAS filer is a different party than the party that will file the advance electronic air cargo data required by § 122.48a. To allow for earlier submission of the ACAS filing, the initial ACAS filing may be submitted without the MAWB number, as long as the MAWB number is later submitted by the ACAS filer or the inbound air carrier according to the applicable ACAS time frame for data submission in paragraph (b) of this section; or

(ii) When the ACAS filer is transmitting all the data elements required by § 122.48a according to the applicable ACAS time frame for data submission; or

(iii) When the inbound air carrier would like to receive from CBP a check on the ACAS status of a specific shipment. If the MAWB number is submitted, either by the ACAS filer or the inbound air carrier, CBP will provide this information to the inbound air carrier upon request.

(3) *Optional data elements*—(i) *Second Notify Party.* The ACAS filer may choose to designate a Second Notify Party to receive shipment status messages from CBP.

(ii) Any additional data elements listed in § 122.48a or any additional information regarding ACAS data elements (*e.g.,* telephone number, email address, and/or internet protocol address for shipper and/or consignee) may be provided and are encouraged.

(e) *ACAS referrals*—(1) *Potential referrals.* There are two types of referrals that may be issued by CBP after a risk assessment of an ACAS submission:

(i) *Referral for information.* A referral for information will be issued if a risk assessment of the cargo cannot be conducted due to non-descriptive, inaccurate, or insufficient data. This can be due to typographical errors, vague cargo descriptions, and/or unverifiable information; and

(ii) *Referral for screening.* A referral for screening will be issued if the potential risk of the cargo is deemed high enough to warrant enhanced screening. A referral for screening must be resolved according to TSA-approved enhanced screening methods.

(2) *ACAS referral resolution.* All ACAS filers and/or inbound air carriers, as applicable, must respond to and take the necessary action to address all referrals as provided in paragraphs (e)(2)(i)–(ii) of this section, no later than prior to departure of the aircraft. The appropriate protocols and time frame for taking the necessary action to address these referrals must be followed as directed. The parties responsible for taking the necessary action to address ACAS referrals are as follows:

(i) *Referral for information.* The ACAS filer is responsible for taking the necessary action to address a referral for information. The last party to file the ACAS data is responsible for such action. For instance, the inbound air carrier is responsible for taking the necessary action to address a referral for information if the inbound air carrier retransmits an original ACAS filer's data and the referral is issued after this retransmission.

(ii) *Referral for screening.* As provided in paragraph (e)(1)(ii) of this section, a referral for screening must be resolved according to TSA-approved enhanced screening methods. If the ACAS filer is a party recognized by TSA to perform screening, the ACAS filer may address a referral for screening directly; if the ACAS filer is a party other than the inbound air carrier and chooses not to address the referral for screening or is not a party recognized by TSA to perform screening, the ACAS filer must notify the inbound air carrier of the referral for screening. The inbound air carrier is responsible for taking the necessary action to address a referral for screening, unless another ACAS filer recognized by TSA to perform screening has taken such action.

(3) *Prohibition on transporting cargo with unresolved ACAS referrals.* The inbound air carrier may not transport cargo on an aircraft destined to the United States until any and all referrals issued pursuant to paragraph (e)(1) of this section with respect to such cargo have been resolved.

(f) *Do-Not-Load (DNL) instructions.* (1) A Do-Not-Load (DNL) instruction will be issued if it is determined that the cargo may contain a potential bomb, improvised explosive device, or other material that may pose an immediate, lethal threat to the aircraft and its vicinity.

(2) As provided in paragraph (c)(3)(iv) of this section, all ACAS filers must provide a telephone number and email address that is monitored 24 hours/7 days a week in case a Do-Not-Load (DNL) instruction is issued. All ACAS filers and/or inbound air carriers, as applicable, must respond and fully cooperate when the entity is reached by phone and/or email when a Do-Not-Load (DNL) instruction is issued. The party with physical possession of the cargo will be required to carry out the Do-Not-Load (DNL) protocols and the directions provided by law enforcement authorities.

(3) The inbound air carrier may not transport cargo with a Do-Not-Load (DNL) instruction.

PART 141—ENTRY OF MERCHANDISE

■ 10. The general authority citation for part 141 and specific authority citation for § 141.113 continue to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1498, 1624.

* * * * *

Section 141.113 also issued under 19 U.S.C. 1499, 1623.

§ 141.113 [Amended]

■ 11. Amend § 141.113(b) by removing the reference to ''§ 113.62(m)(1)'' and adding in its place ''§ 113.62(n)(1)''.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

■ 12. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

§ 178.2 [Amended]

■ 13. Amend § 178.2 by removing ''§ 122.48a'' and adding in its place ''§§ 122.48a, 122.48b''.

PART 192—EXPORT CONTROL

■ 14. The authority citation for part 192 continues to read as follows:

Authority: 19 U.S.C. 66, 1624, 1646c. Subpart A also issued under 19 U.S.C. 1627a, 1646a, 1646b; subpart B also issued under 13 U.S.C. 303; 19 U.S.C. 2071 note; 46 U.S.C. 91.

§ 192.14 [Amended]

■ 15. Amend § 192.14(c)(4)(ii) by removing the reference to ''§ 113.64(k)(2)'' and adding in its place ''§ 113.64(m)(2)''.

Dated: June 4, 2018.

Kirstjen M. Nielsen,

Secretary.

[FR Doc. 2018–12315 Filed 6–11–18; 8:45 am]

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Part III

Commodity Futures Trading Commission

17 CFR Part 49
Amendments to the Swap Data Access Provisions of Part 49 and Certain Other Matters; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 49

RIN Number 3038–AE44

Amendments to the Swap Data Access Provisions of Part 49 and Certain Other Matters

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: Pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), as amended by the Fixing America's Surface Transportation Act of 2015 (''FAST Act''), the Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is amending the Commission's regulations relating to access to swap data held by swap data repositories (''SDRs''). The amendments implement pertinent provisions of the FAST Act and make associated changes to the Commission's regulations governing the grant of access to swap data to certain foreign and domestic authorities by SDRs, as well as changes to certain other regulations unrelated to such access.

DATES: The effective date for this final rule is August 13, 2018. For compliance dates, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Daniel Bucsa, Deputy Director, Division of Market Oversight—Data and Reporting Branch (''DMO–DAR''), (202) 418–5435, *dbucsa@cftc.gov;* David E. Aron, Special Counsel, DMO–DAR, (202) 418–6621, *daron@cftc.gov;* Owen J. Kopon, Special Counsel, DMO–DAR, (202) 418–5360, *okopon@cftc.gov;* or Stephen Kane, Research Economist, Office of the Chief Economist, (202) 418–5911, *skane@cftc.gov,* Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The compliance date for an SDR to comply with its obligation under § 49.17(d)(5)(iii) of the Commission's regulations [1] to provide access to swap data requested by an Appropriate Domestic Regulator (as defined in § 49.17(b)(1)) (''ADR'') or Appropriate Foreign Regulator (as defined in § 49.17(b)(2)) (''AFR'') is, as discussed further below, the earlier of (1) the earliest date, after such SDR receives from such ADR or AFR the confidentiality arrangement required by § 49.18(a), that such SDR, exercising commercially reasonable efforts in light of its obligations under the Act [2] and the Commission's regulations, is able to provide such access to the ADR or AFR and (2) 180 days after the SDR receives from such ADR or AFR the confidentiality arrangement required by § 49.18(a). The compliance date for all other regulations amended, added or revised by this final rule is August 13, 2018.

Table of Contents

[1] 17 CFR 49.17(d)(5)(iii). All Commission regulations cited herein are set forth in Title 17 of the Code of Federal Regulations.

[2] 7 U.S.C. 1 *et seq.*

I. Background and Introduction

A. Statutory Background: The Dodd-Frank Act

Title VII of the Dodd-Frank Act [3] amended the Commodity Exchange Act (''CEA'') to establish a comprehensive new regulatory framework for swaps including, in new CEA section 21, requirements addressing the registration and regulation of SDRs.[4] CEA section 21 imposes on SDRs, among other duties and responsibilities, the duty to maintain the privacy of all swap transaction information received from a swap dealer, counterparty, or any other registered entity.[5] CEA section 21(c)(7) directs SDRs to make swap data available on a confidential basis pursuant to section 8 of the CEA, upon request, and after notifying the Commission of the request,[6] to certain enumerated domestic authorities and any other person (which may include certain types of foreign authorities) that the Commission determines to be appropriate (each such enumerated and Commission-determined entity, a ''21(c)(7) entity'').[7]

As originally enacted, CEA sections 21(d)(1) and (2), respectively, mandated that, prior to receipt of any requested data or information from an SDR, a 21(c)(7) entity agree in writing to abide by the confidentiality requirements described in CEA section 8 and, separately, to indemnify the SDR and the Commission for any expenses arising from litigation relating to the information provided under section 8.[8] Congress's repeal of the CEA section 21(d)(2) indemnification requirement in the FAST Act [9] in December 2015 prompted this rulemaking.[10]

B. Regulatory History: The Part 49 Rules and the Commission's Interpretative Statement

1. Access to SDR Swap Data

In 2011, the Commission adopted rules implementing the requirements for SDRs in CEA section 21.[11] The Commission implemented the SDR swap data access provisions of CEA sections 21(c)(7) and (d) by establishing processes to allow two categories of entities to gain access to SDR swap data. The Commission defined one category, ADRs, in § 49.17(b)(1) of the Commission's regulations as domestic authorities enumerated in CEA section 21(c)(7)(A)–(D) [12] and certain other persons determined by the Commission to be appropriate recipients of such swap data pursuant to CEA section 21(c)(7)(E).[13]

The Commission defined the other category, AFRs,[14] in § 49.17(b)(2) as ''Foreign Regulators'' [15] with existing memoranda of understanding (''MOUs'') or similar types of information sharing arrangements with the Commission, but did not identify any specific persons as AFRs in the SDR Final Rules. The SDR Final Rules also defined the term AFR to include a Foreign Regulator without an existing MOU with the Commission, as determined by the Commission on a case-by-case basis. Such a Foreign Regulator was required to file with the Commission an application providing sufficient facts and procedures to permit the Commission to analyze whether the Foreign Regulator employed appropriate confidentiality procedures, and to satisfy the Commission that any SDR swap data or information accessed by the Foreign Regulator would be disclosed only as permitted by section 8(e) of the CEA.[16]

An ADR or AFR seeking access to SDR swap data is required by current § 49.17(d)(1) to file an access request with the SDR certifying that it is acting within the scope of its jurisdiction and is required by current § 49.17(d)(6) to execute a ''Confidentiality and Indemnification Agreement'' with the SDR.[17]

2. Indemnification Requirement

In the preamble to the SDR Final Rules, the Commission acknowledged commenters' concerns that compliance with the statutory and regulatory requirements to indemnify the Commission, and the SDR providing access to swap data, for any expenses arising from litigation relating to the information provided under section 8 of the CEA, would be difficult for certain domestic and foreign regulators, due to various home country laws and other regulations prohibiting such arrangements.[18] The Commission expressed its intent to continue to work to provide regulators sufficient access to SDR data. In this regard, the Commission outlined the circumstances under which it believed the indemnification provisions of CEA

[3] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010), available at *http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm*. Title VII of the Dodd-Frank Act may be cited as the Wall Street Transparency and Accountability Act of 2010.

[4] *See* Dodd-Frank Act section 728 (adding new CEA section 21, 7 U.S.C. 24(a), to establish a registration requirement and regulatory regime for SDRs).

[5] 7 U.S.C. 24a(c)(6).

[6] CEA section 8, 7 U.S.C. 12, describes circumstances under which public disclosure of information in the Commission's possession is permitted and prohibited. As discussed more fully below, the principles underlying CEA section 8(e), in particular, are fundamental to CEA sections 21(c)(7) and (d) and to the access standards and confidentiality provisions adopted in this release.

[7] *See* 7 U.S.C. 24a(c)(7). *See also* Commission, Final Rulemaking: Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136, Jan. 13, 2012 (''Data Final Rules''). The Data Final Rules set forth, among others, regulations governing SDR data collection and swap data reporting responsibilities under part 45 of the Commission's regulations.

[8] 7 U.S.C. 24a(d). As noted above, the indemnification requirement was stricken from CEA section 21(d) by the FAST Act. *See* Public Law 114–94, section 86001(b)(2).

[9] FAST Act, Public Law 114–94, 129 Stat. 1312 (Dec. 4, 2015).

[10] FAST Act section 86002(b)(2) struck subsection (d) of CEA section 21 and inserted a new provision in in its place that stated that before the swap data repository may share information with any entity listed in section (c)(7), the swap data repository shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 8 of the CEA relating to the information on swap transactions that is provided.

[11] Swap Data Repositories: Registration Standards, Duties and Core Principles; 76 FR 54538 (Sept. 1, 2011) (''SDR Final Rules''); *see also* Swap Data Repositories: Registration Standards, Duties and Core Principles, 75 FR 80898 (Dec. 23, 2010) (the proposed SDR Final Rules) (''SDR NPRM'').

[12] The domestic authorities enumerated in CEA section 21(c)(7) are: (A) Each appropriate prudential regulator; (B) the Financial Stability Oversight Council (''FSOC''); (C) the Securities and Exchange Commission (''SEC''); and (D) the Department of Justice. The term ''prudential regulator'' is defined in CEA section 1a(39) (7 U.S.C. 1a(39)).

[13] In addition to CEA section 21(c)(7) enumerating certain domestic authorities to which an SDR must grant swap data access, CEA section 21(c)(7)(E), as amended by the FAST Act, identifies as an eligible recipient of such access as any other person that the Commission determines to be appropriate, including foreign financial supervisors (including foreign futures authorities); foreign central banks; foreign ministries; and other foreign authorities. 7 U.S.C. 24a(c)(7)(E). Pursuant to this authority, in §§ 49.17(b)(1)(v) and (vi), the Commission identified any Federal Reserve Bank and the Office of Financial Research (''OFR''), respectively, as ADRs. The Commission also defined as an ''Appropriate Domestic Regulator'' each prudential regulator identified in CEA section 1(a)(39), with respect to requests related to any such regulator's statutory authority, without limitation to the activities listed for each regulator in CEA section 1(a)(39). *See* § 49.17(b)(1)(ii). The Commission further reserved the discretion, in § 49.17(b)(1)(vii), to recognize any other person the Commission deems appropriate to be an ADR.

[14] The Commission established the category of AFRs pursuant to CEA section 21(c)(7)(E), which, among other things, includes a list of the types of foreign entities that the Commission may determine to be appropriate recipients of swap data obtained by an SDR.

[15] The term ''Foreign Regulator'' is defined in current § 49.2(a)(5) to mean a foreign futures authority as defined in CEA section 1(a)(26), foreign financial supervisors, foreign central banks and foreign ministries.

[16] 17 CFR 49.17(b)(2)(i)(B).

[17] Current § 49.18(b) requires an SDR to receive such a Confidentiality and Indemnification Agreement from an ADR or AFR prior to releasing swap data to the ADR or AFR.

[18] *See* SDR Final Rules at 54554. The Commission notes that, to date, no 21(c)(7) entity has entered into a confidentiality or indemnification agreement pursuant to CEA section 21(d) or the part 49 rules.

section 21(d) and § 49.18 would not apply. The Commission explained that, under the part 49 rules, ADRs with concurrent regulatory jurisdiction over SDRs may in some circumstances obtain access to swap data reported to and maintained by those SDRs without regard to the notice and indemnification requirements of CEA sections 21(c)(7) and (d).[19] With respect to foreign regulatory authorities, the Commission determined in the SDR Final Rules that swap data reported to and maintained by an SDR may be accessed by an AFR without the execution of a confidentiality and indemnification agreement when the AFR has supervisory authority over a Commission-registered SDR that is also registered with the AFR pursuant to foreign law and/or regulation.

Since concerns about the scope of the indemnification requirement persisted, the Commission issued an interpretative statement designed to provide guidance and greater clarity to interested members of the public and foreign regulators with respect to the scope and application of CEA section 21(d) and the part 49 rules.[20] The Interpretative Statement clarified that a foreign regulatory authority's access to swap data held in a CFTC-registered SDR would not be subject to the confidentiality and indemnification provisions of CEA section 21(d) or the part 49 regulations if (i) the registered SDR is also registered in, or recognized or otherwise authorized by, the foreign authority's regulatory regime and (ii) the data sought to be accessed by the foreign authority has been reported to the registered SDR pursuant to such foreign regulatory regime.[21]

C. FAST Act Amendments to CEA Section 21

Congress responded to regulators' access concerns by including in the FAST Act a repeal of the indemnification requirement in CEA section 21(d)(2).[22] The confidentiality requirement in CEA section 21(d)(1) was retained in amended CEA section 21(d).[23]

The FAST Act also modified CEA section 21(c)(7)(A) by clarifying that SDRs must make available the ''swap'' data they obtain to 21(c)(7) entities, and added to CEA section 21(c)(7)(E)'s non-exclusive list of persons that the Commission may determine to be appropriate recipients of SDR swap data the new category ''other foreign authorities.'' [24]

D. CEA Section 8 and the Confidentiality Provisions of CEA Section 21

CEA section 8 governs the Commission's treatment of nonpublic information in its possession in a number of circumstances. CEA section 8(e) permits the Commission to furnish to the specified types of domestic or foreign entities—upon their request and acting within the scope of their jurisdiction—any information in its possession obtained in connection with the administration of the Act.[25] CEA section 8(e) specifies, with respect to federal U.S. entities, that any information furnished thereunder shall not be disclosed by the entity except in an action or proceeding under the laws of the United States to which the entity, the Commission or the United States is a party. CEA section 8(e) further specifies, with respect to the specified types of foreign entities, that the Commission shall not furnish information thereunder unless the Commission is satisfied that the information will not be disclosed by the entity except in connection with an adjudicatory action or proceeding to which the entity is a party brought under the laws to which such entity is subject.

CEA sections 21(c)(7) and 21(d) incorporate CEA section 8 in establishing the disclosure restrictions and confidentiality standards that apply to SDRs when providing swap data to regulators. The Commission interprets these provisions as requiring consistency with the principles underlying CEA section 8(e) and therefore being fundamental to the access standards and confidentiality provisions adopted in this release. In adopting revised §§ 49.17 and 49.18, the Commission is mindful of these foundational principles: Where information is sought to be accessed, the information must relate to the scope of the requesting entity's jurisdiction; and information provided by the SDR shall not be further disclosed except in limited, defined circumstances.

E. High-Level Summary of Revisions to Part 49

Pursuant to its authority under the Act,[26] the Commission proposed amendments in January 2017 to §§ 49.2, 49.9, 49.17, 49.18, and 49.22 to (i) implement the statutory changes mandated by the FAST Act amendments; (ii) make certain conforming and clarifying changes related to such implementation; (iii) revise the process by which appropriateness is determined for purposes of access to SDR swap data; (iv) clarify the standards in connection with the Commission's appropriateness determinations; and (v) establish the form and substance of the written agreement mandated by CEA section 21(d), as amended.[27] In formulating the proposed amendments, the Commission endeavored to achieve the goals of effective and consistent global regulation of swaps [28] while adhering to the mandate of CEA sections 21(c)(7) and (d) that swap data be made available to a limited universe of

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[19] *See* SDR Final Rules at 54554, n163. Accordingly, pursuant to the Commission's Part 49 rules, these provisions did not apply to an ADR that has regulatory jurisdiction over an SDR registered with the ADR pursuant to a separate statutory authority and also registered with the Commission, if the ADR executes an MOU or similar information sharing arrangement with the Commission and the Commission, consistent with CEA section 21(c)(4)(A), designates the ADR to receive direct electronic access. *See* 17 CFR 49.17(d)(2).

[20] *See* Swap Data Repositories: Interpretative Statement Regarding the Confidentiality and Indemnification Provisions of the Commodity Exchange Act, 77 FR 65177 (Oct. 25, 2012) (''Interpretative Statement'').

[21] Interpretative Statement at 65181.

[22] Title LXXXVI (''Repeal of Indemnification Requirements'') of the FAST Act amends the CEA by repealing the indemnification requirements added by the Dodd-Frank Act for regulatory authorities to obtain access to swap data because foreign regulators and regulatory entities have indicated concerns regarding the indemnification requirements of the Dodd-Frank Act. The title removes such requirements so data can be shared with foreign authorities. The title would still require the regulatory agencies requesting the information to agree to certain confidentiality requirements prior to receiving the data. FAST Act: Conference Report to Accompany H.R. 22, Dec. 1, 2015 at 486–87. The repeal applied as well to the analogous provision in the Securities Exchange Act of 1934, 15 U.S.C. 78m(n)(5).

[23] As noted above, FAST Act section 86002(b)(2) struck subsection (d) of CEA section 21 and inserted a new provision in its place that stated that before the swap data repository may share information with any entity listed in section (c)(7), the swap data repository shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 8 of the CEA relating to the information on swap transactions that is provided.

[24] *See* FAST Act section 86001(b)(1).

[25] 7 U.S.C. 12(e).

[26] *See, e.g.,* CEA section 21(f)(4) (Additional duties developed by Commission), 7 U.S.C. 24a(f)(4). The Commission is also authorized by CEA section 8a(5), 7 U.S.C. 12a(5), to make such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

[27] *See* Proposed Amendments To Swap Data Access Provisions and Certain Other Matters, 82 FR 8369 (Jan. 25, 2017) (''NPRM'').

[28] Section 752(a) of the Dodd-Frank Act directs the CFTC, the SEC and the prudential regulators, as appropriate, to consult and coordinate with foreign regulatory authorities in this regard and provides that these entities may agree to such information-sharing arrangements as may be deemed necessary or appropriate in the public interest or for the protection of investors, swap counterparties, and security-based swap counterparties.

regulators on a confidential basis pursuant to CEA section 8. As explained in Section II below, the Commission is generally adopting, with certain modifications, the rules and rule amendments as proposed.

F. Rescission of Interpretative Statement

The Commission has determined to rescind the Interpretative Statement. References to the indemnification requirement in the Interpretative Statement are no longer necessary, as the FAST Act repealed the indemnification requirement in CEA section 21(d). Additionally, the modifications to § 49.17(d)(3) that are adopted by the Commission in this release are not inconsistent with the clarifications provided in the Interpretative Statement.

II. Discussion

A. Definitions: Amendments to § 49.2

As originally adopted, § 49.2(a)(5) defined the term ''Foreign Regulator'' to include a foreign futures authority as defined in CEA section 1a(26), foreign financial supervisors, foreign central banks and foreign ministries.[29] The FAST Act amendments to the CEA added to section 21(c)(7)(E) a new category of entity—''other foreign authorities''—that the Commission may deem appropriate to obtain access to SDR swap data. The Commission proposed in the NPRM a corresponding amendment to the definition of ''Foreign Regulator'' in § 49.2(a)(5) to conform this definition to amended CEA section 21(c)(7)(E). The Commission received no comments on that proposed amendment. Thus, for the foregoing reasons, the Commission is adopting the amendment as proposed.

B. Domestic and Foreign Regulators With Regulatory Responsibility Over SDRs: Amendments to § 49.17(d)(2) and (3)

1. Current Rules

Commission regulation 49.17(d)(2) currently provides that an ADR with regulatory jurisdiction over an SDR that is registered with the ADR pursuant to a separate statutory authority and that is also registered with the Commission does not need to apply to the SDR for access to swap data and execute a confidentiality and indemnification agreement, as required by §§ 49.17(d) and 49.18(b), as long as the following conditions are met: (i) The ADR executes an MOU or similar information sharing arrangement with the Commission; and (ii) the Commission, consistent with CEA section 21(c)(4)(A), designates the ADR to receive direct electronic access. The Commission provided in the SDR Final Rules that these ADRs may be provided access to the swap data reported and maintained by SDRs without being subject to the notice and indemnification provisions of CEA sections 21(c)(7) and (d).[30]

Commission regulation 49.17(d)(3) currently provides that an AFR with supervisory authority over an SDR registered with it pursuant to foreign law and/or regulation that is also registered with the Commission is not subject to the requirements of § 49.17(d) and § 49.18(b). As described in the SDR Final Rules and the Interpretative Statement, the Commission believes that swap data reported to, and maintained, by an SDR may be appropriately accessed by an AFR without the execution of a confidentiality and indemnification agreement when the AFR is acting in a regulatory capacity with respect to an SDR that is also registered with the AFR, and the swap data was reported to such SDR pursuant to such AFR's regulatory regime.

2. Proposed Amendments

With respect to domestic regulators with regulatory jurisdiction over an SDR, the Commission proposed in the NPRM to remove: (1) The reference to ''Appropriate Domestic Regulator'' in § 49.17(d)(2) and replace it with the term ''domestic regulator'' to clarify that all domestic regulators, and not just ADRs, would fall under § 49.17(d)(2); (2) § 49.17(d)(2)(i) (information sharing arrangement condition); and (3) § 49.17(d)(2)(ii) (direct electronic access condition). Based on its experience with SDR swap data access, the Commission believed an additional refinement of these rules was necessary in order to promote greater efficiency and cooperation among domestic regulators. Accordingly, the Commission proposed that a domestic regulator that has regulatory responsibility over an SDR registered with it pursuant to a separate statutory authority should be able to access SDR data reported to such SDR pursuant to such separate statutory authority irrespective of whether such domestic regulator has executed an MOU or similar information sharing arrangement with the Commission or been designated to receive direct electronic access by the Commission.[31]

In connection with foreign regulatory authorities that have supervisory authority over an SDR, the Commission proposed in the NPRM to (i) replace the reference to ''Appropriate Foreign Regulator'' in § 49.17(d)(3) with the term ''Foreign Regulator,'' as defined in § 49.2, to clarify that all Foreign Regulators, not only those that have been determined ''appropriate'' by the Commission, would fall under § 49.17(d)(3); and (ii) add qualifying language to § 49.17(d)(3) so that § 49.17(d)(3) applies not only to SDRs that are ''registered'' with the Foreign Regulator but also to those SDRs that are ''recognized or otherwise authorized'' by the Foreign Regulator, where the swap data being accessed has been reported to the SDR pursuant to the Foreign Regulator's regulatory regime.[32]

3. Comments Received

The Commission received one comment, from Chicago Mercantile Exchange Inc. (''CME''), DTCC Data Repository (U.S.) LLC (''DDR''), and ICE Trade Vault, LLC (''ICETV'' and, collectively with CME and DDR, the ''SDR Commenters''), on its proposed modifications to § 49.17(d)(2) and (3).[33] The SDR Commenters supported the Commission's proposed modifications to § 49.17(d)(2) and (3) stating that recognizing the separate jurisdictional authority of another domestic regulator or foreign regulator would further appropriate information sharing necessary for regulatory oversight and global systemic risk mitigation purposes.[34]

4. Final Rules

After considering the comments it received with respect to its proposed amendments to § 49.17(d)(2) and (3), and for the reason stated above in section II.B.2., the Commission continues to believe that swap data

[29] 17 CFR 49.2(a)(5). CEA Section 1a(26) defines a ''foreign futures authority'' as any foreign government, or any department, agency, governmental body, or regulatory organization empowered by a foreign government to administer or enforce a law, rule, or regulation as it relates to a futures or options matter, or any department or agency of a political subdivision of a foreign government empowered to administer or enforce a law, rule, or regulation as it relates to a futures or options matter.

[30] *See* SDR Final Rules at 54554.

[31] The Commission's proposal for domestic regulators was consistent with the principle previously set forth in the Interpretative Statement with respect to the application of the confidentiality and indemnification provisions of the CEA to foreign regulators. In particular, the Commission stated that a foreign regulator's access to data from a registered SDR that is also registered, recognized, or otherwise authorized in a foreign jurisdiction's regulatory regime, where the data to be accessed has been reported pursuant to that other regulatory regime, will be dictated by that jurisdiction's regulatory regime and not by the CEA or Commission regulations. *See* Interpretative Statement at 65181.

[32] *Id.*

[33] Joint Comment Letter submitted by CME, DDR, and ICETV at 2 (March 27, 2017) (''SDR Letter'').

[34] *Id.*

reported to, and maintained by, an SDR may be appropriately accessed by a domestic regulator or Foreign Regulator without the execution of a confidentiality and indemnification agreement (1) when the regulator is acting in a regulatory or supervisory capacity with respect to an SDR that is also registered with, or recognized or otherwise authorized by, the regulator and (2) with respect to swap data reported to such SDR pursuant to such regulator's regulatory regime. The Commission, accordingly, is adopting the amendments to § 49.17(d)(2) and (3) as proposed.

C. Appropriateness Determination for Foreign Regulators and Non-Enumerated Domestic Regulators: Amendments to § 49.17(b) and New § 49.17(h)

1. Current Rule

CEA section 21(c)(7) specifies U.S. entities to which swap data must be released by an SDR, provided certain prerequisites are satisfied. Because Congress has determined that access to SDR swap data by these entities is appropriate when the prerequisites are satisfied, no appropriateness determination by the Commission is necessary. These U.S. entities, along with any others the Commission determines to be appropriate pursuant to CEA section 21(c)(7)(E), are identified in § 49.17(b)(1) as ADRs. The current part 49 rules do not include a process for how the Commission would determine a domestic regulator to be ''appropriate'' within the meaning of CEA section 21(c)(7)(E).

Under current § 49.17(b)(2)(i), in order for a Foreign Regulator that does not have a current MOU with the Commission to be determined to be an AFR,[35] it must file with the Commission an application in the form and manner specified by the Commission.[36] Current § 49.17(b)(2)(i)(B) requires that the application provide sufficient facts and procedures to permit the Commission to analyze whether the Foreign Regulator's confidentiality procedures are appropriate and to satisfy the Commission that information provided by an SDR will be disclosed by the Foreign Regulator only as permitted by CEA section 8(e).

[35] No specific Foreign Regulators are enumerated in CEA section 21(c)(7) or specifically identified as AFRs in § 49.17(b)(2).

[36] To date, the Commission has not specified a form and manner for the application referenced in current § 49.17(b)(2)(i)(A).

2. Proposed Amendments: Determination Order Process

The Commission proposed to eliminate the current filing requirements set forth in current § 49.17(b)(2)(i) and establish new filing requirements in proposed new § 49.17(h) that would apply to both Foreign Regulators and domestic regulators. The Commission also proposed to include, in § 49.17(h), CEA-section-8-related confidentiality considerations and the ability for the Commission to revisit or reassess appropriateness determinations. As proposed, new § 49.17(h) would apply to each Foreign Regulator regardless of whether there was a current MOU or similar information sharing arrangement in place between such Foreign Regulator and the Commission, and to any domestic regulator other than an ADR enumerated in § 49.17(b)(1)(i) through (vi) (''Enumerated ADR'').

Proposed § 49.17(h)(3) specified two threshold requirements for a finding of appropriateness: (i) The requesting entity has in place appropriate safeguards to maintain the confidentiality of swap data received from an SDR; and (ii) such entity is acting within the scope of its jurisdiction in seeking access to swap data maintained by an SDR. Because the Commission stated that these requirements are necessary, but may or may not be sufficient to support an appropriateness determination, the Commission proposed to evaluate each filing on a case-by-case basis with reference to these and other factors that the Commission may find germane to its determination. The Commission proposed that, were it to find, based on information submitted to it, that an entity's access to SDR swap data was appropriate, the Commission would issue an order confirming the entity's status as an ADR or AFR and setting forth any conditions or limitations on access consistent with the relevant statutory and regulatory requirements (a ''Determination Order'').

The Commission also proposed in § 49.17(h)(4) to be able to revisit, reassess, limit, suspend or revoke a previously issued Determination Order. That proposal was based on the Commission's belief that it is necessary to reserve the authority to revisit an appropriateness determination, and potentially take one of the foregoing remedial actions, in order to be able to address situations that may arise subsequent to the determination, such as where an AFR or ADR violates the terms of a Determination Order or fails to keep SDR swap data confidential.

3. Proposed Amendments: Factors Considered in Issuing a Determination Order

a. Scope of Jurisdiction

CEA section 21(c)(7) directs SDRs to provide swap data to regulators on a confidential basis pursuant to section 8.[37] The Commission interprets this provision to require consistency with the CEA section 8(e) mandate that information be furnished, on a confidential basis, only to other regulators acting within the scope of their jurisdiction. Accordingly, the Commission believes that an appropriateness determination must be informed by reference to a regulator's jurisdiction.

In this regard, the Commission proposed to add new § 49.17(h)(2), which would require an applicant seeking a Determination Order to provide the Commission sufficient information to permit the Commission to analyze whether the applicant is acting within the scope of its jurisdiction in seeking access to swap data maintained by an SDR. As part of this information, the Commission stated that it expected that an applicant would explain the relationship between its jurisdiction and its request for access to swap data maintained by SDRs, including an explanation of the applicant's need for swap data to carry out its regulatory mandate, legal authority or responsibility.[38]

The Commission proposed in new § 49.17(h)(3) that the Commission would not issue a Determination Order unless it were satisfied that an applicant was acting within the scope of its jurisdiction in seeking access to SDR swap data. The Commission also stated in the NPRM that it expected that each Determination Order would further require, as a condition of the appropriateness determination set forth therein, that a regulator that received a Determination Order promptly notify the Commission, and each SDR from which it received swap data, of any change to its jurisdiction that would relate to the swap data access requested.[39] Proposed § 49.17(d)(4)(iii) enabled the Commission to direct SDRs to limit, suspend or revoke an ADR's or AFR's SDR swap data access to reflect the new scope of its jurisdiction, and required the SDRs to so limit, suspend

[37] 7 U.S.C. 24(c)(7).

[38] The Commission expects that the applicant would provide a description of its scope of jurisdiction as part of these explanations.

[39] The form of confidentiality arrangement set forth in proposed Appendix B to part 49 (''Confidentiality Arrangement Form'') also would have required such notices.

or revoke such access in response to such Commission direction. The Commission expected that limiting access in this manner would reduce the risk of unauthorized or unnecessary disclosures because each appropriate regulator would have access to swap data only to the extent necessary to fulfill its amended jurisdictional mandate or regulatory responsibility.

b. Robust Confidentiality Safeguards

CEA section 21(c)(7) requires that SDRs make swap data available on a confidential basis pursuant to CEA section 8. Proposed § 49.17(h)(2) accordingly would require that an applicant for a Determination Order submit to the Commission information sufficient to permit the Commission to analyze whether the applicant employs appropriate confidentiality safeguards to ensure that swap data the applicant receives from an SDR would not be disclosed other than as permitted by the confidentiality arrangement required by proposed § 49.18(a). The Commission anticipated that this analysis would involve the Commission considering whether the applicant's confidentiality protocols, system safeguards and security compliance procedures could be expected to ensure the confidentiality of the swap data, and whether the applicant had in place protections sufficient to prevent unauthorized intrusions into the systems that maintain the swap data. In this regard, the Commission stated in the NPRM that it would also expect to consider the applicant's processes for limiting internal access to swap data to those persons with a need to know, as well as how the swap data would be stored and whether the swap data would be segregated from other information.

The Commission stated in the NPRM its view that the confidentiality protections set forth in proposed § 49.17(h)(2) strike an appropriate tradeoff between realizing the benefits of data access by regulators,[40] and protecting confidential information in accordance with the dictates of CEA section 8(e), which, as described above, is incorporated into the access provisions of CEA sections 21(c)(7) and (d). In the NPRM, the Commission stated that it would consider these factors essential to a determination of appropriateness.

c. Swap Data Sharing Considerations

The Commission stated in the NPRM that other considerations not proposed to be codified may also contribute to the Commission's appropriateness analysis. Although the Commission proposed to eliminate the current regulatory provision conferring AFR status on a Foreign Regulator with an existing MOU or other similar type of information sharing arrangement executed with the Commission,[41] it nonetheless stated in the NPRM its continued belief that the existence of such an arrangement fosters a cooperative relationship and encourages the development of shared understandings related to regulatory responsibilities. The Commission added in the NPRM that, although not dispositive, indications of a strong cooperative relationship with another authority, as established by the existence of such an arrangement and the Commission's experience working with such authority in finalizing and administering the arrangement, would likely be a factor supporting an appropriateness determination. The Commission also stated in the NPRM that a failure to cooperate fully or to comply with the terms of an existing or prior arrangement might be expected to weigh against an appropriateness determination.

Similarly, when assessing appropriateness, the Commission expected to consider whether it receives access to swap data maintained by trade repositories subject to the applicant's jurisdiction. The Commission stated in the NPRM that it is mindful of the Dodd-Frank Act's encouragement of coordination and cooperation with foreign regulatory authorities.[42] The Commission also stated in the NPRM its belief that increased data access by regulators has the potential to provide the Commission and other authorities with more complete information with which to monitor risk exposures and should be expected to promote global market stability through enhanced regulatory transparency. Accordingly, the Commission stated in the NPRM, it would view the following favorably in considering appropriateness: (i) Commission access to swap data maintained by trade repositories in a foreign regulator's jurisdiction; (ii) an arrangement to assist the Commission in obtaining data from other jurisdictions; and (iii) a history of assistance from a foreign regulator.

4. Proposed Amendments: Other Matters Regarding the Determination Order Process

The Commission stated in the NPRM its preliminary belief that the Determination Order process and factors discussed above offer a reasonable approach to providing requesting entities access to SDR swap data based on clearly articulated factors and any additional considerations or circumstances the Commission may deem relevant on a case-by-case basis. The Commission added that both the required factors and the additional considerations support the mandates of CEA sections 8, 21(c)(7) and 21(d) and are consistent with the express intent of Congress that the Commission coordinate and cooperate with foreign regulatory authorities on matters related to the regulation of swaps. Through the issuance of Determination Orders, the Commission expected to be able to impose appropriate conditions or restrictions on an entity's access to SDR swap data such that the entity's access would be linked to its jurisdictional scope. Pursuant to proposed § 49.17(h)(3), the Commission could, in its discretion, issue a Determination Order of limited duration. The Commission stated in the NPRM that it would expect SDRs to take into account any conditions or restrictions contained in a Determination Order when providing access to swap data to an ADR or AFR.

The Commission further believed it appropriate to make the process and factors proposed in § 49.17(h) applicable to any domestic entities that are not enumerated as ADRs in § 49.17(b)(1)(i) through (vi), as scope of jurisdiction and confidentiality considerations are equally applicable to U.S. entities, and drafted proposed § 49.17(h) accordingly.

5. Final Rules

After considering the comments received in the SDR Letter, and for the reasons stated in the NPRM, stated above in sections II.C.2.–4. and stated in this section, the Commission is adopting amendments to § 49.17(b) and new § 49.17(h) as proposed.

The Commission requested comment on all aspects of proposed § 49.17(h), particularly on whether the proposed regulatory and other factors are sufficient to determine whether access to SDR swap data is appropriate. The Commission received one comment in response, from the SDR Commenters. The SDR Commenters expressed support for the § 49.17(h) appropriateness determination process proposed in the NPRM with respect to

[40] *See* CEA section 21(c)(7); *see also* Section 752(a) of the Dodd-Frank Act (recognizing the goal of effective and consistent global regulation of swaps).

[41] 17 CFR 49.17(b)(2).

[42] *See also* Dodd-Frank Act section 752 (recognizing the goal of effective and consistent global regulation of swaps).

Foreign Regulators and non-enumerated domestic regulators, including the requirement that such regulators file an application with the Commission to be determined to be appropriate recipients of SDR swap data. The SDR Commenters added that they ''believe that a[n] MOU or other information sharing arrangement alone, by [its] nature, ha[s] the potential for imprecise language and bespoke arrangements that would not provide sufficient indication of a regulator's 'appropriateness.' '' [43]

The SDR Commenters also suggested that the Commission revise proposed § 49.17(h)(4), which provides that the Commission reserves the right to revisit, reassess, limit, suspend or revoke any appropriateness determination with respect to an ADR or AFR, consistent with the CEA, to require the Commission to provide a written notice to SDRs of such action to ensure that all SDRs are aware of any changes in status with respect to an appropriateness determination.[44] The Commission agrees with the substance of the ''written notice'' comment but believes that this suggestion should be incorporated elsewhere in the Commission's regulations. Specifically, because proposed § 49.17(h)(4) merely addresses the Commission's right to revisit, reassess, limit, suspend or revoke any appropriateness determination, whereas proposed § 49.17(d)(5) required an SDR to take such action as directed by the Commission,[45] the Commission believes that proposed § 49.17(d)(5), rather than proposed § 49.17(h)(4), should be amended in response to the ''written notice'' comment.[46] Accordingly, the Commission is adopting § 49.17(d)(5) as proposed but with a modification to require that any Commission direction to an SDR specified therein be in writing.

Accordingly, for the reasons stated in the NPRM, stated above in sections II.C.2.–4. and stated in this section, the Commission is adopting amendments to § 49.17(b) and new § 49.17(h) as proposed.

D. Amendments to § 49.17(d)(4): SDR Notice and Verification Obligations

1. Proposed Amendments

CEA section 21(c)(7) requires each SDR to notify the Commission of a swap data request received from an ADR or AFR.[47] Currently, this statutory requirement is implemented in § 49.17(d)(4)(i), which provides that an SDR must promptly notify the Commission regarding ''any'' request received by an ADR or AFR to gain access to swap data maintained by the SDR.

To reduce the burden on SDRs and provide greater operational efficiency consistent with the intent of CEA section 21(c)(7), the Commission proposed to amend the SDR notification requirement in current § 49.17(d)(4)(i) to require an SDR to notify the Commission (i) at the time that it receives the first request for access to swap data from a particular ADR or AFR and (ii) at any time that a swap data request from an ADR or AFR does not comport with the scope of the ADR's or AFR's jurisdiction, as described in the confidentiality arrangement required by proposed § 49.18(a). As proposed, the amendment provided that, upon receiving either such request for data by a particular ADR or AFR, the SDR would be required to provide prompt electronic notification to the Commission of the request, in a format specified by the Secretary of the Commission, pursuant to proposed § 49.17(d)(4)(ii). The SDR would be required to keep such notification and related requests confidential consistent with the requirements of CEA sections 21(c)(6) and (7) and related regulatory requirements set forth in §§ 49.16 and 49.17.

The Commission stated in the NPRM its belief that the proposed approach to SDR notification supports the Commission's need to be aware of who is able to access SDR swap data and what data has been accessed, while eliminating potentially costly, unwieldy and inefficient notice of every swap data request. Under the proposal, the Commission would be notified that a particular ADR or AFR has requested access to SDR swap data and would be able to examine SDR records of the ADR's or AFR's individual swap data requests, and the swap data provided, as the Commission deemed necessary.[48]

The Commission also proposed to amend § 49.17(d)(4) by adding new paragraph (iii) to require each SDR that receives a request for access to its swap data from an ADR or AFR to determine, prior to providing such access, that the request is consistent with the scope of the ADR's or AFR's jurisdiction, as described in the confidentiality arrangement required by proposed § 49.18(a).[49] This verification would need to incorporate any subsequent changes to such scope of jurisdiction.

The Commission also proposed to require an ADR or AFR that has executed a confidentiality arrangement with the Commission pursuant to § 49.18(a) and provided such confidentiality arrangement to one or more SDRs to notify the Commission and each such SDR of any change to such ADR's or AFR's scope of jurisdiction as described in such confidentiality arrangement. Additionally, the proposal enabled the Commission to direct an SDR to suspend, limit, or revoke access to swap data maintained by such SDR based on any such change to an ADR's or AFR's scope of jurisdiction, and required that, if so directed, such SDR must suspend, limit, or revoke such access.

Proposed § 49.17(d)(4)(iv) required SDR verification only once with respect to a request for ongoing or recurring access to particular data. Additionally, if there was a change in the request, the ADR or AFR would be obligated to make a new determination pursuant to proposed § 49.17(d)(4)(iii). The Commission recognized that the proposed requirement would impose a burden on SDRs but noted that SDRs are obliged by CEA section 21(c)(7) to provide access ''pursuant to section 8'' of the CEA, which, as discussed above, the Commission interprets as requiring a jurisdictional nexus to the information requested, consistent with CEA section 8(e). The Commission stated that it believed that, in such circumstances, SDRs must take a role in ensuring

[43] SDR Letter at 3.

[44] SDR Letter at 7.

[45] As proposed, § 49.17(d)(5) did not require that the Commission direct the SDR *in writing* to take any of such actions.

[46] Proposed § 49.17(h)(4) stated that the Commission reserves the right, in connection with any appropriateness determination with respect to an Appropriate Domestic Regulator or Appropriate Foreign Regulator, to revisit, reassess, limit, suspend or revoke such determination consistent with the Act. Proposed § 49.17(d)(5) stated that an SDR shall, as directed by the Commission, limit, suspend or revoke such access should the Commission limit, suspend or revoke the appropriateness determination for such ADR or AFR or otherwise direct the SDR to limit, suspend or revoke such access.

[47] *See* CEA section 21(c)(7), 7 U.S.C. 24a(c)(7).

[48] The Commission stated in the NPRM that, consistent with the current recordkeeping requirements for SDRs in § 45.2(f), SDRs are required to maintain records of all information related to the initial and all subsequent requests for swap data from ADRs and AFRs. The Commission stated that appropriate records would include, at a minimum, the identity of the ADR or AFR accessing the swap data, the date, time and substance of the request for access, confirmation that the request is consistent with the scope of the regulator's jurisdiction, and copies of all swap data provided by the SDR in connection with the request for access. The Commission added that, pursuant to § 1.31, SDRs are required to maintain such records for a period of no less than five years after the date of such request and must provide this information to the Commission upon request.

[49] The scope of jurisdiction would have been described in Exhibit A to the form of confidentiality arrangement set forth in proposed Appendix B to part 49.

compliance with those statutory restrictions of CEA section 21(c)(7).

2. Final Rules

The Commission received several comments from the SDR Commenters on the proposed amendments to § 49.17(d)(4). For the reasons stated above in section II.D.1. and stated in this section II.D.2., the Commission is adopting § 49.17(d)(4)(i) through (iv) as proposed, with one exception. Specifically, the Commission is adopting § 49.17(d)(4)(iii) with one modification suggested by the SDR Commenters, as discussed below in section II.D.2.c.iii. In response to the SDR Commenters' comments, the Commission is also clarifying the guidance provided in the NPRM on **Federal Register** page 8,381, as discussed below in section II.D.2.a.ii.

a. § 49.17(d)(4)(i)

i. Notices of Initial Access Requests and Requests Outside the Scope of Jurisdiction

The SDR Commenters supported the proposed amendment to the notification provisions in current § 49.17(d)(4)(i) to require SDRs to notify the Commission only of an initial ADR or AFR request for access to swap data (rather than every request for swap data), stating that this would reduce reporting burdens and increase operational efficiencies. However, the SDR Commenters stated that ''subsection § 49.17(d)(4)(i) and (iii) should be modified to remove the requirement that an SDR determine whether swap data to which the ADR or AFR seeks access is within the then-current scope of such ADR's or AFR's jurisdiction.'' [50] The SDR Commenters claimed that they ''are not the appropriate entities to determine the scope of a regulator's jurisdiction'' because ''[t]hey do not possess the means to do so correctly with current data fields'' [51] and that the scope of jurisdiction determination ''must rest solely with the Commission.'' [52] Accordingly, the SDR Commenters insisted that their responsibilities ''must be limited to providing access to the ADRs and AFRs in accordance with the specific, appended jurisdictional information clearly set forth in the documents describing the confidentiality arrangements negotiated by the Commission pursuant to § 49.18.(a).'' [53]

The Commission declines to modify § 49.17(d)(4)(i) to provide that an SDR does not need to determine whether swap data to which an ADR or AFR seeks access is within the then-current scope of such ADR's or AFR's jurisdiction. As noted above, SDRs are obliged by CEA section 21(c)(7) to provide access ''pursuant to section 8'' of the CEA, which the Commission interprets as requiring a jurisdictional nexus to the information requested, consistent with CEA section 8(e). However, for the reasons discussed below in response to the SDR Commenters' comments on proposed § 49.17(d)(4)(iii) in relation to determining whether an ADR's or AFR's request for swap data is within the scope of its jurisdiction, the Commission expects SDRs' role in applying § 49.17(d)(4)(i) to be straightforward. As discussed below, the Commission will ensure that each ADR and AFR seeking swap data access provides each SDR from which it seeks such access a description, appended to the confidentiality arrangement required by proposed § 49.18(a), of the ADR's or AFR's scope of jurisdiction in a form that will lend itself to SDRs being readily able to determine whether a particular data request falls within the described scope of jurisdiction. As the Commission will have previously reviewed the described scope of jurisdiction before it is provided to an SDR as part of the confidentiality arrangement required by proposed § 49.18(a), the SDR's role in ensuring that ADRs' and AFRs' swap data access is limited to swap data within the then-current scope of such ADR's or AFR's jurisdiction would be limited to appropriately circumscribing the scope of the swap data to which an ADR or AFR obtains access to match the ADR's or AFR's scope of jurisdiction, as described in the appendix to the confidentiality arrangement required by § 49.18(a), and notifying the Commission if the SDR determines that a particular data request does not comport with the described scope of jurisdiction.

Finally, § 49.17(d)(4)(i) requires an SDR to notify the Commission of initial requests for data by an ADR or AFR and of requests for data that do not comport with the scope of jurisdiction of an ADR or AFR. These notifications are required to be provided, pursuant to § 49.17(d)(4)(ii), in the format specified by the Secretary of the Commission. In response to a request from the SDR Commenters to specify that format, the Secretary of the Commission is now specifying that these notices should be provided to Commission staff at the email address *dmodataandreporting@cftc.gov.*

ii. Recordkeeping

Proposed § 49.17(d)(4)(i) required each SDR to maintain records, pursuant to § 49.12,[54] of the details of an ADR's or AFR's initial request for SDR swap data access and of all subsequent requests by such ADR or AFR for such access. In the NPRM, the Commission explained that an SDR's obligation to maintain records of all information related to the initial and all subsequent requests by an ADR or AFR for swap data access, pursuant to proposed § 49.17(d)(4)(i) and existing § 45.2(f), would require the retention of records that included, at a minimum, the identity of the ADR or AFR accessing the swap data, the date, time and substance of the request for access, confirmation that the request is consistent with the scope of the regulator's jurisdiction, and copies of all data reports and other aggregation of data provided in connection with the request for access.[55]

The SDR Commenters stated that ''the proposed requirement for SDRs to maintain copies of data reports and other aggregation of data provided in connection with the request [f]or access should be amended to avoid imposing unnecessary costs.'' [56] The SDR Commenters also requested that ''additional detail as to what constitutes the 'details of such initial request and of all subsequent requests' be included in the rule itself rather than merely mentioned in the preamble.'' [57] The SDR Commenters characterized the recordkeeping requirements of proposed § 49.17(d)(4)(i) as requiring that SDRs maintain data reports as financially burdensome, challenging to implement, and potentially decreasing information security, because the requirements could require an SDR ''to propagate a given data set more than once.'' [58]

As an alternative to maintaining such reports, the SDR Commenters suggested that they create pre-formatted data

[50] SDR Letter at 4. Proposed § 49.17(d)(4)(i) states that a registered SDR shall notify the Commission promptly after receiving any request that does not comport with the scope of the ADR's or AFR's jurisdiction, as described and appended to the confidentiality arrangement required by proposed § 49.18(a).

[51] SDR Letter at 3.

[52] SDR Letter at 2.

[53] SDR Letter at 4.

[54] Commission Regulation 49.12(a) requires SDRs to maintain their records in accordance with the requirements of part 45 of the Commission's regulations regarding the swap data required to be reported to SDRs. Commission Regulation 45.2(f) requires each SDR to keep complete records of all SDR-related business activities.

[55] NPRM at 8375, n.42; *see also,* NPRM at 8381 (Paperwork Reduction Act discussion of recordkeeping burdens).

[56] SDR Letter at 6.

[57] SDR Letter at 5–6.

[58] SDR Letter at 6.

reports and make them available for download by ADRs and AFRs ''so that the record of access to such reports [would] be easily identifiable, in lieu of maintaining logs of queries and query conditions . . . .'' [59] The SDR Commenters added that, if the Commission adopted their alternative, ''the parameters of the reports and the logic which is used to populate the reports is all that should have to be maintained.'' [60] The SDR Commenters contended that the Commission should require only ''the saving of metadata around reports rather than the actual reports[.]'' [61]

After the NPRM was published in the **Federal Register**, Commission staff discussed the SDR Commenters' recordkeeping concerns, as set out in the SDR Letter, with the SDRs.[62] Based on those discussions, the Commission understands that the SDR Commenters plan to provide swap data access to ADRs and AFRs in one of two ways: (1) Via pre-formatted reports that the SDR Commenters would make available for download by ADRs and AFRs or send to ADRs and AFRs, in each case on a regular basis; or (2) via a Web-based portal through which ADRs and AFRs could conduct customized searches of swap data.[63] In those discussions, the SDR Commenters explained that they would not consider it unduly burdensome to maintain records of the pre-formatted reports (if they provide ADRs and AFRs access to swap data via pre-formatted reports) or records of both the parameters of the permitted access and the queries (if they provide such access via Web portal).

In response to the SDR Letter, and for the reasons explained by the SDR Commenters and described in this section, the Commission confirms that, as represented by the SDRs and consistent with the reasoning discussed in the NPRM,[64] either of these means of providing swap data access to ADRs and AFRs would be acceptable. The Commission also confirms that SDRs may satisfy their recordkeeping duties under § 49.17(d)(4)(i) by maintaining records of, as applicable: (1) Their pre-formatted swap data reports; or (2)(a) the parameters of Web portal swap data access and (b) queries run by ADRs and AFRs using such access.

iii. Aggregated Data

The SDR Commenters also expressed concerns that the Commission's statement that proposed § 49.17(d)(4)(i) and existing § 42.5 would require retention of copies of all other aggregation of data provided in connection with the request for access was intended to impose a requirement to provide aggregated data to ADRs or AFRs. To address that concern, the SDR Commenters asked the Commission to specify that SDRs would not be required to provide ADRs or AFRs with aggregated data and that SDRs are required to provide only raw swap transaction data, in the form of, for example, pre-formatted reports or via Web-based portal access.[65]

In response to the foregoing comment, and for the reasons explained by the SDR Commenters and described in this section, the Commission clarifies that SDRs are required to provide ADRs and AFRs only raw swap transaction data in the form in which SDRs maintain such data. The Commission further clarifies that SDRs are not required to aggregate or manipulate raw swap transaction data to provide it to ADRs or AFRs in customized formats or reports requested thereby. Through its consultations with certain ADRs as required by section 712(a)(1) of the Dodd-Frank Act,[66] the Commission understands that those ADRs enumerated in § 49.17(b)(1)(i) through (vi) that are interested in accessing SDR swap data are capable of receiving such data and manipulating and analyzing such data using their own systems.

After considering the comments on proposed § 49.17(d)(4)(i), for the reasons described above, the Commission is adopting the amendments to § 49.17(d)(4)(i) as proposed.

b. § 49.17(d)(4)(ii)

The Commission proposed only minor, clarifying changes to § 49.17(d)(4)(ii) and did not receive any comments thereon. The Commission is adopting the amendments to § 49.17(d)(4)(ii) as proposed.

c. § 49.17(d)(4)(iii)

i. Scope of an ADR's or AFR's Jurisdiction

The SDR Commenters commented that ''the determination as to scope of jurisdiction must rest solely with the Commission'' [67] because ''[t]he SDRs do not have, and are not required to have[,] information sufficient to determine whether requested swap data is within the ADR['s] or AFR[']s scope of jurisdiction.'' [68] The SDR Commenters contended that, if the Commission wants the SDRs to play a role in determining whether swap data is subject to the jurisdiction of any particular ADR or AFR, the Commission would need to ''amend the current Part 43 and Part 45 fields to provide the SDRs with the basis to make these determinations.'' [69] The SDR Commenters added that they ''should not be expected to make interpretations about jurisdictional questions from ambiguous data points.'' [70]

On this point, the SDR Commenters explained that ''[t]he current Part 43 and Part 45 data fields do not yield information that would allow an SDR to identify trades that fall within an ADR['s] or AFR's jurisdiction definitively.'' [71] They recommended that ADRs and AFRs ''should be required to provide a[ ] . . . list of Part[ ] 43 and 45 data fields (*e.g.,* legal entity identifiers (''LEIs'') of the reporting counterparty and non-reporting party[and] the unique product identifier (''UPI'')) and parameters for such data fields'' [72] that would clearly indicate to the SDRs which swaps fall within an ADR's or AFR's jurisdiction. The SDR Commenters contended that such a list of Part 43 and 45 data fields is necessary because ''no Part 43 or 45 data fields . . . by themselves identify swaps that fall within an ADR['s] or AFR's jurisdiction.'' [73]

The SDR Commenters contended that the benefits of their proposed approach would include ensuring that SDRs grant access in a consistent manner and that the security controls established by an SDR according to Part 43 or 45 parameters would prevent access to swap data outside the scope of an ADR's or AFR's jurisdiction. The SDR

[59] *Id.*

[60] *Id.*

[61] *Id.*

[62] Brief summaries of those ex parte communications are available on the Commission's website at *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=1777.*

[63] The swap data provided in the pre-formatted reports or through the Web-based portals would be limited to swap data within the particular ADR's or AFR's scope of jurisdiction, as described in the confidentiality arrangement required by § 49.18(a).

[64] *See, e.g.,* NPRM at 8385 (stating that the Commission is proposing not to specify a particular means of ADRs and AFRs accessing swap data) and 8386 (stating that the Commission expects that SDRs would choose the lowest cost means of access consistent with their statutory obligation to provide ADRs and AFRs access to swap data and other constraints).

[65] *See* SDR Letter at 6.

[66] Section 712(a)(1) of the Dodd-Frank Act provides that before commencing any rulemaking or issuing an order regarding swap data repositories, the Commission shall consult and coordinate to the extent possible with the Securities and Exchange Commission and the prudential regulators for the purposes of assuring regulatory consistency and comparability.

[67] SDR Letter at 2.

[68] *Id.* at 3.

[69] *Id.* at 4.

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] *Id.*

Commenters recommended the following changes to the proposed regulations to effectuate their proposed approach:

- Removing proposed § 49.17(d)(4)(iv) completely;
- removing the requirement in proposed § 49.17(d)(4)(i) and (iii) that an SDR determine whether swap data to which an ADR or AFR seeks access is within the then-current scope of such ADR's or AFR's jurisdiction;
- replacing the ''negative requirement'' not to provide access unless such a determination has been made with a ''positive requirement'' to provide access that comports with the jurisdictional determination made by the Commission, which determination is clearly spelled out in the confidentiality arrangement;
- modifying paragraph § 49.17(d)(4)(iii) to state that any requested change in an ADR's or AFR's scope of jurisdiction, as described in the confidentiality arrangement required by proposed § 49.18(a), should be agreed to between the Commission and the ADR or AFR and the information appended to the confidentiality arrangement should be amended accordingly and provided to the SDRs for implementation; and
- revising the description of Exhibit A in the confidentiality arrangement to state that the ''description of scope of jurisdiction'' must include a list of part 43 and part 45 fields and specific parameters.[74]

After considering the SDR Commenters' comments and consulting with certain ADRs as required by section 712(a)(1) of the Dodd-Frank Act, the Commission agrees with the SDR Commenters that SDRs should not be responsible for determining the scope of an ADR's or AFR's jurisdiction, for the reasons explained by the SDR Commenters and described in this section. The Commission believes, however, that SDRs should be responsible for limiting ADRs' and AFRs' access to swap data to those swap data within ADRs' and AFRs' then-current scopes of jurisdiction, as described in the appendix to the confidentiality arrangement required by § 49.18(a). As noted above, SDRs are obligated by CEA section 21(c)(7) to provide access ''pursuant to section 8'' of the CEA, which the Commission interprets as requiring a jurisdictional nexus to the information requested, consistent with CEA section 8(e).

For the swap data sharing goal of CEA section 21(c)(7) to be achieved, an ADR's or AFR's description of its scope of jurisdiction must allow the SDRs to establish objective parameters for determining whether a particular data request falls within such scope of jurisdiction, without undue obstacles. The Commission believes that a system requiring legal analysis by the SDRs (a possible result, depending on how ADRs and AFRs describe their scopes of jurisdiction) for each ADR/AFR swap data request is impractical at best and could lead to very slow data access and disparate results across SDRs. Consequently, the Commission supports the spirit of the SDR Commenters' proposal that relevant Part 43/45 data fields could be used to assist in clarifying an ADR's or AFR's scope of jurisdiction, for purposes of SDR swap data access.[75]

The Commission intends to review each ADR's and AFR's description of its scope of jurisdiction and ensure that such descriptions are presented in the confidentiality arrangement in a form SDRs can readily adapt to SDR-developed swap data reports and/or search parameters. The Commission also interprets CEA section 21(c)(7) as imposing on SDRs the duty to limit ADRs' and AFRs' access to swap data to those swap data within ADRs' and AFRs' scope of jurisdiction. The description of an ADR's or AFR's scope of jurisdiction will be appended to the confidentiality arrangement that is executed between the ADR or AFR and the Commission and provided to SDRs. An SDR's duty with respect to this description of the ADR's or AFR's scope of jurisdiction is to ensure that the swap data provided to the ADR or AFR is limited to those records that fall within the description appended to the confidentiality arrangement. For example, if the description is based on a list of LEIs representing entities that a particular ADR regulates, then the SDR's duty would be to provide all swap data associated with the fields in which those LEIs appear (*e.g.,* the fields associated with counterparty identifiers), as those fields are set forth in the description provided by the ADR. As the SDR Commenters acknowledged in discussions with Commission staff, this would make fulfilling their obligations under CEA section 21(c)(7) and § 49.17(d)(4), as proposed, straightforward to apply.

The Commission anticipates that, as a practical matter, ADRs and AFRs generally will describe their then-current scopes of jurisdiction, as appended to the confidentiality arrangement required by § 49.18(a), in terms of LEIs and possibly also UPIs or other product identifiers. Although there may be some limitations of using LEIs and product identifiers (*e.g.,* in limited instances where blank or incorrect data entries remain in LEI fields, LEIs are masked in a number of cases to reflect certain other jurisdictions' privacy law limits on disclosure, and the Commission has yet to designate a UPI and product classification system), the Commission believes these data elements represent the most useful method of describing ADRs' and AFRs' scopes of jurisdiction.[76]

It also is possible that an ADR or AFR will be able to convey its scope of jurisdiction without using part 43 or part 45 data fields in a way that SDRs will be able to easily apply. The SDR Letter itself acknowledged the possibility that other part 43 or part 45 data fields may be relevant in describing ADRs' and AFRs' scopes of jurisdiction.[77] For example, it is conceivable that an ADR's scope of jurisdiction may include all swap data maintained at SDRs (though the Commission does not anticipate that this will be the case with respect to most ADRs). In such case, it would not be necessary to use part 43, part 45 or any other swap data fields to delineate the scope of an ADR's or AFR's jurisdiction. For the foregoing reasons, the Commission declines to specifically require the use of part 43 or part 45 data fields to describe an ADR's or AFR's scope of jurisdiction.

The Commission also declines to act on the SDR Commenters' request to delete proposed § 49.17(d)(4)(iv), which provides that SDRs need only make a jurisdictional determination with respect to an ADR's or AFR's swap data access request once for a recurring request and once each time the parameters of the access requests change. The SDR Commenters expressed support in the SDR Letter for that single determination concept and appear to have requested the deletion of

[74] *Id.* at 4 and 5.

[75] The SDR Commenters' approach, by permitting automation, could expedite swap data access. The SDR Commenters' approach could also eliminate the potential for inconsistent determinations by different SDRs.

[76] In addition, if the scope of an ADR's or AFR's jurisdiction supports receiving all swap data with respect to entities over which an ADR or AFR exercises oversight, the ADR or AFR may not need to use product identifiers at all—it may be able to use LEIs alone to describe the scope of its jurisdiction.

[77] For example, the SDR Letter noted that ''an indication of whether a swap is a mixed swap'' could constitute a part 43 or 45 data field that ''determine[s] . . . which swaps fall within an ADR or AFR's jurisdiction.'' SDR Letter at 4. Also, in ex parte communications following the publication of the NPRM, the SDR Commenters acknowledged that other fields could potentially be relevant as well.

proposed § 49.17(d)(4)(iv) because it would impose a jurisdictional determination requirement on SDRs. As explained above, however, the requirement for an SDR to ensure that a data access request is within the then-current scope of an ADR's or AFR's jurisdiction, as described in an appendix to the confidentiality arrangement required by § 49.18(a), is required by statute and should impose a minimal burden on SDRs.

