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

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–10518; 34–83614; 39–2521; IC–33153]

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the ''Commission'') is adopting revisions to the Electronic Data Gathering, Analysis, and Retrieval System (''EDGAR'') Filer Manual and related rules. The EDGAR system is scheduled to be upgraded on July 9, 2018.

DATES: Effective July 17, 2018. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of July 17, 2018.

FOR FURTHER INFORMATION CONTACT: In the Division of Investment Management, for questions concerning Forms N–CSR or N–CSRS, contact Heather Fernandez at (202) 551–6708. In the Division of Trading and Markets, for questions concerning Form Funding Portal, contact Timothy White at (202) 551–7232. In the Office of Municipal Securities, for questions regarding Forms MA and MA–I, contact Ahmed A. Abonamah at (202) 551–3887. In the Division of Corporation Finance, for questions concerning the Form ABS–15G, Form C, and Form D, contact Heather Mackintosh at (202) 551–8111. In the Division of Economic and Risk Analysis, for questions concerning retired taxonomies and the updated 2018 IFRS taxonomy, contact Brian Hankin at (202) 551–8497.

SUPPLEMENTARY INFORMATION: We are adopting an updated EDGAR Filer Manual, Volume II. The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the EDGAR system.[1] It also describes the requirements for filing using EDGARLink Online and the Online Forms/XML website.

The revisions to the Filer Manual reflect changes within Volume II, entitled EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 47 (July 2018). The updated manual will be incorporated by reference into the Code of Federal Regulations.

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[2] Filers should consult the Filer Manual in conjunction with our rules governing mandated electronic filing when preparing documents for electronic submission.

The EDGAR System and Filer Manual will be updated in Release 18.2 and will reflect the changes described below.

Release No. 33–10486 amended Forms Funding Portal, Form MA, Form MA–I, and Form MSD to eliminate the portions of such forms that requested filers furnish certain sensitive personally identifiable information (''PII'') of natural persons, including Social Security numbers, foreign identity numbers, dates of birth, and places of birth.[3] In Release 18.2, the EDGAR filer interface will be revised to include new ''pop-up'' messages, which will warn filers not to provide such sensitive PII. These changes further support the revisions to the aforementioned forms. Pop-up messages will also instruct filers on how to complete the required fields using a numeric placeholder or CRD number placeholder in lieu of certain sensitive PII in specified fields on submission form types MA, MA–A, MA/A, MA–I, and MA–I/A and on the Form Funding Portal landing page. Corresponding changes have been made to Chapter 8 (Preparing and Transmitting Online Submissions) of the EDGAR Filer Manual, Volume II.

EDGAR will be revised to add the new exhibit ''EX–99. IND PUB ACCT (Change of Independent Public Accountant)'' for submission form types N–CSR, N–CSR/A, N–CSRS and N–CSRS/A. The new exhibit will allow registrants to report a change in their independent public accountant. Corresponding changes have been made to Appendix E (Automated Conformance Rules for EDGAR Data Fields) of the EDGAR Filer Manual, Volume II.

EDGAR will be revised to update submission form types ABS–15G and ABS–15G/A to remove ''Issuing Entity Name'' for the Registered Entity field in Items 2.01 and 2.02 and to remove ''Issuing Entity CIK'' from the Unregistered Entity field in Item 2.01 and from the Unregistered Entity under Rule 15Ga–2 field in Item 2.02. The revisions are designed to improve validation of filer identification header tag information by removing unnecessary header tag fields associated with these submission types. For further information, please see the ''EDGARLink Online XML Technical Specification document'' available on the SEC's public website at *https://www.sec.gov/oit/Article/info-edgar-tech-specs.html.* Corresponding changes have been made to Chapter 7 (Preparing and Transmitting EDGARLink Online Submissions) and Appendix A (Messages Reported by EDGAR) of the EDGAR Filer Manual, Volume II.

EDGAR will be revised to update submission form types C, C/A, C–AR, C–AR/A, and C–TR to provide filers with an error message if they do not adhere to the EDGAR file naming standards specified in Chapter 5 (Constructing Attached Documents and Document Types) of the EDGAR Filer Manual, Volume II. In addition, submission form types C, C/A, C–A, C–AR, C–AR/A and C–U will be updated to allow filers to input a decimal value in the ''Current Employees'' field to denote any part-time employees. Corresponding changes have been made to Chapter 8 (Preparing and Transmitting Online Submissions) of the EDGAR Filer Manual, Volume II.

EDGAR will be revised to update submission form types D and D/A to increase the character limits from 150 to 200 characters for the following fields:

[1] We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33–6986 (April 1, 1993) [58 FR 18638]. We implemented the most recent update to the Filer Manual on April 25, 2018. *See* Release No. 33–10486 (April 25, 2018) [83 FR 22190].

[2] *See* Rule 301 of Regulation S–T (17 CFR 232.301).

[3] *See* Release No. 33–10486.

''Last Name'' under Item 3: Related Persons; ''Recipient'' under Item 12: Sales Compensation; and ''(Associated) Broker or Dealer'' under Item 12: Sales Compensation. For further information, please see the ''EDGAR Form D XML Technical Specification'' document available on the SEC's public website at *https://www.sec.gov/oit/Article/info-edgar-tech-specs.html.* Corresponding changes have been made to Chapter 8 (Preparing and Transmitting Online Submissions) of the EDGAR Filer Manual, Volume II.

The EDGAR system will be updated to remove, and will no longer accept, the following submission form types: F–9, F–9/A, F–9POS, F–9EF, N–MFP, N–MFP/A, N–MFP1, N–MFP1/A, 497K1, 497K2, 497K3A, and 497K3B. These submission types either allow for filing of forms that have been rescinded by prior Commission action, or have been replaced by newer submission form types and are now obsolete. Corresponding changes have been made to Chapter 2 (Quick Guide to EDGAR Filing), Chapter 3 (Index to Forms), Chapter 4 (Filing Fee Information), Chapter 6 (Interactive Data), Chapter 8 (Preparing and Transmitting Online Submissions), and Appendix C (EDGAR Submission Types) of the EDGAR Filer Manual, Volume II.

The EDGAR system will be upgraded to remove the following taxonomies, which have been superseded: US–GAAP–2016, DEI–2013, DEI–2009, EXCH–2016, and RR–2010. The EDGAR system will be updated to reflect the 2018 version of the IFRS taxonomy. For further information please refer to the SEC's public website at *https://www.sec.gov/info/edgar/edgartaxonomies.shtml.*

Chapter 5 (Constructing Attached Documents and Document Types) of the EDGAR Filer Manual, Volume II will be updated to provide clarifying instructions regarding the use of, and submission requirements for, PDF documents for specified submission form types. The EDGAR Filer Manual will also be revised to make clarifying changes to certain instructions by removing references to an application tool used to read XBRL data. The tool is no longer supported on sec.gov. Finally, the EDGAR Filer Manual will include revised instructions that clarify how filers may report shares outstanding for multiple classes of stock for XBRL validation. Corresponding changes have been made to Chapter 6 (Interactive Data) of the EDGAR Filer Manual, Volume II.

Along with the adoption of the Filer Manual, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations of today's revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

The updated EDGAR Filer Manual will be available for website viewing and printing; the address for the Filer Manual is *https://www.sec.gov/info/edgar/edmanuals.htm.* You may also obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m.

Since the Filer Manual and the corresponding rule and form amendments relate solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (''APA'').[4] It follows that the requirements of the Regulatory Flexibility Act[5] do not apply.

The effective date for the updated Filer Manual and the related rule and form amendments is July 17, 2018. In accordance with the APA,[6] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The Commission believes that establishing an effective date less than 30 days after publication of these rules is necessary to coordinate the effectiveness of the updated Filer Manual with these system upgrades.

Statutory Basis

We are adopting the amendments to Regulation S–T under the authority in Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[7] Sections 3, 12, 13, 14, 15, 15B, 23, and 35A of the Securities Exchange Act of 1934,[8] Section 319 of the Trust Indenture Act of 1939,[9] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[10]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

Text of the Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 232 REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78*o*(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–7, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets forth the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the updated EDGAR Filer Manual, Volume I: ''General Information,'' Version 30 (March 2018). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 47 (July 2018).

Additional provisions applicable to Form N–SAR filers are set forth in the EDGAR Filer Manual, Volume III: ''N–SAR Supplement,'' Version 6 (January 2017). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You must comply with these requirements in order for documents to be timely received and accepted. The EDGAR Filer Manual is available for website viewing and printing; the address for the Filer Manual is *https://www.sec.gov/info/edgar/edmanuals.htm.* You can obtain paper copies of the EDGAR Filer Manual at the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. You can also inspect the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

By the Commission.

[4] 5 U.S.C. 553(b)(A).

[5] 5 U.S.C. 601–612.

[6] 5 U.S.C. 553(d)(3).

[7] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[8] 15 U.S.C. 78c, 78*l,* 78m, 78n, 78*o,* 78o–4, 78w, and 78*ll.*

[9] 15 U.S.C. 77sss.

[10] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

Dated: July 10, 2018.

Lynn M. Powalski,

Deputy Secretary.

[FR Doc. 2018–15247 Filed 7–16–18; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–1036]

Special Local Regulations: Recurring Marine Events in Captain of the Port Long Island Sound Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce five special local regulations for marine events in the Sector Long Island Sound area of responsibility on the dates and times listed in the table below. This action is necessary to provide for the safety of life on navigable waterways during the events. During the enforcement periods, no person or vessel may enter the safety zones without permission of the Captain of the Port (COTP) Sector Long Island Sound or designated representative.

DATES: The regulation in 33 CFR 100.100, Table to § 100.100 will be enforced for the following safety zones identified in the **SUPPLEMENTARY INFORMATION** section during the dates and times specified.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of enforcement, call or email Chief Petty Officer Katherine Linnick, Waterways Management Division, U.S. Coast Guard Sector Long Island Sound; telephone 203–468–4565, email *Katherine.E.Linnick@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations listed in 33 CFR 100.100 Table 1 on the specified dates and times as indicated below.

7.6 Aquapalooza, Zach's Bay	• Date: July 22, 2018. • Time: 11:30 a.m. to 5:30 p.m. • Location: All navigable waters of Zach's Bay, Wantagh, NY south of the line connecting a point near the western entrance to Zach's Bay in approximate position 40°36′29.20″ N, 073°29′22.88″ W and a point near the eastern entrance of Zach's Bay in approximate position 40°36′16.53″ N, 073°28′57.26″ W. • Additional stipulations: During the enforcement period vessel speed in the regulated area is restricted to no wake speed or 6 knots, whichever is slower. On the day of the event from 3 p.m. to 5:30 p.m. vessels may only transit the regulated area in the northbound direction or outbound direction.
8.1 Riverfront Dragon Boat and Asian Festival	• Date: August 18, 2018. • Time: 8:00 a.m. to 5:00 p.m. • Location: All waters of the Connecticut River in Hartford, CT between the Bulkeley Bridge at 41°46′10.10″ N, 072°39′56.13″ W and the Wilbur Cross Bridge at 41°45′11.67″ N, 072°39′13.64″ W (NAD 83). All positions are approximate.
8.2 Swim Across the Sound	• Date: August 4, 2018. • Time: 7:30 a.m. to 7:30 p.m. • Location: Waters of Long Island Sound from Port Jefferson, NY in approximate position 40°58′11.71″ N, 073°05′51.12″ W; then northwest to Captain's Cove Seaport, Bridgeport, CT in approximate position 41°09′25.07″ N, 073°12′47.82″ W (NAD 83).
8.4 Island Beach Two Mile Swim	• Date: August 4, 2018. • Time: 7:30 a.m. to 11:30 a.m. • Location: All waters of Captain Harbor between Little Captain's Island and Bower's Island that are located within the box formed by connecting four points in the following positions. Beginning at 40°59′23.35″ N, 073°36′42.05″ W; then northwest to 40°59′51.04″ N, 073°37′57.32″ W; then southwest to 40°59′45.17″ N, 073°38′01.18″ W; then southeast to 40°59′17.38″ N, 073°36′45.9″ W; then northeast to the point of origin (NAD 83). All positions are approximate.
8.6 Smith Point Triathlon	• Date: August 5, 2018. • Time: 6:15 a.m. to 8:15 a.m. • Location: All waters of Narrow Bay near Smith Point Park in Mastic Beach, NY within the area bounded by land along its southern edge and points in position at 40°44′14.28″ N, 072°51′40.68″ W; then north to a point at position 40°44′20.83″ N, 072°51′40.68″ W; then east to a point at position 40°44′20.83″ N, 072°51′19.73″ W; then south to a point at position 40°44′14.85″ N, 072°51′19.73″ W; and then southwest along the shoreline back to the point of origin (NAD 83). All positions are approximate.

Under the provisions of 33 CFR 100.100, the events listed above are established as special local regulations. During the enforcement period, persons and vessels are prohibited from entering into, transiting through, mooring, or anchoring within these regulated areas unless they receive permission from the COTP or designated representative.

This notice of enforcement is issued under authority of 33 CFR part 100 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners or marine information broadcasts. If the

COTP determines that these special local regulations need not be enforced for the full duration stated in this notice of enforcement, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: June 14, 2018.

K.B. Reed,

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

[FR Doc. 2018–15235 Filed 7–16–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2018–0267]

RIN 1625–AA08

Special Local Regulation; Grand Haven Coast Guard Festival Waterski Show, Grand Haven, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is amending a special local regulation for certain waters of the Grand River at Waterfront Stadium in Grand Haven, MI. This action is necessary and is intended to ensure safety of life on navigable waters to be used for a waterski show. This action will prohibit persons or vessels from entering certain waters immediately prior to, during, and immediately after the marine event. This special local regulation is needed to protect spectators, personnel, vessels, and the marine environment from potential hazards created by the Grand Haven Waterski Show.

DATES: This temporary final rule is effective from 7 p.m. through 9 p.m. on July 31, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0267 in the ‘‘SEARCH’’ box and click ‘‘SEARCH.’’ Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this temporary rule, call or email marine event coordinator MSTC Kaleena Carpino, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI; telephone (414) 747–7148, or email *D09-SMB-SECLakeMichgan-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ‘‘impracticable, unnecessary, or contrary to the public interest.’’ Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because The Grand Haven Waterski show is an annual event codified in 33 CFR 100.906. The coordinates listed therein are not accurate for this year's event, and final details for the event were not received in time to publish an NPRM. As such, it is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would inhibit the Coast Guard's ability to protect participants, mariners and vessels from the hazards associated with this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The Captain of the Port Lake Michigan (COTP) has determined that the combination of recreational vessels, commercial vessels, and an unknown number of spectators in close proximity to the waterski show pose extra and unusual hazards to public safety and property. Specific hazards include collisions among event participants, collisions between participants and recreational traffic, and other traffic that may cause injury or marine casualties. Therefore, the COTP is amending a Special Local Regulation around the event location to help minimize risks to safety of life and property to persons, vessels, and the marine environment during this event.

IV. Discussion of the Rule

This rule establishes a temporary special local regulation from 7 p.m. until 9 p.m. on July 31, 2018. In light of the aforementioned hazards, the COTP has determined that a special local regulation is necessary to protect spectators, vessels, and the marine environment. The special local regulation will cover all navigable waters within the following coordinates: 43°04′5 N, 086°14′12.4″ W; then east to 43°04′2″ N, 086°14′1″ W; then south to 43°03′45″ N, 086°14′10″ W; then west to 43°03′48″ N, 086°14′17″ W; then back to the point of origin. No vessel or person will be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative.

The COTP or his designated on-scene representative will notify the public of the enforcement of this rule by all appropriate means, including a Broadcast Notice to Mariners and Local Notice to Mariners. The COTP or his designated on-scene representative may be contacted via VHF Channel 16, or at (404) 747–7182.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ‘‘significant regulatory action,’’ under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation. The event is in the evening hours, and will last for a maximum of 2 hours. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the special local regulation, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 2 hours that will prohibit transit of the Grand River, in Grand Haven, MI in front of the Waterfront Stadium. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Revise § 100.906 to read as follows:

§ 100.906 Grand Haven Coast Guard Festival Waterski Show, Grand Haven, MI.

(a) *Regulated area.* All waters of the Grand River in front of Waterfront Stadium from approximately 500 yards upriver to 150 yards downriver of Grand River Lighted Buoy 3A (Light list number 19000) within the following coordinates: 43°04′5 N, 086°14′12.4″ W; then east to 43°04′2″ N, 086°14′1″ W; then south to 43°03′45″ N, 086°14′10″ W; then west to 43°03′48″ N, 086°14′17″ W; then back to the point of origin (NAD 83).

(b) *Special local regulations.* The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) *Effective date.* These regulations are effective and will be enforced from 7 p.m. through 9 p.m. on July 31, 2018. The time and date for this event is subject to change. In the event of a schedule change, the Coast Guard will issue a Notice of Enforcement with the exact date and time that this regulated area will be enforced.

Dated: June 8, 2018.

Thomas J. Stuhlreyer,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. 2018–15239 Filed 7–16–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2018–0580]

RIN 100–AA08

Special Local Regulations; Annual Les Cheneaux Islands Antique Wooden Boat Show; Hessel, MI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is adding a special local regulation to increase safety in the navigable waters of Marquette Bay, Hessel, MI during the annual Les Cheneaux Islands Antique Wooden Boat Show held annually in mid-August. The regulation will add a no wake zone to be enforced in the area around the show from 7 a.m. to 7 p.m.

DATES: This regulation is effective August 11th, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket go to *http://www.regulations.gov* type USCG–2018–0580 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Steven Durden, Waterways Management, Coast Guard Sector Sault Sainte Marie, U.S. Coast Guard; telephone 906–635–3222, email *Steven.E.Durden@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

The Les Cheneaux Antique Wooden Boat Show was founded in 1978 and the event is held every year in mid-August. During this event, a variety of vessel traffic is attracted to the area in and surrounding the Hessel Marina. A commercial ferry vessel, jet skis, kayaks, paddle boards, sail and power vessels all use this this waterway to view the show and to transit the area. This mix of vessels in close proximity to each other warrants additional safety measures. In response, the Coast Guard published a notice of proposed rulemaking (NPRM) on June 18th, 2018. There, we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this no wake zone. During the comment period that ended July 9th, 2018, we received no comments.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would inhibit the Coast Guard's ability to provide for the public's safety during the August 11th, 2018 Les Cheneaux Islands Antique Wooden Boat Show.

The legal basis for this final rulemaking is found at 33 U.S.C. 1233.

III. Discussion of Comments, Changes and the Rule

We received no comments from the NPRM published June 18th, 2018. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM. The Captain of the Port Sault Sainte Marie (COTP) has determined that adding the Annual Les Cheneaux Islands Antique Wooden Boat Show to the list of Special Local Regulations to establish a no wake zone in the navigable waters of Marquette Bay near Hessel, MI is necessary to ensure the safety of the boating public.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day for the no wake zone. Vessel traffic will be able to safely transit through the no wake zone which will impact a small designated area within the COTP zone for a short duration of time. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the no wake zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves creating a no wake zone for one day each year in a small area. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.922 to read as follows:

§ 100.922 Special Local Regulations; Annual Les Cheneaux Islands Antique Wooden Boat Show; Hessel, MI.

(a) *Regulated area.* These Special Local Regulations apply to all U.S. navigable waters of Marquette Bay, Hessel, MI, within an area bordered by a line from the crib piles charted in position 45°59′59″ N, 084°25′10″ W to Red Buoy ‘‘8’’ charted in position 45°59′46″ N, 084°25′37″ W to Red Buoy ‘‘6’’ charted in position 45°59′58″ N, 084°25′53″ W to Red Buoy ‘‘4’’ charted in position 45°59′57″ N, 084°26′23″ W to Green Buoy ‘‘5’’ charted in position 46°00′13″ N, 084°26′10″ W to land in position 46°00′18″ N, 084°26′04″ W.

(b) *Enforcement period.* These special local regulations are effective for one day in mid-August. The Coast Guard will issue a notice of enforcement with the exact time and date this regulated area will be enforced.

(c) *Special local regulation.* While in the regulated area all vessels will operate at a no wake speed and follow the directions of the on-scene patrol commander.

Dated: July 12, 2018.

M.R. Broz,

Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.

[FR Doc. 2018–15248 Filed 7–16–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2018–0673]

RIN 1625–AA08

Special Local Regulation; 2018 Detroit Hydrofest, Detroit River, Detroit, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation for certain navigable waters of the Detroit River, Detroit, MI. This action is necessary and is intended to ensure safety of life on navigable waters immediately prior to, during, and immediately after the 2018 Detroit Hydrofest boat races.

DATES: This temporary final rule is effective from 7 a.m. on August 24, 2018, through 7 p.m. on August 26, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0673 in the ‘‘SEARCH’’ box and click ‘‘SEARCH.’’ Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Tracy Girard, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9564, or email *Tracy.M.Girard@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ‘‘impracticable, unnecessary, or contrary to the public interest.’’ Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard did not receive the final details of the boat races in time to publish an NPRM. As such, it is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would inhibit the Coast Guard's ability to protect participants, mariners and vessels from the hazards associated with this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The Captain of the Port Detroit (COTP) has determined that the likely combination of recreation vessels, commercial vessels, and an unknown number of spectators in close proximity to a high speed boat race along the water pose extra and unusual hazards to public safety and property. Therefore, the COTP is establishing a special local regulation around the event location to help minimize risks to safety of life and property during this event.

IV. Discussion of the Rule

This rule establishes a temporary special local regulation from 7 a.m. on August 24, 2018 until 7 p.m. August 26, 2018. The regulation will be enforced from 12 p.m. until 7 p.m. on August 24, 2018, and from 7 a.m. until 7 p.m. on August 25 and August 26, 2018. In light of the aforementioned hazards, the COTP has determined that a special local regulation is necessary to protect spectators, vessels, and participants. The special local regulation will encompass all U.S. waters of the Detroit River in Scott Middle Ground, north of Belle Isle, Michigan, starting at positions 42°20.506′ N 083°00.016′ W on the Douglas MacArthur Bridge; extending east to the Belle Isle Crib Light at 42°21.205′ N 082°57.996′ W (NAD 83).

No vessel or person will be permitted to enter the special regulated area without obtaining permission from the COTP or a designated representative. The Captain of the Port Detroit or a designated on-scene representative may be contacted via VHF Channel 16 or via telephone at (313) 568–9560. The Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-year of the special local regulation. Vessel traffic will be able to safely transit around this special local regulation zone which will impact a small designated area of the Detroit River from 7 a.m. on August 24, 2018 until 7 p.m. on August 26, 2018. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the special local regulation and the rule allows vessels to seek permission to enter the area.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation lasting 3 days that will prohibit entry into a designated area. It is categorically excluded from further review under paragraph L[61] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.T09–0673 to read as follows:

§ 100.T09–0673 Special Local Regulation; 2018 Detroit Hydrofest, Detroit River, Detroit, MI.

(a) *Location.* The special local regulation will encompass all U.S. waters of the Detroit River in Scott Middle Ground, north of Belle Isle, Michigan, starting at positions 42°20.506′ N 083°00.016′ W on the Douglas MacArthur Bridge; extending east to the Belle Isle Crib Light at 42°21.205′ N 082°57.996′ W (NAD 83).

(b) *Enforcement period.* A temporary special local is in effect from 7 a.m. on August 24, 2018 until 7 p.m. August 26, 2018. The regulation will be enforced from 12 p.m. until 7 p.m. on August 24, 2018, and from 7 a.m. until 7 p.m. on August 25 and August 26, 2018.

(c) *Regulations.* (1) No vessels or person may enter, transit through, or anchor within the regulated navigation area unless authorized by the Captain of the Port Detroit, or his on-scene representative.

(2) The regulated area is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his on-scene representative.

(3) The ‘‘on-scene representative’’ of the Captain of the Port Detroit is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port Detroit to act on his behalf.

(4) Vessel operators shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to enter or operate within the regulated area. The Captain of the Port Detroit or his on-scene representative may be contacted via VHF Channel 16 or at (313) 568–9560. Vessel operators given permission to enter or operate in the regulated area must comply with all directions given to them by the Captain of the Port Detroit or his on-scene representative.

Dated: July 10, 2018.

Kevin D. Floyd,

Commander, U.S. Coast Guard, Acting Captain of the Port Detroit.

[FR Doc. 2018–15159 Filed 7–16–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2018–0690]

RIN 1625–AA00

Safety Zone; Yankee Air Museum's Fundraiser Air Demonstration, Lake St. Clair, Grosse Pointe Farms, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters in the vicinity of Grosse Pointe Farms, MI. This zone is necessary to protect spectators and vessels from potential hazards associated with the Yankee Air Museum's Fundraiser Air Demonstration.

DATES: This temporary final rule is effective from 8 p.m. until 8:30 p.m. July 18, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0690 in the ‘‘SEARCH’’ box and click ‘‘SEARCH.’’ Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Tracy Girard, Prevention Department, Sector Detroit, Coast Guard; telephone 313–568–9564, or email *Tracy.M.Girard@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ‘‘impracticable, unnecessary, or contrary to the public interest.’’ Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard did not receive the final details of this air demonstration in time to publish an NPRM. As such, it is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would inhibit the Coast Guard's ability to protect participants, mariners and vessels from the hazards associated with this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Detroit (COTP) has determined that an aircraft aerial display proximate to a gathering of watercraft poses a significant risk to public safety and property. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the air demonstration is being displayed.

IV. Discussion of the Rule

This rule establishes a safety zone from 8 p.m. through 8:30 p.m. July 18, 2018. The safety zone will encompass all U.S. navigable waters of Lake St. Clair with in the following corner points: Northeast corner, 42°24.670′ N, 082°51.594′ W, Northwest corner 42°24.671′ N, 082°51.368′ W, Southeast corner 42°24.034′ N, 082°51.857′ W, Southwest corner 42°24.023′ N, 082°51.626′ W (NAD 83). No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of Lake St. Clair for no more than thirty minutes. Moreover, the Coast Guard will issue Broadcast Notice to Mariners (BNM) via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the

National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting less than thirty minutes that will prohibit entry into a designated area. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0690 to read as follows:

§ 165.T09–0690 Yankee Air Museum's Fundraiser Air Demonstration, Lake St. Clair, Grosse Pointe Farms, MI.

(a) *Location.* A safety zone is established to include all U.S. navigable waters of Lake St. Clair within the following corner points: Northeast corner, 42°24.670′ N, 082°51.594′ W, Northwest corner 42°24.671′ N, 082°51.368′ W, Southeast corner 42°24.034′ N, 082°51.857′ W, Southwest corner 42°24.023′ N, 082°51.626′ W (NAD 83).

(b) *Enforcement period.* The regulated area described in paragraph (a) will be enforced 8 p.m. through 8:30 p.m. on July 18, 2018.

(c) *Regulations.* (1) No vessel or person may enter, transit through, or anchor within the safety zone unless authorized by the Captain of the Port Detroit (COTP), or his on-scene representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or his on-scene representative.

(3) The ''on-scene representative'' of COTP is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port Detroit to act on his behalf.

(4) Vessel operators shall contact the COTP or his on-scene representative to obtain permission to enter or operate within the safety zone. The COTP or his on-scene representative may be contacted via VHF Channel 16 or at 313–568–9464. Vessel operators given permission to enter or operate in the regulated area must comply with all directions given to them by the COTP or his on-scene representative.

Dated: July 11, 2018.

Kevin D. Floyd,

Commander, U.S. Coast Guard, Acting Captain of the Port Detroit.

[FR Doc. 2018–15182 Filed 7–16–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. PTO–T–2017–0032]

RIN 0651–AD23

Removal of Rules Governing Trademark Interferences

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) amends the Rules of Practice in Trademark Cases to remove the rules governing trademark interferences. This rule arises out of the USPTO's work during FY 2017 to identify and propose regulations for removal, modification, and streamlining because they are outdated, unnecessary, ineffective, costly, or unduly burdensome on the agency or the private sector. The revisions put into effect the work the USPTO has done, in part through its participation in the Regulatory Reform Task Force (Task Force) established by the Department of Commerce (Department or Commerce) pursuant to Executive Order 13777, to review and identify regulations that are candidates for removal.

DATES: This rule is effective on August 16, 2018.

FOR FURTHER INFORMATION CONTACT: Catherine Cain, Office of the Deputy Commissioner for Trademark Examination Policy, by email at *TMFRNotices@uspto.gov,* or by telephone at (571) 272–8946.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' the Department established a Task Force, comprising, among others, agency officials from the National Oceanic and Atmospheric Administration, the Bureau of Industry and Security, and the USPTO, and charged the Task Force with evaluating existing regulations and identifying those that should be repealed, replaced, or modified because they are outdated, unnecessary, ineffective, costly, or unduly burdensome to both government and private-sector operations.

To support its regulatory reform efforts on the Task Force, the USPTO assembled a Working Group on Regulatory Reform (Working Group), consisting of subject-matter experts from each of the business units that implement the USPTO's regulations, to consider, review, and recommend ways that the regulations could be improved, revised, and streamlined. In considering the revisions, the USPTO, through its Working Group, incorporated into its analyses all presidential directives relating to regulatory reform. The Working Group reviewed existing regulations, both discretionary rules and those required by statute or judicial order. The USPTO also solicited comments from stakeholders through a web page established to provide information on the USPTO's regulatory reform efforts and through the Department's **Federal Register** Notice titled ''Impact of Federal Regulations on Domestic Manufacturing'' (82 FR 12786, Mar. 7, 2017), which addressed the impact of regulatory burdens on domestic manufacturing. These efforts led to the development of candidate regulations for removal based on the USPTO's assessment that these regulations were not needed and/or that elimination could improve the USPTO's body of regulations. This rule removes certain trademark-related regulations. Other rules removing regulations on other subject areas may be published separately.

II. Regulations Being Removed

This rule removes the regulations concerning trademark interferences codified at 37 CFR 2.91–2.93, 2.96, and 2.98. The rule also revises the authority citation for part 2 and revises the undesignated center heading ''INTERFERENCES AND CONCURRENT USE PROCEEDINGS'' to read ''CONCURRENT USE PROCEEDINGS'' to more accurately reflect the final regulations. A trademark interference is a proceeding in which the Trademark Trial and Appeal Board (Board) determines which, if any, of the owners of conflicting applications (or of one or more applications and one or more conflicting registrations) is entitled to registration. 15 U.S.C. 1066. A trademark interference can be declared only upon petition to the Director of the USPTO (Director). However, the Director will grant such a petition only if the petitioner can show extraordinary circumstances that would result in a party being unduly prejudiced in the absence of an interference. 37 CFR 2.91(a). The availability of an opposition or cancellation proceeding to determine rights to registration ordinarily precludes the possibility of such undue prejudice to a party. *Id.* Thus, a petitioner must show that there is some extraordinary circumstance that would make the remedy of opposition or cancellation inadequate or prejudicial to the party's rights.

Trademark interferences have generally been limited to situations where a party would otherwise be required to engage in a series of opposition or cancellation proceedings involving substantially the same issues. Trademark Manual of Examining Procedure § 1507. The promulgation of the interference regulations suggests that at that time, the Office contemplated such situations arising with enough frequency to merit particular regulations governing interference proceedings. However, the rarity of interference proceedings over an extended period of time indicates that the regulations are unnecessary. To the extent that the USPTO's paper petition records are searchable, the USPTO reviewed them and its electronic records of petitions and found that since 1983, the USPTO has received an average of approximately one petition for a trademark interference per year, and almost all of them have been denied except for one petition that was granted in 1985 (32 years ago). The USPTO has been unable to identify a situation since that time in which the Director has granted a petition to declare a trademark interference. Given the extremely low rate of filing over this long period of time, and because parties would still retain an avenue for seeking a declaration of interference through the general petition regulations, the USPTO considers the trademark interference regulations unnecessary.

Section 16 of the Trademark Act, 15 U.S.C. 1066, states that the Director may declare an interference ''[u]pon petition showing extraordinary circumstances.'' Although eliminating §§ 2.91–2.93, 2.96, and 2.98 removes the regulations regarding the requirements for declaring a trademark interference, the statutory authority will remain. On the rare occasion that the Office receives a request that the Director declare a trademark interference, it is currently submitted as a petition under 37 CFR 2.146, a more general regulation on petitions. In the unlikely event that a need for an interference arose, it is still possible for a party to seek institution of a trademark interference by petitioning the Director under 37 CFR 2.146(a)(4), whereby a petitioner may seek relief in any case not specifically defined and provided for by Part 2 of Title 37. Thus, even after removal of these rules, parties retain an avenue for seeking a declaration of interference.

Removal of the identified trademark interference regulations in this rule achieves the objective of making the USPTO regulations more effective and more streamlined, while enabling the USPTO to fulfill its mission goals. The USPTO's economic analysis shows that while the removal of these regulations is not expected to substantially reduce the burden on the impacted community, the regulations are nonetheless being eliminated because they are ''outdated, unnecessary, or ineffective'' regulations encompassed by the directives in Executive Order 13777.

III. Proposed Rule: Comments and Responses

The USPTO published a proposed rule on October 18, 2017 at 82 FR 48469, soliciting comments on the proposed amendments. In response, the USPTO received three comments relevant to the proposed rule. The commenters generally supported the proposed amendments as meeting the stated objectives. The USPTO appreciates the positive input, and these comments require no response.

One commenter noted that the removal of the trademark interference rules will not relieve any burden, as a party can petition the Director to declare an interference with or without these rules, and suggested ''that there should be real amendments which actually mitigate regulatory burden to incent entrepreneurship and market growth.'' As noted above, removal of the identified regulations achieves the objective of making the USPTO regulations more effective and more streamlined, while enabling the USPTO to fulfill its mission goals. Moreover, although removal of these regulations is not expected to substantially reduce the burden on the impacted community, they are being eliminated because they are ''outdated, unnecessary, or ineffective'' regulations that are encompassed by the directives in Executive Order 13777. The Office sought public suggestions on regulatory changes to reduce burdens in order to benefit from the public's input.

All comments are posted on the USPTO's website at *https://www.uspto.gov/trademark/trademark-updates-and-announcements/comments-proposed-rulemaking-related-removal-rules.*

IV. Discussion of Rules Changes

The USPTO revises the authority citation for part 2 to add ''Sec. 2.99 also issued under secs. 16, 17, 60 Stat. 434; 15 U.S.C. 1066, 1067.'' The USPTO revises the undesignated center heading ''INTERFERENCES AND CONCURRENT USE PROCEEDINGS'' to read ''CONCURRENT USE PROCEEDINGS'' and removes the authority citation immediately following that heading. The USPTO removes and reserves §§ 2.91–2.93, 2.96, and 2.98.

Rulemaking Considerations

A. Administrative Procedure Act: The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. *See Perez* v. *Mortg. Bankers Ass'n,* 135 S. Ct. 1199, 1204 (2015) (Interpretive rules ''advise the public of the agency's construction of the statutes and rules which it administers.'' (citation and internal quotation marks omitted)); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (Rule that clarifies interpretation of a statute is interpretive.); *Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (Rules governing an application process are procedural under the Administrative Procedure Act.); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (Rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims.).

Accordingly, prior notice and opportunity for public comment for the changes in this rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. *See Perez,* 135 S.

Ct. at 1206 (Notice-and-comment procedures are required neither when an agency ''issue[s] an initial interpretive rule'' nor ''when it amends or repeals that interpretive rule.''); *Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'' (quoting 5 U.S.C. 553(b)(A))). However, the Office chose to seek public comment before implementing the rule to benefit from the public's input.

B. Regulatory Flexibility Act: For the reasons set forth herein, the Senior Counsel for Regulatory and Legislative Affairs, Office of General Law, of the USPTO has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

This rule removes the regulations addressing trademark interferences codified at 37 CFR 2.91–2.93, 2.96, and 2.98. In trademark interferences, the Board determines which, if any, of the owners of conflicting applications (or of one or more applications and one or more conflicting registrations) is entitled to registration. 15 U.S.C. 1066. Where searchable, the USPTO reviewed its paper and electronic records of petitions and found that since 1983, USPTO has received an average of approximately 1 such petition a year, and almost all of them have been denied except for one petition that was granted in 1985 (32 years ago). Because these regulations have rarely been invoked in the last 32 years and no trademark interference proceedings occurred during that time, the USPTO considers these regulations unnecessary and has determined to remove them. Removing the trademark interference regulations in this rule achieves the objective of making the USPTO regulations more effective and more streamlined, while enabling the USPTO to fulfill its mission goals. The removal of these regulations is not expected to substantively impact parties as, in the unlikely event that a need for a trademark interference arose, a party would be able to petition the Director under 37 CFR 2.146(a)(4) for institution of an interference. For these reasons, this rulemaking will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of Executive Order 12866.

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs): This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

F. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

G. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

H. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

I. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

J. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

K. Executive Order 12630 (Taking of Private Property): This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

L. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

M. Unfunded Mandates Reform Act of 1995: The changes set forth in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

N. National Environmental Policy Act: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

O. National Technology Transfer and Advancement Act: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

P. Paperwork Reduction Act: This rulemaking involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this rule has been reviewed and previously approved by OMB under control number 0651–0054.

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

List of Subjects for 37 CFR Part 2

Administrative practice and procedure, Trademarks.

For the reasons stated in the preamble and under the authority contained in 15 U.S.C. 1123 and 35 U.S.C. 2, as amended, the Office amends part 2 of title 37 as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

■ 1. The authority citation for part 2 is revised to read as follows:

Authority: 15 U.S.C. 1123 and 35 U.S.C. 2 unless otherwise noted. Sec. 2.99 also issued under secs. 16, 17, 60 Stat. 434; 15 U.S.C. 1066, 1067.

■ 2. Revise the undesignated center heading ''INTERFERENCES AND CONCURRENT USE PROCEEDINGS'' above § 2.91 to read ''CONCURRENT USE PROCEEDINGS'' and remove the authority citation immediately following that heading.

§ 2.91 [Reserved and Reserved]

■ 3. Remove and reserve § 2.91.

§ 2.92 [Reserved and Reserved]

■ 4. Remove and reserve § 2.92.

§ 2.93 [Reserved and Reserved]

■ 5. Remove and reserve § 2.93.

§ 2.96 [Reserved and Reserved]

■ 6. Remove and reserve § 2.96.

§ 2.98 [Reserved and Reserved]

■ 7. Remove and reserve § 2.98.

Dated: July 10, 2018.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2018–15163 Filed 7–16–18; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2017–0740; FRL–9980–81—Region 4]

Air Plan Approval; Tennessee; Revisions to Stage I and II Vapor Recovery Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation (TDEC) on November 11, 2017, for the purpose of establishing minor changes to the gasoline dispensing regulations, including adding clarifying language and effective and compliance dates and specifying the counties subject to the reporting requirement rule. EPA has determined that Tennessee's November 11, 2017, SIP revision is approvable because it is consistent with the Clean Air Act (CAA or Act) and with EPA's regulations and guidance.

DATES: This rule is effective August 16, 2018.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2017–0740. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9222. Ms. Sheckler can also be reached via electronic mail at sheckler.kelly@ *epa.govsheckler.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 11, 2017, TDEC submitted a SIP revision to EPA seeking to add clarity for the benefit of the regulated community with gasoline dispensing facilities. Tennessee is making a minor change to its rules regarding gasoline dispensing facilities (GDF) at subparagraph (1)(d) of rule 1200–03–18–.24—''For any GDF otherwise exempt from subparagraph (c) of this paragraph based on monthly throughput, if the GDF *ever* exceeds the applicability threshold specified in subparagraph (c) of this paragraph, it shall be subject to the requirements of subparagraph (c) of this paragraph *and shall remain subject to those requirements* even if its throughput later falls below the threshold. The owner or operator shall inform the Technical Secretary within 30 days following the exceedance.'' The revision clarifies the meaning and application of subparagraph (1)(d) of rule 1200–03–18–.24 by adding the words ''ever'' and ''and shall remain subject to those requirements'' italicized above.

In addition, this revision replaces the phrase ''the effective date of this rule'' with the actual effective date of the rule (July 14, 2016) and replaces ''three years after effective date'' with the actual date of the rule for compliance (August 14, 2019). Finally, this revision adds the list of counties (Davidson, Rutherford, Shelby, Sumner, Knox, Anderson, Williamson and Wilson) that need to report to their permitting authority (if they emit more than 25 tons in a calendar year) and the cross reference to the existing reporting requirement in rule 1200–03–18–.02 to simplify the issuances of notices of authorization under pending permit-by-rule provisions.

Pursuant to CAA section 110(l), the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA section 171), or any other applicable requirement of the Act. The State's addition of clarifying language, specific dates for the gas dispensing rule's effective and compliance dates, as well as specifying the counties subject to the reporting requirement under the cross-referenced rule are approvable under section 110(l) because they merely clarify the application of the rule and are consistent with the CAA and federal regulations.

In this action, EPA is approving TDEC's request to revise the Stage II requirements in the State of Tennessee. EPA published a proposed rulemaking on April 12, 2018 (83 FR 16279), to approve this revision. The details of Tennessee's submittal and the rationale for EPA's action are explained in the proposed rulemaking. The comment period for this proposed rulemaking closed on May 16, 2018. While EPA received six unrelated comments, EPA did not receive any adverse comments for the proposed approval during the public comment period.

II. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of TDEC Regulation section 1200–03–18–.24 entitled ''Gasoline Dispensing Facilities-Stage I and II Vapor Recovery,'' effective August 31, 2017. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

III. Final Action

EPA is taking final action to approve the November 11, 2017, revision to the Tennessee SIP, concerning Regulation 1200–03–18–24, *Stage I and II Vapor Recovery Requirements,* submitted by the TDEC. This action makes minor changes to clarify the Regulation's meaning and applicability. EPA has determined that Tennessee's November 11, 2017, SIP revision related to the Stage I and II Vapor Recovery Requirements is consistent with the CAA and EPA's regulations and guidance related to removal of Stage II requirements from the SIP and that these changes will not interfere with any applicable requirement concerning attainment or any other applicable requirement of the CAA, and therefore satisfy section 110(l).

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 17, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

[1] 62 FR 27968 (May 22, 1997).

requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 2, 2018.

Onis "Trey" Glenn, III,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart RR—Tennessee

■ 2. Section 52.2220, is amended under CHAPTER 1200–3–18 VOLATILE ORGANIC COMPOUNDS by revising the entry for "Section 1200–3–18–.24, Gasoline Dispensing Facilities" to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

TABLE 1—EPA-APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
* *	*	*	* *	*
CHAPTER 1200–3–18 VOLATILE ORGANIC COMPOUNDS				
* *	*	*	* *	*
Section 1200–3–18–.24	Gasoline Dispensing Facilities	8/31/2017	7/17/2018, [Insert citation of publication].	
* *	*	*	* *	*

* * * * *

[FR Doc. 2018–15148 Filed 7–16–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1989–0007; FRL–9980–71—Region 5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Naval Industrial Reserve Ordnance Plant Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 5 is publishing a direct final Notice of Deletion of Operable Unit 3 (OU3) of the Naval Industrial Reserve Ordnance Plant (NIROP) Superfund Site (Site), located in Fridley, Minnesota, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final partial deletion is being published by EPA with the concurrence of the State of Minnesota, through the Minnesota Pollution Control Agency (MPCA), because EPA has determined that all appropriate response actions under CERCLA at OU3, other than operation, maintenance, and five-year reviews, have been completed. However, this partial deletion does not preclude future actions under Superfund.

DATES: This direct final partial deletion is effective September 17, 2018 unless EPA receives adverse comments by August 16, 2018. If adverse comments are received, EPA will publish a timely withdrawal of the direct final partial deletion in the **Federal Register** informing the public that the partial deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1989–0007, by one of the following methods: *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Email: cano.randolph@epa.gov.

Mail: Randolph Cano, NPL Deletion Coordinator, U.S. Environmental Protection Agency Region 5 (SR–6J), 77 West Jackson Boulevard, Chicago, IL 60604, (312) 886–6036.

Hand deliver: Superfund Records Center, U.S. Environmental Protection Agency Region 5, 77 West Jackson Boulevard, 7th Floor South, Chicago, IL 60604, (312)886–0900. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The normal business hours are Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1989–0007. The *http://www.regulations.gov* website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. Environmental Protection Agency, Region 5, Superfund Records Center, 77 West Jackson Boulevard, 7th Floor South, Chicago, IL 60604, Phone: (312) 886–0900, Hours: Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

Mississippi Library, 410 Mississippi St. NE, Fridley, MN 55432, Phone: (763) 324–1560, Hours: Monday and Wednesday, 12:00 p.m. to 8:00 p.m., Tuesday and Thursday, 10:00 a.m. to 6:00 p.m., Friday, 12:00 p.m. to 6:00 p.m. and Saturday 10:00 a.m. to 5:00 p.m.

The Navy has an online repository for the NIROP Site at the link below. Please click on the Administrative Records link to see all the documents. *http://www.navfac.navy.mil/products_and_services/ev/products_and_services/env_restoration/administrative_records.html?p_instln_id=FRIDLEY_NIROP.*

The Minnesota Pollution Control Agency has an information repository for the NIROP Site at their offices: 520 Lafayette Road, St. Paul, MN 55155. Call (651) 296–6300 or toll-free at (800) 657–3864 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Randolph Cano, NPL Deletion Coordinator, U.S. Environmental Protection Agency Region 5 (SR–6J), 77 West Jackson Boulevard, Chicago, IL 60604, (312)886–6036, or via email at *cano.randolph@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Partial Deletion Procedures
IV. Basis for Site Partial Deletion
V. Partial Deletion Action

I. Introduction

EPA Region 5 is publishing this direct final Notice of Partial Deletion for the Naval Industrial Reserve Ordnance Plant (NIROP) Superfund Site (Site) from the National Priorities List (NPL). This partial deletion pertains to OU3, which includes all the unsaturated soils underlying the former Plating Shop Area. The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the NIROP Site is proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466 (Nov. 1, 1995). As described in 300.425(e)(3) of the NCP, a portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses OU3 of the NIROP Site and demonstrates how OU3 meets the deletion criteria. Section V discusses EPA's action to partially delete OU3 of the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews (FYRs) to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such FYRs even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Partial Deletion Procedures

The following procedures apply to the deletion of OU3 of the NIROP Site:

(1) EPA has consulted with the State of Minnesota prior to developing this direct final Notice of Partial Deletion and the Notification of Intent for Partial Deletion published in the ''Proposed Rules'' section of the **Federal Register**.

(2) EPA has provided the State thirty (30) working days for review of this action and the parallel Notification of Intent for Partial Deletion prior to their publication today, and the State, through the Minnesota Pollution Control Agency (MPCA), has concurred on the partial deletion of the Site from the NPL.

(3) Concurrent with the publication of this direct final Notice of Partial Deletion, a notice of the availability of the parallel Notification of Intent for Partial Deletion is being published in a major local newspaper, the Sun Focus, located in Fridley, Minnesota. The newspaper notice announces the 30-day public comment period concerning the Notification of Intent for Partial Deletion of the Site from the NPL.

(4) EPA placed copies of documents supporting the partial deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified in the Addresses Section of this rule.

(5) If adverse comments are received within the 30-day public comment period on this partial deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Partial Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent for Partial Deletion and the comments already received.

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a portion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for further response actions, should future conditions warrant such actions.

IV. Basis for Site Partial Deletion

The following information provides EPA's rationale for deleting OU3 of the NIROP Site from the NPL. EPA believes it is appropriate to delete OU3 of the NIROP Site because all appropriate response actions under CERCLA, other than operation, maintenance, and FYRs, have been completed at OU3 and it is ready for redevelopment as a commercial and/or industrial property.

Site Background and History

The NIROP Site (CERCLIS ID MN3170022914) is located in the northern portion of the Minneapolis/St. Paul Metropolitan Area in an industrial/commercial area at 4800 E. River Road within the limits of Fridley, Anoka County, Minnesota. The NIROP Site is not adjacent to any residential areas and is not located in an environmentally sensitive area, nor near any known environmentally sensitive areas.

The Site is approximately 82.6 acres, most of which are covered with buildings or pavement. The U.S. Navy and/or its contractors produced advanced weapons systems at the facility beginning in 1940. In 2004, the U.S. Navy sold the property to FMC (now BAE). BAE then sold the property to ELT Minneapolis, LLC. ELT Minneapolis owned the former NIROP property and leased the space to United Defense LP until 2013. In 2013, ELT sold the property to Fridley Land, LLC, the current owner. Fridley Land LLC is in the process of redeveloping the property in phases for commercial and/or industrial use.

The formerly government-owned portion of the facility constitutes what is now the NIROP Site. See the site map in NIROP Map Delineating Operable Units, Docket Document ID No. EPA–HQ–SFUND–1989–0007–0075 in the Deletion Docket for OU3. (Note: portions of the main facility building depicted in the Site Map have since been demolished for redevelopment.) The Site Map also shows that the southern portion of the original facility is not part of the NIROP Site.

The Navy and/or its contractors disposed paint sludges and chlorinated solvents generated from ordnance manufacturing processes in pits and trenches in the undeveloped area of the NIROP Site immediately north of the main facility building in the early 1970s. This area is called the North 40 area. MPCA received information concerning the historical waste disposal practices at NIROP and about the contaminant sources in the North 40 area and beneath the NIROP building in 1980.

Trichloroethylene (TCE) was discovered in on-site groundwater wells and in the City of Minneapolis's drinking water treatment plant intake pipe, located in the Mississippi River less than 1 mile downstream from the Site, in 1981. The Navy conducted investigations in 1983 which identified pits and trenches in the North 40 area of the NIROP Site where drummed wastes were deposited. The Navy excavated approximately 1,200 cubic yards of contaminated soil and 43 (55-gallon) drums and disposed them off-site from November 1983 to March 1984.

EPA proposed the NIROP Site to the NPL on July 14, 1989 (54 FR 29820). EPA finalized the NIROP Site on the NPL on November 21, 1989 (54 FR 48184).

EPA, MPCA and the Navy signed a Federal Facilities Agreement (FFA) in March 1991. Per the FFA, one of the purposes of that agreement was to ''Identify alternatives for Remedial Action for Operable Units'' appropriate for the Site prior to the implementation of Final Remedial Actions for the Site.

EPA divided the NIROP Site into three operable units (OUs) to make it easier to address the contaminant issues at the Site. OU3, the subject of this partial deletion, includes all the unsaturated soils underlying the former Plating Shop Area of the Site. The extent of OU3 is detailed in the site map in NIROP Map Delineating Operable Units, Docket Document ID No. EPA–HQ–SFUND–1989–0007–0075 in the Deletion Docket for OU3.

The current scope of OU3 is provided in EPA's August 12, 2013 Memorandum to File that restructured the OUs at the Site. OU3 initially included: (1) All saturated and unsaturated soil underneath the main NIROP manufacturing building, excluding the extreme southern portion of the building, and (2) all saturated soil under and outside the main NIROP manufacturing building, within the legal boundaries of the Site.

EPA's 2013 Memorandum limited the scope of OU3 to unsaturated soil under the former Plating Shop Area. The saturated soils that were initially part of OU3 are now included with OU1. The remaining unsaturated soil under the main NIROP building outside the former Plating Shop Area that were part of OU3 are being addressed as part of OU2.

OU1, which includes the contaminated groundwater within and originating from the NIROP Site, and now saturated soils, will remain on the NPL and is not being considered for deletion as part of this action. EPA deleted OU2, which includes all the unsaturated soils within the legal boundaries of the NIROP Site excluding the unsaturated soils under the former Plating Shop Area, from the NPL effective August 29, 2014 (79 FR 36658, June 30, 2014).

Remedial Investigation and Feasibility Study (RI/FS)

The groundwater in the unconsolidated aquifer beneath the Site is contaminated with volatile organic compounds (VOCs), including: TCE, 1,1,1-trichloroethane (TCA), 1,2-dichloroethylene (DCE), tetrachloroethylene (PERC), 1,1-dichloroethane, toluene, xylene, and ethylbenzene. Some or all of the contaminants identified are hazardous substances as defined in section 104(14) of CERCLA, 42 U.S.C. 9601(14), and 40 CFR 302.4. TCE was found more frequently and at higher concentrations than any other VOC, and is considered to be the best indicator chemical for the Site.

In April 1995, the Navy was renovating the East Plating Shop (now called the former Plating Shop Area or OU3) inside the main manufacturing building, to accommodate an electrical assembly facility. During the renovation, when all of the tanks were removed and prior to the floor repairs being made, the Navy collected soil and groundwater samples to determine whether past plating activities had impacted soil and groundwater beneath the building.

The Navy detected TCE, TCA, PERC and DCE at elevated levels in soil and groundwater. The Navy also found elevated metals concentrations, including chromium, in the vicinity of a former sump. (Note: With the ongoing redevelopment at the Site, OU3 is no longer inside the main manufacturing building. The portion of the building that housed OU3 has since been demolished.)

The Navy detected the highest concentrations of TCE and PERC in the 1995 sampling event in surface (0 to 4 feet below ground surface [bgs]), shallow subsurface (4 to 12 feet bgs), and deep subsurface (>12 feet bgs) soil samples collected from the East Plating Shop. This indicated the possible presence of a ''hot spot'' of TCE and PERC in this area and the likelihood that the East Plating Shop was the source area for these VOCs and chromium.

The 2002 Baseline Human Health Risk Assessment (HHRA) identified an unacceptable potential risk/hazard in OU3 for exposure to soil in the East Plating Shop area under the major-infrequent construction worker exposure scenario. The major-infrequent construction worker exposure scenario assumed construction workers would have a short-term exposure to the maximum concentration of soil contaminants detected from 0–12 feet bgs in the East Plating Shop area during major modifications to the building slab and foundations. The HHRA did not identify any unacceptable risks or hazards to exposure to OU3 soil under a commercial/industrial scenario.

The cancer risk calculated for the major-infrequent construction worker in the 2002 HHRA was 2.1×10^{-6}. This risk is within EPA's acceptable risk range of 1×10^{-4} to 1×10^{-6}, but exceeds MPCA's acceptable subchronic incremental cancer risk of 1×10^{-6}.

The noncancer risks calculated for the major-infrequent construction worker in OU3 in the 2002 HHRA was a hazard quotient (HQ) of 1.35 for chromium, and a total hazard index (HI) of 2.9 for all chemicals. These levels exceed EPA's acceptable noncancer HQ of 1 for individual contaminants and a HI of 1 for multiple chemicals, and MCPA's acceptable subchronic HQ and HI levels of 1 for individual and multiple chemicals.

Chromium is most commonly present in its less-toxic trivalent form because environmental conditions typically favor the reduction of the more-toxic hexavalent chromium to its less-toxic trivalent state. The 2002 HHRA, however, conservatively assumed that 100 percent of the chromium detected in the East Plating Shop area was in the hexavalent form, due to the absence of site-specific speciated data and considering historic Site use. Based on this assumption of 100 percent hexavalent chromium, the potential risks to OU3 receptors from exposure to chromium in the 2002 HHRA were likely overestimated.

Several years after the OU3 remedy was selected and implemented, in 2015, the Navy conducted additional soil sampling in OU3 for total and hexavalent chromium analysis. The analytical results show that at most, the more toxic hexavalent chromium constitutes only 7 percent of the total OU3 chromium measured. The 2015 total and hexavalent chromium concentrations in soil were both below the MPCA soil reference values for industrial use. The Navy used these speciated chromium results to complete a more accurate, focused risk assessment for OU3 chromium in 2016.

In 2016, the Navy also excavated soils beneath the East Plating Shop to remove a potential source of TCE to the groundwater. The excavated soil was in the same area as the elevated chromium concentrations evaluated in the 2002 HHRA. This soil removal aided in reducing any potential health risks associated with chromium.

The Navy completed the Focused Human Health Risk Assessment (FHHRA) for the East Plating Shop area in 2016. The Navy did not include in the data set the soil samples collected in 2015 in the areas subsequently excavated as part of the 2016 East Plating Shop excavation because they were no longer present or available for contact by human receptors.

The FHHRA determined that, for the major-infrequent construction worker exposure scenario, the potential non-cancer HI for all contaminants of potential concern (COPCs)/target organs combined is 0.16. This HI is below EPA's and MPCA's target HI of 1 and does not exceed MPCA's target HQ level of 0.2 for individual COCs. Therefore, the 2016 FHHRA concluded that there are no unacceptable risks or hazards for major-infrequent construction workers who may be exposed to chemicals in mixed OU3 soil.

Selected Remedy

EPA, MPCA and the Navy issued a Record of Decision (ROD) for OU1 on September 28, 1990, and a ROD for OU2 and OU3 on September 17, 2003. EPA issued a Memorandum to File on September 5, 2013 clarifying the OU definitions at the site. The changes to the structure of the OUs in the 2013 Memorandum to File did not alter any of the selected remedies for the Site. EPA, MPCA and the Navy issued an Explanation of Significant Differences (ESD) documenting a requirement for groundwater institutional controls (ICs) as part of the OU1 remedy on September 26, 2014. EPA, MPCA and the Navy issued an ESD documenting a change in some of the IC requirements for OU3 on July 19, 2017. These documents are available the Docket under Docket Document IDs EPA–HQ–SFUND–1989–0007–0062 (1990 OU1 ROD), EPA–HQ–SFUND–1989–0007–0063 (2003 OU2 and OU3 ROD), EPA–HQ–SFUND–1989–0007–0068 (2013 Memorandum to File), EPA–HQ–SFUND–1989–0007–0069 (2014 OU1 ESD) and EPA–HQ–SFUND–1989–0007–0071 (2017 OU3 ESD).

The original remedial action objectives (RAOs) for OU3 in the 2003 OU2 and OU3 ROD were: (1) To prevent unacceptable risks due to residential or other unrestricted exposures to contaminated soils at the Site, and (2) to prevent unacceptable risks to industrial or construction workers due to exposures to contaminated soils at the Site. The remedial action specified for OU3 soils in the 2003 ROD were engineering controls (ECs) and ICs. The original selected remedy for OU3 was: (1) To restrict the use of the Property to industrial or restricted commercial use, until and unless EPA and MPCA determine that concentrations of hazardous substances in the soils have been reduced to levels that allow for a less restrictive use; (2) to prohibit the disturbance of soils beneath the Designated Restricted Area known as the concrete pit foundations where metal-finishing operations previously occurred at the former Plating Shop within the Main Manufacturing Building without the prior written approval of the EPA and MPCA; and (3) to ensure that the concrete pit floor (approximately 8 to 12 feet below grade floor) where metal finishing operations previously occurred at the former Plating Shop within the Main Manufacturing Building is not removed without the prior written approval of EPA and MPCA. That floor will serve as an EC.

On July 19, 2017, EPA, MPCA and the Navy issued an ESD to remove the requirement for some of the ICs and ECs in the OU3 remedy. The remedy components described in the 2003 OU2 and OU3 ROD were initially required to ensure the long-term protectiveness of the OU3 soil because the OU3 soil contamination remained at the Site above levels that allow for unlimited use and unrestricted exposure.

The 2017 ESD modified the selected remedy for OU3 by removing the second and third remedy components described above from the OU3 remedy.

Specifically, there was no longer a need to prohibit the disturbance of soils beneath the former Plating Shop area, nor to ensure that the concrete pit floor at the former Plating Shop remains in place.

EPA, MPCA and the Navy included these two OU3 remedy components in the 2003 ROD based on the conservative assumption in the 2002 HHRA that all of the chromium in OU3 soil was in the more-toxic hexavalent form. Based on the 2015 sampling data, which included speciated chromium results, and the 2016 FHHRA, which found no unacceptable risks or hazards for the major-infrequent construction worker scenario at OU3, the floor in the Plating Shop is no longer needed as an EC and OU3 ICs prohibiting the soils beneath the Plating Shop from being disturbed are no longer necessary.

The IC restricting OU3 to industrial or restricted commercial use in the 2003 OU2 and OU3 ROD [*i.e.,* OU3 remedy component (1) listed above], remains part of the selected remedy for OU3. Implemented ICs at the Site are shown in Figure 2 of the 2017 OU3 ESD in the Docket (Docket Document ID No. EPA–HQ–SFUND–1989–0007–0071).

Response Actions

EPA concurred with the Navy's March 2004 Land Use Control Remedial Design (LUCRD) for OU3 in August 2004. The LUCRD specifies how the OU3 remedy will be implemented, maintained, and enforced if any breach of the remedy should occur. The LUCRD details the Navy's continuing responsibilities with respect to OU3, including: Ensuring that annual on-site physical inspections of OU3 are performed to confirm continued compliance with all Land Use Control (LUC) Performance Objectives; ensuring that annual LUC Compliance Certifications are provided to EPA and MPCA that explain any deficiency, if found; conducting FYRs of the remedy as required by CERCLA and the NCP; notifying EPA and MPCA prior to any planned property conveyance; providing EPA and MPCA the opportunity to review the text of intended deed provisions; and notifying EPA and MPCA if Site activities might interfere with LUC effectiveness.

The LUCs were incorporated into a Quitclaim Deed that was executed by the property owner, the United States and MPCA on June 17, 2004. The Quitclaim Deed acts as an environmental covenant describing the property restrictions. The deed restrictions run with the land such that any subsequent property owner is bound by the same restrictions. The LUCs are to remain in place until EPA and MPCA determine that the concentrations of hazardous substances in the OU3 soils have been reduced to levels that allow for a less restrictive use.

In 2017, EPA, MPCA and the Navy issued an ESD for OU3 removing the requirement for two of the three OU3 LUCs required by the 2003 OU2 and OU3 ROD. The 2017 ESD removed the requirement for the LUCs that required the concrete pit floor in the former Plating Shop to remain in place and for the soils in the former Plating Shop area to remain undisturbed.

Cleanup Levels

There was no cleanup associated with the original remedy for OU3. In 2016, however, soils beneath the East Plating Shop were excavated and replaced with clean soil to address a potential source of TCE to the groundwater as part of OU1. The excavated soil was in the same area as the elevated chromium concentrations evaluated in the 2002 HHRA. The 2016 TCE soil removal also aided in reducing any potential health risk associated with chromium. This further justified the removal of the LUCs for the former Plating Shop floor and for the soil below the floor described in the 2017 OU3 ESD.

Operation and Maintenance

The Navy is the lead agency for the Site and is responsible for conducting routine inspections to ensure that the LUCs are maintained and enforced. The Navy is responsible for reporting the results of the inspections and any breach of the LUCs to the MPCA and EPA.

Five-Year Review

The Navy conducted the last FYR at the Site in October 2013. The 2013 FYR concluded that the remedy at NIROP for OU3 is protective of human health and the environment. The 2013 FYR did not identify any issues or recommendations for OU3. The FYR calls for the Navy to continue long-term stewardship to ensure that the LUC restricting land use at the Site to industrial or restricted commercial use is maintained. The next FYR for the Site is scheduled for October 2018.

Redevelopment

Redevelopment is currently underway to redevelop the NIROP Site into a commercial office/warehouse complex. This redevelopment is consistent with the existing Land Use Designation for the Site. The three parties to the FFA agree that delisting OU3 from the NPL will facilitate the redevelopment effort and allow OU3 to become eligible for State and Federal Brownfields funding. Superfund NPL site property is not eligible for Federal Brownfields funding.

A developer has enrolled the NIROP Site and adjacent land into MPCA's Voluntary Investigation and Cleanup (VIC) program. In conjunction with the redevelopment of the NIROP Site, any additional investigations will be conducted under the oversight and direction of MPCA's VIC program. Under the VIC program, MPCA also requested that all buildings at the NIROP Site have vapor mitigation units installed them and the builder has complied.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. EPA published a document announcing this proposed Direct Final Partial Deletion and announcing the 30-day public comment period in the Sun Focus concurrent with publishing this partial deletion in the **Federal Register**. Documents in the deletion docket, which EPA relied on for recommending the partial deletion of the Site from the NPL, are available to the public in the information repositories and at *www.regulations.gov.* Documents in the docket include maps which identify the specific parcels of land that are included in this proposed Direct Final Partial Deletion (*i.e.,* OU3).

Determination That the Criteria for Partial Deletion Have Been Met

The NCP (40 CFR 300.425(e)) states that portions of a site may be deleted from the NPL when no further response action is appropriate in that area or media. All cleanup actions specified for OU3 of the NIROP Site in the 2003 OU2 and OU3 ROD and the 2017 OU3 ESD have been implemented at the Site. EPA, in consultation with the State of Minnesota, has determined that no further action is warranted to protect human health and the environment at OU3 and that OU3 of the NIROP Site meets the criteria for Partial Deletion from the NPL.

V. Partial Deletion Action

EPA, with concurrence of the State of Minnesota through the MPCA, has determined that all appropriate response actions under CERCLA at OU3, other than operation, maintenance, and five-year reviews, have been completed. Therefore, EPA is deleting OU3 of the NIROP Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective September 17, 2018 unless EPA receives adverse comments by *August 16, 2018.* If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of partial deletion before the effective date of the partial deletion and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notification of intent to partially delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: June 25, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

[FR Doc. 2018–15240 Filed 7–16–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10–90, 16–271; FCC 16–115]

Connect America Fund, Connect America Fund—Alaska Plan

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, an information collection associated with the rules for the Connect America Fund contained in the Commission's *Connect America Fund—Alaska Plan Order,* FCC 16–115. This document is consistent with the *Connect America Fund—Alaska Plan Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of the new information collection requirements.

DATES: The amendments regarding §§ 54.313(f)(1)(i), 54.313(f)(3) and 54.313(l) published at 81 FR 69696, October 7, 2016, are effective July 17, 2018.

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau at (202) 418–7400 or TTY (202) 418–0484. For additional information concerning the Paperwork Reduction Act information collection requirements contact Nicole Ongele at (202) 418–2991 or via email: *Nicole.Ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission submitted revised information collection requirements for review and approval by OMB, as required by the Paperwork Reduction Act (PRA) of 1995, on May 30, 2018, which were approved by OMB on July 2, 2018. The information collection requirements are contained in the Commission's *Connect America Fund—Alaska Plan Order,* FCC 16–115, published at 81 FR 69696, October 7, 2016. The OMB Control Number is 3060–0986. The Commission publishes this document as an announcement of the effective date of the rules published October 7, 2016. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, Room 1–A620, 445 12th Street SW, Washington, DC 20554. Please include the OMB Control Number, 3060–0986, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on July 2, 2018, for the information collection requirements contained in 47 CFR 54.313(f)(1)(i), 54.313(f)(3) and 54.313(l), published at 81 FR 69696, October 7, 2016. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0986.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

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

OMB Control Number: 3060–0986.

OMB Approval Date: July 2, 2018.

OMB Expiration Date: July 31, 2021.

Title: High-Cost Universal Service Support.

Form Number: FCC Form 481, FCC Form 505, FCC Form 507, FCC Form 508, FCC Form 509 and FCC Form 525.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents and Responses: 1,877 respondents; 14,335 responses.

Estimated Time per Response: 0.5–15 hours.

Frequency of Response: On occasion, quarterly and annual reporting requirements, recordkeeping requirement 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. 151–154, 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 410, and 1302.

Total Annual Burden: 63,486 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission notes 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. Privately-held rate-of-return carriers may file the financial information they disclose in FCC Form 481 pursuant to a protective order.

Needs and Uses: On November 18, 2011, the Commission adopted an order reforming its high-cost universal service support mechanisms. *Connect America Fund; A National Broadband Plan for Our Future; Establish Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime;*

Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund, WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208, Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), and the Commission and Wireline Competition Bureau have since adopted a number of orders that implement the *USF/ICC Transformation Order; see also Connect America Fund et al.,* WC Docket No. 10–90 et al., Third Order on Reconsideration, 27 FCC Rcd 5622 (2012); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Order, 27 FCC Rcd 605 (Wireline Comp. Bur. 2012); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Fifth Order on Reconsideration, 27 FCC Rcd 14549 (2012); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Order, 28 FCC Rcd 2051 (Wireline Comp. Bur. 2013); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Order, 28 FCC Rcd 7227 (Wireline Comp. Bur. 2013); *Connect America Fund,* WC Docket No. 10–90, Report and Order, 28 FCC Rcd 7766 (Wireline Comp. Bur. 2013); *Connect America Fund,* WC Docket No. 10–90, Report and Order, 28 FCC Rcd 7211 (Wireline Comp. Bur. 2013); *Connect America Fund,* WC Docket No. 10–90, Report and Order, 28 FCC Rcd 10488 (Wireline Comp. Bur. 2013); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016). The Commission has received OMB approval for most of the information collections required by these orders. At a later date, the Commission plans to submit additional revisions for OMB review to address other reforms adopted in the orders (*e.g.,* 47 CFR 54.313(a)(6)).

More recently, on August 23, 2016, the Commission adopted the *Alaska Plan Order. See Connect America Fund et al.,* WC Docket Nos. 10–90, 16–271; WT Docket No. 10–208, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139 (2016) (*Alaska Plan Order*). In that order, the Commission adopted a plan for providing Alaskan rate-of-return carriers and competitive eligible telecommunications carriers (ETCs) the option to obtain a fixed level of funding for a defined term in exchange for committing to deployment obligations that are tailored to each Alaskan carrier's circumstances. ETCs receiving support pursuant to the Alaska Plan must comply with the Commission's existing high-cost reporting and oversight mechanisms, with certain exceptions and modifications.

On July 7, 2017, the Commission adopted the *ETC Reporting Streamlining Order. See Connect America Fund; ETC Annual Reports and Certifications,* WC Docket Nos. 10–90, 14–58, Report and Order, 32 FCC Rcd 5944 (2017) (*ETC Reporting Streamlining Order*). In that order, the Commission streamlined the annual reporting requirements for ETCs by eliminating rules duplicative of other reporting requirements or that are no longer necessary.

Further, since the previous filing deadline associated with this collection, changing circumstances have made filing certain information no longer necessary or required under the rules. For instance, the final Connect America Phase I incremental support deployment deadlines were in early 2017, so there are no longer any reporting obligations associated with that support.

Moreover, because the Connect America Phase II challenge process has ended, the Commission removed Form 505 from this collection. The Commission also moved FCC Form 507, FCC Form 508, FCC Form 509 and the accompanying instructions to information collection 3060–0233.

The Commission therefore revises this information collection, as well as Form 481 and its accompanying instructions, to reflect these new or modified requirements. The Commission also implemented a number of non-substantive changes to the Form 481 and accompanying instructions. Any increased burdens for particular reporting requirements are associated with ETCs newly subject to those requirements as a condition of receiving high-cost support.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–15171 Filed 7–16–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 17–169; FCC 18–78]

Protecting Consumers From Unauthorized Carrier Changes and Related Unauthorized Charges

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission takes measures to strengthen our rules to protect consumers from slamming and cramming by codifying rules against sales call misrepresentations and cramming and revising rules to improve the effectiveness of the third-party verification (TPV) process. Slamming is an unauthorized change in a consumers' telephone provider and cramming is the placement of an unauthorized charge on the consumers' telephone bill.

DATES: Effective August 16, 2018.

FOR FURTHER INFORMATION CONTACT: Richard D. Smith, Consumer and Governmental Affairs Bureau (717) 338–2797, email *Richard.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, document FCC 18–78, adopted on June 7, 2018, and released on June 8, 2018, in CG Docket No. 17–169. The full text of document FCC 18–78 will be available for public inspection and copying via the Commission's Electronic Comment Filing System (ECFS), and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (844) 432–2272 (videophone), or (202) 418–0432 (TTY).

Congressional Review Act

The Commission will send a copy of document FCC 18–78 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Final Paperwork Reduction Act of 1995 Analysis

The *Report and Order* does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Synopsis

Misrepresentations on Sales Calls

1. The Commission's recent enforcement actions reveal that misrepresentations on sales calls are a

continuing source of slamming. The Commission therefore codifies a rule to prohibit material misrepresentation, including material omissions, in sales calls to further reduce the incidence of slamming. A codified rule is consistent with the Commission's statutory authority and prior enforcement actions. In addition, codifying this prohibition in our rules will provide carriers and consumers with more specific information and notice of this prohibited practice. In so doing, the Commission notes that it revised the *Slamming and Cramming NPRM's* proposed rule, published at 82 FR 37830, August 14, 2017, on sales calls by deleting the reference to ''deception.'' The Commission finds that this term is vague and subject to an unclear interpretation absent a record to define it.

2. Upon a finding of material misrepresentation in the sales call, the consumer's authorization to change carriers will be deemed invalid even if the carrier has some evidence of consumer authorization of a switch. In this regard, our enforcement cases make clear that sales misrepresentations may not be cured by a facially valid TPV. When a consumer's decision to switch carriers is predicated on false information provided in a sales call, that consumer's authorization to switch carriers can no longer be considered binding.

3. A codified rule is consistent with the Commission's statutory authority and prior enforcement actions. Section 201(b) of the Act states, in pertinent part, that ''[a]ll charges, practices, classifications, and regulations for and in connection with [interstate or foreign] communication service [by wire or radio], shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful.'' The Commission has found that misrepresentations made by interstate common carriers constitute unjust and unreasonable practices under section 201(b) of the Act. Sales calls that contain misrepresentations undermine the effectiveness of the carrier's validation procedures under Section 258 of the Act, and thus are an unjust and unreasonable practice that is ''in connection with'' the communication service that is the subject of the verification process.

4. *Material Violations.* The Commission bans only ''material'' misrepresentations on sales calls. In so doing, the Commission acknowledges that occasional minor or trivial inaccuracies that have no bearing on the consumer's decision to switch carriers can occur and may not rise to a level warranting enforcement action, consistent with how the Commission has exercised its enforcement discretion in the past. The Commission declines, however, to require that such misrepresentations also be ''intentional.'' The Commission has never articulated an intentionality standard when it has penalized carriers for misrepresentations on sales calls in the past. Rather, the Commission's forfeiture policies already require that, when determining the appropriate adjustment to a base forfeiture amount (rather than whether the act is a violation), the Commission considers ''egregious conduct'' and ''intentional violation'' consistent with section 503 of the Act. The Commission believes this allows sufficient flexibility to take ''intent'' into consideration as an aggravating or mitigating factor when a violation of this rule occurs.

5. *Defining ''Sales Call.''* The Commission's slamming rules are designed to prevent a provider from switching a consumer's preferred carrier without the consumer's permission. Section 258 of the Act makes it unlawful for any telecommunications carrier to ''submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.'' Thus, for purposes of the slamming rules, the Commission clarifies that a ''sales call'' is any telephone call in which a carrier encourages a subscriber to submit or execute a change in the subscriber's provider of telephone exchange service or telephone toll service.

6. *Recording Sales Calls.* The Commission declines to mandate that sales calls be recorded. Although the Commission agrees with commenters that recordings would aid in determining whether a misrepresentation occurred, the record contains unrebutted evidence that any such mandate would necessitate industry-wide installation of recording technologies, amending existing protocols with vendors that make such calls on carriers' behalf, recording large numbers of calls, and storing those records for some specified period when the vast majority of these calls do not result in consumer complaints. The principal consumer benefit of a recording mandate would be to aid enforcement, but the Commission is confident in light of the success of our prior enforcement actions that we can continue to enforce our rules even without a mandate, and nothing in the record persuades us otherwise.

7. Nonetheless, the Commission encourages carriers and their agents to record sales calls. The Commission clarifies that a consumer's allegation of a sales call misrepresentation shifts the burden of proof to the carrier making the sales call to provide persuasive evidence to rebut the claim. The Commission believes that in those instances in which a consumer has provided credible evidence of a misrepresentation that a carrier is uniquely positioned via its access to sales scripts, recordings, training, and other relevant materials relating to sales calls to proffer evidence to rebut those claims if they are without merit. In most instances, the consumer will not have access to these same materials. An accurate and complete sales call recording may be a carrier's best such evidence, and the record indicates that at least some carriers already record calls for training and monitoring purposes. Those carriers that do not and/or choose not to record sales calls will have to develop other means to rebut credible consumer allegations of misrepresentations on sales calls.

Unauthorized Charges on Telephone Bills

8. The Commission codifies a prohibition on the placement of unauthorized charges on telephone bills. Although cramming has been a long-standing issue addressed in various enforcement actions, and the Commission has adopted truth-in-billing rules to help detect it, the Commission has never codified a rule against cramming. The Commission thus codifies in a new § 64.2401(g) of the Commission's truth-in-billing rules the prohibition against cramming that it has long enforced under section 201(b) of the Act. The Commission believes codifying the cramming prohibition for wireline and wireless carriers will act as a deterrent to this conduct. In so doing, the Commission agrees with commenters that codifying a ban against cramming provides greater clarity to interested parties and will aid its enforcement efforts. In addition, codifying this prohibition into its rules will provide consumers with more specific information and notice of this prohibited practice.

9. The Commission agrees with those commenters who contend that wireless consumers should be afforded the same consumer protections as wireline consumers when such unauthorized charges appear on their telephone bills. This approach is also consistent with the Commission's prior enforcement

investigations conducted under section 201(b) holding wireless providers accountable for alleged unauthorized charges that appeared on wireless bills.

Third-Party Verification

10. *Authorizing Individual Services.* The Commission eliminates the requirement in § 64.1120(b) of its rules that carriers must obtain the authorization for each individual service sold when the carrier is selling more than one telecommunications service to a subscriber. The Commission agrees with those commenters who suggest there is minimal benefit to asking consumers if they want to separately switch individual services based on regulatory classifications that may be outdated and unfamiliar to them.

11. *TPV Abuses.* The Commission remains concerned that the TPV process has been misused in some instances to fraudulently verify consumer authorization to switch providers. Its prior enforcement actions confirm instances of abuse of the TPV process. Although the current record does not contain a sufficient basis to eliminate this widely-used verification mechanism, the Commission believes that these documented abuses warrant additional oversight. As a result, the Commission concludes that any carrier that becomes the subject of a Commission forfeiture order through abuse of that process will be suspended for a period of five years from using the TPV process to confirm consumer switches. That will necessitate that these carriers use other recognized sources of evidence under our rules, such as a letter of agency, to confirm a consumer switch during the pendency of that suspension. The Commission notes that this suspension process will be applied only going forward from the effective date of the rules adopted in document FC 18–78. Thus, carriers and verifiers will be afforded an opportunity to take proactive measures to correct any deficiencies that have resulted in prior enforcement actions. In addition to strengthening its requirements in this action, the Commission reminds carriers that it takes violations of its rules seriously and the Commission will continue to use its enforcement authority to stop bad actors, including through substantial monetary penalties and revocation of Commission operating authorization.

Other Measures

12. In light of the enhanced consumer protections afforded by the rules adopted in document FCC 18–78, the apparent diminishing nature of the slamming and cramming problem as evidenced by recent complaint data, and the potential costs of compliance with additional requirements, the Commission declines to mandate any other changes to its rules.

Final Regulatory Flexibility Analysis

13. As required by the Regulatory Flexibility Act of 1980, as amended (RFA) an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Slamming and Cramming NPRM.* The Commission sought written public comment on the proposals in the *Slamming and Cramming NPRM,* including comments on the IFRA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need For, and Objectives of, the Proposed Rules

14. This document FCC 18–78 adopts rules to strengthen consumer protections from slamming and cramming. Slamming is the unauthorized change of a consumer's preferred interexchange telecommunications service provider, and cramming is the placement of unauthorized charges on a consumer's telephone bill. Despite existing slamming and truth-in-billing rules, recent enforcement actions indicate that the most vulnerable consumers, including the elderly and non-English speakers, remain at significant risk of being the victims of these fraudulent practices because unscrupulous carriers often make it difficult to detect such conduct. Specifically, the Commission adopts rules designed to provide greater clarity of these existing prohibitions and assist in our enforcement actions where such conduct occurs.

15. Section 258 of the Act makes it unlawful for any telecommunication carrier to ''submit or execute a change in accordance with such verification procedures as the Commission shall prescribe.'' The rules adopted in document FCC 18–78 will strengthen the Commission's ability to deter slamming by addressing misleading statements made in sales calls which the record confirms are a substantial factor in slamming. For example, when a consumer's decision to switch carriers is made based on false information provided in a sales call, that consumer's authorization to switch carrier will no longer be considered binding. In addition, the Commission streamlines the carrier change process by eliminating the requirement that the consumer's authorization be obtained for every service to be switched when selling more than one telecommunications service. This will improve the efficiency for both carriers and consumers when making carrier change requests by eliminating unnecessary regulatory impediments. Finally, any telecommunications carrier that is the subject of a Commission forfeiture action will be suspended for a period of five years from using that process to confirm a consumer switch. This will ensure that greater care is taken by both carriers and verifiers to avoid TPV abuses.

16. The Commission has found on numerous instances that cramming is an ''unjust and unreasonable'' practice in violation of section 201(b) of the Act but has never codified a prohibition against cramming in our rules. Doing so in document FCC 18–78 provides greater clarity of this long-recognized prohibition to interested parties and will assist in our enforcement efforts of this prohibited practice.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

17. One comment was filed that specifically addressed the proposed rules and policies presented in the IRFA. Although supporting the adoption of the two proposed rules contained in the *Slamming and Cramming NPRM,* NTCA argues that the IRFA was deficient because the other measures discussed therein were vague and lacked specificity.

Response to Comments by Chief Counsel for Advocacy of Small Business Administration

18. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration, and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

19. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

Small Entities Impacted

20. The rules adopted in document FCC 18–78 will affect obligations of Wireline and Wireless telecommunications carriers.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

21. In document FCC 18–78, the Commission adopt rules to enhance the existing consumer protections from slamming and cramming. Specifically, the Commission adopts rules to codify a ban on: (i) Material misrepresentations

on sales calls for voice services; and (ii) unauthorized charges on telephone bills. Although the Commission has previously held that these practices are unjust and unreasonable practices under section 201(b) of the Act, its rules have not expressly prohibited them. Because these prohibitions have been long recognized pursuant to our enforcement actions, however, they should not necessitate any new burdens for those carriers are that in compliance. In addition, the Commission takes steps to improve the effectiveness of the existing carrier change process by eliminating the requirement that carriers obtain the authorization to switch each individual service when selling more than one service and by suspending any carrier for a five-year period from using the TPV process when it becomes the subject of a Commission forfeiture action.

Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

22. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.''

23. The rules adopted in document FCC 18–78 codify long-recognized consumer protections from slamming and cramming. In prior enforcement actions, the Commission has previously held that these practices are unjust and unreasonable practices under section 201(b) of the Act. As a result, the economic impact on affected carriers should be minimal because they impose no new requirements. In declining to adopt other measures discussed in the *Slamming and Cramming NPRM,* the Commission has taken into consideration the potential burdens on carriers, including smaller carriers, in determining that such actions are not justified at this time. In these instances, the Commission has taken into consideration the concerns of industry commenters that the potential costs and delays that may result from these measures outweigh the potential benefits to consumers.

Ordering Clauses

Pursuant to sections 1–4, 201(b), and 258 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201, 258, document FCC 18–78 *is adopted,* and part 64 of the Commission's rules, 47 CFR 64.1120 and 64.2401 *are amended.*

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of document FCC 18–78 to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of document FCC 18–78, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers, Telecommunications.

Federal Communications Commission.
Marlene Dortch,
Secretary, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 218, 222, 225, 226, 227, 228, 251(e), 254(k), 403(b)(2)(B), (c), 616, 620, 1401–1473, unless otherwise noted.

■ 2. Amend § 64.1120 by revising paragraphs (a)(1)(i) and (b) to read as follows:

§ 64.1120 Verification of orders for telecommunications services.

(a) * * *

(1) * * *

(i) Authorization from the subscriber, subject to the following:

(A) Material misrepresentation on the sales call is prohibited. Upon a consumer's credible allegation of a sales call misrepresentation, the burden of proof shifts to the carrier making the sales call to provide persuasive evidence to rebut the claim. Upon a finding that such a material misrepresentation has occurred on a sales call, the subscriber's authorization to switch carriers will be deemed invalid.

(B) [Reserved]

* * * * *

(b) Any telecommunications carrier that becomes the subject of a Commission forfeiture action through a violation of the third-party verification process set forth in paragraph (c)(3) of this section will be suspended for a five-year period from utilizing the third-party verification process to confirm a carrier change.

* * * * *

■ 3. Amend § 64.2401 by adding paragraph (g) to read as follows:

§ 64.2401 Truth-in-Billing Requirements.

* * * * *

(g) *Prohibition against unauthorized charges.* Carriers shall not place or cause to be placed on any telephone bill charges that have not been authorized by the subscriber.

[FR Doc. 2018–14151 Filed 7–16–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 17–141; CC Docket No. 96–128; WC Docket No. 16–132; FCC 18–21]

Modernization of Payphone Compensation Rules; Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996; 2016 Biennial Review of Telecommunications Regulations

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's payphone compensation rules. This document is consistent with the *Modernization of Payphone Compensation Rules Report and Order,* FCC 18–21, which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of those rules.

DATES: The amendment to 47 CFR 64.1310(a)(3) published at 83 FR 11422, March 15, 2018, is effective on July 17, 2018.

FOR FURTHER INFORMATION CONTACT: Michele Levy Berlove, Attorney Advisor, Wireline Competition Bureau, at (202) 418–1477, or by email at *Michele.Berlove@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements, contact Nicole Ongele at (202) 418–2991 or *nicole.ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on July 2, 2018, OMB approved, for a period of three years, the information collection requirements relating to certain payphone compensation rules contained in the Commission's *Modernization of Payphone Compensation Rules Report and Order,* FCC 18–21, published at 83 FR 11422, March 15, 2018, as specified above.

The OMB Control Number is 3060–1046. The Commission publishes this document as an announcement of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, Room 1–A620, 445 12th Street SW, Washington, DC 20554. Please include the OMB Control Number, 3060–1046, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on July 2, 2018, for the information collection requirements contained in the modifications to the Commission's rules in 47 CFR part 64. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1046. The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

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

OMB Control Number: 3060–1046.

OMB Approval Date: July 2, 2018.

OMB Expiration Date: July 31, 2021.

Title: Part 64, Modernization of Payphone Compensation Rules *et al.*, WC Docket No. 17–141 *et al.,* FCC 18–21.

Form Number: N/A.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 329 respondents; 2,257 responses.

Estimated Time per Response: 0.50 hours–122 hours.

Frequency of Response: On occasion, one-time, and quarterly reporting requirements; third party disclosure requirements; and recordkeeping requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. 151, 154 and 276 of the Communications Act of 1934, as amended.

Total Annual Burden: 34,720 hours.

Total Annual Cost: No cost(s).