For the reasons described below in section II.D.2.c.ii., the Commission declines to modify proposed § 49.17(d)(4)(iii) to state that any change in an ADR's or AFR's swap data access based on a change in its scope of jurisdiction should be agreed to between the Commission and the ADR or AFR, and the jurisdictional description appended to the confidentiality arrangement should be amended accordingly and provided to the SDRs for implementation.

ii. Changes to an ADR's or AFR's Scope of Jurisdiction

The SDR Commenters stated that the Commission should amend § 49.17(d)(4)(iii) to require that the Commission and an ADR or AFR agree to any change to the SDR swap data that an ADR or AFR may access based on a change in the ADR's or AFR's scope of jurisdiction, which should then be reflected in an updated confidentiality arrangement provided to the SDRs.[78]

The Commission believes § 49.17(d)(4)(iii), as proposed, addresses the SDR Commenters' comment. The first sentence states that an SDR shall not grant an ADR or AFR access to swap data maintained by the SDR unless the SDR has determined that the swap data to which the ADR or AFR seeks access is within the then-current scope of such ADR's or AFR's jurisdiction, as described and appended to the confidentiality arrangement required by § 49.18(a). Accordingly, once an SDR receives that jurisdictional description, it can rely on that description until it either receives a new jurisdictional description or is directed by the Commission to suspend, limit, or revoke an ADR's or AFR's swap data access.

The second sentence of § 49.17(d)(4)(iii), as proposed, requires that each ADR or AFR that has executed a confidentiality arrangement with the Commission pursuant to § 49.18(a) and provided it to one or more SDRs shall notify the Commission and each such SDR of any change to such ADR's or AFR's scope of jurisdiction, as described in such confidentiality arrangement. This puts the burden on each ADR and AFR to inform the Commission, and each SDR from which an ADR and AFR receives swap data, of changes to such ADR's or AFR's jurisdiction.[79] The Commission would review any such changes, which the Commission expects will be in the form of an updated jurisdictional description and, unless the Commission found an error or other issue in the updated jurisdictional description, expects to advise the relevant ADR or AFR that it could provide the relevant SDRs the updated scope of jurisdiction description.

If the ADR's or AFR's scope of jurisdiction were to become more narrow, the Commission could use its authority pursuant to the third sentence of proposed § 49.17(d)(4)(iii) to direct the relevant SDRs to suspend, limit, or revoke access to swap data maintained by such SDR based on any such change to such ADR's or AFR's scope of jurisdiction, in which case such SDR shall so suspend, limit, or revoke such access. If the ADR's or AFR's scope of jurisdiction were to expand, as a practical matter, the ADR or AFR could not obtain swap data relevant to such expanded jurisdiction until the SDRs could update the parameters of their means of providing access accordingly, which the Commission would expect them to do no later than the earlier of (1) the earliest date such SDR, exercising commercially reasonable efforts in light of its obligations under the CEA and the Commission's regulations, is able to update the parameters of swap data access to match the ADR's or AFR's new scope of jurisdiction and (2) 180 days after the SDR receives those new parameters.

iii. Written Notices

The SDR Commenters contended that ''[p]roposed § 49.17(d)(4)(iii) should specify that any request by the Commission to the SDR to suspend, limit, or revoke access to swap data should be provided in writing.'' [80] The Commission agrees that such an important action should be provided in writing to avoid misunderstandings and to provide a record on which SDRs can rely. Accordingly, § 49.17(d)(4)(iii), as adopted, provides that an SDR is required to suspend, limit, or revoke an ADR's or AFR's access to the swap data maintained by such SDR only if the Commission communicates such instruction to the SDR in writing.

d. § 49.17(d)(4)(iv)

The Commission proposed in § 49.17(d)(4)(iv) that an SDR need not make the scope of jurisdiction determination required pursuant to proposed § 49.17(d)(4)(iii) more than once with respect to a recurring swap data request but that, if such request changed, the SDR would have to make a new determination pursuant to § 49.17(d)(4)(iii). The SDR Commenters requested that the Commission remove proposed § 49.17(d)(4)(iv), but the Commission understands this request to have been rooted in the SDR Commenters' concern that SDRs are not well suited to make a jurisdictional determination with respect to an ADR's or AFR's request for swap data, as discussed above in section II.D.4.c.i. For the reasons discussed therein, the Commission considers those concerns otherwise addressed and is adopting § 49.17(d)(4)(iv) as proposed.[81]

E. New § 49.17(i): Delegation of Authority

In the interest of expedience and efficiency in determining appropriateness of access by ADRs and AFRs, the Commission proposed (1) to delegate all functions reserved to the Commission in § 49.17 to the Director of the Division of Market Oversight (''DMO'') and to such members of the Commission's staff acting under his or her direction as he or she may designate from time to time and (2) that the DMO Director could submit any such delegated matter to the Commission for its consideration and that nothing prevents the Commission from exercising the delegated authority. The Commission received no comments in response to proposed § 49.17(i) and is adopting it as proposed.

F. CEA Section 21(d) Confidentiality Agreements: Amendments to § 49.18

CEA section 21(d), as amended by the FAST Act, requires that, prior to providing swap data to a 21(c)(7) entity, an SDR shall receive a written agreement from each entity stating that the entity shall abide by the

[78] *See* SDR Letter at 4.

[79] The Commission expects each ADR and AFR to also notify (in writing) the Commission and each SDR from which the ADR or AFR receives swap data of proposed changes to the ADR's or AFR's jurisdiction. With such advance notice, the Commission would seek to consider the implications, if any, of such changes, if finalized as proposed, for the scope of SDR swap data to which the ADR or AFR could have access. With suitable advance notice from the ADR or AFR, the SDRs could implement such changes contemporaneously with the time an ADR's or AFR's scope of jurisdiction changes.

[80] SDR Letter at 7.

[81] As discussed above, the Commission is not mandating that SDRs perform an analysis of an ADR's or AFR's scope of jurisdiction. Instead, the Commission is obligating SDRs to apply the scope of jurisdiction as defined in the confidentiality arrangement required by § 49.18(a).

confidentiality requirements described in CEA section 8 relating to the information on swap transactions that is provided.[82] As originally adopted, the part 49 rules required that such confidentiality agreements be executed between the SDR and the 21(c)(7) entity.[83] The Commission proposed in the NPRM to modify its part 49 rules to add a new § 49.18(a) requiring that a confidentiality arrangement be executed by and between the ADR or AFR and the Commission.[84] Once the ADR or AFR and the Commission have executed a confidentiality arrangement, the ADR or AFR may present the executed document to any SDR from which it requests access to swap data in satisfaction of CEA section 21(d).

Based on its experience with SDRs and swap data access since the adoption of part 49 in 2011, and on further consideration of the relationship between CEA sections 21 and 8, the Commission believed this change was consistent with the statutory framework established by Congress in CEA sections 21(d) and 21(c)(7) and more directly conforms to the confidentiality mandate of CEA section 8. The Commission stated its belief that this change would promote regulatory efficiency and reduce costs to SDRs, ADRs and AFRs while ensuring the confidentiality of SDR swap data.

To further promote regulatory efficiency, the Commission proposed a Confidentiality Arrangement Form for use by ADRs and AFRs. The Commission expects its use by ADRs and AFRs to significantly reduce the need for these entities to negotiate separate, SDR-specific confidentiality arrangements with the Commission. The Confidentiality Arrangement Form also will benefit the Commission by allowing it to use a single form of confidentiality arrangement rather than a different version for each ADR and AFR. This Confidentiality Arrangement Form also will eliminate the costs and potential inefficiencies for the SDRs that are inherent in requiring each SDR to negotiate confidentiality arrangements with a potentially large number of ADRs and AFRs. Similarly, the Confidentiality Arrangement Form will also eliminate costs and inefficiencies for ADRs and AFRs that would be incurred if each ADR and AFR has to negotiate and execute a unique confidentiality arrangement with each SDR. Finally, the Commission believes that widespread use of the Confidentiality Arrangement Form will facilitate timely access to SDR swap data by ADRs and AFRs by reducing or eliminating instances in which the Commission and its staff need to devote time and resources to developing and reviewing individualized confidentiality arrangements.

1. Current Rule

The Commission adopted § 49.18 to implement CEA sections 21(d)(1) and (2) as originally enacted. Accordingly, the current rule obligates SDRs to execute a ''Confidentiality and Indemnification Agreement'' before providing SDR swap data to an ADR or AFR. In the FAST Act, Congress repealed the indemnification requirement in CEA section 21(d)(2), and the Commission proposed in the NPRM certain conforming amendments to § 49.18 to remove references to indemnification.

Separately, the Commission proposed in the NPRM to amend § 49.18 to modify the substantive requirements of the confidentiality arrangement and the parties to the confidentiality arrangement, to establish conditions for restricting or revoking access to SDR swap data, and to clarify the confidentiality obligations of ADRs and AFRs with regulatory responsibility over an SDR.

2. Proposed Amendments to § 49.18(a): Confidentiality Arrangement Required Prior to Disclosure of Swap Data

The Commission proposed to remove existing § 49.18(a)[85] and add a new § 49.18(a) requiring that an SDR, before providing access to swap data maintained by the SDR to an ADR or AFR, receive a confidentiality arrangement executed by the Commission and the ADR or AFR that, at a minimum, contains all elements described in § 49.18(b), as amended.

3. Proposed Amendments to § 49.18(b): Required Elements of the Confidentiality Arrangement

The Commission proposed to amend § 49.18(b)[86] to include a requirement that the confidentiality arrangement required pursuant to § 49.18(a) shall, at a minimum, include all elements included in the Confidentiality Arrangement Form. As proposed, paragraph 5 of the Confidentiality Arrangement Form required an ADR or AFR to undertake that it will be acting within the scope of its jurisdiction each time it requests swap data from an SDR, and to promptly notify the Commission and each relevant SDR if the scope of the ADR's or AFR's jurisdiction changes. As proposed, paragraph 5 of the Confidentiality Arrangement Form also required ADRs and AFRs to employ procedures to maintain the confidentiality of swap data received from an SDR and any information and analyses derived therefrom (the swap data and such information are referred to collectively in the Confidentiality Arrangement Form as the ''Confidential Information'').

As proposed, paragraph 6 of the Confidentiality Arrangement Form required ADR and AFR signatories to employ the following safeguards to maintain the confidentiality of the Confidential Information:

- To the maximum extent practicable, maintain Confidential Information received from SDRs separately from other data and information; [87]
- protect such Confidential Information from misappropriation and misuse; [88]

[82] *See* CEA section 21(d). 7 U.S.C. 24a(d), as amended by the FAST Act.

[83] *See* §§ 49.17(d)(6) and 49.18(b), as in effect prior to this adopting release.

[84] The Commission notes that the SEC has implemented a similar approach with respect to the execution of the required agreement. *See* Access to Data Obtained by Security-Based Swap Data Repositories, 81 FR 60585 at 60591 and 60608 (Sept. 2, 2016) (SEC rule 13n–4(b)(10), 17 CFR 240.13n–4(b)(10), and associated preamble text) (''SEC Indemnification Rule'').

[85] Existing § 49.18(a) describes the purpose of § 49.18.

[86] Existing § 49.18(b) requires an SDR to receive a confidentiality agreement from a 21(c)(7) entity before granting the 21(c)(7) entity access to swap data maintained by the SDR. As discussed above, the Commission proposes to address in § 49.18(a), as adopted herein, the confidentiality agreement condition to swap data access.

[87] Without limitation, ADRs and AFRs seeking useful guidance for Confidential Information segregation can look to the data segregation standards contained in the National Institute of Standards and Technology (''NIST'') Special Publication 800–53, Revision 4, Security and Privacy Controls for Federal Information Systems and Organizations (April 2013) (''NIST Document''), available at *http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf.* The NIST Document also references international security standards in Appendix H (International Information Security Standards). *See also* the Federal Information Security Management Act of 2002, as amended (''FISMA''), 44 U.S.C. 3541. As the Commission has previously noted in a different context, FISMA ''is a source of cybersecurity best practices and also establishes legal requirements for federal government agencies . . . .'' System Safeguards Testing Requirements, 80 FR 80139, 80142 Dec. 23, 2015) (''Registered Entity Cyber NPRM''). The Commission adopted final rules based on the Registered Entity Cyber NPRM. *See* System Safeguards Testing Requirements, 81 FR 64271 (Sept. 19, 2016) (''Final Registered Entity Cyber Rules'').

[88] This should include cybersecurity measures. As the Commission detailed in a different context in the Final Registered Entity Cyber Rules, ''cyber threats to the financial sector continue to expand.'' *See id.* at 64272. *See also* System Safeguards Testing Requirements for Derivatives Clearing Organizations, 80 FR 80113, 80114–80115 (Dec. 23, 2015) (describing escalating and evolving cybersecurity threats); Registered Entity Cyber NPRM at 80140–80141 (describing, inter alia, the then-current cybersecurity threat environment).

• ensure that only ADR or AFR personnel with a need to access particular Confidential Information to perform their job functions related to such Confidential Information have access thereto and that such access is permitted only to the extent necessary to perform such job functions; [89]

• prevent the disclosure of aggregated Confidential Information, unless sufficiently aggregated and anonymized to prevent identification, through disaggregation or otherwise, of a market participant's business transactions, trade data, market positions, customers or counterparties; [90]

• prohibit the use of Confidential Information by ADR or AFR personnel for any improper purpose; and

• include a process for monitoring compliance with the confidentiality safeguards described in the Confidentiality Arrangement Form and for promptly notifying the CFTC and each relevant SDR of any violation of the safeguards or failure to fulfill the terms of the confidentiality arrangement.

As proposed, paragraph 7 of the Confidentiality Arrangement Form also precluded, with limited exceptions, ADRs and AFRs from disclosing any Confidential Information, via onward sharing [91] or otherwise. One exception was for aggregated Confidential Information that is anonymized to prevent identification (through disaggregation or otherwise) of a market participant's business transactions, trade data, market positions, customers or counterparties. The other exception was described in proposed paragraphs 8.a through 8.c., as described below.

As proposed, paragraphs 8.a through 8.c. of the Confidentiality Arrangement Form required specified federal, state or local U.S. ADRs and specified foreign AFRs to undertake that they will not disclose Confidential Information except in specified actions, adjudicatory actions or proceedings under relevant law.

As proposed, paragraph 9 of the Confidentiality Arrangement Form contained certain provisions requiring ADRs and AFRs to notify the Commission, and take certain protective actions, prior to disclosing Confidential Information in circumstances where an ADR or AFR receives a legally enforceable demand to disclose Confidential Information.

As proposed, paragraph 11 of the Confidentiality Arrangement Form required ADRs and AFRs accessing swap data from SDRs to comply with all applicable security-related requirements imposed by an SDR in connection with access to such swap data, as such requirements may be revised from time to time. Because, subject to specified conditions, CEA sections 21(c)(7) and 21(d) require SDRs to provide ADRs and AFRs access to swap data, the Commission expects that SDRs will not impose security-related access requirements beyond those that are necessary to ensure the privacy and confidentiality of SDR swap data. The Commission further expects that SDRs' security-related access requirements for ADRs and AFRs would be akin, if not identical, to the requirements SDRs impose on others (*e.g.,* the Commission, reporting counterparties) to whom SDRs provide swap data access.

To further protect the confidentiality of SDR swap data, paragraph 12 of the Confidentiality Arrangement Form, as proposed, required ADR and AFR signatories to promptly destroy all Confidential Information for which they no longer have a need or which no longer falls within their scope of jurisdiction.[92] The Commission stated in the proposal that, although it may be the case that ADRs or AFRs will use some or all Confidential Information in perpetuity, if they no longer have a need for Confidential Information, they should destroy such Confidential Information to prevent its misuse. Similarly, the Commission stated in the proposal that if an SDR inadvertently provides to an ADR or AFR swap data outside the scope of the ADR's or AFR's jurisdiction, such swap data also should be destroyed immediately after the ADR or AFR discovers that such swap data is outside the scope of its jurisdiction. The Commission clarifies here that, although it is adopting paragraph 12 of the Confidentiality Arrangement Form as proposed, if a recordkeeping obligation that is legally binding on an ADR or AFR would prohibit destroying swap data, the ADR or AFR would not need to destroy swap data in contravention of such prohibition.

The proposed rule required that a confidentiality arrangement include an exhibit (Exhibit A) describing the scope of jurisdiction of the ADR or AFR signatory. If such signatory is not an Enumerated ADR, the ADR or AFR would attach the Commission Determination Order described in § 49.17(h) as Exhibit A to the confidentiality arrangement.[93] If such signatory is an Enumerated ADR, it would attach, as Exhibit A to the confidentiality arrangement, a detailed description of its scope of jurisdiction as it relates to the swap data maintained by SDRs that the Enumerated ADR would seek to access. The description appended as Exhibit A to the confidentiality arrangement would be used by SDRs to verify that each particular swap data request is within the scope of the requesting entity's jurisdiction.

While the Confidentiality Arrangement Form, as proposed, would

[89] One basic principle of data security is that only those with a need to access data to perform their work should be granted access to such data. *See, e.g.,* Framework for Improving Critical Infrastructure Cybersecurity at 23 (Feb. 12, 2014), available at *http://www.nist.gov/cyberframework/upload/cybersecurity-framework-021214.pdf* (characterizing the ''Protect'' element of a core cybersecurity framework as one where ''[a]ccess to assets and associated facilities is limited to authorized users, processes, or devices, and to authorized activities and transactions.'').

[90] The Commission understands that ADRs and AFRs may want to use aggregated and anonymized information derived from SDR swap data in analyses that may be made public. *Cf.* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO–16–175, FINANCIAL REGULATION: COMPLEX AND FRAGMENTED STRUCTURE COULD BE STREAMLINED TO IMPROVE EFFECTIVENESS 71–75 (2016) (''GAO Report''), available at *http://www.gao.gov/assets/680/675400.pdf* (discussing the OFR's Financial Stability Monitor and related confidentiality issues and protections surrounding sharing aggregated and disaggregated information provided by other agencies). The Commission believes that, when properly aggregated and anonymized, information derived from SDR swap data generally can be disclosed without violating the requirement in CEA section 21(d) that a recipient of swap data agree, with respect to the information on swap transactions that is provided by an SDR, to abide by the confidentiality requirements described in CEA section 8. *Cf.* § 49.16(c) (providing that subject to Section 8 of the Act, SDRs may disclose aggregated swap data on a voluntary basis or as requested in the form and manner prescribed by the Commission); SDR Final Rules at 54551 (providing that the Commission believes that it is permissible under the Dodd-Frank Act and part 49 of the Commission's regulations for an SDR to disclose, for non-commercial purposes, data on an aggregated basis such that the disclosed data reasonably cannot be attributed to individual transactions or market participants.). In certain cases, however, even aggregated information may enable a reader to determine a market participant's business transactions, trade secrets (*e.g.,* algorithms) or positions. Thus, the Confidentiality Arrangement Form requires ADRs and AFRs to implement safeguards designed to appropriately limit the use of information that has been aggregated from SDR swap data and to disclose aggregated information only if it is sufficiently anonymized to prevent the identification, through disaggregation or otherwise, of a market participant's business transactions, trade data, market positions, customers or counterparties. ADRs and AFRs can look to § 43.4(d)(1) and (4) and (g) for guidance on anonymization principles.

[91] The Commission interprets the restrictions on disclosure contained in CEA section 8 that are incorporated in CEA sections 21(c)(7) and 21(d) as prohibiting an ADR or AFR from onward sharing swap data it obtains from an SDR.

[92] Paragraph 12 of the Confidentiality Arrangement Form, as proposed, also required ADR and AFR signatories to certify to the CFTC, upon request, that they have destroyed such swap data.

[93] As noted above, the Commission expects that the applicant would provide a description of its scope of jurisdiction as part of the Determination Order process.

require ADRs and AFRs to make certain undertakings before being granted access to SDR swap data, it afforded ADRs and AFRs the discretion to determine how to comply with those obligations with respect to swap data received from an SDR. Additionally, the Commission stated that to the extent the proposed rule did not address a relevant confidentiality issue that arose after an ADR or AFR commenced accessing swap data, the Commission expected affected ADRs and AFRs to take appropriate measures to safeguard affected swap data and advise the Commission of such issue promptly so that the Commission may consider appropriate action.

4. Proposed Removal of § 49.18(c): ADRs and AFRs With Regulatory Responsibility Over an SDR

The Commission proposed removing current § 49.18(c), which provides that the indemnification and confidentiality requirements established in § 49.18(b) do not apply to certain ADRs and AFRs with regulatory responsibility over an SDR, but requires such regulators to comply with CEA section 8 and any other relevant statutory confidentiality authorities. As noted above in section II.B. relating to § 49.17(d)(2) and (3), the Commission believed that those domestic regulators and Foreign Regulators that have regulatory responsibility over an SDR should be able to access swap data reported to such SDR pursuant to such other regulator's regulatory regime, without the limitations set out in current § 49.18(c). Therefore, the Commission submitted in the NPRM that § 49.18(c) is not appropriate. In addition, the Commission noted that § 49.17(d)(2) and (3) already provided that the confidentiality and indemnification requirements of § 49.18(b) do not apply to these domestic regulators and Foreign Regulators with regulatory responsibility over SDRs. However, the Commission stated that insofar as such a regulator sought swap data that was not reported to the SDR pursuant to that regulator's regulatory regime, the exclusions set forth within §§ 49.17(d)(2) and (3) would not apply. The Commission accordingly proposed to eliminate § 49.18(c).

5. Proposed New § 49.18(c) and (d): Failure to Fulfill the Terms of a Confidentiality Arrangement

The Commission proposed new § 49.18(c) to require SDRs to immediately report to the Commission any known failure to fulfill the terms of a confidentiality arrangement that they receive pursuant to § 49.18(a). The Commission also proposed new § 49.18(d), which authorizes the Commission to direct an SDR to limit, suspend or revoke an ADR's or AFR's access to swap data, if the Commission determines that the ADR or AFR has failed to fulfill the terms of its confidentiality arrangement with the Commission.[94]

6. Proposed New § 49.18(e): Delegation of Authority

The Commission proposed to add new § 49.18(e)(1) to delegate to the DMO Director, and to such Commission staff acting under his or her direction as he or she may designate from time to time, all functions reserved to the Commission in § 49.18. Proposed 49.18(e)(2) reserved to the DMO Director the authority to submit to the Commission for its consideration any matter that has been delegated under § 49.18(e)(1). Proposed § 49.18(e)(3) expressly permitted the Commission, at its election, to exercise the authority delegated under § 49.18(e)(1).

This delegation is intended to conserve Commission resources and increase the effectiveness and efficiency of the Commission's oversight and supervision of SDR swap data access. The Commission anticipates that the delegation of authority will help facilitate timely access to SDR swap data by ADRs and AFRs consistent with the requirements set forth in part 49 of the Commission's regulations. However, the DMO Director may submit matters to the Commission for its consideration, as he or she deems appropriate.

7. Conforming Changes

As a result of the FAST Act Amendments, the Commission proposed conforming changes to § 49.17(d)(6) to delete references to an Indemnification Agreement. As a result of the amendments to § 49.18, and in particular, § 49.18(a), the Commission proposed conforming changes to § 49.22(d)(4) relating to chief compliance officer compliance responsibilities and duties so that the appropriate rule provision reflecting the confidentiality arrangement is referenced.

[94] Proposed § 49.18(d) provided that the Commission may, if an ADR or AFR fails to fulfill the terms of a confidentiality arrangement described in § 49.18(a), direct each registered SDR to limit, suspend or revoke such ADR's or AFR's access to swap data held by such SDR. Similarly, proposed § 49.17(d)(5) required an SDR, as directed by the Commission, to limit, suspend or revoke an ADR's or AFR's swap data access should the Commission limit, suspend or revoke the appropriateness determination for such ADR or AFR or otherwise direct the SDR to limit, suspend or revoke such access.

8. Comments Received

The Commission received comments related to proposed § 49.18 from the SDR Commenters. The SDR Commenters supported the Commission's proposed transfer of responsibility for the execution of the confidentiality arrangement with the ADRs and AFRs from the SDRs to the Commission. The SDR Commenters advised that such transfer will significantly reduce regulatory costs and inefficiencies for the SDRs.[95] The SDR Commenters also supported the use of a confidentiality arrangement form. The SDR Commenters stated that use of such a form would promote consistency and further reduce regulatory burdens.[96]

In response to the Commission's proposal to remove previously adopted § 49.18(c), which, in part, applied the conditions of CEA section 8 to those ADRs and AFRs with regulatory responsibility over an SDR, the SDR Commenters agreed with the Commission that it is not appropriate to require a domestic regulator or Foreign Regulator to comply with CEA section 8 where such domestic regulator or Foreign Regulator has regulatory responsibility over an SDR and seeks access to SDR data that was reported pursuant to the regulator's supervisory authority.[97] Accordingly, the SDR Commenters supported the Commission's proposal to remove § 49.18(c) as previously adopted.

Proposed § 49.18(a) and (d) both contemplated notifications being sent to the SDRs. Proposed § 49.18(a) required an SDR that received a notice that an ADR's or AFR's confidentiality arrangement was no longer in effect to no longer provide swap data access to such ADR or AFR. Proposed § 49.18(d) stated that the Commission may, if an ADR or AFR fails to fulfill the terms of a confidentiality arrangement described in § 49.18(a), direct each registered SDR to limit, suspend or revoke such ADR's or AFR's access to swap data held by such SDR. The SDR Commenters recommended that the Commission modify proposed § 49.18(a) and (d) to specify that the notifications contemplated in these provisions be in writing.

9. Final Rule

After consideration of the comments that it received, and for the reasons set forth in sections II.F.1. through II.F.8. above and in this section the Commission is adopting § 49.18 with modifications. First, as discussed above,

[95] *See* SDR Letter at 3.

[96] *See id.*

[97] *See* SDR Letter at 2–3.

the Commission is accepting the SDR Commenters' comments that the notifications contemplated in proposed § 49.18(a) and (d) should be provided in writing and is adopting revised § 49.18(a) and (d) to reflect that change.

The Commission is also modifying proposed § 49.18(a) to promote the use of the Confidentiality Arrangement Form set forth in Appendix B. Specifically, as adopted, § 49.18(a) provides that, prior to providing an ADR or AFR access to any requested swap data, an SDR shall receive therefrom an executed confidentiality arrangement, between the Commission and the ADR or AFR, in the form set out in Appendix B to this part 49. The Commission may, in its discretion, however, agree to execute an alternate confidentiality arrangement with an ADR or AFR if the confidentiality arrangement is consistent with the requirements set forth in § 49.18(a).[98] The Commission believes that widespread use of the Confidentiality Arrangement Form will facilitate timely access to SDR swap data by ADRs and AFRs by reducing or eliminating instances in which the Commission and its staff need to devote time and resources to developing and reviewing individualized confidentiality arrangements. The Commission therefore believes that this modification will increase the potential benefits and cost savings associated with use of the Confidentiality Arrangement Form while still providing ADRs and AFRs the flexibility to use an alternate arrangement if necessary, in consultation with the Commission.

The Commission is adopting all other modifications to § 49.18 as proposed in the NPRM.

G. Other Changes

1. Proposed Rule Changes

In addition to those changes discussed throughout this release, the Commission proposed other changes to part 49, including a number of ministerial changes. The Commission proposed to amend § 49.9(a)(9) to change the reference therein from ''certain appropriate domestic regulators and foreign regulators'' to ''Appropriate Domestic Regulators and Appropriate Foreign Regulators'' to make clear that an SDR is required to provide access to swap data, pursuant to § 49.17, only to ADRs and AFRs. The Commission proposed to make a number of other changes to part 49 to more consistently refer to the defined term ''swap data.'' The Commission proposed to modify: The references in existing §§ 49.9(a)(9) and 49.17(b)(2)(i) to ''swap data or information''; the reference in existing § 49.17(d)(4)(i) to ''swaps transaction data''; and the reference in existing § 49.17(d)(6) to ''requested data,'' to be, in each case, references to ''swap data,'' as that term is defined in § 49.2(a)(15). The Commission proposed these changes to eliminate confusion and to conform part 49 to the FAST Act's amendment of CEA section 21(c)(7) to refer to ''swap data.''

The Commission also proposed to replace the reference in § 49.17(a) to ''swaps data'' with a reference to ''swap data'' and to replace the reference in § 49.17(a) to ''Regulation'' with a reference to ''§ 49.17'' to match the format of the reference in § 49.17(b). The Commission did not intend to effect any substantive changes with these proposed amendments.

The Commission proposed to change the references to ''swap transaction data'' in §§ 49.17(c)(2) and 49.17(c)(3) to ''swap data'' as defined in § 49.2(a)(15). The Commission also proposed to change the references to ''data'' in § 49.17(d)(5) and (6), (e) introductory text, and (e)(1) to ''swap data'' in order to clarify the Commission's intent to refer to ''swap data'' within the meaning of § 49.2(a)(15). For the same reason, the Commission also proposed to add ''swap data and'' before ''information'' in § 49.17(e)(2) to conform it to § 49.17(e)(1), as proposed to be amended.[99] The Commission also proposed to add the term ''and information'' after the term ''swap data'' in the second sentence of § 49.17(e) so that such sentence is consistent with the first sentence of § 49.17(e), which permits access by third party service providers to both swap data and information maintained by a registered SDR, subject to certain conditions.

In § 49.17(f)(2), the Commission proposed to change both references to ''data and information'' to ''swap data and information'' in order to clarify, in each case, that the intended reference is to ''swap data'' as defined in § 49.2(a)(15).

In addition to those changes related to references to ''swap data,'' the Commission also proposed to amend § 49.17(b)(1)(vii) to change the references to any other person the Commission deems appropriate to any other person the Commission determines to be appropriate pursuant to the process set forth in § 49.17(h) to match the language in CEA section 21(c)(7).

Commission regulation 49.17(f)(1) currently states that access of swap data maintained by the registered swap data repository to market participants is generally prohibited. The Commission proposed to amend § 49.17(f)(1) to state that access by market participants to swap data maintained by the registered swap data repository is prohibited other than as set forth in § 49.17(f)(2) in order to clarify its meaning. The Commission did not intend this to be a substantive change to § 49.17(f)(1).

Finally, the Commission proposed several minor clarifying changes to § 49.18(b).[100] These changes include: Replacing ''the swap data'' with ''swap data''; replacing the ''with any Appropriate Domestic Regulator or Appropriate Foreign Regulator'' reference with ''to any Appropriate Domestic Regulator or Appropriate Foreign Regulator''; and adding ''each'' before ''as defined in § 49.17(b)'' to reflect that both ''Appropriate Domestic Regulator'' and ''Appropriate Foreign Regulator'' are defined terms in § 49.17(b).

2. Final Rule Changes

The Commission received comment on only two of the proposed changes described in this section II.G. For the reasons set forth above in section II.G.1. and in this section, with one exception (*i.e.,* § 49.17(e)), the Commission is adopting the changes described in this section II.G. as proposed. The comments and the Commission's responses are described below.

The SDR Commenters generally supported the proposed changes to part 49 to more consistently refer to the defined term ''swap data,'' stating their belief that the consistency ''will promote clarity as to the data to which ADRs and AFRs may be granted access[.]'' [101] However, the SDR Commenters also noted that the term ''swap data'' is defined under § 49.2(a)(15) as ''specific data elements and information set forth in part 45 of this chapter that is required to be reported by a reporting entity to a registered swap data repository.'' [102] The

[98] The Commission is also making similar clarifying modifications to proposed §§ 49.17(d)(6) and 49.17(h)(3).

[99] Although § 49.17(e) uses the terms ''data'' and ''swap data'' interchangeably, the Commission intended those paragraphs to reference the definition of ''swap data'' and, consequently, believes that these amendments do not represent a change to the Commission's original intent in promulgating § 49.17(e). However, the term ''swap data'' is narrower than the term ''data''. Consequently, changing ''data'' to ''swap data'' arguably would narrow the scope of the confidentiality procedures and ''Confidentiality Agreement'' required, respectively, by § 49.17(e)(1) and (2).

[100] These proposed changes appear in proposed § 49.18(b).

[101] SDR Letter at 8.

[102] *Id.*

SDR Commenters asked the Commission to confirm that SDRs may provide ADRs and AFRs with Part 43 data in addition to Part 45 data and characterized this clarification as important because ''the SDRs use a combined message for Parts 43 and 45 reporting, making separation of Part 43 data from Part 45 data exceedingly difficult.'' [103]

In response to this comment, the Commission confirms that SDRs may provide ADRs and AFRs with Part 43 data in addition to Part 45 data. The Commission observes that most data reported pursuant to Part 43 is publicly disseminated and that, to the extent certain data is not publicly disseminated, such data is reported in equal or greater detail pursuant to part 45.

The SDR Commenters also noted that, ''[u]nder § 49.17(e), the Commission proposes to amend 'data and information' to 'swap data and information[ ]'' and commented that, in their view, the more appropriate term ''to ensure a third-party Service Provider may have access to all necessary data and information'' is ''swap data and SDR Information'' (as SDR Information is defined in § 49.2).[104] In response to this comment, the Commission is adopting § 49.17(e) as the SDR Commenters recommended amending it, in part because this change does not change the intent or scope of what is required or what was proposed in the NPRM.

In addition to these final rule changes, the Commission is adopting three ministerial changes to the proposed rule text, each for greater clarity, and one ministerial change to the existing rule text, also for greater clarity. First, the Commission is changing the phrase ''as directed by the Commission'' in proposed § 49.17(d)(5) to ''if directed by the Commission''. Second, the Commission is changing the phrase ''as described and appended to the confidentiality arrangement required by § 49.18(a)'' to ''as described in the appendix to the confidentiality arrangement required by § 49.18(a)'' in both proposed § 49.17(d)(4)(i) and (iii).[105]

Third, the Commission is adding bracketed text at the end of Appendix B to part 49 (describing Exhibit A to the Confidentiality Arrangement Form) in response to the SDR Commenters comment discussed in section II.D.2.c.i. This additional bracketed text provides that in both cases, the description of the scope of jurisdiction must include elements allowing SDRs to establish, without undue obstacles, objective parameters for determining whether a particular Swap Data request falls within such scope of jurisdiction. Such elements could include LEIs of all jurisdictional entities and could also include UPIs of all jurisdictional products or, if no CFTC-approved UPI and product classification system is yet available, the internal product identifier or product description used by an SDR from which Swap Data is to be sought.

Fourth, the Commission is amending existing § 49.17(d)(1), which the Commission had not proposed to amend to provide a brief overview in one paragraph to those persons seeking to obtain swap data access from SDRs, both ADRs and AFRs and those seeking to become ADRs or AFRs, of the requirements to obtain such access and to alert such persons to exceptions to the otherwise applicable requirements. The Commission is also adopting these changes to § 49.17(d)(1) to provide the aforementioned persons citations to the regulations relevant to obtaining SDR swap data access and to relevant exceptions to those regulations. These changes provide that except as set forth in § 49.17(d)(2) or (3), a person who is not an Appropriate Domestic Regulator or an Appropriate Foreign Regulator and who seeks to gain access to the swap data maintained by a swap data repository is required to first become an Appropriate Domestic Regulator or Appropriate Foreign Regulator through the process set forth in § 49.17. Additionally, these changes provide that Appropriate Domestic Regulators and Appropriate Foreign Regulators seeking to gain access to the swap data maintained by a swap data repository are required to comply with § 49.17(d)(6) prior to receiving such access and, if applicable after receiving such access, comply with the notification requirement in § 49.17(d)(4)(iii) applicable to Appropriate Domestic Regulators and Appropriate Foreign Regulators.

III. Request for Comment

In addition to the specific questions set forth throughout the NPRM, the Commission requested comment on all aspects of the proposal and on several specific questions set forth in section III of the NPRM. The Commission received some responsive comments, which it has summarized and responded to in the relevant sections of this adopting release, and two comments that were not responsive.[106]

IV. Compliance Date

The Commission received one comment related to the compliance date of the final rules. The SDR Commenters suggested that the Commission work with the SDRs to set an appropriately mutually agreeable timeframe for the compliance date.[107] Commission staff subsequently engaged in multiple discussions with the SDR Commenters regarding the compliance date. The Commission, as set out below, is adopting a two part compliance date for the final rules adopted herein. The compliance date for the final rules will be 60 days after publication in the **Federal Register**, except for the compliance date for an SDR to comply with its obligation under § 49.17(d)(5)(iii) of the Commission's regulations to provide access to swap data requested by an ADR or AFR. The compliance date for an SDR to comply with its obligation under § 49.17(d)(5)(iii) of the Commission's regulations is the earlier of (1) the earliest date, after such SDR receives from such ADR or AFR the confidentiality arrangement required by § 49.18(a), that such SDR, exercising commercially reasonable efforts in light of its obligations under the CEA and the Commission's regulations, is able to provide such access to the ADR or AFR and (2) 180 days after the SDR receives from such ADR or AFR the confidentiality arrangement required by § 49.18(a).

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities.[108] The rules adopted herein will have a direct effect on the operations of SDRs and certain domestic regulators and foreign regulators seeking

[103] *Id.*

[104] *Id.*

[105] These changes are to clarify that the scope of an ADR's or AFR's jurisdiction, which is the subject of the quoted text, is to be described in the appendix to the confidentiality arrangement required by § 49.18(a) rather than in the confidentiality arrangement itself. The language as proposed was somewhat unclear in that regard.

[106] In addition, the SDR Commenters commented on several issues relating to current § 49.17(f)(2) that were unrelated to the non-substantive change that the Commission proposed to make to § 49.17(f)(2). Because the SDR Commenters' comments on § 49.17(f)(2) were unrelated to the proposed changes to § 49.17(f)(2), they are beyond the scope of the NPRM and not a logical outgrowth of this rulemaking, as a result of which the Commission declines to address them here, in accordance with the Administrative Procedure Act. All comments received in response to the Commission's request for comment are available at *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=1777.*

[107] *See* SDR Letter at 9.

[108] *See* 5 U.S.C. 601 *et seq.*

access to swap data reported to, and maintained by, SDRs.

The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[109] The Commission has previously determined that SDRs are not small entities for purposes of the RFA.[110]

For purposes of the RFA, the definition of ''small entity'' encompasses ''small governmental jurisdictions,'' which in relevant part means governments of locales with a population of less than fifty thousand.[111] Although the Commission anticipates that the final rules adopted herein may be expected to have an economic impact on various governmental entities that access data pursuant to the Dodd-Frank Act's data access provisions (*i.e.,* ADRs and AFRs), the Commission does not anticipate that any of those governmental entities would be small governmental jurisdictions: The Commission believes that the universe of ADRs and AFRs will likely be limited to U.S. federal regulators and equivalent national, or state or provincial, foreign authorities, given that swap regulation does not occur at a local level globally, in the Commission's experience. As a result, the Commission does not believe that the final rules will have a significant economic impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, pursuant to 5 U.S.C. 605(b), hereby certifies that the final rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The amendments to part 49 result in new ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[112] 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 Office of Management and Budget (''OMB'') control number. The OMB control number for the information collection associated with part 49 is 3038–0086 (the ''Information Collection'').[113] The Commission is revising the Information Collection because the rule amendments herein will impose information collection requirements that require approval from OMB under the PRA. The Commission is therefore submitting this final rule to OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.

1. Summary of the Requirements

The modifications to part 49 require SDRs to make swap data available to requesting entities (*i.e.,* ADRs and AFRs) if certain conditions are satisfied. These conditions include the requesting entity executing a confidentiality arrangement with the Commission and providing it to each SDR from which it seeks swap data and, in some cases, receiving an order from the Commission (which requesting entities must apply for, including certain specified types of information in support) determining that it is an appropriate entity to receive SDR swap data. The modifications further require each ADR and AFR to notify the Commission, and each SDR from which an ADR or AFR has received swap data, of any change to the scope of such ADR's or AFR's jurisdiction, as described in the confidentiality arrangement.

The modifications also require SDRs to report to the Commission: (1) Each initial request from an ADR or AFR for access to swap data; (2) all ADR or AFR requests for swap data that do not comport with the described scope of the ADR's or AFR's jurisdiction that is appended to the confidentiality arrangement; and (3) failures to fulfill the terms of confidentiality arrangements. The modifications additionally require each SDR to maintain records of each initial, and all subsequent, requests from an ADR or AFR for access to swap data.

2. Collection of Information

Currently, the Information Collection sets out burden estimates relating to a broad range of SDR obligations associated with registration requirements, reporting requirements, recordkeeping requirements, and disclosure requirements. Where the information collection associated with those obligations is modified by this rule, the Commission is revising the Information Collection accordingly. To the extent this rule introduces new information collections that were not previously incorporated into the Information Collection, the Commission is revising the Information Collection to account for the new information collections. Finally, many of the information collections discussed in the Information Collection are not implicated or modified by the Commission's revisions to part 49 in this release. The Commission, therefore, is not revising the estimated burdens associated with such information collections. New or revised information collections contained in these revisions to part 49 will affect SDRs as well as entities that request access to SDR swap data pursuant to part 49, as revised.

As discussed above, the modifications to part 49 set out in this release are intended to provide a process by which other regulatory authorities may obtain access to SDR swap data. The information collections associated with this process are intended to ensure that SDR swap data is accessed only by appropriate entities and that the confidentiality of any accessed SDR swap data is adequately protected. The ultimate result of this process is intended to provide other regulatory authorities with information to assist with the oversight of the global swaps market and market participants.

ADR/AFRs. As discussed throughout this release, certain conditions must be satisfied before a requesting entity is permitted to access SDR swap data. These conditions may implicate various PRA collections and burdens as discussed below.

Pursuant to § 49.18(a), every requesting entity seeking access to SDR swap data must execute a confidentiality arrangement with the Commission prior to receiving access. This requirement applies to both those entities that are Enumerated ADRs, and those entities, whether foreign or domestic, that require a determination from the Commission that they are appropriate entities to receive access to SDR swap data. The Commission believes the use of the Confidentiality Arrangement Form, or a similar form, if permitted by the Commission, will provide an efficient means to satisfy the requirements of § 49.18(a).

In addition to executing a confidentiality arrangement, requesting entities that are not Enumerated ADRs will be required to seek a Determination Order from the Commission to obtain access to SDR swap data. The Commission is requiring that an Enumerated ADR attach to the confidentiality arrangement a detailed description of its scope of jurisdiction, as it relates to the swap data maintained by SDRs that the Enumerated ADR seeks to access.

The Commission, for PRA purposes, continues to believe that it is reasonable

[109] *See* Policy Statement and Establishment of ''Small Entities'' for purposes of the Regulatory Flexibility Act, 47 FR 18618, 18618–21 (Apr. 30, 1982).

[110] *See* Part 49 Adopting Release at 54575 and Notice of Proposed Rulemaking: Swap Data Repositories, 75 FR 80898, 80926 (Dec. 23, 2010).

[111] 5 U.S.C. 601(5), (6).

[112] 44 U.S.C. 3501 *et seq.*

[113] The most recent revision to OMB Control Number 3038–0086 was approved November 30, 2015 and is available at *http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3038-0086.*

to assume that 300 total entities will seek access to SDR swap data. This estimate is based on the Commission's experience in receiving data requests from other regulators and its experience in coordinating and cooperating with other regulators.[114] For PRA purposes, the Commission assumes there are four SDRs, which is the number of SDRs that are currently provisionally registered with the Commission. As the confidentiality arrangement required by § 49.18(a) will be between the ADR or AFR and the Commission, and will address swap data access from all SDRs, an ADR or AFR will need to execute only a single confidentiality arrangement for all SDRs from which it seeks swap data, rather than a separate confidentiality arrangement for each SDR. Accordingly, the Commission estimates, for PRA purposes, that the total number of confidentiality arrangements that will be executed under the amended part 49 rules is 300.

Although the Commission may, in its discretion, execute a confidentiality arrangement with one or more ADRs/AFRs that is not in the form of the Confidentiality Arrangement Form, § 49.18(b) requires that such alternative confidentiality arrangement include all elements of in the Confidentiality Arrangement Form. Consequently, the Commission is estimating the burden on ADRs and AFRs of negotiating the confidentiality arrangement required by § 49.18(a) based on its estimate of the burden involved for an ADR or AFR to put in place the Confidentiality Arrangement Form. The Commission estimates that the review and execution of each confidentiality arrangement by an ADR or AFR will take approximately 40 hours, for a total burden of 12,000 hours. The burden estimates associated with entering into the confidentiality arrangement required by § 49.18(a) are addressed in the revised Information Collection.

Any requesting entity, other than an Enumerated ADR, that seeks access to SDR swap data must be determined by the Commission to be an appropriate recipient of such access. For Enumerated ADRs, there is no burden associated with seeking to be determined appropriate by the Commission because Enumerated ADRs have already been determined by Congress in CEA section 21(c)(7), or by the Commission through its adoption of § 49.17(b)(1), to be appropriate recipients of SDR swap data access. Those entities that are not Enumerated ADRs and that seek SDR swap data access will be required to receive a Determination Order prior to receiving access to SDR swap data. The process for obtaining such a Determination Order is set out in general terms in § 49.17(h) and requires the requesting entity to prepare and submit an application to the Commission. The preparation and submission of this application constitutes an information collection under the PRA.

As discussed above, the Commission believes that for PRA purposes it is reasonable to assume that 300 domestic and foreign entities will seek access to SDR swap data. Very few of these entities have already been specifically identified by Congress in CEA section 21(c)(7), or by the Commission through its adoption of § 49.17(b)(1), as appropriate recipients of SDR swap data access. The Commission estimates, for PRA purposes, that each entity seeking a Determination Order would expend 100 hours in connection with filing the necessary application with the Commission, for a total initial burden of no more than 30,000 hours (calculated as the product of 300 domestic and foreign entities seeking access to SDR swap data and 100 hours per application). This estimate considers the relevant information that would be required to be provided in such an application, including information regarding the entity's scope of jurisdiction, confidentiality safeguards, as well as any other information the Commission deems relevant to its determination. This burden estimate is included in the Commission's revisions to the Information Collection.

Swap Data Repositories. As discussed throughout this release, SDRs are required to provide access to SDR swap data to ADRs and AFRs, provided certain conditions are met. This requirement may implicate PRA collections and burdens, some of which are already addressed in the existing Information Collection, and some of which constitute new collections, as discussed below. Currently, the burden on SDRs of making data available to ADRs and AFRs is accounted for in the Information Collection, as this is an existing obligation under existing § 49.17(d). However, the rules set out in this release clarify and modify the requirements imposed on SDRs in providing access to SDR swap data to ADRs and AFRs. Consequently, the Commission is revising the Information Collection to account for these clarifications and modifications.

The Commission expects SDRs to incur burdens and costs associated with setting up access to SDR swap data that is consistent with an ADR's or AFR's scope of jurisdiction, as described in the appendix to the confidentiality arrangement required by § 49.18(a). The Commission expects that each confidentiality arrangement will identify, either directly or through an attached Determination Order, the scope of access that is appropriate for a given requesting entity. The Commission expects SDRs to use these limitations to program their systems to reflect the scope of the ADR's or AFR's access to SDR swap data. These limits set out in the confidentiality arrangement are expected to reduce the burdens on SDRs of assessing whether a particular SDR swap data request falls within the scope of an ADR's or AFR's jurisdiction.

The Commission received one comment estimating the burden on SDRs associated with setting up access restrictions to match an ADR's or AFR's scope of jurisdiction.[115] CME estimated that its initial set up costs would be between 400 and 950 hours for all ADRs and AFRs in the aggregate.[116] The Commission believes it is reasonable to accept CME's estimate of 950 hours, as CME is an SDR and, as such, is familiar with the costs required for setting up such access restrictions.[117] Consequently, for PRA purposes, the Commission estimates that all SDRs in the aggregate would incur a total burden of 3,800 hours (*i.e.,* the product of 4 SDRs and 950 hours of time) associated with setting up access for all ADRs and AFRs. The burdens associated with these permissioning requirements are

[114] The Commission continues to estimate that up to approximately 30 authorities in the United States may seek to access swap data from SDRs. In the context of potential AFRs, the Commission believes that most requests will come from authorities in G20 countries, each of which will have no more, and likely fewer, than 30 authorities that may request swap data from SDRs. In addition, certain authorities from outside the G20 also may request swap data from SDRs. Accounting for all of these entities, the Commission estimates that there likely will be a total of no more than 300 relevant domestic and foreign authorities that may request swap data from SDRs.

[115] *See* SDR Letter at 5, n.10.

[116] The SDR Letter stated that ''CME believes the initial set up cost will be between of 400 and 950 hours.'' *Id.* In subsequent communications, CME clarified that this estimate is for all ADRs and AFRs in the aggregate. The other SDRs did not opine on the Commission's estimate of 26 hours.

[117] The Commission, in its proposal, estimated that the burden on an SDR associated with setting up access restrictions to match a requesting entity's scope of jurisdiction will include 20 hours of programmer analyst time, five hours of senior programming time, and one hour of attorney time, for a total of 26 hours. The Commission notes that the SEC also estimated a set up time of 26 hours in its similar rulemaking. *See* Access to Data Obtained by Security-Based Swap Data Repositories, 81 FR 60585 at 60594 (Sept. 2, 2016) (SEC rule 13n–4(b)(9) and (10), 17 CFR 240.13n–4(b)(9) and (10).

addressed in the revised Information Collection.

SDRs will also be required to provide electronic notice to the Commission of the first request for access to swap data from a particular ADR or AFR, and promptly after receiving any request that does not comport with the scope of the ADR's or AFR's jurisdiction, as described in the appendix to the confidentiality arrangement required by § 49.18(a). In addition to notifying the Commission of the foregoing, the Commission is requiring, in § 49.17(d)(4)(i), SDRs to maintain records of the details of the initial and all subsequent requests for swap data from an ADR or AFR. The SDR shall maintain this information for a period of no less than five years after the date of such request and shall provide this information to the Commission upon request, pursuant to § 1.31.

Currently, the Information Collection estimates burdens associated with the various registration, reporting, recordkeeping, and disclosure requirements to which SDRs are subject. The reporting and recordkeeping requirements relating to ADR and AFR data requests constitute an information collection for PRA purposes and require the Commission to revise the reporting and recordkeeping burden estimates contained in the Information Collection. The reporting and recordkeeping requirements in this release may potentially impact each SDR.

SDRs already have the ability to communicate electronically with the Commission and are subject to significant recordkeeping requirements pursuant to §§ 45.2(f) and 49.12. Therefore, the requirements adopted herein should not result in SDRs having to incur initial costs to implement systems to notify the Commission when an ADR or AFR submits a data request for the first time that are in excess of what is already accounted for in the Information Collection.

The Commission estimates that each SDR would incur an annual burden of 480 hours associated with the requirement to maintain records of the details of the initial and all subsequent requests for data from an ADR or AFR, for a total of 1,920 hours annually (*i.e.,* the product of four SDRs and 480 hours). Although the Commission provided an estimate of 280 hours in the NPRM, CME commented that 480 hours was more likely.

The Commission received one comment related to setup costs associated with its proposed recordkeeping requirements.[118] The SDR Letter provided estimates for recordkeeping set up costs. CME subsequently provided updated estimates of these setup costs, which CME now estimates would be approximately 1,100–1,440 hours. The Commission believes it is reasonable to accept CME's estimate of 1,440 hours, as CME is an SDR and, as such, is familiar with the setup costs associated with SDR recordkeeping requirements. Therefore, the Commission estimates that initially each SDR may incur a burden of 1,440 hours associated with these recordkeeping requirements, for a total of 5,760 hours (*i.e.,* the product of four SDRs and 1,440 hours). However, as discussed in this release, the recordkeeping requirements adopted herein may result in lower costs to the SDRs than estimated here, as the Commission is not requiring SDRs to keep records of all copies of swap data provided in response to data requests, as it had proposed in the NPRM.[119] The burdens associated with the notification requirements adopted herein are addressed in the revised Information Collection.

Finally, the current Information Collection accounts for the costs to SDRs of executing a ''Confidentiality and Indemnification Agreement'' with each requesting ADR and AFR. Under the Commission's final rule adopted herein, the SDR is no longer required to execute such an agreement with ADRs or AFRs. The confidentiality arrangements will be between each requesting ADR or AFR and the Commission. Accordingly, the total burden to SDRs, as currently reflected in the Information Collection, is reduced by the cost to execute such agreements. The reduction in burden associated with this change in the confidentiality arrangement requirement is addressed in the revised Information Collection.

C. Cost-Benefit Considerations

1. Introduction

As discussed in Section I above (''Background and Introduction''), the Commission is amending Part 49 to (i) implement the statutory changes mandated by the FAST Act amendments; (ii) make certain conforming and clarifying changes related to such implementation; (iii) revise the process by which a regulator is determined appropriate to receive access to SDR swap data; (iv) clarify the standards in connection with the Commission's appropriateness determinations; and (v) establish the form and substance of the written agreement mandated by CEA section 21(d), as amended.

In the sections that follow, the Commission discusses the costs and benefits associated with the final rule and reasonable alternatives considered. Comments from commenters addressing the associated costs and benefits of the rule are addressed in the appropriate sections. Wherever possible, the Commission has considered the costs and benefits of the final rule in quantitative terms. Given, however, that SDRs do not yet have a history of providing swap data to other regulators, and the final rule does not dictate the means by which SDRs may provide such swap data access in the future, the availability to the Commission of relevant or useful quantitative terms to assess the potential costs and benefits of the final rule is limited. Accordingly, where a quantitative discussion is not feasible, the Commission has considered the costs and benefits of this rulemaking in qualitative terms.

The baseline against which the costs and benefits of this final rule are being compared is the existing status quo for SDR swap data access under CEA section 21, as amended by the FAST Act, taken together with the swap data access requirements in the current Part 49 rules. As a general matter, the Commission recognizes that there are inherent costs and benefits to domestic and foreign regulators having access to SDR swap data. As discussed above, the Commission expects that access to SDR data by ADRs and AFRs will not only assist those regulators in fulfilling their own supervisory and regulatory functions but facilitate greater cooperation and collaboration among regulators across jurisdictions, promoting effective and consistent oversight of the global swaps market. At the same time, however, opening access to SDR data to other regulators may increase opportunities for unauthorized or unnecessary data disclosures, which could negatively impact swap market participants. Congress took into account these costs and benefits associated with broader SDR data access in adopting and amending CEA section 21, which supports access to swap data by appropriate regulators provided that, consistent with CEA section 8, the data accessed falls within their scope of jurisdiction and the data is provided on a confidential basis. In formulating the amendments to Part 49 that make up this final rule, the Commission has been mindful of the tradeoff between these dual objectives embodied in the

[118] *See* SDR Letter at 7, n.15.

[119] Moreover, SDRs are already subject to extensive recordkeeping obligations under existing Commission rules, so SDRs may be able to reduce their costs by making use of existing recordkeeping resources to some extent.

mandate of CEA sections 21(c)(7) and (d), endeavoring to reduce the costs to regulators of obtaining, and to SDRs of providing, access to swap data, while also establishing sufficient processes and conditions to ensure that data access is appropriately scoped and confidentiality is maintained.[120]

2. Benefits

a. Background

In the fall of 2008, a series of large financial institution failures triggered a financial and economic crisis that threatened global financial markets. As a result of these failures, the government intervened to ensure the stability of the U.S. financial system. These failures revealed the vulnerability of the U.S. financial system and economy to widespread systemic risk resulting from, among other things, poor risk management practices of financial firms and the lack of supervisory oversight—specifically data concerning over-the-counter (''OTC'') derivatives activity—for a financial institution as a whole.

The financial crisis also illustrated the significant risks that an uncleared, OTC derivatives market can pose to the financial system. Swap markets were opaque, and financial institutions were significantly interconnected through counterparty credit risk. This exposed the financial system to contagion through spreading defaults and losses. For example, concerned with the size of AIG's credit default swap exposure, the Federal government infused $180 billion of taxpayer money into AIG in order to prevent AIG's failure, which the Federal government was concerned may have led to cascading defaults by AIG creditors and counterparties and other creditors and counterparties indirectly exposed to AIG through credit and swap transactions. The legislative response to the Great Recession, the Dodd-Frank Act, stipulated that data representing OTC derivatives, in general, be reported to SDRs in order to cultivate robust oversight of financial entities and identify risks to the liquidity, stability, and functioning of the financial system.[121] The Commission anticipates that access by ADRs and AFRs to swap data reported to SDRs, in combination with future sharing with the Commission of swap data reported to trade repositories in other jurisdictions, in part as a result of this rulemaking, will facilitate greater inter-agency cooperation, collaboration on matters concerning systemic risk, and identification and mitigation of future financial crises.

b. High-Level Benefits

At a high level, this rulemaking is expected to assist other regulators in performing their supervisory and regulatory functions by providing them, for the first time, access to SDR swap data, which would help regulators better understand the risks their regulated entities are assuming and the impact of such risks on the broader markets. These supervisory and regulatory functions may include: Monitoring and mitigating systemic risk; ensuring financial stability; registration and oversight of financial market infrastructures, trading venues and/or market participants; central bank activities; prudential supervision; restructuring or resolution of infrastructures and firms; and regulation of cash markets, in some of which swap counterparties are active.[122] Regulators may also be able to increase the benefits of receiving SDR swap data by discussing the results of their analyses, subject to the conditions and limitations of the confidentiality arrangement required by § 49.18(a), including restrictions on onward sharing. The Commission believes regulatory coordination is beneficial.

Access to SDR swap data may also facilitate collaboration among the Commission, ADRs and AFRs in comparing the results of their respective SDR swap data analyses. Providing regulators access to SDR swap data should also facilitate cooperation among market and prudential regulators, which sometimes view data in isolation, given their different responsibilities, regulated entities, missions, and—as it relates to this rule making—data sets. In particular, such access may improve early warning systems that might ultimately reduce the probability or severity of a crisis, or both. The benefits of regulatory collaboration and broader access to swap data are likely to persist, if not expand, over time as regulators gain experience working together, while the burden required for establishing access to swap data includes an upfront commitment of time and money that is likely to diminish over time (although some increased operating costs resulting from this rulemaking will remain).

The Commission believes that the implementation of this rulemaking represents a critical element of effective financial market oversight by providing access to SDR data to ADRs and AFRs. The Commission acknowledges that performing systemic risk analysis is very difficult as a result of the fragmented regulatory structure that exists both domestically and internationally. The financial markets are global in nature and contain correlated instruments dispersed across different regulatory authorities and jurisdictions. Regulating such markets utilizing only the data and information available through one particular regulator's regime is suboptimal. For instance, when conducting oversight of treasury futures and interest rate swap markets, it is not sufficient to only assess the available futures and swaps data at the Commission's disposal. Oversight of activity in those markets and associated risk also requires trading activity and position information regarding treasury bonds, repurchase agreements and reverse repurchase agreements. Similarly, regulating the credit and equity asset classes would benefit from information concerning related cash market activity in equity securities, corporate bonds, derivatives (on broad and narrow CDS and equity indexes, single-name CDS and equities, and bespoke transactions), securitizations, repurchase agreements and securities lending. The same applies to conducting comprehensive risk analysis and oversight of other asset classes. Similarly, in regulating swap dealers, the Commission would benefit from obtaining visibility into their positions in other jurisdictions to form a complete picture of their risk profiles.

The Commission may face challenges in analyzing overall market, counterparty, or systemic risk accurately with only the data at its disposal via recordkeeping and reporting pursuant to the CEA and the Commission's regulations promulgated thereunder.

[120] In support of its goal to reduce costs, the final rule is harmonized in many respects with the corollary SEC Indemnification Rule implementing changes to its security-based swap data access rules following adoption of the FAST Act. This rulemaking also is in accord with two recent recommendations issued by the U.S. Department of the Treasury (''Treasury'') in a recent report in which Treasury recommended greater harmonization between the CFTC and the SEC and stated that greater coordination is required among the CFTC, SEC and prudential regulators. *See* A Financial System That Creates Economic Opportunities[:] Capital Markets (Oct. 6, 2017) (''Report'') at 9, available at *https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf*.

[121] *See* section 4r of the CEA, 7 U.S.C. 6r, added to the CEA by section 729 of the Dodd-Frank Act.

[122] *See generally* Data Final Rules at 2136–2137 (observing that Dodd-Frank was enacted to reduce systemic risk, increase transparency, and promote market integrity within the financial system by, among other things creating rigorous recordkeeping and data reporting regimes with respect to swaps); Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements 81 FR 34817, 34819 (May 31, 2016) (observing that as the 2008 financial crisis illustrated, complex financial and operational relationships demonstrated how the transfer of risk associated with swaps is not always transparent and can be difficult to fully assess.).

Prudential, bank, and market regulators likely face similar challenges in assessing the overall market, understanding patterns and flows, and identifying concerning trends based solely on data available pursuant to their own individual regulatory regimes. These limitations presumably impact similarly situated regulators across the global financial system.

In light of the issues flowing from incomplete data, the Commission expects this rule to generate substantial benefits by fostering a regulatory environment that supports broader data access across the regulatory community and expands the accessibility of SDR swap data to other regulators, thereby supporting holistic oversight and data driven policy making at the regulatory level. The probability of successfully overseeing the prevailing market structure of the financial system and preventing another crisis increases as more ADRs and AFRs access SDR swap data and incorporate it into their existing analysis and workflows. Although this rule only provides other regulators access to swap data maintained at SDRs regulated by the Commission, the Commission expects the rulemaking to encourage similar access by the Commission to swap data maintained at trade repositories regulated by other authorities, which would increase the benefits of the rule discussed above accordingly.

c. More Specific Benefits

i. MOUs

Under current § 49.17(b)(2), the existence of a current MOU or similar type of information sharing arrangement with the Commission automatically qualifies a Foreign Regulator as an AFR. The Commission is amending § 49.17(b)(2) to require all ''Foreign Regulators'' who wish to receive swap data from SDRs to file an application with the Commission to be Commission-determined ''Appropriate Foreign Regulators'' and requires the Commission to issue an order finding each Foreign Regulator to be an ''appropriate'' recipient of SDR swap data. The Commission believes that this modification will ensure that Foreign Regulators are acting within the scope of their jurisdiction, consistent with CEA sections 21(c)(7) and 8(e) and should reduce the risk of unauthorized disclosure, misappropriation or misuse of swap data. The SDR Commenters also commented that an MOU or other information sharing agreement alone potentially could have imprecise language and bespoke arrangements that would not provide sufficient indication of a regulator's appropriateness.[123] By requiring use of the Confidentiality Arrangement Form or permitting an alternative arrangement with the same elements, the Commission is establishing confidentiality safeguards that are tailored to the provision of swap data by an SDR to an ADR or an AFR. In addition, as the Commission stated in the NPRM and in the preamble above in sections II.B.4. and 5., it can take into account additional considerations or circumstances it may deem relevant on a case-by-case basis in making an appropriateness determination. This can benefit the appropriateness determination process by permitting the Commission to consider factors such as those identified by the SDR Commenters.

ii. Duty for SDRs To Notify the Commission of Swap Data Requests From ADRs and AFRs

Current § 49.17(d)(4)(i) requires an SDR to promptly notify the Commission regarding any request from an ADR or AFR for access to swap data. The Commission is amending current § 49.17(d)(4)(i) to require such notices only promptly after the SDR receives an *initial* request for access to swap data from a particular ADR or AFR and promptly after receiving a request from an ADR or AFR that does not comport with the scope of the ADR's or AFR's jurisdiction, as described in the appendix to the confidentiality arrangement required by § 49.18(a). The Commission expects this to benefit SDRs by significantly reducing the number of notices and the associated costs. The change might also benefit ADRs and AFRs by expediting the time it takes for them to get access to SDR swap data.

iii. Form of Electronic Notification by SDRs to the Commission

Current § 49.17(d)(4)(ii) requires an SDR to notify the Commission, electronically in a format specified by the Secretary of the Commission, of any request from an ADR or AFR for access to swap data. The Commission is specifying the format in the adopting release. This will benefit SDRs by providing clarity and specificity as to the particular means of notice required such that they can develop such means of notice expeditiously so that SDRs can provide such notices soon after they receive requests for SDR swap data from ADRs and AFRs. This, in turn, might benefit ADRs and AFRs by expediting their access to such swap data.

[123] SDR Letter at 3.

iv. Clarification of SDR Recordkeeping Obligations

In the NPRM, the Commission explained that an SDR's obligation to maintain records of all information related to the initial and all subsequent requests by an ADR or AFR for swap data access would require retaining records including, among other things, copies of all data reports and other aggregation of data provided in connection with the request for access.[124] The SDR Commenters stated that that proposed requirement ''should be amended to avoid imposing unnecessary costs.'' [125] The SDR Commenters characterized that proposed recordkeeping requirement as burdensome, challenging to implement, and potentially decreasing information security, because the requirements could require an SDR ''to propagate a given data set more than once.'' [126]

As an alternative to maintaining such reports, the SDR Commenters offered to create pre-formatted data reports, which they would make available for download by ADRs and AFRs ''so that the record of access to such reports [would] be easily identifiable, in lieu of maintaining logs of queries and query conditions . . . .''[127] The SDR Commenters added that, if the Commission adopted their alternative, ''the parameters of the reports and the logic which is used to populate the reports is all that should have to be maintained.'' [128] The SDR Commenters contended that the Commission should require only ''the saving of metadata around reports rather than the actual reports[.]'' [129]

As discussed above in section II.D.2.ii., the SDR Commenters explained in discussions with staff that they plan to provide swap data access to ADRs and AFRs in one of two ways: (1) Via pre-formatted reports that the SDR Commenters would make available for download by ADRs and AFRs or send to ADRs and AFRs, in each case on a regular basis; or (2) via a Web-based portal through which ADRs and AFRs could conduct customized searches of swap data.[130] In those discussions, the

[124] NPRM at 8375, n.42; *see also,* NPRM at 8381 (Paperwork Reduction Act discussion of recordkeeping burdens).