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: Section 276 of the Communications Act, as amended (the Act), requires that the Federal Communications Commission (Commission or FCC) establish rules ensuring that payphone service providers or PSPs are ''fairly compensated'' for each and every completed payphone-originated call. The Commission's Payphone Compensation Rules satisfy section 276 by identifying the party liable for compensation and establishing a mechanism for PSPs to be paid. A 2003 Report and Order (FCC 03–235) established detailed rules (Payphone Compensation Rules) ensuring that payphone service providers or PSPs are ''fairly compensated'' for each and every completed payphone-originated call pursuant to section 276 of the Communications Act, as amended (the Act). The Payphone Compensation Rules satisfy section 276 by identifying the party liable for compensation and establishing a mechanism for PSPs to be paid. The Payphone Compensation Rules: (1) Place liability to compensate PSPs for payphone-originated calls on the facilities-based long distance carriers or switch-based resellers (SBRs) from whose switches such calls are completed; (2) define these responsible carriers as ''Completing Carriers'' and require them to develop their own system of tracking calls to completion; (3) require Completing Carriers to file with PSPs a quarterly report and also submit an attestation by the chief financial officer (CFO) that the payment amount for that quarter is accurate and is based on 100% of all completed calls; (4) require quarterly reporting obligations for other facilities-based long distance carriers in the call path, if any, and define these carriers as ''Intermediate Carriers;'' and (5) give parties flexibility to agree to alternative compensation arrangements (ACA) so that small Completing Carriers may avoid the expense of instituting a tracking system and undergoing an audit. On February 22, 2018, the Commission adopted a Report and Order, FCC 18–21 (*2018 Payphone Order*), that: (1) Eliminated the payphone call tracking system audit and associated reporting requirements; (2) permitted a company official, including but no longer limited to, the chief financial officer (CFO), to certify that a Completing Carrier's quarterly compensation payments to PSPs are accurate and complete; and (3) eliminated expired interim and intermediate per-payphone compensation rules that no longer apply to any entity. We believe that the revisions adopted in the *2018 Payphone Order* significantly decrease the paperwork burden on carriers.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–15157 Filed 7–16–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[GN Docket No. 16–142; FCC 17–158]

Authorizing Permissive Use of the ''Next Generation'' Broadcast Television Standard

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection requirements associated with FCC 17–158. This

document is consistent with the Commission's Report and Order, which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of those rules.

DATES: The additions of 47 CFR 73.3801, 73.6029, and 74.782 as published at 83 FR 4998, February 2, 2018, are effective as of July 17, 2018.

FOR FURTHER INFORMATION CONTACT: Evan Baranoff, Policy Division, Media Bureau, at 202–418–7142, or via email at *evan.baranoff@ffc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on July 2, 2018, OMB approved the information collection requirements contained in §§ 73.3801, 73.6029, and 74.782 of the Commission's rules. The OMB Control Number is 3060–1254. The Commission publishes this document as an announcement of the effective date of these rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW, Washington, DC 20554. Please include the OMB Control Number, 3060–1254, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on July 2, 2018, for the information collection requirements contained in §§ 73.3801, 73.6029, and 74.782 of the Commission's rules. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

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

OMB Control Number: 3060–1254.

OMB Approval Date: July 2, 2018.

OMB Expiration Date: July 31, 2021.

Title: Next Gen TV/ATSC 3.0 Local Simulcasting Rules; 47 CFR 73.3801 (full-power TV), 73.6029 (Class A TV), and 74.782 (low-power TV) and FCC Form 2100 (Next Gen TV License Application)

Form Number: FCC Form 2100 (Next Gen TV License Application)

Respondents: Business or other for-profit entities, state, local, or tribal government and not for profit institutions.

Number of Respondents and Responses: 1,130 respondents; 4,760 responses.

Estimated Time per Response: 0.017–8 hours.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement; Third party disclosure.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 1, 4, 7, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 157, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 534, and 535.

Total Annual Burden: 3,504 hours.

Total Annual Cost: $130,500.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection.

Needs and Uses: On November 20, 2017, the Commission released a Report and Order (Order), FCC 17–158, in GN Docket No. 16–142, authorizing television broadcasters to use the ''Next Generation'' broadcast television (Next Gen TV) transmission standard, also called ''ATSC 3.0'' or ''3.0,'' on a voluntary, market-driven basis. This authorization is subject to broadcasters continuing to deliver current-generation digital television (DTV) service, using the ATSC 1.0 transmission standard, also called ''ATSC 1.0'' or ''1.0,'' to their viewers. The requirement to continue to provide ATSC 1.0 service is called ''local simulcasting.'' The local simulcasting rules (47 CFR 73.3801 (full-power TV), 73.6029 (Class A TV), and 74.782 (low-power TV),) contain the following information collection requirements which require OMB approval.

License Application to FCC/FCC Form 2100 (Reporting Requirement; 47 CFR 73.3801(f), 73.6029(f), and 74.782(g)): A broadcaster must file an application (FCC Form 2100) with the Commission, and receive Commission approval, before: (i) Moving its ATSC 1.0 signal to the facilities of a host station, moving that signal from the facilities of an existing host station to the facilities of a different host station, or discontinuing an ATSC 1.0 guest signal; (ii) commencing the airing of an ATSC 3.0 signal on the facilities of a host station (that has already converted to ATSC 3.0 operation), moving its ATSC 3.0 signal to the facilities of a different host station, or discontinuing an ATSC 3.0 guest signal; or (iii) converting its existing station to transmit an ATSC 3.0 signal or converting the station from ATSC 3.0 back to ATSC 1.0 transmissions. As directed by the Commission, the Media Bureau will be amending FCC Form 2100 and the relevant schedules (Schedules B, D & F) (See Schedule B—Full Power License to cover application (OMB control number 3060–0837); Schedule D—LPTV/Translator License to cover application (OMB control number 3060–0017); and Schedule F—Class A License to cover application (OMB control number 3060–0928)) as necessary to implement the Next Gen TV licensing process and collect the required information (detailed below). The form will be revised to establish the streamlined ''one-step'' licensing process for Next Gen TV applicants, including adding the above listed purposes (i-iii) to the form. FCC staff will use the license application to determine compliance with FCC rules and to determine whether the public interest would be served by grant of the application for a Next Gen TV station license.

Next Gen TV Broadcaster On-Air Notices to Consumers (Third-Party Disclosure Requirement; 47 CFR 73.3801(g), 73.6029(g), and 74.782(h)): Commercial and noncommercial educational (NCE) broadcast TV stations that relocate their ATSC 1.0 signals (*e.g.,* moving to a host station's facility, subsequently moving to a different host, or returning to its original facility) are required to air daily Public Service Announcements (PSAs) or crawls every day for 30 days prior to the date that the stations will terminate ATSC 1.0 operations on their existing facilities. Stations that transition directly to ATSC 3.0 will be required to air daily PSAs or crawls every day for 30 days prior to the date that the stations will terminate ATSC 1.0 operations. Broadcaster on-air notices to consumers will be used to inform consumers if stations they watch will be changing channels and encouraged to rescan their receivers for new channel assignments.

Next Gen TV Broadcaster Written Notices to MVPDs (Third-Party Disclosure Requirement; 47 CFR 73.3801(h), 73.6029(h), and 74.782(i)): Next Gen TV stations relocating their ATSC 1.0 signals (*e.g.,* moving to a temporary host station's facilities, subsequently moving to a different host, or returning to its original facility) must provide notice to MVPDs that: (i) No longer will be required to carry the station's ATSC 1.0 signal due to the relocation; or (ii) carry and will continue to be obligated to carry the station's ATSC 1.0 signal from the new location. Broadcaster notices to multichannel video programming distributors (MVPDs) will be used to notify MVPDs that carry a Next Gen TV broadcast station about channel changes and facility information.

Local Simulcasting Agreements (Recordkeeping Requirement; 47 CFR 73.3801(e), 73.6029(e), and 74.782(f)): Broadcasters must maintain a written copy of any local simulcasting agreement and provide it to the Commission upon request. FCC staff will review the local simulcasting agreement (when applicable) to determine compliance with FCC rules and to determine whether the public interest would be served by grant of the application for a Next Gen TV station license.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2018–15156 Filed 7–16–18; 8:45 am]

BILLING CODE 6712–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9903

Cost Accounting Standards: Revision of the Exemption From Cost Accounting Standards for Contracts and Subcontracts for the Acquisition of Commercial Items

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Final rule.

SUMMARY: The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards (CAS) Board, is publishing a final rule revising the exemption for contracts or subcontracts for the acquisition of commercial items. This final rule clarifies the types of contracts that are exempt from the application of Cost Accounting Standards when acquiring commercial items.

DATES: *Effective* August 16, 2018.

FOR FURTHER INFORMATION CONTACT: Raymond Wong, Staff Director, Cost Accounting Standards Board (telephone: 202–395–6805; email: *rwong@omb.eop.gov*).

SUPPLEMENTARY INFORMATION: This final rule revises the exemption 48 CFR 9903.201–1(b)(6) for contracts or subcontracts for the acquisition of commercial items (hereafter referred to as the ''(b)(6) commercial item exemption'').

A. Regulatory Process—Changes to 48 CFR Part 9903

The CAS Board's regulations and Standards are codified at 48 CFR chapter 99. This final rule amends a CAS Board regulation other than a Standard and, as such, is not subject to the statutorily prescribed rulemaking process for the promulgation of a Standard at 41 U.S.C. 1502(c) [formerly, 41 U.S.C. 422(g)].

B. Background and Summary

In November 2012, the CAS Board issued a proposed rule to clarify the exemption from CAS when acquiring commercial items. 77 FR 69422. The exemption enumerates the contract types that are authorized when procuring commercial items. Over the years, the CAS Board has issued several rules addressing the exemption to reflect statutory changes regarding the types of contracts that may be used in commercial item acquisitions. See 61 FR 39360 (providing an exemption for firm-fixed-price contracts and subcontracts for the acquisition of commercial items as authorized by section 4305 of the Clinger-Cohen Act of 1996 (FARA), Pub. L. 104–106); 62 FR 31294 (adding fixed-price contracts with economic price adjustments other than those based on actual incurred costs for labor and materials); and 72 FR 36367 (expanding the list of exempt contract types to include time-and-material and labor-hour contracts, in response to changes made by section 1432 of the Services Acquisition Reform Act of 2003, Pub. L. 108–136, which authorized these types of contracts for the acquisition of commercial items).

Since enactment of the Federal Acquisition Streamlining Act in 1994 (Pub. L. 103–355), the Federal Acquisition Regulation (FAR) has included an enumerated list of contract types authorized for use in acquiring commercial items. See 48 CFR part 12.207. Similar to the CAS Board, the Federal Acquisition Regulatory Council has amended FAR 12.207 several times to reflect statutory changes and clarify the intent of the regulation. An inconsistency has developed between the list of contract types recognized for use in acquiring commercial items set forth in paragraph (b)(6) and that commercial item exemption and contract types reflected in FAR 12.207. For example, FAR 12.207 allows the use of firmed fixed price contracts in conjunction with award fee incentives or performance or delivery incentives, known as fixed-price incentive (FPI) contracts, when the award fee or incentive is based solely on factors other than cost. However, the (b)(6) exemption does not expressly recognize FPI contracts on the enumerated list of exempt contracts. Because of this discrepancy, some commenters on a prior CAS Board rulemaking expressed concern that these types of FPI contracts might be excluded under a literal reading of the (b)(6) exemption. See 72 FR 36367.

In its proposed rule, the CAS Board sought to address the inconsistencies between the lists in the (b)(6) exemption and FAR 12.207 by removing reference to specific contract types in the (b)(6) exemption and instead making simple reference to ''contracts and subcontracts for the acquisition of commercial items.'' The CAS Board explained that this generalized language would ''obviate the continuing need to update and keep current a detailed listing of permissible contract types for the acquisition of commercial items, which continues to evolve with the passage of time.'' 77 FR 69424. The CAS Board further explained that this language tracks the exemption set forth in its authorizing statute at 41 U.S.C. 1502(b)(1)(C)(i) as well as the language in section 4205 of the Clinger-Cohen Act.

The CAS Board received several comments in response to the proposed rule. A discussion of the comments and the Board's responses are set forth in section C. Of particular note, some commenters raised concern that more general language may perpetuate ambiguities regarding what contract types are covered by the exemption. After review of the public comments and further deliberation, the CAS Board has concluded that the desired goal of clarification can be more effectively achieved by adding language to the exemption that cross references to FAR 12.207 and its enumeration of contract types authorized for the acquisition of commercial items. The CAS Board believes this approach has multiple benefits. This linkage will eliminate disparities between the FAR and CAS Board rules regarding the description of contract types authorized for commercial item acquisitions. In addition, by maintaining reference to an enumerated list of authorized contract types for commercial item acquisitions, this formulation will avoid the ambiguity that could have been created if the more generalized language in proposed rule were adopted. The CAS Board also hopes that this change will avoid the need for additional CAS Board rulemakings in the event of future statutory actions addressing allowable contract types for commercial item procurements.

Accordingly, this final rule amends the language at 9903.201–1(b)(6) to exempt contracts and subcontracts authorized in 48 CFR 12.207 for the acquisition of commercial items. The CAS Board intends to monitor the effectiveness of this rule in achieving the intent of the law regarding CAS exemptions.

C. Public Comments

The CAS Board published a Notice of Proposed Rulemaking (NPR) on November 19, 2012, proposing to revise the (b)(6) commercial item exemption to read: ''[c]ontracts and subcontracts for the acquisition of commercial items,'' (77 FR 69422). In response to the NPR, the CAS Board received comments from four entities, one of which supported the proposed rule without change and three of which raised concerns. A summary of concerns and the CAS Board's response are below.

1. *Lack of clarity.* Three commenters raised concern that deletion of the more detailed explanation of what contract types are exempt from CAS will increase confusion. One commenter stated that the change ''may be confusing to the inexperienced, including both contractors and Government representatives'' who may not immediately understand how to interpret the phrase ''contracts and subcontracts for the acquisition of commercial items'' without further explanation. This commenter suggested that the exemption include a specific cross reference to statute or regulation so that the reader could more easily determine the exempt contract types. Other commenters warned that a blanket exemption could lead to overpayment. One of these commenters admonished the Board on the need to preserve a more tailored exemption that continues to clarify that the exemption does not apply to specific contract types that involve reimbursement or pricing based on actual costs.

Response: The Board agrees that readers need to be made aware of the specific contracts that are covered by the exemption. This specificity will help ensure easy, clear, and consistent application. As explained above, the Board believes that reference to FAR 12.207, which identifies contract types that may be used to acquire commercial items should accomplish this objective. In this regard, the CAS Board notes that amendments to the CAS Board's authorizing statute made by section 820 of the National Defense Authorization Act for FY 2017 make clear that the Board bears a responsibility to ''minimize the burden on contractors while protecting the interests of the Federal Government.'' The Board believes this goal is shared by the FAR Council, especially in light of direction provided in Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, which directs agencies to ''manage costs associated with the governmental imposition of private expenditures required to comply with Federal regulations.''

The Board intends to monitor the effectiveness of this final rule in achieving the intent of the law regarding CAS exemptions and retains the right to change the approach in the future should any changes to FAR 12.207 that the Board believes are inconsistent with this objective occur.

2. *Disclosure statements.* Two commenters recommended the CAS Board develop Cost Accounting Standards and Disclosure Statement requirements for commercial item acquisitions, as Congress had required in the Clinger-Cohen Act. One of those commenters stated that such steps were needed before the permissible contract types are expanded to include certain cost type contracts.

Response: Creating CAS and Disclosure Statements for commercial item acquisitions would be outside the scope of this rulemaking effort. The CAS Board is aware of the direction contained in the Conference Report to the Federal Acquisition Streamlining Act to ''establish guidance, consistent with commercial accounting systems and practices, to ensure that contractors appropriately assign costs to contracts (other than firm, fixed-price contracts) that are covered by the exemption for contracts or subcontracts where the price negotiated is based on established catalog or market prices of commercial items sold in substantial quantities to the general public.'' That assessment was made by the CAS Board when promulgating the 1997 final rule. However, since the law currently prohibits the use of cost type contracts for the acquisition of commercial items, the Board believes there is little to be gained from developing and imposing Cost Accounting Standards and Disclosure Statement requirements at this time. However, the CAS Board continues to reserve the right to issue such cost accounting standards and disclosure statement requirements should the need arise in the future.

3. *Hybrid and indefinite-delivery-indefinite-quantity (IDIQ) contracts.* One commenter raised the question of how to determine whether CAS is triggered on a ''hybrid'' contract that contains contract line item numbers (CLINs) for both commercial items and non-commercial items where the total value of the contract exceeds the CAS applicability threshold. The commenter suggested that CAS be clarified to ensure CLINs for commercial items on a hybrid contract are not covered by CAS, irrespective of the value of the contract. The commenter further recommended clarification of the CAS triggers for IDIQ contracts, which are often used to acquire commercial items—in particular whether to value the contract based on the size of orders or the size of the umbrella contract.

Response: While issues related to the applicability of CAS to hybrid and IDIQ contracts are outside the scope of this rulemaking effort, the CAS Board takes note of these issues. The Board intends to review these issues more carefully to determine whether clarification of its rules is needed to ensure appropriate application of CAS coverage.

D. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35, Subchapter I) does not apply to this rulemaking, because this rule will impose no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq.* The purpose of this rule is to clarify the application of CAS to contracts for commercial items. In addition, this rule is consistent with the intent of the objectives of the ''Streamlined Applicability of Cost Accounting Standards'' set forth in Section 802 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65).

E. Executive Orders 12866 and 13771, the Congressional Review Act, and the Regulatory Flexibility Act

This rule provides technical clarification on the application of exemptions from CAS for commercial item acquisitions consistent with authorities in the Clinger-Cohen Act. By cross referencing FAR 12.207 and its enumeration of contract types authorized for the acquisition of commercial items, the CAS Board expects to eliminate disparities between the FAR and CAS Board rules that has created confusion for contractors and subcontractors. The economic impact on contractors and subcontractors is, therefore, expected to be minor. As a result, the Board has determined that this rule will not result in the promulgation of an ''economically significant rule'' under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be required, and the requirements of E.O. 13771, *Reducing Regulation and Controlling Regulatory Costs,* do not apply. For the same reason, this final rule is not a ''major rule'' under the Congressional Review Act, 5 U.S.C. Chapter 8. Finally, this rule does not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980, 5 U.S.C. Chapter 6.

List of Subjects in 48 CFR Part 9903

Cost Accounting Standards, Government procurement.

Lesley A. Field,

Acting Chair, Cost Accounting Standards Board.

For the reasons set forth in this preamble, 48 CFR part 9903 is amended as follows:

PART 9903—CONTRACT COVERAGE

■ 1. The authority citation for part 9903 continues to read as follows:

Authority: Pub. L. 111–350, 124 Stat. 3677, 41 U.S.C. 1502.

■ 2. Section 9903.201–1 is amended by revising paragraph (b)(6) to read as follows:

9903.201–1 CAS applicability.

* * * * *

(b) * * *

(6) Contracts and subcontracts authorized in 48 CFR 12.207 for the acquisition of commercial items.

* * * * *

[FR Doc. 2018–15176 Filed 7–16–18; 8:45 am]

BILLING CODE 3110–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180205129–8129–01]

RIN 0648–BH50

Atlantic Highly Migratory Species

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

ACTION: Final rule; technical amendments.

SUMMARY: This final rule makes editorial corrections amending the regulations for Atlantic highly migratory species (HMS). This final action will make the rules easier to use by making the cross-references in the regulations accurate, correcting grammatical and punctuation issues, and reformatting the regulations where needed to be consistent with **Federal Register** guidelines. The action also in several instances simplifies regulatory text by removing unnecessary language. The rule is administrative in nature and does not make any change with substantive effect to the regulations for HMS fisheries.

DATES: This final rule is effective on July 17, 2018.

ADDRESSES: Documents related to HMS fisheries management, such as the 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments, are available from the HMS Management Division website at *https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species* or upon request from the HMS Management Division at 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Lauren Latchford, Larry Redd, or Karyl Brewster-Geisz by phone at 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic HMS are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.,* (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.,* (ATCA). On October 2, 2006, NMFS published in the **Federal Register** (71 FR 58058) regulations implementing the 2006 Consolidated HMS FMP, which details the management measures for Atlantic HMS fisheries; these management measures have been amended or otherwise modified numerous times. The implementing regulations for Atlantic HMS are at 50 CFR part 635.

Background

The regulations at 50 CFR part 635 are promulgated under ATCA and the Magnuson-Stevens Act for the conservation and management of Atlantic highly migratory species, including species of tunas, billfish, sharks, and swordfish. In 2006, NMFS consolidated Atlantic HMS management into one fishery management plan, the 2006 Consolidated HMS FMP. Since then, NMFS has amended the FMP ten times through the fishery management plan amendment process and has made numerous other regulatory changes through framework actions. With this volume of regulatory action, some small grammatical and other errors have accumulated over time. As described in the sections below, this technical amendment corrects grammatical, punctuation, consistency, cross-reference errors in the HMS regulations at 50 CFR part 635. As explained in the Consistency section below, it also simplifies regulatory text by removing unnecessary language in several limited instances.

Typographical Corrections

The following grammatical, punctuation, or clerical errors (*i.e.,* typographical errors) in the HMS regulations are corrected by this final rule:

The definition of ''CK'' at § 635.2 does not spell out the words for which it is an acronym. This final action therefore adds ''Cleithrum to Caudal Keel'' before the acronym ''CK.'' The definition of ''Hammerhead Sharks'' at § 635.2 capitalizes the word ''shark(s).'' This final action changes to lowercase the word ''shark(s).'' The regulation at § 635.4(l)(2)(viii) does not capitalize the word ''tunas'' in the permit title, ''Atlantic Tunas Longline category LAP.'' This final action capitalizes the word ''Tunas.'' The regulation at § 635.5(b)(1)(i) has commas incorrectly after the words ''all'' and ''swordfish'' in the sentence, ''All reports must be species-specific and must include the required information about all, swordfish, and sharks received by the dealer.'' This final action removes the misplaced commas. The regulation at § 635.5(c)(2) is missing apostrophes and has extra parentheses in three places where the text should read, ''owner's designee.'' This final action adds apostrophes and removes the mistaken parentheses to correct this text. The regulations at § 635.6(b)(1)(ii) and (c)(1) do not capitalize the word ''Arabic.'' This final action corrects this error and capitalizes ‘‘Arabic.’’ The regulation at § 635.9(e)(4) has two commas rather than one after the words ‘‘trip’’ and ‘‘*e.g.*’’ This final action removes the extra commas. The regulation at § 635.14(b)(1) uses two different styles of quotation marks around the words ‘‘bluefin tuna ratio.’’ This final action changes the quotation marks so that they are the same and removes the colon within this regulation. The regulation at § 635.14(b)(1) incorrectly capitalizes the word ‘‘Swordfish.’’ This final action changes ‘‘Swordfish’’ to ‘‘swordfish.’’ The regulation at § 635.15(c)(3)(iv) is missing the word ‘‘year’’ and has an extra period at the end of the first sentence. This final action adds the word ‘‘year’’ and removes the extra period. Additionally, this regulation incorrectly capitalizes the words ‘‘Eastern Time.’’ This final action changes ‘‘Eastern Time’’ to ‘‘eastern time.’’ The regulation at § 635.21(g)(1) uses ‘‘NOAA Fisheries,’’ and the final action changes it to ‘‘NMFS’’ for consistency across the regulations. The regulation at § 635.27(d)(1) incorrectly uses the word ‘‘this’’ in the second sentence. This final action changes ‘‘this’’ to ‘‘the.’’ Additionally, this final action removes outdated language regarding an effective date of January 1, 2007 from § 635.27(d)(1). Additionally, for § 635.28(d), this final action capitalizes the lower case ‘‘n’’ for the species Northern albacore tuna.

The regulations at §§ 635.2, 635.4(e)(3) and (g)(2), 635.21(d)(2)(ii), 635.27(b)(1), 635.28(b)(1)(iv), and 635.34(c) do not consistently capitalize the word ‘‘Table’’ and lowercase the word ‘‘appendix’’ in the phrase, ‘‘Table 1 of appendix A to this part.’’ This final action corrects the references to ‘‘Table 1 of appendix A to this part’’ in §§ 635.2, 635.4(e)(3) and (g)(2), 635.21(d)(2)(ii), 635.27(b)(1), 635.28(b)(1)(iv), and 635.34(c) so that capitalization and phrasing are consistent throughout.

Limited Access Permit Corrections

The HMS regulations at § 635.2 currently provide a definition for ‘‘LAP,’’ defining it as an acronym for the ‘‘limited access permit.’’ The HMS regulations do not consistently use the acronym, however, and still refer to ‘‘limited access permits’’ or ‘‘limited access vessel permits’’ sometimes in the regulations. Consistency across the regulations would make them clearer. The regulations at §§ 635.4(a)(3), (d)(4), (e)(2) through (4), (f)(1), (2), (4), and (5), (h)(2), (l)(2)(ii)(A) through (C), (l)(2)(iii) through (ix), and (m)(2), 635.8(a)(1) and (3), (c)(2) and (3), 635.15(k) introductory text and (k)(4)(iii), 635.19(e)(4), 635.21(b)(1), (c)(3) and (4), (c)(5)(iii)(A) and (B), (g)(2) and (3), 635.27(c)(1)(i)(A) and (B), 635.28(a)(3), and 635.71(a)(53) and (e)(10) and (11) do not use the acronym ‘‘LAP’’ for ‘‘limited access permit.’’ This final action changes ‘‘limited access permit’’ to ‘‘LAP’’ so that the acronym defined at § 635.2 is used consistently across the HMS regulations. The regulations at §§ 635.15(k) and (l)(4)(iii) and 635.21(c)(5)(iii)(B) incorrectly use the word ‘‘permit’’ or ‘‘permitted’’ instead of the acronym ‘‘LAP’’ when referring to the Atlantic Tunas Longline category limited access permit. For consistency within the regulations referring to the Atlantic Tunas Longline category limited access permit, this final action changes the word ‘‘permit’’ or ‘‘permitted’’ to ‘‘LAP.’’ The regulations at §§ 635.4(l)(2)(iii) and 635.21(b)(1) incorrectly name a permit as ‘‘tuna longline LAPs.’’ This final action corrects the permit name to ‘‘Atlantic Tunas Longline category LAP.’’ The regulations at §§ 635.21(c)(5)(iii)(A) and 635.71(a)(40) and (b)(36) through (38), incorrectly list a permit name as ‘‘tunas Longline category permit.’’ This final action corrects the permit name to ‘‘Atlantic Tunas Longline category LAP.’’ The regulations at § 635.15(k) improperly exclude the word ‘‘category’’ from the permit name, ‘‘Atlantic Tunas Longline category LAP.’’ This final action corrects the error by adding the word ‘‘category.’’ The regulations at § 635.23(a)(2) incorrectly list the permit as ‘‘General category Atlantic Tunas permit.’’ This final action corrects the permit name to ‘‘Atlantic Tunas General category permit.’’ Additionally this final action removes language referring specifically to ‘‘one large medium or giant BFT per day’’ allowed to be caught or landed on days other than RFDs. Because NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five under cross reference § 635.23(a)(4), it is more clear to refer to the ‘‘daily retention limit in effect for that day.’’ The regulation at § 635.71(b)(20) incorrectly lists the relevant permit as ‘‘Purse Seine category Atlantic tuna permit.’’ This final action corrects the permit name to ‘‘Atlantic Tunas Purse Seine category LAP.’’

Cross References Corrections

This final action corrects the incorrect cross references found in the definitions and regulations at §§ 635.2 (definitions of ‘‘Display Permit’’ and ‘‘EFP’’), 635.4(a)(8) and (h)(1)(iii), 635.5(a)(5)(ii), 635.21(c)(5)(ii)(C)(*1*) and (c)(5)(iv), 635.28(b)(7), (c)(3), and (d), 635.31(d)(2), and 635.40(b)(1). Section 635.21(c)(5)(iv) references paragraphs (A), (B), (C), (G), (H), and (K) as specifying ‘‘[o]ther devices proposed for use as line clippers or cutters or de-hookers.’’ This final action adds references to paragraphs (I) and (J) to that list. Additionally, §§ 635.22(c)(1) and (5) and (d) and 635.23(a)(2) and (4), have cross references that are broadly referenced and need to be more specific to the correct provision under part 635. This action corrects those cross references by adding the specific cross reference location (*e.g.,* within § 635.22(c)(1), changing the reference from § 635.4 to § 635.4(e)).

Consistency Corrections

Regulations at §§ 635.2 (definition of ‘‘Exporter’’) and 635.4(a)(6) use a **Federal Register** citation format that is inconsistent with the citation format otherwise used in part 635. This final action revises the citation format for consistency purposes.

At § 635.4(c)(2), this final action changes the word ‘‘issued’’ to ‘‘with’’ to be more internally consistent.

At § 635.4(l)(2)(viii), this final action removes the word ‘‘an’’ to be more internally consistent.

The current regulations do not consistently refer to swordfish and shark LAPs, sometimes referring to them as ‘‘catch LAPs’’ and other times spelling out ‘‘limited access permit.’’ This inconsistency in terminology can lead to confusion. As such, this final action changes these swordfish and shark LAP references to be more internally consistent to clarify the regulations. Specifically, the regulations at § 635.4(l)(2)(viii) and (ix) use the phrase, ‘‘a directed or incidental LAP for swordfish, a directed or an incidental catch LAP for shark.’’ This final action will correct the phrase to, ‘‘a directed or incidental swordfish LAP, a directed or incidental shark LAP.’’ The regulations at § 635.4(l)(2)(viii) uses the phrase ‘‘a LAP for swordfish.’’ This final action corrects the phrase to ‘‘a swordfish LAP.’’ The regulations at § 635.4(l)(2)(viii) and (ix) uses the phrase ‘‘a directed or incidental catch shark LAP,’’ respectively. This final action corrects the phrase to ‘‘a directed or incidental shark LAP,’’ respectively. The regulations at § 635.4(l)(2)(ix) use the phrase ‘‘directed or incidental catch swordfish or shark LAP.’’ This final action will correct the phrase to ‘‘directed or incidental swordfish or shark LAP.’’ The regulation at § 635.22(f) uses the phrase ‘‘incidental or handgear limited access swordfish permit.’’ This final action will correct the phrase to ‘‘incidental or handgear swordfish LAP.’’

The definition of ''Fishing Year'' at § 635.2 includes incorrect language left over from past definitions. The fishing year for all tunas, sharks, billfish, and swordfish is January 1 through December 31, as reflected in the 2006 Consolidated HMS FMP. This final action removes this outdated text and simplifies the definition for tunas, sharks, billfish and swordfish to match the dates established in previous actions, reading ''January 1 through December 31.''

The first sentence at § 635.20(b) starts with the phrase, ''The size class of a BFT found with the head removed shall be determined using . . .'' This phrase, referring to a BFT that is ''found,'' is confusing and inconsistent with a similar regulation at § 635.20(f) (''For a swordfish that has its head naturally attached . . .''). This final action re-words the phrase found in § 635.20(b) to be less confusing and more consistent with the wording at § 635.20(f). With this change, § 635.20(b) will read, ''If the head of a BFT is no longer attached, the size class of the BFT shall be determined using . . .''

The regulation at § 635.40(b)(3) references 19 CFR 10.79, the ''Declaration of Master and Two Members of Crew on Entry of Products of American Fisheries.'' Section 10.79 no longer exists within title 19, and has instead been reserved. This final action removes language referencing this obsolete regulation and reserves this location. This change would not have any effect on the part 635 regulations since 19 CFR 10.79 has been amended and reserved.

Finally, the regulation at § 635.21(d)(1)(iii)(D) refers to out-of-date coordinates for the Charleston Deep Artificial Reef. This final action updates the old boundary coordinates for the Charleston Deep Artificial Reef to match the boundary changes that were recently made to the Charleston Deep Artificial Reef MPA via Snapper Grouper Amendment 36 (82 FR 29772, June 30, 2017).

Classification

The Assistant Administrator for Fisheries has determined that this final rule is necessary for the conservation and management of U.S. fisheries and that it is consistent with the Magnuson-Stevens Act, the 2006 Consolidated Atlantic HMS FMP and its amendments, ATCA, and other applicable law.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment are unnecessary and contrary to the public interest. This final rule makes only corrective, non-substantive changes to regulatory text, adds missing cross-references and/or corrects cross-references to HMS regulations, and in several instances, removes unnecessary language, and is solely administrative in nature. Therefore, public comment would serve no purpose and is unnecessary. Furthermore, it is in the public interest to revise the regulations as quickly as possible to reduce any potential confusion to the public of the regulatory requirements at 50 CFR part 635. Any delay in implementation would result in the continuation of this potential confusion. Thus, there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date.

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

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, and a proposed rule is not being published, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are inapplicable.

NMFS has determined that fishing activities conducted pursuant to this rule will not affect endangered and/or threatened species or critical habitat listed under the Endangered Species Act, or marine mammals protected by the Marine Mammal Protection Act, because the action is purely administrative in nature by making editorial corrections or clarifications to existing regulatory text, with no substantive changes or effects.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: July 9, 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 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.2, revise the definition of ''Atlantic Aggregated LCS,'' remove the definition of ''CK,'' add the definition of ''Cleithrum to Caudal Keel or CK,'' and revise the definitions of ''Display permit,'' ''EFP,'' ''Exporter,'' ''Fishing year,'' ''Gulf of Mexico Aggregated LCS,'' ''Hammerhead Shark(s),'' ''Highly migratory species (HMS),'' ''Large coastal shark (LCS),'' ''Non-blacknose SCS,'' ''Pelagic shark,'' ''Prohibited shark,'' ''Research LCS,'' ''Small coastal shark (SCS),'' and ''Smoothhound shark(s)'' to read as follows:

§ 635.2 Definitions.

* * * * *

Atlantic Aggregated LCS means one of the following species, or parts thereof, as listed in Table 1 of appendix A to this part: Atlantic blacktip, bull, lemon, nurse, silky, spinner, and tiger.

* * * * *

Cleithrum to Caudal Keel or *CK* measurement means the length of a fish measured along the body contour, *i.e.,* a curved measurement, from the point on the cleithrum that provides the shortest possible measurement along the body contour to the anterior portion of the caudal keel. The cleithrum is the semicircular bony structure at the posterior edge of the gill opening.

* * * * *

Display permit means a permit issued in order to catch and land HMS for the purpose of public display pursuant to § 635.32(d).

* * * * *

EFP means an exempted fishing permit issued pursuant to § 600.745 of this chapter or to § 635.32(c).

* * * * *

Exporter, for purposes of this subpart, is the principal party in interest, meaning the party that receives the primary benefit, monetary or otherwise, of the export transaction. For exports from the United States, the exporter is the U.S. principal party in interest, as identified in 15 CFR part 30. An exporter is subject to the requirements of this subpart, even if exports are exempt from statistical reporting requirements under 15 CFR part 30.

* * * * *

Fishing year means January 1 through December 31.

* * * * *

Gulf of Mexico Aggregated LCS means one of the following species, or parts thereof, as listed in Table 1 of appendix A to this part: Bull, lemon, nurse, silky, spinner, and tiger.

Hammerhead shark(s) means great, scalloped, and smooth hammerhead shark species, or parts thereof, as listed in Table 1 of appendix A to this part.

* * * * *

Highly migratory species (HMS) means bluefin, bigeye, yellowfin, albacore, and skipjack tunas; swordfish; sharks (listed in Table 1 of appendix A to this part); white marlin; blue marlin; sailfish; longbill spearfish; and roundscale spearfish.

* * * * *

Large coastal shark (LCS) means one of the species, or a part thereof, listed in heading A, Large Coastal Sharks, of Table 1 of appendix A to this part.

* * * * *

Non-blacknose SCS means one of the species, or part thereof, listed in heading B, Small Coastal Sharks, of Table 1 of appendix A to this part other than the blacknose shark.

* * * * *

Pelagic shark means one of the species, or a part thereof, listed in heading C, Pelagic Sharks, of Table 1 of appendix A to this part.

* * * * *

Prohibited shark means one of the species, or a part thereof, listed in heading D, Prohibited Sharks, of Table 1 of appendix A to this part.

* * * * *

Research LCS means one of the species, or part thereof, listed in heading A, Large Coastal Sharks, of Table 1 of appendix A to this part, other than sandbar sharks.

* * * * *

Small coastal shark (SCS) means one of the species, or a part thereof, listed in heading B, Small Coastal Sharks, of Table 1 of appendix A to this part.

* * * * *

Smoothhound shark(s) means one of the species, or part thereof, listed in heading E, Smoothhound Sharks, of Table 1 of appendix A to this part.

* * * * *

■ 3. In § 635.4, revise paragraphs (a)(3), (6), and (8), (c)(2), (d)(4), (e)(2) through (4), (f)(1), (2), (4), and (5), (g)(2), (h)(1)(iii), (h)(2), (l)(2)(ii)(A) through (C), (l)(2)(iii) through (ix), and (m)(2) to read as follows:

§ 635.4 Permits and fees.

* * * * *

(a)

* * * * *

(3) *Property rights.* LAPs or any other permit issued pursuant to this part do not represent either an absolute right to the resource or any interest that is subject to the takings provision of the Fifth Amendment of the U.S. Constitution. Rather, LAPs represent only a harvesting privilege that may be revoked, suspended, or amended subject to the requirements of the Magnuson-Stevens Act or other applicable law.

* * * * *

(6) *Sanctions and denials.* A permit issued under this section may be revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at 15 CFR part 904, subpart D.

* * * * *

(8) *Replacement.* NMFS may issue a replacement permit upon the request of the permittee. An application for a replacement permit will not be considered a new application. An appropriate fee, consistent with paragraph (a)(9) of this section, may be charged for issuance of the replacement permit.

* * * * *

(c) * * *

(2) A vessel with a valid Atlantic Tunas General category permit issued under paragraph (d) of this section or with a valid Swordfish General Commercial permit issued under paragraph (f) of this section may fish in a recreational HMS fishing tournament if the vessel has registered for, paid an entry fee to, and is fishing under the rules of a tournament that has registered with NMFS' HMS Management Division as required under § 635.5(d). When a vessel with a valid Atlantic Tunas General category permit or a valid Swordfish General Commercial permit is fishing in such a tournament, such vessel must comply with HMS Angling category regulations, except as provided in paragraphs (c)(3) through (5) of this section.

* * * * *

(d) * * *

(4) A person can obtain an Atlantic Tunas Longline category LAP for a vessel only if the vessel has been issued both a LAP for shark and a LAP, other than handgear, for swordfish. Atlantic Tunas Longline category LAPs may only be obtained through transfer from current owners consistent with the provisions under paragraph (l)(2) of this section.

* * * * *

(e) * * *

(2) The owner of vessels that fish for, take, retain, or possess the Atlantic oceanic sharks listed in headings A, B, or C of Table 1 of appendix A to this part with an intention to sell must obtain a Federal Atlantic commercial shark directed or incidental LAP or an HMS Commercial Caribbean Small Boat permit. The only valid Federal commercial shark directed and shark incidental LAPs are those that have been issued under the limited access program consistent with the provisions under paragraphs (l) and (m) of this section.

(3) A vessel owner issued or required to be issued a Federal Atlantic commercial shark directed or shark incidental LAP may harvest, consistent with the other regulations in this part, any shark species listed in headings A, B, or C of Table 1 of appendix A to this part.

(4) Owners of vessels that fish for, take, retain, or possess the Atlantic oceanic sharks listed in heading E, Smoothhound Sharks, of Table 1 of appendix A to this part with an intention to sell them must obtain a Federal commercial smoothhound permit. In addition to other permits issued pursuant to this section or other authorities, a Federal commercial smoothhound permit may be issued to a vessel alone or to a vessel that also holds either a Federal Atlantic commercial shark directed or incidental LAP.

(f) * * *

(1) Except as specified in paragraphs (n) and (o) of this section, the owner of a vessel of the United States used to fish for or take swordfish commercially from the management unit, or on which swordfish from the management unit are retained or possessed with an intention to sell, or from which swordfish are sold, must obtain an HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section, or one of the following swordfish permits: A swordfish directed LAP, swordfish incidental LAP, swordfish handgear LAP, or a Swordfish General Commercial permit. These permits cannot be held in combination with each other on the same vessel, except that an HMS Charter/Headboat permit with a commercial sale endorsement may be held in combination with a swordfish handgear LAP on the same vessel. It is a rebuttable presumption that the owner or operator of a vessel on which swordfish are possessed in excess of the recreational retention limits intends to sell the swordfish. (2) The only valid commercial Federal vessel permits for swordfish are the HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section (and only when on a non for-hire trip), the Swordfish General Commercial permit issued under paragraph (f) of this section, a swordfish LAP issued consistent with paragraphs (l) and (m) of this section, or permits issued under paragraphs (n) and (o) of this section.

* * * * *

(4) A directed or incidental swordfish LAP is valid only when the vessel has on board a valid shark LAP and a valid Atlantic Tunas Longline category LAP issued for such vessel.

(5) A Swordfish General Commercial permit may not be held on a vessel in conjunction with an HMS Charter/Headboat permit issued under paragraph (b) of this section, an HMS Angling category permit issued under paragraph (c) of this section, a swordfish LAP issued consistent with paragraphs (l) and (m) of this section, an Incidental HMS Squid Trawl permit issued under paragraph (n) of this section, or an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section. A vessel issued a Swordfish General Commercial open access permit for a fishing year shall not be issued an HMS Angling permit or an HMS Charter/Headboat permit for that same fishing year, regardless of a change in the vessel's ownership.

(g) * * *

(2) *Shark.* A dealer, as defined in § 600.10 of this chapter, must possess a valid federal Atlantic shark dealer permit to purchase, trade, or barter any Atlantic shark listed in Table 1 of appendix A to this part except as noted under paragraph (o) of this section.

* * * * *

(h) * * *

(1) * * *

(iii) NMFS may require an applicant to provide documentation supporting the application before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (a)(6) of this section.

* * * * *

(2) *LAPs for swordfish and shark.* See paragraph (l) of this section for transfers of LAPs for shark and swordfish. See paragraph (m) of this section for renewals of LAPs for shark and swordfish.

* * * * *

(l) * * *

(2) * * *

(ii) * * *

(A) The vessel baseline specifications are the respective specifications (length overall, gross registered tonnage, net tonnage, horsepower) of the first vessel that was issued an initial LAP or, if applicable, of that vessel's replacement owned as of May 28, 1999.

(B) Subsequent to the issuance of a swordfish handgear LAP, the vessel's horsepower may be increased, relative to the baseline specifications of the vessel initially issued the LAP, through refitting, replacement, or transfer. Such an increase may not exceed 20 percent of the baseline specifications of the vessel initially issued the LAP.

(C) Subsequent to the issuance of a swordfish handgear LAP, the vessel's length overall, gross registered tonnage, and net tonnage may be increased, relative to the baseline specifications of the vessel initially issued the LAP, through refitting, replacement, or transfer. An increase in any of these three specifications of vessel size may not exceed 10 percent of the baseline specifications of the vessel initially issued the LAP. This type of upgrade may be done separately from an engine horsepower upgrade.

(iii) No person or entity may own or control more than 5 percent of the vessels for which swordfish directed, shark directed, or Atlantic Tunas Longline category LAPs have been issued.

(iv) In order to transfer a swordfish, shark, or an Atlantic Tunas Longline category LAP to a replacement vessel, the owner of the vessel issued the LAP must submit a request to NMFS, at an address designated by NMFS, to transfer the LAP to another vessel, subject to requirements specified in paragraph (l)(2)(ii) of this section, if applicable. The owner must return the current valid LAP to NMFS with a complete application for a LAP, as specified in paragraph (h) of this section, for the replacement vessel. Copies of both vessels' U.S. Coast Guard documentation or state registration must accompany the application.

(v) For swordfish, shark, and Atlantic Tunas Longline category LAP transfers to a different person, the transferee must submit a request to NMFS, at an address designated by NMFS, to transfer the original LAP(s), subject to the requirements specified in paragraphs (l)(2)(ii) and (iii) of this section, if applicable. The following must accompany the completed application: The original LAP(s) with signatures of both parties to the transaction on the back of the permit(s) and the bill of sale for the permit(s). A person must include copies of both vessels' U.S. Coast Guard documentation or state registration for LAP transfers involving vessels.

(vi) For LAP transfers in conjunction with the sale of the permitted vessel, the transferee of the vessel and LAP(s) issued to that vessel must submit a request to NMFS, at an address designated by NMFS, to transfer the limited access permit(s) LAP(s), subject to the requirements specified in paragraphs (l)(2)(ii) and (iii) of this section, if applicable. The following must accompany the completed application: The original LAP(s) with signatures of both parties to the transaction on the back of the permit(s), the bill of sale for the LAP(s) and the vessel, and a copy of the vessel's U.S. Coast Guard documentation or state registration.

(vii) The owner of a vessel issued a LAP(s) who sells the permitted vessel but retains the LAP(s) must notify NMFS within 30 days after the sale of the change in application information in accordance with paragraph (i) of this section. If the owner wishes to transfer the LAP(s) to a replacement vessel, he/she must apply according to the procedures in paragraph (l)(2)(iv) of this section.

(viii) As specified in paragraph (f)(4) of this section, a directed or incidental swordfish LAP, a directed or incidental shark LAP, and an Atlantic Tunas Longline category LAP are required to retain swordfish for commercial purposes. Accordingly, a swordfish LAP obtained by transfer without either a directed or incidental shark LAP or an Atlantic Tunas Longline category LAP will not entitle an owner or operator to use a vessel to fish in the swordfish fishery.

(ix) As specified in paragraph (d)(4) of this section, a directed or incidental swordfish LAP, a directed or incidental shark LAP, and an Atlantic Tunas Longline category LAP are required to retain Atlantic tunas taken by pelagic longline gear. Accordingly, an Atlantic Tunas Longline category LAP obtained by transfer without either a directed or incidental swordfish or shark LAP will not entitle an owner or operator to use the permitted vessel to fish in the Atlantic tunas fishery with pelagic longline gear.

(m) * * *

(2) *Shark and swordfish permits.* A vessel owner must obtain the applicable LAP(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section and/or a Federal commercial smoothhound permit issued under paragraph (e) of this section; or an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, if: The vessel is used to fish for or take sharks commercially from the management unit; sharks from the management unit are retained or possessed on the vessel with an intention to sell; or sharks from the management unit are sold from the vessel. A vessel owner must obtain the applicable LAP(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section, a Swordfish General Commercial permit issued under paragraph (f) of this section, an Incidental HMS Squid Trawl permit issued under paragraph (n) of this section, an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, or an HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section,

which authorizes a Charter/Headboat to fish commercially for swordfish on a non for-hire trip subject to the retention limits at § 635.24(b)(4) if: The vessel is used to fish for or take swordfish commercially from the management unit; swordfish from the management unit are retained or possessed on the vessel with an intention to sell; or swordfish from the management unit are sold from the vessel. The commercial retention and sale of swordfish from vessels issued an HMS Charter/Headboat permit with a commercial sale endorsement is permissible only when the vessel is on a non for-hire trip. Only persons holding non-expired shark and swordfish LAP(s) in the preceding year are eligible to renew those LAP(s). Transferors may not renew LAP(s) that have been transferred according to the procedures in paragraph (l) of this section.

* * * * *

■ 4. In § 635.5, revise paragraphs (a)(5)(ii), (b)(1)(i), and (c)(2) to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(a) * * *

(5) * * *

(ii) Before fishing under a chartering arrangement, the owner of a fishing vessel subject to U.S. jurisdiction must apply for, and obtain, a chartering permit as specified in § 635.32(e) and (g). If a chartering permit is obtained, the vessel owner must submit catch information as specified in the terms and conditions of that permit. All catches will be recorded and counted against the applicable quota of the Contracting Party to which the chartering foreign entity is a member and, unless otherwise provided in the chartering permit, must be offloaded in the ports of the chartering foreign entity or offloaded under the direct supervision of the chartering foreign entity.

* * * * *

(b) * * *

(1) * * *

(i) Dealers that have been issued or should have been issued a Federal Atlantic BAYS tunas, swordfish, and/or shark dealer permit under § 635.4 must submit to NMFS all reports required under this section within the timeframe specified under paragraph (b)(1)(ii) of this section. BAYS tunas, swordfish, and sharks commercially-harvested by a vessel can only be first received by dealers that have been issued or should have been issued an Atlantic tunas, swordfish, and/or shark dealer permit under § 635.4. All federal Atlantic HMS dealers must provide a detailed report of all fish first received to NMFS within the period specified under paragraph (b)(1)(ii) of this section. All reports must be species-specific and must include the required information about all swordfish and sharks received by the dealer, including the required vessel information, regardless of where the fish were harvested or whether the harvesting vessel is permitted under § 635.4. For sharks, each report must specify the total weight of the carcass(es) without the fins for each species, and the total fin weight by grade for all sharks combined. Dealers are also required to submit ''negative'' reports, indicating no receipt of any species, within the timeframe specified under paragraph (b)(1)(ii) of this section if they did not first receive any fish during the reporting period. As stated in § 635.4(a)(6), failure to comply with these recordkeeping and reporting requirements may result in existing dealer permit(s) being revoked, suspended, or modified, and in the denial of any permit applications.

* * * * *

(c) * * *

(2) *Non-tournament landings.* The owner, or the owner's designee, of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category must report all non-tournament landings of Atlantic blue marlin, Atlantic white marlin, roundscale spearfish, and Atlantic sailfish, and all non-tournament and non-commercial landings of North Atlantic swordfish to NMFS by telephone to a number designated by NMFS, or electronically via the internet to an internet website designated by NMFS, or by other means as specified by NMFS, within 24 hours of that landing. For telephone landing reports, the owner, or the owner's designee, must provide a contact phone number so that a NMFS designee can call the vessel owner, or the owner's designee, for follow up questions and to confirm the reported landing. Regardless of how submitted, landing reports submitted to NMFS are not complete unless the vessel owner, or the owner's designee, has received a confirmation number from NMFS or a NMFS designee.

* * * * *

■ 5. In § 635.6, revise paragraphs (b)(1)(ii) and (c)(1) to read as follows:

§ 635.6 Vessel and gear identification.

* * * * *

(b) * * *

(1) * * *

(ii) In block Arabic numerals permanently affixed to or painted on the vessel in contrasting color to the background.

* * * * *

(c) * * *

(1) The owner or operator of a vessel for which a permit has been issued under § 635.4 and that uses handline, buoy gear, harpoon, longline, or gillnet, must display the vessel's name, registration number, or Atlantic Tunas, HMS Angling, or HMS Charter/Headboat permit number on each float attached to a handline, buoy gear, or harpoon, and on the terminal floats and high-flyers (if applicable) on a longline or gillnet used by the vessel. The vessel's name or number must be at least 1 inch (2.5 cm) in height in block letters or Arabic numerals in a color that contrasts with the background color of the float or high-flyer.

* * * * *

■ 6. In § 635.8, revise paragraphs (a)(1) and (3) and (c)(2) and (3) to read as follows:

§ 635.8 Workshops.

(a) * * *

(1) Both the owner and operator of a vessel that fishes with longline or gillnet gear must be certified by NMFS, or its designee, as having completed a workshop on the safe handling, release, and identification of protected species before a shark or swordfish LAP, pursuant to § 635.4(e) and (f), is renewed. For the purposes of this section, it is a rebuttable presumption that a vessel fishes with longline or gillnet gear if: Longline or gillnet gear is onboard the vessel; logbook reports indicate that longline or gillnet gear was used on at least one trip in the preceding year; or, in the case of a permit transfer to new owners that occurred less than a year ago, logbook reports indicate that longline or gillnet gear was used on at least one trip since the permit transfer.

* * * * *

(3) The owner of a vessel that fishes with longline or gillnet gear, as specified in paragraph (a)(1) of this section, is required to possess on board the vessel a valid protected species safe handling, release, and identification workshop certificate issued to that vessel owner. A copy of a valid protected species safe handling, release, and identification workshop certificate issued to the vessel owner for a vessel that fishes with longline or gillnet gear must be included in the application package to renew or obtain a shark or swordfish LAP.

* * * * *

(c) * * *

(2) If a vessel fishes with longline or gillnet gear as described in paragraph (a)(1) of this section, the vessel owner may not renew a shark or swordfish LAP, issued pursuant to § 635.4(e) or (f), without submitting a valid protected species workshop certificate with the permit renewal application. (3) A vessel that fishes with longline or gillnet gear as described in paragraph (a)(1) of this section and that has been, or should be, issued a valid LAP pursuant to § 635.4(e) or (f), may not fish unless a valid protected species safe handling, release, and identification workshop certificate has been issued to both the owner and operator of that vessel.

* * * * *

■ 7. In § 635.9, revise paragraph (e)(4) to read as follows:

§ 635.9 Electronic monitoring.

* * * * *

(e) * * *

(4) *Completion of trip.* Within 48 hours of completing a fishing trip, the vessel owner or operator must mail the removable EM system hard drive(s) containing all data to NMFS or NMFS-approved contractor, according to instructions provided by NMFS. The vessel owner or operator is responsible for using shipping materials suitable to protect the hard drives (*e.g.,* bubble wrap), tracking the package, and including a self-addressed mailing label for the next port of call so replacement hard drives can be mailed back to the vessel owner or operator. Prior to departing on a subsequent trip, the vessel owner or operator must install a replacement EM system hard drive(s) to enable data collection and video recording. The vessel owner or operator is responsible for contacting NMFS or NMFS-approved contractor if they have requested but not received a replacement hard drive(s) and for informing NMFS or NMFS-approved contractor of any lapse in the hard drive management procedures described in the VMP.

* * * * *

■ 8. In § 635.14, revise paragraph (b)(1) to read as follows:

§ 635.14 Performance metrics.

* * * * *

(b) * * *

(1) *Bluefin tuna interactions performance metric.* The basis for the bluefin tuna interactions performance metric is the ratio of the number of bluefin tuna interactions (*i.e.,* the number of fish landed, discarded dead, and discarded alive) to the total weight of designated target species landings (in pounds). For the purposes of this section, the designated target species are swordfish; yellowfin, bigeye, albacore, and skipjack tunas; dolphin; wahoo; and porbeagle, shortfin mako, and thresher sharks. A relatively low bluefin tuna interaction to designated species ratio ('bluefin tuna ratio') indicates that the vessel has successfully avoided catching bluefin tuna while fishing with pelagic longline gear in the performance metric period.

* * * * *

■ 9. In § 635.15, revise paragraphs (c)(3)(iv), (k) introductory text, and (k)(4)(iii) to read as follows:

§ 635.15 Individual bluefin tuna quotas.

* * * * *

(c) * * *

(3) * * *

(iv) *Temporary prohibition of leasing IBQ allocation.* No leasing of IBQ allocation is permitted between 6 p.m. eastern time on December 31 of one year and 2 p.m. eastern time on January 1 of the next year. This period is necessary to provide NMFS time to reconcile IBQ accounts, and update IBQ shares and allocations for the upcoming fishing year.

* * * * *

(k) *Initial IBQ shares.* During year one of implementation of the IBQ Program described in this section, NMFS will issue IBQ shares to eligible Atlantic Tunas Longline category LAP holders, as specified in paragraph (k)(1) of this section. New entrants to the pelagic longline fishery would need to obtain an Atlantic Tunas Longline category LAP, as well as other required LAPs, as described under § 635.4(l), and would need to lease IBQ allocations per paragraph (c) of this section if the LAPs acquired did not qualify for an initial IBQ share.

* * * * *

(4) * * *

(iii) *Items subject to IAD and appeal.* The only items subject to an IAD or appeal are: Initial IBQ share eligibility based on ownership of an active vessel with a valid Atlantic Tunas Longline category LAP combined with the required shark and swordfish LAPs; the accuracy of NMFS records regarding that vessel's amount of designated species landings and/or bluefin interactions; and correct assignment of target species landings and bluefin interactions to the vessel owner/permit holder. As described under paragraph (k)(1) of this section, the IBQ share formulas are based upon historical data associated with a permitted vessel. Because vessels may have changed ownership or permits may have been transferred during 2006 through 2012, the current owner of a permitted vessel may also appeal on the basis of historical changes in vessel ownership or permit transfers. Appeals based on hardship factors (*e.g.,* illness of vessel owner, divorce, etc.) will not be considered.

* * * * *

■ 10. In § 635.19, revise paragraph (e)(4) to read as follows:

§ 635.19 Authorized gears.

* * * * *

(e) * * *

(4) Except for persons aboard a vessel that has been issued a directed, incidental, or handgear swordfish LAP, a Swordfish General Commercial permit, an Incidental HMS squid trawl permit, or an HMS Commercial Caribbean Small Boat permit under § 635.4, no person may fish for North Atlantic swordfish with, or possess a North Atlantic swordfish taken by, any gear other than handline or rod and reel.

* * * * *

■ 11. In § 635.20, revise paragraph (b) to read as follows:

§ 635.20 Size limits.

* * * * *

(b) *BFT size classes.* If the head of a BFT is no longer attached, the size class of the BFT shall be determined using pectoral fin curved fork length (PFCFL) multiplied by a conversion factor of 1.35. The CFL, as determined by conversion of the PFCFL, will be the sole criterion for determining the size class of a beheaded BFT. The conversion factor may be adjusted after consideration of additional scientific information and fish measurement data, and will be made effective by filing notification of the adjustment with the Office of the Federal Register for publication.

* * * * *

■ 12. In § 635.21, revise paragraphs (b)(1), (c)(3) and (4), (c)(5)(ii)(C)(*1*), (c)(5)(iii)(A), (c)(5)(iii)(B) introductory text, (c)(5)(iv), (d)(1)(iii)(D), (d)(2)(ii), and (g)(1) through (3) to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(b) * * *

(1) All vessels that have pelagic or bottom longline gear onboard and that have been issued, or are required to have, a swordfish, shark, or Atlantic Tunas Longline category LAP for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must possess inside the wheelhouse the document provided by NMFS entitled

''Careful Release Protocols for Sea Turtle Release with Minimal Injury,'' and must also post inside the wheelhouse the sea turtle handling and release guidelines provided by NMFS.

* * * * *

(c) * * *

(3) A vessel that has been issued, or is required to have been issued, a LAP under this part may fish with pelagic longline gear in the Cape Hatteras gear restricted area described in paragraph (c)(2)(v) of this section, provided the vessel has been determined by NMFS to be ''qualified,'' (for the relevant year) using the performance metrics described in § 635.14.

(4) In the Gulf of Mexico, pelagic longline gear may not be fished or deployed from a vessel issued or required to have been issued a LAP under this part with live bait affixed to the hooks; and, a person aboard a vessel issued or required to have been issued a LAP under this part that has pelagic longline gear on board may not possess live baitfish, maintain live baitfish in any tank or well on board the vessel, or set up or attach an aeration or water circulation device in or to any such tank or well. For the purposes of this section, the Gulf of Mexico includes all waters of the U.S. EEZ west and north of the boundary stipulated at 50 CFR 600.105(c).

(5) * * *

(ii) * * *

(C) * * *

(*1*) Non-boated turtles should be brought close to the boat and provided with time to calm down. Then, it must be determined whether or not the hook can be removed without causing further injury. A front flipper or flippers of the turtle must be secured with an approved turtle control device from the list specified in paragraph (c)(2)(vii)(D) of this section.

* * * * *

(iii) * * *

(A) *Gangion length.* The length of any gangion on vessels that have pelagic longline gear on board and that have been issued, or are required to have, a swordfish, shark, or Atlantic Tunas Longline category LAP for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must be at least 10 percent longer than any floatline length if the total length of any gangion plus the total length of any floatline is less than 100 meters.

(B) *Hook size, type, and bait.* Vessels fishing outside of the NED gear restricted area, as defined at § 635.2, that have pelagic longline gear on board, and that have been issued, or are required to have, a swordfish, shark, or Atlantic Tunas Longline category LAP for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, are limited, at all times, to possessing on board and/or using only whole finfish and/or squid bait, and the following types and sizes of fishing hooks:

* * * * *

(iv) *Approval of sea turtle bycatch mitigation gear.* NMFS will file with the Office of the Federal Register for publication an initial list of required sea turtle bycatch mitigation gear that NMFS has approved as meeting the minimum design standards specified under paragraph (c)(5)(i) of this section. Other devices proposed for use, such as line clippers or cutters or dehookers, as specified under paragraphs (c)(5)(i)(A) through (C), (G), and (H) through (K) of this section, must be approved as meeting the minimum design standards before being used. NMFS will examine new devices, as they become available, to determine if they meet the minimum design standards, and will file with the Office of the Federal Register for publication notification of any new devices that are approved as meeting the standards.

* * * * *

(d) * * *

(1) * * *

(iii) * * *

(D) *Charleston Deep Artificial Reef.* Bounded by rhumb lines connecting, in order, the following points: 32°9.65′ N lat., 79°9.2′ W long.; 32°7.155′ N lat., 79°5.595′ W long.; 32°2.36′ N lat., 79°9.975′ W long.; 32°5.04′ N lat., 79°13.575′ W long.

* * * * *

(2) * * *

(ii) *Handling and release requirements.* Sea turtle bycatch mitigation gear, as required by paragraph (d)(2)(i) of this section, must be used to disengage any hooked or entangled sea turtle as stated in paragraph (c)(5)(ii) of this section. This mitigation gear should also be employed to disengage any hooked or entangled species of prohibited sharks as listed under heading D, Prohibited Sharks, of Table 1 of appendix A to this part, any hooked or entangled species of sharks that exceed the retention limits as specified in § 635.24(a), and any hooked or entangled smalltooth sawfish. In addition, if a smalltooth sawfish is caught, the fish should be kept in the water while maintaining water flow over the gills and the fish should be examined for research tags. All smalltooth sawfish must be released in a manner that will ensure maximum probability of survival, but without removing the fish from the water or any research tags from the fish.

* * * * *

(g) * * *

(1) Persons fishing with gillnet gear must comply with the provisions implementing the Atlantic Large Whale Take Reduction Plan, the Bottlenose Dolphin Take Reduction Plan, the Harbor Porpoise Take Reduction Plan, and any other relevant Take Reduction Plan set forth in §§ 229.32 through 229.35 of this title. If a listed whale is taken, the vessel operator must cease fishing operations immediately and contact NMFS as required under part 229 of this title.

(2) While fishing with a drift gillnet, a vessel issued or required to be issued a Federal Atlantic commercial shark LAP and/or a Federal commercial smoothhound permit must conduct net checks at least every 2 hours to look for and remove any sea turtles, marine mammals, Atlantic sturgeon, or smalltooth sawfish, and the drift gillnet must remain attached to at least one vessel at one end, except during net checks. Smalltooth sawfish must not be removed from the water while being removed from the net.

(3) While fishing with a sink gillnet, vessels issued or required to be issued a Federal Atlantic commercial shark LAP and/or a Federal commercial smoothhound permit must limit the soak time of the sink gillnet gear to no more than 24 hours, measured from the time the sink gillnet first enters the water to the time it is completely removed from the water. Smalltooth sawfish must not be removed from the water while being removed from the net.

* * * * *

■ 13. In § 635.22, revise paragraphs (c)(1) and (5), (d), and (f) introductory text to read as follows:

§ 635.22 Recreational retention limits.

* * * * *

(c) * * *

(1) The recreational retention limit for sharks applies to any person who fishes in any manner, except to persons aboard a vessel that has been issued a Federal Atlantic commercial shark vessel permit under § 635.4. The retention limit can change depending on the species being caught and the size limit under which they are being caught as specified under § 635.20(e). If a commercial Atlantic shark quota is closed under § 635.28(b), the recreational retention limit for sharks and no sale provision in paragraph (a) of this section may be applied to persons aboard a vessel issued a Federal Atlantic commercial shark vessel permit under § 635.4(e),

only if that vessel has also been issued an HMS Charter/Headboat permit with a shark endorsement under § 635.4(b) and is engaged in a for-hire fishing trip. A person on board a vessel that has been issued or is required to be issued a permit with a shark endorsement under § 635.4 may be required to use non-offset, corrodible circle hooks as specified in § 635.21(f) and (k) in order to retain sharks per the retention limits specified in this section.

* * * * *

(5) Sharks listed in Table 1 of appendix A to this part that are not listed in this section, must be released by persons aboard a vessel that has not been issued a Federal Atlantic commercial shark vessel permit under § 635.4(e).

* * * * *

(d) *Yellowfin tuna.* Three yellowfin tunas per person per day may be retained. Regardless of the length of a trip, no more than three yellowfin tuna per person may be possessed on board a vessel. The recreational retention limit for yellowfin tuna applies to a person who fishes in any manner, except to a person aboard a vessel issued an Atlantic Tunas vessel permit under § 635.4(d). The recreational retention limit for yellowfin tuna applies to persons, including captain and crew, aboard a vessel that has been issued an Atlantic HMS Charter/Headboat permit under § 635.4(b) only when the vessel is engaged in a for-hire trip.

* * * * *

(f) *North Atlantic swordfish.* The recreational retention limits for North Atlantic swordfish apply to persons who fish in any manner, except to persons aboard a vessel that has been issued an HMS Charter/Headboat permit with a commercial sale endorsement under § 635.4(b) and only when on a non for-hire trip; a directed, incidental or handgear swordfish LAP under § 635.4(e) and (f); a Swordfish General Commercial permit under § 635.4(f); an Incidental HMS Squid Trawl permit under § 635.4(n); or an HMS Commercial Caribbean Small boat permit under § 635.4(o).

* * * * *

■ 14. In § 635.23, revise paragraphs (a)(2) and (4) to read as follows:

§ 635.23 Retention limits for bluefin tuna.

* * * * *

(a) * * *

(2) On an RFD, no person aboard a vessel that has been issued an Atlantic Tunas General category permit may fish for, possess, retain, land, or sell a BFT of any size class, and catch-and-release or tag-and-release fishing for BFT under § 635.26(a) is not authorized from such vessel. On days other than RFDs, and when the General category is open, large medium or giant BFT may be caught and landed from such vessels up to the daily retention limit in effect for that day. NMFS will annually publish a schedule of RFDs in the **Federal Register**.

* * * * *

(4) To provide for maximum utilization of the quota for BFT, NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of five per vessel. Such increase or decrease will be based on the criteria provided under § 635.27(a)(8). NMFS will adjust the daily retention limit specified in paragraph (a)(2) of this section by filing an adjustment with the Office of the Federal Register for publication. In no case shall such adjustment be effective less than 3 calendar days after the date of filing with the Office of the Federal Register, except that previously designated RFDs may be waived effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct tag-and-release fishing for BFT under § 635.26(a).

* * * * *

■ 15. In § 635.27, revise the paragraphs (b)(1) introductory text, (c)(1)(i)(A) and (B), and (d)(1) to read as follows:

§ 635.27 Quotas.

* * * * *

(b) * * *

(1) *Commercial quotas.* The commercial quotas for sharks specified in this section apply to all sharks harvested from the management unit, regardless of where harvested. Sharks caught and landed commercially from state waters, even by fishermen without Federal shark permits, must be counted against the appropriate commercial quota. Any of the base quotas listed below, including regional and/or sub-regional base quotas, may be adjusted per paragraph (b)(2) of this section. Any sharks landed commercially as ''unclassified'' will be counted against the appropriate quota based on the species composition calculated from data collected by observers on non-research trips and/or dealer data. No prohibited sharks, including parts or pieces of prohibited sharks, which are listed under heading D, Prohibited Sharks, of Table 1 of appendix A to this part, may be retained except as authorized under § 635.32. For the purposes of this section, the boundary between the Gulf of Mexico region and the Atlantic region is defined as a line beginning on the east coast of Florida at the mainland at 25°20.4′ N. lat., proceeding due east. Any water and land to the south and west of that boundary is considered, for the purposes of quota monitoring and setting of quotas, to be within the Gulf of Mexico region. Any water and land to the north and east of that boundary, for the purposes of quota monitoring and setting of quotas, is considered to be within the Atlantic region.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) A swordfish from the North Atlantic stock caught prior to the directed fishery closure by a vessel for which a directed swordfish LAP, a swordfish handgear LAP, an HMS Commercial Caribbean Small Boat permit, a Swordfish General Commercial open access permit, or an HMS Charter/Headboat permit with a commercial sale endorsement (and only when on a non for-hire trip) has been issued or is required to have been issued is counted against the directed fishery quota. The total baseline annual fishery quota, before any adjustments, is 2,937.6 mt dw for each fishing year. Consistent with applicable ICCAT recommendations, a portion of the total baseline annual fishery quota may be used for transfers to another ICCAT contracting party. The annual directed category quota is calculated by adjusting for over- or under harvests, dead discards, any applicable transfers, the incidental category quota, the reserve quota and other adjustments as needed, and is subdivided into two equal semiannual periods: One for January 1 through June 30, and the other for July 1 through December 31.

(B) A swordfish from the North Atlantic swordfish stock landed by a vessel for which an incidental swordfish LAP, an incidental HMS Squid Trawl permit, an HMS Angling permit, or an HMS Charter/Headboat permit (and only when on a for-hire trip) has been issued, or a swordfish from the North Atlantic stock caught after the effective date of a closure of the directed fishery from a vessel for which a swordfish directed LAP, a swordfish handgear LAP, an HMS Commercial Caribbean Small Boat permit, a Swordfish General Commercial open access permit, or an HMS Charter/Headboat permit with a commercial sale endorsement (when on a non for-hire trip) has been issued, is counted against the incidental category quota. The annual incidental category quota is 300 mt dw for each fishing year.

* * * * *

(d) * * *

(1) Unless adjusted under paragraph (d)(2) of this section or by an ICCAT recommendation, the annual landings limit is 250 Atlantic blue and white marlin, combined. Annual landings of roundscale spearfish are also included to the blue and white marlin annual landings limit. Should the U.S. recreational Atlantic marlin landing limit be adjusted by an ICCAT recommendation, NMFS will file a notice identifying the new landing limit with the Office of the Federal Register for publication prior to the start of the next fishing year or as early as possible.

* * * * *

■ 16. In § 635.28, revise paragraphs (a)(3) introductory text, (b)(1)(iv), (b)(7), (c)(3), and (d) to read as follows:

§ 635.28 Fishery closures.

* * * * *

(a) * * *

(3) When the Atlantic Tunas Longline category quota is reached, projected to be reached, or exceeded, or when there is high uncertainty regarding the estimated or documented levels of bluefin tuna catch, NMFS will file a closure action with the Office of the **Federal Register** for publication. On and after the effective date and time of such action, for the remainder of the fishing year or for a specified period as indicated in the closure action, vessels that have been issued or are required to have a LAP under § 635.4 and that have pelagic longline gear onboard are prohibited from leaving port, regardless of the amount of bluefin tuna quota allocation remaining to each vessel or the amount of fishery quota remaining for other species. In addition to providing notice in the **Federal Register**, NMFS will also notify vessels of any closures and their timing via VMS and may use other electronic methods, such as email. Vessels would be required to return to port prior to the closure date/time. When considering whether to close or reopen the Longline category quota, NMFS may consider the following factors:

* * * * *

(b) * * *

(1) * * *

(iv) The species is a prohibited species as listed under heading D, Prohibited Species of Table 1 of appendix A to this part; or

* * * * *

(7) If the Atlantic Tunas Longline category quota is closed as specified in paragraph (a)(3) of this section, vessels that have pelagic longline gear on board cannot possess, retain, land, or sell sharks.

(c) * * *

(3) *Bluefin tuna Longline category closure.* If the Atlantic Tunas Longline category quota is closed as specified in paragraph (a)(3) of this section, vessels that have pelagic longline gear on board cannot possess or land any North Atlantic swordfish or bluefin tuna.

(d) *Northern albacore tuna.* When the annual fishery quota specified in § 635.27(e) is reached, or is projected to be reached, NMFS will file a closure action with the Office of the Federal Register for publication. When the fishery for Northern albacore tuna is closed, Northern albacore tuna may not be retained. If the Atlantic Tunas Longline category quota is closed as specified in paragraph (a)(3) of this section, vessels that have pelagic longline gear on board cannot possess or land any Northern albacore tuna.

■ 17. In § 635.31, revise paragraph (d)(2) to read as follows:

§ 635.31 Restrictions on sale and purchase.

* * * * *

(d) * * *

(2) Atlantic swordfish dealers may first receive a swordfish harvested from the Atlantic Ocean only from an owner or operator of a fishing vessel that has a valid commercial permit for swordfish issued under this part, and only if the dealer has submitted reports to NMFS according to reporting requirements of § 635.5(b)(1)(ii). Atlantic swordfish dealers may first receive a swordfish from a vessel that has pelagic longline gear onboard only if the Atlantic Tunas Longline category has not been closed, as specified in § 635.28(a)(3).

■ 18. In § 635.34, revise the introductory text of paragraph (c) to read as follows:

§ 635.34 Adjustment of management measures.

* * * * *

(c) NMFS may add species to the prohibited shark species group specified in heading D, Prohibited Sharks, of Table 1 of appendix A to this part if, after considering the criteria in paragraphs (c)(1) through (4) of this section, the species is determined to meet at least two of the criteria. Alternatively, NMFS may remove species from the prohibited shark species group and place them in the appropriate shark species group in Table 1 of appendix A if, after considering the criteria in paragraphs (c)(1) through (4) of this section, NMFS determines the species only meets one criterion.

* * * * *

■ 19. In § 635.40, revise the introductory text of paragraph (b)(1) and remove and reserve paragraph (b)(3) to read as follows:

§ 635.40 Restrictions to enhance conservation.

* * * * *

(b) * * *

(1) For the purposes of paragraph (a) of this section and section 971d(6)(a) of ATCA, a shipment of fish in any form of the species under regulation or under investigation by ICCAT offered for entry, directly or indirectly, from a country named in a finding filed with the Office of the Federal Register for publication under paragraph (a) of this section is eligible for entry if the shipment is accompanied by a completed ATCA COE attached to the invoice certifying that the fish in the shipment:

* * * * *

■ 20. In § 635.71 revise paragraphs (a)(53), (b)(20), (36) through (38), and (40), and (e)(10) and (11) to read as follows:

§ 635.71 Restrictions on sale and purchase.

* * * * *

(a) * * *

(53) Fish for, catch, possess, retain, or land an Atlantic swordfish using, or captured on, ‘‘buoy gear’’ as defined at § 635.2, unless the vessel owner has been issued a swordfish directed limited access 125 permit or a swordfish handgear LAP in accordance with § 635.4(f) or a valid HMS Commercial Caribbean Small Boat permit in accordance with § 635.4(o).

* * * * *

(b) * * *

(20) Approach to within 100 yd (91.5 m) of the cork line of a purse seine net used by a vessel fishing for Atlantic tuna, or for a purse seine vessel to approach to within 100 yd (91.5 m) of a vessel actively fishing for Atlantic tuna, except that two vessels that have Atlantic Tunas Purse Seine category LAPs may approach closer to each other.

* * * * *

(36) Possess J-hooks onboard a vessel that has pelagic longline gear onboard, and that has been issued, or is required to have, a swordfish, shark, or Atlantic Tunas Longline category LAP for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, except when green-stick gear is onboard,

as specified at § 635.21(c)(2)(vii)(A) and (c)(5)(iii)(B)(*3*).

(37) Use or deploy J-hooks with pelagic longline gear from a vessel that has been issued, or is required to have, a swordfish, shark, or Atlantic Tunas Longline category LAP for use in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico, as specified in § 635.21(c)(5)(iii)(B).

(38) As specified in § 635.21(c)(5)(iii)(B)(*3*), possess more than 20 J-hooks onboard a vessel that has been issued, or is required to have, a swordfish, shark, or Atlantic Tunas Longline category LAP for use in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico, when possessing onboard both pelagic longline gear and green-stick gear as defined in § 635.2.

* * * * *

(40) Possess, use, or deploy J-hooks smaller than 1.5 inch (38.1 mm), when measured in a straight line over the longest distance from the eye to any part of the hook, when fishing with or possessing green-stick gear onboard a vessel that has been issued, or is required to have, a swordfish, shark, or Atlantic Tunas Longline category LAP for use in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico, as specified at § 635.21(c)(5)(iii)(B)(*3*) or (c)(2)(vii)(A).

* * * * *

(e) * * *

(10) Fish for, catch, possess, retain, or land an Atlantic swordfish using, or captured on, ‘‘buoy gear’’ as defined at § 635.2, unless, as specified in § 635.19(e)(3), the vessel owner has been issued a swordfish directed LAP or a swordfish handgear LAP in accordance with § 635.4(f) or a valid HMS Commercial Caribbean Small Boat permit in accordance with § 635.4(o).

(11) As the owner of a vessel permitted, or required to be permitted, in the swordfish directed, swordfish handgear LAP category, or issued a valid HMS Commercial Caribbean Small Boat permit and utilizing buoy gear, to possess or deploy more than 35 individual floatation devices, to deploy more than 35 individual buoy gears per vessel, or to deploy buoy gear without affixed monitoring equipment, as specified at § 635.21(h).

* * * * *

[FR Doc. 2018–14916 Filed 7–16–18; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 83, No. 137

Tuesday, July 17, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0554; Product Identifier 2018–NM–064–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A318 series airplanes; Model A319 series airplanes; Model A320 series airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –253N, and –271N airplanes. This proposed AD was prompted by a revision of an airworthiness limitation item (ALI) document, which requires more restrictive maintenance requirements and airworthiness limitations. This proposed AD would require revising the maintenance or inspection program, as applicable, to incorporate new maintenance requirements and airworthiness limitations. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by August 31, 2018.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this NPRM, contact Airbus, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0554; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0554; Product Identifier 2018–NM–064–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this NPRM.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017–0168, dated September 7, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A318 series airplanes; Model A319 series airplanes; Model A320 series airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –253N, and –271N airplanes. The MCAI states:

> The airworthiness limitations for Airbus A320 family aeroplanes are currently defined and published in Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) documents. The airworthiness limitations applicable to the Certification Maintenance Requirements (CMR), which are approved by EASA, are published in ALS Part 3.
>
> The instructions contained in the ALS Part 3 have been identified as mandatory actions for continued airworthiness. Failure to comply with these instructions could result in an unsafe condition.
>
> Previously, EASA issued AD 2016–0092 [which corresponds to FAA AD 2017–25–04, Amendment 39–19118 (82 FR 58098, December 11, 2017) (''AD 2017–25–04'')], to require accomplishment of all maintenance tasks as described in ALS Part 3 at Revision 03. The new ALS Part 3 Revision 05 (hereafter referred to as ''the ALS'' in this [EASA] AD) includes new and/or more restrictive requirements and extends the applicability to model A320–251N, A320–271N, A321–251N, A321–253N and A321–271N aeroplanes.
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2016–0092, which is superseded, and requires accomplishment of all maintenance tasks as described in the ALS.

The unsafe condition is a safety-significant latent failure (that is not annunciated), which, in combination with one or more other specific failures or events, could result in a hazardous or catastrophic failure condition. You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0554.

Relationship Between Proposed AD and AD 2017–25–04

This NPRM does not propose to supersede AD 2017–25–04. Rather, we have determined that a stand-alone AD would be more appropriate to address the changes in the MCAI. This proposed AD would require revising the maintenance or inspection program, as applicable, to incorporate new maintenance requirements and airworthiness limitations. Accomplishment of the proposed actions would then terminate all of the requirements of AD 2017–25–04.

Related Service Information Under 1 CFR Part 51

Airbus has issued Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 3, Certification Maintenance Requirements (CMR), Revision 05, dated April 6, 2017. The service information describes maintenance instructions and airworthiness limitations, including updated inspections and intervals to be incorporated into the maintenance or inspection program. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of these same type designs.

Proposed AD Requirements

This proposed AD would require revising the maintenance or inspection program to incorporate new or revised airworthiness limitation requirements, except as discussed under ‘‘Differences Between this Proposed AD and the MCAI.’’

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j)(1) of this proposed AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Airworthiness Limitations Based on Type Design

The FAA recently became aware of an issue related to the applicability of ADs that require incorporation of an ALS revision into an operator's maintenance or inspection program.

Typically, when these types of ADs are issued by civil aviation authorities of other countries, they apply to all airplanes covered under an identified type certificate (TC). The corresponding FAA AD typically retains applicability to all of those airplanes.

In addition, U.S. operators must operate their airplanes in an airworthy condition, in accordance with 14 CFR 91.7(a). Included in this obligation is the requirement to perform any maintenance or inspections specified in the ALS, and in accordance with the ALS as specified in 14 CFR 43.16 and 91.403(c), unless an alternative has been approved by the FAA.

When a type certificate is issued for a type design, the specific ALS, including the current revision in effect, is a part of that type design, as specified in 14 CFR 21.31(c).

The sum effect of these operational and maintenance requirements is an obligation to comply with the ALS revision defined in the type design referenced in the manufacturer's conformity statement. This obligation may introduce a conflict with an AD that requires a specific ALS revision if new airplanes are delivered with a later revision as part of their type design. Note: When a new airplane is delivered with a later ALS revision, the revised ALS must correct the unsafe condition associated with an existing AD, as specified in 14 CFR 21.21(b)(2).

To address this conflict, the FAA has approved alternative methods of compliance (AMOCs) that allow operators to incorporate the most recent ALS revision (*i.e.,* a later revision) into their maintenance/inspection programs, in lieu of the earlier ALS revision required by the AD. This eliminates the conflict and enables the operator to comply with both the AD and the type design.

However, compliance with AMOCs is normally optional, and we recently became aware that some operators choose to retain the AD-mandated ALS revision in their fleet-wide maintenance/inspection programs, including those for new airplanes delivered with later ALS revisions, to help standardize the maintenance of the fleet. To ensure that operators comply with the applicable ALS revision for newly delivered airplanes containing a later revision than that specified in an AD, we plan to limit the applicability of ADs that mandate ALS revisions to those airplanes that are subject to an earlier revision of the ALS, either as part of the type design or as mandated by an earlier AD.

This proposed AD therefore would apply to Airbus Model A318 series airplanes; Model A319 series airplanes; Model A320 series airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –253N, and –271N airplanes with an original certificate of airworthiness or original export certificate of airworthiness that was issued on or before the date of the ALS revision identified in this proposed AD. Operators of airplanes with an original certificate of airworthiness or original export certificate of airworthiness issued after that date must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet.

Difference Between This Proposed AD and the MCAI

The MCAI specifies that if there are findings from the ALS inspection tasks, corrective actions must be accomplished in accordance with Airbus maintenance documentation. However, this proposed AD does not include that requirement. Operators of U.S.-registered airplanes are required by general airworthiness and operational regulations to perform maintenance using methods that are acceptable to the FAA. We consider those methods to be adequate to address any corrective actions necessitated by the findings of ALS inspections required by this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 1,250 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

We have determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although we recognize that this number may vary from operator to operator. In the past, we have estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), we have determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, we estimate the total cost per operator to be

$7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2018–0554; Product Identifier 2018–NM–064–AD.

(a) Comments Due Date

We must receive comments by August 31, 2018.

(b) Affected ADs

This AD affects AD 2017–25–04, Amendment 39–19118 (82 FR 58098, December 11, 2017) (''AD 2017–25–04'').

(c) Applicability

This AD applies to the Airbus airplanes identified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD, certificated in any category, with an original certificate of airworthiness or original export certificate of airworthiness issued on or before April 6, 2017.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, and –271N airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –253N, and –271N airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a revision of an airworthiness limitation item (ALI) document, which requires more restrictive maintenance requirements and airworthiness limitations. We are issuing this AD to address a safety-significant latent failure (that is not annunciated), which, in combination with one or more other specific failures or events, could result in a hazardous or catastrophic failure condition.

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 90 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information specified in Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 3, Certification Maintenance Requirements (CMR), Revision 05, dated April 6, 2017 (''ALS Part 3 CMR, R5''). The initial compliance time for accomplishing the tasks specified in ALS Part 3 CMR, R5, is at the applicable time specified in ALS Part 3 CMR, R5, or within 90 days after the effective date of this AD, whichever occurs later.

(h) Terminating Actions for AD 2017–25–04

Accomplishing the actions required by paragraph (g) of this AD terminates all of the requirements of AD 2017–25–04.

(i) No Alternative Actions or Intervals

After the maintenance or inspection program, as applicable, has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.*

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(ii) AMOCs applicable previously for AD 2017–25–04 or AD 2014–22–08, Amendment 39–18013 (79 FR 67042, November 12, 2014) that require incorporation of ALS Part 3 CMR, R5, are considered approved as AMOCs for the corresponding provisions of this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by The Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD

2017–0168, dated September 7, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0554.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

(3) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on June 19, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–13781 Filed 7–16–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0582; Product Identifier 2018–NM–085–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); removal of airworthiness directive (AD).

SUMMARY: We propose to remove AD 93–14–19, which applies to certain The Boeing Company Model 767–200 and –300 series airplanes. AD 93–14–19 requires inspections for disbonding of the trailing edge wedge of the leading edge slat; and repair, if necessary. Since we issued AD 93–14–19, an updated stability and control analysis showed that the worst-case scenario of a trailing edge wedge disbond in-flight would not adversely affect the controllability of the airplane. Accordingly, we propose to remove AD 93–14–19.

DATES: We must receive comments on this proposed AD by August 31, 2018.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0582; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposal, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3524; email: *wayne.lockett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0582; Product Identifier 2018–NM–085–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued AD 93–14–19, Amendment 39–8644 (58 FR 41177, August 3, 1993) (''AD 93–14–19''), for certain The Boeing Company Model 767–200 and -300 series airplanes. AD 93–14–19 requires visual inspections and either ''Coin Tap'' inspections or ultrasonic inspections for disbonding of the trailing edge wedge of the leading edge slat, and repair, if necessary. AD 93–14–19 resulted from reports of wedge damage or disbonding; in two cases the damage resulted in loss of a portion of the trailing edge wedge. The trailing edge wedge disbonding was caused by moisture ingression at the wedge end seals and in the skin bonds along the spar chords. Moisture in the aluminum honeycomb core would cause corrosion that would eventually result in disbonding between the skin and the aluminum honeycomb core. We issued AD 93–14–19 to prevent the loss of a trailing edge wedge, which could result in reduced maneuver margins, reduced speed margins to stall, and unexpected roll before stall warning, all of which would adversely affect the controllability of the airplane.