[125] SDR Letter at 6.

[126] *See id.*

[127] *Id.*

[128] *Id.*

[129] *Id.*

[130] The swap data provided in the pre-formatted reports or through the Web-based portals would be limited to swap data within the particular ADR's or AFR's scope of jurisdiction, as described in the appendix to the confidentiality arrangement required by § 49.18(a).

SDR Commenters explained that they would not consider it unduly burdensome to maintain records in those formats.

As discussed above in section II.D.2.ii., the Commission is confirming that SDRs may satisfy their recordkeeping duties under § 49.17(d)(4)(i) by maintaining records of, as applicable: (1) Their pre-formatted swap data reports; or (2)(a) the parameters of Web portal swap data access and (b) queries run by ADRs and AFRs using such access. This confirmation should lower costs to the SDRs by decreasing financial costs thereto, making recordkeeping simpler and decreasing cybersecurity risks, as the SDR Commenters noted.

v. Limitation, Suspension or Revocation of an ADR's or AFR's Swap Data Access

The Commission is requiring, in § 49.17(d)(4)(iii), an SDR to limit, suspend, or revoke an ADR's or AFR's swap data access if the ADR's or AFR's scope of jurisdiction changes and the Commission directs the SDR to limit, suspend, or revoke the ADR's or AFR's swap data access.[131] Similarly, § 49.17(d)(5) requires an SDR to limit, suspend, or revoke an ADR's or AFR's swap data access if the Commission limits, suspends or revokes the ADR's or AFR's appropriateness determination or otherwise directs the SDR, in writing, to limit, suspend, or revoke the ADR's or AFR's swap data access. Although these sections will impose costs on both SDRs (which will be required to build into their systems a means of limiting, suspending, or revoking an ADR's or AFR's swap data access; this could be as simple as, for example, requiring a user name and password to obtain swap data access and deactivating such login credentials) and ADRs and AFRs (which may temporarily or permanently lose access to some or all SDR swap data), the Commission believes this is an unavoidable and appropriate corollary of the requirement in CEA section 21(c)(7) that ADRs' and AFRs' SDR swap data access be on a confidential basis pursuant to CEA section 8,'' which, as discussed throughout this release, requires, among other things, that the swap data provided be within the scope of an ADR's or AFR's jurisdiction. Although CEA section 21(c)(7) also directs SDRs to provide ADRs and AFRs SDR swap data access, such access is subject to the foregoing conditions, among others. Therefore, § 49.17(d)(4)(iii) and (d)(5) will benefit market participants by keeping their swap data confidential, as intended by Congress, if an ADR's or AFR's jurisdiction changes such that it is no longer entitled to such swap data or if other factors lead the Commission to limit, suspend, or revoke an ADR's or AFR's swap data access to ensure that confidentiality is maintained. The ''in writing'' requirement of § 49.17(d)(5) will benefit SDRs by ensuring that all SDRs are aware of any changes in status with respect to an appropriateness determination, as the SDR Commenters requested.[132]

vi. Confidentiality Arrangements

Current §§ 49.17(d)(6) and 49.18(b) require the confidentiality agreement required by CEA section 21(d) to be entered into between an ADR or AFR seeking SDR swap data access and each SDR from which the ADR or AFR seeks such access. The Commission is amending those rules to require that such confidentiality arrangements be entered into between an ADR or AFR, as one party, and the Commission, rather than an SDR, as the other party. This will benefit SDRs by shifting from SDRs to the Commission the costs of negotiating confidentiality arrangements with an estimated 300 [133] ADRs and AFRs. This will also benefit ADRs and AFRs by enabling them to negotiate a single confidentiality arrangement with the CFTC to access swap data from each SDR rather than a separate agreement with each of the SDRs from which they would seek swap data.

The Commission also is requiring the use of the Confidentiality Arrangement Form, unless the Commission waives this requirement. The Commission expects this to benefit ADRs and AFRs by allowing them to avoid expending resources coming up with their own confidentiality arrangement forms and avoid the uncertainty of not knowing what provisions the Commission would accept, reject or negotiate. The Commission expects this to benefit SDRs as well in that most, if not all, confidentiality arrangements will be the same, making them easier to incorporate into their policies and procedures and build swap data access around. Overall, the Commission believes that this rule will increase the potential benefits and cost savings associated with use of the Confidentiality Arrangement Form while still providing ADRs and AFRs the flexibility to use an alternate arrangement if necessary, in consultation with the Commission.

vii. Means of Access

The Commission is not requiring SDRs to provide access to swap data to ADRs and AFRs through a specific technological means. Each SDR operates with different legacy systems and infrastructure, preferred data formats and delivery methods, and unique change management processes. The Commission prescribing a specific means of access for the swap data could subject different SDRs to greater/lesser costs, thereby disadvantaging one/some over other(s). Presumably, SDRs will choose the least costly means of access, all else being equal, as a result of the flexibility provided by the Commission. Thus, the flexibility afforded SDRs to choose the means of access through which they provide swap data access to ADRs and AFRs will benefit SDRs.

More ADRs and AFRs accessing SDR swap data (as a result of the removal of the statutory and regulatory indemnification requirements that ADRs and AFRs refused to submit to) also has the potential to improve the quality of swap data. For instance, ADRs and AFRs might assert their authority over the entities that they regulate to require or encourage them to submit better and/or more data. If swap data quality improves, ADRs and AFRs can make better-informed supervisory decisions to reduce risks. Although the Commission is not mandating the use of LEIs to delineate an ADR's or AFR's scope of jurisdiction for purposes of SDR swap data access, the Commission anticipates the use of LEIs to that end. If ADRs and AFRs do use LEIs for that purpose, the Commission believes that it will be relatively straightforward for SDRs to provide ADRs and AFRs access to appropriate swap data, relative to alternatives such as ADRs and AFRs providing legal memoranda describing the scope of their jurisdictions, which SDRs would then need to parse and translate into field descriptions, which is how SDR swap data are organized. Similarly, although the Commission is not mandating the use of UPIs (or if no CFTC-approved UPI and product classification system is yet available, the internal product identifier or product description used by the SDR) to delineate an ADR's or AFR's scope of jurisdiction, the Commission anticipates the potential use of UPIs to that end. If ADRs and AFRs do use UPIs for that purpose, the Commission believes that it will be relatively easier for SDRs to provide ADRs and AFRs access to appropriate swap data, relative to the

[131] The Commission also is reserving the right, in new § 49.17(h)(4), to revisit, reassess, limit, suspend or revoke a Determination Order. The costs and benefits to ADRs, AFRs and SDRs are similar to the costs and benefits thereto discussed in this section with respect to § 49.17(d)(4)(iii) and (d)(5).

[132] *See* discussion at section II.C.5., supra.

[133] *See,* among other sections, section V.B.2.

alternative of not using a UPI to describe the scope of their jurisdictions.

3. Costs

a. Background

The Commission recognizes that there are different types of costs associated with this rulemaking. In the NPRM, the Commission stated that:

> [o]ne cost is the potential harm to market participants and the public if swap data is misused—for example, inappropriately disclosed by ADRs and AFRs. Or, another harmful scenario might involve misappropriated data where hackers pilfer swap data from ADRs and AFRs to learn the positions of market participants so that the hackers, or other interested parties who may even pay for such information, scam the market. Such bad actors might be able to anticipate such market participants' trades and trade in front of them, raising swap trading costs to market participants, thereby reducing their profits.[134] If the aforementioned scenario occurred frequently enough this might induce swap dealers to widen their spreads, making hedging more expensive. In turn, this might lead to sub-optimal business and investment strategies, as parties would be less willing to participate in swap markets, because it would be more costly. Further, the scenario posed could cause market participants to be concerned that their business strategies might be tipped to their competitors, because with stolen data, somebody might be able to infer their strategies from knowing their swap positions and how these positions change in response to relevant economic events.[135] Such concerns could lead some market participants to withdraw to some extent from swap markets, reducing liquidity and potentially inducing them to use less effective hedging instruments or trading strategies in other markets.[136]

It is difficult to discern the likelihood of this misuse occurring, rendering it difficult to quantify related costs, for at least four reasons. First, data breaches can have different causes, from not upgrading to the most current software, to software glitches, to successful cyber attacks and improper procedures and protocols. Thus, it is difficult to develop a homogenous sample to use to analyze data breaches and what might reasonably be done to mitigate them (*i.e.,* reduce the probability of their occurrence as well as their severity when they do occur). Furthermore, the Commission does not have access to such data even if they do exist. Second, data storage and dissemination technology is constantly changing. This may result in the manner in which data breaches occur changing over time in ways that are difficult to anticipate, as various parties adapt to new technology. Third, it is problematic to assess in advance the severity of a data breach because the severity is dependent on the particulars of a given breach that cannot be easily anticipated. Fourth, it would be difficult, ex ante, to link data misuse to related profits and harms from specific transactions.

b. High-Level Costs

At a high level regarding costs to ADRs and AFRs, the less access to SDR swap data granted to ADRs and AFRs, the less such swap data would help in performing ADRs' and AFRs' supervisory and other regulatory functions. Similarly, the more impediments to swap data access, the longer it would take ADRs and AFRs to use, or the less use ADRs and AFRs could make of, such swap data. It is not mandatory for ADRs and AFRs to ask for access to SDR swap data, however. Thus, ADRs and AFRs can reduce their costs by not asking for swap data or by limiting the swap data they seek and/or the frequency with which they seek it.[137] The Commission expects ADRs and AFRs will seek access to SDR swap data when they believe that the benefits associated with the access are worth incurring the costs associated with obtaining such access.

c. ADRs' and AFRs' Costs

The Commission is imposing several new obligations on Foreign Regulators and certain domestic regulators that will trigger costs for such regulators.

i. Determination Order Applications

Currently, § 49.17(b)(2) defines Foreign Regulators with either an MOU or a similar information sharing agreement in place with the Commission as ''Appropriate Foreign Regulators.'' As amended, however, § 49.17(b)(2) replaces such automatic AFR status with a requirement that Foreign Regulators be determined by the Commission to be AFRs before such Foreign Regulators can obtain swap data from SDRs. This change will impose costs on each Foreign Regulator with an MOU, or similar information sharing agreement, seeking AFR status. The obligation for Foreign Regulators, and domestic regulators that are not enumerated in § 49.17(b)(1)(i) through (vi), to apply for a Determination Order conferring AFR or ADR status in order for such Foreign Regulators and unenumerated domestic regulators to be eligible to receive access to SDR swap data will, at a minimum, require such applicants to draft an application. Some applicants for ADR and AFR status may choose to retain outside counsel or another third party to draft the application, thereby incurring related costs; others might use their own staff. There also may be additional costs associated with the complexity of the application, because applicants for ADR and AFR status will have to explain their jurisdiction and link it to their requests for access to SDR swap data.[138] While applicants will need to expend resources developing their ''appropriateness'' applications, the Commission expects that the requirements and guidance it has provided in this release should reduce such expenditures to a certain extent. Nonetheless, the level of such expenditures will depend on the particulars of a given applicant.

The Commission estimates that each requesting entity would on average expend 100 hours in connection with filing an application to receive a Determination Order. This estimate considers the relevant information that would be required to be provided in such an application, including information regarding the entity's scope of jurisdiction, confidentiality safeguards, as well as any other information relevant for the Commission's determination. The Commission monetizes the 30,000 burden hours by multiplying by a wage rate of $85 [139] or approximately $2.56 million.

ii. Confidentiality Arrangements

The requirement in § 49.18(a) that SDRs receive an executed

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[134] *See, e.g.,* Registered Entity Cyber proposed rulemaking at 80141 (observing that ''there has . . . been a rise in attacks by . . . hacktivists . . . aimed at . . . [, among other things,] theft of data or intellectual property. . . . ''); *id.* at 80189 (Concurring Statement of then-Commissioner Bowen) (stating that ''our firms are facing an unrelenting onslaught of attacks from hackers with a number of motives ranging from petty fraud to international cyberwarfare.'').

[135] While the same risks of misuse and misappropriation exist with respect to swap data maintained at SDRs, SDRs are regulated, and subject to sanctions, by the Commission, whereas ADRs and AFRs are not.

[136] NPRM at 82 FR 8384.

[137] The Commission acknowledges, however, that it is in the best interest of ADRs and AFRs, as Congress recognized in passing the FAST Act, for the process and parameters established by this rulemaking to be utilized and swap data to be made accessible to ADRs and AFRs.

[138] Pursuant to § 49.17(h), applicants will have to describe to the Commission the scope of their jurisdiction so that that description can be provided to SDRs so that SDRs will know the contours of the swap data access they can provide to applicants.

[139] The wage rate used here is a composite (blended) wage rate by averaging the mean annual salaries of an Assistant/Associate General Counsel, an Assistant Compliance Director, and a Programmer (Senior) as published in the 2013 SIFMA Report and dividing that figure by 1,800 annual working hours and multiplying by 1.3 to account for the overhead for a government employee to arrive at the hourly rate of approximately $85.

confidentiality arrangement from an ADR or AFR before the SDR can provide the ADR or AFR swap data is based on a corresponding requirement set forth in CEA section 21(d) and will impose costs on ADRs and AFRs. CEA section 21(d) does not specify any details of the required written agreement other than that it must state that the ADR or AFR shall abide by CEA section 8's confidentiality requirements. The Commission, however, is adopting, in Appendix B to part 49, a Confidentiality Arrangement Form providing for ADRs and AFRs to implement a number of safeguards to effectuate the confidentiality protections mandated by CEA section 21(c)(7). The Confidentiality Arrangement Form can be expected to limit ADRs' and AFRs' flexibility to use confidentiality arrangements more tailored to their specific needs, but this is offset to some extent by corresponding benefits discussed above in section V.C.3.vi. and by the fact that the Commission retained the discretion to negotiate changes to the Confidentiality Arrangement Form.

iii. Data Security

Section 6 of the Confidentiality Arrangement Form contains a number of undertakings designed to prevent unauthorized disclosure of swap data. Given that ADRs and AFRs already likely have existing data security policies, procedures and safeguards, the Commission continues to believe that the costs of developing safeguards in response to such undertakings would likely be only a incremental addition to their existing data security costs, and the other costs of complying with these burdens, such as the costs to develop policies, procedures and safeguards, are within the scope of ADRs' and AFRs' expertise (and thus would likely not require ADRs or AFRs to retain outside experts to develop).[140] Given that ADRs and AFRs can elect not to seek access to swap data from SDRs and that ADRs and AFRs who do seek such access have some control over the scope and frequency of the swap data they seek and the manner in which they seek to analyze such swap data, ADRs and AFRs themselves can influence to some degree the costs they impose on themselves by seeking access to swap data from SDRs.

[140] The Commission continues to believe that ADRs and AFRs would likely have established safeguards to protect sensitive data other than swap data and that such safeguards could be adapted to address the requirements of the confidentiality arrangement.

iv. Onward Sharing

Section 7 of the Confidentiality Arrangement Form would prohibit ADRs and AFRs from onward sharing Confidential Information with other parties, with limited exceptions. This could impose some costs in that ADRs and AFRs would not be able to freely share swap data among themselves, which could reduce the utility of the swap data to ADRs and AFRs, possibly reducing the effectiveness thereof. However, because CEA section 21(c)(7) requires that SDRs share swap data with ADRs and AFRs on a confidential basis pursuant to CEA section 8,'' and CEA section 8(e) also prohibits onward sharing, the onward sharing prohibition in section 7 of the Confidentiality Arrangement Form is required by the CEA.

v. Means of Access

In addition, the fact that the Commission is electing not to specify a particular means of ADRs and AFRs accessing swap data could result in SDRs providing a means of access other than a means preferred by ADRs and AFRs. This might impose additional costs on ADRs and AFRs relative to the potentially lesser costs of their preferred means of access.

The Commission prescribing a particular means of access could result in costs to either ADRs/AFRs or SDRs. Specifically, costs borne by ADRs/AFRs might be shifted to SDRs or vice versa as a particular means of access changes. The Commission chooses to not force all SDRs to use a single means of providing access, thus requiring some or all SDRs to alter their systems, since it is not possible to distinguish a single means of access that would be preferable to all ADRs, AFRs and SDRs. Because of these uncertainties, the Commission is unable to quantify these costs but is able to identify such costs qualitatively. The Commission recognizes that allowing SDRs to choose the means by which they provide swap data access may impose costs of adapting to a particular means of access on ADRs and AFRs. However, given the large number of ADRs and AFRs who may seek SDR swap data access and the large potential variation in their preferred means of access, and given the limited number of SDRs and potential means of access, the Commission believes that ADRs and AFRs, in general, can more easily bear the burden of adapting to SDRs' choices of means of access than vice versa.

d. SDRs' Costs

i. Providing New Access Generally

For SDRs, providing swap data access to so many potential ADRs and AFRs may be expensive. For example, SDRs may be forced to purchase new servers, hire new system administrators to oversee the new swap data/system usage and troubleshoot related problems that may arise. Maintaining new records pursuant to new recordkeeping requirements also could require more resources. The requirement for an SDR not to provide swap data to an ADR or AFR unless the SDR has determined that the swap data is within the then-current scope of the ADR's or AFR's jurisdiction, as described in the appendix to the confidentiality arrangement required by § 49.18(a), may cause SDRs to elect to create new methods for parsing swap data to comply with the requirement to so limit swap data access. Further, if the SDRs send data to ADRs and AFRs, then they will incur costs to transmit the data. These costs include the cost of expanding their capacity to disseminate data as well as the cost to parse existing data to verify that it is within the then-current scope of the ADR's or AFR's jurisdiction, as described in the appendix to the confidentiality arrangement required by § 49.18(a).

ii. Providing Notice to the Commission

Current § 49.17(d)(4)(i) requires SDRs to notify the Commission of any request for access to swap data from a particular ADR or AFR. The Commission's amendments would reduce that burden by permitting SDRs to notify the Commission only of the first such request by each ADR or AFR and of any request that does not comport with the scope of the ADR's or AFR's jurisdiction, as described in the appendix to the confidentiality arrangement required by § 49.18(a). The obligation to notify the Commission of various other actions also will increase SDRs' costs, although to the extent that such notice obligations are not triggered, such cost increases would be tempered accordingly. Nevertheless, SDRs presumably would need to incur some costs to develop policies and procedures, and build out systems, to monitor potential events that would trigger the new notice requirements.

iii. Verifying That a Swap Data Request Is Within an ADR's/AFR's Scope of Jurisdiction

Other SDR costs will include those related to SDRs determining that each access request by an ADR or AFR is within the scope of the ADR's or AFR's

jurisdiction, as required by § 49.17(d)(4)(iii). This will require SDRs to expend resources to ensure that they do not improperly disclose swap data to an ADR or AFR. However, the Commission believes these costs will be mitigated substantially in at least two ways. First, § 49.17(d)(4)(iv) provides that an SDR must make the scope of jurisdiction determination only once with respect to a recurring swap data request, thus ensuring no duplication of effort.[141] Second, § 49.17(d)(4)(iii) provides that the only source an SDR must consult in determining an ADR's or AFR's scope of jurisdiction is the appendix to the confidentiality arrangement required by § 49.18(a). To the extent ADRs and AFRs provide lists of LEIs, and possibly also UPIs of swaps, within the scope of ADRs' and AFRs' jurisdiction, which the Commission continues to expect that they will, this would limit the resources SDRs must expend to verify whether swap data access requests are within the scope of an ADR's or AFR's jurisdiction.[142] No legal analysis would be required on an SDR's part, greatly reducing potential costs. SDRs' costs would come from ensuring that the access they provide ADRs and AFRs to swap data via SDRs' systems is no greater than or less than the swap data to which ADRs and AFRs are entitled based on the scope of the ADRs' or AFRs' jurisdiction, as described in the appendix to the confidentiality agreement required by § 49.18(a).

The Commission believes that the use of LEIs, and potentially UPIs, to effectively determine which SDR swap data should be provided to ADRs/AFRs is a reasonable option, although it has some relatively minor drawbacks unrelated to the amendments in this final rule (*e.g.,* some blank or incorrect data entries remain in LEI fields, LEIs are masked in a number of cases to reflect certain other jurisdictions' privacy law limits on disclosure, and the Commission has yet to designate a UPI and product classification system, and SDRs each have developed their own separate pre-UPI product identifiers in the interim). Despite those drawbacks, the Commission believes LEIs and pre-UPI product identifiers may be useful in describing ADRs' and AFRs' scopes of jurisdiction.[143]

The Commission acknowledges that lists of LEIs of ADRs' and AFRs' regulated entities and lists of UPIs or other product identifiers of swaps within ADRs' and AFRs' jurisdiction may have to be updated from time to time as regulated entities move in and out of ADRs' and AFRs' jurisdiction, ADRs' and AFRs' jurisdiction expands or contracts, swaps evolve, and new types of swaps are introduced. In these cases, for example, an ADR or AFR likely would have to modify periodically the list of LEIs and UPIs or product identifiers it gives to SDRs, imposing some costs on SDRs as they incorporate such changes (and imposing some costs on ADRs and AFRs to monitor their LEI and UPI or product identifier lists and update SDRs and the Commission periodically regarding any changes).

The Commission continues to believe that the rule would further mitigate the costs to SDRs by permitting them to verify that a data access request falls within the scope of an ADR's or AFR's jurisdiction just once for a recurring request the details of which do not change. SDRs might incur additional costs, however, if the scope of an ADR's or AFR's jurisdiction, or other factors discussed in the prior paragraph, change. Such additional costs include some fraction of the costs, discussed above, of verifying that an ADR's or AFR's swap data access request falls within the scope of the ADR's or AFR's jurisdiction. Additionally, ADRs and AFRs would incur some costs to notify the Commission of changes in jurisdiction.

iv. Means of Access

The Commission is not requiring SDRs to use a particular means of providing access to swap data to ADRs and AFRs. The Commission is not specifying a means of access because the Commission has allowed SDRs to build their systems as they saw fit and does not want to impose undue costs by requiring SDRs to all grant access via a specific means, which could impose greater costs on certain SDRs based on how they chose to build their systems.

The Commission notes that SDRs already provide the Commission and the National Futures Association (''NFA'') with swap data access. Given that SDRs have already incurred many fixed costs in granting access to the Commission and NFA, in providing ADRs and AFRs access, the SDRs may benefit from economies of scale, reducing SDRs' costs. The rule would also mitigate SDRs' costs by permitting them to choose the means by which they will provide access to swap data to ADRs and AFRs. The Commission expects that SDRs would choose the lowest cost means of access consistent with their statutory obligation to provide ADRs and AFRs access to swap data and other constraints. The Commission continues to believe that it cannot forecast what these costs are because they depend on particulars of each SDR that the Commission still does not know. Further, the Commission anticipates that many of these particulars will change over time as various parties adapt to technological changes. However, the Commission has estimated costs where it can, based in part on comments it received in the SDR Letter, as discussed below.

v. Recordkeeping

The Commission is amending current § 49.17(d)(4)(i) to require SDRs to maintain records of the details of the initial, and all subsequent, requests for access to swap data from an ADR or AFR. Each SDR would have to maintain this information for the same period required for other SDR records. The Commission anticipates that such costs will be relatively small and anticipates using such data to, for example, monitor ADRs' and AFRs' access requests from time to time to ensure that they remain within the scope of their jurisdiction and, relatedly, to ensure that SDRs have been monitoring this access issue.

4. Response to Comments

The Commission requested comments on all aspects of the NPRM and further requested that commenters provide any data or other information that would be useful in the estimation of the quantifiable costs and benefits of this rulemaking. The Commission received substantive comments from the SDR Commenters on the Commission's PRA burden hour estimates provided in the NPRM. Those comments are incorporated in the Commission's cost estimates for the burdens on SDRs, ADRs, and AFRs.

The Commission is requiring, in § 49.17(d)(4)(iii), that an SDR not provide an ADR or AFR access to swap data, unless the SDR has determined that the swap data is within the then-current scope of the ADR's or AFR's jurisdiction, as described in the appendix to the confidentiality

[141] However, if the request changes, each affected SDR must make a new determination. The Commission believes this is unavoidable due to requirement in CEA section 21(c)(7) that swap data be provided by SDRs to ADRs and AFRs on a confidential basis pursuant to section 8, and that any related costs flow from this statutory requirement.

[142] This assumes that ADRs and AFRs choose to develop such lists, which the Commission continues to anticipate that they would.

[143] In addition, if the scope of an ADR's or AFR's jurisdiction supports receiving all swap data with respect to entities over which an ADR or AFR exercises oversight, the ADR or AFR may not need to use product identifiers at all—it may be able to use LEIs alone to describe the scope of its jurisdiction.

arrangement required by § 49.18(a). The Commission received one comment estimating the burden on SDRs associated with setting up access restrictions to match an ADR's or AFR's described scope of jurisdiction.[144] In the SDR Letter, CME estimated the initial setup cost to be between 400 and 950 hours for all ADRs and AFRs in the aggregate. The Commission believes it is reasonable to accept CME's estimate of 950 hours, as CME is an SDR and, as such, is familiar with the costs required for setting up such access restrictions. Consequently, for PRA and CBC purposes, the Commission estimates that SDRs would incur a total burden of 3,800 hours (*i.e.,* the product of 950 hours of time and four SDRs) associated with setting up SDR swap data access for all ADRs and AFRs. The Commission monetizes these burden hours at an hourly wage rate of $329 [145] yielding a cost of approximately $1,250,200.

As noted in the PRA discussion above, the Commission estimates that each SDR would incur an annual burden of 480 hours associated with the requirement to maintain records of the details of the initial and all subsequent requests for data from an ADR or AFR, for a total of 1,920 hours annually (*i.e.,* the product of four SDRs and 480 hours). The Commission received one comment related to setup costs associated with its proposed recordkeeping requirements.[146] The SDR Letter provided estimates for recordkeeping setup costs. CME subsequently provided updated estimates of the setup costs, which CME now estimates would be approximately 1,100–1,440 hours. The Commission believes it is reasonable to accept CME's estimate of 1,440 hours, as CME is an SDR and, as such, is familiar with the setup costs associated with SDR recordkeeping requirements. Therefore, the Commission estimates that initially each SDR may incur a burden of 1,440 hours associated with these recordkeeping requirements, for a total of 5,760 hours (*i.e.,* the product of four SDRs and 1,440 hours). The Commission monetizes these burden hours by using a wage rate of $329 yielding a cost of $1,895,040. However, as discussed in this release, the recordkeeping requirements adopted herein may result in lower costs to the SDRs than estimated here, as the Commission is not requiring SDRs to keep records of all data reports provided in response to data requests, as it had proposed in the NPRM.

5. Alternatives Considered

As one alternative to comprehensive swap data safeguards, the Commission instead could have chosen to merely delete the indemnification references in its regulations. While that approach could have avoided imposing on ADRs, AFRs, and SDRs many of the costs related to protection of confidentiality discussed herein, it would have dramatically increased the risk of imposing on market participants and the public the costs discussed above in the first paragraph of section IV.C.4. and below in section IV.C.7.a.–c., which the Commission continues to believe is inconsistent with the historical importance Congress and the Commission have placed on protecting information covered by CEA section 8. Consequently, the Commission has determined to take the selected approach.

The Commission also considered and rejected the idea of specifying a means of ADRs and AFRs accessing swap data. The Commission rejected this as being too prescriptive, given that the Commission previously permitted SDRs the discretion to build their systems as they saw fit and for the other reasons discussed above in the means of access discussion.

The Commission also considered prohibiting SDRs from continuing to provide ADRs and AFRs swap data access during the period commencing with a contraction in an ADR's or AFR's scope of jurisdiction and considered reducing the time SDRs are permitted to update their systems to reflect the new jurisdiction. While the Commission retains the authority to do so, as stated above, it expects ADRs and AFRs will notify the Commission upon learning of a potential jurisdictional restriction. The Commission expects that, with such advance notice, SDRs can be more prepared to adjust their systems accordingly shortly after an ADR's or AFR's jurisdiction is limited. The Commission prefers to retain the discretion to address these situations, which it expects to be rare, case-by-case.

6. Consideration of CEA Section 15(a) Factors

CEA section 15(a) requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. CEA section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the CEA section 15(a) factors.

a. Protection of Market Participants and the Public

The Commission believes that the final rules will equip ADRs and AFRs to better understand the risks that are undertaken by their regulated entities, and thus be better positioned to take appropriate action as needed, because they will be able to better understand their regulatees' swap transactions by virtue of having access to SDR swap data.

The Commission is adopting a number of safeguards to prevent market participants' swap data maintained at SDRs from being misappropriated or misused as a result of ADR and AFR access to such swap data. The safeguards include: Modifying the requirements for being an AFR; a requirement that the Commission issue a Determination Order for unenumerated authorities to obtain SDR swap data access; requiring authorities applying for a Determination Order to demonstrate that they are acting within the scope of their jurisdiction in seeking access to SDR swap data; imposing on ADRs and AFRs seeking access to swap data maintained by SDRs a number of required confidentiality safeguards; barring onward sharing of swap data; imposing on SDRs certain recordkeeping and reporting requirements; and ensuring the Commission's ability to revoke an ADR's or AFR's swap data access.

b. Efficiency, Competitiveness, and Financial Integrity of Futures Markets

The Commission continues to believe that there will be little effect on efficiency, competiveness, and financial integrity of futures markets if swap data is properly protected from being

[144] *See* SDR Letter at 5, n.10.

[145] The hourly wage rate used to estimate the costs associated with these requirements is $329, which is a weighted average of salaries and bonuses across different professions from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for overhead and other benefits. The Commission-estimated appropriate wage rate is a weighted national average of salary and bonuses for professionals with the following titles (and their relative weight): ''programmer (senior)'' (10% weight); ''programmer'' (30%); ''compliance advisor (intermediate)'' (20%); ''compliance attorney'' (30%), and ''assistant/associate general counsel'' (10%).

[146] *See* SDR Letter at 7, n.15.

misappropriated or misused. While the Commission believes that the final rules adopted herein will properly protect swap data from being misappropriated or misused, the possibility of such misconduct cannot be eliminated entirely. If such misappropriation or misuse occurs, the efficiency and competitiveness of markets might be affected.

c. Price Discovery

The Commission continues to believe that price discovery would not be affected by this rulemaking, provided that swap data is properly protected. However, the Commission notes that there might be some indirect effects on price discovery if the swap data protection safeguards in this rulemaking are ineffective. If such protections prove ineffective, market participants may be less willing to execute swaps, as their identities, strategies, and/or positions may be revealed. Ineffective data safeguards might harm price discovery if bid/ask spread widens as a result. If so, observed prices might become more volatile because they would oscillate between a wider bid/ask spread.

d. Sound Risk Management Practices

Access to SDR swap data will help ADRs and AFRs to better understand the risks posed by their regulated entities. With access to such swap data, ADRs and AFRs can more comprehensively supervise entities that engage in swap trading and better understand their exposure to losses. Allowing more ADRs and AFRs to access SDR swap data may improve SDR data, too. This improvement might occur by facilitating research and analysis that ultimately leads to better risk management by market participants. This can occur through ADR/AFR research directed at improving the risk management techniques through, for instance, better metrics, instruments, and hedging techniques. Further, swaps data reporting may also be improved by ADRs and AFRs asserting their authority over their regulated entities to encourage or compel them to improve their swap data reporting and risk management.

e. Other Public Interest Considerations

The Commission finds that the ministerial changes to § 49.17(d)(1) discussed above in section II.G.2. may benefit ADRs, AFRs and those persons seeking to become ADRs and AFRs by providing, in one place, a brief overview of all of the requirements applicable to such persons obtaining access to SDR swap data and the circumstances in which such requirements are not applicable.

The Commission also finds that the ministerial changes that it is adopting to the bracketed text at the end of Appendix B to part 49 (describing Exhibit A to the Confidentiality Arrangement Form), drawn from section II.D.2.c.i. of the preamble, may benefit ADRs and AFRs by also including in part 49 of the Commission regulations the instructions and guidance provided in the preamble as to how to describe their scopes of jurisdiction in practical terms SDRs can implement. As with the Commission's ministerial changes to § 49.17(d)(1), such simplification should make obtaining SDR swap data modestly less burdensome and costly for ADRs and AFRs by reducing their staff time needed to go through the process.

The Commission is also making changes to §§ 49.17(d)(6) and 49.18(a) to promote the use of the Confidentiality Arrangement Form set forth in Appendix B, providing that the ability of an ADR or AFR to execute a confidentiality arrangement that is not in the form set forth in Appendix B to this part 49 is at the discretion of the Commission. To the extent that this clarification results in more ADRs and AFRs executing the Confidentiality Arrangement Form, the Commission expects that this could result in modest savings for ADRs and AFRs. The Commission also expects that using the Confidentiality Arrangement Form will save staff time in the negotiation and execution of alternative arrangements.

Other than the foregoing, the Commission has not found any other public interest considerations to be implicated by this rulemaking.

D. Antitrust Considerations

CEA section 15(b) requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of the CEA, in issuing any order or adopting any Commission rule or regulation.

The Commission does not anticipate that the amendments to part 49 that it is adopting today will result in anticompetitive behavior because, among other things, the Commission is allowing SDRs to determine which means of access they will use to provide ADRs and AFRs swap data access (thus, allowing SDRs to ''compete'' on that basis). However, in the NPRM the Commission encouraged comments from the public on any aspect of the proposal that may have had the potential to be inconsistent with the antitrust laws or be anticompetitive in nature.

The Commission received no antitrust-related comments. Consequently, the Commission continues to not anticipate that the amendments to part 49 that it is adopting today will result in anticompetitive behavior.

List of Subjects in 17 CFR Part 49

Swap data repositories; Registration and regulatory requirements; Access to swap data; Confidentiality; Commodity Exchange Act section 8.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 49 as set forth below:

PART 49—SWAP DATA REPOSITORIES

■ 1. The authority citation for part 49 is revised to read as follows:

Authority: 7 U.S.C. 12a, and 24a, unless otherwise noted.

■ 2. In § 49.2, revise paragraph (a)(5) to read as follows:

§ 49.2 Definitions.

(a) * * *

(5) *Foreign Regulator.* The term ''*foreign regulator*'' means a foreign futures authority as defined in Section 1a(26) of the Act, foreign financial supervisors, foreign central banks, foreign ministries and other foreign authorities.

* * * * *

■ 3. In § 49.9, revise paragraph (a)(9) to read as follows:

§ 49.9 Duties of registered swap data repositories.

(a) * * *

(9) Upon request of Appropriate Domestic Regulators and Appropriate Foreign Regulators, provide access to swap data held and maintained by the swap data repository, as prescribed in § 49.17;

* * * * *

■ 4. In § 49.17:

■ a. Revise paragraphs (a), (b)(1)(vii), (b)(2), and (c)(2);

■ b. Revise the first sentence of paragraph (c)(2) and the first sentence of paragraph (c)(3);

■ c. Revise paragraphs (d)(1) through (3), (d)(4)(i) through (iv), and (d)(5) and (6), (e) and (f); and

■ d. Add paragraphs (h) and (i).

The revisions and addtions read as follows:

§ 49.17 Access to SDR data.

(a) *Purpose.* This section provides a procedure by which the Commission,

other domestic regulators and foreign regulators may obtain access to the swap data held and maintained by registered swap data repositories. Except as specifically set forth in this section, the Commission's duties and obligations regarding the confidentiality of business transactions or market positions of any person and trade secrets or names of customers identified in Section 8 of the Act are not affected.

(b) * * *

(1) * * *

(vii) Any other person the Commission determines to be appropriate pursuant to the process set forth in paragraph (h) of this section.

(2) *Appropriate Foreign Regulator.* The term ''*Appropriate Foreign Regulator*'' shall mean those Foreign Regulators the Commission determines to be appropriate pursuant to the process set forth in paragraph (h) of this section.

* * * * *

(c) * * *

(2) *Monitoring tools.* A registered swap data repository is required to provide the Commission with proper tools for the monitoring, screening and analyzing of swap data, including, but not limited to, Web-based services, services that provide automated transfer of data to Commission systems, various software and access to the staff of the swap data repository and/or third-party service providers or agents familiar with the operations of the registered swap data repository, which can provide assistance to the Commission regarding data structure and content. * * *

(3) *Authorized users.* The swap data provided to the Commission by a registered swap data repository shall be accessible only by authorized users. * * *

(d) *Other Regulators*—(1) *General Procedure for Gaining Access to Registered Swap Data Repository Data.* Except as set forth in paragraph (d)(2) or (3) of this section—

(i) A person who is not an Appropriate Domestic Regulator or an Appropriate Foreign Regulator and who seeks to gain access to the swap data maintained by a swap data repository is required to first become an Appropriate Domestic Regulator or Appropriate Foreign Regulator through the process set forth in paragraph (h) of this section, and

(ii) Appropriate Domestic Regulators and Appropriate Foreign Regulators seeking to gain access to the swap data maintained by a swap data repository are required to apply for access by filing a request for access with the registered swap data repository and certifying that it is acting within the scope of its jurisdiction, comply with paragraph (d)(6) of this section prior to receiving such access and, if applicable after receiving such access, comply with the notification requirement in paragraph (d)(4)(iii) of this section applicable to Appropriate Domestic Regulators and Appropriate Foreign Regulators.

(2) *Domestic regulator with regulatory responsibility over a swap data repository.* When a swap data repository that is registered with the Commission pursuant to this chapter is also registered with a domestic regulator pursuant to a separate statutory authority, and such domestic regulator seeks access to swap data that has been reported to such swap data repository pursuant to the domestic regulator's regulatory regime, such access is not subject to the requirements of sections 21(c)(7) or 21(d) of the Act, this paragraph (d) or § 49.18.

(3) *Foreign Regulator with regulatory responsibility over a swap data repository.* When a swap data repository that is registered with the Commission pursuant to this chapter is also registered with, or recognized or otherwise authorized by, a Foreign Regulator that has supervisory authority over such swap data repository pursuant to foreign law and/or regulation, and such Foreign Regulator seeks access to swap data that has been reported to such swap data repository pursuant to the Foreign Regulator's regulatory regime, such access is not subject to the requirements of sections 21(c)(7) or 21(d) of the Act, this paragraph (d) or § 49.18.

(4) * * *

(i) A registered swap data repository shall notify the Commission promptly after receiving an initial request from an Appropriate Domestic Regulator or Appropriate Foreign Regulator to gain access to swap data maintained by such swap data repository and promptly after receiving any request that does not comport with the scope of the Appropriate Domestic Regulator's or Appropriate Foreign Regulator's jurisdiction, as described and appended to the confidentiality arrangement required by § 49.18(a). Each registered swap data repository shall maintain records thereafter, pursuant to § 49.12, of the details of such initial request and of all subsequent requests by such Appropriate Domestic Regulator or Appropriate Foreign Regulator for such access.

(ii) The registered swap data repository shall notify the Commission electronically, in a format specified by the Secretary of the Commission, of the receipt of a request specified in paragraph (d)(4)(i) of this section.

(iii) The registered swap data repository shall not provide an Appropriate Domestic Regulator or Appropriate Foreign Regulator access to swap data maintained by the swap data repository unless the swap data repository has determined that the swap data to which the Appropriate Domestic Regulator or Appropriate Foreign Regulator seeks access is within the then-current scope of such Appropriate Domestic Regulator's or Appropriate Foreign Regulator's jurisdiction, as described and appended to the confidentiality arrangement required by § 49.18(a). An Appropriate Domestic Regulator or Appropriate Foreign Regulator that has executed a confidentiality arrangement with the Commission pursuant to § 49.18(a) and provided such confidentiality arrangement to one or more swap data repositories shall notify the Commission and each such swap data repository of any change to such Appropriate Domestic Regulator's or Appropriate Foreign Regulator's scope of jurisdiction as described in such confidentiality arrangement. The Commission may direct a swap data repository to suspend, limit, or revoke access to swap data maintained by such swap data repository based on any such change to such Appropriate Domestic Regulator's or Appropriate Foreign Regulator's scope of jurisdiction, and, if so directed in writing, such swap data repository shall so suspend, limit, or revoke such access.

(iv) The registered swap data repository need not make the determination required pursuant to paragraph (d)(4)(iii) of this section more than once with respect to a recurring swap data request. If such request changes, the swap data repository must make a new determination pursuant to paragraph (d)(4)(iii) of this section.

(5) *Timing; Limitation, Suspension or Revocation of Swap Data Access.* Once a registered swap data repository has—

(i) Notified the Commission, pursuant to paragraphs (d)(4)(i) and (ii) of this section, of an initial request for swap data access by an Appropriate Domestic Regulator or Appropriate Foreign Regulator, as applicable, that was submitted pursuant to paragraph (d)(1) of this section,

(ii) Received from such Appropriate Domestic Regulator or Appropriate Foreign Regulator a confidentiality arrangement executed by the Commission and such Appropriate Domestic Regulator or Appropriate Foreign Regulator as required by § 49.18(a), and

(iii) Satisfied its obligations under paragraph (d)(4)(iii) of this section, such swap data repository shall provide access to the requested swap data; *provided, however,* that such swap data repository shall, if directed by the Commission in writing, limit, suspend or revoke such access should the Commission limit, suspend or revoke the appropriateness determination for such Appropriate Domestic Regulator or Appropriate Foreign Regulator or otherwise direct the swap data repository, in writing, to limit, suspend or revoke such access.

(6) *Confidentiality Arrangement.* Consistent with § 49.18(a), the Appropriate Domestic Regulator or Appropriate Foreign Regulator shall, prior to receiving access to any requested swap data, execute the form of confidentiality arrangement set out in Appendix B of this part with the Commission; *provided, however,* that the Commission may, in its discretion, agree to execute a confidentiality arrangement with an Appropriate Domestic Regulator or Appropriate Foreign Regulator that is not in the form set forth in Appendix B of this part, if the confidentiality arrangement is consistent with the requirements set forth in § 49.18(b).

(e) *Third-party service providers to a registered swap data repository.* Access to the swap data and SDR Information maintained by a registered swap data repository may be necessary for certain third parties that provide various technology and data-related services to a registered swap data repository. Third-party access to the swap data and SDR Information maintained by a swap data repository is permissible subject to the following conditions:

(1) Both the registered swap data repository and the third party service provider shall have strict confidentiality procedures that protect swap data and SDR Information from improper disclosure.

(2) Prior to a registered swap data repository granting access to swap data or SDR Information to a third-party service provider, the third-party service provider and the registered swap data repository shall execute a confidentiality agreement setting forth minimum confidentiality procedures and permissible uses of the swap data and SDR Information maintained by the swap data repository that are equivalent to the privacy procedures for swap data repositories outlined in § 49.16.

(f) *Access by market participants*—(1) *General.* Access by market participants to swap data maintained by the registered swap data repository is prohibited other than as set forth in paragraph (f)(2) of this section.

(2) *Exception.* Swap data and information related to a particular swap that is maintained by the registered swap data repository may be accessed by either counterparty to that particular swap. However, the swap data and information maintained by the registered swap data repository that may be accessed by either counterparty to a particular swap shall not include the identity or the legal entity identifier (as such term is used in part 45 of this chapter) of the other counterparty to the swap, or the other counterparty's clearing member for the swap, if the swap is executed anonymously on a swap execution facility or designated contract market, and cleared in accordance with Commission regulations in §§ 1.74, 23.610, and 37.12(b)(7) of this chapter.

* * * * *

(h) *Appropriateness determination process.* (1) Each person seeking an appropriateness determination pursuant to this paragraph shall file an application with the Commission.

(2) Each applicant seeking an appropriateness determination shall provide sufficient detail in its application to permit the Commission to analyze whether the applicant is acting within the scope of its jurisdiction in seeking access to swap data maintained by a registered swap data repository, and whether the applicant employs appropriate confidentiality safeguards to ensure that any swap data such applicant receives from a registered swap data repository will not, except as allowed for in the form of confidentiality arrangement set forth in Appendix B to this part 49, be disclosed.

(3) If the Commission determines that an applicant pursuant to this paragraph is, conditionally or unconditionally, appropriate for purposes of CEA section 21(c)(7), the Commission shall issue an order setting forth its appropriateness determination. The Commission shall not determine that an applicant pursuant to this paragraph is appropriate unless the Commission is satisfied that—

(i) The applicant employs appropriate confidentiality safeguards to ensure that any swap data such applicant receives from a registered swap data repository will not be disclosed, except as allowed for in the form of confidentiality arrangement set forth in Appendix B to this part 49 or, in the Commission's discretion as set forth in paragraph (d)(6) of this section, in a different form, provided that such confidentiality arrangement contains the elements required in § 49.18(b), and

(ii) Such applicant is acting within the scope of its jurisdiction in seeking access to swap data from a registered swap data repository.

(4) The Commission reserves the right, in connection with any appropriateness determination with respect to an Appropriate Domestic Regulator or Appropriate Foreign Regulator, to revisit, reassess, limit, suspend or revoke such determination consistent with the Act.

(i) *Delegation of Authority Relating to Certain matters in this section.* (1) The Commission hereby delegates, until such time as the Commission orders otherwise, the following functions to the Director of the Division of Market Oversight and to such members of the Commission's staff acting under his or her direction as he or she may designate from time to time: All functions reserved to the Commission in this section.

(2) The Director of the Division of Market Oversight may submit any matter which has been delegated under paragraph (i)(1) of this section to the Commission for its consideration.

(3) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated under paragraph (i)(1) of this section.

■ 5. Revise § 49.18 to read as follows:

§ 49.18 Confidentiality arrangement.

(a) *Confidentiality arrangement required prior to disclosure of swap data by a registered swap data repository to an Appropriate Domestic Regulator or Appropriate Foreign Regulator.* Prior to a registered swap data repository providing access to swap data to any Appropriate Domestic Regulator or Appropriate Foreign Regulator, each as defined in § 49.17(b), the swap data repository shall receive from such Appropriate Domestic Regulator or Appropriate Foreign Regulator, pursuant to Section 21(d) of the Act, an executed confidentiality arrangement between the Commission and the Appropriate Domestic Regulator or Appropriate Foreign Regulator, as applicable, in the form set forth in Appendix B to this part 49 or, in the Commission's discretion as set forth in § 49.17(d)(6), in a different form, provided that such confidentiality arrangement contains the elements required in paragraph (b) of this section. Such confidentiality arrangement must include, either as Exhibit A to the form set forth in Appendix B of this part or similarly appended, a description of the Appropriate Domestic Regulator's or

Appropriate Foreign Regulator's jurisdiction. Once a registered swap data repository is notified, in writing, that a confidentiality arrangement received from an Appropriate Domestic Regulator or Appropriate Foreign Regulator no longer is in effect, the swap data repository shall not provide access to swap data to such Appropriate Domestic Regulator or Appropriate Foreign Regulator.

(b) *Elements of confidentiality arrangement.* The confidentiality arrangement required pursuant to paragraph (a) of this section shall, at a minimum, include all elements included in the form of confidentiality arrangement set forth in appendix B of this part.

(c) *Reporting failures to fulfill the terms of a confidentiality arrangement.* A registered swap data repository shall immediately report to the Commission any known failure to fulfill the terms of a confidentiality arrangement that it receives pursuant to paragraph (a) of this section.

(d) *Failures to fulfill the terms of the confidentiality arrangement.* The Commission may, if an Appropriate Domestic Regulator or Appropriate Foreign Regulator fails to fulfill the terms of a confidentiality arrangement described in paragraph (a) of this section, direct, in writing, each registered swap data repository to limit, suspend or revoke such Appropriate Domestic Regulator's or Appropriate Foreign Regulator's access to swap data held by such swap data repository.

(e) *Delegation of authority relating to certain matters in this section.* (1) The Commission hereby delegates, until such time as the Commission orders otherwise, the following functions to the Director of the Division of Market Oversight and to such members of the Commission's staff acting under his or her direction as he or she may designate from time to time: All functions reserved to the Commission in this section.

(2) The Director of the Division of Market Oversight may submit any matter which has been delegated under paragraph (e)(1) of this section to the Commission for its consideration.

(3) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated under paragraph (e)(1) of this section.

■ 6. In § 49.22, revise paragraph (d)(4) to read as follows:

§ 49.22 Chief compliance officer.

* * * * *

(d) * * *

(4) Taking reasonable steps to ensure compliance with the Act and Commission regulations relating to agreements, contracts, or transactions, and with Commission regulations under Section 21 of the Act, including confidentiality arrangements received by the chief compliance officer's registered swap depository pursuant to § 49.18(a);

* * * * *

■ 7. Add appendix B to part 49 to read as follows:

Appendix B to Part 49—Confidentiality Arrangement for Appropriate Domestic Regulators and Appropriate Foreign Regulators To Obtain Access To Swap Data Maintained by Registered Swap Data Respositories Pursuant to §§ 49.17(d)(6) and 49.18(a)

CONFIDENTIALITY ARRANGEMENT BETWEEN THE U.S. COMMODITY FUTURES TRADING COMMISSION AND [*NAME OF FOREIGN/DOMESTIC REGULATOR*] CONCERNING ACCESS TO SWAP DATA HELD AND MAINTAINED BY REGISTERED SWAP DATA REPOSITORIES

The U.S. Commodity Futures Trading Commission (''CFTC'') and the [*name of foreign/domestic regulator* (''ABC'')] (each an ''Authority'' and collectively the ''Authorities'') have entered into this Confidentiality Arrangement (''Arrangement'') in connection with [whichever is applicable] [CFTC Regulation 49.17(b)(1)[(i)–(vi)]/the determination order issued by the CFTC to [ABC] (''Order'')] and any request for swap data by [ABC] to any swap data repository (''SDR'') registered with the CFTC.

Article One: General Provisions

1. ABC is permitted to request and receive swap data directly from a registered SDR (''Swap Data'') on the terms and subject to the conditions of this Arrangement.

2. This Arrangement is entered into to fulfill the requirements under Section 21(d) of the Commodity Exchange Act (''Act'') and CFTC Regulation 49.18. Upon receipt by a registered SDR, this Arrangement will satisfy the requirement for a written agreement pursuant to Section 21(d) of the Act and CFTC Regulation 49.17(d)(6). This Arrangement does not apply to information that is [reported to a registered SDR pursuant to [ABC]'s regulatory regime where the SDR also is registered with [ABC] pursuant to separate statutory authority, even if such information also is reported pursuant to the Act and CFTC regulations][reported to a registered SDR pursuant to [ABC]'s regulatory regime where the SDR also is registered with, or recognized or otherwise authorized by, [ABC], which has supervisory authority over the repository pursuant to foreign law and/or regulation, even if such information also is reported pursuant to the Act and CFTC regulations.] [1]

3. This Arrangement is not intended to limit or condition the discretion of an Authority in any way in the discharge of its regulatory responsibilities or to prejudice the individual responsibilities or autonomy of any Authority.

4. This Arrangement does not alter the terms and conditions of any existing arrangements.

Article Two: Confidentiality of Swap Data

5. ABC will be acting within the scope of its jurisdiction in requesting Swap Data and employs procedures to maintain the confidentiality of Swap Data and any information and analyses derived therefrom (collectively, the ''Confidential Information''). ABC undertakes to notify the CFTC and each relevant SDR promptly of any change to ABC's scope of jurisdiction.

6. ABC undertakes to treat Confidential Information as confidential and will employ safeguards that:

a. To the maximum extent practicable, identify the Confidential Information and maintain it separately from other data and information;

b. Protect the Confidential Information from misappropriation and misuse;

c. Ensure that only authorized ABC personnel with a need to access particular Confidential Information to perform their job

[1] The first bracketed phrase will be used for ADRs; the second will be used for AFRs. The inapplicable phrase will be deleted.

functions related to such Confidential Information have access thereto, and that such access is permitted only to the extent necessary to perform their job functions related to such particular Confidential Information;

d. Prevent the disclosure of aggregated Confidential Information; provided, however, that ABC is permitted to disclose any sufficiently aggregated Confidential Information that is anonymized to prevent identification, through disaggregation or otherwise, of a market participant's business transactions, trade data, market positions, customers or counterparties;

e. Prohibit use of the Confidential Information by ABC personnel for any improper purpose, including in connection with trading for their personal benefit or for the benefit of others or with respect to any commercial or business purpose; and

f. Include a process for monitoring compliance with the confidentiality safeguards described herein and for promptly notifying the CFTC, and each SDR from which ABC has received Swap Data, of any violation of such safeguards or failure to fulfill the terms of this Arrangement.

7. Except as provided in Paragraphs 6.d. and 8, ABC will not onward share or otherwise disclose any Confidential Information.

8. ABC undertakes that:

a. If a department, central bank, or agency of the Government of the United States, it will not disclose Confidential Information except in an action or proceeding under the laws of the United States to which it, the CFTC, or the United States is a party;

b. If a department or agency of a State or political subdivision thereof, it will not disclose Confidential Information except in connection with an adjudicatory action or proceeding brought under the Act or the laws of [*name of either the State or the State and political subdivision*] to which it is a party; or

c. If a foreign futures authority or a department, central bank, ministry, or agency of a foreign government or subdivision thereof, or any other Foreign Regulator, as defined in Commission Regulation 49.2(a)(5), it will not disclose Confidential Information except in connection with an adjudicatory action or proceeding brought under the laws of [*name of country, political subdivision, or (if a supranational organization) supranational lawmaking body*] to which it is a party.

9. Prior to complying with any legally enforceable demand for Confidential Information, ABC will notify the CFTC of such demand in writing, assert all available appropriate legal exemptions or privileges with respect to such Confidential Information, and use its best efforts to protect the confidentiality of the Confidential Information.

10. ABC acknowledges that, if it does not fulfill the terms of this Arrangement, the CFTC may direct any registered SDR to suspend or revoke ABC's access to Swap Data.

11. ABC will comply with all applicable security-related requirements imposed by an SDR in connection with access to Swap Data maintained by the SDR, as such requirements may be revised from time to time.

12. ABC will promptly destroy all Confidential Information for which it no longer has a need or which no longer falls within the scope of its jurisdiction, and will certify to the CFTC, upon request, that ABC has destroyed such Confidential Information.

Article Three: Administrative Provisions

13. This Arrangement may be amended with the written consent of the Authorities.

14. The text of this Arrangement will be executed in English, and may be made available to the public.

15. On the date this Arrangement is signed by the Authorities, it will become effective and may be provided to any registered SDR that holds and maintains Swap Data that falls within the scope of ABC's jurisdiction.

16. This Arrangement will expire 30 days after any Authority gives written notice to the other Authority of its intention to terminate the Arrangement. In the event of termination of this Arrangement, Confidential Information will continue to remain confidential and will continue to be covered by this Arrangement.

This Arrangement is executed in duplicate, this _____ day of _____.

_____

[*name of Chairman*]

Chairman

U.S. Commodity Futures Trading Commission

_____

[*name of signatory*]

[*title*]

[*name of foreign/domestic regulator*]

[Exhibit A: Description of Scope of Jurisdiction. If ABC is not enumerated in Commission Regulations 49.17(b)(1)(i)–(vi), it must attach the Determination Order received from the Commission pursuant to Commission Regulation 49.17(h). If ABC is enumerated in Commission Regulations 49.17(b)(1)(i)–(vi), it must attach a sufficiently detailed description of the scope of ABC's jurisdiction as it relates to Swap Data maintained by SDRs. In both cases, the description of the scope of jurisdiction must include elements allowing SDRs to establish, without undue obstacles, objective parameters for determining whether a particular Swap Data request falls within such scope of jurisdiction. Such elements could include LEIs of all jurisdictional entities and could also include UPIs of all jurisdictional products or, if no CFTC-approved UPI and product classification system is yet available, the internal product identifier or product description used by an SDR from which Swap Data is to be sought.]

Issued in Washington, DC, on June 5, 2018, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

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

Appendicies to Amendments to the Swap Data Access Provisions of Part 49 and Certain Other Matters—Commission Voting Summary, Chairman's Statement, and Commissioner's Statement

Appendix 1—Commission Voting Summary

On this matter, Chairman Giancarlo and Commissioners Quintenz and Behnam voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Chairman J. Christopher Giancarlo

Eight years ago, Congress included in the Dodd-Frank Act a requirement that foreign and domestic regulators indemnify SDRs and the Commission for any expenses arising from litigation relating to the information provided by SDRs. Foreign and domestic regulators were unable or unwilling to provide this indemnification hindering the ability to share swaps data. The indemnification requirement also hindered the ability of foreign and domestic regulators to access SDR data to assess risks their regulated entities are assuming, and the impact of such risks on the broader markets.

I am pleased that Congress has since amended the Dodd-Frank Act to take out the indemnification requirement. We therefore can change our regulations accordingly, which we propose to do today.

In addition to the removal of the indemnification requirement, the final rule adds a category of ''other regulators'' that the Commission may deem to be appropriate to receive access to SDR swap data.

The final rule sets out the process by which appropriateness is determined for those entities that are not already specifically enumerated. This process is a change to current Commission regulations, as it would apply to any such entity, including domestic regulators not enumerated in Commission regulations and foreign regulators.

The statute also now requires a SDR to receive a written agreement from each requesting entity stating that the entity shall abide by the confidentiality requirements described in the CEA prior to sharing information with the requesting entity. Commission regulations currently require the SDR and the requesting regulator to execute a confidentiality agreement, but do not provide a form or details of such an agreement.

The final rule modifies the current Commission regulations by providing a form of confidentiality arrangement, as Appendix B to part 49, and by requiring the confidentiality arrangement to be between the requesting regulator and the Commission. The Commission expects that this will benefit SDRs in that most, if not all, confidentiality arrangements will be exactly the same, and the Commission will be in the place of entering into the confidentiality agreements with regulators.

We received comments from the affected CFTC-registered SDRs on the proposed rule that I believe that we have sufficiently addressed. The final regulations provide

long-awaited clarity to the official sector regarding the CFTC's requirements to determine access to, and safeguard the confidentiality of, transactional information reported to SDRs.

In my experience as a Commissioner and Chairman of the CFTC, I have found, as have other foreign and domestic regulators, that conducting oversight of global derivatives markets can be difficult as a result of the current fragmented financial regulatory structure. In this regard, I expect that the final rule will enable authorities to enhance their oversight of derivatives markets across product and asset classes by marrying up the trading and position data they receive from regulated entities with the data sets obtained directly from SDRs. In so doing, I believe we have made significant progress towards cross-border data sharing and enhancing transparency in the global swaps market.

Because today's swaps markets are global in scope, utilizing the data and information available in only one jurisdiction does not provide a complete picture of cross border trading activity and systemic risk. To that end, I expect that CFTC staff will seek to facilitate access to SDR data for authorities with which we have a history of regulatory assistance and that similarly seek to facilitate CFTC access to data maintained by trade repositories in their jurisdiction. Such data sharing represents an opportunity for greater cooperation among market and prudential regulators, as well as among foreign and domestic regulators, providing more effective financial market oversight, expanding data driven policymaking, and improving early warning systems to reduce the probability or severity of a financial crisis.

These regulations will have a direct positive impact on the operational readiness of the official sector, providing authorities with critical information to make sound near-term and long-term policy and oversight decisions.

I am particularly pleased that this rule represents a final step in eliminating a major legal impediment to sharing swaps market data with overseas regulators. The Dodd-Frank Act's original insistence on an indemnification requirement may have been well-intentioned to protect the safety of data held in SDRs, but Congress wisely determined that any such benefit is outweighed by the greater public interest of allowing international regulators to share and access information to carry out the regulatory and supervisory functions necessary to protect the global financial markets.

It is essential that policymakers in other jurisdictions make determinations similar to these before us today concerning current legal barriers to information sharing. Even a law, like the new EU General Data Protection Regulation (GDPR), which has laudable objectives, must not be applied in ways that hinder the sharing and access of information between European and U.S. regulators for regulatory and supervisory purposes. Such a result could have dangerous implications for our global markets. I hope today's action by the CFTC will encourage international regulators and policymakers to take affirmative steps to address other existing legal barriers to information sharing and access.

Appendix 3—Supporting Statement of Commissioner Brian D. Quintenz

I support today's final rule addressing indemnification and amendments to the swap data access provisions of Part 49. I would like to thank the staff in our Division of Market Oversight for their work to amend Part 49 of the Commission's Regulations to implement provisions of the Fixing America's Surface Transportation Act of 2015 (Fast Act) [1].

The Fast Act amended provisions of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) [2] that proved unworkable. Most significantly, the Fast Act repealed the Dodd-Frank Act's requirement that to obtain data from swap data repositories (SDR) registered with the CFTC, domestic and foreign authorities must indemnify the CFTC and SDRs from any claims arising from a SDR's production of information to those authorities. Foreign regulators unfamiliar with the U.S. tort law concept of ''indemnification'' that is inconsistent with their traditions and legal structures, have opted against requesting any information from SDRs. Domestic regulators have also opted against requesting information from SDRs because of the indemnification requirement. Removing the indemnification requirement will facilitate the sharing of SDR information with domestic and foreign authorities and better enable regulators in the United States and abroad to monitor risk across the global financial system.

[FR Doc. 2018–12377 Filed 6–11–18; 8:45 am]

BILLING CODE 6351–01–P

[1] Public Law 114–94, 129 Stat 1312 (Dec. 4, 2015).

[2] Public Law 111–203, 124 Stat 1376 (July 21, 2010).

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Part IV

Commodity Futures Trading Commission

17 CFR Part 1
De Minimis Exception to the Swap Dealer Definition; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AE68

De Minimis Exception to the Swap Dealer Definition

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing to amend the de minimis exception within the ''swap dealer'' definition in the Commission's regulations by: Setting the aggregate gross notional amount threshold for the de minimis exception at $8 billion in swap dealing activity entered into by a person over the preceding 12 months; excepting from consideration when calculating the aggregate gross notional amount of a person's swap dealing activity for purposes of the de minimis threshold: Swaps entered into with a customer by an insured depository institution in connection with originating a loan to that customer; swaps entered into to hedge financial or physical positions; and swaps resulting from multilateral portfolio compression exercises; and providing that the Commission may determine the methodology to be used to calculate the notional amount for any group, category, type, or class of swaps, and delegating to the Director of the Division of Swap Dealer and Intermediary Oversight (''DSIO'') the authority to make such determinations (collectively, the ''Proposal''). In addition, the Commission is seeking comment on the following additional potential changes to the de minimis exception: Adding a minimum dealing counterparty count threshold and a minimum dealing transaction count threshold; excepting from consideration when calculating the aggregate gross notional amount for purposes of the de minimis threshold swaps that are exchange-traded and/or cleared; and excepting from consideration when calculating the aggregate gross notional amount for purposes of the de minimis threshold swaps that are categorized as non-deliverable forward transactions.

DATES: Comments must be received on or before August 13, 2018.

ADDRESSES: You may submit comments, identified by RIN 3038–AE68, by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish for the Commission to consider information that is exempt from disclosure under the Freedom of Information Act (''FOIA''),[1] a petition for confidential treatment of the exempt information may be submitted according to the procedures set forth in § 145.9 of the Commission's regulations.[2]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under FOIA.

FOR FURTHER INFORMATION CONTACT: Matthew Kulkin, Director, 202–418–5213, *mkulkin@cftc.gov*, Erik Remmler, Deputy Director, 202–418–7630, *eremmler@cftc.gov*, Rajal Patel, Associate Director, 202–418–5261, *rpatel@cftc.gov*, or Jeffrey Hasterok, Data and Risk Analyst, 646–746–9736, *jhasterok@cftc.gov*, Division of Swap Dealer and Intermediary Oversight; Bruce Tuckman, Chief Economist, 202–418–5624, *btuckman@cftc.gov* or Scott Mixon, Associate Director, 202–418–5771, *smixon@cftc.gov*, Office of the Chief Economist; Mark Fajfar, Assistant General Counsel, 202–418–6636, *mfajfar@cftc.gov*, Office of General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. Statutory Authority

The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') was signed into law on July 21, 2010.[3] Title VII of the Dodd-Frank Act established a statutory framework to reduce risk, increase transparency, and promote market integrity within the

[1] 5 U.S.C. 552.

[2] 17 CFR 145.9. Commission regulations referred to herein are found at 17 CFR chapter I.