Actions Since AD 93–14–19 Was Issued

Since we issued AD 93–14–19, an updated stability and control analysis showed that the worst-case scenario of a trailing edge wedge disbond in-flight would not adversely affect the controllability of the airplane. Simulation analysis shows that the airplane has sufficient lateral control up to the stick shaker to counter the rolling moment caused by a trailing edge wedge loss, at all flap settings. Therefore, the unsafe condition no longer exists on these products worldwide.

FAA's Conclusions

Upon further consideration, we have determined that AD 93–14–19 must be removed. Accordingly, this proposed AD would remove AD 93–14–19. Removal of AD 93–14–19 would not preclude the FAA from issuing another related action or commit the FAA to any course of action in the future.

Related Costs of Compliance

AD 93–14–19 affects approximately 180 airplanes of U.S. registry. The estimated costs for the actions required by AD 93–14–19 for U.S. operators is $79,200, or $440 per airplane. Removing AD 93–14–19 would eliminate those costs.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority.

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

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

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) AD 93–14–19, Amendment 39–8644 (58 FR 41177, August 3, 1993), and adding the following new AD:

The Boeing Company: Docket No. FAA–2018–0582; Product Identifier 2018–NM–085–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by August 31, 2018.

(b) Affected ADs

This AD removes AD 93–14–19, Amendment 39–8644 (58 FR 41177, August 3, 1993).

(c) Applicability

This AD applies to The Boeing Company Model 767 series airplanes, certificated in any category, line numbers 1 through 488 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Related Information

For more information about this AD, contact Wayne Lockett, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3524; email: *wayne.lockett@faa.gov.*

Issued in Des Moines, Washington, on June 22, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–14398 Filed 7–16–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0199; Airspace Docket No. 18–ANE–3]

RIN 2120–AA66

Proposed Amendment of Class E Airspace, Belfast, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace extending upward from 700 feet above the surface at Belfast Municipal Airport, Belfast, ME, to accommodate airspace reconfiguration due to the decommissioning of the Belfast non-directional radio beacon and cancellation of the NDB approach. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at this airport. This action also would update the geographic coordinates of this airport.

DATES: Comments must be received on or before August 31, 2018.

ADDRESSES: Send comments on this proposal to: The U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: (800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2018–0199; Airspace Docket No. 18–ANE–3, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.*

FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC, 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at Belfast Municipal Airport, Belfast, NH, to support IFR operations at this airport.

Comments Invited

Interested persons are invited to comment on this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (Docket No. FAA–2018–0199 and Airspace Docket No. 18–ANE–3) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for the address and phone number.) You may also submit comments through the internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ‘‘Comments to FAA Docket No. FAA–2018–0199; Airspace Docket No. 18–ANE–3.’’ The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA proposes an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to modify Class E airspace extending upward from 700 feet or more above the surface within an 9.4-mile radius (increased from a 6.4-mile radius) of Belfast Municipal Airport, Belfast, NH, due to the decommissioning of the Belfast NDB, and cancellation of the NDB approach. The airspace redesign would enhance the safety and management of IFR operations at the airport. The geographic coordinates of the airport also would be adjusted to coincide with the FAAs aeronautical database.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ‘‘significant regulatory action'' under Executive Order 12866; (2) is not a ‘‘significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ‘‘Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017, is amended as follows:

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

* * * * *

ANE ME E5 Belfast, ME [Amended]

Belfast Municipal Airport, ME
(Lat. 44°24′33″ N, long. 69°00′43″ W)

That airspace extending upward from 700 feet above the surface within a 9.4-mile radius of Belfast Municipal Airport.

Issued in College Park, Georgia, on July 10, 2018.

Ryan W. Almasy,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2018–15153 Filed 7–16–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–102951–16]

RIN 1545–BN36

Filing Requirements for Information Returns Required on Magnetic Media (Electronically); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of proposed rulemaking.

SUMMARY: This document contains a correction to notice of proposed rulemaking (REG–102951–16) that was published in the **Federal Register** on Thursday, May 31, 2018 (83 FR 24948). The proposed regulations are relating to amending rules for determining whether information returns must be filed by using magnetic media (electronically).

DATES: Written or electronic comments and request for a public hearing for the notice of proposed rulemaking at 83 FR 24948, May 31, 2018, are still being accepted and must be received by July 30, 2018.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Michael Hara at (202) 317–6845; concerning the submission of comments and request for a public hearing, Regina L. Johnson, (202) 317–5177 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is subject of this document is under section 6011 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–102951–16) contains an error that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, in the notice of proposed rulemaking (REG–102951–16) that is subject to FR Doc. 2018–11749, beginning on page 24948 in the issue of May 31, 2018, make the following correction in the **SUPPLEMENTARY INFORMATION** section. On page 24949 in the first column, under the caption ‘‘Explanation of Provisions’’, the last line from the bottom of the second full paragraph, the language ‘‘§ 301.6011–2 (c)(1)(iv), Example 4.’’ is corrected to read ‘‘§ 301.6011–2 (b)(4).’’.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2018–15164 Filed 7–16–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0343]

RIN 1625–AA00

Safety Zone, S99 Alford Street Bridge—Emergency Grid Replacement Project, Mystic River, Charlestown and Everett, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for the navigable waters within 150-yards of the S99 Alford Street Bridge, at mile 1.4 on the Mystic River between Charlestown and Everett, Massachusetts from October 1, 2018 through April 30, 2019. The safety zone is necessary to protect personnel, vessels and the marine environment from potential hazards created during the emergency replacement of the steel grid deck on all four bascule spans of the S99 Alford Street Bridge. This proposed rule would prohibit vessels and persons from being in the safety zone unless authorized by the Captain of the Port Boston or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before August 16, 2018.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0343 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ‘‘Public Participation and Request for Comments’’ portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mark Cutter, Waterways Management Division, U.S. Coast Guard Sector Boston, telephone 617–223–4000, email *Mark.E.Cutter@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On April 6, 2018, the City of Boston notified the Coast Guard that the Massachusetts Department of Transportation's Highways Division will be conducting emergency repairs to the S99 Alford Street Drawbridge at mile 1.4 on the Mystic River between Charlestown and Everett Massachusetts from May 2018 through the summer of 2019. The emergency repairs consist of replacing the steel grid bridge decking on all four bascule spans. To complete these repairs by the summer of 2019 and still maintain regional transportation, each side span of the bascule bridge will need to be closed at different times. To make the necessary repairs, workers will need to use barges in the waterway underneath the bridge span to access the side spans. Bridge span closures and use of the waterway underneath the bridge to effectuate the repairs are scheduled to commence on October 1, 2018, and be completed by April 30, 2019.

Hazards from bridge span closures and use of the waterway underneath include heavy lift operations, falling equipment and materials, and construction vessels. The Captain of the Port (COTP) Boston has determined that potential hazards associated with the bridge repairs would be a safety concern for anyone in or on Mystic River waters within 150-yards of the bridge. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP Boston or a designated representative. The Coast Guard will notify the public through the Massachusetts Bay Harbor Safety Committee meetings, Boston's Port Operators Group meetings, and Local Notice to Mariners. Moreover, the Coast Guard would issue a Safety Marine Information Broadcast via marine channel 16 (VHF–FM) fourteen (14) days in advance of the commencement of the Safety Zone. If the project is completed before April 30, 2019, enforcement of the safety zone will be suspended and notice given to the public to the greatest extent possible.

The purpose of this rulemaking is to protect personnel, vessels and the marine environment from potential hazards created during repairs on the

S99 Alford Street Bridge, at mile 1.4 on the Mystic River between Charlestown and Everett Massachusetts. The Coast Guard proposes this rulemaking is under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The Coast Guard proposes to establish a safety zone starting at 12:01 a.m. on October 1, 2018, and to make it effective to 11:59 p.m. on April 30, 2019. The safety zone would cover all navigable waters within 150-yards of the S99 Alford Street Bridge, at mile 1.4 on the Mystic River between Charlestown and Everett Massachusetts. The duration of the zone is intended to ensure the safety of vessels, the maritime public, construction workers, and these navigable waters during the repairs on the S99 Alford Street Bridge over the main channel of the Mystic River. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP Boston or a designated representative.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. We expect the adverse economic impact of this proposed rule to be minimal since we will provide ample notice of the safety zone effective dates and vessels will be able to enter safety zone when construction equipment is not occupying the channel. Although this regulation may have some adverse impact on the public, the potential impact will be minimal because boating season for vessels on the Mystic River usually concludes around mid-October and consequently the amount of traffic in this waterway during the effective period for the safety zone is limited.

This safety zone is of similar dimension and a shorter duration to the one established in 2011 (73916 FR/Vol. 77, NO. 239) for the original rehabilitation of the bridge. The regulatory text we are proposing appears at the end of this document.

Notification of the emergency repairs to the Alford Street Drawbridge and the associated safety zone will be made to mariners through the Massachusetts Bay Harbor Safety Committee meetings, Boston's Port Operators Group meetings, and Local Notice to Mariners. Moreover, the Coast Guard would issue a Safety Marine Information Broadcast via marine channel 16 (VHF–FM) fourteen (14) days in advance of the commencement of the Safety Zone. The rule would allow vessels to seek permission to enter the zone when the channel is not being occupy by construction equipment.

B. Impact on Small Entities

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a temporary safety zone extending 150 yards around a bridge to complete emergency repairs to the S99 Alford Street Bridge during a seven month period when boating traffic is minimal on the Mystic River. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a new § 165.T01–0343 to read as follows:

§ 165.T01–0343 Safety Zone, S99 Alford Street Bridge—Emergency Grid Replacement Project, Mystic River, Charlestown and Everett MA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Mystic River between Charlestown and Everett, Massachusetts from surface to bottom, within 150-yards of the S99 Alford Street Bridge, at mile 1.4 on the Mystic River between Charlestown and Everett, Massachusetts.

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

Designated representative means any Coast Guard commissioned, warrant, petty officer, or any federal, state, or local law enforcement officer who has been designated by the Captain of the Port (COTP) Boston, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

Official patrol vessels means any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Boston to enforce this section.

(c) *Enforcement period.* This section is enforceable 24 hours a day from 12:01 a.m. on October 1, 2018, through 11:59 p.m. on April 30, 2019. When enforced as deemed necessary by the COTP Boston, vessels will be prohibited from entering this safety zone during the emergency grid replacement on the bridge.

(d) *Regulations.* The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply:

(1) No person or vessel may enter or remain in this safety zone without the permission of the COTP Boston or the COTP's designated representatives. However, any person or vessel permitted to enter the safety zone must comply with the directions and orders of the COTP Boston or the COTP's designated representatives.

(2) To obtain permission required by this regulation, individuals may reach the COTP Boston or a COTP designated representative via Channel 16 (VHF–FM) or 617–223–5757 (Sector Boston Command Center).

(3) *Penalties.* Those who violate this section are subject to the penalties set forth in 33 U.S.C. 1232.

Dated: July 11, 2018.

Eric. J. Doucette,

Captain, U.S. Coast Guard Captain of the Port Boston.

[FR Doc. 2018–15183 Filed 7–16–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810–AB33

[Docket ID: ED–2016–OESE–0056]

Title I—Improving the Academic Achievement of the Disadvantaged-Supplement Not Supplant; Withdrawal

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Proposed rule; withdrawal.

SUMMARY: The U.S. Department of Education (Department) is withdrawing the notice of proposed rulemaking (NPRM) pertaining to the supplement not supplant requirements under title I, part A of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA).

DATES: As of July 17, 2018, the proposed regulations published on September 6, 2016, at 81 FR 61148 are withdrawn.

FOR FURTHER INFORMATION CONTACT: Patrick Rooney, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W202, Washington, DC 20202. Telephone: (202) 453–5514. Email: *patrick.rooney@ed.gov.*

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

SUPPLEMENTARY INFORMATION: Section 1118(b)(2) of the ESEA, as amended by the ESSA, contains a new provision for demonstrating compliance with the title I, part A supplement not supplant requirement. Pursuant to section 1601(b)(3)(A) of the ESEA, prior to issuing any regulations that implement the supplement not supplant requirement, the Department must engage in negotiated rulemaking. The Department conducted negotiated rulemaking on draft supplement not supplant regulations in spring 2016 but the negotiating committee did not reach consensus.

Subsequently, on September 6, 2016, the Department published in the **Federal Register** an NPRM (81 FR 61148) proposing regulations relating to the supplement not supplant requirement in title I, part A of the ESEA, as amended by the ESSA. In January 2017, the Department announced that it would not publish final regulations on this requirement. As a result, the Department withdraws its NPRM. We note that this is considered a deregulatory action under Executive Order 13771. Because the Department did not publish final regulations, this withdrawal will have no effect on existing regulations, which do not include provisions implementing the title I, part A supplement not supplant requirement.

Accessible Format: Individuals with disabilities can obtain this document and the NPRM in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

Dated: July 12, 2018.

Frank Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2018–15259 Filed 7–16–18; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0116; FRL–9980–80—Region 4]

Air Plan Approval; Georgia; Revisions to VOC Definitions and Ambient Air Quality Standards

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On November 13, 2017, the State of Georgia through the Georgia Environmental Protection Division (EPD), submitted revisions to the Georgia State Implementation Plan (SIP). The Environmental Protection Agency (EPA) is proposing to approve SIP revisions, which modify the State's air quality regulations as incorporated into the SIP. Specifically, the revisions pertain to definition changes, including the modification of the definition of ''volatile organic compounds,'' (VOC) and changes to the State's air quality standards for sulfur dioxide (SO_2), particulate matter (both $PM_{2.5}$ and PM_{10}), carbon monoxide (CO), ozone (O_3), lead (Pb) and nitrogen dioxide (NO_2) to be consistent with the National Ambient Air Quality Standards (NAAQS). EPA is proposing to approve these provisions of the SIP revisions because the State has demonstrated that these changes are consistent with the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before August 16, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2018–0116 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9088. Ms. Bell can also be reached via electronic mail at *bell.tiereny@epa.gov.*

I. Background

In this rulemaking, EPA is proposing to approve changes into the Georgia SIP, submitted by the State on November 13, 2017. The submission revises Rule 391–3–1–.01, ''Definitions'' by adding t-Butyl acetate (also known as tertiary butyl acetate or TBAC) and 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane to the list of organic compounds having negligible photochemical reactivity. The definition of VOC is also being updated by removing the recordkeeping requirements for t-Butyl acetate. Finally, the definition of VOC is being revised to include chemical names to clarify previous exemptions. EPA is also proposing to approve changes into the Georgia SIP to amend Rule 391–3–1–.02(4), ''Ambient Air Standards,'' by updating Georgia's air quality standard to be consistent with the NAAQS. The submittal by the State can be found in the docket for this rulemaking at *www.regulations.gov* and is further summarized below. Also on November 29, 2017, EPD submitted a separate SIP revision to make changes to Rule 391–3–1–.03(6), ''Exemption'' under Permits and Rule 391–3–1–.02(7)(a)(1), ''General Requirements'' under Prevention of Significant Deterioration (PSD). EPA will address these changes in a separate notice. Additionally, EPD withdrew from EPA's consideration, Rule 391–3–1–.02(7)(a)2(ix), ''Regulated NSR pollutant'' under PSD, and Rule 391–3–1–.03(8)(c)(16), ''Additional Provisions for $PM_{2.5}$ Non-Attainment Areas'' under Permits.[1]

[1] The State withdrew Rule 391–3–1–.02(7)(a)2(ix), ''Regulated NSR pollutant'' and Rule 391–3–1–.03(8)(c)(16), ''Additional Provisions for $PM_{2.5}$ Non-

II. EPA's Analysis of Georgia's SIP Revisions

a. Revisions to Definitions

Tropospheric ozone, commonly known as smog, occurs when VOC and nitrogen oxides (NO_X) react in the atmosphere in the presence of sunlight. Because of the harmful health effects of ozone, EPA and state governments implement rules to limit the amount of certain VOC and NO_X that can be released into the atmosphere. VOC have different levels of reactivity; they do not react at the same speed or do not form ozone to the same extent. Section 302(s) of the CAA specifies that EPA has the authority to define the meaning of ''VOC,'' and hence what compounds shall be treated as VOC for regulatory purposes.

EPA determines whether a given carbon compound has ''negligible'' reactivity by comparing the compound's reactivity to the reactivity of ethane. It has been EPA's policy that compounds of carbon with negligible reactivity need not be regulated to reduce ozone and should be excluded from the regulatory definition of VOC. *See* 42 FR 35314 (July 8, 1977), 70 FR 54046 (September 13, 2005). EPA lists these compounds in its regulations at 40 CFR 51.100(s) and excludes them from the definition of VOC. The chemicals on this list are often called ''negligibly reactive.'' EPA may periodically revise the list of negligibly reactive compounds to add or delete compounds.

On November 29, 2004,[2] and August 1, 2016,[3] EPA issued final rules revising the definition of VOC by adding new compounds, t-Butyl acetate and 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane, to the list of those considered to be negligibly reactive compounds, and on February 25, 2016 (81 FR 9339), EPA issued a final rule removing recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements for t-Butyl acetate.[4] The State's November 13, 2017, SIP revision adds t-Butyl acetate and 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane to the list of negligibly reactive compounds to be consistent with federal and other similar SIP-approved regulations. They are excluded from the VOC definition on the basis that they make a negligible contribution to tropospheric ozone formation. The revision also removes the recordkeeping requirements for t-Butyl acetate and includes the addition of certain chemical names to clarify previous exemptions: Dichloromethane; HFE–7100; HFE–7200; HCOOCH3; and HFE–7300. EPA is proposing to approve this revision because it is consistent with the definition of VOC at 40 CFR 51.100(s).

Pursuant to CAA section 110(l), the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act. The State's addition of certain chemical names is approvable under section 110(l) because the revision merely clarifies previous exemptions. The State's addition of exemptions from the definition of VOCs, and the removal of recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements for t-Butyl acetate[5] are approvable under section 110(l) because they reflect changes to Federal regulations based on findings that the exempted compounds are negligibly reactive, and additionally for t-Butyl acetate, that there was no evidence it was being used at levels that cause concern for ozone formation, and the data that had been collected under the recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements had proven to be of limited utility in judging it's cumulative impact.

b. Updated NAAQS

The November 13, 2017, SIP submission revises the State's ambient air quality standards to reflect the historical and current NAAQS for SO_2, PM_{10}, $PM_{2.5}$, CO, O_3, Pb, and NO_2. Specifically, the revisions add provisions related to the 2015 ozone NAAQS to the State's regulations, and modify language in the regulations to provide clarity and consistency with the NAAQS.

Sections 108 and 109 of the CAA govern the establishment, review, and revision, as appropriate, of the NAAQS to protect public health and welfare. The CAA requires periodic review of the air quality criteria—the science upon which the standards are based—and the standards themselves. EPA's regulatory provisions that govern the NAAQS are found at 40 CFR 50—*National Primary and Secondary Ambient Air Quality Standards.* In this rule, EPA is proposing to approve the portions of the revisions to the State of Georgia air quality regulations addressing Rule 391–3–1–.02(4), *Ambient Air Standards,* in the Georgia SIP, submitted by Georgia on November 13, 2017. Rule 391–3–1–.02(4) is amended by updating air quality standards to reflect the most recent NAAQS. The SIP submission amending the State of Georgia regulations to incorporate the most recent SO_2, particulate matter (both $PM_{2.5}$ and PM_{10}), CO, O_3, Pb and NO_2 NAAQS can be found in the docket for this rulemaking at *www.regulations.gov* and is summarized below.

i. SO_2

On June 22, 2010, EPA promulgated a revised primary SO_2 NAAQS to an hourly standard of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations, and revoked the 24-hour SO_2 NAAQS. *See* 75 FR 35520. Accordingly, in the November 13, 2017, SIP submission, Georgia revised Rule 391–3–1–.02(4)(b) to update its primary air quality standards for SO_2 to be consistent with the NAAQS promulgated by EPA in 2010, with the exception of Rule 391–3–1–.02(4)(b)2 and 391–3–1–.02(4)(b)3.[6] EPA is proposing to approve this change because it is consistent with the SO_2 NAAQS as defined by EPA.

ii. PM

On July 18, 1997, EPA promulgated a new 24-hour primary and secondary NAAQS for $PM_{2.5}$ at a level of 65 micrograms per cubic meter (µg/m^3), based on the 98th percentile of 24-hour $PM_{2.5}$ concentrations averaged over three years. EPA also promulgated a new annual primary and secondary NAAQS for $PM_{2.5}$ at a level of 15.0 µg/m^3, based on the annual arithmetic

Attainment Areas'' on December 1, 2016, and July 26, 2017, respectively. The State also acknowledges this in the response to comment of the pre-hearing in the November 13, 2017, submittal. The information is in the Docket.

[2] In EPA's November 29, 2004, final rulemaking, the Agency adds t-Butyl acetate to the list of excluded compounds from the definition of VOCs. *See* 69 FR 69298.

[3] In EPA's August 1, 2016, final rulemaking, the Agency adds 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane to the list of excluded compounds from the definition of VOCs. *See* 81 FR 50330.

[4] EPA removed these requirements in part because there was no evidence that TBAC was being used at levels that cause concern for ozone formation and because the data that had been collected under these requirements had proven to be of limited utility in judging the cumulative impacts of exempted compounds. *See* 81 FR 9339.

[5] This current proposed rulemaking does not, and is not intended to, reopen any prior final EPA rulemaking or findings made therein, including EPA's 2004 final rule (69 FR 69298) and EPA's 2016 final rule (81 FR 9339).

[6] The former primary SO_2 NAAQS set forth in 40 CFR 50.4 will continue to apply to an area until one year after the effective date of the designation of that area, pursuant to section 107 of the CAA, for the 2010 SO_2 NAAQS set forth in § 50.17. Therefore, Georgia is asking that EPA not act on the SO_2 NAAQS in Rule 391–3–1–.02(4)(b)2. and Rule 391–3–1–.02(4)(b)3 until final designations are complete for all areas in Georgia for the 2010 SO_2 NAAQS.

mean averaged over three years. *See* 62 FR 38652. On October 17, 2006, EPA revised the 24-hour primary and secondary $PM_{2.5}$ NAAQS to 35 µg/m^3, based on the 98th percentile of 24-hour $PM_{2.5}$ concentrations averaged over three years. At that same time, EPA revoked the annual PM_{10} NAAQS. *See* 71 FR 61144. On December 14, 2012, EPA revised the primary annual NAAQS for $PM_{2.5}$ at a level of 12 µg/m^3, based on the annual arithmetic mean averaged over three years. *See* 78 FR 3085; January 15, 2013. Accordingly, in the November 13, 2017, SIP submission, Georgia revised Rule 391–3–1–.02(4) to update its air quality standards for PM_{10} and $PM_{2.5}$ to be consistent with the NAAQS promulgated by EPA in 1997, 2006, and 2012. EPA is proposing to approve this change because it is consistent with the PM_{10} and $PM_{2.5}$ NAAQS as defined by EPA.

iii. CO

EPA initially established the NAAQS for CO on April 30, 1971. The standards were set at 9 parts per million (ppm), as an 8-hour average, and 35 ppm, as a 1-hour average, neither to be exceeded more than once per year. *See* 36 FR 8186. In 1985, EPA concluded its first periodic review of the criteria and standards for CO. EPA decided not to revise the existing primary standards and to revoke the secondary standard for CO. *See* 50 FR 37484 (September 13, 1985). On August 1, 1994, EPA concluded its second periodic review of the criteria and standards for CO by deciding that revisions to the CO NAAQS were not warranted at that time. Thus, the primary standards were retained at 9 ppm with an 8-hour averaging time, and 35 ppm with a 1-hour averaging time, neither to be exceeded more than once per year. *See* 59 FR 38906.[7] On August 31, 2011, EPA issued a final rulemaking concluding that the CO NAAQS was still requisite to protect public health with an adequate margin of safety and thus retained the CO NAAQS. *See* 76 FR 542494. Accordingly, in the November 13, 2017, SIP submission, Georgia revised Rule 391–3–1–.02(4) to update its air quality standards for CO to be consistent with the current CO NAAQS. EPA is proposing to approve this change because it is consistent with the CO NAAQS as defined by EPA.

iv. O_3

On March 27, 2008, EPA promulgated a new 8-hour primary and secondary NAAQS for ozone at a level of 0.075 ppm (the 2008 8-hour Ozone NAAQS), based on an annual fourth-highest maximum 8-hour concentration averaged over three years. *See* 73 FR 16436. On October 26, 2015, EPA promulgated a new primary and secondary NAAQS for ozone at a level of 0.070 ppm (the 2015 8-hour Ozone NAAQS), based on an annual fourth-highest maximum 8-hour concentration averaged over three years. *See* 80 FR 65292. Accordingly, in the November 13, 2017, SIP submission, Georgia revised Rule 391–3–1–.02(4) to add the 2015 8-hour Ozone NAAQS promulgated by EPA in 2015. EPA is proposing to approve this change because it is consistent with the ozone NAAQS as defined by EPA.

v. Pb

On November 12, 2008, EPA promulgated a new 1-hour primary and secondary NAAQS for Pb at a level of 0.15 µg/m^3, based on a rolling 3-month average. *See* 73 FR 66964. Accordingly, in the November 13, 2017, SIP submission, Georgia revised Rule 391–3–1–.02(4) to update its air quality standards for Pb to be consistent with the NAAQS promulgated by EPA in 2008. EPA is proposing to approve this change because it is consistent with the Pb NAAQS as defined by EPA.

vi. NO_2

On February 9, 2010, EPA promulgated a new 1-hour primary NAAQS for NO_2 at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. *See* 75 FR 6474. Accordingly, in the November 13, 2017, SIP submission, Georgia revised Rule 391–3–1–.02(4) to update its air quality standards for NO_2 to be consistent with the NAAQS promulgated by EPA in 2010. EPA is proposing to approve this change because it is consistent with the NO_2 NAAQS as defined by EPA.

EPA has reviewed the revisions to Rule 391–3–1–.02(4) in the November 13, 2017, SIP submission, including the NAAQS updates for SO_2, PM_{10}, $PM_{2.5}$, CO, O_3, Pb, and NO_2, and has made the preliminary determination that these changes are consistent with the CAA. As mentioned above, EPA is proposing to approve these changes to the NAAQS into the Georgia SIP.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Georgia Rule 391–3–1–.01, ''Definitions,'' effective July 20, 2017, which revises the definition of VOC; and Rule 391–3–1–.02(4), ''Ambient Air Standards,'' effective July 20, 2017, which revises the State's ambient air quality standards to be consistent with the NAAQS. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve the State of Georgia's November 13, 2017, SIP revisions identified in section II above. These changes are consistent with the CAA.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

[7] EPA initiated the next period review in 1997 but did not conduct rulemaking to complete the review.

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: July 2, 2018.

Onis ''Trey'' Glenn, III,

Regional Administrator, Region 4.

[FR Doc. 2018–15147 Filed 7–16–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9980–73—Region 4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Whitehouse Oil Pits Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 is issuing a Notice of Intent to Delete the Whitehouse Oil Pits Superfund Site (Site) located in Whitehouse, Florida, from the National Priorities List (NPL) and requests public comments on this proposed action. This site is also known as the Whitehouse Waste Oil Pits Site. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Florida (State), through the Florida Department of Environmental Protection (FDEP), have determined that all appropriate response actions under CERCLA, other than operations and maintenance, monitoring and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by August 16, 2018.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1983–0002 by one of the following methods:

(1) *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

(2) *Email:* Rusty Kestle, Remedial Project Manager, *kestle.rusty@epa.gov.*

(3) *Mail:* Rusty Kestle, Remedial Project Manager, Superfund Restoration and Sustainability Branch, Superfund Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960.

(4) *Hand delivery:* USEPA Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Attention: Rusty Kestle, Remedial Project Manager, Superfund Restoration and Sustainability Branch. Hours of Operation: Monday to Friday 7:30 a.m. to 4:30 p.m. Phone: 404–562–8819.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1983–0002. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* website is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

(1) USEPA Region 4, 61 Forsyth Street SW, Atlanta, GA 30303–8909, Monday through Friday, 7:30 a.m. to 4:30 p.m., Contact Tina Terrell 404–562–8835; and

(2) West Regional Jacksonville Public Library, 1425 Chaffee Rd. S, Jacksonville, FL 32221, Monday–

Thursday 10:00 a.m. to 9:00 p.m., Friday and Saturday 10:00 a.m.–6:00 p.m., Sunday CLOSED.

FOR FURTHER INFORMATION CONTACT: Rusty Kestle, Remedial Project Manager, Superfund Restoration and Sustainability Branch, Superfund Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, GA 30303–8960, phone 404–562–8819, email: *kestle.rusty@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction

The EPA announces its intent to delete the Whitehouse Oil Pits Superfund Site from the NPL and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the NCP, which the EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. The EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

The EPA will accept comments on the proposal to delete this site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that the EPA is using for this action. Section IV discusses the Whitehouse Oil Pits Superfund Site and demonstrates how it meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), the EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, the EPA conducts five-year reviews (FYRs) to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. The EPA conducts such FYRs even if a site is deleted from the NPL. The EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA consulted with the State before developing this Notice of Intent to Delete.

(2) The EPA has provided the State 30 working days for review of this notice prior to publication of it today.

(3) In accordance with the criteria discussed above, the EPA has determined that no further response is appropriate.

(4) The State, through the FDEP, has concurred with deletion of the Site from the NPL.

(5) Concurrently with the publication of this Notice of Intent to Delete in the **Federal Register**, a notice is being published in a major local newspaper, The Florida Times-Union. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the site from the NPL.

(6) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

If comments are received within the 30-day public comment period on this document, the EPA will evaluate and respond appropriately to the comments before making a final decision to delete. If necessary, the EPA will prepare a responsiveness summary to address any significant public comments received. After the public comment period, if the EPA determines it is still appropriate to delete the Site, the Regional Administrator will publish a final Notice of Deletion in the **Federal Register**. Public notices, public submissions and copies of the responsiveness summary, if prepared, will be made available to interested parties and in the Site's information repositories listed above.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter the EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist the EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Intended Site Deletion

The following information provides the EPA's rationale for deleting the Site from the NPL:

Site Background and History

The Whitehouse Oil Pits Superfund Site is an abandoned waste oil sludge disposal facility located in Whitehouse, about 10 miles west of downtown Jacksonville, Duval County, Florida. The Site occupies seven acres west of Chaffee Road, about four tenths of a mile north of U.S. Highway 90. Between 1958 and 1968, Allied Petro Product, Inc. (Allied), disposed of contaminated acidic waste oil sludge from their oil reclaiming operations in seven unlined pits on the Site. Allied operated the Site as a repository for waste oil sludge and acidic oil re-refinery byproducts from 1958 until 1968. The waste oil recovery process used an acid-clay process to form corrosive by-products including waste-acid tar and spent acidic clays. Allied constructed the first pits in 1958 to dispose of waste oil sludge and acid from its oil reclaiming process, and by 1968 the company had constructed and filled seven pits. The EPA later found that the waste contained Polycyclic Aromatic Hydrocarbons (PAHs), Polychlorinated Biphenyls (PCBs) and heavy metals, which impacted soil, groundwater, surface water and sediment. Allied went bankrupt in 1968 and the pits containing wastes were abandoned; the City of Jacksonville assumed ownership of the Site by tax default.

In 1968, the diking around pit number 7 ruptured and spilled waste into the

McGirts Creek tributary and neighboring private properties. The pit was backfilled following this incident. The City of Jacksonville recognized the need to take action to prevent further spread of contamination. The Jacksonville Mosquito Control Branch began building water-oil separators with limestone filters at the Site, but was not able to finish construction due to budget issues. Wastewater from the pits continued to be released into the adjacent wetland area and the McGirts Creek tributary. These releases resulted in contamination of surface water and sediment. In 1976, the Jacksonville Mosquito Control Branch implemented a dike wall reconstruction project at the Site when an estimated 200,000 gallons of waste oil spilled on the adjacent land and creek. On June 29, 1976, the EPA Region 4's Environmental Emergency Branch was contacted by the City of Jacksonville following the 200,000-gallon oil spill. The EPA began the spill assessment and cleanup of McGirts Creek under section 311 of the Clean Water Act, spending about $200,000 in the process. The EPA, in conjunction with the City of Jacksonville, constructed a treatment system to drain the pits.

After draining water from the pits, the Jacksonville Mosquito Control Branch took measures to stabilize the ponds. Since the remaining viscous waste oil sludge would not support heavy construction equipment, the ponds were backfilled with selected construction debris, scrap lumber, trees, wood chips and non-degradable wastes. A three-inch layer of automobile shredder waste was placed on top of these materials. The liquid portion of the waste oil sludge was pumped off, mixed with a stabilizing agent, and then used as a backfill/sealer over the automobile shredder waste. The relatively impervious layer of stabilizing agent and oil was intended to prevent vertical percolation of rainwater. The stabilizing agent and oil mixture was covered with eight to twelve inches of clean earth (mostly sand). After the project ran out of stabilizing agent, local clay was substituted as a landfill capping material. The Site was then planted with local grasses and ditches were constructed to control drainage.

In 1979, monitoring by the City of Jacksonville showed the continuing release of contaminants to surface water and groundwater which the City of Jacksonville attempted to address by covering the surface and sides of the pits and dike with six inches of low-permeability local clay, followed by twelve inches of topsoil. This cover was revegetated using local grasses. The drainage was modified to control leachate seepage into the ditches. The dikes around the pits were strengthened and drop structures were constructed to control flow velocity and erosion in the ditches. The modified drainage configuration diverted surface water away from the landfill, thus reducing the mechanism for contaminant transport. This second stabilization project was completed during the summer of 1980.

On December 30,1982 (47 FR 58476), the Site was proposed for listing on the EPA's NPL. The Site's listing on the NPL was finalized on September 8, 1983 (48 FR 40865). The Site ID is FLD980602767.

Remedial Investigation and Feasibility Study (RI/FS)

In 1983, the Florida Department of Environmental Regulation (FDER), which is now referred to as the FDEP, completed a remedial investigation (RI) under a cooperative agreement with the EPA. The RI characterized Site wastes and the extent of contamination. The Site's RI showed contamination of soil, groundwater, surface water, and sediment with numerous organic compounds, including PAHs and PCBs, and heavy metals. In 1985, the EPA completed a feasibility study (FS), which evaluated risk and remedial alternatives for the Site. The risk assessment indicated that the greater risk was posed by migration of contaminants into drinking water supplies. Several alternative remedies were considered: No action; no action with groundwater monitoring; excavation with variations that included a treatment or offsite disposal of soil, sludges, and sediment and treatment of groundwater; and excavation, extraction, and treatment supplemented by construction of a barrier wall to contain the remaining contaminated media and prevent its leaching into the groundwater and surface water.

Ultimately, several remedies were required over time to address the contamination or prior remedy failures. The remedies were selected in a 1985 Record of Decision (ROD), revised in an amended ROD (AROD) in 1992, and then further revised in the 1998 AROD based on additional investigations and a treatability study. An Explanation of Significant Differences (ESD) was issued in 2001.

Selected Remedies

1985 ROD

Based on the findings of the 1985 RI/FS, the EPA issued a ROD on May 30, 1985. Remedial action objectives (RAOs) defined in the 1985 ROD included:

1. Prevent further migration of contaminated groundwater into the underlying aquitard.
2. Prevent contamination of the local drinking water supply.
3. Reduce or eliminate migration of contamination to surface water.
4. Eliminate the source sludge, treat the source sludge to a less hazardous or non-hazardous state, or contain the release of the hazardous pollutants offsite.
5. Reduce or eliminate the migration of contaminated soils and sediments.

The remedy components included in the 1985 ROD were:

1. Installation of a slurry wall around the Site, isolating the waste.
2. Recovery and treatment of contaminated groundwater within the walled area, thus contributing to waste isolation.
3. Removal of contaminated sediment from the northeast tributary of McGirts Creek and placement within the isolation area.
4. Construction of a surface cap over the Site to reduce the flow of water into the walled area.

The 1985 ROD did not provide a tabulation of specific remediation goals. However, the goals were generally defined to meet the FDER's drinking water standards and surface water quality criteria. Where no cleanup criteria had been established, the cleanup goals were set at background or minimal risk levels.

1992 AROD

The EPA began but suspended implementation of the 1985 remedy for several reasons, including failure of the cap, a determination that the groundwater treatment methodology was inappropriate for the Site, discovery that the analysis of the shallow aquifer was unreliable, and realization that the operations and maintenance costs were grossly underestimated. Moreover, in 1986, Congress amended CERCLA by passing the Superfund Amendments and Reauthorization Act (SARA) which stressed the importance of permanent remedies. As a result, the EPA reevaluated the 1985 remedy and began to search for alternatives that would permanently and significantly reduce the mobility, toxicity, and volume of hazardous substances at the Site. The EPA conducted additional studies between 1989 and 1992. These studies included a baseline risk assessment, a supplemental feasibility study, and a treatability study in 1991 to examine a treatment train of soils washing, biological treatment and stabilization.

The studies led to the EPA's issuance of an AROD on June 16, 1992 (the 1992 AROD). Under the 1992 AROD, the cleanup objectives were to prevent current and future exposure to contaminated groundwater.

The remedy components included in the 1992 AROD were:

1. Excavation of contaminated waste pits.
2. Separation of construction debris, stumps, etc., from contaminated soils and steam cleaning prior to offsite disposal.
3. Volume reduction by soils washing.
4. Biotreatment to biologically degrade wash water contaminants.
5. Stabilization/solidification of biotreated material exceeding cleanup criteria.
6. On-site disposal of washed soils and stabilization/solidification of contaminant fines and sludge.
7. Extraction and treatment of contaminated groundwater using activated carbon and chemical precipitation, with discharge to the northeast tributary of McGirts Creek.
8. Installation and maintenance of a six-inch vegetative cover over the excavated area.
9. Installation and maintenance of a fence around the Site during remedial activities.
10. Implementation of institutional controls (ICs), including deed restrictions.

The 1992 AROD included contingencies if groundwater recovery and treatment were determined to be ineffective. Contingencies included:

1. Containment measures involving engineering controls or long-term gradient controls.
2. Waiver of chemical-specific ARARs for the aquifer based on the technical impracticability of achieving further contaminant reduction.
3. Institutional controls for groundwater.
4. Continued monitoring of on-site and off-site wells.

Cleanup goals were developed for soils and groundwater in the 1992 AROD. Following the signing of the 1992 AROD, the EPA issued special notice letters to initiate negotiations with the potentially responsible parties (PRPs). Because a settlement could not be reached, the EPA proceeded with a fund-lead remedial design. During the design phase for the 1992 AROD remedy, the EPA discovered most of the components of the treatment train identified for source materials would not work. For example, lead concentrations and pH levels encountered in the waste sludge would be toxic to bacteria, rendering biological treatment ineffective. In April 1994, the EPA and the PRPs, the Whitehouse Remedial Action Group (WRAG), signed an Administrative Order on Consent (AOC) under which the PRPs conducted the additional studies. The results of those studies indicated that additional treatability and feasibility studies were required. In January1995, the WRAG agreed to modify the AOC with the EPA to perform the additional work. After completing these additional studies, the WRAG prepared and finalized the supplemental treatability and feasibility study (FS) in July 1997.

1998 AROD

Based on the treatability and feasibility study findings in July 1997, the EPA issued an AROD in September 1998 to incorporate elements of the contingency remedy in the 1992 AROD, as well as elements of the original 1985 ROD. The 1998 AROD addressed all contaminated media at the Site by containing the onsite waste sludge, contaminated soils, wetlands, sediment and groundwater. The remedy's function was to isolate the Site as a source of groundwater and surface water contamination and reduce the risks associated with exposure to the contaminated materials.

The major components of the selected remedy included:

1. In-situ stabilization/solidification treatment of lifts 1 (topsoil and clay) and 2 (thin layer of shredded foam rubber and plastic overlying a layer of sawdust, wood chips, dimensional lumber, debris and silty sand) with a geogrid to enhance structural stability.
2. Installation of a slurry wall (slurry wall or geosynthetic sheet pile wall) to isolate and contain contaminated soils, sludge, wetlands, sediments and groundwater.
3. Installation of a lime curtain inside the containment system to adjust groundwater pH.
4. Construction of a low permeability cap over the contained area that meets Resource Conservation and Recovery Act (RCRA) closure requirements under 40 CFR 264.228(a)(2).
5. Realignment of the McGirts Creek tributary to optimize the area of groundwater containment.
6. Extension of the municipal water supply to residents along Machelle Drive and Chaffee Road and plugging of private supply wells.
7. Installation of a permanent security fence around the containment area and installation and maintenance of appropriate storm water management controls.
8. Monitored natural attenuation of contaminated groundwater outside the containment system.
9. Sampling of offsite surface soils and downstream surface water and sediment during design to determine if additional measures are necessary.
10. Imposition of deed restrictions to control future land and groundwater use.

The AROD established cleanup goals for groundwater and soils based on federal or state primary maximum contaminant levels (MCLs) or risk based numbers. These cleanup goals and the source of the cleanup level can be found Tables 8–1 and 8–2 of the Final Risk Assessment, dated September 1, 1991, and Table 2–1 of the Final Remedial Action Report. Soils contaminants of concern addressed by the remedy include organic compounds (Benzene, Benzo(a)pyrene, Bis (2-Ethyl Hexyl) Phthalate, Chlorobenzene, 1,4-Dichlorochlorobenzene, Di-N-Butyl Phthalate, Methylene Chloride, Polychlorinated Biphenyls (PCB) 1260, 2-Methylnaphthalene, Naphthalene, Phenol, Tetrachloroethene, Toluene and Trichloroethene) and inorganic compounds (Antimony, Arsenic, Barium, Cadmium, Chromium, Copper, Lead and Nickel). Groundwater contaminants of concern include organic compounds (Acetone, Benzene, Benzo(a)pyrene, Bis (2-Ehtyl Hexyl) Phthalate, Carbon Disulfide, Di-N-Butyl Phthalate, Ethylbenzene, Methyl Ethyl Ketone, 3/4 Methylphenol, Naphthalene, 2-Methylnaphthalene, Phenol, Toluene, Trichloroethene and Xylene) and inorganic compounds (Antimony, Arsenic, Barium, Cadmium, Chromium, Copper, Lead, Manganese, Nickel, Selenium, Vanadium and Zinc).

2001 ESD

An ESD was issued in 2001 to remove the lime curtain from the selected remedy due to concerns that it might adversely affect the sodium based slurry wall. The ESD also increased the size of the slurry wall, size of the cap, and area of the tributary to be realigned based on the discovery of additional contamination.

Remedial action objectives (RAOs) established in the 1985 ROD and adopted in the 1998 AROD address groundwater, surface water, sludge, sediment and soils. The 2001 ESD did not alter the original RAOs. The RAOs include:

1. Prevent further migration of contaminated groundwater into the underlying aquitard.
2. Prevent contamination of the local drinking water supply.

3. Reduce or eliminate migration of contamination to surface water.
4. Eliminate the source sludge, treat the source sludge to a less hazardous or non-hazardous state, or contain the release of the hazardous pollutants off site.
5. Reduce or eliminate the migration of contaminated soils and sediments.

Response Actions

Response actions are discussed above. Construction of the remedy began in 2003 and was completed in May 2007 with the finalization of the Remedial Action Report. The City of Jacksonville, now the owner of the property comprising the Site, entered into a restrictive covenant with FDEP on January 27, 2011. This institutional control restricts activities on the property and the future use of the property.

Cleanup Levels

Groundwater sampling events have occurred at the Site since August 2006 when the first year of operations maintenance and monitoring (OM&M) began and have continued over the last ten years under the thirty-year OM&M Plan. The groundwater levels are determined inside the barrier wall and groundwater levels and monitoring data are collected at monitoring wells outside of the barrier wall. Contaminants 1,4-dichlorobenzene, chlorobenzene, methylene chloride, tetrachloroethene, di-n-butyl phthalate, and PCB–1260 were sampled for during the first quarter of groundwater sampling. The sampling verified that these contaminants were not found at detectable levels outside of the barrier wall and would not require monitoring during future sampling. Manganese has been detected at levels slightly above the State of Florida secondary MCL of 50 ppb upgradient and downgradient of the contaminant source. Therefore, the elevated manganese levels are not thought to be Site related. Monitoring for manganese will continue and action will be taken if levels continue to be elevated and are determined to be Site related. All other groundwater COCs were monitored regularly over the last ten years and their detected levels were below cleanup levels; this includes groundwater arsenic concentrations which have largely been below 1 µg/L. The highest reading was less than 2 µg/L which is well below the current MCL of 10 µg/L. Groundwater is the only media that is monitored at the Site because the remaining contamination in soils and sediment is contained within a barrier wall and cap that prevents lateral contaminant migration.

Operations, Monitoring and Maintenance (OM&M)

The OM&M Plan for the Site was approved by the EPA and OM&M activities began in July 2006, and continue to this day. The scope of the OM&M Plan included monthly Site inspections to monitor the following components, except for passive gas management (quarterly) and wetland planting monitoring (semi-annual):

1. Closure cap.
2. Passive gas management system.
3. Storm water management system.
4. Created wetland planting areas.
5. Site security system.
6. Groundwater monitoring system.

In addition to inspecting the remedial components above, the cap is mowed on a quarterly basis. Originally, water levels of wells inside and outside of the barrier wall were monitored on a monthly basis to evaluate the performance of the barrier wall. Groundwater wells were sampled semi-annually for Volatile Organic Compounds (VOCs), Semi-Volatile Compounds (SVOCs) and metals. In April 2013, the EPA and FDEP agreed that sampling could be limited to metals. Now, the monitoring program consists of semi-annual monitoring of 23 wells for metals only and semi-annual water level monitoring of 23 wells and 6 piezometers. At this time, all sampling data are below cleanup criteria. The Site is owned by the City of Jacksonville, which is part of the WRAG PRP group. ICs are maintained by the PRP group through OM&M inspections. City/county zoning and permitting requirements for land and groundwater use in the area add another layer of protection.

Five-Year Reviews (FYR)

Pursuant to CERCLA section 121(c), 42 U.S.C. 9601 *et seq.,* and the EPA's FYR Guidance, statutory FYRs are required for the Whitehouse Oil Pits Superfund Site because the completed remedy does not allow for unlimited use and unrestricted exposure. The first FYR was completed on November 13, 2008, which was five years after onsite construction activities began. The second FYR was signed on May 7, 2014 and indicated that the remedy was still protective of human health and the environment. A multilayered cap covers all impacted soils; a barrier wall contains the contaminated groundwater; and the municipal water supply was extended to residents who live near the Site. The cap, together with the containment provided by the slurry wall, prevents contamination from entering the groundwater and migrating offsite into the soil, groundwater, surface water, and sediment.

The 2014 FYR stated the remedy was protective only in the short term and included two issues and recommendations. The Operations, Maintenance and Monitoring (OM&M) Plan did not include contingency activities to address groundwater overtopping the containment area and internal flow gradients had not been adequately monitored to assess the structural integrity of the containment system. Recommendations were made to continue to monitor metals concentrations in the groundwater and to modify the OM&M Plan. The OM&M Plan was modified in June 2015 to include more specific contingency actions to address groundwater overtopping the containment area and include monitoring of groundwater flow gradients inside and outside the barrier wall to assess the effectiveness of the containment remedy. Monitoring of groundwater for metals continues. Required actions were completed to make the Site protective of human health and the environment. However, the EPA does not consider groundwater overtopping the containment area to be a justifiable concern for several reasons: (1) The average depth of the barrier wall was designed to extend through the full depth of the surficial unconfined aquifer and key into the underlying semi-confining strata (estimated to be 40 ft.), thus, there can be no lateral or vertical movement of groundwater into the containment area; (2) the entire Site is covered with a multi-layered cap system with a permeability of at least 1E–07 intended to shed any rainwater falling on the cap; (3) the cap system has a network of internal drains which carry any flows penetrating the cap to the ditch system surrounding the cap; and (4) there is no evidence that groundwater levels within the barrier wall are trending up. The Site will continue to be monitored as part of the OM&M Plan and the next FYR is due May 2019.

Community Involvement

Community involvement activities were undertaken throughout the thirty-year history of the Site in the form of public meetings, FYR interviews and Site update mail-outs. There are currently no major community concerns about the Site. The FYR community involvement process will continue to monitor any potential community concerns.

The residents of the surrounding neighborhood stated in the 2013 Site interviews that they are concerned about periodic flooding that occurs in their yards after heavy rains. However, the main factor that is contributing to flooding in the McGirts Creek floodplain is not Site related; the construction of dams by beavers in McGirts Creek is responsible for flooding problems in the area. In the past, the beaver dams were removed by the Site contractors as a courtesy, but has never been part of the actual OM&M Plan requirements. The beaver dam issue has been communicated to the residences of the surrounding neighborhood and the residents are responsible for taking any action to remove beaver dams in the future.

Determination That the Site Meets the Criteria for Deletion in the NCP

The implemented remedy achieves the degree of cleanup and protection specified in the RODs for the Site for all pathways of exposure. The selected remedy at the Site is protective of human health and the environment because all exposure pathways that could result in unacceptable risks are being controlled. Contamination remaining onsite is being contained to the capped portion. The barrier walls were designed and constructed to contain the contamination and prevent any lateral or vertical movement of groundwater in or out of the containment area; ICs are in place in the form of land and groundwater use restrictions. These ICs are in the form of a Declaration of Restrictive Covenant executed between FDEP and the City of Jacksonville. This IC was executed on the 2nd of February 2011, and restricts activities on the property and the future use of the property. All selected remedial and removal actions, remedial action objectives, and associated cleanup goals are consistent with the EPA policy and guidance; the EPA has followed the procedures required by 40 CFR 300.425(e) and these actions, objectives and goals have all been achieved and, therefore, no further Superfund response is needed to protect human health and the environment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: July 3, 2018.

Onis ''Trey'' Glenn, III,

Regional Administrator, Region 4.

[FR Doc. 2018–15242 Filed 7–16–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1989–0007; FRL–9980–69—Region 5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Naval Industrial Reserve Ordnance Plant Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notification of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 5 is issuing a Notice of Intent to Delete Operable Unit 3 (OU3) of the Naval Industrial Reserve Ordnance Plant (NIROP) Superfund Site (Site), located in Fridley, Minnesota, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA and the State of Minnesota, through the Minnesota Pollution Control Agency (MPCA), have determined that all appropriate response actions at the OU, identified under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this partial deletion does not preclude future actions under Superfund. This partial deletion pertains to the OU3 portion of the NIROP Site, which includes all the unsaturated soils underlying the former Plating Shop Area of the NIROP Superfund Site.

DATES: Comments must be received by August 16, 2018.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1989–0007, by mail to Randolph Cano, NPL Deletion Coordinator, U.S. Environmental Protection Agency Region 5 (SR–6J), 77 West Jackson Boulevard, Chicago, IL 60604. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the Rules section of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Randolph Cano, NPL Deletion Coordinator, U.S. Environmental Protection Agency Region 5 (SR–6J), 77 West Jackson Boulevard, Chicago, IL 60604, (312) 886–6036, email: *cano.randolph@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of this issue of the **Federal Register**, we are publishing a direct final Notice of Partial Deletion for OU3 of the NIROP Superfund Site without prior Notice of Intent for Partial Deletion because EPA views this as a noncontroversial revision and anticipates no adverse comment. We have explained our reasons for this partial deletion in the preamble to the direct final Notice of Partial Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this partial deletion action, we will not take further action on this Notification of Intent for Partial Deletion. If we receive adverse comment(s), we will withdraw the direct final Notice of Partial Deletion, and it will not take effect. We will then, as appropriate, address all public comments in a subsequent final Notice of Partial Deletion based on this Notification of Intent for Partial Deletion. We will not institute a second comment period on this Notification of Intent for Partial Deletion. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Partial Deletion which is located in the ''Rules and Regulations'' section of this issue of the **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: June 25, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

[FR Doc. 2018–15241 Filed 7–16–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2005–0011; FRL–9980–60—Region 3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Dorney Road Landfill Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region III is issuing a Notice of Intent to Delete the Dorney Road Landfill Superfund Site (Site) located in Longswamp and Upper Macungie Townships, in Berks and Lehigh Counties, Pennsylvania from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the Commonwealth of Pennsylvania (the Commonwealth), through the Pennsylvania Department of Environmental Protection (PADEP), have determined that all appropriate response actions under CERCLA, other than operation and maintenance (O&M), monitoring, and Five-Year Reviews, have been completed. However, this deletion would not preclude future actions under Superfund.

DATES: Comments must be received by August 16, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2005–0011, by one of the following methods:

- *http://www.regulations.gov* Follow on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*
- *Email: greaves.david@epa.gov.*
- *Mail:* U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103.
- *Hand delivery:* U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–2005–0011. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. EPA Region III Administrative Records Room, 1650 Arch Street—6th Floor, Philadelphia, PA 19103–2029, Business Hours: Monday through Friday, 8:00 a.m.–4:30 p.m.; by appointment only

Local Repository, Upper Macungie Township Building, 8330 Schantz Road, Breinigsville, PA 18031, Business Hours: Monday through Friday, 7:30 a.m.–4:00 p.m.

FOR FURTHER INFORMATION CONTACT: David Greaves, Remedial Project Manager, U.S. Environmental Protection Agency, Region 3, 3HS211650 Arch Street Philadelphia, PA 19103, (215) 814–5729, email: *greaves.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

EPA Region III announces its intent to delete the Dorney Road Landfill Superfund Site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

EPA will accept comments on the proposal to delete this Site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Dorney Road Landfill Superfund Site and demonstrates how it meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the Commonwealth, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the Commonwealth before developing this Notice of Intent to Delete.

(2) EPA has provided the Commonwealth 30 working days for review of this notice prior to publication of it today.

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate.

(4) The Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP), has concurred with deletion of the Site from the NPL.

(5) Concurrently with the publication of this Notice of Intent to Delete in the **Federal Register**, a notice is being published in a major local newspaper, the *Reading Eagle.* The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(6) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

If comments are received within the 30-day public comment period on this document, EPA will evaluate and respond appropriately to the comments before making a final decision to delete. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete the Site, the Regional Administrator will publish a final Notice of Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and in the site information repositories listed above.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Background and History

EPA proposed the Dorney Road Landfill Superfund Site (Site) (CERCLIS ID PAD980508832) to the NPL on September 8, 1983 (48 FR 40674) and added the Site as final on the NPL on September 21, 1984 (49 FR 37070). The Site is located along the southwest boundary of Upper Macungie Township in Lehigh County, PA, with a small portion of the Site extending into Longswamp Township in Berks County.

The 27-acre Site consists of an abandoned iron mine pit that was used as a landfill, a surrounding soil berm, and adjacent land. Beginning in 1962, the Site was operated as an open dump, with the majority of waste disposed in an abandoned mine pit. The landfill was expanded to except a variety of household and industrial waste from regional municipalities and local businesses, until operations ceased in December 1978.

In all areas of the Site, except for the northwestern portion, the water table occurs in the bedrock near or below the bedrock/overburden interface. The overburden is approximately 70 feet thick. The landfill waste is contained within the overburden. The water table exists within the overburden areas of relatively thick overburden and in the bedrock where the overburden is relatively thin. The water table is not in contact with the waste material. The direction of regional groundwater flow in the bedrock-overburden aquifer is generally from the northwest to the southeast.

In January 1970, the Pennsylvania State Health Center notified the landfill owner that the landfill constituted a public health threat and required the owner to compact the fill and apply cover to the landfill. A follow-up letter stated that the owner did not comply with the directive. In June 1970, a representative from the Pennsylvania Department of the Environmental Resources (PADER, formerly, the Pennsylvania State Health Center) visited the landfill and noted the approximate location of an on-site area used for the disposal of sludge. Other visits identified the disposal of petroleum products, asbestos, and battery casings.

Contaminants in the leachate and groundwater included ketones, vinyl chloride, trichloroethene (TCE), benzene, heavy metals, and arsenic. Soils contained the pesticide dieldrin, as well as lead and chromium. The apparent source of contamination was the waste buried and dumped on the soil at the landfill.

In 1986, EPA performed an Emergency Removal Action at the Site to ensure that landfill-related materials were not transported off of the property by storm water. The removal action consisted of re-grading the Site to prevent surface water runoff. The construction of on-site ponds allowed for controlled discharge of surface water via two major spillways. Although a soil cover was applied to portions of the Site, the landfill had never been graded and capped, and waste continued to be exposed in some areas.

Remedial Investigation and Feasibility Study (RI/FS)

The Site consists of two operable units (OUs). OU1 addresses the source of the contamination by capping the landfill. OU2 focuses on addressing groundwater contamination which is the principal exposure pathway.

A Cooperative Agreement was signed between EPA and PADER, and PADER became the lead agency for work in the RI/FS phase. The OU1 RI was performed from January to June 1988. Due to difficulties encountered during Phase I activities, additional data needs were identified and investigative activities were proposed as a Phase II RI effort. Results of the OU1 RI were presented in the Final Remedial Investigation Report for OU1 dated August 11, 1988. A Feasibility Study for OU1, focusing on the landfill waste, was also submitted in August 1988. The OU2 RI/FS was performed by PADER from March to July 1991. The study focused on the groundwater and primarily consisted of additional sampling of wells installed during the OU1 RI.

Major field activities conducted during Phase I of the OU1 RI included:

- Air sampling;
- On-site surface water and seep sampling;
- On-site sediment sampling;
- On-site and off-site, surface and subsurface soil sampling;
- Monitoring well installation;
- Groundwater monitoring well and residential well sampling;
- Hydraulic conductivity testing;
- Fracture trace analysis;
- Surface geophysical investigation.

The major field activities performed during Phase II of the OU1 RI included:

- Installed one deep well off-site (MW–6) to the southeast to obtain downgradient groundwater data.
- Installed an off-site well nest (MW–7/7D) to the northwest of the landfill to provide additional groundwater quality data and flow information.
- Installed on-site boring (TB–LMW–4) to determine the thickness of gravel between the base of the refuse and the top of the bedrock.
- Installed four borings (TB–1,2,3,4) along the southeast corner of the site to identify the presence or absence of a shallow groundwater zone identified during the OU1 Phase I RI.
- Obtained six additional groundwater samples (MW–6, 7, 7D, two rounds) and analyzed for unfiltered metals.
- Performed borehole geophysics in off-site wells (MW–2D, 3D, 4, 5D, 6, 7, 7D). Borehole geophysics were performed to supplement the minimal lithological data obtained during the OU1 Phase 1 and Phase II RI drilling and well installation activities due to difficulty in drilling and poor recoveries.

Air sampling was performed to determine the quantity and quality of ambient airborne contaminants to evaluate the potential exposure to on-site workers and neighboring populations. The data was used to determine the appropriate level of protection on-site, and to establish the exclusion, contamination reduction, and support zone delineations used during the field activities.

A fracture trace analysis was performed to provide information on the number, size, frequency and orientation of bedrock joints, fractures, and large-scale lineaments. The data was used for determining monitoring well locations and for evaluation of the potential for contaminant migration through bedrock.

A geophysical investigation (seismic refraction survey) was performed to obtain information on the thickness of overburden and the depth to bedrock, the thickness of the landfill waste, the condition of the bedrock at the iron mine pit, and to verify any lineaments previously identified.

Sampling and analysis of the on-site ponds was performed to collect data on the contaminant concentrations in the standing liquid and bottom sediments. The data was used to estimate the extent and degree of contamination and estimate the volumes of liquid and soil to be treated and/or removed.

Soil sampling was performed to provide data on the chemical characteristics of soils both on-site and off-site, to determine the degree of off-site migration of contamination, and to provide data concerning the on-site vertical and horizontal extent of contamination. For comparison to on-site data, a background sample was collected approximately 900 ft. west of the Site and was assumed to be isolated from any site-related conditions. On-site soils exceeded EPA's acceptable levels for both cancer risk and non-cancer hazard index primarily due to polycyclic aromatic hydrocarbons (PAHs), arsenic, lead and chromium. Contaminants in leachate and groundwater included ketones, 1,1-dichloroethene (1,1-DCE), 1,2-dichloroethane (1,2-DCA), TCE, tetrachloroethylene (PCE), vinyl chloride, benzene and arsenic. Both cancer and non-cancer groundwater risk substantially exceeded EPA's acceptable criteria. Risk at the Site was due to dermal contact and incidental ingestion of landfill soil, solid waste and on-site ponded waters (OU1) and residential exposure via ingestion of contaminated groundwater and inhalation of volatile contaminants while showering (OU2).

Selected Remedy

On September 29, 1988, the Acting Regional Administrator signed a Record of Decision (ROD) for OU1. The Selected Remedy in the 1988 OU1 ROD consists of the following components:

- Elimination of on-site ponded waters
- Regrading
- Pennsylvania-Type Multi-layer Cap
- Run-on/Run-off Controls
- Run-off Monitoring
- Groundwater Monitoring
- Perimeter Fence
- Deed Notice

The Remedial Action objectives (RAOs) were not explicitly stated in the ROD for OU1. The following RAOs were inferred:

- Control contaminant migration off-site by containment of contaminated landfill soil and waste material;
- Prevent dermal contact and incidental ingestion; and
- Prevent continued leaching of precipitation and ponded waters through the contaminated landfill material.

On September 18, 1991, the Regional Administrator signed an Explanation of Significant Differences (ESD) for OU1. The 1991 ESD was issued to address compliance with wetlands Applicable or Relevant and Appropriate Requirements (ARARs). The Selected Remedy in the 1988 OU1 ROD required the destruction of approximately seven acres of wetlands during construction of the cap. The 1991 ESD allowed the sedimentation ponds required to control run-on/run-off from the cap to also mitigate the destroyed wetlands and become a quality habitat for the varied wildlife at the Site.

On September 30, 1991, the Regional Administrator signed a ROD for OU2 (1991 OU2 ROD), selecting a remedy with the following major components:

- Wellhead treatment units to be provided to residences if levels of site-related contaminants exceeded federal Maximum Contaminant Levels (MCLs);
- Groundwater monitoring.

The RAO for OU2 was not explicitly stated in the 1991 OU2 ROD; however, the RAO is inferred to be to eliminate exposure to contaminated groundwater.

Response Actions

In September 1990, EPA issued a Unilateral Administrative Order (UAO), EPA Docket No. III–90–45–DC, to seven Potentially Responsible Parties (PRPs) after negotiations were unsuccessful. A second UAO, EPA Docket No. III–91–26–DC, was issued to an eighth PRP on January 25, 1991, and a third UAO, EPA Docket No. III–92–33–DC, was issued to five additional PRPs on August 13, 1992. The UAOs required the PRPs to implement the Selected Remedy described in the 1988 OU1 ROD. The modifications to the Selected Remedy specified in the September 18, 1991 ESD were incorporated into the UAOs. The Remedial Design (RD) was approved in June 1995.

The Remedial Action (RA) for OU1 began in April 1998. The major components of the RA included the following:

- Site clearing which included removal of ponded water, clearing of vegetative cover, chipping woody vegetation, and relocation of fugitive surface debris under the cover system;
- Monitoring well abandonment;
- Gas trench construction, which was designed to minimize the lateral flow of landfill gas outside the landfill limits below the surface. The design included a peripheral gas collection trench just beyond the lateral extent of the landfill;
- Landfill regrading to achieve the grades and slopes for the acceptance of the cover system;
- Subgrade preparation which involved grading and placement of compacted general fill;
- Construction of a gas vent layer on top of the landfill. A geocomposite was used as a gas vent layer on the side slopes of the landfill.
- Gas vent collection piping system consisting of flexible 4-inch perforated High Density Polyethylene (HDPE) pipe along the top of the gas trench connected to seventeen 4-inch HDPE conveyance pipes which were connected to seventeen peripheral passive vents along the crest of the cap. On the surface of the cap, an additional fourteen passive vents were installed with four horizontal perforated flexible HDPE feeder pipes to collect the gas and vent it passively through vent pipes;
- A geotextile was placed over the gas venting layer prior to installation of the grading layer;
- Two types of geomembrane were installed. A 40-millimeter smooth HDPE geomembrane was installed where the slopes were minimal and a 40-millimeter textured HDPE geomembrane was installed on the embankment slopes along the periphery of the landfill;
- On the top of the landfill, a geotextile cushion layer was placed over the geomembrane to protect it from the overlying sand drainage layer;
- A sand drainage layer was put in place and another separation geotextile was put on top of the drainage layer;
- An 18-inch layer of compacted general fill on the cover system and 24-inches of general fill on the cover system slopes serve as protection layer over the underlying system;
- A vegetative layer was the final cover;
- Surface drainage was designed with five basic drainage patterns. These patterns were rough graded during initial landfill grading operations and incorporated as part of the temporary erosion sediment control plan. Permanent drainage incorporated the use of stormwater pipes, riprap channels and natural drainage systems;
- A replacement wetland was constructed, which also serves as a stormwater drainage area; and
- A chain link security fence was installed with proper signage.

The contractor conducted the RA basically as designed, with only minor modifications. One modification had to be made for the construction of the wetlands. The west pond contained a large rock which had to be excavated with a rock hammer and processed using a rock crusher. This generated approximately 30,000 cubic yards of fill that was used on the general fill layer of the landfill cap. Another modification was with the placement of the fence on Dorney Road. A variance was needed from the Township to construct the fence closer to the street than 6 feet in order to avoid puncturing the cap with the fence posts. The variance was granted and the fence was installed according to the specifications.

EPA, PADEP and the U.S. Army Corps of Engineers (COE) conducted a pre-final inspection on September 20, 1999. The inspection resulted in a schedule for the contractor to correct some minor construction items.

EPA issued a UAO for the OU2 RD/RA, EPA Docket No. III–92–27–DC, to twelve PRPs on August 18, 1992. The baseline residential well sampling for OU2 was conducted during the first two weeks of March 1999. The 1991 OU2 ROD and RD required residential groundwater samples to be compared to federal MCLs. If the sampling results were above the MCLs, wellhead treatment units would be required. The baseline results were below the MCLs at all residential wells and no wellhead treatment units were installed. Residential monitoring is ongoing. The operation and maintenance plans (O&M Plans) for OU1 and OU2 were approved by EPA and PADEP in October 1997 and September 1996, respectively. The Preliminary Closeout Report (PCOR) was issued for the Site on September 28, 1999. The PCOR documents that construction activities were completed at the Site in accordance with *Closeout Procedures For National Priorities Sites (OSWER Directive 9320.2–09A–P).*

Cleanup Levels

Groundwater monitoring is performed in accordance with the 1988 OU1 ROD and 1995 OU1 O&M Plan at the landfill monitoring well network and in accordance with the 1991 OU2 ROD and 1996 O&M Plan at the residential well monitoring network.

Landfill monitoring is conducted to detect any changes in groundwater quality due to leaching of landfill contaminants. The landfill monitoring network consists of the following wells: MW–2S, MW–2DR, MW–3S, MW–7S, MW–11S and MW–11D. During each sampling event, groundwater samples are analyzed for volatile organic compounds (VOCs) and dissolved metals. Field activities, groundwater elevation data, groundwater quality data and the results of the data validation are presented in each summary report. A summary of all historical data is also presented in the summary reports.

During the 2013–2017 period, several metals were detected in the landfill monitoring wells. The detected VOCs included PCE, TCE, and chloromethane. All detections during the 2013–2017 period were within the historical range of concentrations and remain very low. Most are well below MCLs except for manganese, mercury and thallium in MW–7S and thallium in MW–3S. MW–7S is up gradient of the landfill and these exceedances do not appear to be site related. Thallium was only detected in MW–3S during two sampling events in 2016, but had not been detected previously or in subsequent sampling events. Based on a review of historical monitoring from 2013 to 2017 from all other monitoring wells, there have been no exceedances of MCLs during this period.

The 1988 OU1 ROD did not select chemical-specific ARARs for groundwater. Instead, the 1988 OU1 ROD required groundwater monitoring upgradient and downgradient of the Site to detect any changes in groundwater quality due to the potential leaching of landfill contaminants into groundwater. As indicated above, detections of Site-related compounds in groundwater are generally below the respective MCLs and have remained consistent with historic groundwater sampling results. Therefore, no impacts to groundwater as a result of leaching of landfill contaminants have been observed and the groundwater cleanup goal established in the 1988 OU1 ROD has been achieved.

Residential wells are sampled quarterly on a rotating basis so the same wells are not sampled every event. Groundwater samples are collected from an inside or outside spigot and analyzed for VOCs. Twenty-eight residential wells were sampled between the 2013 and 2017. Of those 28 wells, 14 wells had one or more detections of VOCs. The most commonly detected VOC is PCE. The PCE concentrations are consistent with historical concentrations at these locations. Chloroform was detected at two locations in 2016 and TCE was detected once in 2013. All detections from 2013 to 2017 have been well below respective MCLs and have never exceeded MCLs during any monitoring event.

The 1991 OU2 ROD waived the Pennsylvania Hazardous Waste Management Regulations [25 PA Code §§ 264.90–264.100, specifically 25 PA Code § 264.97(i) and (j) and § 264.100(a)(9)], which require remediation of groundwater to background levels, as well as the requirement to remediate groundwater to federal Maximum Contaminant Levels (MCLs) under the Safe Drinking Water Act, 42 U.S.C. 300g-l and set forth in 40 CFR 141.61. These ARARs were waived in accordance with CERCLA (42 U.S.C. 9621(d)(4)(C)) and the NCP (40 CFR 300.430(f)(1)(ii)(C)(3)) due to technical impracticability of achieving background levels (from an engineering perspective) and MCLs throughout the groundwater contaminant plume. As indicated above, detections of Site-related compounds in groundwater are generally below the respective MCLs in Site monitoring wells.

The 1991 OU2 ROD required that MCLs be met for Site related contaminants of concern (COCs) at the tap prior to use of the groundwater by nearby residents. Wellhead treatment systems would be provided if any Site related MCL exceedances were identified. As indicated above, no Site-related compounds exceeded MCLs in any residential samples during the most recent Five-Year Review period from 2013 to 2017. Additionally, no Site related COCs have been identified in any residential samples above MCLs since sampling began in 1999. Therefore, the RAO of eliminating exposure to contaminated groundwater has been achieved. Residential monitoring will continue to ensure that groundwater cleanup goals continue to be met.

Operation and Maintenance

The PRP group conducts long-term monitoring and maintenance activities at the Site in accordance with the EPA-approved August 1995 OU1 O&M Plan and January 1996 OU2 O&M Plan. The primary activities associated with O&M include the following:

- Visual inspection of the cap with regard to vegetative cover, settlement, stability, and any need for corrective action. In addition, the cap is scheduled for periodic mowing;
- Inspection of the drainage swales for blockage, erosion and instability, and any need for corrective action;
- Inspection of the condition of the groundwater monitoring wells;
- Quarterly groundwater monitoring, which includes monitoring of the landfill wells and residential wells; and
- Engineered wetlands inspection and assessment. Inspections are conducted primarily for the purposes of assessing both weed control needs and the survival of plantings. Assessments are performed to determine if engineered wetlands are meeting the performance standards regarding survival and density of the desired wetlands species.

The City of Allentown conducts the quarterly inspections of the landfill, as well as the quarterly groundwater sampling of both the landfill wells and the residential wells. Over the last five years there have been few, if any, problems with the landfill.

As established in the 1991 OU2 ROD, long-term monitoring is conducted on a quarterly basis at five residences selected based on the previous sampling results. The quarterly sampling is conducted by the City of Allentown. The quarterly sampling program may be modified by EPA, in such areas as the number of wells, location of wells, frequency of sampling, and analytical parameters. If quarterly sampling indicates that a residential well that exceeds MCLs, a wellhead treatment system would be provided and maintained. There have been no quarterly residential samples which have been above MCLs since sampling began in March 1999.

In March of 2007 EPA issued a second ESD (2007 ESD) that required institutional controls (ICs) (*e.g.* easements, covenants, title notices or land use restrictions through orders or agreements with EPA), to be established to prevent any future use of the Site that could compromise the effectiveness of the Selected Remedy.

The ICs were established to prevent the disturbance of the landfill cap and the installation of groundwater wells on the capped portion of the Dorney Road Landfill property and to prevent future use of the property that would compromise the effectiveness of the Selected Remedy.

EPA surveyed the landfill property to determine the parcel boundaries and to confirm the current property owners in 2011. An assessment of the ICs already in place concluded that ICs to protect the integrity of the cap cover system and prevent the installation of drinking water wells on the landfill were implemented by the following instruments with the four Site owners:

- Unilateral Administrative Order Docket No. III–98–011–DC, March 3, 1998, for access to conduct RA
- Unilateral Administrative Order for Access Docket No. III–96–79–DC, September 18, 1996, for access to conduct RA
- Administrative Order by Consent, Docket No. III–97–84–DC, May 14, 1997, for access and resolution of liability
- Administrative Order by Consent Docket No. III–97–85–DC, May 14, 1997, for access and resolution of liability
- Administrative Order for Access Docket No. III–98–013–DC, for access to conduct RA
- Docket No. III–98–012–DC, March 3, 1998, for access to conduct RA, respondent *In Rem*
- Deed Notice No. 8665–9544 May 10, 1991 states that property is part of Dorney Road Landfill CERCLA action in Docket No. III–90–45–DC

Five-Year Review

Pursuant to CERCLA section 121(c) and as provided in the current guidance on Five-Year Reviews, *Comprehensive Five-Year Review Guidance, OSWER Directive 9355.7–03B–P, June 2001,* EPA must conduct a statutory Five-Year Review if hazardous substances remain on-site above levels that would not allow for unlimited use and unrestricted exposure. The Five-Year Reviews for the Site were signed on the following dates:

1. First Five-Year Review—July 11, 2003
2. Second Five-Year Review—July 28, 2008
3. Third Five-Year Review—May 29, 2013
4. Fourth Five-Year Review—May 18, 2018

No issues or recommendations were identified in the 2018 Fourth Five-Year Review. The Protectiveness Statement in the 2018 Fourth Five-Year Review was as follows:

The remedies in place at the Site are protective of human health and the environment. The landfill cap prevents direct contact with site contamination and prevents migration of contaminants to groundwater. Groundwater contamination is stable in landfill wells with most contaminants below MCLs. Residential monitoring indicates site contaminants remain below MCLs. The institutional controls in place are adequate to protect the engineered remedy and prevent installation of drinking water wells on the landfill.''

Community Involvement

EPA community relations staff conducted an active campaign to ensure that the residents were well informed about activities at the Site. Community relations activities included the following:

- Interviews of Township officials for Five-Year Reviews
- Fact Sheets

In accordance with the requirements of 40 CFR 300.425(e)(4), EPA's community involvement activities associated with this deletion will consist of information supporting the deletion docket in the local Site information repository and placing a public notice of EPA's intent to delete the Site from the NPL in the *Reading Eagle,* a major, local newspaper of general circulation.

Determination That the Site Meets the Criteria for Deletion in the NCP

Construction of the Selected Remedy at the Site has been completed and O&M has been untaken and is still ongoing in accordance with the EPA-approved O&M Plans. All RAOs, Performance Standards, and cleanup goals established in the 1988 OU1 ROD, 1991 OU2 ROD, 1991 ESD and 2007 ESD have been achieved and the Selected Remedy is protective of human health and the environment. No further Superfund response actions, other than O&M, monitoring, and Five-Year Reviews, are necessary to protect human health and the environment.

The procedures specified in 40 CFR 300.425(e) have been followed for the deletion of the Site. EPA, with concurrence of the Commonwealth through PADEP, has determined that all appropriate response actions under CERCLA, have been completed. Therefore, EPA is deleting the Site from the NPL.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: June 19, 2018.

Cosmo Servidio,

Regional Administrator, EPA Region III.

[FR Doc. 2018–15245 Filed 7–16–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2000–0003; FRL–9980–72—Region 4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Davis Timber Company Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 is issuing a Notice of Intent to Delete the Davis Timber Company Superfund Site (Site) located in Hattiesburg, Lamar County, Mississippi, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Mississippi (State), through the Mississippi Department of Environmental Quality (MDEQ), have determined that all appropriate response actions under CERCLA, other than operations and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by August 16, 2018.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–2000–0003, by one of the following methods:

(1) *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

(2) *Email:* Scott Martin, Remedial Project Manager, *martin.scott@epa.gov.*

(3) *Mail:* Scott Martin, Remedial Project Manager, Superfund Restoration and Sustainability Branch, Superfund Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

(4) *Hand delivery:* USEPA Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Attention: Scott Martin, Remedial Project Manager, Superfund Restoration and Sustainability Branch. Hours of Operation: Monday to Friday 7:30 a.m. to 4:30 p.m. Phone: 404–562–8951.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–2000–0003. EPA policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

(1) USEPA Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960, Monday–Friday 7:30 a.m.–4:30 p.m., Contact Tina Terrell 404–562–8835; and

(2) Oak Grove Public Library (in the Reference Section) 4958 Old Highway 11, Hattiesburg, Mississippi, 39402, Monday–Friday 9:00 a.m.–6:00 p.m.; and Saturdays 10:00 a.m. to 2:00 p.m.; Phone: 601–296–1620.

FOR FURTHER INFORMATION CONTACT: Scott Martin, Remedial Project Manager, Superfund Restoration and Sustainability Branch, Superfund Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960, phone 404–562–8916, email: *martin.scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The EPA announces its intent to delete the Davis Timber Company Superfund Site from the NPL and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the NCP, which the EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. The EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

The EPA will accept comments on the proposal to delete this site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that the EPA is using for this action. Section IV discusses the Davis Timber Superfund Site and demonstrates how it meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), the EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, the EPA conducts five-year reviews (FYRs) to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. The EPA conducts such FYRs even if a site is deleted from the NPL. The EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA consulted with the State before developing this Notice of Intent to Delete.

(2) The EPA has provided the State 30 working days for review of this notice prior to publication of it today.

(3) In accordance with the criteria discussed above, the EPA has determined that no further response is appropriate.

(4) The State, through the MDEQ, has concurred with deletion of the Site from the NPL.

(5) Concurrently with the publication of this Notice of Intent to Delete in the **Federal Register**, a notice is being published in a major local newspaper, Hattiesburg American. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the site from the NPL.

(6) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

If comments are received within the 30-day public comment period on this document, the EPA will evaluate and respond appropriately to the comments before making a final decision to delete. If necessary, the EPA will prepare a responsiveness summary to address any significant public comments received. After the public comment period, if the EPA determines it is still appropriate to delete the Site, the Regional Administrator will publish a final Notice of Deletion in the **Federal Register**. Public notices, public submissions and copies of the responsiveness summary, if prepared, will be made available to interested parties and in the site's information repositories listed above.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter the EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist the EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides the EPA's rationale for deleting the Site from the NPL.

Site Background and History

The Davis Timber Company Site is located at 107 Jackson Road, approximately 6 miles northwest of Hattiesburg, in Lamar County, Mississippi. The Davis Timber Company produced treated pine poles, pilings, and timber at the Site from 1972 to 1987. Operations at the Site included bark removal, treatment of wood with pentachlorophenol (PCP), and product storage. The Site is approximately 30 acres and was comprised of a scragg mill, debarker, pole peeler, office and shop, treatment cylinder, cooling pond, oil storage tank, two aboveground PCP-solution storage tanks, a storage yard, and a large former PCP and waste bark Impoundment (Impoundment).

Surface soil on the Site consists of a very thin layer of sandy clay, which overlies a very thick clay unit, the Hattiesburg formation, that inhibits vertical migration of precipitation. Surface water runoff from the property flows into two intermittent tributaries of Mineral Creek: East Mineral Creek and West Mineral Creek. Mineral Creek flows northeast into Country Club Estates Lake, a 66-acre lake located approximately 1.25 miles downstream of the Site. Country Club Estates Lake is a recreational fishery and designated recreation area. Wastewater from Site operations containing PCP, dioxin and furan compounds, was discharged into the Impoundment. In 1980, the Impoundment was backfilled and capped by the property owner with approximately 6 to 8 inches of clay.

Between December 1974 and January 1987, the MDEQ documented six fish kills in Country Club Estates Lake. Several of the fish kills were attributed to documented releases of PCP from the Impoundment. In 1987, MDEQ ordered Davis Timber Company to discontinue wood preserving operations. According to MDEQ, Davis Timber Company subsequently declared bankruptcy in 1990. Since 1987, Mississippi officials collected fish from Country Club Estates Lake seven times and analyzed the fish tissue for dioxin compounds. In 1989, after obtaining the first set of fish tissue data, MDEQ issued an advisory against both commercial fishing and consumption of fish caught in Country Club Estates Lake due to the high levels of dioxin compounds in the fish tissue. In 1989, the Agency for Toxic Substances and Disease Registry (ATSDR) was petitioned by the MDEQ to conduct a public health assessment at Country Club Estates Lake on behalf of the residents of Country Club Estates. In that public health assessment, released in January 1993, ATSDR classified Country Club Estates Lake as a public health hazard because of concentrations of PCP and chlorinated dibenzodioxins (dioxins) and dibenzofurans (furans) detected in the Lake. In July 2000, MDEQ collected fish from Country Club Estates Lake. According to these sampling results, dioxin levels in fish from Country Club Estates Lake declined below 5 pg/g, which is Mississippi's lower limit for issuing consumption advisories for dioxin. In June 2001, Mississippi officials lifted the ban on consumption of fish caught near the Site because dioxin levels in fish showed a significant decrease over a 10-year period.

The Site was proposed as a NPL Site on May 11, 2000 (65 FR 30489). It was finalized as a NPL Site in July 2000 (65 FR 46096). The EPA's Identification Number is MSD046497012.

Remedial Investigation and Feasibility Study (RI/FS)

The Remedial Investigation (RI) was conducted by the EPA Region 4 Science and Ecosystem Support Division (SESD) between May 2000 and September 2001. During this period, SESD collected 30 subsurface soil samples, 6 groundwater samples, 51 sediment samples, 11 surface water samples, 27 surface soil samples, and multiple fish tissue samples (individual and composite). The Site was divided into 49 grids measuring 200-ft by 200-ft except in the central-northern portion of the Site, which was divided into 100-ft by 100-ft grids. A 3 to 5-point composite surface sample was collected from each grid and a subsurface sample was collected from the center of each grid at a depth of 18 to 24 inches.

Contamination was delineated based on those constituents detected at concentrations exceeding the EPA Region 9 Preliminary Remediation Goals (PRGs) and/or Federal Maximum Contaminant Levels (MCLs) for surface water and groundwater; or human health risk-based Region 4 PRGs (*e.g.,* for dioxins/furans in soil and sediment). Risk-based remediation goals derived from Site-specific data are identified by the Human Health Risk Assessment (HHRA) for residential, industrial and recreational receptors and the ecological risk assessment. Arsenic, aluminum, thallium, and iron are identified in soil as chemicals of potential concern (COPCs) assuming residential use of the property in the RI; however, they were not Chemicals of Concern (COCs) when considering the property will likely be utilized for a recreational future land use, not residential purposes. As a result, COCs for the Site are limited to PCP and dioxin/furans.

Appreciable quantities of groundwater have not been observed at the Site. Of the four permanent monitoring wells installed outside the Impoundment area, only one produced an adequate quantity of water to collect a groundwater sample. No Volatile Organic Compounds (VOCs), PCP, or Polycyclic Aromatic Hydrocarbons (PAHs) were detected in the groundwater sample collected from this well outside the Impoundment area. Temporary monitoring wells were installed and sampled in the initial field investigation. After evaluation of historical aerial photographs, it is believed these temporary monitoring wells were installed within the footprint of the Impoundment and the fluid sampled was not groundwater but fluid remaining within the Impoundment. The four permanent monitoring wells have been properly abandoned. The groundwater was not a pathway of contaminant migration, and a groundwater response action was not required.

Selected Remedy

The site is comprised of one Operable Unit (OU). The Record of Decision (ROD) for the Davis Timber Site was signed on September 24, 2009 following consideration of public comment on the proposed plan. The Site's ROD identified the following Remedial Action Objectives (RAOs):

i. Reduce or eliminate human exposure to contaminated surface and subsurface soil;

ii. Reduce human exposure to contaminated surface water; and

iii. Reduce exposure of ecological receptors to contaminated surface soil and sediment.

The remedial action specified for this site has been deemed necessary by the EPA to protect public health, welfare, and the environment from actual or threatened releases of hazardous substances from this site into the environment. The remedial actions chosen for the Site are summarized as follows:

(1) Extract the liquid from the closed Impoundment, and treat the liquid to remove the dissolved contamination and discharge the clean water to West Mineral Creek;

(2) Move a 500 to 1,000-foot portion of West Mineral Creek (immediately adjacent to the Impoundment area) approximately 200 feet west of its current location;

(3) Construct an earthen retaining wall or berm structure along the western boundary of the Impoundment between it and the relocated portion of West Mineral Creek;

(4) Excavate and move contaminated soil into the Impoundment area;

(5) Dredge contaminated sediment from the creeks, ponds, and wetlands, and remove excess water and move into the Impoundment area;

(6) Construct a cap over the Impoundment area (designed with a stabilizing sub-cap);

(7) Backfill excavated and dredged locations with clean borrow material;

(8) Implement land-use/deed restrictions to limit construction over the capped Impoundment and contaminated soil areas;

(9) Grade and prepare the site for optimal storm water drainage control; and

(10) Establish and implement a long-term monitoring program to assess the effectiveness of the remedial action.

Response Actions

Remedial action physical construction activities began during October 2011 following receipt of remedial action funding through the President's Jobs Initiative Program. Remedial action construction services were procured through the existing Region 4 Emergency Response and Removal Services (ERRS) contract.

Construction activities were completed in August 2012, and included the following:

(1) Site clearing and demolition of on-site structures;

(2) Installation of the Impoundment liquid extraction and treatment system (this system treated approximately 539,000 gallons of liquid);

(3) West Mineral Creek Relocation (relocated approximately 1,046 linear feet of creek approximately 200 feet west of its current location);

(4) Impoundment berm construction;

(5) Cooling pond and areas of surface soil contamination excavation (excavated approximately 3,060 cubic yards);

(6) East Mineral Creek Excavation (approximately 525 linear feet and 101 cubic yards of soil);

(7) Impoundment cap construction; and

(8) Final grading and vegetation.

The selected remedy required Institutional Controls (land use or deed restrictions) to control and limit on-site activities to preserve the integrity of the capped Impoundment and all components of the engineered containment system. Site use is restricted to activities compatible with the future anticipated recreational land use.

The Site parcel has an environmental covenant which does not allow residential use and restricts excavation before meeting notification requirements of Mississippi's One Call law.

Cleanup Levels

The RA successfully achieved compliance with the defined performance standards documented in the ROD and the RD.