[3] Public Law 111–203, 124 Stat. 1376 (2010), available at *https://www.cftc.gov/idc/groups/public/@swaps/documents/file/hr4173_enrolledbill.pdf.*

financial system by regulating the swap market. Among other things, the Dodd-Frank Act amended the Commodity Exchange Act (''CEA'') [4] to provide for the registration and regulation of swap dealers (''SDs'').[5] The Dodd-Frank Act directed the CFTC and the U.S. Securities and Exchange Commission (''SEC'' and together with the CFTC, ''Commissions'') to jointly further define, among other terms, the term ''swap dealer,'' [6] and to exempt from designation as an SD a person that engages in a de minimis quantity of swap dealing.[7]

CEA section 1a(49) defines the term ''swap dealer'' to include any person who: (1) Holds itself out as a dealer in swaps; (2) makes a market in swaps; (3) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or (4) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps (collectively referred to as ''swap dealing,'' ''swap dealing activity,'' or ''dealing activity'').[8] The statute also requires the Commission to promulgate regulations to establish factors with respect to the making of a determination to exempt from designation as an SD an entity engaged in a de minimis quantity of swap dealing.[9] CEA section 1a(49) further provides that in no event shall an insured depository institution be considered to be an SD to the extent it offers to enter into a swap with a customer in connection with originating a loan with that customer.[10]

B. Regulatory History

Pursuant to the statutory requirements, in December 2010, the Commissions issued a proposing release further defining, among other things, the term ''swap dealer'' (''SD Definition Proposing Release'').[11] Subsequently, in May 2012, the Commissions issued an adopting release (''SD Definition Adopting Release'') [12] further defining, among other things, the term ''swap dealer'' in § 1.3 of the CFTC's regulations (the ''SD Definition'') and providing for a de minimis exception in paragraph (4) therein.[13] The de minimis exception states that a person shall not be deemed to be an SD unless its swaps connected with swap dealing activities exceed an aggregate gross notional amount (''AGNA'') threshold of $3 billion (measured over the prior 12-month period), subject to a phase-in period during which the AGNA threshold is set at $8 billion.[14] The phase-in period was originally scheduled to terminate on December 31, 2017, and the de minimis threshold was scheduled to decrease to $3 billion at that time. However, as discussed below, pursuant to paragraph (4)(i)(D) of the SD Definition, the Commission issued two successive orders to set new termination dates, and the phase-in period is currently scheduled to terminate on December 31, 2019.[15]

When the $3 billion de minimis exception threshold was established, the Commissions explained that the information then available regarding certain portions of the swap market was limited, and that they expected more information to be available in the future (following the implementation of swap data reporting), which would enable the Commissions to make a more informed assessment of the proper level for the de minimis exception and to revise it as appropriate.[16] In establishing the AGNA threshold of $3 billion, the Commissions stated that ''there may be some uncertainty regarding the exact level of swap dealing activity, measured in terms of a gross notional amount of swaps that should be regarded as de minimis.'' [17] In light of this uncertainty, the Commissions provided for the phase-in period during which the de minimis threshold was set at $8 billion, explaining that this would: (1) Permit market participants and the Commissions to become familiar with the application of the SD Definition and regulatory requirements; (2) afford the Commissions time to study the swap market as it evolved and to consider new information about the swap market that became available (*e.g.,* through swap data reporting); (3) provide potential SDs that engage in smaller amounts of activity additional time to adjust their business practices, while at the same time preserving a focus on the regulation of the largest and most significant SDs; and (4) address comments suggesting that the de minimis threshold be set higher initially to provide for efficient use of regulatory resources and that implementation of SD requirements in general be phased.[18]

In recognition of these limitations and in anticipation of additional swap market data becoming available to the CFTC through the reporting of transactions to swap data repositories (''SDRs''), paragraph (4)(ii)(B) of the SD Definition was adopted, which directed CFTC staff to complete and publish for public comment a report on topics relating to the definition of the term ''swap dealer'' and the de minimis threshold as appropriate, based on the availability of data and information.[19] Paragraph (4)(ii)(C) of the SD Definition provided that after giving due consideration to the staff report and any associated public comment, the CFTC may either set a termination date for the phase-in period or issue a notice of proposed rulemaking to modify the de minimis exception.[20]

In the interest of providing ample opportunity for public input on the relevant policy considerations, as well as on staff's preliminary analysis of the SDR data, and to ensure that the Commission had as much information and data as practicable for purposes of its determinations with respect to the de minimis exception, in November 2015 staff issued a preliminary report concerning the de minimis exception (''Preliminary Staff Report'').[21] The

[4] The CEA is found at 7 U.S.C. 1, *et seq.*

[5] *See* 7 U.S.C. 6s(a)(1).

[6] Dodd-Frank Act section 712(d)(1). *See* the definitions of ''swap dealer'' in CEA section 1a(49) and § 1.3 of Commission regulations. 7 U.S.C. 1a(49); 17 CFR 1.3.

[7] *See* Dodd-Frank Act section 721.

[8] 7 U.S.C. 1a(49)(A). In general, a person that satisfies any one of these prongs is deemed to be engaged in swap dealing activity.

[9] 7 U.S.C. 1a(49)(D).

[10] 7 U.S.C. 1a(49)(A).

[11] Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' 75 FR 80174 (proposed Dec. 21, 2010).

[12] Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' 77 FR 30596 (May 23, 2012).

[13] *See* 17 CFR 1.3, Swap dealer. As discussed in more detail in section II, the Commission notes that a joint rulemaking with the SEC is not required to amend the de minimis exception, pursuant to paragraph (4)(v) of the SD Definition. *See* 17 CFR 1.3, Swap dealer, paragraph (4)(v); 77 FR at 30634 n.464.

[14] 17 CFR 1.3, Swap dealer, paragraph (4)(i)(A). Paragraph (4)(i)(A) also provides for a de minimis threshold of $25 million with regard to swaps in which the counterparty is a ''special entity'' (excluding ''utility special entities'' as provided in paragraph (4)(i)(B) of the SD Definition) as defined in CEA section 4s(h)(2)(C), 7 U.S.C. 6s(h)(2)(C). This proposal would not change the de minimis threshold for swaps with special entities.

[15] *See* Order Establishing De Minimis Threshold Phase-In Termination Date, 81 FR 71605 (Oct. 18, 2016); Order Establishing a New De Minimis Threshold Phase-In Termination Date, 82 FR 50309 (Oct. 31, 2017).

[16] *See* 77 FR at 30632–34. In making their determination, the Commissions considered the limited and incomplete swap market data that was available at that time and concluded that the $3 billion level appropriately considers the relevant regulatory goals. *Id.* at 30632. The Commissions found merit in determining the threshold by multiplying the estimated size of the domestic swap market by a 0.001 percent ratio suggested by several commenters. *Id.* at 30633.

[17] *Id.* at 30633.

[18] *See id.* at 30633–34.

[19] 17 CFR 1.3, Swap dealer, paragraph (4)(ii)(B).

[20] 17 CFR 1.3, Swap dealer, paragraph (4)(ii)(C).

[21] *See* Swap Dealer De Minimis Exception Preliminary Report (Nov. 18, 2015), available at

Continued

Preliminary Staff Report sought to analyze the available swap data, in conjunction with relevant policy considerations, to assess the $8 billion AGNA de minimis threshold and potential alternatives to the AGNA de minimis exception.[22] Commission staff received 24 comment letters responsive to the Preliminary Staff Report.[23]

After consideration of the public comments received in response to the Preliminary Staff Report, and further data analysis, in August 2016 staff issued a final staff report [24] concerning the de minimis exception (''Final Staff Report,'' and together with the Preliminary Staff Report, ''Staff Reports''). The Final Staff Report refreshed much of the analysis conducted in the Preliminary Staff Report for a subsequent review period,[25] and similar to the Preliminary Staff Report, discussed observations with respect to the $8 billion de minimis threshold, as well as the de minimis exception alternatives considered in the Preliminary Staff Report, in light of refreshed data and comments received.

The data analysis in the Staff Reports provided some insights into the effectiveness of the de minimis exception as currently implemented. For example, staff analyzed the number of swap transactions involving at least one registered SD,[26] which is indicative of the extent to which swaps are subject to SD regulation at the current $8 billion threshold. Data reviewed for the Final Staff Report indicated that approximately 96 percent of all reported swap transactions involved at least one registered SD.[27]

To provide additional time for more information to become available to reassess the de minimis exception, in October 2016 the Commission issued an order, pursuant to paragraph (4)(ii)(C)(1) of the SD Definition, establishing December 31, 2018, as the new termination date for the $8 billion phase-in period.[28] As noted above, absent any action, the phase-in period would have terminated, and the de minimis threshold would have decreased to $3 billion, on December 31, 2017. To enable staff to conduct additional analysis, in October 2017 the Commission further extended the phase-in period to December 31, 2019.[29] Generally, the extensions provided additional time for Commission staff to conduct more complete data analysis regarding the de minimis exception, and gave market participants additional time to begin preparing for a change, if any, to the de minimis exception threshold.

C. Policy Considerations

1. Swap Dealer Registration Policy Considerations

In adopting the SD Definition, the Commissions identified the policy goals underlying SD registration and regulation generally to include reducing systemic risk, increasing counterparty protections, and increasing market efficiency, orderliness, and transparency.

Reducing systemic risk: The Dodd-Frank Act was enacted in the wake of the financial crisis of 2008, in significant part, to reduce systemic risk, including the risk to the broader U.S. financial system created by interconnections in the swap market.[30] Pursuant to the Dodd-Frank Act, the Commission has adopted regulations designed to mitigate the potential systemic risk inherent in the previously unregulated swap market.[31]

Increasing counterparty protections: Providing regulatory protections for swap counterparties who may be less experienced or knowledgeable about the swap products offered by SDs (particularly end-users who use swaps for hedging or investment purposes) is a fundamental policy goal advanced by the regulation of SDs.[32] The Commissions recognized that a narrower or smaller de minimis exception would increase the number of counterparties that could potentially benefit from those regulatory protections.[33]

Increasing market efficiency, orderliness, and transparency: Increasing swap market efficiency, orderliness, and transparency is another goal of SD regulation.[34] Regulations requiring SDs, for example, to keep detailed daily trading records, report trade information, and engage in portfolio reconciliation and compression exercises help achieve these market benefits.[35]

2. De Minimis Exception Policy Considerations

The Commissions also recognized that, consistent with Congressional intent, ''an appropriately calibrated de minimis exception has the potential to advance other interests.'' [36] The Commissions explained that these interests include increasing efficiency, allowing limited swap dealing in connection with other client services, encouraging new participants to enter the market, and focusing regulatory resources.[37] The policy objectives underlying the de minimis exception are designed to encourage participation and competition by allowing persons to engage in a de minimis amount of dealing without incurring the costs of registration and regulation.[38]

Increasing efficiency: A de minimis exception based on an objective test with a limited degree of complexity enables entities to engage in a lower level of swap dealing with limited concerns about whether their activities

http://www.cftc.gov/idc/groups/public/@swaps/documents/file/dfreport_sddeminis_1115.pdf.

[22] For the Preliminary Staff Report, staff analyzed data from April 1, 2014 through March 31, 2015.

[23] The comment letters are available on the Commission website at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1634.*

[24] *See* Swap Dealer De Minimis Exception Final Staff Report (Aug. 15, 2016), available at *http://www.cftc.gov/idc/groups/public/@swaps/documents/file/dfreport_sddeminis081516.pdf.*

[25] For the Final Staff Report, staff analyzed data from April 1, 2015 through March 31, 2016.

[26] Given that all of the CEA section 4s requirements have not yet been implemented by regulation, the term ''registered SD'' refers to an entity that is a provisionally registered SD. *See* 17 CFR 3.2(c)(3)(iii).

[27] *See* section II.A below for additional discussion regarding the Staff Reports.

[28] 81 FR 71605.

[29] 82 FR 50309.

[30] Dodd-Frank Act, Preamble (indicating that the purpose of the Dodd-Frank Act was to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes).

[31] For example, registered SDs have specific requirements for risk management programs and margin. *See, e.g.,* 17 CFR 23.600; 17 CFR 23.150–23.161.

[32] For example, registered SDs are subject to rigorous external business conduct standard regulations designed to provide counterparty protections. *See, e.g.,* 17 CFR 23.400–23.451.

[33] 77 FR at 30628 (''On the one hand, a de minimis exception, by its nature, will eliminate key counterparty protections provided by Title VII for particular users of swaps and security-based swaps.'').

[34] *Id.* at 30629 (''The statutory requirements that apply to [SDs] . . . include requirements . . . aimed at helping to promote effective operation and transparency of the swap . . . markets.''). *See also id.* at 30703 (''Those who engage in swaps with entities that elude [SD] or major swap participant status and the attendant regulations could be exposed to increased counterparty risk; customer protection and market orderliness benefits that the regulations are intended to provide could be muted or sacrificed, resulting in increased costs through reduced market integrity and efficiency. . . .'').

[35] *See, e.g.,* 17 CFR 23.200–23.205; 17 CFR part 45; 17 CFR 23.502–23.503.

[36] *See* 77 FR at 30628.

[37] *See* 77 FR at 30628–30, 30707–08.

[38] In considering the appropriate de minimis threshold, the Commissions stated that ''exclud[ing] entities whose dealing activity is sufficiently modest in light of the total size, concentration and other attributes of the applicable markets can be useful in avoiding the imposition of regulatory burdens on those entities for which dealer regulation would not be expected to contribute significantly to advancing the customer protection, market efficiency and transparency objectives of dealer regulation.'' *Id.* at 30629–30.

would require registration.[39] The de minimis exception thereby fosters efficient application of the SD Definition. Additionally, the Commission is of the view that the potential for regular or periodic changes to the de minimis threshold may reduce its efficacy by making it challenging for persons to calibrate their swap dealing activity as appropriate for their business models. Further, the existing de minimis exception reduces regulatory uncertainty and increases efficiency by establishing a simple threshold test for all of a person's swaps connected with swap dealing activity. Conversely, the more variables included in the de minimis calculation, the more complex the determination of whether a person must register, potentially resulting in less efficiency.[40]

Allowing limited ancillary dealing: A de minimis exception allows persons to accommodate existing clients that have a need for swaps (on a limited basis) along with other services.[41] This interest enables end-users to continue transacting within existing business relationships, for example to hedge interest rate or currency risk.

Encouraging new participants: A de minimis exception also promotes competition by allowing a person to engage in some swap dealing activities without immediately incurring the regulatory costs associated with SD registration and regulation.[42] Without a de minimis exception, SD regulation could become a barrier to entry that may stifle competition. An appropriately calibrated de minimis exception could lower the barrier to entry of becoming an SD by allowing smaller participants to gradually expand their business until the scope and scale of their activity warrants regulation (and the costs involved with compliance).

Focusing regulatory resources: Finally, the de minimis exception also increases regulatory efficiency by enabling the Commission to focus its limited resources on entities whose swap dealing activity is sufficient in size and scope to warrant oversight.[43]

The Commissions explained that ''implementing the de minimis exception requires a careful balancing that considers the regulatory interests that could be undermined by an unduly broad exception as well as those regulatory interests that may be promoted by an appropriately limited exception.'' [44] A narrower de minimis exception would likely mean that a greater number of entities would be required to register as SDs and become subject to the regulatory framework applicable to registered SDs. However, a de minimis exception that is too limited could, for example, discourage persons from engaging in swap dealing activity in order to avoid the burdens associated with SD regulation.

D. De Minimis Calculation

Whether a person's activities constitute swap dealing is based on a facts and circumstances analysis. Generally, a person must count towards its AGNA de minimis threshold all swaps it enters into for dealing purposes over any rolling 12-month period. In addition, each person whose own swaps do not exceed the de minimis threshold must also include in its de minimis calculation the AGNA of swaps of any other unregistered affiliate controlling, controlled by, or under common control with that person (referred to as ''aggregation'').[45]

Pursuant to various CFTC regulations, certain swaps, subject to specific conditions, need not be considered in determining whether a person is an SD, including: (1) Swaps entered into by an insured depository institution (''IDI'') with a customer in connection with originating a loan to that customer; [46] (2) swaps between affiliates; [47] (3) swaps entered into by a cooperative with its members; [48] (4) swaps hedging physical positions; [49] (5) swaps entered into by floor traders; [50] (6) certain foreign exchange (''FX'') swaps and FX forwards; [51] and (7) commodity trade options.[52] In addition, certain cross-border swaps [53] and swaps resulting from multilateral portfolio compression exercises [54] need not be counted towards the person's de minimis threshold, subject to certain conditions, pursuant to CFTC interpretive guidance and staff letters. Further, certain inter-governmental or quasi-governmental international financial institutions are not included within the term ''swap dealer.'' [55]

II. The Proposal

Given the more complete information now available regarding certain portions of the swap market, the data analytical capabilities developed since the SD regulations were adopted, and five years of implementation experience, the Commission believes that modifications to the de minimis exception are necessary to increase efficiency, flexibility, and clarity in the application of the SD Definition.

Additionally, in March 2017, Chairman Giancarlo initiated an agency-wide internal review of CFTC regulations and practices to identify those areas that could be simplified to make them less burdensome and costly

[39] *Id.* at 30628–29 (''[T]he de minimis exception may further the interest of regulatory efficiency when the amount of a person's dealing activity is, in the context of the relevant market, limited to an amount that does not warrant registration . . . . In addition, the exception can provide an objective test . . . .'').

[40] *Id.* at 30707–08 (''On the other hand, requiring market participants to consider more variables in evaluating application of the de minimis exception would likely increase their costs to make this determination.'').

[41] *Id.* at 30629, 30708.

[42] *Id.* at 30629.

[43] *Id.* at 30628–29.

[44] *Id.* at 30628. *See also* SD Definition Proposing Release, 75 FR at 80179 (The de minimis exception ''should apply only when an entity's dealing activity is so minimal that applying dealer regulations to the entity would not be warranted.'').

[45] 17 CFR 1.3, Swap dealer, paragraph (4)(i)(A); Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 FR 45292, 45323 (July 26, 2013).

[46] *See* 17 CFR 1.3, Swap dealer, paragraph (5); 77 FR at 30620–24.

[47] *See* 17 CFR 1.3, Swap dealer, paragraph (6)(i); 77 FR at 30624–25.

[48] *See* 17 CFR 1.3, Swap dealer, paragraph (6)(ii); 77 FR at 30625–26.

[49] *See* 17 CFR 1.3, Swap dealer, paragraph (6)(iii); 77 FR at 30611–14.

[50] *See* 17 CFR 1.3, Swap dealer, paragraph (6)(iv); 77 FR at 30614. The floor trader exclusion was also addressed in no-action relief. *See* CFTC Staff Letter No. 13–80, No-Action Relief from Certain Conditions of the Swap Dealer Exclusion for Registered Floor Traders (Dec. 23, 2013), available at *https://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/13-80.pdf*.

[51] *See* Determination of Foreign Exchange Swaps and Foreign Exchange Forwards Under the Commodity Exchange Act, 77 FR 69694, 69704–05 (Nov. 20, 2012); Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 FR 48208, 48253 (Aug. 13, 2012).

[52] 17 CFR 32.3; Commodity Options, 77 FR 25320, 25326 n.39 (Apr. 27, 2012).

[53] *See* 78 FR 45292; CFTC Staff Letter No. 12–61, No-Action Relief: U.S. Bank Wholly Owned by Foreign Entity May Calculate De Minimis Threshold Without Including Activity From Its Foreign Affiliates (Dec. 20, 2012), available at *https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/12-61.pdf*; CFTC Staff Letter No. 12–71, No-Action Relief: U.S. Bank Wholly Owned by Foreign Entity May Calculate De Minimis Threshold Without Including Activity From Its Foreign Affiliates (Dec. 31, 2012), available at *https://www.cftc.gov/idc/groups/public/%40lrlettergeneral/documents/letter/12-71.pdf*; and CFTC Letter No. 18–13, No-Action Position: Relief for Certain Non-U.S. Persons from Including Swaps with International Financial Institutions in Determining [SD] and Major Swap Participant Status (May 16, 2018), available at *https://www.cftc.gov/sites/default/files/idc/groups/public/%40lrlettergeneral/documents/letter/2018-05/18-13.pdf*.

[54] CFTC Staff Letter No. 12–62, No-Action Relief: Request that Certain Swaps Not Be Considered in Calculating Aggregate Gross Notional Amount for Purposes of the Swap Dealer De Minimis Exception for Persons Engaging in Multilateral Portfolio Compression Activities (Dec. 21, 2012), available at *https://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/12-62.pdf*.

[55] *See* 77 FR at 30693.

(''Project KISS'').[56] The Commission subsequently published in the **Federal Register** a Request for Information soliciting suggestions from the public regarding how the Commission's existing rules, regulations, or practices could be applied in a simpler, less burdensome, and less costly manner.[57] As discussed below, a number of responses submitted pursuant to the Project KISS Request for Information also support modifications to the de minimis exception.[58]

The amendments proposed herein support a clearer and more streamlined application of the SD Definition. They also provide greater clarity regarding which swaps need to be counted towards the de minimis threshold and consider the practical application of swaps in different circumstances. This Proposal includes amendments regarding: (1) The appropriate de minimis threshold level; and (2) the swap transactions that are not required to be counted towards that threshold.

With respect to the appropriate threshold level, the Commission is proposing to amend the de minimis exception in paragraph (4) of the SD Definition by setting the AGNA threshold at $8 billion in swap dealing activity. Additionally, to complement the Commission's definitions of the types of activities that do not constitute swap dealing, the Commission is proposing to add specific exceptions from the de minimis threshold calculation for certain swaps entered into: (1) By IDIs in connection with loans to customers; and (2) to hedge financial or physical positions.[59] Additionally, the Commission is proposing to except from a person's de minimis threshold calculation swaps that result from multilateral portfolio compression exercises, in a manner consistent with relief granted in a 2012 DSIO staff no-action letter.[60] Lastly, the Commission is proposing to provide that, for purposes of paragraph (4) of the SD Definition, the Commission may determine the methodology to be used to calculate the notional amount for any group, category, type, or class of swaps. The Commission is also proposing to delegate authority to the Director of DSIO to make such determinations.

The proposed rule changes would amend the de minimis exception provision in paragraph (4) of the SD Definition, pursuant to the Commission's authority under CEA section 1a(49), which requires the Commission to promulgate regulations to establish factors with respect to the making of this determination to exempt a de minimis quantity of swap dealing.[61] The Commissions issued the SD Definition Adopting Release pursuant to section 712(d)(1) of the Dodd-Frank Act, which requires the CFTC and SEC to jointly adopt rules regarding the definition of, among other things, the term ''swap dealer.'' The CFTC continues to coordinate with the SEC on SD and security-based swap dealer regulations. However, as discussed in the SD Definition Adopting Release, a joint rulemaking is not required with respect to the de minimis exception-related factors.[62] The Commission notes that it is consulting with the SEC and prudential regulators regarding the changes to the SD Definition discussed in this Proposal.[63]

Although this Proposal includes several potential rule amendments in a single notice, the CFTC may in the future issue separate adopting releases for any aspect of this Proposal that is finalized.[64]

A. $8 Billion De Minimis Threshold

As discussed above, the de minimis threshold for the AGNA of a person's swap dealing activity is scheduled to decrease to $3 billion on December 31, 2019, requiring persons to begin calculating towards the lower threshold on January 1, 2019. Based on the data and analysis described below, the Commission is proposing to amend paragraph (4)(i)(A) of the SD Definition by setting the de minimis threshold at $8 billion. For added clarity, the Commission is also proposing to change the term ''swap positions'' to ''swaps'' in paragraph (4)(i)(A). Additionally, the Commission is proposing to delete a parenthetical clause in paragraph (4)(i)(A) referring to the period after adoption of the rule further defining the term ''swap,'' and to remove and reserve paragraph (4)(ii) of the SD Definition, which addresses the phase-in procedure and staff report requirements of the de minimis exception (discussed above in section I.B), since both of those provisions would no longer be applicable.

The Commission recognizes the benefits and drawbacks of an SD Definition that relies upon AGNA for SD registration purposes. The Commission is aware of potential viable alternative metrics and remains open to the possibility of relying on a different approach in the future, such as a threshold based on entity-netted notional amounts[65] or other risk metrics, including, but not limited to, initial margin, open positions, material swaps exposure, net current credit exposure, gross negative or positive fair value, potential future exposure, value-at-risk, or expected shortfall. However, at this time, the Commission continues to believe that the de minimis exception should include an AGNA threshold component. As noted in the SD Definition Adopting Release, a notional value test is useful to measure the relative amount of an entity's swap dealing activity, and it avoids potential

[56] *See* Remarks of then-Acting Chairman J. Christopher Giancarlo before the 42nd Annual International Futures Industry Conference in Boca Raton, FL (Mar. 15, 2017), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-20*.

[57] Project KISS, 82 FR 21494 (May 9, 2017), amended by 82 FR 23765 (May 24, 2017). The **Federal Register** Request for Information, and the suggestion letters filed by the public are available at *https://comments.cftc.gov/KISS/KissInitiative.aspx*.

[58] *See* Letters from BP Energy Company and BP Products North America Inc. (collectively, ''BP'') (Sep. 29, 2017); Chatham Financial Corp. (''Chatham'') (Sep. 29, 2017); Coalition for Derivatives End-Users (''CDE'') (Sep. 29, 2017); The Commercial Energy Working Group (''CEWG'') (Sep. 30, 2017); Commodity Markets Council (''CMC'') (Sep. 29, 2017); EDF Trading North America, LLC (''EDF'') (Sep. 29, 2017); Edison Electric Institute and the Electric Power Supply Association (collectively, ''EEI/EPSA'') (Sep. 29, 2017); Financial Services Roundtable (''FSR'') (Sep. 30, 2017); Futures Industry Association (''FIA'') (Sep. 28, 2017); Institute of International Bankers (''IIB'') (Sep. 29, 2017); International Energy Credit Association (''IECA'') (Sep. 30, 2017); International Swaps and Derivatives Association, Inc. (''ISDA'') (Sep. 29, 2017); Natural Gas Supply Association (''NGSA'') (Sep. 29, 2017); Northern Trust Company (''Northern Trust'') (Sep. 21, 2017); Securities Industry and Financial Markets Association (''SIFMA'') (Sep. 29, 2017); Custom House USA, LLC and Western Union Business Solutions (USA), LLC (collectively, ''Western Union'') (Sep. 25, 2017); and Custom House USA, LLC, Western Union Business, GPS Capital Markets, Inc., and Associated Foreign Exchange, Inc. (collectively, ''WU/GPS/AFEX'') (Sep. 29, 2017).

[59] These proposed exceptions would be in addition to the existing exclusions in paragraphs (5) and (6)(iii) of the SD Definition for swaps entered into by IDIs and swaps entered into for the purpose of hedging physical positions, respectively.

[60] *See* CFTC Staff Letter No. 12–62, *supra* note 54.

[61] 7 U.S.C. 1a(49)(D). *See also* 17 CFR 1.3, Swap dealer, paragraph (4)(v).

[62] 77 FR at 30634 n.464 (''We do not interpret the joint rulemaking provisions of section 712(d) of the Dodd-Frank Act to require joint rulemaking here, because such an interpretation would read the term ''Commission'' out of CEA section 1a(49)(D) (and Exchange Act section 3(a)(71)(D)), which themselves were added by the Dodd-Frank Act.'').

[63] As required by § 712(a)(1) of the Dodd-Frank Act.

[64] *See ICI* v. *CFTC,* 720 F.3d 370, 379 (D.C. Cir. 2013) (''[A]s the Supreme Court has emphasized, '[n]othing prohibits federal agencies from moving in an incremental manner.' '') (quoting *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 522 (2009)).

[65] *See* Introducing ENNs: A Measure of the Size of Interest Rate Swap Markets (Jan. 2018), available at *http://www.cftc.gov/idc/groups/public/@economicanalysis/documents/file/oce_enns0118.pdf*; Remarks of Chairman J. Christopher Giancarlo before Derivcon 2018, New York City, NY (Feb. 1, 2018), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo35*.

distorting effects from measures that reflect netting or collateral offsets.[66]

1. Methodology

(i) Filters and Assumptions

For this Proposal, CFTC staff conducted an analysis of SDR data from January 1, 2017, through December 31, 2017 (the ''review period'').[67] Generally, employing methodologies similar to those used for purposes of the Staff Reports, staff attempted to calculate persons' swaps activity in terms of AGNA to assess how the swap market might be impacted by potential changes to the current de minimis exception.

Given improvements in the quality of data being reported to SDRs since the Staff Reports were issued, Commission staff was able to analyze the AGNA of swaps activity for interest rate swaps (''IRS''), credit default swaps (''CDS''), FX swaps,[68] and equity swaps (while by comparison, in the Staff Reports, AGNA analysis was limited to IRS and CDS).[69] However, given certain limitations discussed below, AGNA data was not available for non-financial commodity (''NFC'') swaps. In addition to now-available AGNA information for FX swaps and equity swaps, there were also continued improvements in the consistency of legal entity identifier (''LEI'') and unique swap identifier reporting. However, as explained in the Staff Reports, the SDR data lacks: (1) A reporting field to indicate whether a swap was entered into for dealing purposes (as opposed to hedging, investing, or proprietary trading); and (2) a reporting field to indicate whether a specific swap need not be considered in determining whether a person is an SD or need not be counted towards the person's de minimis threshold, pursuant to one of the exclusions or exceptions identified above in section I.D.[70] These constraints limited the usefulness of the SDR data to identify which swaps should be counted towards a person's de minimis threshold, and the ability to precisely assess the current de minimis threshold or the impact of potential changes to the current exclusions.

As noted above, for purposes of this Proposal, staff utilized assumptions and methodologies similar to those detailed in the Staff Reports to approximate potential swap dealing activity.[71] To attempt to account for the various exclusions relevant to the SD Definition, filters were applied to the data to exclude certain transactions and entities from the analysis. The reason an entity enters into a swap (*e.g.,* dealing, hedging, investing, proprietary trading) is not collected under the reporting requirements in part 45 of the Commission's regulations.[72] Accordingly, staff used filters to identify and exclude certain categories of entities—such as funds, insurance companies, cooperatives, government-sponsored entities, most commercial end-users, and international financial institutions—as potential SDs because these entities generally use swaps for investing, hedging, or proprietary trading and do not seem to be engaged in swap dealing activity, or otherwise enter into swaps that would not be included in determining whether the entity is an SD.[73] Further, additional filters allowed for the exclusion of inter-affiliate[74] and non-U.S. swap transactions.[75]

With the benefits of improved data quality and analytical tools, staff was able to conduct a more granular analysis, as compared to the Staff Reports, in order to more accurately identify those entities that, based on their observable business activities, are potentially engaged in swap dealing activity (''In-Scope Entities'')[76] versus those likely engaged in other kinds of transactions (*e.g.,* entering into swaps for investment purposes). Further, for the purposes of this Proposal, a minimum unique counterparty count of 10 counterparties was utilized to better identify the entities that are likely to be engaged in transactions that have to be considered for the SD Definition. Each distinct, unaffiliated counterparty of a person was regarded as one unique counterparty (hereinafter referred to as ''counterparty'').[77] A threshold of 10 counterparties was utilized because, after excluding inter-affiliate and non-U.S. swap transactions, 83 percent of registered SDs had 10 or more reported counterparties, while approximately 97 percent of unregistered entities had fewer than 10 counterparties. Therefore, this appeared to be a reasonable threshold to better identify entities likely engaged in swap dealing. Adding this filter to the analysis reduced the likelihood of false positives—*i.e.,* reduced the potential that entities likely engaged in hedging or other non-dealing activity would be identified as potential SDs.

The updated analysis largely confirmed the analysis conducted for the Staff Reports;[78] however, there is greater confidence in the results given the improved data and refined methodology. Nonetheless, given the lack of a swap dealing indicator for individual swaps, and the lack of an indicator to identify whether a specific swap need not be considered in determining whether a person is an SD or counted towards the person's de minimis threshold, staff's analysis is based on a person's AGNA of swaps activity, as opposed to AGNA of swap dealing activity.

With respect to NFC swaps, Commission staff encountered a number of challenges in calculating notional amounts. These included: (1) The vast array of underlying commodities with differing characteristics; (2) the multiple types of swaps (*e.g.,* fixed-float, basis, options, multi-leg, exotic); (3) the variety of data points required to calculate notional amounts (*e.g.,* price, quantity, quantity units, location, grades, exchange rate); (4) locality-specific terms; and (5) lack of industry standards for notional amount-equivalent calculations.[79] However,

[66] 77 FR at 30630.

[67] The data used in this Proposal was sourced from data reported to the four registered SDRs: BSDR LLC, Chicago Mercantile Exchange Inc., DTCC Data Repository, and ICE Trade Vault.

[68] The term ''FX swaps'' is used in this Proposal to only describe those FX transactions that are counted towards a person's de minimis calculation. The term ''FX swaps'' does not refer to swaps and forwards that are not counted towards the de minimis threshold pursuant to the exemption granted by the Secretary of the Treasury. *See* 77 FR at 69704–05; 77 FR at 48253. Section III.C below discusses the Secretary of the Treasury's exemption in more detail in the context of non-deliverable forward transactions.

[69] *See* Preliminary Staff Report, *supra* note 21, at 21–22; Final Staff Report, *supra* note 24, at 19.

[70] *See* Preliminary Staff Report, *supra* note 21, at 15; Final Staff Report, *supra* note 24, at 19.

[71] *See* Preliminary Staff Report, *supra* note 21, at 13–21; Final Staff Report, *supra* note 24, at 4–6, 19–20.

[72] *See* 17 CFR part 45 app.1.

[73] *See* section I.D (discussing the de minimis threshold calculation). The Commission notes that entity-based exclusions are not a determinative means of assessing whether any particular entity is engaged in swap dealing. *See* Preliminary Staff Report, *supra* note 21, at 12; Final Staff Report, *supra* note 24, at 6.

[74] *See* 17 CFR 1.3, Swap dealer, paragraph (6)(i).

[75] *See generally* 78 FR 45292.

[76] The majority of In-Scope Entities are banks, broker-dealers, non-bank financial entities, and affiliates thereof.

[77] For example, if Bank A entered into swaps with each of three entities that are all affiliated with Bank B (*i.e.,* Bank A entered into swaps with each of Bank B–1, Bank B–2, and Bank B–3), and also entered into a swap with Bank C, Bank A was considered to have four counterparties (Bank B–1, Bank B–2, Bank B–3, and Bank C). Additionally, each invalid identifier (*i.e.,* an invalid LEI or a non-LEI identifier) was considered its own counterparty. However, it is possible that each invalid identifier does not actually represent a distinct counterparty because one counterparty may be associated with multiple invalid identifiers.

[78] *See generally* Final Staff Report, *supra* note 24; Preliminary Staff Report, *supra* note 21.

[79] *Compare* Letter from American Petroleum Institute, Commodity Markets Council, Edison Electric Institute, Electric Power Supply Association, Independent Petroleum Association of America, and Natural Gas Supply Association (Sep. 20, 2012) (stating that ''The notional amount for

Continued

given the limitations in the AGNA data, counterparty counts and transaction counts were used to analyze likely swap dealing activity for participants in the NFC swap market.

(ii) Regulatory Coverage Analysis

To assess the relative impact on the swap market of potential changes to the de minimis exception, CFTC staff analyzed the extent to which the swap market was subject to SD regulation during the review period because at least one counterparty to a swap was a registered SD (''2017 Regulatory Coverage''). For purposes of this analysis, any person listed as a provisionally registered SD on December 31, 2017, was considered to be a registered SD. Specifically, with regard to 2017 Regulatory Coverage, staff identified the extent to which: (1) Swaps activity, measured in terms of AGNA, was subject to SD regulation during the review period because at least one counterparty to a swap was a registered SD (''2017 AGNA Coverage''); (2) swaps activity, measured in terms of number of transactions, was subject to SD regulation during the review period because at least one counterparty to a swap was a registered SD (''2017 Transaction Coverage''); and (3) swaps activity was subject to SD regulation during the review period, measured in terms of number of counterparties who transacted with at least one registered SD (''2017 Counterparty Coverage'').

Additionally, staff estimated regulatory coverage by assessing the extent to which the swap market would have been subject to SD regulation at different de minimis thresholds because at least one counterparty to a swap was identified as a ''Likely SD'' (''Estimated Regulatory Coverage''). For purposes of this analysis, the term ''Likely SD'' refers to an In-Scope Entity that exceeds a specified AGNA threshold level, and trades with at least 10 counterparties. With regard to Estimated Regulatory Coverage, staff identified the extent to which: (1) Swaps activity, measured in terms of AGNA, would have been subject to SD regulation during the review period, at a specified de minimis threshold, because at least one counterparty to a swap was identified as a Likely SD at that de minimis threshold (''Estimated AGNA Coverage''); (2) swaps activity, measured in terms of number of transactions, would have been subject to SD regulation during the review period, at a specified de minimis threshold, because at least one counterparty to a swap was identified as a Likely SD at that de minimis threshold (''Estimated Transaction Coverage''); and (3) counterparties in the swap market would have transacted with at least one Likely SD during the review period, at a specified de minimis threshold (''Estimated Counterparty Coverage'').

2. Data and Analysis

For this Proposal, the Commission considered reducing the AGNA de minimis threshold to $3 billion, maintaining the threshold at $8 billion, or increasing the threshold. Based on the data and related policy considerations discussed below, the Commission is of the view that maintaining the current $8 billion AGNA de minimis threshold is appropriate. The policy objectives underlying SD regulation—reducing systemic risk, increasing counterparty protections, and increasing market efficiency, orderliness, and transparency—would not be significantly advanced if the threshold were to decrease to $3 billion or to increase from the current $8 billion level.[80] Nor does the Commission believe that the policy objectives furthered by a de minimis exception—increasing efficiency, allowing limited ancillary dealing, encouraging new participants, and focusing regulatory resources—would be significantly advanced if the threshold were to be changed.[81]

Analysis of the data indicates that: (1) The current $8 billion threshold subjects almost all swap transactions (as measured by AGNA or transaction count) to SD regulations;[82] (2) at a lower threshold of $3 billion, there would only be a small amount of additional AGNA and swap transactions subject to SD regulation, and potentially reduced liquidity in the swap market, as compared to the $8 billion threshold; (3) counterparty protections may be reduced at higher thresholds; and (4) a lower threshold could lead to reduced liquidity for NFC swaps, negatively impacting end-users and commercial entities who utilize NFC swaps for hedging purposes. Additionally, the Commission expects that maintaining an $8 billion threshold would foster the efficient application of the SD Definition by providing continuity and addressing the uncertainty associated with the end of the phase-in period.

The analysis below is based on a January 1, 2017, through December 31, 2017, review period, and includes swap transactions reported to SDRs, excluding inter-affiliate and non-U.S. transactions.[83] The total size of the swap market that was analyzed, after excluding inter-affiliate and non-U.S. transactions, was approximately $221.1 trillion in AGNA of swaps activity (excluding NFC swaps), approximately 4.4 million transactions, and 39,107 counterparties.

(i) Regulatory Coverage at $8 Billion Threshold

As shown below, the data indicates that, at the $8 billion threshold, there was nearly complete 2017 Regulatory Coverage as measured by 2017 AGNA Coverage and 2017 Transaction Coverage.

options should be based on the absolute value of the product of the notional quantity of the option (without adjustment for the option delta) multiplied by the transaction value for the option (*i.e.,* the premium).''), attached to a 2016 comment letter available at *https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60595&SearchText, with* Letter from Futures Industry Association Principal Traders Group (Dec. 20, 2012) (proposing a methodology that does not utilize premium value or the strike price, but does include option delta in the calculation), available at *https://ptg.fia.org/file/487/download?token=HSUPcHmL. See also* Ernst & Young, Notional value under Dodd-Frank: survey of energy commodities participants (2013) (''While the term notional value is commonly used in industry, in practice there isn't a single accepted definition.''), available at *http://www.ey.com/Publication/vwLUAssets/Notional_value_-_under_Dodd-Frank/$FILE/Notional_value_under_Dodd_Frank.pdf.*

[80] As discussed below, the analysis explored the hypothetical effects on the swap market of changing the AGNA threshold to various amounts between $3 billion and $100 billion.

[81] The Commission also notes that setting the threshold at $8 billion would be consistent with a non-binding Congressional Directive stating that the Commission should establish a de minimis threshold of $8 billion or greater within 60 days of enactment of the Consolidated Appropriations Act of 2016. *See* Accompanying Statement to the Consolidated Appropriations Act of 2016, Explanatory Statement Division A at 32 (Dec. 2015), available at *http://docs.house.gov/meetings/RU/RU00/20151216/104298/HMTG-114-RU00-20151216-SD002.pdf*; H.Rpt. 114–205 at 76 (July 14, 2015), available at *https://www.congress.gov/114/crpt/hrpt205/CRPT-114hrpt205.pdf.*

[82] SD regulations include, among other things, registration, internal and external business conduct standards, reporting, recordkeeping, risk management, margin, and chief compliance officer requirements. However, the requirement to report a swap to an SDR applies regardless of whether an SD is a counterparty to the swap.

[83] *See* section II.A.1 above for additional discussion regarding the methodology utilized to conduct the analysis.

TABLE 1—SWAPS SUBJECT TO SD REGULATION
2017 TRANSACTION COVERAGE

Asset class	Total number of transactions	Number of transactions including at least one registered SD	2017 transaction coverage (%)
IRS	945,593	937,975	99.19
CDS	133,570	132,899	99.50
FX swaps	2,443,659	2,435,537	99.67
Equity swaps	281,219	281,211	>99.99
NFC swaps	633,943	546,823	86.26
Total	4,437,984	4,334,445	97.67

As seen in Table 1, at the $8 billion threshold, almost all swap transactions involved at least one registered SD as a counterparty, greater than 99 percent for IRS, CDS, FX swaps, and equity swaps. For NFC swaps, approximately 86 percent of transactions involved at least one registered SD as a counterparty. As discussed in more detail in section II.A.2.iv, although that percentage is lower than the approximately 99 percent for the other asset classes, the Commission is of the view that with respect to NFC swaps, lower SD regulatory coverage is acceptable given the unique characteristics of the NFC swap market. Overall, approximately 98 percent of transactions involved at least one registered SD.

TABLE 2—SWAPS SUBJECT TO SD REGULATION
2017 AGNA COVERAGE

Asset class	Total AGNA ($Bn)	AGNA including at least one registered SD ($Bn)	2017 AGNA coverage (%)
IRS	182,961	182,847	99.94
CDS	7,527	7,490	99.51
FX swaps	28,794	28,775	99.93
Equity swaps[84]	1,850	1,850	99.99
Total	221,132	220,963	99.92

As seen in Table 2, at the $8 billion threshold, almost all AGNA of swaps activity included at least one registered SD, greater than 99 percent for IRS, CDS, FX swaps, and equity swaps.

The 2017 Transaction Coverage and 2017 AGNA Coverage ratios indicate that SD regulations covered nearly all swaps in these asset classes, signifying that nearly all swaps already benefited from the policy considerations discussed above (*e.g.,* reducing systemic risk, increasing counterparty protections, and increasing market efficiency, orderliness, and transparency) at the existing $8 billion threshold.

The Commission notes the 2017 Counterparty Coverage was approximately 83.5 percent—*i.e.,* approximately 16.5 percent of the counterparties in the swap market did not transact with at least one registered SD on at least one swap (6,440 counterparties out of a total of 39,107), and therefore potentially did not benefit from the counterparty protection aspects of SD regulations.[85] However, given the 2017 AGNA Coverage and 2017 Transaction Coverage statistics, these 6,440 entities overall had limited swaps activity. Collectively, the 6,440 entities entered into 77,333 transactions, an average of approximately 12 transactions per entity, and represented only approximately 1.7 percent of the overall number of transactions during the review period. Additionally, collectively, the 6,440 entities had an AGNA of approximately $68 billion in swaps activity, an average of approximately $10.6 million per entity, and they represented only approximately 0.03 percent of the overall AGNA of swaps activity during the review period in IRS, CDS, FX swaps, and equity swaps.

The Commission also believes that this limited activity indicates that, to the extent these 6,440 entities are engaging in swap dealing activities, such activity is likely ancillary and in connection with other client services, potentially advancing the policy rationales behind a de minimis exception. For example, of the 6,440 entities, 5,302 are active in IRS, indicating that these entities may be entering into loan-related swaps with banks. These banks may be entering into an outright amount of swap dealing activity at a level below the de minimis threshold, or do not have to register because of the exclusion for swaps entered into by IDIs in connection with originating loans.[86]

Generally, the Commission is of the view that the policy considerations underlying SD regulation—reducing systemic risk, increasing counterparty protections, and increasing market efficiency, orderliness, and

[84] Coverage is approximately 99.99 percent due to rounding.

[85] The actual number of entities without a single transaction with a registered SD is likely lower than 6,440. Of the 6,440 entities, 1,780 have invalid identifiers that staff was unable to manually replace with a valid LEI. It is possible that these 1,780 invalid identifiers actually represent fewer than 1,780 distinct counterparties because one counterparty may be associated with multiple invalid identifiers.

[86] *See* 17 CFR 1.3, Swap dealer, paragraph (5).

transparency—are being appropriately advanced at the current $8 billion threshold given the regulatory coverage statistics discussed above. Only a low percentage of swaps activity is not currently covered by SD regulation-related requirements,[87] indicating that the current threshold is appropriate. Additionally, as discussed below in sections II.A.2.ii and II.A.2.iv, a reduction in the de minimis threshold could negatively affect the policy considerations underlying the de minimis exception, as compared to the current $8 billion threshold.

(ii) Regulatory Coverage at Lower Threshold

Given the high percentage of swaps that were subject to SD regulation at the existing $8 billion threshold during the review period, a lower threshold of $3 billion would result in only a small amount of additional activity being directly subjected to SD regulation. To estimate the effect of a lower de minimis threshold during the review period, staff compared the number of Likely SDs and the Estimated AGNA Coverage, Estimated Transaction Coverage, and Estimated Counterparty Coverage at $8 billion and $3 billion thresholds.

Table 3 estimates the percentage of IRS, CDS, FX swaps, and equity swaps that would involve at least one Likely SD at de minimis thresholds of $3 billion and $8 billion. To make these calculations, staff used the methodology described in section II.A.1 to determine Likely SDs at the indicated thresholds.[88] Because SDR data does not include information indicating the underlying purposes of a swap,[89] the analysis likely includes swaps that were not required to be counted under the SD Definition (*e.g.,* swaps entered into for hedging, investing, or proprietary trading purposes). Therefore, the estimates of the number of Likely SDs at various AGNA thresholds may differ from the actual number of entities that would be required to register at those thresholds. For example, Table 3 shows that an estimated 108 entities could be required to register as SDs at the $8 billion threshold, whereas the figures in Table 1 are based on the 100 actual registered SDs.[90] Nevertheless, the Commission believes that Table 3 presents a reasonably accurate estimate of how the number of SDs that are required to register will fluctuate with changes in the threshold.

TABLE 3—NUMBER OF LIKELY SDS AND ESTIMATED REGULATORY COVERAGE
IRS, CDS, FX SWAPS, AND EQUITY SWAPS
[Minimum 10 counterparties]

AGNA threshold ($Bn)	Number of likely SDs	Likely SD count change vs. $8 Bn threshold	Estimated AGNA coverage (%)	Estimated transaction coverage (%)	Estimated counterparty coverage (%)
1	2	3	4	5	6
3	121	13	99.96	99.83	90.75
8	108	.....	99.95	99.77	88.80

Column 1 of Table 3 lists the AGNA thresholds for which information is being presented. Column 2 is the number of Likely SDs at each given threshold as determined using the methodology described above, including a 10 counterparty minimum. Column 3 is the change in the number of Likely SDs, as compared to the current $8 billion threshold. Columns 4, 5, and 6 illustrate the Estimated Regulatory Coverage, in percentage terms, for the $3 billion and $8 billion de minimis thresholds during the review period. The percentages are based on a total market size in IRS, CDS, FX swaps, and equity swaps of approximately $221.1 trillion in AGNA of swaps activity, 3.8 million transactions, and 34,774 counterparties, after excluding inter-affiliate and non-U.S. transactions.[91]

As columns 2 and 3 indicate, the number of Likely SDs increases from 108 at an $8 billion AGNA threshold to 121 at a $3 billion AGNA threshold—an increase of 13 entities. However, as columns 4 through 6 indicate, and as explained in more detail below in Tables 4 through 6, if these 13 entities were all registered as SDs, the increase in Estimated Regulatory Coverage would be small.

TABLE 4—ESTIMATED AGNA COVERAGE ($3 Bn and $8 Bn)
IRS, CDS, FX SWAPS, AND EQUITY SWAPS
[Minimum 10 counterparties]

AGNA threshold ($Bn)	Estimated AGNA coverage (%)	Change in estimated AGNA coverage (pct. point)	Estimated AGNA coverage ($Bn)	Change in estimated AGNA coverage ($Bn)
3	99.96	0.01	221,039	19
8	99.95	.....	221,020	.....

[87] Transactions that do not include at least one registered SD as a counterparty would generally not be subject to SD-specific regulations (*e.g.,* margin, business conduct standard, and risk management requirements). However, such transactions would still be subject to swap reporting requirements (*e.g.,* 17 CFR part 45), among other regulations.

[88] The term ''Likely SD'' refers to an In-Scope Entity that exceeds a notional threshold test, and trades with at least 10 counterparties.

[89] *See* 17 CFR part 45 app. 1.

[90] Some registered SDs were not captured in the Estimated Regulatory Coverage analysis since they primarily are involved in the NFC swap market, which is excluded from this AGNA-based analysis. In addition, some of the existing registered SDs reported AGNA of swaps activity below $8 billion in 2017 but remained registered SDs.

[91] Note that the market totals of 3.8 million transactions and 34,774 counterparties exclude NFC swaps, whereas the market totals, in section II.A.2.i above, of 4.4 million transactions and 39,107 counterparties include NFC swaps.

As seen in Table 4, at a $3 billion threshold, the Estimated AGNA Coverage would have increased from approximately $221,020 billion (99.95 percent) to $221,039 billion (99.96 percent)—an increase of $19 billion (a 0.01 percentage point increase).

TABLE 5—ESTIMATED TRANSACTION COVERAGE ($3 Bn and $8 Bn)
IRS, CDS, FX SWAPS, AND EQUITY SWAPS
[Minimum 10 counterparties)

AGNA threshold ($Bn)	Estimated transaction coverage (%)	Change in estimated transaction coverage (pct. point)	Estimated transaction coverage (number of trades)	Change in estimated transaction coverage (number of trades)
3	99.83	0.06	3,797,734	2,404
8	99.77	.....	3,795,330	.....

As seen in Table 5, at a $3 billion threshold, the Estimated Transaction Coverage would have increased from 3,795,330 trades (99.77 percent) to 3,797,734 trades (99.83 percent)—an increase of 2,404 trades (a 0.06 percentage point increase).

TABLE 6—ESTIMATED COUNTERPARTY COVERAGE ($3 Bn and $8 Bn)
IRS, CDS, FX SWAPS, AND EQUITY SWAPS
[Minimum 10 counterparties]

AGNA threshold ($Bn)	Estimated counterparty coverage (%)	Change in estimated counterparty coverage (pct. point)	Estimated counterparty coverage (number of counterparties)	Change in estimated counterparty coverage (number of counterparties)
3	90.75	1.96	31,559	680
8	88.80	.....	30,879	.....

As seen in Table 6, at a $3 billion threshold, the Estimated Counterparty Coverage would have increased from 30,879 counterparties (88.80 percent) to 31,559 counterparties (90.75 percent)—an increase of 680 counterparties (a 1.96 percentage point increase).

The Commission is of the view that these small increases in Estimated AGNA Coverage, Estimated Transaction Coverage, and Estimated Counterparty Coverage indicate that the systemic risk mitigation, counterparty protection, and market efficiency benefits of SD regulation would be enhanced in only a very limited manner if the de minimis threshold decreased from $8 billion to $3 billion. Additionally, the limited regulatory and market benefits of a $3 billion threshold should be considered in conjunction with the costs associated with a lower threshold. In particular, the persons required to register would incur the likely significant costs of implementing, among other things, policies and procedures, technology systems, and training programs to address requirements imposed by SD regulations.[92]

Further, if the de minimis threshold decreases to $3 billion, it is possible that the number of Likely SDs would be smaller than estimated because the analysis includes swaps that would not be required to be counted under the SD Definition (*e.g.,* swaps entered into for hedging, investing, or proprietary trading purposes). Further, persons engaged in swap dealing in amounts between $3 billion and $8 billion may also reduce their swap dealing activity to remain under a lower threshold, thus further reducing the actual incremental change.

To more fully understand the potential market impact of a lower threshold, the Commission also analyzed the 13 entities that were identified as Likely SDs at a $3 billion threshold but not at an $8 billion threshold.

TABLE 7—CATEGORIES OF LIKELY SDS ($3 Bn and $8 Bn)
IRS, CDS, FX SWAPS, AND EQUITY SWAPS
[Minimum 10 counterparties]

Category	$3 Bn	$8 Bn	Difference
Bank/Bank subsidiary/Bank affiliate	105	95	10
Non-bank financial	14	11	3
Other[93]	2	2	0
Total	121	108	13

[92] Registered SDs are subject to a broad range of regulatory requirements. *See, e.g., supra* note 82.

[93] ''Other'' refers to commercial entities, such as consumers, merchants, producers, or traders of physical commodities, who appear to be engaging in some swap dealing activity.

As seen in Table 7, for IRS, CDS, FX swaps, and equity swaps, entities that would potentially have to register at a lower threshold primarily include banks or bank affiliates, 10 of the 13 entities in total. In the aggregate, these 13 entities have only approximately $19 billion in AGNA of swaps activity (approximately 0.01 percent of the overall market) and 2,406 transactions (approximately 0.06 percent of the overall market) with currently unregistered market participants, further indicating that decreasing the threshold to $3 billion would yield only a small increase in Estimated Regulatory Coverage. After reviewing the list of the 10 banking entities' counterparties, it is also likely that some of the activity for the 10 banking entities consists of swaps that would be excluded from the de minimis calculation pursuant to the exclusion for swaps entered into by IDIs in connection with loans to customers (as provided for in paragraph (5) of the SD Definition), potentially reducing the likelihood that all or some of these entities would be required to register at a lower threshold.

In addition to a negligible increase in the AGNA or number of transactions that would be subject to SD regulation at a $3 billion threshold, policy considerations may indicate that lowering the threshold would not be beneficial to the market. A number of Project KISS suggestions addressed these policy-related concerns.[94]

The Commission believes that a $3 billion AGNA de minimis threshold could lead certain entities to reduce or cease swap dealing activity to avoid registration and its related costs. Generally, the costs associated with registering as an SD may exceed the revenue from dealing swaps for many small or mid-sized banks and non-financial entities. Additionally, some persons engaged in swap dealing activities below the current $8 billion threshold have indicated that swap dealing is not a major source of revenue and is only complementary to other client-facing businesses, suggesting that these smaller dealing entities could reduce or eliminate their swap dealing activities if the threshold is lowered. Although the magnitude of this effect is not certain, reduced swap dealing activity could lead to increased concentration in the swap dealing market, reduced availability of potential swap counterparties, reduced liquidity, increased volatility, higher fees, wider bid/ask spreads, or reduced competitive pricing. The end-user counterparties of these smaller swap dealing entities may be adversely impacted by the above consequences and could face a reduced ability to use swaps to manage their business risks.[95]

Based on the likely small increase in regulatory coverage, and the potential negative market effects of a $3 billion de minimis threshold, the Commission is of the view that, on balance, the overall policy goals of SD registration and the de minimis exception would not be advanced by lowering the threshold from $8 billion.

(iii) Regulatory Coverage at Higher Thresholds

To assess the effect of a higher de minimis threshold, staff compared the number of Likely SDs and the Estimated AGNA Coverage, Estimated Transaction Coverage, and Estimated Counterparty Coverage at $8 billion, $20 billion, $50 billion, and $100 billion thresholds. As with the analysis above regarding $3 billion and $8 billion thresholds, to make these calculations, staff used the methodology described in section II.A.1 to determine Likely SDs at the indicated thresholds.[96] As discussed, if a swap transaction includes at least one Likely SD, that transaction would theoretically be subject to SD-related regulations.

TABLE 8—NUMBER OF LIKELY SDS AND REGULATORY COVERAGE
IRS, CDS, FX SWAPS, AND EQUITY SWAPS
[Minimum 10 counterparties]

AGNA threshold ($Bn)	Number of likely SDs	Likely SD count change vs. $8 Bn threshold	Estimated AGNA coverage (%)	Estimated transaction coverage (%)	Estimated counterparty coverage (%)
1	2	3	4	5	6
8	108	.....	99.95	99.77	88.80
20	93	(15)	99.94	99.72	86.00
50	81	(27)	99.91	99.35	83.09
100	72	(36)	99.88	99.20	81.19

As seen in Table 8, the number of Likely SDs decreases from 108 at an $8 billion AGNA threshold to 93, 81, and 72 Likely SDs, at the $20 billion, $50 billion, and $100 billion thresholds, respectively. As columns 4 and 5 indicate, and as explained in more detail below in Tables 9 and 10, the reduction in the number of Likely SDs would lead to only a relatively small decrease in Estimated AGNA Coverage and Estimated Transaction Coverage at higher AGNA thresholds of up to $100 billion. However, as column 6 indicates, and as explained in more detail below in Table 11, there would potentially be a more pronounced reduction in Estimated Counterparty Coverage at higher AGNA thresholds.

[94] *See* Letters from BP, Chatham, CDE, CMC, EDF, EEI/EPSA, FSR, IIB, IECA, ISDA, NGSA, SIFMA, Western Union, and WU/GPS/AFEX, *supra* note 58.

[95] *See generally* Letters from BP, Chatham, CDE, CMC, EDF, EEI/EPSA, FSR, IIB, IECA, ISDA, NGSA, SIFMA, Western Union, and WU/GPS/AFEX, *supra* note 58; Final Staff Report, *supra* note 24, at 11–12 (citing comment letters submitted in response to Preliminary Staff Report, *supra* note 21).

[96] Additionally, as discussed in section II.A.2.ii, the percentages are based on a total market size in IRS, CDS, FX swaps, and equity swaps of approximately $221.1 trillion in AGNA of swaps entered into, 3.8 million transactions, and 34,774 counterparties, after excluding inter-affiliate and non-U.S. transactions.

TABLE 9—ESTIMATED AGNA COVERAGE ($8 Bn, $20 Bn, $50 Bn, and $100 Bn)
IRS, CDS, FX SWAPS, AND EQUITY SWAPS
[Minimum 10 counterparties]

AGNA threshold ($Bn)	Estimated AGNA coverage (%)	Change in estimated AGNA coverage (pct. point)	Estimated AGNA coverage ($Bn)	Change in estimated AGNA coverage ($Bn)
8	99.95	.....	221,020	.....
20	99.94	(0.01)	221,005	(15)
50	99.91	(0.04)	220,935	(85)
100	99.88	(0.06)	220,877	(143)

As seen in Table 9, at a $100 billion threshold, the Estimated AGNA Coverage would have decreased from approximately $221,020 billion (99.95 percent) to $220,877 billion (99.88 percent)—a decrease of $143 billion (a 0.06 percentage point decrease). The decrease would be lower at thresholds of $20 billion and $50 billion, at 0.01 percentage points and 0.04 percentage points, respectively.

TABLE 10—ESTIMATED TRANSACTION COVERAGE ($8 Bn, $20 Bn, $50 Bn, and $100 Bn)
IRS, CDS, FX SWAPS, AND EQUITY SWAPS
[Minimum 10 counterparties]

AGNA threshold ($Bn)	Estimated transaction coverage (%)	Change in estimated transaction coverage (pct. point)	Estimated transaction coverage (number of trades)	Change in estimated transaction coverage (number of trades)
8	99.77	.....	3,795,330	.....
20	99.72	(0.05)	3,793,454	(1,876)
50	99.35	(0.42)	3,779,466	(15,864)
100	99.20	(0.58)	3,773,440	(21,890)

As seen in Table 10, at a $100 billion threshold, the Estimated Transaction Coverage would have decreased from 3,795,330 trades (99.77 percent) to 3,773,440 trades (99.20 percent)—a decrease of 21,890 trades (a 0.58 percentage point decrease). The decrease would be lower at thresholds of $20 billion and $50 billion, at 0.05 percentage points and 0.42 percentage points, respectively.

TABLE 11—ESTIMATED COUNTERPARTY COVERAGE ($8 Bn, $20 Bn, $50 Bn, and $100 Bn)
IRS, CDS, FX SWAPS, AND EQUITY SWAPS
[Minimum 10 counterparties]

AGNA threshold ($Bn)	Estimated counterparty coverage (%)	Change in estimated counterparty coverage (pct. point)	Estimated counterparty coverage (number of counterparties)	Change in estimated counterparty coverage (number of counterparties)
8	88.80	.....	30,879	.....
20	86.00	(2.80)	29,907	(972)
50	83.09	(5.71)	28,893	(1,986)
100	81.19	(7.61)	28,234	(2,645)

As seen in Table 11, at a $100 billion threshold, the Estimated Counterparty Coverage would have decreased from 30,879 counterparties (88.80 percent) to 28,234 counterparties (81.19 percent)—a decrease of 2,645 counterparties (a 7.61 percentage point decrease). The decrease would be lower at thresholds of $20 billion and $50 billion, at 2.80 percentage points and 5.71 percentage points, respectively.

The small decrease in Estimated AGNA Coverage and Estimated Transaction Coverage at higher thresholds potentially indicates that increasing the threshold to up to $100 billion may have a limited effect on the systemic risk and market efficiency policy considerations of SD regulation. Additionally, a higher threshold could enhance the benefits associated with a de minimis exception, for example by allowing entities to increase ancillary dealing activity. However, the decrease in Estimated Counterparty Coverage indicates that fewer entities would be transacting with registered SDs, and therefore, the counterparty protection benefits of SD regulation might be reduced if the de minimis threshold increased from $8 billion to $20 billion, $50 billion, or $100 billion.

Also, the Commission is preliminarily of the view that maintaining the status quo signals long-term stability of the de minimis threshold. This should provide for the efficient application of the SD Definition as it allows for long-term planning based on the current AGNA de minimis threshold.

(iv) Regulatory Coverage of NFC Swap Market

As indicated in Table 1 above, approximately 86 percent of NFC swaps involved at least one registered SD. Although that percentage is lower than the approximately 99 percent for other asset classes, as discussed below, the Commission is of the view that lower SD regulatory coverage is acceptable given the unique characteristics of the NFC swap market. Table 12 presents information on the category and SD registration status of In-Scope Entities with at least 10 NFC swap counterparties.

TABLE 12—CATEGORIES AND REGISTRATION STATUS
IN-SCOPE ENTITIES
[Minimum 10 NFC counterparties]

Category	Registered SDs	Unregistered entities
Bank/Bank subsidiary/Bank affiliate	39	12
Non-bank financial entity (*e.g.,* traders without physical assets)	2	8
Other (*e.g.,* commercial entities, such as consumers, merchants, producers, or traders of physical commodities, who appear to be engaging in some swap dealing activity)	3	22
Total	44	42

Analysis of SDR data indicates that were 86 In-Scope Entities with 10 or more NFC swap counterparties during the review period. As seen in Table 12, of these 86 entities, 44 are registered SDs and 42 are unregistered entities. Of the 42 unregistered entities, 22 have a primary business that is non-financial in nature. Specifically, these are commercial entities, such as consumers, merchants, producers, or traders of physical commodities, who appear to be engaging in some swap dealing activity. Moreover, half of the 12 unregistered banks or bank affiliates active in the NFC swap market are small or mid-sized in nature. Further, of the 42 unregistered entities, only seven have AGNA of swaps activity greater than $3 billion in IRS, CDS, FX swaps, and equity swaps, indicating that the majority of these entities are primarily or exclusively active in NFC swaps.[97] In addition to the fact that entering into NFC swaps is the primary swaps activity for the majority of these 42 entities, a review of these entities' transaction data indicates that they appear to provide NFC swaps generally to smaller end-user counterparties, potentially to permit these counterparties to hedge risks associated with physical commodities.

TABLE 13—NFC SWAP TRANSACTION STATISTICS
IN-SCOPE ENTITIES
[Minimum 10 NFC counterparties][98]

Statistic	Registered SDs (44 total)	Unregistered entities (42 total)
Transactions:		
Mean	12,638	2,195
Total	546,656	85,025
Total as Percent of all NFC transactions	86%	13%
Counterparties:		
Mean	176	40
Total	4,626	1,207
Total as Percent of all NFC counterparties	83%	22%

Table 13 indicates that registered SDs with 10 or more counterparties entered into 86 percent of the transactions in the NFC swap market, and faced 83 percent of counterparties in at least one transaction,[99] indicating that the existing $8 billion de minimis threshold has helped extend the benefits of SD registration to much of the NFC swap market. The trading activity of the 42 unregistered entities represents approximately 13 percent of the overall NFC swap market by transaction count. However, as compared to the existing 44 registered SDs with at least 10 counterparties, these 42 unregistered entities have significantly lower mean transaction and counterparty counts, indicating that they may only be providing ancillary dealing services to accommodate commercial end-user clients, and/or be engaged in non-swap dealing activity, such as hedging activity or proprietary trading.

Lacking notional-equivalent data for NFC swaps, it is unclear how many of the 42 entities would actually be subject to SD registration at any given de minimis threshold. It is possible that a portion of the swaps activity for some or all of these entities qualifies for the physical hedging exclusion in paragraph (6)(iii) of the SD Definition or is

[97] Five have greater than $8 billion in AGNA of swaps activity.

[98] The transaction and counterparty totals are not mutually exclusive, as some of the 44 registered SDs transact with the 42 unregistered entities. The 44 registered SDs also transact with some of the same counterparties as the 42 unregistered entities.

[99] Including existing registered SDs with fewer than 10 counterparties would only add 167 trades to the analysis.

otherwise not swap dealing activity, regardless of the de minimis threshold level.[100]

The Commission believes that the available data, related policy considerations, and comments from market participants [101] demonstrate that maintaining an $8 billion threshold is also appropriate with respect to the NFC swap asset class.

First, a reduced de minimis threshold likely would have negative impacts on NFC swap liquidity. Specifically, some entities may reduce dealing to avoid registration and its related costs. Many of the entities identified in Table 12 that are not registered as SDs are non-financial in nature and trade in physical commodity markets, or are small or mid-sized banks. Based on analysis of data and comments from swap market participants, it is likely that much of the swap dealing by these entities serves small or mid-sized end-users in their localized markets. Often, the end-users served by these entities do not have trading relationships with larger, financial-entity SDs, and the end-users rely on these small to mid-sized and/or non-financial entities to access liquidity provided by larger dealers.

For example, the 42 unregistered In-Scope Entities described above entered into NFC swaps with 1,207 counterparties, 1,174 of which were not registered SDs. Of these 1,174 entities, 705 had no transactions with registered SDs. Almost all of the 705 entities are commercial end-users.[102] Of the 52,396 NFC swaps that these 705 entities entered into, 48,813 were entered into with the 42 unregistered In-Scope Entities discussed above.[103] Therefore, it is likely that these 705 entities are generally relying on the 42 unregistered In-Scope Entities for access to the NFC swap market. It is unclear if these 705 entities would be able to establish trading lines with registered SDs if some of the 42 entities reduced or eliminated their NFC swap dealing activities.

If the de minimis threshold is decreased, the Commission is of the view that this would negatively affect swap market access and liquidity for commercial end-user counterparties of currently unregistered entities that are active in NFC swaps. Specifically, these entities may reduce or stop dealing activity if a lower threshold would subject them to SD registration.[104] The swap dealing activity of unregistered entities dealing in NFC swaps is likely a smaller part of those entities' overall business activities, and may not support the costs associated with SD registration and compliance.[105]

Generally, a reduction in the threshold could negatively affect the ability of these entities to provide ancillary services involving swap transactions, a stated benefit for having a de minimis exception. Further, if the threshold is maintained at $8 billion, it is possible that unregistered entities that currently limit trading activity to below $3 billion may increase dealing volumes to levels closer to $8 billion, potentially increasing liquidity in the NFC swap market. As the Commission has stated:

> The futures and swaps markets are essential to our economy and the way that businesses and investors manage risk. Farmers, ranchers, producers, commercial companies, municipalities, pension funds, and others use these markets to lock in a price or a rate. This helps them focus on what they do best: innovating, producing goods and services for the economy, and creating jobs. The CFTC works to ensure these hedgers and other market participants can use markets with confidence.[106]

Allowing small to mid-sized non-financial entities with a presence in the physical commodity markets to provide ancillary services involving swap transactions helps fulfill this goal.

Second, even if the threshold were decreased, it is unclear if or to what extent the 2017 Counterparty Coverage statistic of 86 percent would increase for NFC swaps since several of those entities likely already have less than $3 billion in AGNA of swap dealing activity. Additionally, as discussed above, many of these entities would likely reduce activity to remain below the SD de minimis threshold, further reducing any increase in Estimated Counterparty Coverage from a lower threshold.

Third, many of the entities engaged in limited swap dealing activity for NFC swaps appear to have a unique role in the market in that their primary business is generally non-financial in nature and the swap dealing activity is ancillary to their primary role in the market. Further, these firms generally pose less systemic risk than financial market SDs.[107] For these reasons, the Commission believes that there are strong public policy arguments not to require that all of these entities register with the Commission.

Fourth, although it has not conducted an analysis of AGNA activity in NFC swaps,[108] the Commission is of the preliminary view that increasing the de minimis threshold could potentially lead to fewer entities being required to register as SDs due to their NFC swap market activity. This could reduce the number of entities transacting with registered SDs, and therefore also reduce the benefits of those SD regulations concerned with counterparty protections.

Preliminarily, the Commission does not believe that decreasing or increasing the de minimis threshold would have much benefit for the NFC swap market. Rather, there is a concern that a change in the threshold would cause harm to that market.

(v) Setting an $8 Billion Threshold Avoids Potential Administrative Burdens

The Commission notes that setting the de minimis threshold at $8 billion would allow persons to continue to use existing calculation procedures and business processes that are geared towards the $8 billion threshold. Modifying the threshold could require entities to revise monitoring processes, modify internal systems, and amend policies and procedures tied to an $8 billion threshold, leading to increased costs. Further, as discussed, the Commission expects that maintaining an $8 billion threshold would foster the efficient application of the SD Definition by providing continuity and addressing the uncertainty associated with the end of the phase-in period.

Based on the available data and policy considerations discussed above, the Commission proposes to maintain the de minimis threshold for AGNA of swap dealing at $8 billion.

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[100] Hypothetically, if all 42 entities registered, the percentage of all NFC swaps facing at least one registered SD would rise from approximately 86 percent to 98 percent.

[101] *See* Letters from BP, CDE, CMC, EDF, EEI/EPSA, FSR, IIB, IECA, ISDA, NGSA, and SIFMA, *supra* note 58.

[102] The 705 entities comprise 12.6 percent of the 5,578 counterparties who entered into NFC swaps.

[103] The 48,413 NFC swaps comprise 7.6 percent of the 633,943 NFC swaps entered into during the review period.

[104] Comments from market participants have specifically indicated that some entities would reduce or stop dealing activity if the de minimis threshold is reduced. *See generally* Letters from BP, CMC, EDF, IIB, and NGSA; Final Staff Report, *supra* note 24, at 11–12, 16–17 (citing comment letters submitted in response to Preliminary Staff Report, *supra* note 21).

[105] *See generally* Letters from BP, CDE, CMC, EDF, EEI/EPSA, FSR, IIB, IECA, ISDA, NGSA, and SIFMA, *supra* note 58; Final Staff Report, *supra* note 24, at 11–12, 16–17 (citing comment letters submitted in response to Preliminary Staff Report, *supra* note 21).

[106] CFTC Responsibilities, available at *https://www.cftc.gov/About/MissionResponsibilities/index.htm*.

[107] *See e.g.,* Letter from CDE, *supra* note 58; Final Staff Report, *supra* note 24, at 12 (citing comment letters submitted in response to Preliminary Staff Report, *supra* note 21).

[108] As discussed above in section II.A.1.i, there were challenges in calculating notional amounts for NFC swaps.

3. Request for Comments

The Commission requests comments on the following questions. To the extent possible, please quantify the impact of issues discussed in comments, including costs and benefits, as applicable.

(1) Based on the data and related policy considerations, is an $8 billion de minimis threshold appropriate? Why or why not?

(2) Should the de minimis threshold be reduced to $3 billion? Why or why not?

(3) Should the de minimis threshold be increased? If so, to what threshold? Why or why not?

(4) Are the assumptions discussed above regarding a $3 billion de minimis threshold, an $8 billion de minimis threshold, or a higher de minimis threshold accurate, including, but not limited to, compliance costs and market liquidity assumptions?

(5) As an alternative or in addition to maintaining an $8 billion threshold, should the Commission consider a tiered SD registration structure that would establish various exemptions from SD compliance requirements for SDs whose AGNA of swap dealing activity is between the $3 billion and $8 billion?

(6) What is the impact of the de minimis threshold level on market liquidity? Are there entities that would increase their swap dealing activities if the Commission raised the de minimis exception, or decrease their swap dealing activities if the Commission lowered the threshold? How might these changes affect the swap market?

(7) Are there additional policy or statutory considerations underlying SD regulation or the de minimis exception that the Commission should consider?

(8) Have there been any structural changes to the swap market such that the policy considerations have evolved since the adoption of the SD Definition?

(9) Are entities curtailing their swap dealing activity to avoid SD registration at $8 billion or $3 billion thresholds, and if so, what impact is that having on the swap market? Are certain asset classes or product types more affected by such curtailed dealing activity than others?

(10) Does registration as an SD allow persons to substantially increase their swap dealing activity, or is increased swap dealing activity constrained by capital requirements at the firm level and other considerations?

(11) Should an entity's AGNA of swap dealing activity continue to be tested against the de minimis threshold for any rolling 12-month period, only for calendar year periods, or for some other regular 12-month period such as quarterly or semi-annual testing?

(12) What are the benefits and detriments to using AGNA of swap dealing activity as the relevant criterion for SD registration, as compared to other options, including, but not limited to, entity-netted notional amounts or credit exposures?

B. Swaps Entered Into by Insured Depository Institutions in Connection With Loans to Customers

1. Background

The CEA provides that in no event shall an IDI be considered to be an SD to the extent it offers to enter into a swap with a customer in connection with originating a loan with that customer.[109] With respect to the statutory exclusion, the Commissions jointly adopted paragraph (5) of the SD Definition, which allows an IDI to exclude—when determining whether it is an SD—certain swaps it enters into with a customer in connection with originating a loan to that customer (the ''IDI Swap Dealing Exclusion'').[110]

For a swap to be considered to have ''been entered into . . . in connection with originating a loan,'' the IDI Swap Dealing Exclusion requires that: (1) The IDI enter into the swap no earlier than 90 days before and no later than 180 days after execution of the loan agreement (or transfer of principal); [111] (2) the rate, asset, liability, or other notional item underlying the swap be tied to the financial terms of the loan or be required as a condition of the loan to hedge risks arising from potential changes in the price of a commodity; [112] (3) the duration of the swap not extend beyond termination of the loan; [113] (4) the IDI be the source of at least 10 percent of the principal amount of the loan, or the source of a principal amount greater than the notional amount of swaps entered into by the IDI with the customer in connection with the loan; [114] (5) the AGNA of swaps entered into in connection with the loan not exceed the principal amount outstanding; [115] (6) the swap be reported as required by other CEA provisions if it is not accepted for clearing; [116] (7) the transaction not be a sham, whether or not the transaction is intended to qualify for the IDI Swap Dealing Exclusion; [117] and (8) the loan not be a synthetic loan, including, without limitation, a loan credit default swap or a loan total return swap.[118] A swap that meets the above requirements would not be considered when assessing whether a person is an SD.

Based on information gained from market participants,[119] as well as analysis of data submitted to SDRs, the Commission believes that the IDI Swap Dealing Exclusion: (1) Has unnecessarily restrictive conditions; (2) is not clear in certain instances; and (3) limits the ability of IDIs to provide swaps that would allow their customers to properly hedge risks associated with bank loans. In general, these issues make it more difficult for IDIs that are not registered as SDs to provide swaps to loan customers because of the concern that certain swaps would not qualify for the IDI Swap Dealing Exclusion. Certain IDIs are restricting loan-related swaps because of the potential that such swaps would have to be counted towards an IDI's de minimis threshold, leading the IDI to register as an SD and incur registration-related costs. The restrictions on loan-related swaps by IDIs may result in reduced availability of swaps for the loan customers of these IDIs, potentially hampering the ability of end-user borrowers to enter into hedges in connection with their loans.

The Commission is not at this time proposing to amend the IDI Swap Dealing Exclusion in paragraph (5) of the SD Definition. As discussed above, pursuant to requirements of section 712(d)(1) of the Dodd-Frank Act, the CFTC and SEC jointly adopted the IDI Swap Dealing Exclusion in paragraph (5) as part of the definition of what constitutes swap dealing activity. Rather than proposing to revise the scope of activity that constitutes swap dealing, the Commission is proposing to amend paragraph (4) of the SD Definition, which addresses the de minimis exception.[120] In particular, the

[109] 7 U.S.C. 1a(49)(A).

[110] 17 CFR 1.3, Swap dealer, paragraph (5).

[111] 17 CFR 1.3, Swap dealer, paragraph (5)(i)(A).

[112] 17 CFR 1.3, Swap dealer, paragraph (5)(i)(B).

[113] 17 CFR 1.3, Swap dealer, paragraph (5)(i)(C).

[114] 17 CFR 1.3, Swap dealer, paragraph (5)(i)(D).

[115] 17 CFR 1.3, Swap dealer, paragraph (5)(i)(E).

[116] 17 CFR 1.3, Swap dealer, paragraph (5)(i)(F).

[117] 17 CFR 1.3, Swap dealer, paragraph (5)(iii)(A).

[118] 17 CFR 1.3, Swap dealer, paragraph (5)(iii)(B).

[119] *See, e.g.,* Letters from Chatham, FSR, and Northern Trust, *supra* note 58; Final Staff Report, *supra* note 24, at 17 (citing comment letters submitted in response to Preliminary Staff Report, *supra* note 21).

[120] A joint rulemaking is not required with respect to changes to the de minimis exception-related factors. 77 FR at 30634 n.464 (''We do not interpret the joint rulemaking provisions of section 712(d) of the Dodd-Frank Act to require joint rulemaking here, because such an interpretation would read the term ''Commission'' out of CEA section 1a(49)(D) (and Exchange Act section 3(a)(71)(D)), which themselves were added by the Dodd-Frank Act.''). As noted above, pursuant to section 712(a)(1) of the Dodd-Frank Act, the Commission is consulting with the SEC and

Commission is proposing to add specific factors that an IDI can consider when assessing whether swaps entered into with customers in connection with loans to those customers must be counted towards the IDI's de minimis calculation. The IDI could assess these factors and exclude qualifying swaps from the de minimis calculation regardless of whether the swaps would qualify for the IDI Swap Dealing Exclusion.

Specifically, the Commission is proposing new paragraph (4)(i)(C) of the SD Definition, which would except from the calculation of the de minimis threshold certain loan-related swaps entered into by IDIs (the ''IDI De Minimis Provision''). The IDI De Minimis Provision would have requirements that are similar to the IDI Swap Dealing Exclusion, but would encompass a broader scope of loan-related swaps. The proposed IDI De Minimis Provision includes: (1) A lengthier timing requirement for when the swap must be entered into; (2) an expansion of the types of swaps that are eligible; (3) a reduced syndication percentage requirement; (4) an elimination of the notional amount cap; and (5) a refined explanation of the types of loans that would qualify.

The Commission notes that any swap that meets the requirements of the IDI Swap Dealing Exclusion in paragraph (5) of the SD Definition would also meet the requirements of the proposed IDI De Minimis Provision. However, proposed paragraph (4)(i)(C) provides additional flexibility as to what swaps need to be counted towards an IDI's de minimis calculation. The Commission believes that the broader scope of the proposed IDI De Minimis Provision, described in further detail below, may advance the policy objectives of the de minimis exception by allowing some IDIs to provide swaps to customers in connection with loans without having to register as an SD. In other words, the proposed provision would facilitate swap dealing in connection with other client services and may encourage more IDIs to participate in the swap market—two policy objectives of the de minimis exception. Greater availability of loan-related swaps may also improve the ability of customers to hedge their loan-related exposure. The Commission also believes that the more flexible provisions of the proposed IDI De Minimis Provision may allow for more focused, efficient application of the SD Definition to the activities of IDIs that offer swaps in connection with loans.

Commission staff reviewed data to assess the potential impact of the IDI De Minimis Provision. Table 14 below provides information regarding the AGNA of swaps activity entered into by entities that were identified as IDIs [121] with at least 10 counterparties in IRS, CDS, FX swaps, and equity swaps.[122] The table summarizes the AGNA of swaps activity of smaller IDIs within various AGNA ranges from $1 billion to $50 billion. Note that persons that are affiliated with IDIs were not included in this analysis (*e.g.,* broker-dealer subsidiaries, other non-IDI affiliates).

TABLE 14—IDI ACTIVITY (RANGES BETWEEN $1 Bn AND $50 Bn) IRS, CDS, FX SWAPS, AND EQUITY SWAPS

[Minimum 10 counterparties]

Range of AGNA of swaps activity ($Bn)	Number of IDIs		AGNA of swaps activity [123]		
	Registered as SDs	Not registered as SDs	Total with at least one registered SD ($Bn)	Total with no registered SDs ($Bn)	Total with no registered SDs (percent of overall market)
1–3	0	13	13.5	8.9	0.004
3–8	0	10	37.5	16.5	0.007
8–20	0	4	42.6	6.5	0.003
20–50	2	3	160.7	14.2	0.006

As seen in Table 14, there are a number of IDIs that have 10 or more counterparties and are active in the swap market at lower AGNAs.[124] For example, there are 13 IDIs that are not currently registered as SDs and have between $1 billion and $3 billion in AGNA of swaps activity. Based on market participant comments [125] and review of the trading data, the Commission believes that many of the unregistered entities engaged in $1 billion to $50 billion in AGNA of swaps activity are entering into swaps with customers in connection with loans to those customers. Additionally, many of these IDIs could be restricting their swaps activity because the IDI Swap Dealing Exclusion limits, or is ambiguous regarding, which swaps are considered to be ''in connection with'' originating a loan (and therefore are excluded from the SD analysis).

As Table 14 indicates, the AGNA of swaps activity that these unregistered IDIs enter into with other non-registered entities is low relative to the total swap market analyzed. For example, there are 10 IDIs that have between $3 billion and $8 billion each in AGNA of swaps activity—none of which are registered SDs. In aggregate, these IDIs entered into approximately $54.0 billion in AGNA of swaps activity. However, only $16.5 billion of that activity was between two entities not registered as SDs, representing only 0.007 percent of the total AGNA of swaps activity during the review period. Depending on the range of AGNA of swaps activity examined, the level of activity occurring between two entities not registered as SDs (at least one of which is an IDI) varies between only approximately 0.003 percent and 0.007 percent of the total AGNA of swaps activity.

Given those low percentages, the Commission is of the view that the policy benefits of SD regulation likely would not be significantly diminished if the proposed IDI De Minimis Provision

prudential regulators regarding the changes to the de minimis exception discussed in this Proposal.

[121] Based on information on the Federal Deposit Insurance Corporation website, available at *https://www5.fdic.gov/idasp/advSearch_warp_download_all.asp*.

[122] As discussed above in section II.A.1.i, there were challenges in calculating notional amounts for NFC swaps. Therefore, the analysis in this section focuses on the other asset classes.

[123] The AGNA totals are not mutually exclusive across rows, and therefore cannot be added together without double counting. For example, some IDIs in the $1 billion to $3 billion range transact with IDIs in the $3 billion to $8 billion range. Transactions that involve entities from multiple rows are reported in both rows.

[124] Although staff did not manually identify the category of every counterparty with less than $1 billion of activity, there are at least 200 entities generally identified as banks, each with AGNA of swaps activity below $1 billion and with at least 10 counterparties.

[125] *See generally supra* note 119.

is adopted and some of the unregistered IDIs marginally expand the number and AGNA of swaps they enter into with customers in connection with loans to those customers. This low percentage of swap activity between two unregistered entities may also indicate that the limits of the IDI Swap Dealing Exclusion are restricting certain IDIs from taking full advantage of the exclusion. Further, though these entities are active in the swap market, the Commission is of the view that their activity poses less systemic risk as compared to larger IDIs because of their limited AGNA of swaps activity as compared to the overall size of the market. Generally, the reduced potential for risk, combined with the potential that end-user loan customers may benefit from increased access to loan-related swaps, provides support for the proposed IDI De Minimis Provision.

The proposed rule text described below may provide greater ability for IDIs to not count loan-related swaps towards their de minimis threshold calculations, potentially increasing the availability of loan-related swaps for their borrowers and advancing the stated policy goals of the de minimis exception.

2. Proposal

(i) Timing Requirement

Pursuant to the IDI Swap Dealing Exclusion in paragraph (5) of the SD Definition, if an IDI enters into a swap in connection with originating a loan to a customer, that swap must be entered into no more than 90 days before or 180 days after the date of execution of the loan agreement (or date of transfer of principal to the customer) for the IDI Swap Dealing Exclusion to apply.[126]

The Commission is proposing new paragraph (4)(i)(C)(*1*) of the SD Definition, which, for purposes of an IDI's de minimis calculation, does not include the 180-day restriction. Therefore, an IDI would not have to count towards its de minimis calculation any swap entered into in connection with a loan after the date of execution of the loan agreement (or date of transfer of principal). Additionally, the Commission is proposing to generally maintain the restriction for swaps entered into more than 90 days before loan funding, except where an executed commitment or forward agreement for the applicable loan exists, in which case the 90-day restriction would not apply.

The Commission believes that the timing restrictions in the IDI Swap Dealing Exclusion limit the ability of IDIs to effectively provide hedging solutions to end-user borrowers. Depending on market conditions or business needs, it is not uncommon for a borrower to wait for a period of time greater than 180 days after a loan is originated to enter into a hedging transaction. For example, if an IDI provides a loan with a 10-year term, and the borrower chooses to wait until 181 days after the loan to hedge interest rate risk underlying that loan, the swap would not qualify for the IDI Swap Dealing Exclusion. However, under the proposed IDI De Minimis Provision, if the borrower entered into the hedge 181 days after execution, the swap would not have to be counted towards an IDI's de minimis calculation. Given that many of the entities that the Commission expects to utilize the IDI De Minimis Provision are small and mid-sized banks, not including this timing restriction could lead to increased swap availability for the borrowing customers that rely on such IDIs for access to swaps (and thereby advance a policy objective of the de minimis exception).

For a swap to be considered ''in connection with'' a loan for the purposes of the IDI De Minimis Provision, the Commission believes there should be a reasonable expectation that the loan will be entered into with a customer. Therefore, the proposed 90-day restriction is suitable because it requires that the swap be entered into within an appropriate period of time prior to the execution of the loan. However, where an executed commitment or forward agreement to loan money exists between the IDI and the borrower prior to the 90-day limit, the Commission believes a reasonable expectation for the loan is demonstrated. Accordingly, for purposes of the IDI De Minimis Provision, the Commission is proposing that an IDI may enter into a swap with a customer, in connection with a loan to that customer, more than 90 days prior to the execution of the loan where there is an executed commitment or forward agreement to loan money.

(ii) Relationship of Swap to Loan

The IDI Swap Dealing Exclusion requires that the rate, asset, liability, or other notional item underlying such swap is, or is directly related to, a financial term of such loan or that such swap is required, as a condition of the loan under the insured depository institution's loan underwriting criteria, to be in place in order to hedge price risks incidental to the borrower's business and arising from potential changes in the price of a commodity (other than an excluded commodity).[127] As explained in the SD Definition Adopting Release, the first category is for ''adjusting the borrower's exposure to certain risks directly related to the loan itself, such as risks arising from changes in interest rates or currency exchange rates,'' and the second category is to ''mitigate risks faced by both the borrower and the lender, by reducing risks that the loan will not be repaid.'' [128] Therefore, both categories of swaps are directly related to repayment of the loan.

The Commission is proposing new paragraph (4)(i)(C)(*2*), which states that for purposes of the IDI De Minimis Provision, a swap is ''in connection with'' a loan if the rate, asset, liability or other term underlying such swap is, or is related to, a financial term of such loan, or if such swap is required as a condition of the loan, either under the insured depository institution's loan underwriting criteria or as is commercially appropriate, in order to hedge risks incidental to the borrower's business (other than for risks associated with an excluded commodity) that may affect the borrower's ability to repay the loan.

The Commission is of the view that the proposed language would further the policy objectives of the de minimis exception by providing flexibility to reflect the actual market practices of end-users who hedge their risk. The first provision refers to a ''term'' rather than a ''notional item,'' and does not include the word ''directly,'' for added flexibility. Because the second provision in the proposed language allows for swaps that are not explicitly required as a condition of the IDI's underwriting criteria, it provides flexibility for IDIs to enter into certain swaps with borrowers to hedge risks (*e.g.,* commodity price risks) that may not have been evident at the time the loan was entered into or that are determined based on the unique characteristics of the borrower rather than the standard bank underwriting criteria. For example, physical commodity-related hedging decisions may not be made at the time the loan is entered into, but rather at a future point when inventory is purchased or produced. Additionally, in these cases, the underwriting criteria may not explicitly require that the borrower enter into swaps to hedge commodity price risk. This additional flexibility allows IDIs to enter into swaps, as commercially appropriate, with borrowers to hedge risks—in this case,

[126] 17 CFR 1.3, Swap dealer, paragraph (5)(i)(A).

[127] *See* 17 CFR 1.3, Swap dealer, paragraph (5)(i)(B); 77 FR at 30622.

[128] 77 FR at 30622.

commodity price risk—that may affect the borrower's ability to repay the loan without the limitation that such swaps must be contemplated in the original underwriting criteria in order not to be counted towards an IDI's de minimis calculation. The Commission believes that this proposal benefits both IDIs and customers and serves the purposes of the de minimis exception by allowing for greater use of swaps in effective and dynamic hedging strategies. The Commission also believes that this aspect of the proposed new provision would facilitate efficient application of the SD Definition by reducing the concern that ancillary dealing activity may subject the IDI to SD registration-related requirements.

(iii) Syndicated Loan Requirement

For a loan-related swap with a notional amount equal to the full principal amount of the loan to qualify for the IDI Swap Dealing Exclusion, an IDI must be responsible for at least 10 percent of a syndicated loan.[129] In the proposed IDI De Minimis Provision, new paragraph (4)(i)(C)(*4*)(*i*) requires an IDI to be, under the terms of the agreements related to the loan, the source of at least five percent of the maximum principal amount under the loan for a related swap not to be counted towards its de minimis calculation.[130] In addition to this different syndication requirement, proposed paragraph (4)(i)(C)(*4*)(*i*) also includes a single provision that consolidates the separate provisions in paragraphs (5)(i)(D)(*1*) and (5)(i)(D)(*2*) of the IDI Swap Dealing Exclusion.

For loans that are widely syndicated, lenders may not have control over their final share of the syndication. It is not uncommon for borrowers to enter into negotiations regarding related swaps before the underlying loan has been executed. The need to have at least a 10 percent share of the syndicate can make it more difficult for IDIs to determine, in advance, whether a swap they have negotiated with a borrower will qualify for the IDI Swap Dealing Exclusion. The lower syndication threshold of five percent in this Proposal provides additional flexibility for IDIs to enter into a greater range of loan-related swaps without having those swaps count towards their de minimis calculations.

The Commission is also proposing to add paragraph (4)(i)(C)(*4*)(*ii*), which states that if an IDI is a source of less than a five percent of the maximum principal amount of the loan, the notional amount of all swaps the IDI enters into in connection with the financial terms of the loan cannot exceed the principal amount of the IDI's loan in order to qualify for the IDI De Minimis Provision. This provision is similar to existing paragraph (5)(i)(D)(*3*) of the IDI Swap Dealing Exclusion, except that it uses a five percent participation threshold.

(iv) Total Notional Amount of Swaps

The IDI Swap Dealing Exclusion requires that the AGNA of swaps entered into in connection with the loan not exceed the principal amount outstanding.[131] The Commission is proposing to not include this restriction in the IDI De Minimis Provision in the case of IDIs responsible for at least five percent of the loan principal.[132] It is not uncommon for an IDI-related loan to have related swaps that hedge multiple categories of exposure. For example, it is possible for a borrower to hedge some combination of interest rate, foreign exchange, and/or commodity risk in connection with a loan. The Commission notes that the AGNA of such swaps entered into in connection with the loan could exceed the principal amount outstanding; therefore, this restriction might unduly restrict the ability of certain IDIs to provide loan-related swaps to their borrowing customers to more effectively allow the customers to hedge loan-related risks. Not including this restriction in the IDI De Minimis Provision would thereby advance the policy objectives of the de minimis exception noted above.

(v) Types of Loans

The requirements of the IDI Swap Dealing Exclusion do not account for types of credit financings that are similar to loans (*e.g.,* credit enhanced bonds, letters of credit, leases, revolving credit facilities). When the Commission adopted the IDI Swap Dealing Exclusion, it generally referenced existing common law definitions for the term ''loan,'' [133] stating that ''[r]ather than examine at this time the many particularized examples of financing transactions cited by some commenters, the term 'loan' for purposes of this exclusion should be interpreted in accordance with this settled legal meaning.'' [134] Additionally, to prevent evasion, the Commission adopted restrictions stating that the term ''loan'' shall not include any synthetic loan, including, without limitation, a loan credit default swap or loan total return swap, and stating that the term ''loan'' does not include sham loans, whether or not intended to qualify for the exclusion from the definition of the term swap dealer in this rule.[135]

Similarly, to prevent evasion, the Commission is proposing new paragraph (4)(i)(C)(*6*), which states that the IDI De Minimis Provision shall not apply to any transaction that is a sham and shall not apply to any synthetic loan. The Commission believes it is appropriate to continue to require that swaps associated with synthetic loans be counted towards the de minimis exception. However, for added simplicity, the Commission has not included the provision specifically listing ''a loan credit default swap or loan total return swap.'' The Commission notes that certain loan credit default swaps and loan total return swaps may be valid loan structures. Nonetheless, to the extent a credit default swap, loan total return swap, or any other financial instrument would be considered a synthetic lending arrangement, swaps entered into in connection with such a synthetic lending arrangement would not qualify for the IDI De Minimis Provision.

The Commission is of the view that swaps entered into in connection with non-synthetic lending arrangements that are commonly known in the market as ''loans'' would generally not need to be counted towards an IDI's de minimis calculation if the other requirements of the IDI De Minimis Provision are also met. Although the Commission is not proposing to assess individual categories of transactions to determine whether they qualify as loans, it recognizes the common law definition cited in the SD Definition Adopting Release. Additionally, the Commission's regulations in part 75 (regarding ''Proprietary Trading and Certain Interests in and Relationships with Covered Funds'') define a loan as any loan, lease, extension of credit, or

[129] 17 CFR 1.3, Swap dealer, paragraph (5)(i)(D).

[130] Moreover, as discussed below in section II.B.2.iv, if the IDI is responsible for at least five percent of a syndicated loan, the Commission is proposing to not include the restriction that the AGNA of swaps entered into in connection with the loan not exceed the principal amount outstanding.

[131] 17 CFR 1.3, Swap dealer, paragraph (5)(i)(E).

[132] As discussed above in section II.B.2.iii in connection with proposed paragraph (4)(i)(C)(*4*)(*ii*), if an IDI is a source of less than a five percent of the maximum principal amount of the loan, the notional amount of all swaps the IDI enters into in connection with the financial terms of the loan cannot exceed the principal amount of the IDI's loan.

[133] 77 FR at 30622 n.326 (''To constitute a loan there must be (i) a contract, whereby (ii) one party transfers a defined quantity of money, goods, or services, to another, and (iii) the other party agrees to pay for the sum or items transferred at a later date.'' (internal citations omitted)).

[134] *Id.* at 30622.

[135] 17 CFR 1.3, Swap dealer, paragraph (5)(iii). *See* 77 FR at 30622, 30708.

secured or unsecured receivable that is not a security or derivative.[136] The Commission is of the view that this definition would also apply for purposes of the IDI De Minimis Provision. Generally, allowing swaps entered into in connection with other forms of financing commonly known as loans not to be counted towards the de minimis threshold calculation better reflects the breadth of lending products and credit financings that borrowers often utilize and thereby advances the policy objectives of the de minimis exception noted above.

(vi) Additional Requirements

The remaining requirements for the IDI De Minimis Provision are substantively identical to the IDI Swap Dealing Exclusion provisions in paragraph (5) of the SD Definition.

Proposed paragraph (4)(i)(C)(*3*) is identical to paragraph (5)(i)(C), stating that the termination date of the swap cannot extend beyond termination of the loan.

Proposed paragraph (4)(i)(C)(*5*) states that a swap is considered to have been entered into in connection with originating a loan to a customer if the IDI: (1) Directly transfers the loan amount; (2) is part of a syndicate of lenders that is the source of the loan amount; (3) purchases or receives a participation in the loan; or (4) under the terms of the agreements related to the loan, is, or is intended to be, the source of funds for the loan. This provision is similar to paragraph (5)(ii) of the IDI Swap Dealing Exclusion, except that it also encompasses a loan-related swap if the IDI ''is intended to be'' the source of the funds. This difference is consistent with the timing requirement provision, discussed above in section II.B.2.i, which does not include the 90 days before execution of the loan restriction in situations where an executed commitment or forward agreement for the applicable loan exists.

3. Request for Comments

The Commission requests comments on the following questions. To the extent possible, please quantify the impact of issues discussed in the comments, including costs and benefits, as applicable.

(1) Based on the data and related policy considerations, is the proposed IDI De Minimis Provision appropriate? Why or why not?

(2) How will the proposed IDI De Minimis Provision impact IDIs who enter into swaps with customers in connection with loans? Will IDIs enter into more swaps with loan customers as result of the proposed IDI De Minimis Provision?

(3) If the underlying loan is called, put, accelerated, or if it goes into default before the scheduled termination date, should the related swap be required to be terminated to remain eligible for the IDI De Minimis Provision?

(4) Are there circumstances that can be anticipated at the time of loan origination that would support permitting the termination date of the swap to extend beyond termination of the loan?

(5) Does the provision in proposed paragraph (4)(i)(C)(*1*) referencing ''executed commitment'' or ''forward agreement'' sufficiently reflect market practice regarding how swaps may be entered into in connection with a loan in advance of the loan being executed?

(6) Is it common for an IDI to have as low as five percent participation in a syndicated loan and also provide swaps in connection with the loan?

(7) Is it common for the AGNA of loan-related swaps to exceed the outstanding principal amount of the loan? In what circumstances?

(8) Should the Commission define ''synthetic loan''? How should that term be defined?

(9) Are there circumstances in which a loan credit default swap or loan total return swap would not be considered a synthetic lending arrangement?

(10) If an IDI would have to register as an SD but for the IDI De Minimis Provision, should that IDI be required to provide notice to the Commission, Commission staff, or the National Futures Association? Alternatively, to utilize the proposed IDI De Minimis Provision, should IDIs be required to directly reference the related loan in the written swap confirmation?

C. Swaps Entered Into To Hedge Financial or Physical Positions

1. Background and Proposal

In adopting the SD Definition, the Commission provided that, subject to certain requirements, swaps entered into by a person for purposes of hedging physical positions are not considered in determining whether the person is an SD (the ''Physical Hedging Exclusion'').[137] However, the regulatory text does not include a specific exclusion for swaps entered into for purposes of hedging financial positions. Rather, the Commission stated that swaps entered into for hedging purposes that did not fall within the SD Definition, including those that qualify for an exclusion in the SD Definition, would not count towards the de minimis threshold.[138]

Based on feedback from swap market participants during implementation of the SD regulations and in connection with Project KISS,[139] the Commission believes that although there is a specific exclusion for swaps entered into in connection with hedging physical positions, the absence of an explicit exclusion in the regulations for swaps entered into for purposes of hedging financial positions has caused uncertainty in the marketplace regarding whether swaps that hedge, for example, interest rate risk, credit risk, or foreign exchange risk, would also need to be counted towards a person's de minimis threshold. This uncertainty could cause inefficient application of the SD Definition by leading some persons to: (1) Count swaps that they enter into to hedge financial positions as swap dealing activity for purposes of assessing whether the persons would need to register as SDs; or (2) not enter into swaps to hedge financial positions for fear of exceeding the de minimis threshold.

The Commission is of the view that an explicit statement of the factors that indicate when a swap entered into to hedge financial or physical positions (''hedging swap'') is excluded from counting towards the de minimis threshold would help swap market participants know with greater certainty what swaps have to be counted towards the de minimis threshold, and thereby help market participants apply the SD Definition more efficiently. The Commission is proposing to add a hedging exception in new paragraph (4)(i)(D) of the SD Definition, permitting entities to not count towards their de minimis calculations hedging swaps, when such swaps meet certain conditions (the ''Hedging De Minimis Provision''). Similar to the proposed IDI De Minimis Provision, the Hedging De Minimis Provision does not revise the scope of activity that constitutes swap dealing. Rather, the new provision would set out explicit factors an entity can consider for purposes of assessing whether hedging swaps must be counted towards the de minimis

[136] 17 CFR 75.2(s).

[137] 17 CFR 1.3, Swap dealer, paragraph ¶ (6)(iii).

[138] 77 FR at 30631 n.433 (''For purposes of the de minimis exception to the [SD Definition] . . . the relevant question in determining whether swaps count as dealing activity against the de minimis thresholds is whether the swaps fall within the [SD Definition] . . . . If hedging or proprietary trading activities did not fall within the definition, including because of the application of [paragraph (6) of the SD Definition in § 1.3], they would not count against the de minimis thresholds.'').

[139] *See* Letters from IIB, Western Union, and WU/GPS/AFEX, *supra* note 58.

calculation.[140] The Commission notes that any swap that meets the requirements of the Physical Hedging Exclusion in paragraph (6)(iii) of the SD Definition would also meet the requirements of the proposed Hedging De Minimis Provision, but meeting the requirements of the Physical Hedging Exclusion is not a prerequisite for application of the Hedging De Minimis Provision. In addition, as the Commission noted in the SD Definition Adopting Release, if a swap does not satisfy the criteria of the Hedging De Minimis Provision, this does not mean the swap is necessarily swap dealing activity.[141] Rather, such hedging activity should then be considered in light of all the other relevant facts and circumstances to determine whether the person is engaging in activity (*e.g.,* market making, accommodating demand) that brings the person within the SD Definition.

Proposed paragraph (4)(i)(D) states that to qualify for the Hedging De Minimis Provision, a swap must be entered into by a person for the primary purpose of reducing or otherwise mitigating one or more of the specific risks to which it is subject, including, but not limited to, market risk, commodity price risk, rate risk, basis risk, credit risk, volatility risk, correlation risk, foreign exchange risk, or similar risks arising in connection with existing or anticipated identifiable assets, liabilities, positions, contracts or other holdings of the person or any affiliate. Additionally, the person entering into the hedging swap must not: (1) Be the price maker of the hedging swap; (2) receive or collect a bid/ask spread, fee, or commission for entering into the hedging swap; and (3) receive other compensation separate from the contractual terms of the hedging swap in exchange for entering into the hedging swap.

The requirements that the person not be a price maker of the swap or receive compensation for the swap should ensure that the Hedging De Minimis Provision does not improperly exclude swap dealing activity. As discussed in the SD Definition Adopting Release, in connection with swaps that hedge physical positions:

> When a person enters into a swap for the purpose of hedging the person's own risks in specified circumstances, an element of the [SD] definition—the accommodation of the counterparty's needs or demands—is absent. Therefore, consistent with our overall interpretive approach to the definition, the activity of entering into such swaps (in the particular circumstances defined in the rule) does not constitute swap dealing. Providing an exception for such swaps from the [SD] analysis reduces costs that persons using such swaps would incur in determining if they are [SDs].[142]

The Commission believes that this rationale applies broadly to swaps that hedge both financial and physical positions. When the person is not the price maker of the hedging swap, or otherwise receiving compensation, the person is not accommodating the needs of a counterparty, such swap is generally not swap dealing activity, and therefore should not be counted for purposes of the de minimis exception. Adding this specific exception as a factor to be considered for purposes of the de minimis calculation provides additional clarity which advances the policy objectives of the de minimis threshold. In particular, the Commission believes that the scope of the Hedging De Minimis Provision would encourage greater use of swaps (*i.e.,* greater participation in the swap market) to hedge risks. Additionally, the proposed rule accounts for circumstances where entities may hedge risks using affiliates. The flexible terms of the Hedging De Minimis Provision should facilitate an efficient application of the SD Definition that is more focused on activity that is covered by the statutory and regulatory definition of swap dealing. As noted below, the Hedging De Minimis Provision contains elements to ensure that it does not improperly exclude swap dealing activity that should be counted against the de minimis threshold.

The SD Definition Adopting Release also states that, generally, swaps that hedge positions that were entered into as part of swap dealing activity would also not need to be counted towards a person's de minimis threshold calculation if they meet the requirements of the proposed exception.[143] The proposed Hedging De Minimis Provision is consistent with the CFTC's position in the SD Definition Adopting Release.

Lastly, the proposed Hedging De Minimis Provision also includes, in paragraphs (D)(*3*) through (D)(*5*), the following requirements that are in the Physical Hedging Exclusion: (1) The swap must be economically appropriate to the reduction of risks that may arise in the conduct and management of an enterprise engaged in the type of business in which the person is engaged; (2) the swap must be entered into in accordance with sound business practices; and (3) the swap is not in connection with activity structured to evade designation as an SD. The Commission believes that these requirements are also appropriate for this broader Hedging De Minimis Provision to ensure that swap dealing activity is not improperly being excluded from a person's de minimis threshold calculation.

2. Request for Comments

The Commission requests comments on the following questions. To the extent possible, please quantify the impact of issues discussed in the comments, including costs and benefits as applicable.

(1) Based on the policy considerations, is the proposed Hedging De Minimis Provision appropriate? Why or why not?

(2) Is the proposed Hedging De Minimis Provision too narrowly or broadly tailored?

(3) How will the proposed Hedging De Minimis Provision impact entities that enter into swaps to hedge financial or physical positions?

(4) The proposed Hedging De Minimis Provision would be used to determine whether a person has exceeded the AGNA threshold set forth in paragraph (4)(i)(A) of the SD Definition, whereas the Physical Hedging Exclusion in paragraph (6)(iii) of the SD Definition addresses when a swap is not considered in determining whether a person is an SD. How might this distinction impact how entities analyze their swap dealing activity and whether they would exceed the de minimis threshold?

D. Swaps Resulting From Multilateral Portfolio Compression Exercises

1. Background and Proposal

The Commission is proposing new paragraph (4)(i)(E) of the SD Definition, which would allow a person to exclude from its de minimis calculation swaps that result from multilateral portfolio compression exercises (''MPCE De

[140] *See* section II.B.1. As discussed, a joint rulemaking with the SEC is not required under the statute with respect to the de minimis exception-related factors. 77 FR at 30634 n.464.

[141] 77 FR at 30613.

[142] 77 FR at 30710.

[143] The CFTC stated that ''the relevant question in determining whether swaps count as dealing activity against the de minimis thresholds is whether the swaps fall within the [SD Definition] . . . . If hedging or proprietary trading activities did not fall within the definition . . . they would not count against the de minimis thresholds.'' *Id.* at 30631 n.433. DSIO later stated that back-to-back swaps should each undergo a facts and circumstances analysis to determine if they should be considered swap dealing activity. *See* Frequently Asked Questions (FAQ)—[DSIO] Responds to FAQs About Swap Entities (Oct. 12, 2012), available at *https://www.cftc.gov/idc/groups/public/@newsroom/documents/file/swapentities_faq_final.pdf.*

Minimis Provision'').[144] The MPCE De Minimis Provision is consistent with DSIO no-action relief issued on December 21, 2012 (''Staff Letter 12–62'').[145] Specifically, DSIO stated that it would not recommend that the Commission take enforcement action against any person for failure to include in its de minimis calculation the terminations of swaps (in whole or in part) or swaps entered into as replacement swaps as part of a multilateral portfolio compression exercise (as defined in paragraph 23.500(h) of the Commission's regulations). The relief provided was not time-limited.

The Commission concurs with the position taken in Staff Letter 12–62. Generally, multilateral portfolio compression allows swap market participants with large portfolios to ''net down'' the size and number of outstanding swaps between them. The Commission is of the view that this advances the policy considerations behind SD regulation by reducing counterparty credit risk, lowering the AGNA of outstanding swaps, and reducing operational risks by decreasing the number of outstanding swaps. The Commission understands that multilateral portfolio compression exercises do not permit participants to provide liquidity or set prices in the market. A participant in a multilateral portfolio compression exercise submits some criteria for its participation in the exercise (*e.g.,* credit or counterparty limits), but the outcome of a compression cycle will depend on several variables that the participants cannot know or control, such as the positions in counterparties' portfolios and the criteria set by other participants. Given this process, the Commission is of the view that multilateral portfolio compression exercise swaps generally do not involve any of the attributes the Commission has identified as indicative of swap dealing activity.[146] Further, the Commission notes that counting such swaps towards a person's de minimis threshold could discourage participation in multilateral portfolio compression exercises, reducing the market benefit of the risk reduction such exercises provide.

To advance the policy objectives of the de minimis exception discussed above, proposed paragraph (4)(i)(E) would allow a person to exclude from its de minimis calculation swaps that result from multilateral portfolio compression exercises. In particular, the MPCE De Minimis Provision's explicit statement that such swaps do not need to be counted towards the de minimis threshold would facilitate efficient application of the SD Definition. Moreover, adding this proposed exception to the regulatory text would therefore be consistent with the goals of Project KISS. Additionally, to ensure that the scope of this exception is not improperly exceeded, the proposed rule includes an anti-evasion provision.

2. Request for Comments

The Commission requests comments on the following questions. To the extent possible, please quantify the impact of issues discussed in the comments, including costs and benefits, as applicable.

(1) Is the proposed MPCE De Minimis Provision appropriate? Why or why not?

(2) Is the proposed MPCE De Minimis Provision too narrowly or broadly tailored? Are there additional restrictions or conditions that should apply in order for swaps resulting from multilateral portfolio compression exercises to not count towards a person's de minimis threshold?

(3) How will the proposed MPCE De Minimis Provision impact entities that enter into multilateral portfolio compression exercises?

E. Methodology for Calculating Notional Amounts

1. Background and Proposal

Given the potential variety of methods that could be used to calculate the notional amount for certain swaps, particularly for swaps where notional amount is not a contractual term of the transaction (*e.g.,* NFC swaps), the Commission is proposing new paragraph (4)(vii) of the SD Definition, which provides that the Commission may approve or establish methodologies for calculating notional amounts for purposes of determining whether a person exceeds the AGNA de minimis threshold. Further, the Commission is proposing to delegate to the Director of DSIO the authority to make such determinations.

In the SD Definition Adopting Release, the Commission did not prescribe specific calculation methodologies for notional amounts (except for leveraged swaps),[147] and in the context of calculating notional amounts to determine whether an entity was a major swap participant (''MSP''), the Commission explicitly stated that it ''contemplate[d] the use of industry standard practices.'' [148] Subsequent to issuance of the SD Definition Adopting Release, DSIO issued interpretive responses to frequently asked questions regarding calculating notional amounts for purposes of the de minimis exception (the ''DSIO FAQ Guidance'').[149]

Further, for purposes of reporting swaps to trade repositories, the Committee on Payments and Market Infrastructures (''CPMI'') and the Board of the International Organization of Securities Commissions (''IOSCO'') recently issued guidance regarding the definition, format, and usage of key over-the-counter derivative data elements, which included guidance on calculating certain notional amounts (the ''Technical Guidance'').[150] The calculation methodologies described in the Technical Guidance will be considered for adoption by the Commission in future rulemakings related to swap data reporting.[151] However, the Commission recognizes that the Technical Guidance does not necessarily address how notional amounts should be calculated for purposes of the de minimis exception under CFTC regulations.

The Commission notes that market participants have already requested clarity regarding how notional amounts should be calculated for NFC swaps for purposes of determining whether a person exceeds the AGNA de minimis

[144] Similar to the proposed IDI De Minimis Provision and the Hedging De Minimis Provision, the MPCE De Minimis Provision does not revise the scope of activity that constitutes swap dealing. Rather, the new provision sets out factors an entity can consider for purposes of assessing whether swaps resulting from multilateral portfolio compression exercises need to be counted towards the de minimis calculation.

[145] CFTC Staff Letter No. 12–62, *supra* note 54.

[146] *See, e.g.,* 77 FR at 30606–19 (*e.g.,* accommodating demand, market making, holding oneself out as a dealer in swaps, seeking to profit by providing liquidity, etc.).

[147] The Commission noted that ''effective notional'' should be used if the swap is leveraged or structurally enhanced. *See* 17 CFR 1.3, Swap dealer, paragraph (4)(i)(A); 77 FR at 30630.

[148] 77 FR at 30670 n. 902.

[149] *See* Frequently Asked Questions (FAQ)—[DSIO] Responds to FAQs About Swap Entities (Oct. 12, 2012), available at *https://www.cftc.gov/idc/groups/public/@newsroom/documents/file/swapentities_faq_final.pdf.*

[150] *See* CPMI and Board of IOSCO, Technical Guidance—Harmonisation of critical OTC derivatives data elements (other than UTI and UPI) (Apr. 2018), available at *https://www.bis.org/cpmi/publ/d175.pdf.*

[151] *See* Technical Guidance, *supra* note 150, at 7 (''The responsibility for issuing requirements for market participants on the reporting of OTC derivative transactions to [trade repositories] falls within the remit of the relevant authorities. Therefore, this document does not represent guidance on which critical data elements will be required to be reported in a given jurisdiction. Rather, if such data elements are required to be reported in a given jurisdiction, this document represents guidance to the authorities in that jurisdiction on the definition, the format and the allowable values that would facilitate consistent aggregation at a global level.'').

threshold.[152] Additionally, the notional amount calculation methodologies described in the DSIO FAQ Guidance, the methodologies used by market participants as industry standard practice, and the methodologies described in the Technical Guidance differ from one another in some respects. Thus, the Commission believes additional clarity about the appropriate notional amount calculation methodologies for purposes of the SD de minimis threshold would be beneficial. Further, additional questions may arise regarding notional amount calculations, as it relates to the AGNA de minimis threshold, given the broad array of swaps available across all asset classes and the potential for new types of swap products becoming available in the future. Therefore, the Commission is proposing new paragraph (4)(vii)(A) of the SD Definition, which sets out a mechanism for the Commission, on its own or upon written request by a person, to determine the methodology to be used to calculate the notional amount for any group, category, type, or class of swaps for purposes of whether a person exceeds the AGNA de minimis threshold. The Commission notes that the process for submitting a written request regarding the methodology for notional amount calculations would be consistent with the process described in § 140.99 of the Commission's regulations.[153] Further, the proposed rule requires that such methodology be economically reasonable and analytically supported, and that any such determination be made publicly available and posted on the CFTC website.[154]

From time to time, DSIO issues interpretive guidance or no-action letters to registrants on a variety of issues, often to address uncertainty regarding the application of Commission regulations (*e.g.,* the DSIO FAQ Guidance). Consistent with that practice, the Commission also believes it is important to provide clarity regarding calculation methodologies, as it relates to the AGNA de minimis threshold, to market participants on a timely basis. Doing so would ensure that persons are fully aware of whether their activities could lead to (or presently entail) SD registration requirements in the event of market or regulatory changes. Delegation by the Commission of this function to DSIO should help to provide clarity on a timely basis, and provide certainty that DSIO has the authority to make notional amount calculation determinations. Therefore, the Commission is proposing new paragraph (4)(vii)(B)(*i*) of the SD Definition, which delegates to the Director of DSIO, or such other employee(s) that the Director may designate, the authority to determine the methodology to be used to calculate the notional amount for any group, category, type, or class of swaps for purposes of whether a person exceeds the AGNA de minimis threshold. Additionally, the Director of DSIO would be able to submit any matter delegated pursuant to proposed paragraph (4)(vii)(A) to the Commission for its consideration. Further, as is the case with existing delegations to staff, the Commission would continue to reserve the right to exercise the delegated authority itself at any time. Consistent with the requirements of proposed paragraph (4)(vii)(A), any determination made pursuant to this proposed delegation must be economically reasonable and analytically supported, and be made publicly available and posted on the CFTC website. As is the case with staff interpretive letters, once a determination is made, either by the Commission or the Director of DSIO, all persons may rely on the determination.

Rather than codifying all permitted notional amount calculation methodologies for purposes of the AGNA de minimis threshold, or requiring other Commission action each time new methodologies are approved, the Commission believes that providing delegated authority gives the Commission and staff appropriate flexibility to promptly respond to future market developments regarding notional amount calculation methodologies. The Commission expects that subsequent to adopting this delegation of authority, either the Commission or the Director of DSIO will determine methodologies for calculating notional amounts for certain categories of swaps.

2. Request for Comments

The Commission welcomes comments on the following questions regarding the proposed process for determining methodologies for calculating notional amounts, and the proposed delegation of authority. To the extent possible, please quantify the impact of issues discussed in the comments, including costs and benefits, as applicable.

(1) Is the proposed process to determine the methodology to be used to calculate the notional amount for any group, category, type, or class of swaps appropriate? Why or why not?

(2) Is the proposed process too narrowly or broadly tailored?

(3) Is the restriction that a methodology be economically reasonable and analytically supported appropriate? Why or why not? What other standards may be appropriate for this purpose?

(4) How will the proposed process impact persons that enter into swaps where notional amount is not a stated contractual term?

(5) Is the proposed delegation of authority too narrowly or broadly tailored?

(6) How will the proposed delegation of authority impact persons that enter into swaps where notional amount is not a stated contractual term?

(7) Is there a better alternative to this proposed process? If so, please describe.

The Commission also welcomes comments on the following questions regarding calculation of notional amounts for purposes of the de minimis exception. Comments regarding the calculation of notional amounts should focus on the de minimis exception (rather than other Commission regulations, such as the reporting requirements in part 45). To the extent possible, please quantify the comments, including costs and benefits, as applicable.

(1) Should the notional amount (either stated or calculated) for transactions with embedded optionality be delta-adjusted by the delta of the underlying options, provided that the methods are economically reasonable and analytically supported? Should delta-adjusted notional amounts be used for all asset classes and product types, or only some?

(2) For swaps without stated contractual notional amounts, should ''price times volume'' generally be used

[152] *See, e.g.,* Letter from CEWG; Letter from Natural Gas Supply Association (Jan. 15, 2016), available at *https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60595&SearchText=.*

[153] *See* 17 CFR 140.99.

[154] Pursuant to this proposed rule, it is possible that methodologies for calculating notional amounts for the de minimis calculation could be approved or established that differ from methodologies in the Technical Guidance. However, the purpose of the Technical Guidance was not to consider specific requirements that jurisdictions may have with respect to calculating notional amount for registration purposes. The Commission notes that the proposed approach is similar to one taken by the Canadian Securities Administrators. *See* Proposed National Instrument 93–102 Derivatives: Registration and Proposed Companion Policy 93–102 Derivatives: Registration (Apr. 19, 2018) (collectively, the ''Proposed Instrument''), available at *http://www.albertasecurities.com/Regulatory%20Instruments/5399899%20_%20CSA%20Notice%2093-102.pdf.* The Proposed Instrument includes an alternative notional calculation methodology—for the purpose of derivative dealer registration thresholds—that differs from the Technical Guidance. *See* Proposed Instrument at 6–7, 24–26.

as the basis for calculating the notional amount?

(3) What other notional amount calculation methods, aside from ''price times volume,'' could be used for swaps without a stated notional amount that renders a calculated notional amount equivalent more directly comparable to the stated contractual notional amount typically available in IRS, CDS, and FX swaps? [155]

(4) For swaps without a stated contractual notional amount, does calculation guidance exist in other jurisdictions and/or regulatory frameworks, such as in banking, insurance, or energy market regulations? Should persons be permitted to use such guidance to calculate notional amounts for purposes of a de minimis threshold calculation?

(5) What should be used for ''price'' when calculating notional amounts for swaps without a stated contractual notional? Contractual stated price, such as a fixed price, spread, or option strike? The spot price of the underlying index or reference? The implied forward price of the underlying? A different measure of price not listed here? Should the price of the last available transaction in the commodity at the time the swap is entered into be used for this calculation? Is it appropriate to use a ''waterfall'' of prices to calculate notional amount, depending on the availability of a price type? [156]

(6) What metric should be used for ''price'' for certain basis swaps with no fixed price or fixed spread?

(7) How should the ''price'' of swaps be calculated for swaps with varying prices per leg, such as a predetermined rising or falling price schedule?

(8) What metric should be used for ''volume'' when calculating notional amounts for swaps without a stated contractual notional amount? Should the Commission assume that swaps with volume optionality will be exercised for the full quantity or should volume options be delta-adjusted, too?

(9) Should the total quantity for a ''leg'' be used, or an approximation for a pre-determined time period, such as a monthly or annualized quantity approximation? [157]

(10) How should the ''volume'' of swaps be calculated for swaps with varying notional amount or volume per leg, such as amortizing or accreting swaps?

(11) Should the U.S. dollar equivalent notional amount be calculated across all ''legs'' of a swap by calculating the U.S. dollar equivalent notional amount for each leg and then calculating the minimum, median, mean, or maximum notional amount of all legs of the swap?

(12) Should the absolute value of a price times volume calculation be used, or should the calculation allow for negative notional amounts?

(13) Given that a derivatives clearing organization (''DCO'') has to mark a swap to market on a daily basis, it may be possible to determine ''implied volatilities'' for swaptions and options that are regularly marked-to-market, such as cleared swaps, in order to delta-adjust them. Should DCO evaluations be used when there are not better market prices available?

III. Other Considerations

In addition to the proposed rule amendments discussed above, the Commission is seeking comment on other potential considerations for the de minimis threshold, including: (1) Adding a minimum dealing counterparty count and a minimum dealing transaction count threshold; (2) excepting from the de minimis threshold calculation swaps that are exchange-traded and/or cleared; and (3) excepting from the de minimis threshold calculation swaps that are categorized as non-deliverable forwards. The Commission may take into consideration comments received regarding any of these factors in formulating the final rule or may in the future consider proposing an amendment to the SD Definition to reflect any of these factors for purposes of the de minimis threshold calculation.

A. Dealing Counterparty Count and Dealing Transaction Count Thresholds

1. Background

The Commission is re-considering the merits of using AGNA, by itself, to determine if an entity's swap dealing activity is de minimis. Specifically, the Commission is seeking comment on whether an entity should be able to qualify for the de minimis exception if its level of swap dealing activity is below *any* of the following three criteria: (1) An AGNA threshold, (2) a proposed dealing counterparty count threshold, *or* (3) a proposed dealing transaction count threshold.

Section 1a(49)(D) of the CEA directs the Commission to exempt from designation as an SD an entity that engages in a de minimis quantity of swap dealing, and provides the Commission with broad discretion to promulgate regulations to establish factors with respect to the making of this determination to exempt.[158] The SD Definition Proposing Release suggested three possible criteria for determining when an entity engaged in more than a de minimis quantity of dealing activity: AGNA of swap dealing activity, number of dealing transactions, and number of dealing counterparties.[159] In selecting these three factors as possible appropriate measurements of an entity's ''quantity'' of swap dealing activity, the Commission also noted that ''a range of alternative approaches may be reasonable.'' [160] The Commission stated that it selected the proposed factors in an effort to focus the de minimis exception on ''entities for which registration would not be warranted from a regulatory point of view in light of the limited nature of their dealing activities.'' [161] The SD Definition Adopting Release did not include factors beyond an AGNA threshold in the de minimis exception.[162]

The Commission seeks comment on whether and how the inclusion of these additional factors might account for modest variations in an entity's level of dealing activity that occur over time and provide entities with enhanced flexibility to manage their dealing activity below the registration threshold. The Commission also seeks comment on whether these additional criteria could better assist the Commission in identifying those entities whose dealing activity is limited and reduce instances of ''false positives'' of any one measure of activity, such as where an entity's dealing activity may marginally exceed

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[155] ''Price times volume'' is similar to a cash flow calculation, while ''stated contractual notional'' is usually the basis that forms a cash flow calculation when combined with price, strike, fixed rate, coupon, or reference index. Therefore, ''stated contractual notional amount'' may be described as more similar to ''volume'' than ''price times volume.'' For example, for a $100 million interest rate swap, the stated notional amount is typically the basis of the periodic calculated cash flows instead of the actual cash flows, which are calculated using the stated notional amount and the stated ''price'' per leg (such as a fixed or floating rate index).

[156] For example, contractual stated fixed price might be required to be used first. Lacking a stated fixed price in the swap, spot price of the underlying would then be used instead.

[157] For an example of ''monthly notional amount approximation'' rather than aggregated total notional quantity, *see* Proposed Instrument, *supra* note 154, at 24–26.

[158] 7 U.S.C. 1a(49)(D).

[159] SD Definition Proposing Release, 75 FR at 80180.

[160] *Id.* (''Thus, while the proposed factors discussed below reflect our attempt to delimit the de minimis exemption appropriately, we recognize that a range of alternative approaches may be reasonable, and we are particularly interested in commenters' suggestions as to the appropriate factors.'').

[161] *Id.*

[162] In reaching this conclusion, the Commissions considered concerns expressed by commenters that ''a standard based on the number of swaps . . . or counterparties can produce arbitrary results by giving disproportionate weight to a series of smaller transactions or counterparties.'' 77 FR at 30630.

the current $8 billion AGNA threshold, but still be so ''limited in nature'' that it does not warrant SD regulation.

For example, the inclusion of dealing counterparty count and dealing transaction count thresholds in the de minimis exception could help account for differences in transaction sizes across asset classes. As commenters have noted, certain asset classes tend to have higher average notional amounts per swap than others.[163] As a result, a market participant that executes a small number of dealing transactions with only a few counterparties in an asset classes for which the notional amount of each transaction is comparatively large may be required to register, whereas a market participant with the exact same number of dealing transactions and dealing counterparties in an asset class with a smaller average notional amount may not be required to register. Moreover, differences in the average tenor and frequency of swap transactions also exist across asset classes. For example, depending upon the underlying activity that the counterparty is trying to hedge, a person may prefer to enter into a single one-year, $1 billion swap, or four consecutive three-month, $1 billion swaps. One hedging strategy results in a calculation of $1 billion for purposes of the de minimis threshold, the other in a calculation of $4 billion for purposes of the threshold. The Commission seeks comment on whether consideration of dealing counterparty count and dealing transaction count could address the impact of such differences and facilitate relatively equal amounts of de minimis dealing across asset classes.

In addition to differences across asset classes, the Commission recognizes that an entity's swap dealing volume may fluctuate over time. For example, as compared to the first quarter of 2017, during the first quarter of 2018, overall IRS notional amount activity rose by approximately 25 percent, while trade count grew by approximately 16 percent.[164] The Commission seeks comment on whether the inclusion of additional metrics in the de minimis exception could provide market participants with greater flexibility to serve their existing customer base during periods of volatility or economic stress, without the concern that such episodic increases in dealing activity may somehow trigger SD registration. The Commission notes this result could also further one of the policy goals of the de minimis exception, which is to enable end-user counterparties to execute hedging swaps with firms with whom they have ongoing business relationships, rather than forcing such entities to establish separate relationships with registered SDs. It could also potentially provide increased liquidity in the swap market during periods of financial stress.

The Commission seeks comment on whether including dealing counterparty count and dealing transaction count thresholds in the de minimis exception, in conjunction with an AGNA calculation, would further the policy goals underlying the exception. The Commission also seeks comment on whether adding minimum dealing counterparty count and dealing transaction count thresholds would be consistent with the Commission's goal of ensuring that person's engaged in more than a de minimis level of dealing are subject to SD regulation.

2. Potential Thresholds

The Commission recognizes the importance of appropriately calibrating potential dealing counterparty count and dealing transaction count thresholds in order to further the Commission's interest in identifying and exempting de minimis dealing activity. As part of its preliminary consideration of this approach, the Commission performed an analysis of the counterparty counts and transaction counts of Likely SDs and registered SDs to determine at what thresholds certain entities might be required to register using a multi-factor approach. The Commission notes that it was unable to exclude non-dealing counterparties and non-dealing trades.

As discussed above in section II.A.2.ii, there were 108 Likely SDs at the $8 billion AGNA threshold with at least 10 counterparties (in IRS, CDS, FX swaps, and equity swaps). The median counterparty count for these 108 Likely SDs was 132 counterparties and the median transaction count was 5,233 trades. Of these 108 Likely SDs with at least 10 counterparties, 106 also had at least 100 transactions, and there were 88 Likely SDs that had at least 15 counterparties and 500 transactions.

There were 78 registered SDs that had at least $8 billion in AGNA of swaps activity. The median counterparty count for these 78 entities was 186 counterparties and the median transaction count was 12,004 trades. Of these 78 registered SDs, 72 had at least 10 counterparties and at least 100 transactions. Additionally, 70 of the 78 registered SDs had at least 15 counterparties and 500 transactions.

Based on this preliminary analysis, the Commission is seeking comment on whether it would be appropriate to establish a dealing counterparty count threshold of 10 counterparties and a dealing transaction count threshold of 500 transactions.

For purposes of calculating a person's counterparty count under this approach, the Commission seeks comment on whether it should allow counterparties that are members of a single group of persons under common control to be treated as a single counterparty. In addition, the Commission seeks comment whether it should consider excluding registered SDs and MSPs from an entity's counterparty count. Similar to the current dealing AGNA threshold, the de minimis calculation for counterparty counts and transaction counts could also incorporate aggregation (after application of relevant de minimis calculation-related exclusions) of the counterparty counts and transaction counts of affiliated entities that are not registered SDs.[165]

The Commission understands that the use of additional criteria could lead to entities that engage in high levels of AGNA of swap dealing activity not having to register as SDs if they have low counterparty counts or low transaction counts. In order to account for this possibility, the Commission seeks comment on whether it would be appropriate to include an AGNA backstop above which entities would have to register as SDs, regardless of their counterparty counts or transaction counts. For example, under this approach, if an entity exceeds some level of AGNA of dealing activity greater than $8 billion, it would be required to register as an SD, regardless of its number of dealing counterparties or dealing transactions. With respect to a potential AGNA backstop, the Commission seeks comment on whether a $20 billion AGNA threshold would be appropriate.