Impoundment Water Extraction and Treatment

The water extraction and treatment system removed and treated 539,454 gallons of contaminated water from the closed Impoundment. Approximately 77 percent of the water was removed from the Impoundment. The remedial design established performance standards for the treatment system discharge to West Mineral Creek as the Mississippi Water Quality Criteria for Intrastate, Interstate and Coastal Waters. These standards comply with the requirements of a Mississippi National Pollutant Discharge Elimination System (NPDES) permit. Operation of the treatment system continued until May 30, 2012, when diminishing recovery volumes and water levels indicated the practical limit of dewatering had been reached.

Soil

The remedial design specified excavation of contaminated soil from two areas of the Site:

(1) Within the footprint of the former cooling pond; and

(2) Within the delineated area of surface soil contamination surrounding the former cooling pond and process area.

Two additional areas of contaminated soil were discovered during the remedial action and were also excavated:

(1) Beneath the former maintenance building; and

(2) Beneath the location of the former treatment cylinder.

Contaminated soil in these additional soil areas were excavated and disposed of in the Impoundment area until the visible extent of contamination was removed and vapor screening indicated total organic vapors of less than 10 parts per million.

Post-excavation subsurface soil samples collected from the base of the cooling pond excavation and the surface soil excavation were analyzed for dioxins, furans and PCP. The 2013 Remedial Action Report summarized the sampling results as follows:

(1) Three composite subsurface soil samples were collected from the base of the cooling pond excavation and compared to the dioxin Toxic Equivalency Quotient (TEQ) cleanup level of 5 µg/kg. All three sample results were below the cleanup level, ranging from 0.088 to 0.40 µg/kg.

(2) Five composite subsurface soil samples and one duplicate sample were collected from the bottom of the surface soil excavation area. All of the sample results were below the dioxin TEQ cleanup goal of 5 µ g/kg.

Sediment

Prior to excavation, the EPA contractor collected additional sediment samples from East Mineral Creek and analyzed for dioxins and furans. All results were below the cleanup goal for dioxin TEQs. Contaminated sediment was excavated from three areas of East Mineral Creek that had shown the highest concentrations during the RI. A total of 101 cubic yards of sediment was removed and disposed of in the closed Impoundment area. Three post-excavation sediment samples and one duplicate sample were collected from the creek to confirm that cleanup goals were achieved. Dioxin TEQ results were below the ROD cleanup level of 1.9 µg/kg for all samples, with values ranging from 0.21 to 0.73 µg/kg. All samples collected during the RI were below the sediment cleanup goal for PCP except for one (8,200 µg/kg, performance standard 7,600 µg/kg).

Groundwater

No appreciable quantities of groundwater have been observed at the Site. Of the four permanent monitoring wells installed outside the Impoundment area, only one produced an adequate quantity of water to collect a groundwater sample. No volatile organic compounds (VOCs), PCP, or polycyclic aromatic hydrocarbons (PAHs) were detected in the groundwater sample collected from this well outside the Impoundment area.

Post-excavation soil sampling performed by Onedia Total Integrated Enterprise (OTIE) confirmed that soil and sediment cleanup levels were achieved. All work performed by WRS Compass (WRSC) during the RA was conducted in accordance with the RD specifications, unless otherwise documented and approved by the EPA Remedial Project Manager (RPM). The EPA had a representative on-site for much of the RA construction who, in conjunction with the OTIE representative, ensured that the remedy was constructed in accordance with the RD specifications and that the construction quality control requirements of the specifications were strictly adhered to.

Operations and Maintenance

The responsibility for operations and maintenance (O&M) was transferred to the State on October 20, 2014. Future O&M activities at the site are expected to be limited to mowing, inspections, and FYRs. Periodic inspections will need to be implemented to ensure the Impoundment cap and berm retain their integrity, and to ensure that stormwater and sediment controls, the West Mineral Creek channel, and revegetated areas operate as intended.

Five-Year Review

The purpose of a the FYR is to evaluate the implementation and performance of a remedy to determine if the remedy is and will continue to be protective of human health and the environment. In addition, FYR reports identify issues found during the review, if any, and document recommendations to address them. The first FYR was conducted in December 2016.

The FYR was conducted pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) section 121, consistent with the NCP (40 CFR 300.430(f)(4)(ii)), and considering the EPA policy. The triggering action for this statutory review is the on-site construction start date of the remedial action. The FYR has been prepared because hazardous substances, pollutants or contaminants remain at the Site above levels that allow for unlimited use and unrestricted exposure (UU/UE).

The Site consists of one operable unit (OU1), and OU1 consisted of all contaminated media, which includes soil and sediment, associated with the Site.

The FYR concluded that the remedy at OU1 currently protects human health and the environment because there are no completed exposure pathways; contaminated soil and sediment were excavated and capped, and Impoundment water was treated and discharged. The FYR had no issues or recommendations. The next FYR will be conducted in 2021.

Community Involvement

Throughout the removal and remedial process, the EPA has kept the public informed of the activities being conducted at the Site by way of public meetings, progress fact sheets, and the announcement through local newspaper advertisement on the availability of documents related to the site and FYRs.

The notice of the availability of the Administrative Record and an announcement of the Proposed Plan for a public meeting was published in the Hattiesburg American newspaper on July 15, 2009. A public comment period was held from July 15, 2009, to August 14, 2009. The Proposed Plan was presented to the community during a public meeting on August 10 at the Breland Community Center, 79 Jackson Road, Hattiesburg, MS 39402. At this meeting, representatives from the EPA and MDEQ answered questions from the community concerning the proposed remedy and the remedial alternatives that were evaluated. The Administrative Record file was available to the public and was placed in the information repository maintained at the EPA Region 4 Superfund Record Center and at the Oak Grove Public Library (in the Reference Section) 4958 Old Highway 11, Hattiesburg, Mississippi, 39402.

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k) and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket, which the EPA relied on for recommendation of the deletion from the NPL, are available to the public in the information repositories identified above.

Determination That the Site Meets the Criteria for Deletion in the NCP

The EPA has followed the procedures required by 40 CFR 300.425(e) as mentioned above and the implemented remedy achieves the degree of cleanup specified in the ROD for all pathways of exposure. Specifically, post-excavation soil sampling performed by OTIE confirmed that soil and sediment cleanup levels were achieved. These results verify that the Site has achieved the ROD cleanup standards, and that all cleanup actions specified in the ROD have been implemented. All selected remedial and removal action objectives and associated cleanup levels are consistent with agency policy and guidance. This Site meets all the site completion requirements as specified in Office of Solid Waste and Emergency Response (OSWER) Directive 9320.22, *Close-Out Procedures for National Priorities List Sites.* No further Superfund response is needed to protect human health and the environment.

The EPA, with concurrence of the State through MDEQ, has determined that all appropriate response actions under CERCLA have been completed. Therefore, the EPA is proposing to delete the Site from the NPL.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: July 3, 2018.

Onis ''Trey'' Glenn, III,

Regional Administrator, Region 4.

[FR Doc. 2018–15243 Filed 7–16–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1989–0011; FRL–9980–58—Region 3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Recticon/Allied Steel Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region III is issuing a Notice of Intent to Delete the Recticon/Allied Steel Superfund Site (Site) located in East Coventry Township, Chester County, Pennsylvania, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the Commonwealth of Pennsylvania (the Commonwealth), through the Pennsylvania Department of Environmental Protection (PADEP), have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by August 16, 2018.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1989–0011, by one of the following methods:

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

- *Email:* hass.andrew@epa.gov
- *Mail:* USEPA Region III, 1650 Arch Street, Mail Code: 3HS21; Philadelphia, PA. 19103.
- *Hand delivery:* USEPA Region III, 1650 Arch Street, Philadelphia, PA 19103. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1989–0011 EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

USEPA Region III Administrative Records Room, 1650 Arch Street—6th Floor, Philadelphia, PA 19103–2029, 215–814–3157, Business Hours: Monday through Friday, 8:00am–4:30pm; by appointment only Local Repository

East Coventry Township Municipal Building, 855 Ellis Woods Road, Pottstown, PA 19464, 610–495–5443, Call for Business Hours

FOR FURTHER INFORMATION CONTACT: Andrew Hass, Remedial Project Manager, U.S. Environmental Protection Agency, Region 3, 3HS21 1650 Arch Street Philadelphia, PA 19103, (215) 814–2049, email: *hass.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
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I. Introduction

EPA Region III announces its intent to delete the Recticon/Allied Steel Superfund Site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

EPA will accept comments on the proposal to delete this Site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Recticon/Allied Steel Superfund Site and demonstrates how it meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the Commonwealth, whether any of the following criteria have been met:

i. responsible parties or other persons have implemented all appropriate response actions required;

ii. all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts Five-Year Reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. Five-Year Reviews are no longer required at this Site; however, EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the Commonwealth before developing this Notice of Intent to Delete.

(2) EPA has provided the Commonwealth 30 working days for review of this notice prior to publication of it today

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate;

(4) The Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP), has concurred with deletion of the Site from the NPL.

(5) Concurrently with the publication of this Notice of Intent to Delete in the **Federal Register**, a notice is being published in a major local newspaper, the *Pottstown Mercury.* The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(6) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

If comments are received within the 30-day public comment period on this document, EPA will evaluate and respond appropriately to the comments before making a final decision to delete. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete the Site, the Regional Administrator will publish a final Notice of Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and in the site information repositories listed above.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Background and History

EPA proposed the Recticon/Allied Steel Superfund Site (Site) (CERCLIS ID PAD002353969) to the NPL on June 24, 1988 (53 FR 23988) and added the Site as final on the NPL on October 4, 1989 (54 FR 41000). The Site is located at the intersection of State Route 724 and Wells Road in East Coventry Township, PA and is approximately 8 miles northwest of Phoenixville, PA and 3.2 miles southeast of Pottstown, PA. The 5-acre Recticon/Allied Steel Site consists of two properties, the former Allied Steel Products Corporation facility and the former Recticon facility.

From 1972–1988, Allied Steel Products Corporation (Allied) began fabrication of various steel products on a property located on the eastern corner of the intersection. Recticon was a subsidiary of Rockwell International and manufactured silicon wafers for the electronics industry from 1974 to 1981 on the western corner of the intersection. In 1979, the Pennsylvania Department of Environmental Resources (PADER), now known as the Pennsylvania Department of Environmental Protection (PADEP), detected trichloroethylene (TCE) in the groundwater beneath the Site. In 1980, a contractor determined that leakage in the area of Allied's compressor room had released TCE onto the ground. High levels of TCE were found in Allied's on-site well. In addition, sediment samples taken from the drainage ditch alongside the Allied building yielded high levels of copper and zinc, well above ecological risk levels.

The Commonwealth of Pennsylvania and Recticon entered into a Consent Order in 1981 to undertake initial cleanup actions at the Site. Recticon, under PADER oversight, removed contaminated soils from the Site and transported them to an EPA-approved facility for disposal. Recticon also pumped and treated some of the groundwater beneath the Site for a few months. Under PADER oversight, Allied Steel also excavated contaminated soil and shipped it off-site for proper disposal. In 1990, EPA entered into two Consent Orders with Rockwell International, the former parent company of Recticon, to provide residential well filters to nearby residents and to conduct the Remedial Investigation/Feasibility Study (RI/FS).

Remedial Investigation and Feasibility Study (RI/FS)

The RI/FS was conducted from January 1991 through May 1993 and determined that soil, sediment, and groundwater were impacted by volatile organic compounds (VOCs) and metals from the historic operation of the Allied and Recticon facilities.

Selected Remedy

The Selected Remedy for the Site was documented in a June 30, 1993 Record of Decision (ROD) and modified in an August 29, 1997 ROD Amendment; a September 10, 2004 Explanation of Significant Differences (ESD); and a May 26, 2010 ESD. The following sections discuss the components of the Selected Remedy and details on implementation.

1993 Record of Decision

The Remedial Action Objectives (RAOs) for the Site as established in the 1993 ROD were as follows:

1. Prevent human exposure to contaminants in the groundwater.
2. Restore contaminated groundwater to its beneficial use and to background concentrations, if technically practicable, or Maximum Contaminant Levels (MCLs), whichever is more stringent.
3. Protect uncontaminated groundwater and surface water for current and future use, and environmental receptors.

After the 1993 ROD was finalized, EPA divided the Site remedial work into three operable units (OUs) to facilitate management of the remedial process.

- Operable Unit 1 (OU1)—Water Line
- Operable Unit 2 (OU2)—Soil
- Operable Unit 3 (OU3)—Groundwater

OU1—Water Line

The Selected Remedy for OU1 in the 1993 ROD consisted of the installation of a public water supply to East Coventry Township to 14 residences and businesses.

OU2—Soil

The Selected Remedy for OU2 in the 1993 ROD consisted of the excavation and off-site disposal of contaminated soils. The soil cleanup levels in the 1993 ROD were based on the amount of contamination that could remain in the soil without further contributing to groundwater contamination above ''background'' concentrations.

The 1997 ROD Amendment changed the cleanup levels for Site contaminants of concern (COCs) in groundwater from ''background'' concentrations to MCLs. This change was based on the Commonwealth of Pennsylvania's enactment of the Land Recycling and Environmental Remediation Standards Act (Act 2) on May 19, 1995, 35 Pa. Stat. § 6026.101 *et seq.,* which established MCLs as the protective groundwater cleanup levels. As a result of the change in groundwater cleanup levels to MCLs, a new soil cleanup level was calculated for the proposed soil excavation response at the Site. Site-specific modeling was used to determine the maximum concentration of TCE that could be in the soil and not cause leaching into the groundwater above the MCL. The modeling resulted in a cleanup level of 1,600 μg/kg of TCE in soil. It was determined that additional soil excavation was no longer necessary because the concentrations of contaminants in the soil after the initial response action were below this cleanup level.

The 1997 ROD Amendment also required that institutional controls be implemented to prohibit soil excavation on the Recticon property that could result in exposure to contaminated soil via direct contact and to prohibit any new wells on Site until the groundwater cleanup levels are met.

The 2004 ESD eliminated the requirement for institutional controls to prohibit direct contact with the soil on the Recticon property. The ESD identified PADEP Act 2 Media Specific Concentrations (MSCs) for TCE for direct contact with soils as the cleanup level that would need to be exceeded for new institutional controls to be necessary. No TCE was detected in soil at the Site exceeding the PADEP Act 2 MSC for direct contact.

The ESD also eliminated the requirement to prohibit the construction of new groundwater wells at the Site.

OU3—Groundwater

The Selected Remedy for OU3 initially consisted of extraction and treatment of groundwater with discharge to the Schuylkill River following a pre-design hydrogeologic investigation and well abandonment. In accordance with the 1993 ROD, a comprehensive pre-design study of the groundwater at the Site was conducted to further define the outer boundaries of the groundwater plume and the hydraulic properties within the aquifer. Based on the findings of this study, a groundwater recovery system for contaminated groundwater was designed. The groundwater recovery system consisted of extraction, shallow tray air stripping and granular activated carbon treatment to remove the VOCs, and discharge of treated water to the Schuylkill River.

The 2010 ESD changed the groundwater extraction and treatment remedy to enhanced natural bioremediation of TCE. A successful pilot test, which reduced the levels of TCE in the Site wells, had been conducted using this technology. The 2010 ESD also re-instituted the requirement for institutional controls for groundwater use on both the Recticon and Allied properties, since all wells on these properties were not below the cleanup levels.

Response Actions

The Remedial Design and Remedial Action (RD/RA) were performed by Rockwell under Unilateral Administrative Order (UAO) No. III–94–16–DC issued on March 24, 1994. In accordance with the 1993 ROD, a Phase 1 Archeological Survey was performed in April 1995 prior to the start of onsite construction activity and determined that the Site had no historical significance. In 1999, Rockwell spun off its semiconductor business as an independent company called Conexant Systems, Inc. Conexant assumed responsibility for performing the RD/RA as required by the UAO.

OU1—Water Line

Construction of the water line was completed between September 1998 through November 1999 and consisted of extending a water main to the Site area and connecting 14 residences and businesses. Once the municipal water lines were connected, filtration systems previously used at the properties were no longer necessary. EPA performed the final inspection of the water line and connections on December 13, 1999.

OU2—Soil

In accordance with the 1993 ROD, verification sampling was conducted on the soil at the former Allied facility to determine the source and extent of copper and zinc contamination. An ecological assessment indicated that the copper and zinc levels exceeded the Region III Biological Technical Assistance Group (BTAG) screening values, and that any terrestrial or aquatic receptors on or near the Site would be exposed to unacceptable levels of these contaminants. As a result, EPA conducted a time-critical removal at the Site in April 1998. Six inches of contaminated soil were excavated and removed from a small portion of the Site known as the ‘‘crane area’’ and shipped off-site for proper disposal. The area was backfilled with clean soil and grass was planted.

The 1993 ROD also required the excavation of TCE contaminated soils on the former Recticon facility. This requirement was modified by the 1997 ROD Amendment, which changed the soil cleanup level. As a result of this change, no further soil excavation was required and institutional controls were instead required to prohibit soil excavation. The 2004 ESD subsequently eliminated the requirement for institutional controls for soil.

OU3—Groundwater

Construction of the groundwater portion of the remedy started in June 1998 and consisted of the installation of approximately 10 additional monitoring wells, an extraction well and the construction of a groundwater extraction and treatment system. EPA conducted a pre-final inspection of OU3 on April 19, 1999 and determined that Rockwell and its contractors had constructed the remedy in accordance with remedial design plans and specifications. A Preliminary Closeout Report (PCOR) was issued on December 14, 1999, documenting Construction Completion for the Site.

A Pilot Study was initiated in 2001 to evaluate the effectiveness of using enhanced bioremediation to treat groundwater contamination more effectively than groundwater extraction and treatment. The study consisted of injecting non-toxic food-grade amendments and other approved supplements into the groundwater to enhance the natural biodegradation occurring at the Site. A total of 13 injections were completed during the Pilot Study from June 2001 through February 2007 utilizing several different amendments. The Pilot Study effectively reduced VOC contamination in the groundwater close to groundwater cleanup levels. The 2010 ESD replaced groundwater extraction and treatment with enhanced bioremediation based on the results of the Pilot Study.

Cleanup Levels

Table 1 describes the soil and groundwater cleanup levels established in the 1997 ROD Amendment:

TABLE 1

COC	Medium	Standard
TCE	Soil	1,600 μg/kg
TCE	Groundwater	5 μg/L
Vinyl Chloride	Groundwater	2 μg/L
1,1 dichloroethene	Groundwater	7 μg/L
1,2 dichloroethane	Groundwater	5 μg/L
1,2 dichloroethene	Groundwater	70 μg/L
Tetrachloroethene	Groundwater	5 μg/L

No soil was identified with TCE concentrations exceeding 1,600 μg/kg; therefore, no soil excavation was performed. Soil contaminated with zinc and copper at the Allied facility was excavated and disposed offsite under a time-critical removal action by EPA in 1998.

Groundwater COC concentrations at all sampling locations were below the groundwater cleanup levels during the 2011 annual sampling event. In accordance with the 1993 ROD, twelve (12) quarters of groundwater sampling were performed between October 2011 and September 2014 to confirm that the cleanup levels have been achieved. Vinyl chloride was detected in one well during this sampling at a concentration exceeding the cleanup level of 2 μg/L and TCE was detected in one well at a concentration exceeding the cleanup level of 5 μg/L. For these two wells, statistical tools specified in EPA program guidance were used to evaluate attainment for vinyl chloride and TCE. These data were statistically analyzed and the cleanup level exceedances were determined not to be statistically significant. No other samples identified any COC above the groundwater cleanup levels throughout the twelve quarters of sampling.

Additionally, EPA performed a cumulative risk assessment using the 2014 groundwater sampling results. Groundwater COC concentrations were compared to EPA Tap Water Risk Screening Level (RSLs) and if the RSL was exceeded during any of the 2014 sampling events, a risk assessment was performed. The data were grouped in Exposure Areas (EAs) based on groundwater sampling locations. The cumulative risk results were below or within EPA's acceptable risk range for each of the EAs.

Based on the results of the twelve quarters of groundwater monitoring and the results of the cumulative risk assessment, the groundwater cleanup levels have been achieved at the Site.

EPA subsequently issued a Final Close Out Report (FCOR) for the Site dated December 17, 2017. The FCOR summarized the remedial activities conducted at the Site, and concluded that EPA has successfully completed all response actions for the Site in accordance with *Close Out Procedures for National Priorities List Sites* (OSWER Directive 9320.2–09A–P).

Operation and Maintenance

Operation and Maintenance (O&M) activities for the Site were focused on the groundwater portion of the remedy (OU3). The initial groundwater remedy involved extraction and treatment of contaminated groundwater at the Site from 1998 through 2002. The water was treated using a shallow tray air stripper and GAC and the treated water was discharged to the Schuylkill River. The discharge was in continuous compliance with the substantive requirements of the National Pollutant Discharge Elimination System (NPDES). The system treated approximately 200 million gallons of contaminated groundwater prior to being shut down in December 2002.

The 2010 ESD replaced the groundwater extraction and treatment component of the Selected Remedy with enhanced bioremediation. Groundwater monitoring confirmed that groundwater cleanup levels have been achieved at the Site and no ongoing or future O&M or additional groundwater monitoring is necessary.

Institutional Controls

The 1993 ROD required an institutional control to restrict access to those portions of the aquifer where contaminants remain above performance standards. Institutional controls were also included in the 1997 ROD Amendment to prohibit soil excavation on the Recticon property and installation of new wells on the Recticon property until groundwater cleanup levels were met.

The 2004 ESD stated that institutional controls were no longer required for soil and that the groundwater was making progress toward achieving cleanup levels, therefore, institutional controls prohibiting new wells were no longer required. However, in the 2010 ESD, EPA determined that institutional controls for groundwater were still required since the groundwater cleanup levels had not yet been achieved. Therefore, the installation of new groundwater wells on the two properties comprising the Site needed to be prohibited until the groundwater at the Site meets the cleanup levels selected in the 1997 ROD Amendment. This institutional control has been implemented by deed notices which have been placed on the titles for the two Site properties pursuant to a 2002 Prospective Purchaser Agreement with the current owner of the Allied portion of the Site, and a 2005 Consent Decree with Wellsford, Inc., the current owner of the Recticon portion of the Site.

The Chester County Health Departments Rules and Regulations, § 501.12.5.1, currently provide an additional layer of use restriction for the Site groundwater by prohibiting the installation or use of drinking water supply wells in the vicinity of the Site unless the wells are tested for contamination and treated if contamination is identified. The relevant provisions of the regulations are provided below:

501.12.5.1 A permit shall be denied and/or approval to use the water supply shall be withheld in those areas of the County where the Chester County Health Department has been notified by State or Federal agencies or other sources that the area is unsuitable for the installation of on-site water wells due to known groundwater contamination unless the following conditions are met:

501.12.5.1.1 The water well must be tested prior to use and on a yearly basis for all known and suspected contaminants in the area.

501.12.5.1.2 When the water quality analysis shows that the contaminant level exceeds the maximum contaminant levels allowed by the Safe Drinking Water Act, the water must be treated by the appropriate treatment unit before approval can be granted.

As discussed in detail above, groundwater cleanup levels have been achieved at the Site. Therefore, in accordance with the 2010 ESD, institutional controls prohibiting the installation of new wells at the Site are no longer required.

Five-Year Review

Pursuant to CERCLA section 121(c) and as provided in the current guidance on Five-Year Reviews *Comprehensive Five-Year Review Guidance, OSWER Directive 9355.7–03B–P, June 2001,* EPA must conduct a statutory Five-Year Review if hazardous substances remain on-site above levels that would not allow for unlimited use and unrestricted exposure. The Five-Year Reviews for the Site were signed on the following dates:

1. First Five-Year Review—May 14, 2005
2. Second Five-Year Review—June 23, 2010
3. Third Five-Year Review—May 11, 2015

No issues or recommendations were identified in the 2015 Third Five-Year Review. The Protectiveness Statement in the 2015 Third Five-Year Review was as follows:

''*The Site is protective of human health and the environment. The RAOs established for the Site have been accomplished.*''

There are no hazardous substances or materials left on-site above levels that would not allow for unlimited use and unrestricted exposure; therefore, additional Five-Year Reviews are not required in the future.

Community Involvement

EPA community relations staff conducted an active campaign to ensure that the residents were well informed about activities at the Site. Community relations activities included the following:

- Interviews of East Coventry Township officials for Five-Year Reviews
- Annual Meetings with Chester County Board of Health

In accordance with the requirements of 40 CFR 300.425(e)(4), EPA's community involvement activities associated with this deletion will consist of placing the deletion docket in the local Site information repository and placing a public notice of EPA's intent to delete the Site from the NPL in the *Pottstown Mercury,* a major, local newspaper of general circulation.

Determination That the Site Meets the Criteria for Deletion in the NCP

Construction of the Selected Remedy at the Site has been completed and O&M was completed in accordance with the EPA-approved O&M Plan. Institutional controls are no longer necessary at the Site. All RAOs, performance standards, and cleanup levels established in the 1993 ROD, 1997 ROD Amendment, 2004 ESD, and 2010 ESD have been achieved and the Selected Remedy is protective of human health and the environment in the short- and long-term. No further Superfund response is necessary to protect human health and the environment.

The Site Deletion procedures specified in 40 CFR 300.425(e) have been followed for the deletion of the Site. EPA, with concurrence of the Commonwealth through PADEP, has determined that all appropriate response actions under CERCLA, have been completed. Therefore, EPA is deleting the Site from the NPL.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: June 19, 2018.

Cosmo Servidio,

Regional Administrator, EPA Region III.

[FR Doc. 2018–15244 Filed 7–16–18; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 83, No. 137
Tuesday, July 17, 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

July 11, 2018.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW, Washington, DC 20503. 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.

Comments regarding these information collections are best assured of having their full effect if received by August 16, 2018. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Field Crops Production.

OMB Control Number: 0535–0002.

Summary of Collection: The primary functions of the National Agricultural Statistics Services' (NASS) are to prepare and issue State and national estimates of crop and livestock production, disposition, and prices and to collect information on related environmental and economic factors. The Field Crops Production Program consists of probability field crops surveys and supplemental panel surveys. These surveys are extremely valuable for commodities where acreage and yield are published at the county level. NASS will use surveys to collect information through a combination of the internet, mail, telephone, and personnel interviews. The general authority for these data collection activities is granted under U.S. Code Title 7, Section 2204.

Need and Use of the Information: NASS collects information on field crops to monitor agricultural developments across the country that may impact on the nation's food supply. The Secretary of Agriculture uses estimates of crop production to administer farm program legislation and import and export programs. Collecting this information less frequently would eliminate the data needed to keep the Department abreast of changes at the State and national level.

Description of Respondents: Farms; Business or other for-profits.

Number of Respondents: 626,115.

Frequency of Responses: Reporting: Weekly, Monthly, Quarterly, Annually.

Total Burden Hours: 181,411.

Ruth Brown,
Departmental Information Collection Clearance Officer.

[FR Doc. 2018–15162 Filed 7–16–18; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 12, 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 August 16, 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), *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.

Food and Nutrition Service

Title: Study of School Food Authority (SFA) Procurement Practices.

OMB Control Number: 0584—NEW.

Summary of Collection: The purpose of the Study of SFA Procurement Practices is to describe and assess the practices of SFAs related to procuring goods and services for the National School Lunch Program (NSLP), School Breakfast Program (SBP), Fresh Fruit and Vegetable Program (FFVP), Summer Food Service Program (SFSP), and Child and Adult Care Food Program (CACFP) and to better understand how SFAs make decisions that lead to these procurement practices. Study findings will describe similarities and differences in how SFAs procure goods and services and explain key issues and experiences of SFAs. Using a nationally representative sample of SFAs, this study will be one of the first Food and Nutrition Service (FNS) studies of SFA procurement practices for Child Nutrition (CN) meal programs that comprehensively examines the use of Food Service Management Companies and Cooperative Purchasing Agreements, recordkeeping, local purchases, and food purchase specifications. Procurement for CN meal programs can be affected by federal regulations (such as the Richard B. Russell National School Lunch Act, which set procurement requirements for NSLP and SBP in 2014), policy memos, program guidance, and grant funding, in addition to State and local policies.

Additionally, there are government-wide regulations under 7 CFR 210.21, 220.16, 225.17, 226.22, and 2 CFR 200 that also apply to these procurements. SFA procurement procedures must adhere to CN program and government-wide regulations and guidance, and State and local policies related to procurement.

Need and Use of the Information: This study will collect data on a voluntary basis from SFAs using a web survey and in-depth interviews. FNS will use the information collected through this study to better understand how SFAs make decisions that lead to their procurement practices for CN programs, to assist SFAs in understanding FNS regulations and complying with program requirements, to provide more effective policy guidance, and to provide supplemental training.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 760.

Frequency of Responses: Reporting: One-time.

Total Burden Hours: 1,268.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–15184 Filed 7–16–18; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2018–0040]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval 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 a revision to and extension of approval of an information collection associated with the regulations for the importation of fruits and vegetables into the United States.

DATES: We will consider all comments that we receive on or before September 17, 2018.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0040.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2018–0040, 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-2018-0040* 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 regulations for the importation of fruits and vegetables into the United States, contact Mr. Juan Román, Senior Regulatory Policy Specialist, RCC, RPM, PHP, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 851–2242. 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: Importation of Fruits and Vegetables.

OMB Control Number: 0579–0264.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U .S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service, which administers regulations to implement the PPA.

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–83) allow a number of fruits and vegetables to be imported into the United States, under specified conditions, from certain parts of the world while continuing to protect against the introduction of pests into the United States. Under these regulations, the importation of a variety of fruits and vegetables from specified countries require the use of information collection activities such as phytosanitary certificates, trapping records, compliance agreements, application of sterile insect technique, monitoring, safeguarding, emergency action notifications, and notices of arrival.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 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 0.45 hours per response.

Respondents: National plant protection organization officials of countries exporting to the United States and businesses.

Estimated annual number of respondents: 65.

Estimated annual number of responses per respondent: 13.

Estimated annual number of responses: 855.

Estimated total annual burden on respondents: 381 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 11th day of July 2018.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2018–15230 Filed 7–16–18; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection: Forest Industries and Logging Operations Data Collection Systems

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the USDA Forest Service is seeking comments from all interested individuals and organizations on the renewal of a currently approved information collection, *Forest Industries and Logging Operations Data Collection Systems (0596–0010),* with a revision for a new sampling approach.

DATES: Comments must be received in writing on or before September 17, 2018 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to: USDA, Forest Service, Attn: James Bentley, Southern Research Station, Forest Inventory and Analysis, 4700 Old Kingston Pike, Knoxville, TN 37919. Comments also may be submitted via facsimile to 865–862–0262 or by email to: *jamesbentley@fs.fed.us.*

Comments submitted in response to this notice may be made available to the public through relevant websites and upon request. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

The public may inspect comments received at the Southern Research Station, 4700 Old Kingston Pike, Knoxville, TN, during normal business hours. Visitors are encouraged to call ahead to 865–862–2000 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: James Bentley, Southern Research Station, at 865–862–2056. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Forest Industries and Logging Operations Data Collection Systems.

OMB Number: 0596–0010.

Expiration Date of Approval: December 31, 2019.

Type of Request: Renewal with Revision.

Abstract: The Forest and Range Renewable Resources Planning Act of 1974 and the Forest and Rangeland Renewable Resources Research Act of 1978 require the Forest Service to evaluate trends in the use of logs and wood chips, to forecast anticipated levels of logs and wood chips, and to analyze changes in the harvest of these resources from the Nation's forest resource. This important survey has been conducted since the 1940s, with various adjustments along the ways to accommodate new questions or data collection needs. Information provided in this data collection can be used to:

- Describe the timber resource and its use in detail;
- Evaluate trends in resource use;
- Forecast future anticipated level of demand on the resource; and
- Analyze the ramifications of any changes in timber demand.

For this renewal, we are proposing a new sample design to guide the annual collection of information from primary wood-using mills, replacing the periodic approach. This new approach is more efficient and cost-effective, and ultimately will generate more accurate, comprehensive, and timely information.

To collect this information, USDA Forest Service or state natural resource agency personnel will use three questionnaires. Two questionnaires, the Pulpwood Questionnaire and the Logs and Other Roundwood Questionnaire, will be paper or electronic. Paper questionnaires will be returned in pre-paid postage envelopes, and electronic questionnaires returned via email. The third questionnaire, the Logging Operations Questionnaire, will be administered in person by field personnel collecting tree utilization data at sampled logging sites.

Pulpwood Received Questionnaire: USDA Forest Service personnel will use this questionnaire to collect and evaluate information from pulp mills in order to monitor the volume, types, species, sources, and prices of timber products harvested throughout the United States. The data collected will be used to provide essential information about the current use of the Nation's timber resources for pulpwood industrial products and is not available from other sources.

Logs and Other Roundwood Received Questionnaire: This questionnaire is used by USDA Forest Service or state natural resource agency personnel to collect and evaluate information from the other, non-pulp, primary wood-using mills, including small, part-time mills, as well as large corporate entities. Primary wood-using mills are facilities that use harvested wood in log or chip form, such as sawlogs, veneer logs, composite panel, posts, and poles, to manufacture a secondary product, such as lumber or veneer. USDA Forest Service personnel evaluate the information collected and use it to monitor the volume types, species, sources, and prices of timber products harvested throughout the United States.

Logging Operations Questionnaire: This questionnaire is used by USDA Forest Service and/or state natural resource agency personnel to collect and evaluate information from logging operations, to help characterize the logging industry and its response to outside influences. The information will be used to measure the 'health' of the logging industry, as well as to provide background information for decision-making.

Affected Public: Individuals and the Private Sector (Businesses and Non-Profit Organizations), in particular mill owners, procurement foresters, logging operations owners, and loggers will be affected.

Estimate of Burden per Response: An average of 30 minutes for the Pulpwood Questionnaire for 132 respondents (estimated); an average of 42 minutes for the Logs and Other Roundwood Questionnaire for 2,875 respondents (estimated); an average of 11 minutes for the Logging Operations Questionnaire for 435 respondents (estimated).

Estimated Annual Number of Respondents: 3,442.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,147 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: June 29, 2108.

Carlos Rodriguez-Franco,

Deputy Chief for Research and Development.

[FR Doc. 2018–15228 Filed 7–16–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

SUPPLEMENTARY INFORMATION:

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[06/27/2018 through 07/10/2018]

Firm name	Firm address	Date accepted for investigation	Product(s)
Centerless Technology, Inc	45 Wells Street, Rochester, NY 14611.	6/27/2018	The firm manufactures steel parts through precision grinding.
DeLong's, Inc	301 Dix Road, Jefferson City, MO 65109.	6/27/2018	The firm manufactures fabricated structural steel products.
Fusion Systems, Inc. d/b/a Fusion OEM.	6951 High Grove Boulevard, Burr Ridge, IL 60527.	7/2/2018	The firm manufactures electro-mechanical devices, control systems, and communications equipment as well as associated racks, cabinets and housings. The firm also provides related assembly services.
La Mar Lighting Company, Inc.	485 Smith Street, Farmingdale, NY 11735.	7/3/2018	The firm manufactures fluorescent and light-emitting diode (LED) light fixtures as well as related sensor controls.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Irette Patterson,

Program Analyst.

[FR Doc. 2018–15203 Filed 7–16–18; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–088]

Steel Racks From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation

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

DATES: Applicable July 10, 2018.

FOR FURTHER INFORMATION CONTACT: Jonathan Hill or Patrick O'Connor at (202) 482–3518 or (202) 482–0989, respectively; AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On June 20, 2018, the U.S. Department of Commerce (Commerce) received an antidumping duty (AD) Petition concerning imports of steel racks from the People's Republic of China (China), filed in proper form on behalf of the Coalition of Fair Rack Imports (the petitioner).[1] The AD Petition was accompanied by a countervailing duty (CVD) Petition concerning imports of steel racks from China.

On June 22, 2018, Commerce requested supplemental information pertaining to certain aspects of the Petition in two separate supplemental questionnaires, one dealing with general issues with the petition and the other with issues related to Volume II of the Petition.[2]

The petitioner filed its responses to the supplemental questionnaires on June 26.[3] On June 28, and June 29, 2018, Commerce requested supplemental information pertaining to certain areas of the Petition.[4] The petitioner filed responses to Commerce's requests on June 29, and July 2, 2018.[5] On July 5, 2018, we spoke with the petitioner regarding the scope language submitted in its July 2, 2018 submission.[6] On July 9, 2018, the petitioner filed an amendment to the scope, further clarifying the scope language.[7]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of steel racks from China are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing steel racks in the United States. Consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to the petitioner supporting its allegation.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(E) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the AD investigation that the petitioner is requesting.[8]

Period of Investigation

Because China is a non-market economy (NME) country, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) is October 1, 2017, through March 31, 2018.

Scope of the Investigation

The product covered by this investigation is steel racks from China. For a full description of the scope of this investigation, *see* the Appendix to this notice.

Scope Comments

During our review of the Petition, Commerce contacted the petitioner regarding the proposed scope language to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.[9] As a result, the scope of the Petition was modified to clarify the description of merchandise covered by the Petition. The description of the merchandise covered by this initiation, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the preamble to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[10] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,[11] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on July 30, 2018, which is 20 calendar days from the signature date of this notice.[12] Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on August 9, 2018, which is 10 calendar days from the initial comments deadline.

Commerce requests that any factual information parties consider relevant to the scope of the investigation be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[13] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Comments on Product Characteristics for AD Questionnaire

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics

[1] *See* the petitioner's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties: Steel Racks from the People's Republic of China,'' dated June 20, 2018 (the Petition). *See* Volume I of the Petition, at 1–3.

[2] *See* Commerce's Letters, both titled, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Steel Racks from the People's Republic of China: Supplemental Questions,'' and both dated June 22, 2018.

[3] *See* the petitioner's Letters, ''*Steel Racks from the People's Republic of China: Response to Supplemental Questions—Antidumping Duties,* dated June 26, 2018 (AD Supplement). *See* ''Steel Racks from the People's Republic of China: Response to Supplemental Questions—General Issues,'' dated June 26, 2018 (General Issues Supplement).

[4] *See* Memoranda, ''Phone Call with Counsel to the Petitioner,'' dated June 28, 2018 and Memorandum, ''Phone Call with Counsel to Petitioners,'' dated June 29, 2018.

[5] *See* Steel Racks from the People's Republic of China: Additional Response to Supplemental Questions—Antidumping Duties,'' dated June 29, 2018 (Second AD Supplement). *See* ''Steel Racks from the People's Republic of China: Response to Second Set of Supplemental Questions—General Issues,'' dated July 2, 2018 (Second General Issues Supplement). *See* ''Steel Racks from the People's Republic of China: Additional Response to Supplemental Questions—Antidumping Duties,'' dated July 2, 2018 (Third AD Supplement).

[8] *See* the ''Determination of Industry Support for the Petition'' section, *infra.*

[9] *See* General Issues Supplement, at 1–9; *see also* Revised Scope, at Exhibit 1.

[10] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[11] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[12] *See* 19 CFR 351.303(b).

[13] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

of steel racks to be reported in response to Commerce's AD questionnaire. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to report the relevant factors of production accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. In order to consider the suggestions of interested parties in developing and issuing the AD questionnaire, all product characteristics comments must be filed by 5:00 p.m. ET on July 30, 2018, which is 20 calendar days from the signature date of this notice.[14] Any rebuttal comments must be filed by 5:00 p.m. ET on August 9, 2018. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of the China less-than-fair-value investigation.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[15] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[16]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.[17] Based on our analysis of the information submitted on the record, we have determined that steel racks, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[18]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the Appendix to this notice. To establish industry support, the petitioner provided its own 2017 shipments of the domestic like product and compared this to the estimated total shipments of the domestic like product for the entire domestic industry.[19] The petitioner explained that it relied on shipment data because production data for the entire domestic industry were not available.[20] In addition, the petitioner contends that shipments are a reasonable proxy for data on production of steel racks.[21] We relied on data the petitioner provided for purposes of measuring industry support.[22]

In its July 3, 2018, letter, Jiaxing Zhongda Import & Export Co., Ltd. (Jiaxing Zhongda), a Chinese exporter/producer, submitted comments on industry support and requested that Commerce poll the industry to determine industry support.[23] The petitioner responded to these comments in the Industry Support Supplement, dated July 3, 2018.[24] In a letter dated July 5, 2018, Guangdong Wireking Housewares and Hardware Co., Ltd. (Guangdong Wireking), a Chinese exporter/producer, submitted comments on industry support and requested that Commerce poll the industry to determine industry support.[25] The petitioner responded to Guangdong Wireking's comments on July 6, 2018.[26] In a letter dated July 9, 2018, United Material Handling (UMH), a U.S. importer of subject merchandise, submitted comments on industry support and requested that Commerce poll the industry to determine industry support.[27] The petitioner responded to these comments in the Third Industry Support Supplement, dated July 10,

[14] *See* 19 CFR 351.303(b).

[15] *See* section 771(10) of the Act.

[16] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[17] *See* Volume I of the Petition, at 11–13 and Exhibit I–9; *see also* General Issues Supplement, at 9–10.

[18] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Antidumping Duty Investigation Initiation Checklist: Steel Racks from the People's Republic of China (China AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Steel Racks from the People's Republic of China (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[19] *See* Volume I of the Petition, at 3–5 and Exhibits I–2 and I–3; *see also* General Issues Supplement, at 10–11 and Exhibit 5; *see also* Second General Issues Supplement, at 3–4 and Exhibits 1 and 2.

[20] *See* Volume I of the Petition, at 4–5 and Exhibit I–2.

[21] *Id.* at 4 Exhibit I–3; *see also* Second General Issues Supplement, at 4.

[22] *See* Volume I of the Petition, at 4–5 and Exhibit I–2; *see also* General Issues Supplement, at 10–11 and Exhibit 5; *see also* Second General Issues Supplement, at 3–4 and Exhibits 1 and 2.

[23] *See* Jiaxing Zhongda's Letter, ''Steel Racks from the People's Republic of China: Pre-Initiation Industry Support Comments, dated July 3, 2018 (Jiaxing Zhongda Letter).

[24] *See* the petitioner's Letter, ''Steel Racks from the People's Republic of China: Response to Industry Support Comments,'' dated July 3, 2018 (Industry Support Supplement).

[25] *See* Guangdong Wireking Letter, ''Steel Racks from the People's Republic of China: Pre-Initiation Industry Support Comments,'' dated July 5, 2018 (Guangdong Wireking Letter).

[26] *See* the petitioner's Letter, ''Steel Racks from the People's Republic of China: Response to Industry Support Comments,'' dated July 6, 2018 (Second Industry Support Supplement).

[27] *See* UMH's Letter, ''Steel Racks from the People's Republic of China Pre-Initiation Comments on Industry Support, dated July 9, 2018) (UMH Letter).

2018.[28] For further discussion of these comments, *see* Attachment II of the China AD Initiation Checklist.

Our review of the data provided in the Petition, the General Issues Supplement, the Second General Issues Supplement, letters from Jiaxing Zhongda, Guangdong Wireking, and UMH, the Industry Support Supplement, the Second Industry Support Supplement, the Third Industry Support Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.[29] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[30] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[31] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[32] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(E) of the Act and it has demonstrated sufficient industry support with respect to the AD investigation that it is requesting that Commerce initiate.[33]

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[34]

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and lost revenues; decline in production, quantity of U.S. shipments, and capacity utilization rate; and decline in the domestic industry's profitability.[35] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[36]

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which Commerce based its decision to initiate an AD investigation of imports of steel racks from China. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the China AD Initiation Checklist.