A minimum dealing counterparty and dealing transaction threshold, in combination with an AGNA amount backstop, might provide a higher AGNA de minimis threshold to small dealers that only plan to occasionally deal swaps with a limited number of counterparties or execute a limited number of transactions. As noted above,

[163] *See, e.g.,* Preliminary Report, *supra* note 21, at 52; Letter from American Bankers Association (Jan. 19, 2016) (''Risk mitigating commodity swaps are . . . of a shorter tenor and a smaller average notional size as compared to other asset classes.''), available at *https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60596&SearchText=.*

[164] Based on historical information from archived CFTC Swaps Reports, available at *https://www.cftc.gov/MarketReports/SwapsReports/Archive/index.htm.*

[165] *See* 17 CFR 1.3, Swap dealer, paragraph (4).

this higher effective threshold could also provide additional flexibility for small dealers to provide clients with dealing services without the costs of registration, as long as the dealer can structure the business to remain below the counterparty count and transaction count limits and the higher AGNA backstop. Generally, adding additional metrics could potentially serve to better identify the types of entities that are engaged in swap dealing activity. However, as commenters have noted previously, the use of additional metrics could make the de minimis calculation more complex.

Given these considerations, the Commission welcomes comments on the following:

(1) Taking into account the Commission's policy objectives, should minimum dealing counterparty counts and minimum dealing transaction counts be considered in determining an entity's eligibility for the de minimis exception?

(2) Would a dealing counterparty count threshold of 10 dealing counterparties be appropriate? Why or why not? Is another dealing counterparty count threshold more appropriate?

(3) Would a dealing transaction count threshold of 500 dealing transactions be appropriate? Why or why not? Is another dealing transaction count threshold more appropriate?

(4) Under what circumstances might entities have a relatively high AGNA of swap dealing activity, but low dealing counterparty counts or low dealing transaction counts?

(5) Would an AGNA backstop of $20 billion be appropriate? Why or why not? Is another AGNA backstop level more appropriate?

(6) Would adding dealing counterparty count and dealing transaction count thresholds simplify the SD analysis for certain market participants, and if so, how and for which categories of participants?

(7) Would adding dealing counterparty count and dealing transaction count thresholds complicate the SD analysis for certain market participants, and if so, how and for which categories of participants?

(8) Should registered SDs or MSPs be counted towards the dealing counterparty count threshold?

(9) Should dealing counterparty and dealing transaction counts be aggregated across multiple potential swap dealing entities, similar to the existing AGNA aggregation standard? [166]

(10) For counterparty count purposes, should counterparties that are all part of one corporate family be counted as distinct counterparties, or as one counterparty?

(11) Should a facts and circumstances analysis apply to determine if an amendment or novation to an existing swap is swap dealing activity that counts towards a person's dealing transaction count? Why or why not?

(12) Would adding dealing counterparty count and dealing transaction count thresholds address the impact of differences in transaction sizes across asset classes?

(13) Would it be more appropriate for a multi-factor threshold to only include a dealing counterparty count threshold *or* a dealing transaction count threshold, rather than adding both criteria?

(14) Are there other criteria that should be included in the de minimis exception? If so, what are they and how could the Commission efficiently collect, calculate, and track them?

B. Exchange-Traded and/or Cleared Swaps

The Commission is seeking comment on whether an exception from the de minimis calculation for swaps that are executed on an exchange (*e.g.,* a swap execution facility (''SEF'') or designated contract market (''DCM'')) and/or cleared by a DCO is appropriate,[167] and may take into consideration comments received regarding possible exceptions based on these factors in formulating the final rule. The Commission is mindful of the need to consider how the existing de minimis exception may be affecting the utilization of exchange trading [168] and/or clearing in the swap market, as well as the extent to which the policy goals of SD registration and regulation may be advanced through exchange trading and clearing.

The Commission believes that excepting such swaps from the de minimis calculation could improve utilization of exchanges and/or clearing.[169] Generally, systemic risk considerations for SD regulation should be less significant for swaps that are cleared because risk management is handled centrally by the DCO. Counterparties to the swap post margin with the DCO and firms clearing swaps on behalf of customers are registered with the Commission as futures commission merchants and subject to capital requirements.[170] In addition, clearing would potentially be encouraged if the Commission adds an exception for cleared swaps for purposes of the de minimis threshold calculation, furthering one of the key tenets of the Dodd-Frank Act.

Additionally, counterparty protection policy considerations for SD regulation may be less significant for exchange-traded swaps because the counterparty protections and trade terms would generally be provided by the exchange. Through execution of swaps on exchanges, counterparties benefit from viewing the prices of available bids and offers and from having access to transparent and competitive trading systems or platforms. Further, a number of the external business conduct standard requirements otherwise applicable to SDs do not apply when a swap is executed anonymously on an exchange. These requirements are either inapplicable to such transactions by their terms (because, for example, the counterparty is anonymous), or do not apply to the SD because the exchange fulfills the requirements.[171] However, counterparties could receive reduced levels of protection if trades previously executed over-the-counter move to anonymous trading on exchanges, though this concern is partially mitigated because products traded on exchanges are generally standardized and non-negotiated.

In addition to the benefits described above, the market efficiency, orderliness, and transparency goals of SD regulation would also potentially be enhanced since the obligations of, for example, reporting trade information and engaging in portfolio reconciliation and compression exercises would be centrally (and more efficiently) managed by the exchange and/or DCO, as applicable.

[166] 17 CFR 1.3, Swap dealer, paragraph (4); 78 FR at 45323.

[167] The Commission notes that swap market participants have submitted comments that address this topic. *See, e.g.,* Letters from FIA, FSR, Northern Trust, and SIFMA, *supra* note 58; Final Staff Report, *supra* note 24, at 14 (citing comment letters submitted in response to Preliminary Staff Report, *supra* note 21).

[168] For example, one of the CEA's objectives is to promote the trading of swaps on swap execution facilities and to promote pre-trade price transparency in the swaps market. 7 U.S.C. 7b–3(e).

[169] Swaps subject to a clearing requirement pursuant to CEA section 2(h) must be executed on a SEF or DCM, unless no SEF or DCM makes the swap available to trade or a clearing exception under CEA section 2(h)(7) applies. 7 U.S.C. 2(h)(8).

[170] *See* CEA section 4d(f), 7 U.S.C. 6d(f); 17 CFR 1.17.

[171] *See, e.g.,* 17 CFR 23.402 (''know your counterparty'' requirements only apply when the counterparty's identity is known to the SD prior to execution); 17 CFR 23.430 (requirements to verify counterparty eligibility are not applicable when the swap is executed on a DCM, or on a SEF if the identity of the counterparty is not known to the SD), 17 CFR 23.431 (disclosure of material information and scenario analysis is not required when the SD does not know the identity of counterparty prior to initiation of a transaction on a SEF or DCM).

The Commission notes that an exclusion exists in paragraph (6)(iv) of the SD Definition for certain exchange-traded and cleared swaps entered into by floor traders (''Floor Trader Exclusion''). In the SD Definition Adopting Release, the Commission declined to distinguish exchange-traded swaps under the SD Definition, noting, among other things, that:

> [A] variety of exchanges, markets, and other facilities for the execution of swaps are likely to evolve in response to the requirements of the Dodd-Frank Act, and there is no basis for any bright-line rule excluding swaps executed on an exchange, given the impossibility of obtaining information about how market participants will interact and execute swaps in the future, after the requirements under the Dodd-Frank Act are fully in effect.[172]

Nonetheless, the Commission created a carve-out for exchange-traded and cleared swaps executed by floor traders. Subject to certain conditions, the Floor Trader Exclusion allows registered floor traders who trade swaps solely using proprietary funds for their own account to exclude exchange-traded and cleared swaps from their de minimis calculation. Therefore, while execution and clearing are factors in the Floor Trader Exclusion, they are not the sole basis for it. The Floor Trader Exclusion enables floor traders to provide liquidity to exchanges in non-dealing capacities, such as proprietary trading, without potentially triggering SD regulation. However, the Commission notes that the market benefits of the Floor Trader Exclusion may be complemented if the de minimis exception also applied to all exchange-traded and/or cleared swaps.

The CFTC has not conducted robust data analysis regarding the potential impact of an exception from the de minimis calculation for swaps that are exchange-traded and/or cleared. However, excepting such swaps from the de minimis calculation would also likely lead to adjustments in how the swap market operates; therefore, it is difficult to forecast what percentage of transactions would ultimately be exchange-traded and/or cleared if such an exception were implemented. The Commission also notes that clearing is a post-execution activity and is not tied to the pre-execution swap dealing activities that determine whether a person needs to register as an SD. Therefore, adding a clearing-related factor to the de minimis exception may cause conflation between swap dealing and clearing.

The Commission understands that this exception could result in entities that engage in a significant amount of swap dealing activity in exchange-traded and/or cleared swaps not having to register as SDs. In order to account for this possibility, the Commission seeks comment on whether it would be appropriate to establish a AGNA backstop such that once an entity's swap dealing activity in exchange-traded and/or cleared swaps exceeds a certain notional amount, it would be required to register as an SD. Alternatively, the Commission is also considering whether it may be appropriate to apply a haircut to the notional amounts of exchange-traded and/or cleared swaps for purposes of the de minimis calculation. Under this approach, persons would only need to count a certain percentage of their total notional amount of exchange-traded and/or cleared swaps towards their de minimis threshold. These alternatives would ensure that persons with significant amounts of exchange-traded and cleared swaps would still likely be required to register as SDs.

Given these considerations, the Commission welcomes comments on the following:

(1) How would an exception for exchange-traded swaps from a person's de minimis calculation impact the policy considerations underlying SD regulation and the de minimis exception?

(2) How would an exception for cleared swaps from a person's de minimis calculation impact the policy considerations underlying SD regulation and the de minimis exception?

(3) How would an exception for exchange-traded and cleared swaps from a person's de minimis calculation impact the policy considerations underlying SD regulation and the de minimis exception?

(4) Should all exchange-traded swaps be excepted from the de minimis calculation, or only certain transactions? If so, which transactions? Should only those trades that are anonymously executed be excepted? How would the Commission judiciously differentiate, monitor, and track such transactions apart from other exchange-traded swaps?

(5) Should all cleared swaps be excepted from the de minimis calculation, or only certain transactions? If so, which transactions? Should the Commission differentiate between trades that are intended to be cleared and trades that are actually cleared? How would the Commission judiciously differentiate, monitor, and track such transactions apart from other cleared swaps?

(6) Should all exchange-traded and cleared swaps be excepted from the de minimis calculation, or only certain transactions? If so, which transactions? How would the Commission judiciously differentiate, monitor, and track such transactions apart from other exchange-traded and cleared swaps?

(7) If exchange-traded swaps are excepted from a person's de minimis calculation, what other conditions, if any, should apply for the trade to qualify for the exception?

(8) If cleared swaps are excepted from a person's de minimis calculation, what other conditions, if any, should apply for the trade to qualify for the exception?

(9) If exchange-traded and cleared swaps are excepted from a person's de minimis calculation, what other conditions, if any, should apply for the trade to qualify for the exception?

(10) If exchange-traded swaps are excepted from the de minimis calculation, should the Commission establish a notional backstop above which an entity must register? If so, what is the appropriate level for the backstop?

(11) If cleared swaps are excepted from the de minimis calculation, should the Commission establish a notional backstop above which an entity must register? If so, what is the appropriate level for the backstop?

(12) If exchange-traded and cleared swaps are excepted from the de minimis calculation, should the Commission establish a notional backstop above which an entity must register? If so, what is the appropriate level for the backstop?

(13) Should persons be able to haircut the notional amounts of their exchange-traded swaps for purposes of the de minimis calculation? If so, would a 50 percent haircut be appropriate? Why or why not?

(14) Should persons be able to haircut the notional amounts of their cleared swaps for purposes of the de minimis calculation? If so, would a 50 percent haircut be appropriate? Why or why not?

(15) Should persons be able to haircut the notional amounts of their exchange-traded and cleared swaps for purposes of the de minimis calculation? If so, would a 50 percent haircut be appropriate? Why or why not?

(16) Would an exception for exchange-traded swaps increase the volume of swaps executed on SEFs or DCMs?

(17) Would an exception for cleared swaps increase the volume of swaps that are cleared?

[172] *See* 77 FR at 30610.

(18) Would an exception for exchange-traded and cleared swaps increase the volume of swaps executed on SEFs or DCMs and the volume of swaps that are cleared?

(19) Are there any unique costs or benefits associated with excepting exchange-traded swaps from an entity's de minimis calculation?

(20) Are there any unique costs or benefits associated with excepting cleared swaps from an entity's de minimis calculation?

(21) Are there any unique costs or benefits associated with excepting exchange-traded and cleared swaps from an entity's de minimis calculation?

(22) Has the Floor Trader Exclusion encouraged additional trading on SEFs and DCMs?

(23) Has the Floor Trader Exclusion encouraged additional clearing of swaps?

(24) Should the Commission consider additional modifications to the Floor Trader Exclusion in lieu of a broader exception for all exchange-traded and/or cleared swaps?

(25) How should transactions executed on exempt multilateral trading facilities, exempt organized trading facilities, and/or exempt DCOs be treated?

C. Non-Deliverable Forwards

Section 1a(47) of the CEA defines the term ''swap,'' [173] and establishes that foreign exchange swaps [174] and foreign exchange forwards [175] shall be considered swaps unless the Secretary of the Treasury makes a written determination that either foreign exchange swaps or foreign exchange forwards or both should be not be regulated as swaps [176] (to avoid confusion with the term ''FX swap'' as otherwise used in this release, the terms ''foreign exchange swap'' and ''foreign exchange forward'' as used in this section III.C refer only to those products as defined by CEA sections 1a(25) and 1a(24), respectively).

In November 2012, the Secretary of the Treasury signed a determination that exempts both foreign exchange swaps and foreign exchange forwards from the definition of ''swap,'' in accordance with the CEA (''Treasury Determination'').[177] The Treasury Determination further explained that foreign exchange options, currency swaps, and non-deliverable forwards (''NDFs'') may not be exempted from the CEA's definition of ''swap'' because they do not satisfy the statutory definitions of a foreign exchange swap or foreign exchange forward.[178] The Treasury Determination explained that:

> [A]n NDF is a swap that is cash-settled between two counterparties, with the value of the contract determined by the movement of exchange rates between two currencies. On the contracted settlement date, the profit to one party is paid by the other based on the difference between the contracted NDF rate (set at the trade's inception) and the prevailing NDF fix (usually a close approximation of the spot foreign exchange rate) on an agreed notional amount. NDF contracts do not involve an exchange of the agreed-upon notional amounts of the currencies involved. Instead, NDFs are cash settled in a single currency, usually a reserve currency. NDFs generally are used when international trading of a physical currency is relatively difficult or prohibited.[179]

The Commission understands from market participants that NDFs provide an important market function because they are used to hedge exposures to restricted currencies when the exposure is held by someone outside of the home jurisdiction. The Commission also understands that NDFs are economically and functionally similar to deliverable foreign exchange forwards in that the same net value is transmitted in either structure.

Further, the Commission has learned from market participants that markets continue to treat both NDFs and deliverable foreign exchange forwards as the same functional product. Like deliverable foreign exchange forwards, NDFs settle on a net rather than gross basis, which significantly mitigates counterparty risk in this context. In some cases, market participants that previously had settled deliverable foreign exchange forwards on a net basis (whether to minimize counterparty risk or for other reasons) now take steps so as to ensure they are able to avail themselves of the exemption from swap status afforded by the Treasury Determination, including settlement of foreign exchange forwards on a gross basis.

The Commission could determine to amend the de minimis exception in paragraph (4) of the ''swap dealer'' definition in § 1.3 of the Commission's regulations by excepting NDFs from consideration when calculating the AGNA of swap dealing activity for purposes of the de minimis threshold. Excepting NDFs would result in a more comparable regulatory treatment for these transactions when compared with foreign exchange swaps and foreign exchange forwards pursuant to the Treasury Determination.

Given these considerations, the Commission welcomes comments on the following:

(1) Should the Commission except NDFs from consideration when calculating the AGNA of swap dealing activity for purposes of the de minimis exception? Why or why not?

(2) Are there other foreign exchange derivatives that the Commission should except from consideration for counting towards the de minimis threshold?

(3) Do NDFs pose any particular systemic risk in a manner distinct from foreign exchange swaps and foreign exchange forwards?

(4) If the Commission were to except NDFs from consideration when calculating the AGNA for purposes of the de minimis exception, are there particular limits that the Commission should consider in connection with this exception?

(5) What would be the market liquidity impact if the Commission were to except NDFs from counting towards the de minimis threshold?

(6) Is there material benefit to the market in requiring participants that transact in NDFs to register with the Commission, while not imposing similar obligations on participants that transact in deliverable foreign exchange forwards? If so, what benefits accrue from imposing such registration obligations?

(7) Please provide any relevant data that may assist the Commission in evaluating whether to except NDFs from counting towards the de minimis threshold.

(8) Please provide any additional comments on other factors or issues the Commission should consider when evaluating whether to except NDFs from counting towards the de minimis threshold.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires that agencies consider

[173] 7 U.S.C. 1a(47).

[174] As defined in CEA section 1a(25). 7 U.S.C. 1a(25) (The term ''foreign exchange swap'' is defined to mean a transaction that solely involves an exchange of two different currencies on a specific date at a fixed rate that is agreed upon on the inception of the contract covering the exchange; and a reverse exchange of those two currencies at a later date and at a fixed rate that is agreed upon on the inception of the contract covering the exchange.).

[175] As defined in CEA section 1a(24). 7 U.S.C. 1a(24) (The term ''foreign exchange forward'' is defined to mean a transaction that solely involves the exchange of two different currencies on a specific future date at a fixed rate agreed upon on the inception of the contract covering the exchange.).

[176] 7 U.S.C. 1a(47)(E).

[177] 77 FR 69694.

[178] *Id.* at 69695.

[179] *Id.* at 69703 (citing 77 FR at 48254–55).

whether the regulations they propose will have a significant economic impact on a substantial number of small entities.[180] This Proposal only affects certain entities that are close to the de minimis threshold in the SD Definition. For example, the Proposal would affect entities with a relevant AGNA of swap dealing activity between $3 billion and $8 billion. Moreover, it also would affect entities that engage in swap dealing activity above an AGNA of $3 billion that also enter into hedging swaps, or, in the case of IDIs, that enter into loan-related swaps. That is, the Proposal is relevant to entities that engage in swap dealing activity with a relevant AGNA measured in the billions of dollars. The Commission does not believe that these entities would be small entities for purposes of the RFA. Therefore, the Commission believes that this Proposal will not have a significant economic impact on a substantial number of small entities, as defined in the RFA.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that this Proposal will not have a significant economic impact on a substantial number of small entities. The Commission invites comment on the impact of this Proposal on small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1955 (''PRA'') [181] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (''OMB'') control number. The proposed rules will not impose any new recordkeeping or information collection requirements, or other collections of information that require approval of OMB under the PRA.

The Commission notes that all reporting and recordkeeping requirements applicable to SDs result from other rulemakings, for which the CFTC has sought OMB approval, and are outside the scope of rulemakings related to the SD Definition.[182] The CFTC invites public comment on the accuracy of its estimate that no additional recordkeeping or information collection requirements, or changes to existing collection requirements, would result from the Proposal.

C. Cost-Benefit Considerations

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[183] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. In this section, the Commission considers the costs and benefits resulting from its determinations with respect to the Section 15(a) factors, and seeks comments from interested persons regarding the nature and extent of such costs and benefits.

The Proposal amends the de minimis exception in paragraph (4) of the SD Definition in § 1.3 by: (1) Setting the de minimis exception threshold at $8 billion in AGNA of swap dealing activity, the same as the current phase-in level, and removing the phase-in process; (2) adding an exception from the de minimis threshold calculation for swaps entered into by IDIs in connection with originating loans to customers; (3) adding an exception from the de minimis threshold calculation for swaps entered into by a person for purposes of hedging financial or physical positions; (4) codifying prior DSIO guidance regarding the treatment of swaps that result from multilateral portfolio compression exercises; and (5) providing that the Commission may determine the methodology to be used to calculate the notional amount for any group, category, type, or class of swaps, and delegating to the Director of DSIO the authority to make such determinations.

As part of this cost-benefit consideration, the Commission will: (1) Discuss the costs and benefits of each of the proposed changes; and (2) analyze the proposed amendments as they relate to each of the 15(a) factors.

1. $8 Billion De Minimis Threshold

As discussed above, the SD Definition provides an exception from the SD Definition for persons who engage in a de minimis amount of swap dealing activity. Currently, a person shall not be deemed to be an SD unless swaps entered into in connection with swap dealing activity exceed an AGNA threshold of $3 billion (measured over the prior 12-month period), subject to a phase-in period that is currently in effect, during which the AGNA threshold is set at $8 billion. The Commission is proposing to amend the de minimis exception to the SD Definition to set the de minimis threshold at the current $8 billion phase-in level.

There are general policy-related costs and benefits associated with the proposal to set the de minimis threshold at $8 billion. In addition to these policy considerations, the proposal to set the de minimis threshold at $8 billion would also have specific monetary costs and benefits as compared to a lower or higher threshold. The current $8 billion phase-in level threshold, along with the prospect that the threshold would decrease to $3 billion after December 31, 2019 in the absence of further Commission action, sets the baseline for the Commission's consideration of the costs and benefits of the proposed alternatives. Accordingly, the Commission considers the costs and benefits that would result from maintaining the current $8 billion phase-in level threshold, or alternatively, a threshold level below or above the current $8 billion threshold. The status quo baseline also includes other aspects of existing rules related to the de minimis exception. The analysis also takes into account any no-action relief, to the extent such relief is being relied upon. As the Commission is of the preliminary belief that the existing no-action relief related to the de minimis exception is being fully relied upon by market participants, the cost-benefit discussion that follows also considered the effects of that relief.

(i) Policy-Related Costs and Benefits

There are several policy objectives underlying SD regulation and the de minimis exception to SD registration. As discussed above in section I.C, the primary policy objectives of SD regulation include reducing systemic risk, increasing counterparty protections, and increasing market efficiency, orderliness, and transparency.[184] To achieve these policy

[180] 5 U.S.C. 601 *et seq.*

[181] 44 U.S.C. 3501 *et seq.*

[182] Parties wishing to review the CFTC's information collections on a global basis may do so at *www.reginfo.gov*, at which OMB maintains an inventory aggregating each of the CFTC's currently approved information collections, as well as the information collections that presently are under review.

[183] 7 U.S.C. 19(a).

[184] *See* 77 FR at 30628–30, 30707–08.

objectives, registered SDs are subject to a broad range of requirements, including, among other things, registration, internal and external business conduct standards, reporting, recordkeeping, risk management, posting and collecting margin on uncleared swaps, and chief compliance officer designation and responsibilities. The Commission also considers policy objectives furthered by a de minimis exception, which include increasing efficiency, allowing limited ancillary dealing, encouraging new participants to enter the swap dealing market, and focusing regulatory resources.[185] These policy considerations have general costs and benefits associated with them depending on the level of the de minimis threshold.

As noted in the SD Definition Adopting Release, generally, the lower the de minimis threshold, the greater the number of entities that are subject to the SD-related regulatory requirements, which could decrease systemic risk, increase counterparty protections, and promote swap market efficiency, orderliness, and transparency.[186] However, a lower threshold could have offsetting effects that might decrease the policy benefits of lowering the de minimis exception threshold. For example, it is likely that a lower threshold would lead to reduced ancillary dealing activity and discourage new participants from entering into the swap market.

(a) Maintaining the $8 Billion De Minimis Phase-In Threshold

At the $8 billion threshold, the 2017 Transaction Coverage and 2017 AGNA Coverage ratios indicate that nearly all swaps were covered by SD regulation, giving rise to the benefits from the policy objectives of SD regulation discussed above. Specifically, as seen in Table 1 in section II.A.2.i, almost all swap transactions involved at least one registered SD as a counterparty, approximately 99 percent or greater for IRS, CDS, FX swaps, and equity swaps. For NFC swaps, approximately 86 percent of transactions involved at least one registered SD as a counterparty. Overall, approximately 98 percent of all swap transactions involved at least one registered SD. As seen in Table 2, almost all AGNA of swaps activity included at least one registered SD, approximately 99 percent or greater for IRS, CDS, FX swaps, and equity swaps.

Further, the Commission notes that the 6,440 entities that did not enter into any transactions with a registered SD had limited activity overall. As discussed in section II.A.2.i, the 6,440 entities entered into 77,333 transactions, representing approximately 1.7 percent of the overall number of transactions during the review period. Additionally, collectively, the 6,440 entities had $68 billion in AGNA of swaps activity, representing approximately 0.03 percent of the overall AGNA of swaps activity during the review period. The Commission believes that this limited activity indicates that to the extent these entities are engaging in swap dealing activities, such activity is likely ancillary and in connection with other client services, potentially indicating that the policy rationales behind a de minimis exception are being advanced at the current $8 billion threshold.

Additionally, with respect to NFC swaps, Table 13 in section II.A.2.iv indicates that registered SDs still entered into the significant majority (86 percent) of the overall market's total transactions and faced 83 percent of counterparties in at least one transaction, indicating that the existing $8 billion de minimis threshold has helped extend the benefits of SD registration to much of the NFC swap market. The trading activity of the 42 unregistered entities with 10 or more NFC swap counterparties represents approximately 13 percent of the overall NFC swap market by transaction count. However, as compared to the existing 44 registered SDs with at least 10 counterparties, these 42 In-Scope Entities have significantly lower mean transaction and counterparty counts, indicating that they may only be providing ancillary dealing services to accommodate commercial end-user clients, also potentially indicating that the policy rationales behind a de minimis exception are being advanced at the current $8 billion threshold.

(b) $3 Billion De Minimis Threshold

The Commission is of the view that the systemic risk mitigation, counterparty protection, and market efficiency benefits of SD regulation would be enhanced in only a very limited manner if the de minimis threshold decreased from $8 billion to $3 billion, as would be the case if the current regulation and the existing Commission order establishing an end to the phase-in period on December 31, 2019 were left unchanged. As seen in Table 4 in section II.A.2.ii, the Estimated AGNA Coverage would increase from approximately $221,020 billion (99.95 percent) to $221,039 billion (99.96 percent), an increase of $19 billion (a 0.01 percentage point increase). As seen in Table 5, the Estimated Transaction Coverage would increase from 3,795,330 trades (99.77 percent) to 3,797,734 trades (99.83 percent), an increase of 2,404 trades (a 0.06 percentage point increase). As seen in Table 6, the Estimated Counterparty Coverage would increase from 30,879 counterparties (88.80 percent) to 31,559 counterparties (90.75 percent), an increase of 680 counterparties (a 1.96 percentage point increase). The effect of these limited increases is further mitigated by the fact that at the current $8 billion phase-in threshold, the substantial majority of transactions are already covered by SD regulation—and related counterparty protection requirements—because they include at least one registered SD as a counterparty.

For NFC swaps, as discussed in section II.A.2.iv, without notional-equivalent data, it is unclear how many of the 42 In-Scope Entities with 10 or more counterparties that are not registered SDs would actually be subject to SD registration at a $3 billion de minimis threshold. It is possible that a portion of the swaps activity for some or all of these entities qualifies for the physical hedging exclusion in paragraph (6)(iii) of the SD Definition, and therefore would not be considered swap dealing activity, regardless of the de minimis threshold level.[187]

As discussed in section II.A.2.ii with respect to IRS, CDS, FX swaps, and equity swaps, and section II.A.2.iv with respect to NFC swaps, the Commission also notes that it is possible that a lower de minimis threshold could lead to certain entities reducing or ceasing swaps activity to avoid registration and its related costs. Although the magnitude of this effect is unclear, reduced swap dealing activity could lead to increased concentration in the swap dealing market, reduced availability of potential swap counterparties, reduced liquidity, increased volatility, higher fees, wider bid/ask spreads, or reduced competitive pricing. The end-user counterparties of these smaller swap dealing entities may be adversely impacted by the above consequences and could face a reduced ability to use swaps to manage their business risks.

(c) Higher De Minimis Threshold

Conversely, a higher de minimis threshold would potentially decrease the number of registered SDs, which could have a negative impact on

[185] *See id.*

[186] *See id.* at 30628–30, 30703, 30707.

[187] Hypothetically, if all 42 entities registered, the percentage of all NFC swaps facing at least one registered SD would rise from approximately 86 percent to 98 percent.

achieving the SD regulation policy objectives. For example, a higher de minimis threshold would allow a greater amount of swap dealing to be undertaken without certain counterparty protections. This might impact the integrity of swap market to some extent. However, the Commission is unable to quantify how the integrity of swap market might be harmed. On the other hand, the higher the de minimis threshold, the greater the number of entities that are able to engage in dealing activity without being required to register, which could increase competition and liquidity in the swap market. A higher threshold could also allow the Commission to expend its resources on entities with larger swap dealing activities warranting more oversight.

As seen in Table 9 in section II.A.2.iii, in comparison to an $8 billion threshold, a $100 billion threshold would reduce the Estimated AGNA Coverage from approximately $221,020 billion (99.95 percent) to $220,877 billion (99.88 percent), a decrease of $143 billion (a 0.06 percentage point decrease). As seen in Table 10, in comparison to an $8 billion threshold, a $100 billion threshold would reduce the Estimated Transaction Coverage from 3,795,330 trades (99.77 percent) to 3,773,440 trades (99.20 percent), a decrease of 21,890 trades (a 0.58 percentage point decrease). The decreases would be more limited at higher thresholds of $20 billion or $50 billion. The data also indicates that at higher thresholds, there is a more pronounced decrease in Estimated Counterparty Coverage. As seen in Table 11, the Estimated Counterparty Coverage would decrease from 30,879 counterparties (88.80 percent) to 28,234 counterparties (81.19 percent), a decrease of 2,645 counterparties (a 7.61 percentage point decrease). The decrease would be lower at thresholds of $20 billion and $50 billion, at 2.80 percentage points and 5.71 percentage points, respectively.

Although it has not conducted an analysis of AGNA activity in NFC swaps, the Commission is of the preliminary view that increasing the de minimis threshold could potentially lead to fewer registered SDs participating in in the NFC swap market, similar to its observations with respect to IRS, CDS, FX swaps, and equity swaps discussed above in section II.A.2.iii. This could reduce the number of entities transacting with registered SDs.

The cost of reduced protections for counterparties would be realized to the extent a higher threshold would result in fewer swaps involving at least one registered SD. Additionally, depending on how the swap market adapts to a higher threshold, it is also possible that the reduction in Estimated Regulatory Coverage would be greater than the data indicates to the extent that a higher de minimis threshold leads to an increased amount of swap dealing activity between entities that are not registered SDs. In such a scenario, Estimated Regulatory Coverage could potentially decrease more than the data indicates, negatively impacting the policy goals of SD regulation.

(d) Preliminary Entity-Netted Notional Amounts Analysis

As previously discussed, analysis indicates that the Estimated AGNA Coverage is not very sensitive to changes in de minimis threshold level. Staff also conducted a preliminary analysis of the sensitivity of entity-netted notional amounts (''ENNs'')[188] of Likely SDs in the IRS market to changes in the de minimis threshold level. The ENNs analysis normalizes notional amounts to five-year risk equivalents and nets long and short positions within counterparty pairs in the same currency.[189]

The preliminary analysis indicates that IRS ENNs are generally not overly sensitive to the de minimis threshold levels between $3 billion and $50 billion, providing additional support for staff's preliminary consideration of the policy-related costs and benefits discussed above. Table 15 shows the results of an analysis of the de minimis threshold in terms of ENNs for the IRS market.

TABLE 15—ENNS FOR IRS LIKELY SDS

[Minimum 10 counterparties]

Notional threshold ($Bn)	Number of likely SDs	IRS ENNs totals ($Bn)			Change in ENNs totals vs. $8 Bn (%)		
		Long	Short	Net	Long	Short	Net
3	121	9,812	8,307	1,505	0.6	1.1	(1.8)
8	108	9,750	8,219	1,532	.....	.....	.....
20	93	9,707	8,191	1,516	(0.4)	(0.3)	(1.0)
50	81	9,617	8,105	1,512	(1.4)	(1.4)	(1.3)
100	72	9,464	8,026	1,439	(2.9)	(2.3)	(6.1)

The 108 Likely SDs at $8 billion identified by the AGNA analysis in section II.A.2.ii above represented approximately $9.8 trillion of long ENNs and $8.2 trillion of short ENNs on December 15, 2017. A reduction in the de minimis threshold from $8 billion to $3 billion would have only a modest effect on the coverage of risk transfer as measured by IRS ENNs, adding only 0.6 percent of additional long ENNs and 1.1 percent of additional short ENNs. Similarly, an increase in the de minimis threshold from $8 billion to $50 billion would modestly decrease long ENNs by 1.4 percent and short ENNs by 1.4 percent. The decrease would be more limited at a threshold of $20 billion.[190]

(ii) Direct Cost and Benefits of Setting an $8 Billion Threshold

It is likely that for any de minimis threshold, some firms will have AGNA of swap dealing activity sufficiently close to the threshold so as to require analysis to determine whether their AGNA qualifies as de minimis. Hence, with a $3 billion threshold, some set of entities will likely have to incur the direct costs of analyzing whether they

[188] *See* Introducing ENNs: A Measure of the Size of Interest Rate Swap Markets, *supra* note 65.

[189] Each entity is net long or net short ENNs against each of its counterparties, and each entity's total long and short ENNs are the sums of its long and short ENNs, respectively, across all of its counterparties. *See id.*

[190] IRS ENNs totals for a hypothetical de minimis threshold of $100 billion, however, begin to show increased sensitivities compared to other de minimis thresholds examined.

would exceed the de minimis threshold, and with an $8 billion threshold, a (mostly) different set of entities would have to continue to incur costs of analyzing their activity.

Based on the available data, the Commission estimates that if the de minimis threshold were set at $3 billion, approximately 22 currently unregistered entities would need to conduct an initial analysis of whether they would be above the threshold.[191] The Commission estimates that the potential total direct cost of conducting the initial analysis for the 22 entities would average approximately $79,000 per entity, or approximately $1.7 million in the aggregate.[192] Certain of those entities with ongoing swap dealing activity that is near a $3 billion threshold may also need to conduct periodic de minimis calculation analyses to assess whether they qualify for the exception. The Commission estimates that approximately 11 entities may need to conduct such analyses.[193] Further, the Commission estimates that the potential annual direct cost of conducting these ongoing analyses for those 11 entities would be approximately $40,000 per entity, or $440,000 in the aggregate.[194]

Conversely, the Commission assumes that a higher threshold would permit certain entities to no longer incur ongoing costs of assessing whether they are above the threshold. The Commission estimated the savings that would result from a higher de minimis threshold of $20 billion. Based on the available data, the Commission estimates that if the de minimis threshold were set at $20 billion, approximately 29 entities would no longer need to conduct an ongoing analysis of whether they would be above the new threshold, while 4 entities may begin conducting such an analysis.[195] The Commission estimates that the ongoing cost savings for the net 25 entities that would no longer be conducting periodic de minimis threshold analyses would average approximately $40,000 per entity, or $1 million in the aggregate per year.[196]

(iii) Section 15(a)

Section 15(a) of the CEA requires the Commission to consider the effects of its actions in light of the following five factors:

(a) Protection of Market Participants and the Public

Providing regulatory protections for swap counterparties who may be less experienced or knowledgeable about the swap products offered by SDs (particularly end-users who use swaps for hedging or investment purposes) is a fundamental policy goal advanced by the regulation of SDs.

The Commission is proposing to maintain the current de minimis phase-in threshold of $8 billion in AGNA of swap dealing activity. As discussed above, the Commission recognizes that a $3 billion de minimis threshold may result in more entities being required to register as SDs compared to the proposed (and currently in-effect) $8 billion threshold, thereby extending counterparty protections to a greater number of market participants. However, this benefit is relatively small because, at the current $8 billion phase-in threshold, the substantial majority of transactions are already covered by SD regulation—and related counterparty protection requirements—since they include at least one registered SD as a counterparty.[197]

On the other hand, as noted above, a threshold above $8 billion may result in fewer entities being required to register as SDs, thus extending counterparty protections to a fewer number of market participants. Although the Estimated Transaction Coverage and Estimated AGNA Coverage would not decrease much at higher thresholds of up to $100 billion, the decrease in Estimated Counterparty Coverage is more pronounced at higher de minimis thresholds, potentially indicating that the benefit of SD counterparty protections requirements could be reduced at higher thresholds.

SD regulation is also intended to reduce systemic risk in the swap market. Pursuant to the Dodd-Frank Act, the Commission has proposed or adopted regulations for SDs, including margin and risk management requirements, designed to mitigate the potential systemic risk inherent in the swap market. Therefore, the Commission recognizes that a lower de minimis threshold may result in more entities being required to register as SDs, thereby potentially further reducing systemic risk. Conversely, a higher de minimis threshold may result in fewer entities being required to register an SD and, thus, possibly increase systematic risk.

However, the Commission's data appears to indicate that the additional entities that would need to register at the $3 billion de minimis threshold are engaged in a comparatively smaller amount of swap dealing activity. Many of these entities might be expected to have fewer counterparties and smaller overall risk exposures as compared to the SDs that engage in swap dealing in excess of the $8 billion level. Accordingly, the Commission believes that that the incremental reduction in systemic risk that may be achieved by registering dealers that engage in dealing between the $3 billion and $8 billion thresholds is limited.

The data also indicates that at higher thresholds of $20 billion, $50 billion, or $100 billion, fewer entities would be

[191] Commission staff analyzed the swaps activity of market participants over a one-year period to develop this estimate. The estimate includes 22 In-Scope Entities that had 10 or more counterparties and between $1 billion and $5 billion in AGNA of swaps activity in IRS, CDS, FX swaps, and equity swaps. Entities that were already registered SDs were excluded. The estimate does not account for entities that primarily are entering into NFC swaps because notional amount information was not available for that asset class.

[192] This estimate is based on the following staff requirements for this determination: 25 hours for an OTC principal trader at $695/hour, 40 hours for a compliance attorney at $335/hour, 35 hours for a chief compliance officer at $556/hour, 80 hours for an operations manager at $290/hour, and 20 hours for a business analyst at $273/hour. These individuals would be responsible for identifying, analyzing, and aggregating the swap dealing activity of a firm and its affiliates. The estimates of the number of personnel hours required have been updated from the SD Definition Adopting Release in light of the Commission's experience in implementing the SD Definition.

The estimates of the hourly costs for these personnel are from SIFMA's Management & Professional Earnings in the Securities Industry 2013 survey, modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for firm size, employee benefits, and overhead, which is the same multiplier that was used when the SD Definition was adopted. *See* 77 FR at 30712 n.1347.

The Commission recognizes that particular entities may, based on their circumstances, incur costs substantially greater or less than the estimated averages.

[193] The estimate of 11 entities is approximately 50 percent of the 22 entities that would need to undertake an initial analysis. This estimate assumes that many entities would, following the initial analysis, determine that they would either need to register or choose not to engage in enough dealing activity to require ongoing monitoring.

[194] The Commission estimates that the ongoing analysis would be streamlined as a result of the initial analysis, and therefore would be less costly. For purposes of this calculation, the Commission preliminarily estimates that the cost of the ongoing analysis would be approximately 50 percent of the cost of the initial analysis.

[195] Commission staff analyzed the swaps activity of market participants over a one-year period to develop this estimate. The estimate includes 29 In-Scope Entities that had between $3 billion and $15 billion, and 4 In-Scope Entities that had between $15 billion and $25 billion, in AGNA of swaps activity in IRS, CDS, FX swaps, and equity swaps, and at least 10 counterparties. The estimate does not account for entities that primarily are entering into NFC swaps because notional amount information was not available for that asset class.

[196] The Commission estimates that the ongoing analysis would be streamlined as a result of the initial analysis, and therefore would be less costly. For purposes of this calculation, the Commission preliminarily estimates that the cost of the ongoing analysis would be approximately 50 percent of the cost of the initial analysis.

[197] As discussed in section II.A.2.i, the 2017 Transaction Coverage was approximately 98 percent.

required to register as SDs, though the change in regulatory coverage as measured by Estimated AGNA Coverage and Estimated Transaction Coverage would be small. Thus, the Commission preliminarily believes that the increase in systemic risk that may occur due to a higher threshold would not be significant. However, depending on how the market adapts to a higher threshold, the level of regulatory coverage could potentially decrease more than the data indicates.

Additionally, as discussed above, the ENNs analysis suggests that the change in the extent to which market risk is held by persons identified as Likely SDs is not very sensitive to the changes in the thresholds considered here.

The Commission preliminarily believes that setting the de minimis threshold at $8 billion will not substantially diminish the protection of market participants and the public as compared to a $3 billion threshold. Further, as discussed, the Commission does not expect that an increase in the threshold would increase the protection of market participants and the public.

(b) Efficiency, Competitiveness, and Financial Integrity of Markets

Another goal of SD regulation is swap market efficiency, orderliness, and transparency. These market benefits are achieved through regulations requiring, for example, SDs to keep detailed daily trading records, report trade information, provide counterparty disclosures about swap risks and pricing, and engage in portfolio reconciliation and compression exercises.

As compared to a $3 billion de minimis threshold, an $8 billion threshold may have a negative effect on the efficiency and integrity of the markets as fewer entities are required to register as SDs and fewer transactions become subject to SD-related regulations. However, the Commission also recognizes that the efficiency and competitiveness of the swap market may be negatively impacted if the de minimis threshold is set too low, by potentially increasing barriers to entry that may stifle competition and reduce swap market efficiency. For example, if entities choose to reduce or cease their swap dealing activities in response to the $3 billion de minimis threshold, the number or availability of market makers for swaps may be reduced, which could lead to increased costs for potential counterparties and end-users. Conversely, a higher threshold may increase market liquidity, efficiency, and competition as more entities engage in swap dealing without SD registration as a barrier to entry. However, a higher threshold may also result in fewer swaps being subject to SD-related regulations requiring, for example, disclosures, portfolio reconciliation, portfolio, compression, potentially reducing the financial integrity of markets.

Considering these countervailing factors, the Commission believes that setting the de minimis threshold at $8 billion will not significantly diminish the efficiency, competitiveness, and financial integrity of markets as compared to a $3 billion threshold. Further, as discussed, an increase in the threshold would potentially have both positive and negative effects to the efficiency, competitiveness, and financial integrity of the markets.

(c) Price Discovery

All else being equal, the Commission preliminarily believes that price discovery will not be harmed and might be improved if there are more entities engaging in ancillary dealing due to increased competitiveness among swap counterparties. The Commission is preliminarily of the view that, as compared to a $3 billion threshold, an $8 billion de minimis threshold would encourage participation of new SDs and promote ancillary dealing because those entities engaged in swap dealing activities below the threshold would not need to incur the direct costs of registration until they exceeded a higher threshold.

Similarly, raising the threshold above $8 billion could lead to even more entities engaging in ancillary dealing.

(d) Sound Risk Management

The Commission notes that a higher de minimis threshold could lead to impaired risk management practices because a lower number of entities would be required by regulation to: (1) Develop and implement detailed risk management programs; (2) adhere to business conduct standards that reduce operational and other risks; and (3) satisfy margin requirements for uncleared swaps. For the same reason, a lower threshold could positively impact risk management since more entities would be required to comply with the above mentioned risk-related SD regulations.

(e) Other Public Interest Considerations

The Commission has not identified any other public interest considerations with respect to setting the de minimis threshold at $8 billion in AGNA of swap dealing activity.

2. Swaps Entered Into by Insured Depository Institutions in Connection With Loans to Customers

The proposed IDI De Minimis Provision would require that the loans and related swaps generally meet requirements that, as compared to the requirements of the IDI Swap Dealing Exclusion in paragraph (5) of the SD Definition, reflect: (1) A revised timing requirement for when the swap must be entered into; (2) an expansion of the types of swaps that are eligible; (3) a reduced syndication percentage requirement; (4) an elimination of the notional amount cap; and (5) a refined explanation of the types of loans that would qualify. Any swap that meets the requirements of the IDI Swap Dealing Exclusion in paragraph (5) of the SD Definition would also meet the requirements of this new IDI De Minimis Provision.

(i) Policy-Related Costs and Benefits

Similar to the IDI Swap Dealing Exclusion in paragraph (5) of the SD Definition, the IDI De Minimis Provision allows IDIs to tailor the risks of a loan to the loan customer's and the lender's needs and promotes the risk-mitigating effects of swaps. The IDI De Minimis Provision, however, allows more flexibility, which should expand the universe of swaps that do not have to be counted towards the de minimis threshold, as well as decrease concentration in the markets for swaps and loans. For example, the different requirements for both timing and the relationship of the swap to the loan will increase the ability of IDIs to enter into certain swaps and not be concerned that they would have to be counted towards the de minimis threshold. This should enhance market liquidity, which is helpful for customers of IDIs that may not have access to larger SDs. Conversely, expanding the universe of swaps not required to be counted towards the de minimis threshold also expands the number of swaps potentially not subject to SD regulation and consequently, could decrease customer protections. As mentioned in section II.B.1, however, the proposed IDI De Minimis Provision will likely benefit mostly small and mid-sized IDIs, which mitigates the concern that systemic risk will increase as a result of the proposed change.

As indicated by Table 14 in section II.B.1, the level of activity between unregistered IDIs and other unregistered persons is between only approximately 0.003 percent and 0.007 percent of the total AGNA of swaps activity, depending on the range of AGNA of

swaps activity being examined (at AGNAs of between $1 billion and $50 billion). Given those low percentages, the Commission is of the view that the policy benefits of SD regulation likely would not be significantly diminished if the proposed IDI De Minimis Provision is adopted and some unregistered IDIs marginally expand the number and AGNA of swaps they enter into with customers in connection with loans to those customers. Further, though these entities are active in the swap market, the Commission is of the view that their activity poses less systemic risk as compared to larger IDIs because of their limited AGNA of swaps activity as compared to the overall size of the market.

The Commission believes that the benefits of added market liquidity may be more significant than the costs of potentially reduced customer protections. The cost of reduced customer protections is mitigated because such swaps would still be required to be reported to the CFTC and IDIs would still be subject to prudential regulatory requirements, thereby providing oversight with respect to such swaps.

(ii) Section 15(a)

Section 15(a) of the CEA requires the Commission to consider the effects of its actions in light of the following five factors:

(a) Protection of Market Participants and the Public

The IDI De Minimis Provision proposed amendment may expand the universe of swaps that fall outside the scope of SD regulations, potentially increasing systemic risk and reducing counterparty protections. However, the IDIs would still be subject to prudential regulatory requirements, potentially mitigating this concern.

(b) Efficiency, Competitiveness, and Financial Integrity of Markets

The efficiency, competitiveness, and financial integrity of the markets may also be affected by the addition of the IDI De Minimis Provision since it provides IDIs more flexibility to enter into swaps in connection with loans without registering as SDs. With the added flexibility, the number of IDIs offering swaps in connection with loans may increase, which might have a positive impact on the efficiency and competiveness of the market for swaps and loans. However, the added flexibility may also result in fewer swaps being subject to SD-related regulations.

(c) Price Discovery

The IDI De Minimis Provision could lead to better price discovery as small and mid-sized banks increase their level of ancillary dealing activity, which might increase the frequency of swap transaction pricing.

(d) Sound Risk Management

The proposed IDI De Minimis Provision should increase the usage of swaps for risk mitigation, which might reduce the risk resulting from the defaulting of loan customers. Additionally, having more IDIs offering swaps in connection with loans might decrease concentration in the market for loan-related swaps and thereby decrease risk as well.

(e) Other Public Interest Considerations

The Commission has not identified any other public interest considerations with respect to the proposed IDI De Minimis Provision.

3. Swaps Entered Into To Hedge Financial or Physical Positions

The Commission is proposing new paragraph (4)(D), which provides a general exception from the SD de minimis threshold calculation for certain hedging swaps. To meet the requirements of the Hedging De Minimis Provision, a swap must be entered into by a person for the primary purpose of reducing or otherwise mitigating one or more of its specific risks, including, but not limited to, market risk, commodity price risk, rate risk, basis risk, credit risk, volatility risk, correlation risk, foreign exchange risk, or similar risks arising in connection with existing or anticipated identifiable assets, liabilities, positions, contracts, or other holdings of the person or any affiliate. Additionally, the entity entering into the hedging swap must not: (1) Be the price maker of the hedging swap; (2) receive or collect a bid/ask spread, fee, or commission for entering into the hedging swap; and (3) receive other compensation separate from the contractual terms of the hedging swap in exchange for entering into the hedging swap.

(i) Policy-Related Costs and Benefits

Generally, the proposed Hedging De Minimis Provision is not expected to impact how such swaps are treated for purposes of the de minimis threshold calculation, but rather provides additional clarity to market participants, which allows them to determine more easily whether swaps entered into for purposes of hedging financial or physical positions are counted towards the de minimis threshold. The Commission believes that the clarity will benefit certain entities by encouraging economically-appropriate risk mitigation, potentially reducing systemic risk broadly. The proposed exception should reduce costs that persons engaging in such swaps would incur in determining if they are SDs. Such added clarity may also improve market liquidity as entities feel more comfortable entering into a swap for the purpose of hedging, knowing that the swap would not necessarily constitute swap dealing. In addition to increased market liquidity, the additional clarity should encourage economically appropriate risk mitigation.

Conversely, it is possible that improper application of the Hedging De Minimis Provision could lead to certain swap dealing activity being treated as hedging activity that does not need to be counted towards the de minimis threshold. This may reduce the level of the Commission's regulatory coverage of the swap market. However, the Commission believes that the requirements of the proposed Hedging De Minimis Provision limit the likelihood that dealing activity would be treated as hedging activity by market participants.

(ii) Section 15(a)

Section 15(a) of the CEA requires the Commission to consider the effects of its actions in light of the following five factors:

(a) Protection of Market Participants and the Public

The Commission notes that certain swaps that are now currently counted towards the de minimis threshold could now be hedging swaps that would not be counted, which could potentially mean less regulatory coverage and protection for market participants. However, as discussed, the Commission believes that the proposed exception for swaps entered into to hedge financial or physical positions has a number of requirements that greatly reduce the likelihood that swap dealing activity would improperly not be counted towards an entity's de minimis threshold calculation, reducing the potential impact to systemic risk and counterparty protections.

(b) Efficiency, Competitiveness, and Financial Integrity of Markets

With respect to the Hedging De Minimis Provision, market liquidity may improve as entities would be able to execute hedging swaps knowing that the swaps would not necessarily constitute swap dealing that counts towards the de minimis threshold.

(c) Price Discovery

The Hedging De Minimis Provision could lead to better price discovery as more entities gain certainty that hedging swaps are not considered dealing activity, and therefore increase their hedging-related activity because they are less likely to have to register as an SD.

(d) Sound Risk Management

The added clarity that certain hedging swaps need not be counted towards an entity's de minimis calculation could lead to improved risk management as certain entities increase their hedging activities.

(e) Other Public Interest Considerations

The Commission has not identified any other public interest considerations with respect to the proposed Hedging De Minimis Provision.

4. Swaps Resulting From Multilateral Portfolio Compression Exercises

(i) Policy-Related Costs and Benefits

The Commission believes that swaps which result from multilateral portfolio compression exercises and which meet the requirements of the existing Staff Letter No. 12–62 would also meet the requirements of the proposed rule amendment, and are already not considered swaps that have to count towards a person's de minimis threshold. The Commission is of the preliminary belief that the existing no-action relief is being fully relied upon by market participants, and therefore, this proposed change could lead to increased certainty for market participants, without any significant policy-related costs for the swap market.

(ii) Section 15(a)

Section 15(a) of the CEA requires the Commission to consider the effects of its actions in light of the following five factors:

(a) Protection of Market Participants and the Public

Multilateral portfolio compression exercises help to better align initial margin between appropriate counterparties when, for example, a swap with a compression exercise participant has been backed-to-backed between two SD affiliates in the same holding company. In such cases, the original outward facing swap with the first affiliate and the back-to-back affiliate swap may be replaced with an outward facing swap with the second affiliate. Thus, having SDs engage in compression exercises may increase the protections that posting initial margin provides market participants and the public, namely, a counterparty has a senior claim to posted initial margin and may not have to become a general creditor in a bankruptcy. To the extent that a provision explicitly excepting multilateral portfolio compression exercise swaps from the de minimis calculation encourages more participation in compression exercises, market participants and the public may be better protected.

(b) Efficiency, Competitiveness, and Financial Integrity of Markets

The increased certainty that swaps resulting from multilateral portfolio compression exercises do not need to be counted towards a person's de minimis threshold could encourage persons to enter into multilateral portfolio compression exercises on a more regular basis, potentially increasing the financial integrity of the markets.

(c) Price Discovery

Prices from swap compression exercises are not publicly reported because they are not price-forming trades. As such, the Commission has not identified any price discovery considerations with respect to the MPCE De Minimis Provision.

(d) Sound Risk Management

The increased certainty that swaps resulting from multilateral portfolio compression exercises do not need to be counted towards a person's de minimis threshold could encourage persons to enter into multilateral portfolio compression exercises on a more regular basis, potentially reducing risk.

(e) Other Public Interest Considerations

The Commission has not identified any other public interest considerations with respect to the MPCE De Minimis Provision.

5. Methodology for Calculating Notional Amounts

(i) Policy-Related Costs and Benefits

To allow for more timely clarity to market participants, the Commission is proposing new paragraph (4)(vii) of the SD Definition, which provides that the Commission may determine the methodology to be used to calculate the notional amount for any group, category, type, or class of swaps, and delegates to the Director of DSIO the authority to determine methodologies for calculating notional amounts. Additionally, any such methodology shall be economically reasonable and analytically supported, and be made publicly available on the CFTC website. The Commission believes that this proposed amendment would facilitate timely clarity regarding notional amount calculation methodologies for purposes of the de minimis threshold, and help ensure that persons are fully aware of whether their activities could lead to (or presently entail) SD registration requirements in the event of market or regulatory changes. As is the case with existing delegations to staff, the Commission would continue to reserve the right to exercise the delegated authority itself at any time.

(ii) Section 15(a)

(a) Protection of Market Participants and the Public

The Commission has not identified any protection of market participants and the public considerations with respect to the proposed rule for determining the methodology for calculating notional amounts and the delegation of authority.

(b) Efficiency, Competitiveness, and Financial Integrity of Markets

The Commission has not identified any efficiency, competitiveness, and financial integrity of the markets considerations with respect to the proposed rule for determining the methodology for calculating notional amounts and the delegation of authority.

(c) Price Discovery

The Commission has not identified any price discovery considerations with respect to the proposed rule for determining the methodology for calculating notional amounts and the delegation of authority.

(d) Sound Risk Management

The Commission believes that most market participants understand the risks of the swaps they engage in. To the extent that the proposed amendment compels SDs to assess the deltas of embedded options in swaps, however, the proposed amendment could lead to an audit trail for SDs that might ultimately improve risk management (if estimated deltas did not exist already).

(e) Other Public Interest Considerations

The Commission believes that the proposed rule for determining the methodology for calculating notional amounts and the delegation of authority will ensure that persons are fully aware of whether their activities could lead to (or presently entail) SD registration requirements in the event of market or regulatory changes.

6. Request for Comment

The Commission invites comments from the public on all aspects of its

preliminary consideration of costs and benefits associated with this Proposal. The questions below relate to areas that the Commission preliminarily believes may be relevant. In addressing these or any other aspect of the Commission's preliminary assessment, commenters are encouraged to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposed alternatives.

(1) What are the costs and benefits to market participants associated with each proposed change? Please explain and, to the extent possible, quantify these costs and benefits.

(2) What are the direct costs associated with SD registration and compliance? What is the smallest notional amount of dealing swaps that an entity must enter into in order for the profitability of its swap dealing activity to exceed SD registration and compliance costs?

(3) Are there indirect benefits to registering as an SD? For example, does being a registered SD make an entity a more desirable counterparty? Are many of the benefits of transacting with an SD not relevant because many requirements are part of standard ISDA agreements?

(4) Besides the direct costs of registration and compliance, are there any indirect costs to becoming a registered SD? What are these costs?

(5) Would the entities with dealing activity between $3 billion and $8 billion incur similar registration and compliance costs as compared to entities with dealing activity above $8 billion? Would those dealers be impacted differently by those costs?

(6) What are the costs and benefits to the public associated with each proposed change? Please explain and, to the extent possible, quantify these costs and benefits.

(7) How does each proposed change affect the efficiency, competitiveness, and financial integrity of markets?

(8) How does each proposed change affect price discovery for the swap market?

(9) How does each proposed change affect sound risk management for swap market participants?

(10) How does each proposed change affect other public interests that the Commission may elect to consider?

(11) Has the Commission identified all of the relevant categories of costs and benefits in its preliminary consideration of the costs and benefits? Please describe any additional categories of costs or benefits that the Commission should consider.

(12) The Commission preliminarily believes that cross-border aspects of this rulemaking are similar to domestic applications. Do the costs and benefits of the proposed changes, as applied in cross-border contexts, differ from those costs and benefits resulting from their domestic application, and, if so, in what ways and to what extent?

D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of the CEA, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of the CEA.[198]

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requests comment on whether this Proposal implicates any other specific public interest to be protected by the antitrust laws.

The Commission has considered this Proposal to determine whether it is anticompetitive and has preliminarily identified no anticompetitive effects. The Commission requests comment on whether this Proposal is anticompetitive and, if it is, what the anticompetitive effects are.

Because the Commission has preliminarily determined that this Proposal is not anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA. The Commission requests comment on whether there are less anticompetitive means of achieving the relevant purposes of the CEA that would otherwise be served by adopting this Proposal.

List of Subjects in 17 CFR Part 1

Commodity futures, Definitions, De minimis exception, Insured depository institutions, Swaps, Swap dealers.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR part 1 as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

[198] 7 U.S.C. 19(b).

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6*l,* 6m, 6n, 6*o,* 6p, 6r, 6s, 7, 7a–1, 7a–2, 7b, 7b–3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24 (2012).

■ 2. In § 1.3, amend the definition of the term ''Swap dealer'' as follows:
■ a. Revise paragraph (4)(i)(A);
■ b. Add paragraphs (4)(i)(C), (D), and (E);
■ c. Remove and reserve paragraph (4)(ii); and
■ d. Add paragraph (4)(vii).

The revisions and additions read as follows:

§ 1.3 Definitions.

* * * * *

Swap Dealer. * * *

(4) *De minimis exception*—(i)(A) *In general.* Except as provided in paragraph (4)(vi) of this definition, a person that is not currently registered as a swap dealer shall be deemed not to be a swap dealer as a result of its swap dealing activity involving counterparties, so long as the swaps connected with those dealing activities into which the person—or any other entity controlling, controlled by or under common control with the person—enters over the course of the immediately preceding 12 months have an aggregate gross notional amount of no more than $8 billion, and an aggregate gross notional amount of no more than $25 million with regard to swaps in which the counterparty is a ''special entity'' (as that term is defined in section 4s(h)(2)(C) of the Act, 7 U.S.C. 6s(h)(2)(C), and § 23.401(c) of this chapter), except as provided in paragraph (4)(i)(B) of this definition. For purposes of this definition, if the stated notional amount of a swap is leveraged or enhanced by the structure of the swap, the calculation shall be based on the effective notional amount of the swap rather than on the stated notional amount.

* * * * *

(C) *Insured depository institution swaps in connection with originating loans to customers.* Solely for purposes of determining whether an insured depository institution has exceeded the aggregate gross notional amount threshold set forth in paragraph (4)(i)(A) of this definition, an insured depository institution may exclude swaps entered into by the insured depository institution with a customer in connection with originating a loan to that customer, subject to the requirements of paragraphs (4)(i)(C)(*1*) through (4)(i)(C)(*6*) of this definition.

(*1*) *Timing of execution of swap.* The insured depository institution enters into the swap with the customer no

earlier than 90 days before execution of the applicable loan agreement, or no earlier than 90 days before transfer of principal to the customer by the insured depository institution pursuant to the loan, unless an executed commitment or forward agreement for the applicable loan exists, in which event the 90 day restriction does not apply;

(*2*) *Relationship of swap to loan.* (*i*) The rate, asset, liability or other term underlying such swap is, or is related to, a financial term of such loan, which includes, without limitation, the loan's duration, rate of interest, the currency or currencies in which it is made and its principal amount; or

(*ii*) Such swap is required as a condition of the loan, either under the insured depository institution's loan underwriting criteria or as is commercially appropriate, in order to hedge risks incidental to the borrower's business (other than for risks associated with an excluded commodity) that may affect the borrower's ability to repay the loan;

(*3*) *Duration of swap.* The duration of the swap does not extend beyond termination of the loan;

(*4*) *Level of funding of loan.* (*i*) The insured depository institution is committed to be, under the terms of the agreements related to the loan, the source of at least 5 percent of the maximum principal amount under the loan; or

(*ii*) If the insured depository institution is committed to be, under the terms of the agreements related to the loan, the source of less than 5 percent of the maximum principal amount under the loan, then the aggregate notional amount of all swaps entered by the insured depository institution with the customer in connection with the financial terms of the loan cannot exceed the principal amount of the insured depository institution's loan;

(*5*) The swap is considered to have been entered into in connection with originating a loan with a customer if the insured depository institution:

(*i*) Directly transfers the loan amount to the customer;

(*ii*) Is a part of a syndicate of lenders that is the source of the loan amount that is transferred to the customer;

(*iii*) Purchases or receives a participation in the loan; or

(*iv*) Under the terms of the agreements related to the loan, is, or is intended to be, the source of funds for the loan;

(*6*) The loan to which the swap relates shall not include:

(*i*) Any transaction that is a sham, whether or not intended to qualify for the exception from the de minimis threshold in this definition; or

(*ii*) Any synthetic loan.

(D) *Swaps entered into for the purpose of hedging.* Solely for purposes of determining whether a person has exceeded the aggregate gross notional amount threshold set forth in paragraph (4)(i)(A) of this definition, the person may exclude swaps that are entered into for the purpose of hedging, subject to the requirements of paragraphs (4)(i)(D)(*1*) through (4)(i)(D)(*6*) of this definition.

(*1*) The person is entering into the swap for the primary purpose of reducing or otherwise mitigating one or more specific risks for the person, which includes, without limitation, market risk, price risk, rate risk, basis risk, credit risk, volatility risk, foreign exchange risk, liquidity risk, or similar risks arising in connection with existing or anticipated identifiable assets, liabilities, positions, contracts, or other holdings of the person or any affiliate of the person;

(*2*) For that swap, the person is not the price maker and does not receive or earn a bid/ask spread, fee, commission, or other compensation for entering into the swap;

(*3*) The swap is economically appropriate to the reduction of risks that may arise in the conduct and management of an enterprise engaged in the type of business in which the person is engaged;

(*4*) The swap is entered into in accordance with sound business practices; and

(*5*) The person does not enter into the swap in connection with activity structured to evade designation as a swap dealer.

(E) *Swaps resulting from multilateral portfolio compression exercises.* Solely for purposes of determining whether a person has exceeded the aggregate gross notional amount threshold set forth in paragraph (4)(i)(A) of this definition, the person may exclude swaps that result from multilateral portfolio compression exercises, as defined in § 23.500 of this chapter, to the extent the person does not enter into the multilateral portfolio compression exercise in connection with activity structured to evade designation as a swap dealer.

(ii) [Reserved]

* * * * *

(vii) *Methodology for calculation of notional amounts.* (A) For purposes of paragraph (4) of this definition, the Commission may on its own, or upon written request by a person, determine the methodology to be used to calculate the notional amount for any group, category, type, or class of swaps. Such methodology shall be economically reasonable and analytically supported. Each such determination shall be made publicly available and posted on the Commission website.

(B) *Delegation.* (*i*) The Commission hereby delegates to the Director of the Division of Swap Dealer and Intermediary Oversight, or such other employee or employees as the Director may designate from time to time, the authority in paragraph (4)(vii)(A) of this definition to determine the methodology to be used to calculate the notional amount for any group, category, type, or class of swaps.

(*ii*) The Director of the Division of Swap Dealer and Intermediary Oversight may submit any matter which has been delegated to him or her under paragraph (4)(vii)(B)(*i*) of this definition to the Commission for its consideration.

(*iii*) Nothing in this paragraph (4)(vii)(B) may prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Swap Dealer and Intermediary Oversight under paragraph (4)(vii)(A) of this definition.

* * * * *

Issued in Washington, DC, on June 5, 2018, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

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

Appendices to De Minimis Exception to the Swap Dealer Definition—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Giancarlo and Commissioner Quintenz voted in the affirmative. Commissioner Behnam voted in the negative.

Appendix 2—Statement of Chairman J. Christopher Giancarlo

Since becoming Chairman, I have committed to resolving this outstanding issue and giving market participants the regulatory certainty they need. Still, as you know, last year I requested that the Commission postpone a decision on the de minimis threshold for a year. That decision was understandably disappointing to some, including my fellow Commissioners, who said they were then ready to vote on it.

Yet, as I told Congress at the time, I did not just want to address the de minimis threshold; I wanted to get it right.

Today, I believe the staff has had adequate time to analyze the most current and comprehensive trading data and arrive at a recommendation for the best path forward in terms of managing risk to the financial system. The staff has provided

Commissioners with full access to the data they have used in their analysis. They have also conducted additional and specific data analyses requested by Commissioners.

The data shows quite clearly that a drop in the de minimis definition from $8 billion to $3 billion would not have an appreciable impact on coverage of the marketplace. In fact, any impact would be less than one percent—an amount that is truly de minimis.

On the other hand, the drop in the threshold would pose unnecessary burdens for non-financial companies that engage in relatively small levels of swap dealing to manage business risk for themselves and their customers. That would likely cause non-financial companies to curtail or terminate risk-hedging activities with their customers, limiting risk-management options for end-users and ultimately consolidating marketplace risk in only a few large, Wall Street swap dealers.

In my travels around the country over the past four years on the Commission, I have met numerous small swaps trading firms that make markets in local markets or in select asset classes. These firms are often housed in small community banks, local energy utilities or commodity trading houses. They all trade below the $8 billion threshold. Almost all of them say that if the de minimis threshold were to drop to $3 billion, they would reduce their trading accordingly. They just cannot afford to be registered as swap dealers.

Who are the winners if these small firms reduce their market making activities? Big Wall Street banks. Who are the losers if these small firms reduce their market making activities? Small regional lenders, energy hedgers and Ag producers, who become more dependent on Wall Street trading liquidity. Who is the really big loser? The U.S. economy, which becomes more financially concentrated and less economically diverse.

That is why I think the proposed rule rightly balances the mandate to register swap dealers whose activity is large enough in size and scope to warrant oversight without detrimentally affecting community banks and agricultural co-ops that engage in limited swap dealing activity and do not pose systemic risk. Leaving the threshold at the $8 billion level allows firms to avoid incurring new costs for overhauling their existing procedures for monitoring and maintaining compliance with the threshold. It fosters increased certainty and efficiency in determining swap dealer registration by utilizing a simple objective test with a limited degree of complexity. And it ensures that smaller market makers and the counterparties with which they trade can engage in limited swap dealing without the high costs of registration and compliance as intended by Congress when it established the de minimis dealing exception to begin with.

The changes proposed today will also not count swaps of Insured Depository Institutions (IDIs) made in connection with loans. They would allow, for example, an insured depository institution swap dealer to write a swap with a customer 181 days after entering into a loan without counting it towards the $8 billion threshold. These types of changes will allow small and regional banks to further serve customers' needs without the added burden of unnecessary regulation and associated compliance costs.

This proposal incorporates feedback and input from my two fellow Commissioners and their fine staffs. We now look forward to feedback from the public and market participants. We ask numerous questions about whether any additional exceptions or calculations should be included in the final rule. Three years ago, I raised the question of whether there should be an exclusion from counting cleared swaps towards the registration threshold and that question is asked again. Your response to questions regarding adding other potential components will help the Commission assess whether further adjustments to the de minimis exception may be appropriate in the final rule.

As discussed in the adopting release, staff continues to consult with the SEC and prudential regulators regarding the changes in the proposal in particular some of the questions regarding exclusions. I remain committed to working with Chair Jay Clayton and the SEC in areas where harmonization is necessary and appropriate.

I also remain committed to finalizing this rule before the end of the year. I recognize that market participants need certainty. Today's proposal is a major step forward in doing just that. I applaud staff for this proposal and look forward to feedback.

Appendix 3—Supporting Statement of Commissioner Brian D. Quintenz

I support this proposed rulemaking governing swap dealer registration, which is fundamental to the Commission's effective oversight of the swaps market.

Swap dealers are subject to extensive and costly regulatory requirements: Registration fees; minimum capital requirements; posting margin for uncleared swaps; IT costs for trade processing, reporting, confirmation, and reconciliation activities; costs to create and send clients daily valuation reports; costs for recordkeeping obligations; third party audit expenses; legal fees to develop and implement business conduct rules and many, many more. If that sounds like a big bill, it is. A prominent economic research firm estimated the present value of the cost for swap dealer registration compliance at $390 million per firm.[1]

Those significant requirements and costs are imposed to advance equally significant policy objectives, such as the reduction of systemic risk, increased counterparty protections, and enhanced market efficiency and integrity. Therefore, the registration threshold, as the trigger mechanism for those costs and objectives, must be appropriately and specifically calibrated to ensure that the correct market group shoulders the burdens of swap dealer regulations because they are best situated to realize the corresponding policy goals of that registration.

I have stated previously, in great detail and with considerable evidence, the importance of appropriately calibrating the de minimis threshold so that entities posing no systemic risk and with a relatively small market footprint are not regulated under a regime that is more appropriate for the world's largest, most complex financial institutions.[2] If we fail to calibrate this threshold appropriately, firms at the margin will likely reduce their activity to avoid registration as opposed to serving their clients' interests and accepting the burdens of registration. A public policy choice which drives away market participants and reduces market activity is undeniably flawed.

From my first confirmation hearing in 2016 to the present day,[3] including meetings with elected representatives, my second confirmation hearing,[4] interviews with the press,[5] discussions with market participants, and in public remarks at event forums, [6] I have been adamant that notional value is a poor measure of activity and a meaningless measure of risk, and therefore, by itself, is a deficient metric by which to impose large costs and achieve substantial policy objectives.[7] Therefore, I have some reservations about this proposal's continued reliance on a one-size-fits-all notional value test for swap dealer registration.

I still, and will continue to, believe that the criteria for determining swap dealer registration should be more closely correlated to risk. However, if any final rule is going to

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[1] *See* National Economic Research Associates, Cost-Benefit Analysis of the CFTC's Proposed Swap Dealer Definition 1 (Dec. 20, 2011) (''NERA Report''), *http://www.nera.com/content/dam/nera/publications/archive2/PUB_SwapDealer_1211.pdf*. It is difficult to estimate the initial and incremental, ongoing costs of swap dealer regulation. NERA's report regarding the costs of registration for non-financial energy firms remains one of the only comprehensive analyses produced.

[2] Keynote Address of Commissioner Brian Quintenz before the Smart Financial Regulation Roundtable (Nov. 2017), *https://www.cftc.gov/PressRoom/SpeechesTestimony/opaquintenz3*.

[3] Transcript, ''Hearing to Consider Pending CFTC Nominations,'' Senate Agriculture, Nutrition, and Forestry Committee, September 15, 2016, 2016 WL 4938280 p.12.

[4] Transcript, ''Hearing to Consider Pending CFTC Nominations,'' Senate Agriculture, Nutrition, and Forestry Committee, July 27, 2017, 2017 WL 3215667 p.14 (''With regard to the de minimis threshold level, I think when this threshold was set originally it was really done without the benefit of a lot of data. I think if there is a scenario where this shortfall reduces from $8 billion to $3 billion [that] instead of increasing registration, it would drive participants out of the market or force them to reduce their activity because of the cost that would be imposed upon them.'').

[5] Bain, Benjamin, ''CFTC Swaps Dealer Threshold Criticized by Its Newest Republican,'' Bloomberg (Oct. 9, 2017); *and* DeFrancesco, Dan, ''CFTC's Quintenz: Dealer Threshold Could Exclude Cleared Swaps—Commissioner Suggests Risks should be Better Considered in De Minimis Reappraisal,'' *Risk.Net* (Oct. 24, 2017).

[6] ''Fireside Chat: CFTC Commissioners,'' FIA Expo Chicago (Oct 19, 2017) available at: *https://expo2017.fia.org/articles/fireside-chat-cftc-commissioners*, at 9'30'' through 10'25''.

[7] For further discussion, see comment letter to CFTC from Financial Services Roundtable dated January 19, 2016 (''We do not see a benefit to requiring an entity that enters into a small number of swaps with a large notional amount but little exposure to choose between exiting the market or registering as a swap dealer, nor should entities that are taking on very large exposures without crossing a notional threshold, or a trade or counterparty count metric, be unregulated because they have concentrated risk in a small number of trades.'').

settle for an activity-based threshold, a notional value metric should at least be combined with additional measures (such as dealing counterparty count and dealing transaction count) to determine what constitutes a de minimis quantity of swap dealing activity. Including additional measures should mitigate instances of ''false positives'' that could result from the use and deficiencies of any one activity-based metric.[8]

While it would have been my preference that this concept appear in this proposal's rule text as the operative standard, I am very grateful to the Chairman and the Division of Swap Dealer and Intermediary Oversight (DSIO) for including a robust discussion in the preamble on the merits of replacing the current notional value de minimis threshold with a three-prong test. Specifically, the preamble suggests an entity could qualify for the de minimis exception if its dealing activity is below *any* of the following three criteria: (i) A notional threshold, (ii) a proposed dealing counterparty count threshold, or (iii) a proposed dealing transaction count threshold. In other words, an entity would have to surpass all three hurdles collectively in order to lose the de minimis exception's safe harbor.

I have included several questions in the proposal that ask for feedback on this approach, particularly with respect to the dealing counterparty and transaction count thresholds which I believe would provide market participants with additional flexibility to serve their clients' needs without triggering a very costly and burdensome registration process. I thank the staff of DSIO for including my questions in the proposal and welcome market participant's feedback on this potential approach.

I also welcome comments on the Proposed Rule's preamble discussion on accounting for exchange-traded or cleared swaps in an entity's de minimis calculation. Many of the policy goals of swap dealer regulation are accomplished when a swap is exchange-traded and cleared. For example, systemic risk concerns are diminished with respect to cleared swaps: The swaps are standardized, the executing counterparties do not incur counterparty credit risk because they face the clearinghouse and not each other, and each side is required to post margin that helps guarantee performance and prevent unfunded losses from accumulating. Removing such swaps from the de minimis calculation would better align the registration threshold with risk and would also, I believe, encourage additional liquidity on SEFs. I am hopeful that with the benefit of additional industry comment and further Commission analysis, the Commission will either adopt an exclusion for exchange-traded and cleared swaps or adjust their notional weighting in an entity's de minimis calculation.

We must remember, the Commission is not establishing the de minimis exception in a vacuum. Subsequent to the adoption of the swap dealer definition, other regulatory requirements have gone into effect which also advance the goals of swap dealer registration, such as mandatory clearing, SEF trading, reporting swap data to repositories, and margin requirements for uncleared swaps. For example, regardless of whether an entity is registered as a swap dealer, its swap activity is transparent to the Commission because of the swap data and real-time reporting requirements that apply to all market participants.

When the Commission first established the $8 billion de minimis threshold in 2012, it did so without the benefit of swap data.[9] Now almost six years later, staff has conducted a comprehensive analysis of the available swap data collected by Commission-registered SDRs and presented estimates about the impact that lower or higher notional amount thresholds would have on swap dealer registration. Although much work remains to be done to further refine the data, particularly with respect to the non-financial commodity asset class, I commend staff for their hard work, progress, and thoughtful analysis. I believe the data in the Proposed Rule clearly supports maintaining the de minimis threshold at $8 billion or potentially increasing it. For example, at a $20 billion notional threshold, the estimated amount of notional swap activity that would no longer be covered by swap dealer regulation is approximately only 1/100th of 1 percent of the $221 trillion market analyzed. I am interested to hear from commenters about the policy and market implications of maintaining or raising the de minimis threshold.

Finally, I would like to commend the Chairman and DSIO for including many important improvements to the de minimis exception in this proposal which I fully support. For instance, I support an appropriate Insured Depository Institution exception that will allow for banks to serve their clients' needs. By removing unnecessary timing restrictions and expanding the types of credit extensions that qualify for the exception, the proposal should improve the ability of IDIs to help their customers hedge loan-related risks as the statute intended. I also support the proposed rule's clarification that swaps that hedge financial risks may be excluded from an entity's de minimis count. Market participants should be able to use swaps to manage their financial and physical risks without concern that such activity may trigger swap dealer registration.

I will vote in favor of issuing this proposal to the public for feedback and look forward to hearing from market participants about how these proposed amendments may be further refined or calibrated to increase the efficacy of the de minimis threshold to meet the goals of swap dealer registration.

[8] *For further discussion, see* letter from Institute of International Bankers dated January 19, 2016.

[9] *See Hearing to Review the 2016 Agenda of the Commodity Futures Trading Commission Before the H. Comm. on Agric.,* 114th Cong. 17 (2016) (response of Timothy Massad, former CFTC Chairman, to question posed by Congressman David Scott (D–GA)), *https://agriculture.house.gov/uploadedfiles/114-40_-_98680.pdf.*

Appendix 4—Dissenting Statement of Commissioner Rostin Behnam

Introduction

I respectfully dissent from the Commodity Futures Trading Commission's (the ''Commission'' or ''CFTC'') notice of proposed rulemaking addressing the de minimis exception to the swap dealer definition (the ''Proposal''). I have a number of concerns with specific criteria of the various exceptions proposed and contemplated in the Proposal. However, my gravest concern is that the Commission is moving far beyond the task before it—setting the aggregate gross notional amount threshold for the de minimis exception—to redefine swap dealing activity absent meaningful collaboration with the Securities and Exchange Commission (''SEC''), as required by the Dodd-Frank Act,[1] and to the detriment of market participants eager for regulatory certainty. Equally concerning, the Proposal's various ancillary components not only detract from its core purpose, but may signify the Commission's willingness to exploit the de minimis exception to undermine the swap dealer definition and circumvent Congressional intent.

As discussed in the preamble to the Proposal, the regulatory history sets forth a clear path towards—and a deadline to complete—today's determination to propose an amendment that would set the aggregate gross notional amount (''AGNA'') threshold for the de minimis exception at $8 billion in swap dealing activity entered into by a person over the preceding 12 months prior to the termination of the phase-in period on December 31, 2019.[2] Since the Commission's

[1] The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, section 712(d), 124 Stat. 1376, 1644 (2010) (the ''Dodd-Frank Act''). Additionally, with respect to rulemakings and orders regarding swap dealers, among other things, section 712(a) requires the CFTC to consult and coordinate to the extent possible with the SEC and the prudential regulators to ensure consistency and comparability, to the extent possible. Such consultation must occur before the CFTC commences such rulemaking or order issuance. The Proposal indicates only that the Commission ''is consulting with the SEC and prudential regulators regarding the changes to the SD Definition discussed in this Proposal,'' indicating that the Commission may not have adhered to the letter or spirit of section 712(a) or (d) of the Dodd-Frank Act with respect to the Proposal.

[2] Since the initial establishment of the AGNA at $3 billion in May 2012, and initial five year phase-in period during which the AGNA threshold was set at $8 billion, the Commission issued two successive orders extending the phase-in, and issued preliminary and final staff reports concerning the de minimis threshold, as required by paragraph 4(ii)(B) of the swap dealer definition. Additionally, the Commission has more than five years of swap dealer oversight experience; given that the first swap dealers submitted applications for preliminarily registration in December 2017. *See* Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' 77 FR 30596 (May 23, 2012) (''SD Definition Adopting Release''); Order Establishing De Minimis Threshold Phase-In Termination Date, 81 FR 71605 (Oct. 18, 2016)

Continued

first Order Establishing a New De Minimis Threshold Phase-in Termination Date in 2016,[3] market participants have endured undue and prolonged uncertainty because the Commission has not acted decisively on the de minimis threshold. When the Commission punted again in October 2017, I urged the Commission to take further action now or let the current rule take effect.[4]

It is now June 2018. Given the twelve month lookback for calculating the AGNA, absent Commission action, market participants will need to start tracking their swap dealing activity on January 1, 2019 to determine whether their dealing activity would require registration when the phase-in period ends on December 31, 2019. The Commission has less than six months to either finalize the Proposal or kick it down the road again by issuing a third order establishing yet another phase-in termination date sometime in the future.

Six months is an ambitious time frame for even a simple rule. While CFTC-specific data is not available, at least one study concluded that the average amount of time for federal regulatory agencies to finalize rules is generally between 14 and 20 months.[5] The Part 49 amendments that we also voted on today, for example, took over 16 months between the Commission proposal and a final rule, and that rule only addressed a single industry comment letter that was nine pages long. However, given our extensive history with the AGNA for the de minimis exception, I believe that had the Commission observed the course it was on, and focused on the task at hand, it could have crafted the Proposal to address the issues most critical to market participants (the de minimis threshold, the exclusion for insured depository institution swaps in connection with originating loans to customers or ''IDI Swap Dealing Exclusion,'' and the hedging swap exclusion), consistent with requirements of the Commodity Exchange Act (the ''CEA'' or ''Act'') and Congressional intent and within the six month window we are now in.

Instead, the Commission, having waited too long to address these critical issues jointly with the SEC, veered off course, and relies too heavily on an alternative means to reach its destination: The de minimis exception.[6] Though this alternative path is within the Commission's authority, I believe that in utilizing the de minimis exception to address longstanding concerns with the IDI and physical hedging exclusions, the Commission stopped respecting the difference between what is permissible and what is proper. As a consequence, the Proposal morphed into a loophole for the Commission to explore the extent to which it may unilaterally alter the swap dealer definition. Such overreach not only may call into question the integrity of this agency, but it could prolong the uncertainty currently plaguing market participants as they (and the general public) sort through the matters ancillary to the de minimis AGNA threshold, which alone raise over 50 individual questions in requests for comments.

Commission Authority Under Regulation 1.3, Swap Dealer, Paragraph (4)(v)

Under paragraph 4(v) of the swap dealer definition, the Commission may change the requirements of the de minimis exception by rule or regulation, and may do so independent of the SEC (''De Minimis Exception Authority'').[7] While this authority permits the Commission to revisit the de minimis threshold, in the SD Definition Adopting Release, the Commission stated that in determining whether to revisit the threshold, it intended to focus on whether the de minimis exception (1) results in a swap dealer definition that encompasses too many entities whose activities are not significant enough to warrant full Title VII regulation; (2) results in an undue amount of dealing activity to fall outside of the regulatory framework; or (3) leads to inappropriate reductions in counterparty protections.[8]

While the Commission's authority with respect to the de minimis exception is broad, the Commission cannot lose sight of its purpose, as set forth in the CEA,[9] and the underlying Congressional intent.[10] As well, this authority is not intended to provide a de facto means to alter the swap dealer definition, by for example, excepting from consideration swaps that are exchange-traded and/or cleared when calculating the AGNA for purposes of the de minimis threshold, or excepting from such consideration entire categories of swaps.

Exclusions vs. Exceptions

IDI De Minimis Provision

Turning to the Proposal, and the critical issues, I am concerned with the Commission's use of its De Minimis Exception Authority to address longstanding concerns that the IDI Swap Dealing Exclusion, which was jointly adopted with the SEC as paragraph (5) to the swap dealer definition (''SD Definition), is unnecessarily restrictive, lacks clarity, and limits the ability of IDIs to serve customers in connection with their lending activity—which is inconsistent with the CEA.[11] As explained in the Proposal, ''rather than proposing to revise the scope of activity that constitutes swap dealing,'' which would require a joint rulemaking with the SEC, the Commission is proposing to amend paragraph (4) of the SD Definition, which addresses only the de minimis exception. Accordingly, the Proposal is to include both the IDI Swap Dealing Exclusion and a separate, slightly broader IDI De Minimis Provision in the SD Definition.

Conducting a side-by-side comparison of the current text of paragraph (5) and proposed paragraph (4)(i)(C) of the SD Definition, it is difficult to understand what hurdles may have prevented the CFTC and SEC from engaging in a joint rulemaking to address these relatively modest differences, which are generally well supported by the record. It's especially noteworthy given the close working relationship between the two agencies and ongoing harmonization efforts.[12] The end result is that, if finalized, instead of simply disregarding or ''excluding'' all swap activity that meets a single set of criteria, IDIs will have to develop an additional analysis to address swap activity that cannot be excluded from their determinations for purposes of the SD Definition, but might nevertheless be excepted from their AGNAs when calculating dealing activity for the purpose of the de minimis threshold. It is difficult to understand why the Commission would want to create additional regulatory burdens in the context of this Proposal, and the document provides no explanation other than that the Commission has discretion under its De Minimis Exception Authority.

Hedging De Minimis Provision

I am similarly concerned that the Commission's use of its De Minimis Exception Authority to provide greater regulatory certainty with respect to swaps entered to hedge physical or financial exposures (the ''Hedging De Minimis Provision'') will—out of an abundance of caution—be utilized by market participants

(''Initial Phase-In Termination Date Order''); Order Establishing a New De Minimis Threshold Phase-In Termination Date, 82 FR 50309 (Oct. 31, 2017) (''Second Phase-In Termination Date Order''); Swap Dealer De Minimis Exception Preliminary Report (Nov. 18, 2015), available at *http://www.cftc.gov/idc/groups/public/@swaps/documents/file/dfreport_sddeminis_1115.pdf;* Swap Dealer De Minimis Exception Final Staff Report (Aug. 15, 2016), available at *http://www.cftc.gov/idc/groups/public/@swaps/documents/file/dfreport_sddeminis081516.pdf.*

[3] Initial Phase-In Termination Date Order, *supra* note 2.

[4] Second Phase-In Termination Date Order, *supra* note 2; Rostin Behnam, *Statement on De Minimis Threshold* (Oct. 11, 2017), *https://www.cftc.gov/PressRoom/SpeechesTestimony/behnamstatement101117a.*

[5] Jason Webb Yackee and Susan Webb Yackee, *Delay in Notice and Comment Rulemaking: Evidence of Systemic Regulatory Breakdown?, in* Regulatory Breakdown: The Crisis of Confidence in U.S. Regulation 169 (Cary Coglianese ed., 2012).

[6] *See* 17 CFR 1.3, Swap dealer, paragraph (4)(v), providing that the Commission may by rule or regulation change the requirements of the de minimis exception described in paragraphs (4)(i) through (iv).

[7] *Id.; see also* SD Definition Adopting Release, 77 FR at 30634, n. 464.

[8] SD Definition Adopting Release, 77 FR at 30634–5.

[9] *See* CEA section 1a(49)(D), 7 U.S.C. 1a(49)(D).

[10] *See* SD Definition Adopting Release, 77 FR at 30629, n. 413 (''Congress incorporated a de minimis exception to the swap dealer definition to ensure that smaller institutions that are responsibly managing their commercial risk are not inadvertently pulled into addition regulations.'') (quoting 156 Cong. Rec. S6192 (daily ed. July 22, 2010) (letter from Senators Dodd and Lincoln to Representatives Frank and Paterson).

[11] *See* CEA 1a(49)(A), 7 U.S.C. 1a(49)(A) (providing that ''in no event shall an insured depository institution be considered to be a swap dealer to the extent it offers to enter into a swap with a customer in connection with originating a loan with that customer'').

[12] *See, e.g.* CFTC (@CFTC), @CFTC & @SEC_News teams are hard at work on Title VII harmonization, Twitter (Feb. 27, 2018, 4:53 p.m.), *https://twitter.com/CFTC/status/968605066889515009*; Chris Giancarlo (*@giancarloCFTC*), Twitter (Feb. 27, 2018, 9:18 p.m.) *https://twitter.com/giancarloCFTC/Status/968671749737992192.*

as a limitation on the universe of hedging swaps they consider to be outside their swap dealing activity. In this instance, instead of amending the Physical Hedging Exclusion,[13] which is in the nature of a safe harbor and provides that, subject to certain requirements, swaps entered into by a person for hedging physical positions are not considered for purposes of determining whether that person is a swap dealer, the Commission is proposing an exception with respect to a person's AGNA for the de minimis threshold for swaps entered to hedge financial or physical positions. While this exception will, if finalized, exist in the Commission regulations alongside the Physical Hedging Exclusion, it is not truly a safe-harbor and could end up limiting the discretion inherent in the SD Definition.

An exception, as proposed for the Hedging De Minimis Provision, ostensibly creates a precise rule, leaving compliance staff or even regulatory enforcement agencies with limited discretion when evaluating difficult scenarios. As the Commission has stated, ''In general, entering into a swap for the purpose of hedging is inconsistent with swap dealing.'' [14] The Commission also has emphasized that all relevant facts and circumstances about a swap ought to be considered when determining whether a person is a swap dealer.[15] It seems that an exception limited solely to determining whether a person has exceeded the AGNA de minimis threshold may prove unduly limiting and inconsistent with the SD Definition.[16]

Premature Delegation

The Proposal purports to create Commission authority to determine the methodology to be used to calculate the notional amount for any group, category, type, or class of swaps for purposes of the AGNA de minimis threshold calculation and immediately delegates that authority to the Director of the Division of Swap Dealer and Intermediary Oversight (''DSIO''). The Commission has, to my knowledge, not released public guidance on this issue since 2012.[17] The Proposal cites two letters, one responding to the Chairman's recent Project KISS initiative, and the other responding to the request for comments on the Swap Dealer De Minimis Exception Preliminary Report,[18] in support of the inherent need to empower the Director of DSIO to independently—and without limitation—provide clarity about the appropriate notional amount calculation methodologies for purposes of the de minimis threshold in a timely manner. As well, both the public guidance and requests cited in the Proposal address or respond to the need for clarity regarding commodity swaps, further calling into question the breadth of the proposed delegation.

For most swaps, calculation of notional amount is a matter of standard industry practice. There is not any controversy as to how notional amount is calculated. Giving the Director of DSIO broad authority to determine how this calculation is made for all categories of swaps is a remedy that is not commensurate to the limited issue of how to determine the notional value of commodity swaps. It also provides an opportunity for mischief. This provision could subsume the entire de minimis threshold by giving the Director of DSIO broad authority to determine what swaps count toward the threshold—and perhaps more importantly, what swaps do not.

I'm concerned that the Commission is proposing to both establish its authority and immediately delegate such authority without any internal discussion, without any public deliberation, and within this Proposal. The Commission has simply not articulated a sound rationale for moving abruptly forward on this rule proposal without fulsome consideration of its legal authority, potential risks, and possible alternatives. Indeed, upon review of the Proposal, it came to my attention that the Commission's proposed delineation of authority to determine the methodology for calculating notion amounts in proposed paragraph (D)(vii)(A) of the SD Definition may contradict its De Minimis Exception Authority.

The De Minimis Exception Authority provides that the Commission may by rule or regulation change the requirements of the de minimis exception. Given that the methodology for calculating notional amounts for purposes of the AGNA for the de minimis threshold would be a ''requirement'' of that exception, one could assume that the authority to alter it resides with the Commission, and that the Commission would need to engage in rulemaking to establish a methodology. Of course, the De Minimis Exception Authority includes a ''may'' versus a ''shall,'' and therefore the Commission has discretion to engage in rulemaking, but I believe the ''may'' applies more generally to suggest that the Commission may change the requirements of the de minimis exception, and if it chooses to do so, rulemaking is the vehicle. My point is that the Commission's precise authority and attendant parameters are unclear, and it would therefore be more prudent to first, define the parameters of the notional amount calculation issue, conduct additional research and explore our options to address it, and then propose a more cogent solution in a separate rulemaking so as not to further detract from the more salient and critical issues before the Commission as part of this Proposal.

Ancillary Matters

Having become comfortable with using its De Minimis Exception Authority, the Commission appears to have determined to use this Proposal to seek comment on ''other potential considerations for the de minimis threshold.'' These considerations run the gamut from re-considering the merits of using AGNA by itself by seeking comment on adding alternative criteria in the form of a dealing counterparty or dealing transaction count threshold to excepting from consideration when calculating the AGNA for purposes of the de minimis threshold (1) swaps that are exchange-traded and/or cleared and (2) swaps that are categorized as non-deliverable forward transactions. These ''considerations'' result in the combined inclusion of more than 50 individual requests for comment, detracting from any reasonable market participant's (or the public's) ability to provide comments on the more critical issues raised by this Proposal. Moreover, each ''potential consideration'' raises individual concerns as to whether the Commission is attempting to undermine the swap dealer definition and circumvent Congressional intent.

Dealing Counterparty Count and Dealing Transaction Count Thresholds

The Commission is seeking comment on whether an entity should be able to qualify for the de minimis exception if its level of swap dealing activity is below any one of three criteria: (1) An AGNA threshold; (2) a proposed dealing counterparty count threshold; or (3) a proposed dealing transaction count threshold. In support of its request for comment, already limited Commission staff resources were utilized to construct an alternative to the proposal aimed at suggesting that, despite its analysis in the Proposal in support of setting the AGNA threshold for the de minimis exception at $8 billion, a $20 billion AGNA ''backstop'' threshold was appropriate. This analysis and attendant request for comment suddenly appeared in the Proposal after hours on May 31, 2018, providing my office less than 17 hours to respond before DSIO intended to submit a final voting copy to the Commission's Office of the Secretariat.

Not only is the inclusion of this request for comment in this Proposal overwhelmingly misplaced, but its inclusion at such a late hour in the process undermines the inherent fairness of the rulemaking process. Foremost, the Commission already rejected the use of counterparty and transaction count thresholds as determinative criteria for the de minimis threshold.[19] Moreover, the Commission is required to take the Swap Dealer De Minimis Exception Final Staff Report (''Final Staff Report'') and comments into account when weighing further action on the de minimis exception at the end of the phase-in.[20] According to the Final Staff Report, ''many of the commenters stated that the Commission should not use the alternative factors of Counterparty and/or Transaction Count as part of a de minimis exception because they are misleading or

[13] 17 CFR 1.3, Swap dealer, paragraph (6)(iii).

[14] SD Definition Adopting Release, 77 FR at 30611.

[15] *See, e.g.,* CFTC Fact Sheet: Final Rules Regarding Further Defining ''Swap Dealer,'' ''Major Swap Participant and ''Eligible Contract Participant'' (Apr. 18, 2012), *available at https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/msp_ecp_factsheet_final.pdf.*

[16] *See* Frequently Asked Questions (FAQ)—[DSIO] Responds to FAQs About Swap Entities (Oct. 12, 2012), *available at https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/swapentities_faq_final.pdf.*

[17] *Id.*

[18] *See* n.152 of the Proposal, Letter from CEWG; Letter from Natural Gas Supply Association (Jan. 15, 2016), available at *https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60595&SearchText=.*

[19] SD Definition Adopting Release, 77 FR at 30630.

[20] *Id.* at 30634.

arbitrary indicators of dealing activity.'' [21] The footnote cites 11 comment letters representing at least 12 entities including major industry and trade organizations.[22] In comparison, only two commenters supported the use of the alternative factors.[23]

While I believe it may be appropriate for the Commission to explore other factors or criteria in defining the scope of the de minimis threshold, inclusion of even a request for comments on dealing counterparty count and dealing transaction count thresholds should be out of scope—even as a request for comment—for this Proposal, which speaks directly to the end of the phase-in, and is proceeding on a constrained time schedule such that even providing Commissioners the courtesy of ample opportunity to evaluate the merits of including this line of questioning was dispensed with.

Exchange-Traded and/or Cleared Swaps

Similar to the dealing counterparty and transaction count threshold, the Commission has already rejected arguments that swaps executed on an exchange should not be considered in determining if a person is a swap dealer.[24] However, beyond that, the breadth of the request for comment suggests that a discussion regarding how the utilization of exchange trading and/or clearing in the swap market may address the underlying policy goals of swap dealer registration is significant and raises issues that should be considered in the context of a joint discussion with the SEC and prudential regulators regarding the SD Definition. Even further, it may require Congressional action to amend the statutory swap dealer definition, which does not distinguish exchange traded and/or cleared swaps from over-the-counter swaps, and in fact, may suggest that there is no distinction given the focus on market making, which significantly occurs on exchanges.[25] In responding to this request for comment, I hope that commenters address whether an exception for exchange-traded and/or cleared swaps—even if limited to consideration when calculating the AGNA for purposes of the de minimis threshold—would be consistent with the statutory definition of ''swap dealer'' in CEA section 1a(49) and Congressional intent.

Non-Deliverable Forwards

Similarly, I believe that the issue of whether the Commission should consider an exception for NDFs from consideration when calculating the AGNA of swap dealing activity for purposes of the de minimis threshold is inappropriate. Such an exception ignores that the SD Definition is activities-based.[26] The real issue that should be addressed is whether NDFs are swaps and, if so, whether they ought to be excluded from consideration in the SD Definition.[27] Instead of attempting to begin a conversation through use of its De Minimis Exception Authority, the Commission should use its relationships with the Secretary of the Treasury, the SEC and prudential regulators and engage in a meaningful dialog regarding the appropriate categorization and consideration of NDFs outside of this Proposal.

Conclusion

I am disappointed with today's Proposal and would have liked to been able to support the portions that were well supported by the data and analysis and could lead to a clear and legally sound resolution of the de minimis threshold, providing much needed regulatory certainty for a critical cohort of market participants. I am hopeful that market participants have sufficient time to evaluate and respond to the most critical aspects of this Proposal and do not get overwhelmed or overly optimistic with regard to lines of questioning that take us further afield from Congressional intent and therefore are less likely to come to fruition. I understand that messaging creates expectations; sometimes, we must focus on what's right and not what seems easy.

[FR Doc. 2018–12362 Filed 6–11–18; 8:45 am]

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[21] Swap Dealer De Minimis Exception Final Staff Report, *supra* note 2 at 15.

[22] *Id.* at note 45.

[23] *Id.* at note 49.

[24] *See* SD Definition Adopting Release, 77 FR at 30610.

[25] *See, e.g., Id.* at 30608.

[26] *Id.*

[27] As noted in the Proposal, the Secretary of the Treasury, pursuant to authority in section 1a(47)(E) of the CEA, 7 U.S.C. 1a(47)(E), declined to exempt NDFs from the CEA's definition of ''swap.''

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Part V

Farm Credit Administration

12 CFR Parts 611 and 615
Organization; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Investment Eligibility; Final Rule

FARM CREDIT ADMINISTRATION

12 CFR Parts 611 and 615

RIN 3052–AC84

Organization; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Investment Eligibility

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA, Agency, us, our, or we) adopts a final rule that amends our regulations governing investments of both Farm Credit System (FCS or System) banks and associations. The final rule strengthens eligibility criteria for investments that FCS banks purchase and hold, and implements section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or DFA) by removing references to and requirements for credit ratings and substituting other appropriate standards of creditworthiness. The final rule revises FCA's regulatory approach to investments by FCS associations by limiting the type and amount of investments that an association may hold for risk management purposes.

DATES: This regulation shall become effective on January 1, 2019.

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SUPPLEMENTARY INFORMATION:

I. Objectives

The final rule objectives are to:

- Strengthen investment practices at Farm Credit banks [1] and associations [2] to enhance their safety and soundness;
- Ensure that Farm Credit banks hold sufficient high-quality liquid investments for liquidity purposes;
- Enhance the ability of the Farm Credit banks and associations to supply credit to agricultural and aquatic producers and their cooperatives in times of financial stress;
- Comply with section 939A of the Dodd-Frank Act;
- Modernize the investment eligibility criteria for Farm Credit banks; and
- Revise the investment regulation for associations to improve their investment management practices so they are more resilient to risk.

II. Background

Congress created the Farm Credit System, which consists of Farm Credit banks, associations, service corporations,[3] and the Federal Farm Credit Banks Funding Corporation to provide permanent, stable, affordable, and reliable sources of credit and related services to American agricultural and aquatic producers.[4] Farm Credit banks issue System-wide consolidated debt obligations in capital markets, which enable associations to fund short-, intermediate-, and long-term credit and related services to farmers, ranchers, producers and harvesters of aquatic products, rural residents for housing, and farm-related businesses.[5]

Farm Credit banks depend on investments to provide liquidity and to manage surplus short-term funds and interest rate risk. Investments also help enable associations to manage the risks they confront.[6] Although Farm Credit banks get their funding through issuing System-wide consolidated debt securities, they must have enough available funds, cash and investments, to continue paying maturing obligations if access to the debt market becomes temporarily impeded.

FCA regulations in subpart E of part 615 impose comprehensive requirements on investment practices at all System institutions except Farmer Mac. We first proposed revisions to our investment regulations in 2011.[7] In 2012, we issued a final rule that adopted many of these proposed requirements, particularly those guiding prudent investment management practices at System banks.[8] However, that final rule did not substantively revise the rules governing investment eligibility in § 615.5140, or association investments in § 615.5142. In 2014, we proposed amendments to §§ 615.5140 and 615.5142 to address comments from System institutions.[9] More specifically, the proposed rule revised the eligibility criteria for System bank investments. In addition, proposed § 615.5142 would: (1) Impose a portfolio limit on association investments; (2) limit association investments to certain securities issued or guaranteed as to principal and interest by the United States Government and its Agencies; and, (3) delete the specific investment purposes of reducing interest rate risk and managing surplus short-term funds.[10]

A major reason that we engaged in this rulemaking is that investment products are becoming increasingly complex, and some investments are riskier and less liquid than previously believed. Section 939A of the DFA requires each Federal agency to review all its regulations that reference or require the use of credit ratings issued by a Nationally Recognized Statistical Rating Organization (NRSRO) to assess the creditworthiness of an instrument. Under this provision of the Dodd-Frank Act, Federal agencies must also remove references to NRSRO credit ratings from their regulations and substitute other appropriate creditworthiness standards in their place. As a result, FCA is removing the actual references to NRSRO credit ratings in our regulations in subpart E of part 615.

FCA received over 1250 comment letters about our 2014 proposed regulations. FCS banks and associations submitted 12 comment letters, and we received separate comment letters from a System trade association and Farmer Mac. Commercial banks, and their various trade associations, as well as their directors, officers, and employees submitted the remaining comment letters. Most of the letters from bank commenters were form letters, and several individuals associated with the same bank submitted multiple or

[1] Section 619.9140 of FCA regulations defines ''Farm Credit banks'' to include Farm Credit Banks, agricultural credit banks, and banks for cooperatives.

[2] Section 619.9050 of FCA regulations defines the term ''association'' to include (individually or collectively) Federal land bank associations, Federal land credit associations, production credit associations, and agricultural credit associations.

[3] A service corporation cannot extend credit or provide insurance services.

[4] The Federal Agricultural Mortgage Corporation (Farmer Mac), also a System institution, operates a secondary market for agricultural real estate mortgage loans, rural housing mortgage loans, and rural utility cooperative loans. This rulemaking does not affect Farmer Mac, and the use of the term ''System institution'' in this preamble and the final rule does not include Farmer Mac.

[5] One Farm Credit bank, is an agricultural credit bank, which lends to, and provides other financial services to farmer-owned cooperatives, rural utilities (electric and telephone), and rural water and waste water disposal systems. It also finances U.S. agricultural exports and imports, and provides international banking services to cooperatives and other eligible borrowers.

[6] Under § 611.1135(a), which we do not propose to revise, service corporations may hold investments for the purposes authorized for their organizers.

[7] 76 FR 51289, August 18, 2011.

[8] 77 FR 66362, November 5, 2012.

[9] *See* 79 FR 43301, July 25, 2014.

[10] Final § 615.5140 identifies eligible investments for both Farm Credit banks and associations. Former § 615.5142 governs investment purposes for associations, but it did not prescribe the amount of association investments.

duplicate copies of the same letter. System and Farmer Mac commenters sought revisions to the bank and association regulations to clarify specific provisions, or to address their concerns. The bank commenters opposed all provisions of the proposed rule, except the provisions implementing section 939A of the DFA. All the bankers asked FCA to withdraw the rule, and to refrain from revising the investment regulations for System banks and associations, unless the amendments implemented new statutory authority.

III. Final Rule

After reviewing and considering the comment letters, FCA now enacts a final rule that governs investment activities at System banks, associations, and service corporations. The final rule: (1) Implements section 939A of the DFA; (2) strengthens investment management practices at FCS institutions, other than Farmer Mac; (3) improves the quality of System bank investments and streamlines the list of eligible investments; (4) revises the investment purposes and types associations may hold; and (5) clarifies the rules of divestiture of ineligible investments, and establishes new transition rules. Additionally, we updated the definitions for investments in subpart E of part 615, and we made conforming amendments to other regulations. FCA plans to rescind two Informational Memoranda, revise a third Informational Memorandum, and updating FCA Bookletter BL–064 so that FCA guidance conforms with this final rule.

FCA notes that all regulations in part 615, subpart E, together create a regulatory investment management framework for System institutions. In this context, System institutions need to consider and follow all requirements specified in §§ 615.5132, 615.5133, 615.5134, and 615.5140, as applicable. A System institution's decision to purchase and hold investments must be driven by an internal assessment of their risk tolerances and liquidity needs, plus eligible investments held.

A. Definitions

The definitions in § 615.5131 apply to all our investment regulations in subpart E of part 615. We proposed to remove or revise several definitions in § 615.5131 that pertain to eligible investments and credit ratings. These amendments align the definitions in FCA's investment regulations with other FCA regulations, or with the definitions that other Federal agencies, such as the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and Securities and Exchange Commission use in their regulations.

We received a comment from a bank trade association about the proposed definition of ''asset class.'' Under the proposal, ''asset class means a group of securities that exhibit similar characteristics and behave similarly in the marketplace.'' As we noted in the preamble to the proposed rule, asset classes for bank investments include, but are not limited, to money market instruments, municipal securities, corporate bonds, mortgage-backed securities (MBS), asset-backed securities (ABS) (excluding MBS), and ''any other asset class as determined by FCA.'' The commenter opposed this provision because it authorizes FCA to approve other asset class types. The commenter asserted that FCA should not approve new asset classes except through a formal rulemaking. FCA responds that it has authority under various provisions of section 5.17 of the Farm Credit Act of 1971, as amended, (Act) to approve new investments, including new asset classes. As appropriate, FCA will decide how best to approve any new asset classes based on the circumstances and characteristics of the instrument when the issue arises. Sometimes, a notice and comment rulemaking is appropriate, while at other times, FCA may decide to issue a bookletter or informational memorandum, or approve such instruments under case-by-case authority. We adopt this definition as proposed.

The same bank trade association also commented on the definition of ''obligor'' in the proposed regulation. The commenter expressed concerns that the definition of ''obligor'' would permit System institutions to make loans to ineligible persons, businesses, agencies, or corporations under their investment authorities. Our investment regulations cannot confer authority on System institutions that exceed their powers under the Act. The Act separates the System's lending authorities from its investment authorities. Therefore, our investment regulations cannot authorize System institutions to make loans to ineligible borrowers disguised as investments. We adopt this definition as proposed.

We proposed to define a collateralized debt obligation (CDO) as a debt security collateralized by mortgage-backed securities (MBS) or asset-backed securities (ABS, or trust-preferred securities). Farmer Mac claimed that this definition was inconsistent with how the security markets defined CDOs. FCA agrees with the commenter. We addressed this concern by deleting the term ''collateralized debt obligation'' in final § 615.5131, and adding the term ''resecuritization.'' Section 628.2 already defines ''resecuritization'' to mean ''a securitization which has more than one underlying exposure and in which one or more of the underlying exposures is a securitization exposure.'' We will further discuss in greater detail why resecuritizations are ineligible investments for System banks below.

We proposed to delete the definition of ''eurodollar time deposit'', ''final maturity'', ''general obligations'', ''Government agency'', ''Government-sponsored agency'', ''liquid investments'', ''mortgage securities'', ''Nationally Recognized Statistical Rating Organization (NRSRO)'', ''revenue bond'', and ''weighted average life (WAL)'' in § 615.5131. We received no comments on these revisions. Accordingly, the final rule deletes these definitions for the reasons explained in the preamble to the proposed rule.

The proposal added definitions of ''asset-backed securities (ABS)'', ''Country risk classification (CRC)'', ''Diversified investment fund (DIF)'', ''Government-sponsored enterprise (GSE)'', ''Mortgage-backed securities (MBS)'', ''sponsor'', and ''United States (U.S.) Government agency.'' We received no comments on these new definitions, and we incorporate them into final § 615.5131 without revision. However, we made a technical, non-substantive revision by replacing the definition of ''Country risk classification (CRC)'' in final § 615.5131 with a cross-reference to the identical definition in our Capital Adequacy regulations, § 628.2. The preamble to the proposed rule explains our reasoning for adopting these definitions.

B. Section 615.5132—Investments Purposes

Under the existing rule, System banks may continue to buy and hold eligible investments to fulfill liquidity requirements, manage short-term funds, and manage interest rate risk, under § 615.5132(a). A System trade association and a Farm Credit Bank interpret our regulations as requiring each System bank to designate a specific purpose under § 615.5132(a) for every investment it purchases and holds. The commenter claims that this is inconsistent with the approach that FCA proposed for System associations, and the approach that the Federal Banking Regulatory Agencies (FBRAs) [11]

[11] The FBRAs are the Board of Governors of the Federal Reserve System, the Office of the

Continued

followed in their liquidity coverage ratio regulation, which recognized that securities often serve multiple purposes.[12] Accordingly, the commenter asserted that FCA should not require FCS banks to hold an investment for only one of the purposes identified in § 615.5132(a). The commenter urged FCA to grant System banks greater flexibility to decide the authorized purposes and allow them to change the designated purpose as circumstances warrant.

FCA responds to this comment even though we proposed no change to § 615.5132. We note that § 615.5132(a) does not restrict System banks to holding each investment for only one purpose. In fact, § 615.5140(a)(1)(i) states that eligible investments may be held for one or more of the investment purposes authorized in § 615.5132(a). However, the preamble to the proposed rule notes that certain investments, such as private placements, are not suitable for liquidity and, therefore, a System bank would need to document the specific purpose or reason for holding such investments. FCA finds no reason to revise either § 615.5132(a) or § 615.5140(a)(1) to address the commenters concerns.

C. Section 615.5133—Investment Management

Section 615.5133 governs investment management practices at Farm Credit banks, associations, and service corporations. System institutions hold investments for different purposes and, therefore, investment practices will vary. This regulation requires the boards of directors of System institutions to adopt an internal control framework that protects their institutions from potential losses. Under this regulation, the policies must establish risk tolerance parameters that address credit, market, liquidity and operational risks. Additionally, this regulation requires the institution to set up delegations of authority, internal controls, portfolio diversification requirements, obligor limits, due diligence requirements, and to report regularly to the board of directors.

Except for a few minor stylistic changes, we proposed no substantive changes to § 615.5133(a), (b), (d), and (e), which respectively addresses the responsibilities of the boards of directors, general requirements for investment policies, delegation of authority, and internal controls. We received no comments on these provisions, which we now adopt as a final rule. We proposed to redesignate § 615.5133(f), which addresses due diligence, and § 615.5133(g), which address reports to the board, as § 615.5133(h) and (i), respectively. We proposed to enhance the portfolio diversification and the counterparty (*i.e.,* obligor) limits for Farm Credit banks, which were previously in § 615.5133(c)(1)(i), and establish them as free-standing provisions in redesignated § 615.5133(f) and (g), respectively. We received comments about risk tolerance requirements in § 615.5133(c), portfolio diversification in redesignated § 615.5133(f), and the obligor limits in redesignated § 615.5133(g), which we will now address.

1. Risk Tolerance

Proposed § 615.5133(c)(1)(ii) would address concentration risk. It would require that an institution's investment policies establish concentration limits for single or related obligors, sponsors, geographical areas, industries, unsecured exposures, and asset classes or obligations with similar characteristics. We proposed to add sponsors and unsecured investments to this regulatory provision because we believe undue concentration in a sponsor or unsecured investments could present excessive risk. Concentration limits should be commensurate with the types and complexity of investments that an institution holds.

We received a comment about proposed § 615.5133(c)(1)(ii) from a bank trade association. This commenter opined that FCA should establish a specific concentration limit by regulation, rather than allowing FCS institutions to set their own concentration limits. Both FCA and the FBRAs no longer prescribe concentration limits by regulation because each financial institution has its own business model and risk appetite. Financial institution regulators examine each regulated institution for robust risk management practices. The commenter has not identified any compelling reasons FCS institutions should not be subject to the same supervisory framework as banks.

2. Liquidity Risk

FCA proposed to revise § 615.5133(c)(3), which governs how System institutions manage the liquidity characteristics of investments they hold. Specifically, we proposed to separately address the different liquidity needs of System banks and associations. Proposed § 615.5133(c)(3)(i) would address liquidity in the investment policies of Farm Credit banks, while proposed § 615.5133(c)(3)(ii) would address the liquid characteristics of investments that associations hold. We proposed this revision because of the differences in how Farm Credit banks and associations manage liquidity. Farm Credit banks hold liquidity reserves to manage funding and liquidity risks for themselves, their affiliated associations, and certain service corporations. In contrast, System associations have more limited funding and liquidity risk exposure because their only substantial liability is their debt obligation to their funding bank. We received no comments on proposed § 615.5133(c)(3), and we now adopt it as a final rule with minor stylistic changes.

3. Farm Credit Bank Portfolio Diversification

As discussed above, proposed § 615.5133(f) emphasized the importance of a well-diversified investment portfolio. This provision would require System banks to adopt policies that prevent their investment portfolios from posing significant risk of loss due to excessive concentrations in asset classes, maturities, industries, geographic areas, and obligors. The proposed rule retained the provisions of the previous regulations that imposed no concentration limits on securities issued or guaranteed by the U.S. government and its agencies, and kept a 50-percent cap on MBS securities issued or guaranteed by a Government-sponsored enterprise (GSE). In 2014, we proposed a 15-percent portfolio cap on all other eligible asset classes. Under our proposal, no Farm Credit bank could invest more than 10 percent of total capital in a single obligor, and the securities of a single obligor could not exceed 3 percent of the bank's total outstanding investments.

System commenters asked us to remove the portfolio limit on money market funds. The commenters stressed that money market funds are diversified in nature and they are an effective vehicle for liquidity risk management, and the short-term maturities make these investments self-liquidating, which provide the banks with a reliable source of liquidity during periods of market stress. We are persuaded by this logic and, therefore, we omit the portfolio limit on money market funds in final § 615.5133(f)(3)(iii).

System commenters also claimed that the limit of 3 percent in the overall investment portfolio for each obligor is unnecessary because the proposed rule reduced the regulatory obligor limit from 20 percent to 10 percent of total capital. According to the commenters,

Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

[12] *See* 79 FR 61440, October 10, 2014.

obligor exposure limits based on capital provides sufficient protection for System banks, and the proposed, additional 3-percent obligor limit on the overall investment portfolio does not add meaningful protection from a risk management perspective. We agree with the commenters, and therefore, we have deleted this limit from the final regulation.

D. Section 615.5134—Liquidity Reserve

We proposed technical, non-substantive revisions to the terms ''Government-sponsored enterprise (GSE)'' and ''U.S. Government agency'' in our liquidity reserve regulation in § 615.5134. These changes conform to the definitions in § 615.5131. We received no comments about this change. This change is consistent with recent changes to FCA's capital regulations as well as guidance from the FBRAs. For these reasons, we adopt the proposed provision as a final rule without change.

We proposed to clarify that MBS *fully* guaranteed by a U.S. Government agency qualify for Level 2 liquidity and MBS *fully* guaranteed by a GSE qualify for Level 3 liquidity. A System commenter requested that we treat the MBS of a GSE in conservatorship as full faith and credit obligations of the United States and, therefore, qualifying for Level 2 of the Liquidity Reserve. FCA declined this request. Our approach is consistent with FCA's capital regulations and that of the FBRAs, which points to the uncertainty of the future government support of GSEs in conservatorship.

We made a clarifying change to the table ''to omit two lines: In Level 2 ''Additional Levels 1 investments'', and in Level 3 ''Additional Level 1 or 2 investments'' as well as the accompanying discount factors. We determined these two provisions are confusing and difficult to follow and are redundant given the preceding section of the regulation dealing with day counts.

E. Section 615.5140(a)—Eligible Investments for Farm Credit Banks

Proposed § 615.5140(a)(2) sets forth the types of eligible investments that Farm Credit banks may purchase and hold. The intent of this provision is to ensure that System banks invest only in high-quality investments. We received comments on each investment type, which we now discuss.[13]

1. Non-Convertible Senior Debt Securities

The proposed rule would continue to authorize FCS banks to invest in non-convertible senior debt securities. A bank trade association questioned whether System institutions should have authority to invest in corporate bonds. The commenter claims that corporate bonds are not as high quality as government bonds, and expose investors to greater interest rate risk. The commenter's concern is that a corporate bond could allow System banks to become the only, or the majority, investor, which the commenter believes could enable the System to exceed the lending constraints in the Act.

FCA is not willing to ban investments in all corporate bonds, as the commenter requests. Our regulations have allowed FCS institutions to invest in high-quality corporate bonds since 1993. System institutions use these high-quality corporate bonds to build and diversify their liquidity portfolios. This regulatory provision imposes high credit quality standards, portfolio and obligor limits, and purpose restrictions on non-convertible senior debt securities. These restrictions mean that the FCS may purchase and hold only publicly traded debt securities. Under proposed § 615.5140(a)(2)(i), which is redesignated as final § 615.5140(a)(1)(ii)(A), investments in corporate debt securities fall under an institution's investment authority and, therefore, they do not violate the lending restrictions of the Act. Accordingly, final § 615.5140(a)(1)(ii)(A) will allow FCS banks to buy and hold a non-convertible, senior debt security, which includes corporate bonds.

Under proposed § 615.5140(a)(2)(i), System banks could not invest in senior debt securities that can convert into another debt or equity security.[14] FCA received no comments on non-convertible senior debt securities, and it adopts this provision as final and redesignate it as § 615.5140(a)(1)(ii)(A) without substantive change.

2. Money Market Instruments

As under our previous rule, investments in money market instruments would be eligible under the proposed rule. Money market instruments include short-term instruments such as (1) Federal funds, (2) negotiable certificates of deposit, (3) bankers' acceptances, (4) commercial paper, (5) non-callable term Federal funds (6) Eurodollar time deposits, (7) master notes, and (8) repurchase agreements collateralized by eligible investments as money market instruments. A money market instrument is an eligible security if it matures in 1 year or less.

Two System commenters asked that we remove the asset class limit for money market instruments because their short-term maturities make them self-liquidating. FCA agrees with the commenters that money market instruments are liquid due to their short maturities and, therefore, no longer warrant a portfolio limit. However, the 10-percent obligor limit would still apply for these investments. Accordingly, FCA has removed the 15-percent portfolio diversification requirement for money market instruments in final § 615.5133(f)(3)(iii).

3. Mortgage-Backed Securities and Asset-Backed Securities Guaranteed by the U.S. Government and U.S. Government Agencies

Under proposed § 615.5140(a)(2)(iii), MBS and ABS that are fully guaranteed as to the timely payment of principal and interest by a U.S. Government agency would remain eligible securities because of their high credit quality. As we explained in the preamble to the proposed rule, securities labeled ''government guaranteed'' satisfy this criterion only if they are fully guaranteed as to the timely payment of principal and interest.[15] We received no comments on proposed § 615.5140(a)(2)(iii) and, therefore, we adopt this provision as final and redesignated § 615.5140(a)(1)(ii)(C) without substantive change.

4. Mortgage-Backed Securities and Asset-Backed Securities Guaranteed by GSEs

Under the proposed rule, MBS and ABS that are fully and explicitly guaranteed as to the timely payment of principal and interest by GSEs would

[13] Revised § 615.5140(a) would apply to Farm Credit banks only. As discussed below, all association eligibility requirements would be in revised § 615.5140(b).

[14] As noted in the preamble to the proposed rule, non-convertible senior debt includes: (1) U.S. Government and U.S. Government agencies debt securities, (2) Government-sponsored enterprises debt securities, (3) municipal (debt) securities, (4) corporate debt securities, and (4) other senior debt securities. Senior debt securities may be secured by a specific pool of collateral or may be unsecured with priority of claims over junior types of debt or equity securities. To be eligible under this criterion, a senior debt security must not be convertible into a non-senior debt security or an equity security. *See* 79 FR 43301, 43304, July 25, 2014. Since 1993, FCA has stated it is generally inappropriate for System institutions to maintain an ownership interest in commercial enterprises by holding equity securities. *See* 58 FR 63059, 63049–50, November 30, 1993.

[15] See 79 FR 43301, 43304, July 25, 2014.

remain eligible investments.[16] Section 615.5174 authorize Farmer Mac AMBSs. As already noted in the liquidity reserve preamble discussion, a System commenter asked that the final rule treat securities of GSEs under conservatorship in the same fashion as though they were full faith and credit obligations of the U.S. Government. For the reasons explained earlier, we do not agree with the commenter, and we do not change this provision of the final rule.

5. Senior-most Positions of Non-Agency Mortgage-Backed Securities and Asset-Backed Securities

Previous § 615.5140(a)(5) and (6) classified non-agency mortgage-backed securities (including non-agency commercial mortgage-backed securities), and asset-backed securities as eligible investments. In 2014, FCA proposed restricting that provision by only allowing an institution to buy the senior-most position of a tranched non-agency MBS or ABS as an eligible security.[17] A non-agency MBS or ABS, which is not tranched, and which payments are made on a pro-rata basis would be eligible securities under the proposed rule. Under proposed § 615.5140(a)(2)(v), an eligible MBS must satisfy the definition of ''mortgage related security'' in 15 U.S.C. 78c(a)(41). Non-agency commercial MBS (CMBS) that meet these requirements are eligible investments for System banks under this regulatory provision. Non-agency MBSs and CMBS must also meet the criteria in the Secondary Market Mortgage Enhancement Act of 1984 (SMMEA). We received no comments on the eligibility of the senior-most position of non-agency securities and, therefore, we adopt this provision as final and redesignate it as § 615.5140(a)(1)(i)(E).

6. Private Placement Securities

During this rulemaking, FCA used the term ''private placement'' securities when referring to privately placed bonds or debt securities. Private placement refers to the sale of securities to a few sophisticated investors without registration with the Securities and Exchange Commission, and often without a prospectus. As a result, a private placement security normally is not a liquid security and not held for liquidity purposes; however, they may be appropriate for risk management. A bank trade association opined that FCA should not authorize any System institution to purchase private placement securities. This comment letter, however, focused on FCA approval of private placement securities on a case-by case basis. Since private placements are not liquid, they need to be approved by FCA on a case-by-case basis under § 615.5140(e). We discuss this issue in greater detail below.

7. International and Multilateral Development Bank Obligations

Proposed § 615.5140(a)(2)(vi) retained the previous authority of Farm Credit banks to invest in obligations of international and multilateral development banks, if the United States is a voting shareholder. We received no comment on this provision and, therefore, we adopt this provision as final and redesignate it as § 615.5140(a)(1)(i)(F).

8. Shares of a Diversified Investment Fund

For many years, these regulations have authorized System banks to invest in several types of money market funds offered by investment companies registered under section 8 of the Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.* The proposed rule retained this original authority, although FCA updated and modified some of the terminology. Under proposed § 615.5140(a)(2)(vii), shares of a diversified investment fund (DIF) would remain an eligible investment if the DIF's portfolio consists solely of eligible investments under any other paragraph of proposed § 615.5140(a)(2), or § 615.5174. The investment company's risk and return objectives and use of derivatives must be consistent with the investment policies of the Farm Credit bank. FCA proposed, however, more restrictive portfolio diversification limits on DIF investments than those that now exist.

FCA received no comments about what constitutes a DIF. However, we wish to clarify that a diversified investment fund consists of any of three categories of investment funds, which are mutual funds,[18] closed-end funds or unit investment trusts registered under the Investment Company Act of 1940. A diversified investment fund also includes exchanged-traded funds [19] and money market funds.[20] Exchange-Traded Funds (ETFs) while considered mutual funds or unit investment trusts, differ from traditional mutual funds and unit investment trusts (UITs). An investor's investment consists of purchased shares in these investment funds. All these investment funds meet the criteria of this regulation provision, which we redesignate as § 615.5140(a)(1)(i)(G).

A bank trade association objected to DIFs as eligible investments for FCS institutions. The commenter claimed that the proposed rule did not limit the scope of investments in DIFs, so this authority could be very broad and exceed the lending constraints of the Act. FCA disagrees and points out that both §§ 615.5134 and 615.5140 impose very stringent criteria for investments in DIFs. Furthermore, our regulations have allowed investments in DIFs for over 20 years, and the proposed rule did not expand this authority, or permit System banks to invest in DIFs for purposes that are beyond managing liquidity, short-term surplus funds, or interest rate risks. Additionally, this regulation still requires the portfolio of any eligible DIF to be comprised solely of investments authorized by §§ 615.5140 and 615.5174. System banks can only invest in DIFs by buying shares of investment companies registered under section 8 of the Investment Company Act of 1940. Contrary to the commenter's claim, DIFs are eligible only if System banks exclusively hold the liquid, low-risk assets found in final and redesignated § 615.5140(a)(1)(ii)(G). Because DIFs are investments, they do not enable the FCS to exceed the lending constraints of the Act.

9. Obligors' Creditworthiness Standard

Previous § 615.5140 relied on NRSRO credit ratings to determine the eligibility of investments in many asset classes, including municipal securities, certain money market instruments, non-agency mortgage-backed securities, asset-backed securities, and corporate debt securities.[21] As noted earlier, section 939A of the DFA requires each Federal

[16] Securities are eligible under this provision only if a GSE fully guarantees the timely payment of both the principal and interest due. A GSE ''wrap'' (guarantee) does not make a security eligible under this provision unless it is a guarantee of all principal and interest. When considering whether to purchase a security with a GSE guarantee or wrap, an institution must ensure that it is fully guaranteed.

[17] In 2011, we originally proposed that one of the criteria for senior-most MBSs was that no other remaining position in the securitization had a higher priority claim to any contractual cashflows. 76 FR 51289, August 18, 2011. In response to System comment letters, we deleted this criterion in our 2014 proposed rule.

[18] The Investment Company Act of 1940 does not define the term ''mutual fund'' but SEC literature uses it interchangeably with an open-end fund, which that statute defines.

[19] Exchange-traded funds are investment funds that are legally classified as open-end funds or unit investment trusts under the Investment Company Act of 1940.

[20] A money market fund is a special type of mutual fund under the Investment Company Act of 1940 and 17 CFR 270.2a–7—Money market funds.

[21] Our regulation has not imposed credit rating requirements on investments in obligations of United States. U.S. Government agencies, GSEs, and international and multilateral development banks, and in DIFs and certain money market instruments.

agency to revise all its regulations that refer to, or require reliance on credit ratings to assess creditworthiness of an instrument to remove the reference or requirement and to substitute other appropriate creditworthiness standards. FCA proposed § 615.5140(a)(3) to implement section 939A of the DFA by addressing the creditworthiness of the obligor of securities that System banks buy and hold as investments.

Our proposed rule would have required at least one obligor of the investment to have ''very strong capacity'' to meet its financial commitment for the expected life of the investment. If a Farm Credit bank is relying upon an obligor located outside of the United States to meet its financial commitment, the proposal required:

> That obligor's sovereign host country to have the highest or second-highest consensus Country Risk Classification (CRC) (a 0 or a 1) as published by the Organization of Economic Cooperation Development (OECD or must be an OECD member that is unrated; or the investment must be fully guaranteed as to the timely payment of principle and interest.[22]

A System trade association, an FCS association, and Farmer Mac commented that the proposed creditworthiness standard for obligors was too stringent. These commenters suggested that the final rule should require at least one obligor to have a ''strong'' capacity to meet its financial commitment for the expected life of the investment, rather than the ''very strong'' capacity referred to in the proposed rule. One of these commenters asked FCA to provide further clarification about how ''very strong capacity to meet its financial commitments'' is related to a ''very low probability of default.'' These commenters also urged FCA to adopt the FBRA's creditworthiness standard of ''investment grade.''

FCA declined the commenters' request to relax the creditworthiness standard for obligors. FCA believes a security with ''low credit risk'' is one where the Farm Credit bank determines the issuer has a ''very strong'' capacity to meet all financial commitments under the security's projected life even under adverse economic conditions. Securities that exhibit these characteristics are liquid and marketable. Farm Credit banks primarily hold securities for liquidity purposes and, therefore, the creditworthiness standards for these securities ensure that they are marketable and readily convertible into cash in a crisis at minimum costs.

[22] *http://www.oecd.org/trade/xcred/crc.htm.*

We recognize our regulations governing margin and capital requirements for covered swap entities, and capital adequacy for all System institutions use the ''investment grade'' standard. However, we determine that ''investment grade'' is not appropriate for these investment regulations. FCA believes not all securities that meet the ''investment grade'' requirements would be of suitable high credit quality and marketable for liquidity purposes. Therefore, FCA declines to lower its proposed investment creditworthiness standard.

We now respond to the comment requesting clarification about the relationship between ''very strong capacity to meet its financial commitments'' and a ''very low probability of default.'' In evaluating the creditworthiness of a security, a Farm Credit bank should consider any of the following factors as well as any additional factors it deems appropriate:

- Credit spreads (*i.e.,* whether it is possible to demonstrate that a security is subject to an amount of credit risk based on the spread between the security's yield and the yield of Treasury or other securities);
- Securities-related research (*i.e.,* whether providers of securities-related research believe the issuer of the security will be able to meet its financial commitments, generally or specifically, with respect to the securities held by the Farm Credit bank);
- Internal or external credit risk assessments;
- Default statistics (*i.e.,* whether providers of credit information relating to securities express a view that specific securities have a probability of default consistent with other securities with an amount of credit risk);
- Inclusion on an index (*i.e.,* whether a security, or issuer of the security, is included as a component of a recognized index of instruments that are subject to a specific amount of credit risk);
- Priorities and enhancements (*i.e.,* the extent to which credit enhancements, such as overcollateralization and reserve accounts cover a security)
- Price, yield, and volume (*i.e.,* whether the price and yield of a security are consistent with other securities that the institution has determined are subject to an amount of credit risk and whether the price resulted from active trading); and
- Asset class-specific factors (*e.g.,* in the case of structured finance products, the quality of the underlying assets).

10. Credit and Other Risk in the Investment

In addition to imposing creditworthiness standards on obligors, we also proposed that an eligible investment must exhibit low credit risk and other risk characteristics consistent with the purposes for which it is held, such as interest rate risk. Institutions must consider other risks but are not limited to just those listed in § 615.5133(c). FCA received a System comment that proposed § 615.5140(a)(4) limits the ability of System banks to use an investment for more than one investment purpose. We already responded to that comment above in the preamble discussion of final § 615.5132. In addition, our discussion in the preamble about the creditworthiness of the obligor explains our position of credit quality, and this provision requires no revision. Therefore, we adopt this provision as final and redesignate it as § 615.5140(a)(1)(iv).

11. Currency Denomination

Since 1993, § 615.5140(a) has required all investments at System institutions to be denominated in U.S. dollars. We proposed no change to this requirement, and we received no comments about it. Accordingly, we retain this requirement in the final rule without revision, but redesignate it as § 615.5140(a)(v).

12. Ineligible Investments

The proposed rule, § 615.5140(c), would have prohibited Farm Credit banks from purchasing collateralized debt obligations (CDOs), as originally defined in § 615.5131. As discussed in the preamble to the definitions section above, Farmer Mac objected to our definition of ''CDO,'' and we responded by substituting the term ''resecuritization'' for ''CDO.''

However, the final rule would prohibit System banks from purchasing and holding resecuritizations as we originally proposed. During the financial crisis of 2008–2009, many risky securitization exposures were resecuritized into new complex securities where not all buyers fully understood the risks in the different tranches of these new resecuritization exposures. These securities, which were sometimes known as CDO-squared, CDO-cubed, or reperformers, exposed investors to higher risk than the basic securitization structure. Basel III and the FBRAs recognized the higher risk posed by resecuritizations, and assigned a higher risk weight to them than basic

securitization exposure.[23] FCA strongly believes the complex nature of the risks within these resecuritization exposures are inappropriate investments for System banks. Therefore, we consider these resecuritization exposures to be ineligible investments for the purposes authorized in § 615.5132. FCA also believes certain pools of previously delinquent or reperforming loans that were once part of a different securitization exposure exhibit similar risks as a resecuritization exposure. The final rule prohibits System banks from purchasing resecuritizations without FCA's approval under final § 615.5140(e), except when both principal and interest are fully and explicitly guaranteed by the U.S. Government or a GSE.

13. Reservation of Authority

Proposed § 615.5140(d) would have made explicit our authority, on a case-by-case basis, to determine that an investment poses inappropriate risk, notwithstanding that it satisfies the investment eligibility criteria. The proposal also provides that FCA would notify a Farm Credit bank as to the proper treatment of any such investment. We received no comment on this provision. We retain this provision to safeguard the safety and soundness of banks, and we redesignate it as § 615.5140(c).

F. Association Investments

FCA proposed to substantially revise § 615.5142, which governed association investments. Previously, § 615.5142 did not impose a portfolio limit on the total amount of association investments. Additionally, our former regulation permitted associations to hold the same types of investments as Farm Credit banks even though associations are not subject to the liquidity reserve requirement in § 615.5134, and they are not exposed to the same liquidity and market (interest rate) risks as their funding banks. Previously, § 615.5142 authorized each association to hold eligible investments listed in § 615.5140, with the approval of its funding bank, for the purposes of reducing interest rate risk and managing surplus short-term funds. The regulation also required each Farm Credit bank to review annually the investment portfolio of every association it funds.

The proposed rule would limit association investments to securities that are issued or fully guaranteed or insured as to the timely payment of principal and interest by the United States or any of its agencies in an amount that does not exceed 10 percent of its total outstanding loans. The proposed rule also addresses: (1) Investment and risk management practices at System associations; (2) funding bank supervision of association investments; (3) requests by associations to FCA to hold other investments; and (4) transition requirements for System associations to come into compliance with the new rule.

We proposed these changes because most System associations have increased in size and complexity over the past two decades, offering a diversity of products and services to adapt to a changing and increasingly competitive agricultural sector. The changes in agriculture have introduced new risks to the associations. For example, while the associations have adopted adequate risk management strategies to effectively adapt to this changing environment, they remain concentrated in agriculture and have limited ability to manage concentration risk. Although the previous regulation allowed the associations to use investments for managing surplus short-term funds and reducing interest rate risk, they could not use investments to manage concentration risk. For these reasons, we designed the proposed rule to strike a balance by granting associations greater flexibility in the purposes for which they may hold investments, while placing new limits on the amounts and types of investments they may hold. Under the proposed rule, associations would have the flexibility to manage concentration risks with securities that are issued or fully guaranteed or insured as to the timely payment of principal and interest by the U.S. Government or its agencies. The Act specifically authorizes System associations to buy and sell obligations of, or insured by, the United States or any agency thereof, and make other investments as may be approved by their respective funding banks under regulations issued by FCA.[24]

Before we address the substantive comments that we have received, we notify the public that we have consolidated all the provisions governing eligible investments for all System institutions into a single regulation, § 615.5140. Accordingly, FCA has removed § 615.5142 concerning association investments, and redesignated it as final § 615.5140(b). Proposed § 615.5142(d) would have redesignated, but not substantively changed, § 615.5140(e) concerning other association investments approved by FCA. The final rule restores case-by case approvals for both banks and associations to § 615.5140(e). Although we received, no comments about restructuring final § 615.5140, we consolidated the two sections for greater uniformity in the rule. Addressing eligible investments in a single regulation will make it easier for both FCA examiners and System institutions to use and apply this rule.

1. Association Investment Purposes

The proposed rule would remove the requirements in the previous regulation that authorize associations to hold investments for the purposes of reducing interest rate risk and managing surplus short-term funds. The preamble to the proposed rule explained that these requirements may be too restrictive and too inflexible for associations to effectively manage their risks in today's environment. For many associations, a limited portfolio of high-quality investments could help diversify risks they experience as lenders that primarily lend to a single-industry agriculture.

We invited comments about whether this rule should identify specific purposes for associations to purchase and hold investments, and we asked the commenters to expressly identify any specific purposes that the final regulation should retain or require, and why. Two bank trade associations stated that the final rule should identify specific risk management purposes for associations to purchase and hold investments. One commenter asked if associations are no longer required to manage surplus short-term funds and reduce interest rate risks, what is the reason for these investments?

FCA responded that System institutions face four broad types of risks: (1) Credit; (2) market (interest rate); (3) liquidity; and (4) operational. Although the previous regulation allowed associations to hold investments only for managing surplus short-term funds (liquidity), and reducing interest rate risk (market risk), the associations remain exposed to broader risk both in individual investments and in their overall portfolios. Additionally, the prior regulation permitted associations to hold the same investments as FCS banks, which exposed them to the same four risks. For this reason, § 615.5133 requires all FCS banks and association to address these four risks in their

[23] *See* § 628.43(b)(5)—A supervisory calibration parameter, *p,* is equal to 0.5 for securitization exposures that are not resecuritization exposures and equal to 1.5 for resecuritization exposures.

[24] *See* sections 2.2(10) and (11), and 2.12(17) and (18) of the Act. Additionally, sections 2.2(10) and 2.12(18) of the Act authorize System associations to deposit funds with any member bank of the Federal Reserve System, or with any bank insured by the Federal Deposit Insurance Corporation.

investment policies. The investment policies must be commensurate with the size and complexity of the institution's investment portfolio. As discussed in greater detail below, this final rule retains and strengthens the investment management requirements in § 615.5133. Additionally, new limits on the amount and types of investments in our proposal would counterbalance the greater flexibility in investment purposes.

As stated above, FCA seeks to grant associations greater flexibility in investment purposes, while placing more restrictions on the types and amount of investments they may hold. Contrary to claims in banker comment letters, this rule restricts, rather than expands the types of investments that associations may purchase and hold. This rule no longer authorizes associations to hold the same investments as FCS banks, such as money market instruments, corporate bonds, and certain asset-backed securities.

In contrast, a System association asked FCA to retain the investment list in the previous regulation, which it claims associations need to manage ''prepayment [extension or contraction] risk, credit risk, liquidity risk and yield risk.'' However, FCA determines that the new regulation provides sufficient risk management tools for associations, and their need for investments is different from their funding banks. By only authorizing associations to hold securities issued or unconditionally guaranteed by the U.S. Government and its agencies, the regulation eliminates most credit risk associated with such assets, and helps mitigate risk in their overall portfolios. Securities issued or unconditionally guaranteed by the U.S Government and its agencies still present market (interest rate), liquidity, and operational risks to associations. As discussed elsewhere in this preamble, placing a 10-percent portfolio cap on associations for the first time, and limiting the types of investments that associations may hold, result in a conservative and risk-adverse regulatory approach. The low credit risk in these investments offer the opportunity to diversify the balance sheet credit risks for those associations that choose to exercise their investment authorities.

2. Eligible Association Investments

Proposed § 615.5142(a) would authorize System associations to invest solely in obligations that the United States Government and its agencies issue, fully guarantee, or insure as to the timely payment of principal and interest. Sections 2.2(11) and 2.2(17) expressly authorize System associations to invest in such obligations of the United States and its agencies. Such obligations are usually liquid and marketable. Although MBS issued by the U.S. Government and its agencies pose almost no credit risk to investors, they potentially expose investors to other risks, especially market (interest rate and prepayment risk). We find that these investments are suitable for managing risk at associations because they have no credit risk and they enable associations to diversify their portfolios. Additionally, all System institutions may hold Farmer Mac AMBS as eligible investments.[25]

Bankers and their trade associations commented that this provision would allow System associations to buy ineligible loans that are guaranteed by the United States and its agencies in contravention of the Act. FCA revised this provision to address these concerns. FCA has addressed the commenters' concerns by changing the term ''obligations'' to ''securities'' in the third sentence of the final rule. If an association purchases the government-guaranteed portions of individual loans, such purchases do not meet the criteria for an investment security under the final rule.[26] FCA has added rule text to clarify that only securities that the U.S. Government and its agencies unconditionally guarantee are eligible investments for associations. Under the final regulation, only investments defined and booked as securities under GAAP qualify as authorized investments under the final rule.

For further clarification, FCA notes that pool assemblers purchase guaranteed portions of loans in the secondary market, and securitize these assets. In this context, not all these securitizations will be eligible investments for associations. We anticipate that System associations most likely will purchase and hold either securities guaranteed by SBA or issued by Farmer Mac.[27] The SBA and Farmer Mac guarantee the timely payment of principal and interest to investors.[28] Under GAAP, such assets are reported as investments. System banks and associations purchase Farmer Mac 2 AMBSs under § 615.5174, not under § 615.5140. Farmer Mac 2 AMBSs and guaranteed SBA securities are eligible investments for associations under the final regulation. We have redesignated proposed § 615.5142(a) as final § 615.5140(b)(1).

3. Association Portfolio Limits

Proposed § 615.5142(a) limits association investments to 10 percent of total outstanding loans. This portfolio limit ensures that loans to eligible borrowers always comprise most of the assets of FCS associations, which is consistent with the System's mission. Our regulations authorize Farm Credit banks to hold significantly larger investment portfolios than System associations because the: (1) Banks maintain liquidity and manage interest rate risk for all but a few affiliated associations; and (2) associations borrow almost exclusively from their funding banks.

The proposed 10-percent portfolio limit on investments should be sufficient to enable associations to develop robust strategies to manage risks if association investment policies, management practices and procedures, and appropriate internal controls support those investment activities. Furthermore, the proposed 10-percent limit should help associations manage their concentration risk as single-industry lenders. FCA believes that the proposed 10-percent portfolio limit on investments strikes an appropriate balance by enabling associations to appropriately manage and diversify risks while continuing to serve their primary mission of lending to farmers and other eligible borrowers.

We received comments about the proposed portfolio limits from both System and non-System commenters. The principal concerns raised by the commenters focused on: (1) How FCA would apply the 10-percent limit; (2) which investments the portfolio limit covered, and (3) whether the 10-percent limit is prudent.

System commenters raised three primary issues about the proposed portfolio limit for association investments. Several System commenters inquired whether the 10-percent limit on investments applies to

[25] Investments in Farmer Mac AMBS are covered by § 615.5174. Investments in Farmer Mac AMBS cannot exceed the total amount of outstanding loans of a System bank or association.

[26] For Generally Accepted Accounting Principles' (GAAP) purposes, the association should treat the purchase of an individual loan as purchase of an interest in an assignment in a loan participation. System institutions, when purchasing the guaranteed portion of an individual loan, also must comply with the lending eligibility and loan purpose of parts 613 and 614, as if they originated the loan.

[27] The SBA issues a ''SBA Guaranteed Pool Certificate'' to those securitizations created by third-party issuers. In effect, the SBA unconditionally guarantees the security. Farmer Mac issues Farmer Mac 2 AMBSs whose underlying assets consist of the guaranteed portions of USDA loans.

[28] SBA is a Government agency while Farmer Mac is a GSE.

both investments authorized under § 615.5142(a) and those approved by FCA on a case-by-case basis. Additionally, some System commenters opined that the 10-percent limit was too restrictive, and that FCA should increase it to 15-percent. Others suggested that a limit based on ''total outstanding loans'' would be too restrictive. These commenters suggested that the final rule tie the portfolio cap to a broader array of assets including; ''earning assets,'' ''loans plus mission-related investments plus UBEs plus RBICs plus [Farmer Mac] MBS'' or ''total assets.''

Bankers and their trade associations commenters opposed the proposed portfolio limit on association investments for other reasons. First, these commenters wanted FCA to base the portfolio limit on association capital levels, not total outstanding loans. One of the bank trade association commenters misinterpreted the proposed portfolio limit for associations by assuming that it established two separate 10-percent limits; one for U.S. Government-guaranteed investments, and one for ''all other association investments.'' This commenter requested that FCA limit eligible investments to 10 percent of capital (5 percent for guaranteed investments and 5 percent for non-guaranteed investments), which would include 1 percent of capital for ''other investments'' which are ''for purposes that are [consistent] with the Act's lending constraints.'' Second, these commenters claim that the proposed portfolio limit was too high because investments at most associations would rarely equal or exceed 10 percent of total outstanding loans. Third, bank commenters claimed that if loan volume declines at an association, it should then liquidate investments to comply with the portfolio limit, which would expose it to losses on their required sale due to their presumed illiquidity.

We now respond to requests that we either increase or decrease the portfolio limit for investments. As stated above, System commenters claimed that a 10-percent limit was too restrictive, and they request that we increase it to 15 percent. System commenters have not convinced us that the 10-percent limit is too restrictive. FCA notes that the policies at some System associations with active investment programs establish a 15-percent portfolio limit for investments, while in practice, investments at most associations rarely equal or exceed 10 percent of total outstanding loans. In contrast, bank trade associations commenters asked us to significantly lower the proposed 10-percent limit. However, a lower limit would not provide meaningful risk diversification, or the necessary economies of scale for associations to justify the added costs of establishing and maintaining the infrastructure and internal controls for holding and managing an investment portfolio of securities unconditionally guaranteed by the United States Government and its agencies. Reducing the portfolio limit below 10 percent could hamper associations from holding such investments, thereby denying them more diversified and better quality asset portfolios. For this reason, we decline both requests.

We now address requests from bank commenters that FCA change the denominator for the portfolio limit calculation from total outstanding loans to capital. These commenters stated that all FRBAs impose investment limits that are based on references to capital, rather than loans or other assets. Additionally, these commenters assert that a limit tied to capital would more effectively reduce the risk exposure to System associations. FCA responds that the purpose of the portfolio limit is to ensure that most association assets are loans to eligible agricultural and aquatic producers while promoting portfolio diversity. Under the final rule, associations may hold only securities that are unconditionally guaranteed by the U.S. Government and its agencies for risk management purposes, which effectively eliminates the credit risk exposure that the commenters fear. Furthermore, § 615.5182 requires associations to manage interest rate risk associated with such Government-guaranteed investments. For these reasons, a portfolio limit based on a reference to capital is unnecessary. In this context, the statutory framework for the FCS is different than that for banks. FBRAs do not tie investments at banks to loans or other assets because their statutes do not limit their lending activity to a single economic sector.

As noted earlier, a bank trade association asked that the final rule limit non-guaranteed investments to 5 percent of capital, and ''other investments'' to 1 percent of capital. The commenter also suggested that the final rule prohibit associations from holding non-guaranteed and ''other investments'' for purposes that are inconsistent with the Act's lending constraints. FCA already addressed the comment about using capital as the reference for a portfolio limit. More importantly, the final rule does not allow associations to disguise ineligible loans as investments in violation of the Act, and as explained elsewhere in this preamble, we amended the final rule to address this specific concern.

We now respond to System commenters who asked us to change the portfolio limit from ''total outstanding loans'' to either ''earning assets,'' or ''total assets.'' We decline this request because ''total outstanding loans'' is a standard that provides associations with a sufficient level of investments to manage their risks prudently and economically. Our investment regulations use the same standard for calculating the limit for Farm Credit banks, which play a far greater role in managing liquidity and market risk for the entire System than associations. Under the circumstances, FCA finds no compelling reason for enacting a permissive standard for System associations, and a more stringent one for Farm Credit banks. Separately, FCA has consistently held that the principal statutory mission of the System is lending to agricultural and aquatic producers, and their cooperatives. A portfolio limit tied to loans ensures that agricultural credits remain the primary assets of all System banks and associations. A portfolio limit based on either ''earning'' or ''total'' assets could permit associations to hold a greater amount of assets that are unrelated to agriculture.

Several System commenters asked that the portfolio limit calculation exclude equity investments in Rural Business Investment Companies (RBICs), an Unincorporated Business Entities (UBEs), or Farmer Mac Class B stock (held only by System investors) from its numerator. FCA agrees with System commenters, and the final rule excludes both debt and equity investments in these three entities from the calculation of the 10-percent limit. The amount that System institutions, either alone or together, may invest in RBICs are limited by statute.[29] Investments in UBEs are subject to limits in § 611.1153(h). FCA does not intend to place any limitations on either the purchase of Farmer Mac Class B equity or Farmer Mac issued Agricultural Mortgage Backed Securities (AMBS) because it would discourage System institutions from using Farmer Mac in its risk management strategies. A System bank or association may purchase Farmer Mac Class B equity under § 615.5173 and Farmer Mac AMBSs under § 615.5174.

Several System institutions suggested that the calculation for the portfolio limit revealed a potential conflict because the numerator would use a 30-

[29] *See* section 384J of the Consolidated Farm and Rural Development Act, 7 U.S.C. 2009cc–9.

day average while the denominator would use a 90-day average. These commenters requested that the final regulation set a 90-day average daily balance for both the numerator and denominator. FCA disagrees with the commenter that a 10-percent limit calculation should use a 90-day average balance for both the numerator and the denominator. FCA believes that the commenter's approach could favorably influence the association's calculation of the numerator of the 90-day average, and thus periodically exceed the 10-percent portfolio limit. After considering various alternatives, FCA decides that using a date-specific total investment amount for the numerator best achieves our objective that each association never exceeds the 10-percent portfolio limit. This approach simplifies the calculation by removing one of the two averages proposed. FCA will keep the denominator calculation at a 90-day average because FCA's capital regulations and call report instructions already require FCS institutions to calculate 90-day average daily balances for loans outstanding.

The final rule requires System associations to compute the 10-percent limit based upon a total amount for investments on a specific date in the numerator, divided by a 90-day average daily balance of loans outstanding in the denominator. This calculation values investments at amortized cost. Loans, as defined in § 615.5131, are calculated quarterly (as of the last day of March, June, September, and December) by using the average daily balance of loans during the quarter. For this calculation, loans would include accrued interest, but would not include allowances for loan loss adjustments.

FCA changes the 30-day average daily balance in proposed § 615.5142(a) to a date specific amount in final and redesignated § 615.5140(b)(3). FCA has made a conforming change to the final rule, which requires associations to compute the limit using for the numerator, the date-specific amount of investments divided by the denominator, using the amount of the 90-day average balance reported in the most recent call report. Unless otherwise directed by FCA, associations should calculate this limit quarterly.

A bank trade association asserted that if loan volume declines at an association, the association should liquidate investments to stay within the 10-percent limitation. FCA notes that proposed § 615.5142(e)(2) expressly stated that an association would not need to divest of investments that were eligible when purchased even if a decline in total outstanding loans causes it to exceed the 10-percent portfolio limit. However, the rule would prohibit associations from purchasing additional investments until their total amount is equal to or less than the 10-percent limit. FCA retains this approach in the final rule and redesignate it as § 615.5140(b)(5). Requiring liquidation of investments when total outstanding loans decline could expose associations to unnecessary losses due to fluctuations in investment prices and associated transaction costs.[30] The commenter also claimed that it is unclear whether association investments authorized by the proposed rule would be liquid, and this could increase risk to an association in the event it had to liquidate eligible investments. Given that this regulation limits association investments for risk management purposes to securities that are issued, or unconditionally guaranteed or insured by the U.S. Government or its agencies, the commenter's concern lacks merit.

After reviewing all the comments, FCA has decided to retain the proposed portfolio limit of 10 percent of total outstanding loans, although the final rule contains some minor adjustments, which we explained earlier. This new regulation imposes a portfolio limit on association investments, whereas the former regulation had none. As we explained in the preamble to the proposed rule, the 10-percent limit on investments ensures that loans to agricultural producers and other eligible borrowers constitute most of association assets. In this context, the primary purpose of the portfolio limit is to ensure that System associations adhere to their statutory mission as a GSE to finance agriculture. Additionally, the 10-percent portfolio limit strikes an appropriate balance that enables associations to effectively manage and diversify risks while staying within the boundaries of the Act. Since associations may hold only investments issued, guaranteed or insured by the United States Government and its agencies, and investments approved by FCA on a case-by-case basis, a portfolio limit that does not exceed 10 percent of loans allows an appropriate economy of scale based on expected overhead costs and compliance with investment management requirements in § 615.5133.

Both System institutions and bank commenters asked whether the 10-percent limit applied to investments that FCA approves on a case-by-case basis. FCA confirms that the final regulation will apply an aggregate limit of 10 percent to investments authorized in § 615.5140.

4. Association Risk Management Requirements

The proposed rule addressed risk management practices that associations must follow if they select, purchase, and hold investments. We designed these provisions to ensure that System associations comply with prudent investment management practices. The proposed rule would have required each association to evaluate its investment management policies, and determine and document how its investment activities adhere to prudent risk management processes and procedures. Under the proposed rule, each association must comply with proposed § 615.5133(a), (b), (c), (d), (e), (h), and (i), which govern investment management practices at all System institutions.[31] From FCA's perspective, compliance with these provisions of § 615.5133 would instill discipline in investment management practices at each System association, which protects its safety and soundness. Additionally, each association's investment management must be appropriate for the size, risk characteristics, and complexity of the association and its investment portfolio. Investment management must consider the association's unique circumstances, risk tolerances, and objectives.

We asked for comments on whether these new requirements would impose undue regulatory burden on System associations and their funding banks. FCA received no comments about risk management practices at associations. Since these risk management practices enhance safety and soundness at System associations, we adopt the proposed regulatory requirements without substantive revision.

The rule requires each association to assess how investments that they purchase and hold impact the association's credit risk profile, and affect its risk-bearing capacity. Such factors that associations should consider and evaluate include, but are not limited to, its management experience

[30] Although we received no similar comment about the bank investment portfolio limit, we note that the same rationale applies. A System bank would not need to divest of investments that were eligible when purchased even if a decline in total outstanding loans causes it to exceed the 35-percent portfolio limit. However, System banks could not purchase additional investments.

[31] Proposed § 615.5142(b)(1) would not require System associations to comply with proposed § 615.5133(f) and (g) because those two provisions explicitly apply only to System banks. Proposed § 615.5142(b) has been redesignated as final § 615.5140(b)(2)(i). FCA did not redesignate § 615.5133(f) and (g).

and capability to understand and manage complex structures and unique risks in the investments it purchases and holds. Associations may purchase and hold investments in final § 615.5140(b)(1) only for managing risks. Although FCA does not expect associations to suffer losses or break-even on investments, using investments *primarily* for speculative purposes or generating gains from trading is an impermissible activity. Likewise, the intentional mismatched funding of investments and the resulting increase in interest rate risk would typically be inappropriate unless used as an effective hedge against other risks on the balance sheet. Other risks that associations should consider and evaluate include prepayment (extension and contraction) risks and interest rate cap risks and how these risks potentially impact earnings.

5. Funding Bank Supervision of Association Investments

Sections 2.2(10) and 2.12(18) of the Farm Credit Act require each association to obtain its funding bank's approval of the association's investment activities under FCA regulations. Proposed § 615.5142(c) sets forth the requirements for funding banks to review, approve, and oversee the investment activities of its affiliated associations. As required by statute, each association must request from its funding bank prior approval to buy and hold investments under this section. FCA structured the proposed rule to provide flexibility so that funding banks could approve types or classes of investments, rather than each individual investment. However, the proposed rule, would require funding banks to review and approve prospective association investments, prior to submission to FCA for case-by-case approval. The FCA Board continues to be the final authority for approving all association case-by-case investments. The proposed rule would require each bank to explain in writing its reasons for approving or denying the association's investment requests.

Once an association has established a satisfactory investment management program that its funding bank has approved, the association could purchase and hold investments that the Act and this regulation authorize. The intent of this provision is to balance the association investment activities with the funding and oversight role of the bank. As part of the approval, the funding bank must evaluate, determine and document that the association has: (1) Adequate policies, procedures, internal controls, and accounting and reporting systems for its investments; (2) the capability and expertise to effectively manage risks in investments; and (3) complied with requirements of proposed § 615.5142(b). Any prior System association investment management program that the funding bank previously approved would need to be reviewed and re-approved once proposed § 615.5142 becomes final and effective. FCA notes that the General Financing Agreement (GFA) (including any attached, referenced, or related documents) could establish covenants governing the investment activities of an affiliated association. As such, the GFA can be a useful tool for funding banks to review and monitor the investment activities of their affiliated associations.

Finally, the proposed rule would keep the previous requirement that each System bank annually review the investment portfolio of every affiliated association.[32] As part of its annual review, the bank must evaluate whether the association's: (1) Investments mitigate and manage its risks; and (2) risk management practices continue to be adequate.

FCA received comments from System institutions and commercial banks about funding bank approval of investments on a program rather than individual basis. We have already addressed this issue in a preceding section. Commercial bank trade associations claimed that FCA was abdicating its responsibilities by authorizing the funding banks to approve classes of association investments. We respond that sections 2.2(10) and 2.12(18) of the Act authorize associations to hold investments as may be approved by their funding bank under the regulations of FCA. This regulation meets this statutory requirement. Additionally, the final regulation only allows associations to invest in obligations issued, guaranteed, or insured by the U.S. Government and its agencies. As stated above, case-by-case investments must be approved by FCA. For these reasons, we adopt proposed § 615.5142(c)(1) as final and redesignate it as § 615.5140(b)(4).

6. Transition Issues From Previous to New Investment Regulations

Proposed § 615.5142(e)(1), would not require an association to divest of any investments held before the effective date of this rule provided we previously authorized the investment under former § 615.5140 or by official written Agency action. As we explained in the preamble to the proposed rule, this transition rule would allow an association to continue to hold previous investments that would no longer be authorized by the final rule. After this final rule is effective, institutions may not extend or renew investments past their maturity unless they are authorized by regulation or FCA approval.

Proposed § 615.5142(e)(3) would apply to all investments that an association acquires after the new regulation becomes effective. Specifically, all investments that an association purchases after proposed § 615.5142 becomes effective as a final rule would be subject to § 615.5143 of this part, which governs the managing and divesting of ineligible investments.

A bank trade association opposed this provision because it believes that FCA should not permit associations to hold investments that the final rule no longer authorizes. The commenter claimed that FCA should require immediate divestiture of these readily marketable investments. FCA responds that these investments were eligible when purchased under regulations and a pilot program that were then in effect. It is customary and accepted practice among financial institution regulators to allow institutions to retain investments until maturity, if prior regulations or agency action authorized their purchase unless a statute requires immediate divestiture or there is a compelling safety and soundness reason. As noted above, institutions cannot renew or extend such investments after they mature. Accordingly, we adopt proposed § 615.5142(e)(1) as final and redesignate it as § 615.5140(b)(5).

G. Other Investments Approved by FCA

Since 1999, our investment regulations have allowed all System institutions to purchase and hold other investments (not listed in our regulation) that FCA approves. The regulation requires that all requests for our approval must explain the risk characteristics of the investment and the institution's purpose and objectives for making the investment. We proposed no changes to this provision of our regulation, which still can be found at § 615.5140(e), and the final rule retains this authority without revision. Case-by case approvals enable System institutions to purchase and hold other investments that are consistent with their statutory authorities and the objectives of the Act. Currently, FCA requires System institutions to submit information and analysis with each approval request that demonstrates that

[32] FCA notes that the General Financing Agreement (including any attached, referenced, or related documents) can be a useful tool for funding banks to review and monitor the investment activities of their affiliated associations. *See* § 614.4125.

the asset is accounted for as an investment under GAAP,[33] and not a loan to an ineligible borrower.

The bankers and their trade associations opposed the case-by-case approval authority. These commenters claim that the case-by-case approval authority in the regulation goes beyond the investment provisions in the Act and Congressional intent. They further claimed that this regulatory provision enables FCA to approve ''illegal'' loans to ineligible borrowers and classify them as investments. Specifically, these commenters claim that the proposed rule and guidance provided by the Informational Memorandum dated September 4, 2014, would permit FCS institutions to evade lending restrictions by buying instruments that are improperly labeled as ''debt securities,'' ''obligations,'' or ''bonds.'' The commenters state that the proposed rule and the Information Memorandum dated September 4, 2014, does not state that ''investments'' explicitly exclude commercial business loans. A related complaint was that the proposed rule did not identify specific criteria that FCA would use to distinguish loans from investments and that the approval of private placements would further blur this distinction. According to the commenters, such approvals would enable System institutions to impermissibly compete with tax-paying banks. Another concern of banks and their trade associations is that the case-by-case approvals lack transparency.

FCA proposed no changes to the regulation governing case-by-case approvals of investments by System banks and associations. Accordingly, this final rule makes no changes to this existing regulatory provision. Therefore, FCA is not required to respond to the issues raised above by commercial bankers because they are not relevant to this rulemaking. However, FCA will address each of these issues to be responsive to the bankers and their trade associations, and transparent to the public.

Several provisions of the Farm Credit Act allow FCA to approve new investments at the request of System institutions. Sections 1.5(15), 2.2(10), 2.12(18), and 3.0(13)(A) expressly authorize Farm Credit banks and associations to make other investments as may be authorized under FCA regulations.[34] Additionally, section 5.17(a)(5) authorizes FCA to ''grant approvals provided for under this Act either on a case-by-case basis or through regulations that confer approval on actions of System institutions.'' Pursuant to these statutory provisions, FCA regulations have for many years permitted System institutions to request Agency approval of new investments that are not specifically covered in our regulations. This regulatory approach provides flexibility so System institutions can adapt to changing market conditions within their statutory authority. Financial markets often respond to economic and financial changes by creating new types of investments. By approving new investments under this case-by-case authority, FCA enables the System to react to evolving conditions in the marketplace.

In exercising its explicit statutory authority to approve System investments, FCA remains within the Act. The statute grants System institutions both lending and investment authorities, although it does not always establish specific criteria that distinguish loans from investments. As the Agency charged with interpreting, administering, and implementing the Act, FCA must look to caselaw, other statutes, accounting conventions, and guidance from the FBRAs to properly distinguish loans from investments. FCA does not have authority to approve, nor does it approve, ''illegal'' loans to ineligible borrowers and classify them as investments, as the commenters allege. As stated earlier, FCA, pursuant to the Informational Memorandum of September 4, 2014, only approves obligations that qualify as investments under GAAP. Additionally, FCA will also analyze whether a proposed investment meets the necessary criteria under Federal Securities statutes, such as the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940. As part of its analysis, FCA will also consider relevant Federal caselaw such as Reves v. *Ernest & Young,*[35] and *SEC* v. *W.J. Howey Co.*[36] Finally, FCA uses the Federal Financial Institution Examination Council's call report instructions on investments and loans as additional guidance.

In response to bank concerns about whether private placements are investments or loans, FCA notes that the same logic also applies to case-by-case approval of private placements. We observe that private placements are not liquid, but they are often suitable for other risk management purposes. Private placement securities may be appropriate in limited circumstances for interest rate risk management purposes. Bank commenters point out that private placements are not widely sold to public investors. FCA responds that it has authority to approve such private placement securities on a limited basis under specific conditions provided they meet the criteria of an investment. FCA intends to look at all relevant facts when it determines whether a private placement is an investment, not a loan to an ineligible borrower.

A bank trade association raised concerns that investments approved on a case-by-case basis would be subject to a favorable tax treatment, which would enable System banks and associations to earn additional income. The arguments of the bankers and their trade associations have not persuaded us that case-by-case approval of investments allows System institutions to ''unfairly'' compete with tax-paying banks. We note that many community banks, which submitted comments, may organize as Subchapter S corporations. The tax treatment for System institutions under the Internal Revenue Code for subchapter T [37] is similar to the tax treatment of small banks, with less than or equal to 100 investors, that file under subchapter S.

FCS debt usually trades close to Treasuries. We note that commercial banks may pay the same costs for funds as the System by funding or discounting their agricultural loans through two GSEs—Farmer Mac or the Federal Home Loan Banks. Also, System banks must hold large liquidity portfolios consisting of cash and high-quality investments. Although System banks may deposit cash at a Federal Reserve bank, they do not earn interest on their deposits in contrast to Federal Reserve member banks. In addition, most Treasuries are ''negative carry-trades'' for System institutions because they funded these investments at a debt price slightly above Treasury rates.

Commercial bankers also claimed that case-by-case approvals lack transparency. The FCA Board must decide whether to approve any investments that are not expressly authorized by regulation. All resolutions that the FCA Board votes on are public

[33] *See* Information Memorandum of September 4, 2014, (Appendix B, requirement 15).

[34] More specifically, the Act expressly allows Farm Credit banks and associations, ''to buy and sell obligations of, or insured by, the United States or any agency thereof, or securities backed by the full faith and credit of any such agency, and make other investments as may be authorized under regulations issued by the Farm Credit Administration.''

[35] 494 U.S. 56 (1990).

[36] 328 U.S. 293 (1946).

[37] Some System institutions may not elect to follow subchapter T in the Internal Revenue Code. Such institutions would pay taxes on retained net income.

documents, and FCA publishes summaries of Board actions on its website. Thus, the public can easily find out information about investments that FCA has approved on a case-by-case basis. Such information includes the investment type, investment amount, the System institution(s) making the investment, general obligor characteristics, and the investment location. Usually, institutions withdraw requests for approval if during the review process, FCA staff indicates that the proposed transaction does not qualify as an investment, or otherwise is not within the applicants' investment authority.

Commercial bank commenters requested that FCA publish a list of the potential investments it would approve on a case-by-case basis under the final rule. We believe that the bankers' approach would deny FCA and the System the flexibility to respond to changing market circumstances. As discussed earlier, sections 1.5(15), 2.2(11), 2.12(18), 3.1(13)(A), and 5.17(a)(5) expressly authorize System banks and associations to hold other investments that FCA approves by regulation. FCA exercises its express statutory authority in a manner that is consistent with law, and safety and soundness.

Commercial bank commenters noted that proposed § 615.5142(a) stated that associations may hold investments only for risk management purposes. They disputed that investments approved by FCA on a case-by-case purposes are for risk management. Under existing § 615.5140(e), case-by-case approvals have not been subject to the existing purpose requirements for association investments. This will continue unchanged in this final rule because FCA proposed no changes, and has made no changes to the case-by-case authority. We note, however, that the purposes for the investments and the risk characteristics of the investment are part of what FCA evaluates in its approval process.

H. Management of Ineligible Investments and Reservation of Authority To Require Divestiture

Our divestiture regulations have long required System institutions to: (1) Quickly divest of investments that were ineligible when purchased; and (2) effectively mitigate the risk associated with investments that became ineligible when their credit quality deteriorated. FCA expects that System institutions will rarely find themselves holding ineligible investments in their portfolio except potentially in times of a widespread financial crisis. Under our regulatory framework, institutions must report investments that are ineligible when purchased immediately to FCA and divest within 60 calendar days or pursuant to a divestiture plan approved by FCA. If an eligible investment later deteriorates and poses additional risk to the institution, the focus of the institution becomes risk mitigation. FCA reserves authority to require divestiture in specific circumstances.

The proposed rule would retain most of the substantive divestiture requirements in previous § 615.5143. However, the proposed rule identified which divestiture requirements apply to banks, and which ones apply to associations. More specifically, final and redesignated § 615.5140(b)(5) addresses how the new 10-percent portfolio limit for associations pertains to these divestiture requirements.

A bank trade association commented that FCA should not allow System institutions to hold any investment that becomes ineligible. This commenter asked FCA to require System institutions to divest of such investments within 6 months. FCA finds this suggestion to be unduly inflexible. Requiring automatic divestiture within 6 months seems punitive because it may not allow FCA to consider the least costly remedy for the institution. The commenter's suggestion that the final regulation should require institutions to divest of investments that later became ineligible due to a credit downgrade does not consider that some of these investments may later experience a credit upgrade. In these cases, mandatory divestiture within 6 months may expose the System institution to unnecessary losses.

A comment from a bank trade association asked whether FCA is requiring FCS institutions to divest of investments approved under the Investment in Rural America—Pilot Programs after discontinuing those programs. The commenter also questioned why FCA would allow a System institution to continue to hold any investment approved under the pilot program after the program ended. Investments held under the Pilot Programs were designated as rural community investments that furthered the System's mission to increase the flow of funds into rural areas. In response to the commenter's question, we cite the FCA News Release NR 13–15(11–14–13) which states:

'' . . . [T]he Farm Credit Administration Board voted to conclude effective December 31, 2014, each pilot program approved after 2004 as part of the investments in Rural America program. The Board's action permits each Farm Credit System (System) institution that is participating in a pilot program to continue to hold its investments through the maturity dates for the investments, provided the institution continues to meet all conditions.''

As stated above, the FCA Board permitted System institutions to hold these investments until maturity, and this approach mitigated potential losses to institutions that held these investments.

For these reasons, FCA adopts proposed § 615.5143 as a final regulation without substantive change. However, we made some minor stylistic changes which primarily included revising cross references to association investments which are now in final § 615.5140 instead of § 615.5142.

H. Miscellaneous

1. Appropriate Use of Derivatives

Derivatives can be appropriate and useful for hedging and risk management. While our regulations do not prohibit a System bank from using derivatives to build an investment portfolio, use of these derivatives must be consistent with an authorized investment purpose and not used for speculative purposes. We note that most cleared derivative contracts are very liquid, while many non-cleared derivative contracts are less liquid.

2. Conforming Changes to Other Regulation Sections

We received no comments about provisions in the proposed rule that made conforming changes to references in §§ 611.1153, 611.1155, 615.5174, and 615.5180. Accordingly, we will incorporate these changes into the final rule.

IV. Effective Date

We recognize that Farm Credit banks may require time to bring their policies and procedures into compliance with the new requirements of the final rule. A passage in the preamble to the proposed rule stated that we were contemplating whether the compliance date of the final rule for Farm Credit banks should be 6 months after its effective date. We invited comments as to whether this delayed compliance timeframe would be appropriate. We also asked for comments on whether a delayed compliance date would be appropriate for associations.

An FCS bank claimed that System institutions would need 12 months to make the necessary changes to come into compliance with the final rule. We believe that the changes in this rule for both banks and associations are not so extensive that System institutions need a full 12 months to come into

compliance. We also believe that a more prolonged delay would be detrimental to the safe and sound operations of System institutions. For these reasons, we believe that 6 months is sufficient time for all System institutions to bring their policies, procedures, and internal controls into compliance with the final rule. Accordingly, the final rule will become effective on January 1, 2019.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income more than the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, parts 611 and 615 of chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

PART 611—ORGANIZATION

■ 1. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.2, 1.3, 1.4, 1.5, 1.12, 1.13, 2.0, 2.1, 2.2, 2.10, 2.11, 2.12, 3.0, 3.1, 3.2, 3.3, 3.7, 3.8, 3.9, 3.21, 4.3A, 4.12, 4.12A, 4.15, 4.20, 4.21, 4.25, 4.26, 4.27, 4.28A, 5.9, 5.17, 5.25, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2002, 2011, 2012, 2013, 2020, 2021, 2071, 2072, 2073, 2091, 2092, 2093, 2121, 2122, 2123, 2124, 2128, 2129, 2130, 2142, 2154a, 2183, 2184, 2203, 2208, 2209, 2211, 2212, 2213, 2214, 2243, 2252, 2261, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; sec. 414 of Pub. L. 100–399, 102 Stat. 989, 1004.

§ 611.1153 [Amended]

■ 2. Section 611.1153 is amended by removing in paragraph (i)(1) the reference ''§ 615.5140(e)'' and adding in its place the reference ''§ 615.5140(b) or § 615.5142(d)''.

§ 611.1155 [Amended]

■ 3. Section 611.1155 is amended by removing in paragraph (a)(1) the reference ''§ 615.5140(e)'' and adding in its place the reference ''§ 615.5140(b) or § 615.5142(d)''.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

■ 4. The authority citation for part 615 is revised to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of Pub. L. 92–181, 85 Stat. 583 (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a), Pub. L. 100–233, 101 Stat. 1568, 1608; sec. 939A, Pub. L. 111–203, 124 Stat. 1326, 1887 (15 U.S.C. 78o–7 note).

■ 5. Section 615.5131 is amended by:
■ a. In the definition of ''Asset-backed securities (ABS)'', removing the words ''mortgage securities'' and adding in their place the words ''mortgage-backed securities'';
■ b. Adding in alphabetical order definitions for ''Asset class'', ''Country risk classification (CRC)'', and ''Diversified investment fund (DIF)'';
■ c. Removing the definitions for ''Eurodollar time deposit'', ''Final maturity'', ''General obligations'', ''Government agency'', and ''Government-sponsored agency'';
■ d. Adding in alphabetical order a definition for ''Government-sponsored enterprise (GSE)'';
■ e. Removing the definition for ''Liquid investments'' and ''Mortgage securities'';
■ f. Adding in alphabetical order a definition for ''Mortgage-backed securities (MBS)'';
■ g. Removing the definition for ''Nationally Recognized Statistical Rating Organization (NRSRO)'';
■ h. Adding in alphabetical order definitions for ''Obligor'' and ''Resecuritization'';
■ i. Removing the definition for ''Revenue bond'';
■ j. Adding in alphabetical order definitions for ''Sponsor'' and ''United States (U.S.) Government agency''; and
■ k. Removing the definitions for ''Weighted average life (WAL)''.

The additions read as follows:

§ 615.5131 Definitions.

* * * * *

Asset class means a group of securities that exhibit similar characteristics and behave similarly in the marketplace. Asset classes include, but are not limited to, money market instruments, municipal securities, corporate bond securities, MBS, ABS, and any other asset class as determined by FCA.

Country risk classification (CRC) as defined in § 628.2 of this chapter.

Diversified investment fund (DIF) means an investment company registered under section 8 of the Investment Company Act of 1940.

Government-sponsored enterprise (GSE) means an entity established or chartered by the United States Government to serve public purposes specified by the United States Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States Government.

* * * * *

Mortgage-backed securities (MBS) means securities that are either:

(1) Pass-through securities or participation certificates that represent ownership of a fractional undivided interest in a specified pool of residential (excluding home equity loans), multifamily or commercial mortgages; or

(2) A multiclass security (including collateralized mortgage obligations and real estate mortgage investment conduits) that is backed by a pool of residential, multifamily or commercial real estate mortgages, pass through MBS, or other multiclass MBSs.

Obligor means an issuer, guarantor, or other person or entity who has an obligation to pay a debt, including interest due, by a specified date or when payment is demanded.

Resecuritization as defined in § 628.2 of this chapter.

Sponsor means a person or entity that initiates a transaction by selling or pledging to a specially created issuing entity, such as a trust, a group of financial assets that the sponsor either has originated itself or has purchased.

United States (U.S.) Government agency means an instrumentality of the U.S. Government whose obligations are fully guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. Government.

* * * * *

■ 6. Section 615.5133 is revised to read as follows:

§ 615.5133 Investment management.

(a) *Responsibilities of board of directors.* The board of directors must adopt written policies for managing the institution's investment activities. The board must also ensure that management complies with these policies and that appropriate internal controls are in place to prevent loss. At

least annually, the board, or a designated committee of the board, must review the sufficiency of these investment policies.

(b) *Investment policies—general requirements.* Investment policies must address the purposes and objectives of investments; risk tolerance; delegations of authority; internal controls; due diligence; and reporting requirements. The investment policies must fully address the extent of pre-purchase analysis that management must perform for various classes of investments. The investment policies must also address the means for reporting, and approvals needed for, exceptions to established policies. A Farm Credit banks investment policy must address portfolio diversification and obligor limits under paragraphs (f) and (g) of this section. Investment policies must be sufficiently detailed, consistent with, and appropriate for the amounts, types, and risk characteristics of its investments.

(c) *Investment policies—risk tolerance.* Investment policies must establish risk limits for eligible investments and for the entire investment portfolio. The investment policies must include concentration limits to ensure prudent diversification of credit, market, and, as applicable, liquidity risks in the investment portfolio. Risk limits must be based on all relevant factors, including the institution's objectives, capital position, earnings, and quality and reliability of risk management systems and must take into consideration the interest rate risk management program required by § 615.5180 or § 615.5182, as applicable. Investment policies must identify the types and quantity of investments that the institution will hold to achieve its objectives and control credit risk, market risk, and liquidity risk as applicable. Each association or service corporation that holds significant investments and each Farm Credit bank must establish risk limits in its investment policies, as applicable, for the following types of risk:

(1) *Credit risk.* Investment policies must establish:

(i) *Credit quality standards.* Credit quality standards must be established for single or related obligors, sponsors, secured and unsecured exposures, and asset classes or obligations with similar characteristics.

(ii) *Concentration limits.* Concentration limits must be established for single or related obligors, sponsors, geographical areas, industries, unsecured exposures, asset classes or obligations with similar characteristics.

(iii) *Criteria for selecting brokers and, dealers.* Each institution must buy and sell eligible investments with more than one securities firm. The institution must define its criteria for selecting brokers and dealers used in buying and selling investments.

(iv) *Collateral margin requirements on repurchase agreements.* To the extent the institution engages in repurchase agreements, it must regularly mark the collateral to fair market value and ensure appropriate controls are maintained over collateral held.

(2) *Market risk.* Investment policies must set market risk limits for specific types of investments and for the investment portfolio.

(3) *Liquidity risk*—(i) *Liquidity at Farm Credit banks.* Investment policies must describe the liquidity characteristics of eligible investments that the bank will hold to meet its liquidity needs and other institutional objectives.

(ii) *Liquidity at associations.* Investment policies must describe the liquid characteristics of eligible investments that the association will hold.

(4) *Operational risk.* Investment policies must address operational risks, including delegations of authority and internal controls under paragraphs (d) and (e) of this section.

(d) *Delegation of authority.* All delegations of authority to specified personnel or committees must state the extent of management's authority and responsibilities for investments.

(e) *Internal controls.* Each institution must:

(1) Establish appropriate internal controls to detect and prevent loss, fraud, embezzlement, conflicts of interest, and unauthorized investments.

(2) Establish and maintain a separation of duties between personnel who supervise or execute investment transactions and personnel who supervise or engage in all other investment-related functions.

(3) Maintain records and management information systems that are appropriate for the level and complexity of the institution's investment activities.

(4) Implement an effective internal audit program to review, at least annually, the investment management practices including internal controls, reporting processes, and compliance with FCA regulations. This annual review's scope must be appropriate for the size, risk and complexity of the investment portfolio.

(f) *Farm Credit bank portfolio diversification*—(1) *Well-diversified portfolio.* Subject to the exemptions set forth in paragraph (f)(3) of this section, each Farm Credit bank must maintain a well-diversified investment portfolio as set forth in paragraph (f)(2) of this section.

(2) *Investment portfolio diversification requirements.* A well-diversified investment portfolio means that, at a minimum, investments are comprised of different asset classes, maturities, industries, geographic areas, and obligors. These diversification requirements apply to each individual security that the Farm Credit bank holds within a DIF. In addition, except as exempted by paragraph (f)(3) of this section, no more than 15 percent of the investment portfolio may be invested in any one asset class. Securities within each DIF count toward the appropriate asset class. Measurement of this diversification requirement must be based on the portfolio valued at amortized cost.

(3) *Exemptions from investment portfolio diversification requirements.* The following investments are not subject to the 15-percent investment portfolio diversification requirement specified in paragraph (f)(2) of this section:

(i) Investments that are fully guaranteed as to the timely payment of principal and interest by a U.S. Government agency;

(ii) Investments that are fully and explicitly guaranteed as to the timely payment of principal and interest by a GSE, except that no more than 50 percent of the investment portfolio may be comprised of GSE MBS. Investments in Farmer Mac securities are governed by § 615.5174 and are not subject to this limitation; and

(iii) Money market instruments identified in § 615.5131.

(g) *Farm Credit bank obligor limit.* No more than 10 percent of a Farm Credit bank's total capital (Tier 1 and Tier 2) as defined by § 628.2 of this chapter may be invested in any one obligor. This obligor limit does not apply to investments in obligations that are fully guaranteed as to the timely payment of principal and interest by U.S. Government agencies or fully and explicitly guaranteed as to the timely payment of principal and interest by GSEs. For a DIF, both the DIF itself and the entities obligated to pay the underlying debt are obligors.

(h) *Due diligence*—(1) *Pre-purchase analysis*—(i) *Eligibility and compliance with investment policies.* Before purchasing an investment, the institution must conduct sufficient due diligence to determine whether the investment is eligible under § 615.5140 and complies with its board's investment policies. The institution

must document its assessment and retain any supporting information used in that assessment. The institution may hold an investment that does not comply with its investment policies only with the prior approval of its board.

(ii) *Valuation.* Prior to purchase, the institution must verify the fair market value of the investment (unless it is a new issue) with a source that is independent of the broker, dealer, counterparty or other intermediary to the transaction.

(iii) *Risk assessment.* At purchase, the institution must at a minimum include an evaluation of the credit risk (including country risk when applicable), liquidity risk, market risk, interest rate risk, and underlying collateral of the investment, as applicable. This assessment must be commensurate with the complexity and type of the investment. The institution must also perform stress testing on any structured investment that has uncertain cash flows, including all MBS and ABS, before purchase. The stress test must be commensurate with the type and complexity of the investment and must enable the institution to determine that the investment does not expose its capital, earnings, or liquidity if applicable, to risks that are greater than those specified in its investment policies. The stress testing must comply with the requirements in paragraph (h)(4)(ii) of this section. The institution must document and retain its risk assessment and stress tests conducted on investments purchased.

(2) *Ongoing value determination.* At least monthly, the institution must determine the fair market value of each investment in its portfolio and the fair market value of its whole investment portfolio.

(3) *Ongoing analysis of credit risk.* The institution must establish and maintain processes to monitor and evaluate changes in the credit quality of each investment in its portfolio and in its whole investment portfolio on an ongoing basis.

(4) *Quarterly stress testing.* (i) The institution must stress test its entire investment portfolio, including stress tests of each investment individually and the whole portfolio, at the end of each quarter. The stress tests must enable the institution to determine that its investment securities, both individually and on a portfolio-wide basis, do not expose its capital, earnings, or liquidity if applicable, to risks that exceed the risk tolerance specified in its investment policies. If the institution's portfolio risk exceeds its investment policy limits, the institution must develop a plan to comply with those limits.

(ii) The institution's stress tests must be defined in a board-approved policy and must include defined parameters for the security types purchased. The stress tests must be comprehensive and appropriate for the institution's risk profile. At a minimum, the stress tests must be able to measure the price sensitivity of investments over a range of possible interest rates and yield curve scenarios. The stress test methodology must be appropriate for the complexity, structure, and cash flows of the investments in the institution's portfolio. The institution must rely to the maximum extent practicable on verifiable information to support all its stress test assumptions, including prepayment and interest rate volatility assumptions. The institution must document the basis for all assumptions used to evaluate the security and its underlying collateral. The institution must also document all subsequent changes in its assumptions.

(5) *Presale value verification.* Before the institution sells an investment, it must verify its fair market value with an independent source not connected with the sale transaction.

(i) *Reports to the board of directors.* At least quarterly, the institution's management must report on the following to its board of directors or a designated board committee:

(1) Plans and strategies for achieving the board's objectives for the investment portfolio;

(2) Whether the investment portfolio effectively achieves the board's objectives;

(3) The current composition, quality, and the risk and liquidity profiles of the investment portfolio;

(4) The performance of each class of investments and the entire investment portfolio, including all gains and losses realized during the quarter on individual investments that the institution sold before maturity and why they were liquidated;

(5) Potential risk exposure to changes in market interest rates as identified through quarterly stress testing and any other factors that may affect the value of its investment holdings;

(6) How investments affect its capital, earnings, and overall financial condition;

(7) Any deviations from the board's policies (must be specifically identified);

(8) The status and performance of each investment described in § 615.5143(a) and (b) or that does not comply with the institution's investment policies; including the expected effect of these investments on its capital, earnings, liquidity, as applicable, and collateral position; and

(9) The terms and status of any required divestiture plan or risk reduction plan.

■ 7. In § 615.5134, paragraph (b) is amended by revising the table to read as follows:

§ 615.5134 Liquidity reserve.

* * * * *

(b) * * *

Liquidity level		Instruments	Discount (multiply by)
Level 1		• Cash, including cash due from traded but not yet settled debt.	100 percent
		• Overnight money market investment	100 percent
		• Obligations of U.S. Government agencies with a final remaining maturity of 3 years or less.	97 percent
		• GSE senior debt securities that mature within 60 days, excluding securities issued by the Farm Credit System.	95 percent
		• Diversified investment funds comprised exclusively of Level 1 instruments.	95 percent
Level 2		• Obligations of U.S. Government agencies with a final remaining maturity of more than 3 years.	97 percent
		• MBS that are fully guaranteed by a U.S. Government agency as to the timely repayment of principal and interest.	95 percent
		• Diversified investment funds comprised exclusively of Levels 1 and 2 instruments.	95 percent

Liquidity level		Instruments	Discount (multiply by)
Level 3	.....	• GSE senior debt securities with maturities exceeding 60 days, excluding senior debt securities of the Farm Credit System. • MBS that are fully guaranteed by a GSE as to the timely repayment of principal and interest. • Money market instruments maturing within 90 days ..... • Diversified investment funds comprised exclusively of levels 1, 2, and 3 instruments.	93 percent for all Level 3 instruments

* * * * *

■ 8. Section 615.5140 is revised to read as follows:

§ 615.5140 Eligible investments.

(a) *Farm Credit banks*—(1) *Investment eligibility criteria.* A Farm Credit bank may purchase an investment only if it satisfies the following investment eligibility criteria:

(i) The investment must be purchased and held for one or more investment purposes authorized in § 615.5132.

(ii) The investment must be one of the following:

(A) A non-convertible senior debt security;

(B) A money market instrument with a maturity of 1 year or less;

(C) A portion of an MBS or ABS that is fully guaranteed as to the timely payment of principal and interest by a U.S. Government agency;

(D) A portion of an MBS or ABS that is fully and explicitly guaranteed as to the timely payment of principal and interest by a GSE;

(E) The senior-most position of an MBS or ABS that a U.S. Government agency does not fully guarantee as to the timely payment of principal and interest or a GSE does not fully and explicitly guarantee as to the timely payment of principal and interest, provided that the MBS satisfies the definition of ''mortgage related security'' in 15 U.S.C. 78c(a)(41);

(F) An obligation of an international or multilateral development bank in which the U.S. is a voting member; or

(G) Shares of a diversified investment fund registered under the Investment Company Act of 1940, if its portfolio consists solely of securities that satisfy paragraph (a)(1)(ii)(A), (B), (C), (D), (E), or (F) of this section, or are eligible under § 615.5174. The investment company's risk and return objectives and use of derivatives must be consistent with the Farm Credit bank's investment policies.

(iii) At least one obligor of the investment must have very strong capacity to meet its financial commitment for the expected life of the investment. If any obligor whose capacity to meet its financial commitment is being relied upon to satisfy this requirement is located outside the U.S., either:

(A) That obligor's sovereign host country must have the highest or second-highest consensus Country Risk Classification (0 or 1) as published by the Organization for Economic Cooperation and Development (OECD) or be an OECD member that is unrated; or

(B) The investment must be fully guaranteed as to the timely payment of principal and interest by a U.S. Government agency.

(iv) The investment must exhibit low credit risk and other risk characteristics consistent with the purpose or purposes for which it is held.

(v) The investment must be denominated in U.S. dollars.

(2) *Resecuritizations.* Notwithstanding any other provision of this section, System banks may *not* purchase resecuritizations (except when both principal and interest are fully and explicitly guaranteed by the U.S. Government or a GSE) without approval under paragraph (e) of this section.

(b) *Farm Credit associations*—(1) *Risk management investments.* Each Farm Credit System association, with the approval of its funding bank, may purchase and hold investments to manage risks. Each association must identify and evaluate how the investments that it purchases contributes to management of its risks. Only securities that are issued by, or are unconditionally guaranteed or insured as to the timely payment of principal and interest by, the United States Government or its agencies are investments that associations may acquire for risk management purposes under this paragraph (b).

(2) *Secondary market Government-guaranteed loans.* Loans purchased in the secondary market that are unconditionally guaranteed or insured by the U.S. Government or its agencies as to principal and interest are not eligible risk management investments under this paragraph (b).

(3) *Risk management requirements.* Each association that purchases investments for risk management must document how its investment activities contribute to managing risks as required by paragraph (b)(1) of this section. Such documentation must address and evidence that the association:

(i) Complies with § 615.5133(a), (b), (c), (d), and (e). These investment management processes must be appropriate for the size, risk and complexity of the association's investment portfolio.

(ii) Complies with § 615.5182 for investments that exhibit interest rate risk that could lead to significant declines in net income or in the market value of capital.

(iii) Assesses how these investments impact the association's overall credit risk profile and how these investment purchases aid in diversifying, hedging, or mitigating overall credit risk.

(iv) Considers and evaluates any other relevant factors unique to the association or to the nature of the investments that could affect the association's overall risk-bearing capacity, including but not limited to management experience and capability to understand and manage unique risks in investments purchased.

(4) *Association investment portfolio limit.* The total amount of investments purchased and held under this section must not exceed 10 percent of the association's total outstanding loans. In computing this limit:

(i) Include in the numerator the daily (point-in-time) balance of all investments purchased and held under this section. Unless otherwise directed by FCA, associations must use the investment balance on the last business day of the quarter when calculating the numerator of the portfolio limit under this paragraph. For this calculation, value investments at amortized cost and accrued interest.

(ii) Include in the denominator the 90-day average daily balance of total outstanding loans as defined in § 615.5132. For this calculation, value loans at amortized cost and include accrued interest. The denominator does not include any allowance for loan loss adjustments.

(iii) Exclude from the numerator the following:

(A) Equity investments in unincorporated business entities authorized in § 611.1150 of this chapter;

(B) Equity investments in Rural Business Investment Companies organized under 7 U.S.C. 2009cc *et seq.;*

(C) Equity investments in Class B Farmer Mac stock authorized in § 615.5173; and

(D) Farmer Mac agricultural mortgage-backed securities under § 615.5174.

(5) *Funding bank supervision of association investments.* (i) The association must not purchase and hold investments without the funding bank's prior approval. The bank must review the association's prior approval requests and explain in writing its reasons for approving or denying the request. The prior approval is required before the association engages in investment activities and with any significant change(s) in investment strategy.

(ii) In deciding whether to approve an association's request to purchase and hold investments, the bank must evaluate and document that the association:

(A) Has adequate policies, procedures, and controls, in place for its investment accounting and reporting;

(B) Has capable staff with the necessary expertise to manage the risks in investments; and

(C) Complies with paragraph (b)(3) of this section.

(iii) The bank must review annually the investment portfolio of every association that it funds. This annual review must evaluate whether the association's investments manage risks over time, and the continued adequacy of the associations' risk management practices.

(6) *Transition for association investments.* (i) An association is not required to divest of any investment held on January 1, 2019 that was authorized under § 615.5140 as contained in 12 CFR part 615 revised as of January 1, 2018 or otherwise by official written FCA action that allowed the association to continue to hold such investment. Once such investment matures, the association must not renew it unless the investment is authorized pursuant to this section.

(ii) No association is required to divest of investments if a decline in total outstanding loans causes it to exceed the portfolio limit in paragraph (b)(3) of this section. However, the institution must not purchase new investments unless, after they are purchased, the total amount of investments held falls within the portfolio limit.

(c) *Reservation of authority.* FCA may, on a case-by-case basis, determine that a particular investment you are holding poses inappropriate risk, notwithstanding that it satisfies the investment eligibility criteria. If so, we will notify you as to the proper treatment of the investment.

(d) [Reserved]

(e) *Other investments approved by FCA.* You may purchase and hold investments that we approve. Your request for our approval must explain the risk characteristics of the investment and your purpose and objectives for making the investment.

§ 615.5142 [Removed and reserved]

■ 9. Section 615.5142 is removed and reserved.

■ 10. Section 615.5143 is revised to read as follows:

§ 615.5143 Management of ineligible investments and reservation of authority to require divestiture.

(a) *Investments ineligible when purchased.* Investments that do not satisfy the eligibility criteria set forth in § 615.5140(a) or (b) or investments FCA had not approved under § 615.5140(e), as applicable, at the time of purchase are ineligible. System institutions must not purchase ineligible investments. If the institution determines that it has purchased an ineligible investment, it must notify FCA within 15 calendar days after the determination. The institution must divest of the investment no later than 60 calendar days after determining that the investment is ineligible unless FCA approves, in writing, a plan that authorizes the institution to divest the investment over a longer period. Until the institution divests of the ineligible investment:

(1) A Farm Credit bank must not use the ineligible investment to satisfy its liquidity requirement(s) under § 615.5134;

(2) The institution must include the ineligible investment in the portfolio limit calculation defined in § 615.5132 or § 615.5140(b)(3), as applicable; and

(3) A Farm Credit bank must exclude the ineligible investment as collateral under § 615.5050.

(b) *Investments that no longer satisfy investment eligibility criteria.* If the institution determines that an investment (that satisfied the eligibility criteria set forth in § 615.5140(a) or (b), as applicable, when purchased) no longer satisfies the criteria, or that an investment that FCA approved pursuant to § 615.5140(e), no longer satisfies the conditions of approval, the institution may continue to hold the investment, subject to the following requirements:

(1) The institution must notify FCA within 15 calendar days after such determination;

(2) A Farm Credit bank must not use the ineligible investment to satisfy its liquidity requirement(s) under § 615.5134;

(3) The institution must include the ineligible investment in the portfolio limit calculation defined in § 615.5132 or § 615.5140(b)(3), as applicable;

(4) A Farm Credit bank may continue to include the investment as collateral under § 615.5050 at the lower of cost or market value; and

(5) The institution must develop a plan to reduce the investment's risk to the institution.

(c) *Reservation of authority.* FCA retains the authority to require the institution to divest of any investment at any time for failure to comply with § 615.5132(a) or § 615.5140(a), (b), or (e), or for safety and soundness reasons. The timeframe set by FCA will consider the expected loss on the transaction (or transactions) and the effect on the institution's financial condition and performance.

§ 615.5174 [Amended]

■ 11. In § 615.5174, paragraph (d) is amended by removing the reference ''§ 615.5133(f)(1)(iii) and § 615.5133(f)(4)'' and adding in its place ''§ 615.5133(h)(1)(iii) and (h)(4)''.

§ 615.5180 [Amended]

■ 12. In § 615.5180, paragraph (c)(3) is amended by removing the reference ''§ 615.5133(f)(4)'' and adding in its place the reference ''§ 615.5133(h)(4)''.

Dated: June 5, 2018.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

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