Export Price

The petitioner based U.S. export prices (EP) on price quotes.[37] Where applicable, the petitioner made deductions from U.S. price for distributor markup, movement and other expenses, consistent with the terms of sale.[38]

Normal Value

Commerce considers China to be an NME country.[39] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of the initiation of this investigation. Accordingly, NV in China is appropriately based on factors of production (FOPs) valued in a surrogate market economy country, in accordance with section 773(c) of the Act.[40]

The petitioner claims that Brazil is an appropriate surrogate country for China because it is a market economy country that is at a level of economic development comparable to that of China and it is a significant producer of comparable merchandise.[41] The petitioner provided publicly available information from Brazil to value all FOPs.[42] Therefore, based on the information provided by the petitioner, we determine that it is appropriate to use Brazil as the primary surrogate country for initiation purposes.

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

Factors of Production

Based on its assertion that information regarding the FOPs and volume of inputs consumed by Chinese producers/exporters of steel racks was not reasonably available to the petitioner, the petitioner used the consumption rates of a U.S. steel racks producer to estimate the Chinese manufacturers' FOPs.[43] The petitioner valued the estimated FOPs using surrogate values from Brazil, as noted above.[44] The petitioner used the average

[28] See the peitioner's Letter, ''Steel Racks from the People's Republic of China: Response to UMH's Industry Support Comments,'' dated July 10, 2018 (Third Industry Support Supplement).

[29] *See* China AD Initiation Checklist, at Attachment II.

[30] *Id.; see also* section 732(c)(4)(D) of the Act.

[31] *See* China AD Initiation Checklist, at Attachment II.

[32] *Id.*

[33] *Id.*

[34] *See* Volume I of the Petition, at 17 and Exhibit I–13.

[35] *See* Volume I of the Petition, at 14–28 and Exhibits I–3, I–13, and I–15 through I–24; *see also* General Issues Supplement, at 11–12 and Exhibit 6; and Second General Issues Supplement, at 4–5.

[36] *See* China AD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Steel Racks from the People's Republic of China.

[37] *See* China AD Initiation Checklist.

[38] *Id.*

[39] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination,* 82 FR 50858, 50861 (November 2, 2017), and accompanying decision memorandum, *China's Status as a Non-Market Economy,* unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 83 FR 9282 (March 5, 2018).

[40] *See* China AD Initiation Checklist.

[41] *See* Volume II of the Petition, at 1–2 and Exhibits II–1 and II–2.

[42] *Id.* at 5–7 and Exhibits II–7 through II–15.

[43] *See* Volume II of the Petition at 5–7 and Exhibit II–7 and AD Supplement at 2–3 and Exhibit 3.

[44] *Id.* at 5–7 and Exhibits II–7 through II–15.

POI exchange rate to convert surrogate values expressed in Brazilian reals to U.S. dollars.[45]

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of steel racks from China are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for steel racks from China are 130.0–144.5 percent.[46]

Initiation of Less-Than-Fair-Value Investigation

Based upon the examination of the Petition, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of steel racks from China are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Respondent Selection

The petitioner named 93 producers/exporters as accounting for the majority of exports of steel racks to the United States from China.[47] In accordance with our standard practice for respondent selection in AD cases involving NME countries, we intend to issue quantity and value (Q&V) questionnaires to producers/exporters of merchandise subject to this investigation. In the event Commerce determines that it cannot individually examine each company, where appropriate, Commerce intends to select mandatory respondents based on the responses received to its Q&V questionnaire. Commerce will request Q&V information from known exporters and producers identified with complete contact information in the Petition. In addition, Commerce will post the Q&V questionnaires along with filing instructions on Enforcement and Compliance's website at *http://www.trade.gov/enforcement/news.asp.*

Producers/exporters of steel racks from China that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Enforcement & Compliance's website. The Q&V questionnaire response must be submitted by the relevant Chinese exporters/producers no later than 5:00 p.m. ET on July 24, 2018, which is two weeks from the signature date of this notice. All Q&V responses must be filed electronically via ACCESS.

Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate application.[48] The specific requirements for submitting a separate-rate application in this investigation are outlined in detail in the application itself, which is available on Commerce's website at *http://enforcement.trade.gov/nme/nme-sep-rate.html.* The separate-rate application will be due 30 days after publication of this initiation notice.[49] Exporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from China submit a response to both the Q&V questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. Companies not filing a timely Q&V questionnaire response will not receive separate-rate consideration.

Use of Combination Rates

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[50]

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petition have been provided to the government of China *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of steel racks from China are materially injuring or threatening material injury to a U.S. industry. A negative ITC determination will result in the investigation being terminated.[51] Otherwise, the investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). 19 CFR 351.301(b) requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [52] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[53] Time limits for the submission of factual

[45] *Id.* at Exhibit II–9.

[46] *See* China AD Initiation Checklist.

[47] *See* Volume I of the Petition at Exhibit I–6; *see also* General Issues Supplement, at 1 and Exhibit 1.

[48] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries (April 5, 2005), available at *http://enforcement.trade.gov/policy/bull05-1.pdf* (Policy Bulletin 05.1).

[49] Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that "the Secretary may request any person to submit factual information at any time during a proceeding," this deadline is now 30 days.

[50] *See* Policy Bulletin 05.1 at 6 (emphasis added).

[51] *Id.*

[52] *See* 19 CFR 351.301(b).

[53] *See* 19 CFR 351.301(b)(2).

information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[54] Parties must use the certification formats provided in 19 CFR 351.303(g).[55] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: July 10, 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

Scope of the Investigation

The merchandise covered by this investigation is steel racks and parts thereof, assembled, to any extent, or unassembled, including but not limited to, vertical components (*e.g.,* uprights, posts, or columns), horizontal or diagonal components (*e.g.,* arms or beams), braces, frames, locking devices (*i.e.,* end plates and beam connectors), and accessories (including, but not limited to, rails, skid channels, skid rails, drum/coil beds, fork clearance bars, pallet supports, column and post protectors, end row and end aisle protectors, corner guards, row spacers, and wall ties). Subject steel racks and parts thereof are made of steel, including, but not limited to, cold and/or hot-formed steel, regardless of the type of steel used to produce the components and may, or may not, include locking tabs, slots, or bolted, clamped, or welded connections.

Steel rack components can be assembled into structures of various dimensions and configurations by welding, bolting, clipping, or with the use of devices such as clips, end plates, and beam connectors, including, but not limited to the following configurations: (1) Racks with upright frames perpendicular to the aisles that are independently adjustable, with positive locking beams parallel to the aisle spanning the upright frames with braces; and (2) cantilever racks with vertical components parallel to the aisle and cantilever beams or arms connected to the vertical components perpendicular to the aisle. Steel racks may be referred to as pallet racks, storage racks, stacker racks, retail racks, pick modules, selective racks, or cantilever racks and may incorporate moving components and be referred to as pallet-flow racks, carton-flow racks, push-back racks, movable-shelf racks, drive-in racks, and drive-through racks. While steel racks may be made to ANSI MH16.l or ANSI MH16.3 standards, all steel racks and parts thereof meeting the description set out herein are covered by the scope of this investigation, whether or not produced according to a particular standard.

The scope includes all steel racks and parts thereof meeting the description above, regardless of

(1) dimensions, weight, strength, gauge, or load rating;

(2) vertical components or frame type (including structural, roll-form, or other);

(3) horizontal support or beam/brace type (including but not limited to structural, roll-form, slotted, unslotted, Z-beam, C-beam, L-beam, step beam, and cantilever beam);

(4) number of supports;

(5) number of levels;

(6) surface coating, if any (including but not limited to paint, epoxy, powder coating, zinc, or other metallic coatings);

(7) shape (including but not limited to rectangular, square, corner, and cantilever);

(8) the method by which the vertical and horizontal supports connect (including but not limited to locking tabs or slots, bolting, clamping, and welding); and

(9) whether or not the steel rack has moving components (including but not limited to rails, wheels, rollers, tracks, channels, carts, and conveyors).

Subject merchandise includes merchandise matching the above description that has been finished or packaged in a third country. Finishing includes, but is not limited to, coating, painting, or assembly, including attaching the merchandise to another product, or any other finishing or assembly operation that would not remove the merchandise from the scope of the investigation if performed in the country of manufacture of the steel racks and parts thereof. Packaging includes packaging the merchandise with or without another product or any other packaging operation that would not remove the merchandise from the scope of the investigation if performed in the country of manufacture of the steel racks and parts thereof.

Steel racks and parts thereof are included in the scope of this investigation whether or not imported attached to, or included with, other parts or accessories such as wire decking, nuts, and bolts. If steel racks and parts thereof are imported attached to, or included with, such non-subject merchandise, only the steel racks and parts thereof are included in the scope.

The scope of this investigation does not cover: (1) Decks, *i.e.,* shelving that sits on or fits into the horizontal supports to provide the horizontal storage surface of the steel racks; (2) wire shelving units, *i.e.,* shelves made from wire that incorporate both a wire deck and wire horizontal supports (taking the place of the horizontal beams and braces) into a single piece with tubular collars that slide over the posts and onto plastic sleeves snapped on the posts to create a finished unit; (3) pins, nuts, bolts, washers, and clips used as connecting devices; and 4) non-steel components.

Specifically excluded from the scope of this investigation are any products covered by Commerce's existing antidumping and countervailing duty orders on boltless steel shelving units prepackaged for sale from the People's Republic of China. *See Boltless Steel Shelving Units Prepackaged for Sale From the People's Republic of China: Antidumping Duty Order,* 80 FR 63,741 (October 21, 2017); *Boltless Steel Shelving Units Prepackaged for Sale From the People's Republic of China: Amended Final Affirmative Countervailing*

[54] *See* section 782(b) of the Act.

[55] *See also Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

Duty Determination and Countervailing Duty Order, 80 FR 63,745 (October 21, 2017). Also excluded from the scope of this investigation are bulk-packed parts or components of boltless steel shelving units that were specifically excluded from the scope of the *Boltless Steel Shelving Orders* because such bulk-packed parts or components do not contain the steel vertical supports (*i.e.,* uprights and posts) and steel horizontal supports (*i.e.,* beams, braces) packaged together for assembly into a completed boltless steel shelving unit.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheadings: 7326.90.8688, 9403.20.0080, and 9403.90.8041. Subject merchandise may also enter under subheadings 7308.90.3000, 7308.90.6000, 7308.90.9590, and 9403.20.0090. The HTSUS subheadings are provided for convenience and U.S. Customs purposes only. The written description of the scope is dispositive.

[FR Doc. 2018–15225 Filed 7–16–18; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–089]

Certain Steel Racks From the People's Republic: Initiation of Countervailing Duty Investigation

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

DATES: Applicable July 10, 2018.

FOR FURTHER INFORMATION CONTACT: Eli Lovely or Robert Galantucci at (202) 482–1593 or (202) 482–2923, respectively, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On June 20, 2018, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) Petition concerning imports of certain steel racks (steel racks) from the People's Republic of China (China), filed in proper form on behalf of the Coalition for Fair Rack Imports (the petitioner), the members of which are domestic producers of steel racks.[1] The CVD Petition was accompanied by an antidumping duty (AD) Petition concerning imports of steel racks from China.

On June 22, 2018, Commerce requested supplemental information pertaining to certain aspects of the Petition in two separate supplemental questionnaires, one dealing with CVD programs and one primarily with scope clarification issues.[2] The petitioner filed additional information on June 26, 2018.[3]

On June 28, 2018, Commerce requested supplemental information pertaining to industry support and import statistics.[4] The petitioner filed a response to Commerce's request on July 2, 2018.[5] On July 5, 2018, we spoke with the petitioner regarding the scope language submitted in its July 2, 2018, submission.[6] On July 9, 2018, the petitioner filed an amendment to the scope, further clarifying the scope language.[7]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of China (GOC) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of steel racks in China and that imports of such products are materially injuring, or threatening material injury to, the domestic steel racks industry in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petition is accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(E) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support necessary for the initiation of the requested CVD investigation.[8]

Period of Investigation

Because the Petition was filed on June 20, 2018, the period of investigation is January 1, 2017, through December 31, 2017.

Scope of the Investigation

The product covered by this investigation is steel racks from China. For a full description of the scope of these investigations, *see* the Appendix to this notice.

Scope Comments

During our review of the Petition, Commerce received proposed scope language from the petitioner to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.[9] As a result of petitioner's submissions, the scope of the Petition was modified to clarify the description of merchandise covered by the Petition. The description of the merchandise covered by this initiation, as described in the Appendix to this notice, reflects this clarification.

As discussed in the Preamble to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[10] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,[11] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on July 30, 2018, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on August 9, 2018, which is 10 calendar days from the initial comments deadline.[12]

Commerce requests that any factual information parties consider relevant to the scope of the investigation be submitted during this period. However,

[1] *See* the petitioner's Letter, ''Petitions for the Imposition of Antidumping Duties and Countervailing Duties: Steel Racks from the People's Republic of China,'' dated June 20, 2018 (the Petition).

[2] *See* Commerce's Letters, both titled, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Steel Racks from the People's Republic of China: Supplemental Questions,'' and both dated June 22, 2018.

[3] *See* the petitioner's Letters, ''Steel Racks from the People's Republic of China: Response to Supplemental Questions—Countervailing Duties,'' dated June 26, 2018 (CVD Supplement). *See* ''Steel Racks from the People's Republic of China: Response to Supplemental Questions—General Issues,'' dated June 26, 2018 (General Issues Supplement).

[4] *See* Memoranda, ''Phone Call with Counsel to the Petitioner,'' dated June 28, 2018.

[5] *See* the petitioner's Letter, ''Steel Racks from the People's Republic of China—General Issues,'' dated July 2, 2018 (Second General Issues Supplement).

[6] *See* Memorandum, ''Phone Call with Counsel to the Petitioner,'' dated July 5, 2018.

[7] *See* the petitioner's Letter, ''Steel Racks from the People's Republic of China: Scope Clarification,'' dated July 9, 2018 (Revised Scope).

[8] *See* the ''Determination of Industry Support for the Petition'' section, *infra.*

[9] *See* General Issues Supplement, at 1–9; *see also* Revised Scope, at Exhibit 1.

[10] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (Preamble).

[11] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[12] *See* 19 CFR 351.303(b).

if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[13] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified representatives of the GOC of the receipt of the Petition and provided them the opportunity for consultations with respect to the CVD Petition.[14] The GOC did not request consultations.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[15] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[16]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.[17] Based on our analysis of the information submitted on the record, we have determined that steel racks, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[18]

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the Appendix to this notice. To establish industry support, the petitioner provided its own 2017 shipments of the domestic like product and compared this to the estimated total shipments of the domestic like product for the entire domestic industry.[19] The petitioner explained that it relied on shipment data because production data for the entire domestic industry are not available.[20] In addition, the petitioner contends that shipments are a reasonable proxy for data on production of steel racks.[21] We relied on data the petitioner provided for purposes of measuring industry support.[22]

In its July 3, 2018, letter, Jiaxing Zhongda Import & Export Co., Ltd. (Jiaxing Zhongda), a Chinese exporter/producer, submitted comments on industry support and requested that Commerce poll the industry to determine industry support.[23] The petitioner responded to these comments in the Industry Support Supplement, dated July 3, 2018.[24] In a letter dated July 5, 2018, Guangdong Wireking Housewares and Hardware Co., Ltd. (Guangdong Wireking), a Chinese exporter/producer, submitted comments on industry support and requested that

[13] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). *See also Enforcement and Compliance: Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx,* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[14] *See* Commerce's Letter, ''Countervailing Duty Petition on Certain Steel Racks from China,'' dated June 20, 2018.

[15] *See* section 771(10) of the Act.

[16] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[17] *See* Volume I of the Petition, at 11–13 and Exhibit I–9; *see also* General Issues Supplement, at 9–10.

[18] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Countervailing Duty Investigation Initiation Checklist: Steel Racks from the People's Republic of China (China CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Steel Racks from the People's Republic of China (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[19] *See* Volume I of the Petition, at 3–5 and Exhibits I–2 and I–3; *see also* General Issues Supplement, at 10–11 and Exhibit 5; *see also* Second General Issues Supplement, at 3–4 and Exhibits 1 and 2.

[20] *See* Volume I of the Petition, at 4–5 and Exhibit I–2.

[21] *Id.,* at 4 and Exhibit I–3; *see also* Second General Issues Supplement, at 4.

[22] *See* Volume I of the petition, at 4–5 and Exhibit I–2; *see also* General Issues Supplement, at 10–11 and Exhibit 5; *see also* Second General Issues Supplement, at 3–4 and Exhibits 1 and 2.

[23] *See* Jiaxing Zhongda's Letter, ''Steel Racks from the People's Republic of China: Pre-Initiation Industry Support Comments,'' dated July 3, 2018 (Jiaxing Zhongda Letter).

[24] *See* the petitioner's Letter, ''Steel Racks from the People's Republic of China: Response to Industry Support Comments,'' dated July 3, 2018 (Industry Support Supplement).

Commerce poll the industry to determine industry support.[25] The petitioner responded to Guangdong Wireking's comments on July 6, 2018.[26] In a letter dated July 9, 2018, United Material Handling (UMH), a U.S. importer of subject merchandise, submitted comments on industry support and requested that Commerce poll the industry to determine industry support.[27] The petitioner responded to these comments on July 10, 2018.[28] For further discussion of these comments, *see* Attachment II of the China CVD Initiation Checklist.

Our review of the data provided in the Petition, the General Issues Supplement, the Second General Issues Supplement, letters from Jiaxing Zhongda, Guangdong Wireking, and UMH, the Industry Support Supplement, the Second Industry Support Supplement, the Third Industry Support Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.[29] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.*, polling).[30] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[31] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[32] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(E) of the Act, and it has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting that Commerce initiate.[33]

Injury Test

Because China is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[34]

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and lost revenues; decline in production, quantity of U.S. shipments, and capacity utilization rate; and decline in the domestic industry's profitability.[35] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[36]

Initiation of CVD Investigation

Based on the examination of the Petition, we find that the Petition meets the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of steel racks from China benefit from countervailable subsidies conferred by the GOC. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 65 days after the date of this initiation.

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on 25 of the 28 subsidy programs alleged in the petition. For a full discussion of the basis for our decision to initiate or not on each program, *see* China CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Respondent Selection

The petitioner named 93 producers/exporters as accounting for the majority of exports of steel racks to the United States from China.[37] In the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on quantity and value (Q&V) questionnaires issued to potential respondents. Commerce normally selects mandatory respondents in a CVD investigation using U.S. Customs and Border Protection (CBP) entry data, and on July 5, 2018, we released CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment regarding the CBP data and respondent selection must do so within three business days of the publication date of the notice of initiation of this CVD investigation.[38] However, for this investigation, the Harmonized Tariff Schedule of the United States (HTSUS) numbers of the subject merchandise would enter under (7326.90.8688, 9403.20.0080, and 9403.90.8041) are basket categories containing products unrelated to steel racks, and much of the reported entry data do not contain

[25] *See* Guangdong Wireking's Letter, ''Steel Racks from the People's Republic of China: Pre-Initiation Industry Support Comments,'' dated July 5, 2018 (Guangdong Wireking Letter).

[26] *See* the petitioner's Letter, ''Steel Racks from the People's Republic of China: Response to Industry Support Comments,'' dated July 6, 2018 (Second Industry Support Supplement).

[27] *See* UMH's Letter, ''Steel Racks from the People's Republic of China Pre-Initiation Comments on Industry Support,'' dated July 9, 2018 (UMH Letter).

[28] *See* Petitioner's Letter, ''Steel Racks from the People's Republic of China: Response to Industry Support Comments,'' dated July 10, 2018 (Third Industry Support Supplement).

[29] *See* China CVD Initiation Checklist, at Attachment II.

[30] *Id.; see also* section 702(c)(4)(D) of the Act.

[31] *See* China CVD Initiation Checklist, at Attachment II.

[32] *Id.*

[33] *Id.*

[34] *See* Volume I of the Petition, at 17 and Exhibit I–13.

[35] *See* Volume I of the Petition, at 14–28 and Exhibits I–3, I–13, and I–15 through I–24; *see also* General Issues Supplement at 11–12 and Exhibit 6; and Second General Issues Supplement, at 4–5.

[36] *See* China Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Steel Racks from the People's Republic of China.

[37] *See* Volume I of the Petition, at Exhibit I–6; *see also* General Issues Supplement, at 1 and Exhibit 1.

[38] *See* Memorandum, ''Steel Racks from the People's Republic of China Countervailing Duty Petition: Release of Customs Data from U.S. Customs and Border Protection,'' dated July 5, 2018.

quantity information. We, therefore, cannot rely on CBP entry data in selecting respondents. We instead intend to issue Q&V questionnaires to each potential respondent, for which the petitioner has provided a complete address, that is: (1) Named in the Petition, and (2) appears in the CBP entry data, and base respondent selection on the responses received. Commerce will post the Q&V questionnaire along with the filing instructions on the Enforcement and Compliance website at *http://trade.gov/enforcement/news.asp.*

Exporters and producers of steel racks from China that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from the Enforcement and Compliance website. The Q&V questionnaire must be submitted by the relevant Chinese exporters/producers no later than 5:00 p.m. ET on July 24, 2018, which is two weeks from the signature date of this notice. All Q&V responses must be filed electronically via ACCESS.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Commerce's website at *http://enforcement.trade.gov/apo.*

Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the date noted above. We intend to finalize our decisions regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), copies of the public versions of the Petition have been provided to the GOC *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of steel racks from China are materially injuring, or threatening material injury to, a U.S. industry.[39] A negative ITC determination will result in the investigation being terminated.[40] Otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). 19 CFR 351.301(b) requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[41] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[42] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these investigations.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[43] Parties must use the certification formats provided in 19 CFR 351.303(g).[44] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act and 19 CFR 351.203(c).

Dated: July 10, 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

Scope of the Investigation

The merchandise covered by this investigation is steel racks and parts thereof, assembled, to any extent, or unassembled, including but not limited to, vertical components (*e.g.,* uprights, posts, or columns), horizontal or diagonal components (*e.g.,* arms or beams), braces, frames, locking devices (*i.e.,* end plates and beam connectors), and accessories (including, but

[39] *See* section 703(a)(2) of the Act.

[40] *See* section 703(a)(1) of the Act.

[41] *See* 19 CFR 351.301(b).

[42] *See* 19 CFR 351.301(b)(2).

[43] *See* section 782(b) of the Act.

[44] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (''*Final Rule*''); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

not limited to, rails, skid channels, skid rails, drum/coil beds, fork clearance bars, pallet supports, column and post protectors, end row and end aisle protectors, corner guards, row spacers, and wall ties). Subject steel racks and parts thereof are made of steel, including, but not limited to, cold and/or hot-formed steel, regardless of the type of steel used to produce the components and may, or may not, include locking tabs, slots, or bolted, clamped, or welded connections.

Steel rack components can be assembled into structures of various dimensions and configurations by welding, bolting, clipping, or with the use of devices such as clips, end plates, and beam connectors, including, but not limited to the following configurations: (1) Racks with upright frames perpendicular to the aisles that are independently adjustable, with positive locking beams parallel to the aisle spanning the upright frames with braces; and (2) cantilever racks with vertical components parallel to the aisle and cantilever beams or arms connected to the vertical components perpendicular to the aisle. Steel racks may be referred to as pallet racks, storage racks, stacker racks, retail racks, pick modules, selective racks, or cantilever racks and may incorporate moving components and be referred to as pallet-flow racks, carton-flow racks, push-back racks, movable-shelf racks, drive-in racks, and drive-through racks. While steel racks may be made to ANSI MH16.l or ANSI MH16.3 standards, all steel racks and parts thereof meeting the description set out herein are covered by the scope of this investigation, whether or not produced according to a particular standard.

The scope includes all steel racks and parts thereof meeting the description above, regardless of

(1) Dimensions, weight, strength, gauge, or load rating;

(2) vertical components or frame type (including structural, roll-form, or other);

(3) horizontal support or beam/brace type (including but not limited to structural, roll-form, slotted, unslotted, Z-beam, C-beam, L-beam, step beam, and cantilever beam);

(4) number of supports;

(5) number of levels;

(6) surface coating, if any (including but not limited to paint, epoxy, powder coating, zinc, or other metallic coatings);

(7) shape (including but not limited to rectangular, square, corner, and cantilever);

(8) the method by which the vertical and horizontal supports connect (including but not limited to locking tabs or slots, bolting, clamping, and welding); and

(9) whether or not the steel rack has moving components (including but not limited to rails, wheels, rollers, tracks, channels, carts, and conveyors).

Subject merchandise includes merchandise matching the above description that has been finished or packaged in a third country. Finishing includes, but is not limited to, coating, painting, or assembly, including attaching the merchandise to another product, or any other finishing or assembly operation that would not remove the merchandise from the scope of the investigation if performed in the country of manufacture of the steel racks and parts thereof. Packaging includes packaging the merchandise with or without another product or any other packaging operation that would not remove the merchandise from the scope of the investigation if performed in the country of manufacture of the steel racks and parts thereof.

Steel racks and parts thereof are included in the scope of this investigation whether or not imported attached to, or included with, other parts or accessories such as wire decking, nuts, and bolts. If steel racks and parts thereof are imported attached to, or included with, such non-subject merchandise, only the steel racks and parts thereof are included in the scope.

The scope of this investigation does not cover: (1) Decks, *i.e.,* shelving that sits on or fits into the horizontal supports to provide the horizontal storage surface of the steel racks; (2) wire shelving units, *i.e.,* shelves made from wire that incorporate both a wire deck and wire horizontal supports (taking the place of the horizontal beams and braces) into a single piece with tubular collars that slide over the posts and onto plastic sleeves snapped on the posts to create a finished unit; (3) pins, nuts, bolts, washers, and clips used as connecting devices; and (4) non-steel components.

Specifically excluded from the scope of this investigation are any products covered by Commerce's existing antidumping and countervailing duty orders on boltless steel shelving units prepackaged for sale from the People's Republic of China. *See Boltless Steel Shelving Units Prepackaged for Sale From the People's Republic of China: Antidumping Duty Order,* 80 FR 63,741 (October 21, 2017); *Boltless Steel Shelving Units Prepackaged for Sale From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 80 FR 63,745 (October 21, 2017). Also excluded from the scope of this investigation are bulk-packed parts or components of boltless steel shelving units that were specifically excluded from the scope of the *Boltless Steel Shelving Orders* because such bulk-packed parts or components do not contain the steel vertical supports (*i.e.,* uprights and posts) and steel horizontal supports (*i.e.,* beams, braces) packaged together for assembly into a completed boltless steel shelving unit.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheadings: 7326.90.8688, 9403.20.0080, and 9403.90.8041. Subject merchandise may also enter under subheadings 7308.90.3000, 7308.90.6000, 7308.90.9590, and 9403.20.0090. The HTSUS subheadings are provided for convenience and U.S. Customs purposes only. The written description of the scope is dispositive.

[FR Doc. 2018–15224 Filed 7–16–18; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–062]

Cast Iron Soil Pipe Fittings From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part

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

SUMMARY: The Department of Commerce (Commerce) determines that cast iron soil pipe fittings from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2017, through June 30, 2017.

DATES: Applicable July 17, 2018.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin or Denisa Ursu, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6478 and (202) 482–2285 respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 20, 2018, Commerce published in the **Federal Register** the *Preliminary Determination* in the LTFV investigation of cast iron soil pipe fittings from China.[1] The mandatory respondents in this investigation are Shanxi Xuanshi Industrial Group Co. Ltd. (Xuanshi), Wor-Biz International Trading Co., Ltd. (Anhui) (Wor-Biz), Sibo International Limited (Sibo), and Kingway Pipe Co., Ltd. (Kingway). Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final determination of this investigation is now July 5, 2018.[2]

[1] *See Cast Iron Soil Pipe Fittings from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination and Extension of Provisional Measures,* 83 FR 7145 (February 20, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for

Continued

A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by interested parties for this final determination may be found in the Issues and Decision Memorandum issued concurrently with this notice.[3] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version are identical in content.

Scope of the Investigation

The products covered by this investigation are cast iron soil pipe fittings from China. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation'' in Appendix I of this notice. For this final determination, Commerce has issued a scope memorandum addressing interested parties' comments regarding scope issues presented in the case briefs and in subsequent scope comments.[4] Commerce has determined to modify the scope of the investigation to include two additional subheadings of the U.S. Harmonized Tariff Schedule under which subject merchandise may enter. Commerce has also provided a clarification in the Final Scope Memorandum. For further discussion, *see* Commerce's Final Scope Memorandum. The scope in Appendix I reflects the final scope language.

Analysis of Comments Received

The issues raised in the case and rebuttal briefs submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum is attached to this notice at Appendix II.

Final Affirmative Determination of Critical Circumstances, in Part

In accordance with section 733(e)(1) of the Act and 19 CFR 351.206, we preliminarily found that critical circumstances exist with respect to imports of cast iron soil pipe fittings from the China-wide entity, the non-selected separate rate respondents, and Sibo, but do not exist with respect to Xuanshi and Wor-Biz.[5] Commerce received no comments regarding its preliminary critical circumstances findings. For the final determination, we continue to find that, in accordance with section 735(a)(3) of the Act and 19 CFR 351.206, critical circumstances exist with respect to imports of the subject merchandise from the China-wide entity. Based on updated shipment and import data, we find that critical circumstances do not exist with respect to Xuanshi, Wor-Biz, and the non-selected separate rate respondents.[6] As discussed below, we have determined that Sibo is no longer eligible for a separate rate, and is now considered to be part of the China-wide entity.

China-Wide Entity and Use of Adverse Facts Available

After the *Preliminary Determination* and prior to verification, Sibo notified Commerce that it was withdrawing from participation in this investigation. By withdrawing from participation in this investigation, Sibo prevented us from conducting verification of its questionnaire responses, including its claim that it is a wholly foreign-owned company. Therefore, we find that Sibo has failed to demonstrate its eligibility for a separate rate, and is considered to be part of the China-wide entity.[7] For the reasons explained in the *Preliminary Determination,* we continue to find that the use of adverse facts available (AFA), pursuant to sections 776(a) and (b) of the Act, is warranted in determining the rate for the China-wide entity, which includes Sibo, Kingway, and other uncooperative respondents.

China-Wide Rate

In selecting the AFA rate for the China-wide entity, Commerce's practice is to select a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[8] Specifically, it is Commerce's practice to select, as an AFA rate, the higher of: (a) The highest dumping margin alleged in the petition; or, (b) the highest calculated dumping margin of any respondent in the investigation.[9] For the final determination and for the reasons explained in the Issues and Decision Memorandum, we are relying on the highest non-aberrational control-number-specific dumping margin calculated for Sibo in the *Preliminary Determination* to determine the rate for the China-wide entity.[10]

Separate Rates

For the final determination, we continue to find that Xuanshi and Wor-Biz are eligible to separate rates, as noted below. Section 735(c)(5)(A) of the Act provides that the estimated ''all-others'' rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding zero or *de minimis* margins, and any margins determined entirely under section 776 of Act. Consistent with our practice, we calculated a dumping margin for the companies determined to be eligible for separate rates, but which were not individually examined, based on the final dumping margins calculated for Xuanshi and Wor-Biz.[11] With two respondents, we would normally calculate (A) a weighted-average of the dumping margins calculated for the

Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Cast Iron Soil Pipe Fittings from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See* Memorandum, ''Countervailing Duty and Less-Than-Fair-Value Investigations of Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Scope Memorandum'' (Final Scope Memorandum), dated concurrently with, and hereby adopted by, this notice.

[5] *See* Preliminary Determination at 33–34.

[6] *See* the Issues and Decision Memorandum for further details.

[7] *Id.*

[8] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethyl cellulose from Finland,* 69 FR 77216 (December 27, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethyl cellulose from Finland,* 70 FR 28279 (May 17, 2005).

[9] *See, e.g., Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 77 FR 17436, 17438 (March 26, 2012); *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the People's Republic of China,* 65 FR 34660 (May 31, 2000), and accompanying IDM.

[10] *See* Issues and Decision Memorandum at Comment 1 for a full discussion of this issue.

[11] *See* Memorandum, ''Cast Iron Soil Pipe Fittings from the People's Republic of China: Calculation of the Final Margin for Separate Rate Companies,'' dated concurrently with this notice.

mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted-average of the dumping margins calculated for the mandatory respondents using each company's publicly-ranged values for the merchandise under consideration. We would compare (B) and (C) to (A) and select the rate closest to (A) as the most appropriate rate for the separate rate companies.[12] In this case, as complete publicly-ranged sales data was unavailable, we based the separate rate on a simple average of the two calculated margins.

Combination Rates

In the *Initiation Notice,*[13] Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Accordingly, we have assigned combination rates to certain companies as provided in the ''Final Determination'' section below.

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from interested parties and our findings at verification, we made certain changes to the calculation of the antidumping duty margin applicable to Xuanshi and Wor-Biz. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Final Determination

Commerce determines that cast iron soil pipe fittings from China are being, or are likely to be, sold in the United States at LTFV, and that the following dumping margins exist:

Producer	Exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Shanxi Xuanshi Industrial Group Co., Ltd	Shanxi Xuanshi Industrial Group Co., Ltd	27.18	27.09
Guang Zhou Premier & Pinan Foundry Co., Ltd/Botou Chenyuan Foundry Co., Ltd/Wuhu Best Machines Co., Ltd.	Wor-Biz Trading Co., Ltd (Anhui)	22.11	21.88
Shijiazhuang Asia Casting Co., Ltd	Shijiazhuang Asia Casting Co., Ltd	24.65	24.49
Qinshui Shunshida Casting Co., Ltd/Xinle Xinye Metal Products Co., Ltd.	Shanxi Zhongrui Tianyue Trading Co., Ltd	24.65	24.49
Qinshui Shunshida Casting Co., Ltd/Xinle Rishuo Casting Factory/Shijiazhuang Shunjinguangao Trade Co., Ltd/Xinle Tang Rong Fa Lan Pan Co., Ltd.	Dalian Lino F.T.Z. Co., Ltd	24.65	24.49
Xinle City Zhile Pipeline Industry Co., Ltd/Qinshui Shunshida Casting Co., Ltd/Foshan City Deying Metal Products Co., Ltd.	Dinggin Hardware (Dalian) Co., Ltd	24.65	24.49
Xinle Rishuo Casting Factory/Qinshui Shunshida Casting Co., Ltd.	Dalian Metal I/E Co., Ltd	24.65	24.49
Qinshui County Xinwei Precision Co., Ltd	Qinshui Shunshida Casting Co., Ltd	24.65	24.49
Shanxi Guruiwei Casting Co., Ltd	Richang Qiaoshan Trade Co., Ltd	24.65	24.49
Shijiazhuang Jingruisheng Metal Products Co., Ltd/Qinshui Shunshida Casting Co., Ltd/Xinle City Zhile Pipe Co., Ltd.	Hebei Metals & Engineering Products Trading Co., Ltd.	24.65	24.49
China-Wide Entity		360.39	360.30

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final determination in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of cast iron soil pipe fittings from China, as described in the ''Scope of the Investigation'' section, exported by Xuanshi and Wor-Biz, entered or withdrawn from warehouse, for consumption on or after February 20, 2018, the date of publication of the *Preliminary Determination* notice in the **Federal Register**.

Furthermore, we continue to find that critical circumstances exist pursuant to section 735(c)(4)(A) of the Act with respect to the China-wide entity. Therefore, for this entity, we will instruct CBP to continue to suspend liquidation for all appropriate entries of cast iron soil pipe fittings entered, or withdrawn from warehouse, for consumption on or after November 22, 2017, which is 90 days prior to the date of publication of the *Preliminary Determination.*

To determine the cash deposit rate,[14] Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion countervailing duty (CVD) proceeding where appropriate. Accordingly, because Commerce has made a final affirmative determination for export subsidies, we offset the calculated

[12] *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010).

[13] *See Cast Iron Soil Pipe Fittings from the People's Republic of China: Initiation of Less-Than-Fair Value Investigation,* 82 FR 37053, 37056 (August 8, 2017).

[14] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

estimated weighted-average dumping margins by the appropriate rates as indicated in the above chart.[15] We made no adjustment for domestic subsidy pass-through in this case because we found no basis upon which to make such an adjustment.[16]

In addition, pursuant to section 735(c)(1)(B)(ii) of the Act, Commerce will instruct CBP to require a cash deposit equal to the weighted-average amount by which NV exceeds U.S. price as follows: (1) The cash deposit rate for the exporter/producer combination listed in the table above will be the rate identified for that combination in the table; (2) for all combinations of exporters/producers of merchandise under consideration that have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate established for the China-wide entity; and (3) for all non-Chinese exporters of the merchandise under consideration which have not received their own separate rate above, the cash deposit rate will be the cash deposit rate applicable to the Chinese exporter/producer combination that supplied that non-Chinese exporter. These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV.

As Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of cast iron soil pipe fittings from China, or sales (or the likelihood of sales) for importation, of cast iron soil pipe fittings from China. If the ITC determines that such injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, Commerce intends to issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to sections 735(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: July 5, 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 I

Scope of the Investigation

The merchandise covered by this investigation is cast iron soil pipe fittings, finished and unfinished, regardless of industry or proprietary specifications, and regardless of size. Cast iron soil pipe fittings are nonmalleable iron castings of various designs and sizes, including, but not limited to, bends, tees, wyes, traps, drains, and other common or special fittings, with or without side inlets.

Cast iron soil pipe fittings are classified into two major types—hubless and hub and spigot. Hubless cast iron soil pipe fittings are manufactured without a hub, generally in compliance with Cast Iron Soil Pipe Institute (CISPI) specification 301 and/or American Society for Testing and Materials (ASTM) specification A888. Hub and spigot pipe fittings have hubs into which the spigot (plain end) of the pipe or fitting is inserted. Cast iron soil pipe fittings are generally distinguished from other types of nonmalleable cast iron fittings by the manner in which they are connected to cast iron soil pipe and other fittings.

The subject imports are normally classified in subheading 7307.11.0045 of the Harmonized Tariff Schedule of the United States (HTSUS): Cast fittings of nonmalleable cast iron for cast iron soil pipe. They may also be entered under HTSUS 7324.29.0000 and 7307.92.3010. The HTSUS subheadings and specifications are provided for convenience and customs purposes only; the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Final Determination of Critical Circumstances
IV. China-Wide Rate
V. Separate Rates
VI. Adjustments for Countervailable Export Subsidies
VII. Changes Since the Preliminary Determination
VIII. Discussion of the Issues
General Issues
Comment 1: What Rate to Assign as Adverse Facts Available (AFA) to Sibo and the China-Wide Entity
Comment 2: Surrogate Country Selection
Comment 3: Adjusting the Global Trade Atlas (GTA) Import Data for Movement Expenses
Comment 4: Treatment of Certain Inputs as Materials or Overhead
Comment 5: Reintroduced Materials
Comment 6: Surrogate Value for Coated Sand
Comment 7: Calculating the Margins on a Consistent Basis
Comment 8: Calculation of Movement Expenses
Comment 9: Non-Refundable Value Added Tax (VAT)
Comment 10: Record-Keeping Deficiencies
Wor-Biz Issues
Comment 11: Surrogate Value for Asphalt Paint
Comment 12: Surrogate Value for Paint Thinner
Comment 13: Calculation of Freight Revenue
Xuanshi Issues
Comment 14: Surrogate Value for Pig Iron
Comment 15: Surrogate Values for Iron Ore, Coal, and Coke
Comment 16: Calculation of the Slag Iron By-Product Offset
Comment 17: Calculation of the Packing Material Consumption Rates
Comment 18: Surrogate Values for Inland and Ocean Freight
IX. Recommendation

[FR Doc. 2018–14925 Filed 7–13–18; 11:15 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Economic Expenditure Survey of Golden Crab Fishermen in the U.S. South Atlantic Region

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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

[15] *See* the Issues and Decision Memorandum for further discussion.

[16] *Id.*

proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 17, 2018.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at *pracomments@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dr. Scott Crosson, (305) 361–4468 or *scott.crosson@*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection. The National Marine Fisheries Service (NMFS) proposes to collect economic information from golden-crab landing commercial fishermen in the United States (U.S.) South Atlantic region. The data gathered will be used to evaluate the likely economic impacts of management proposals. In addition, the information will be used to satisfy legal mandates under Executive Order 12898, the Magnuson-Stevens Fishery Conservation and Management Act (U.S.C. 1801 *et seq.*), the Regulatory Flexibility Act, the Endangered Species Act, and the National Environmental Policy Act, and other pertinent statues.

II. Method of Collection

A standardized survey will be administered via in-person, telephone and/or mail to all fishermen participating in the fishery.

III. Data

OMB Number: 0648–0631.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 9.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 9.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 12, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–15191 Filed 7–16–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG302

Endangered Species; File Nos. 18238, 21327 and 22123

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

ACTION: Notice; receipt of applications for permits and a permit modification.

SUMMARY: Notice is hereby given that three applicants have applied in due form for a permit or permit modification to take green (*Chelonia mydas*), hawksbill (*Eretmochelys imbricata*), Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta*), and olive ridley (*L. olivacea*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or email comments must be received on or before August 16, 2018.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the "Features" box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting the applicable File No. from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on the applications should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on the application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman (for File No. 18238–01) or Erin Markin (for File Nos. 21327 and 22123), (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permits and permit modification are requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

File No. 18238–01: Permit No. 18238 issued on April 21, 2016 (81 FR 43589) authorizes the NMFS Southwest Fisheries Science Center, 8901 La Jolla Shores Drive, La Jolla, CA 92037, (Responsible Party: Lisa Ballance, Ph.D.,) to take green, loggerhead, and olive ridley sea turtles for research in southern California waters. Researchers may conduct vessel surveys for sea turtle counts, captures, examination, observation, marking, biological sampling, tagging, and morphometrics. The permit holder requests authorization to: (1) Increase the number of green sea turtles that may be taken from 60 to 100 turtles annually to accommodate an increase in survey effort needed to improve population abundance estimates, and (2) extend the duration of the permit until September 30, 2025.

File No. 21327: Raymond Carthy, Florida Cooperative Fish and Wildlife Research Unit, USGS–BRD, P.O. Box 110485, Gainesville, FL 23611, proposes to continue research to determine (1) distribution and abundance, (2) use of benthic habitats, (3) demographics and movement patterns, and (4) human impacts for sea turtles in the Florida Panhandle and Big Bend region of Florida. Up to 1720 green, 160 hawksbill, 285 Kemp's ridley, and 180 loggerhead sea turtles, annually, may be harassed, but not captured, during vessel surveys and when using a remotely operated vehicle to study brumating behavior. Up to 540 green, 40 hawksbill, 210 Kemp's ridley, and 130 loggerhead sea turtles would be captured, annually, by hand, or dip, tangle, or strike net, marked, biologically sampled (blood, tissue, scute), tagged (flipper and passive integrated transponder [PIT]), measured, weighed, and photographed prior to release. A subset of captured sea turtles would receive a satellite tag or a combination of an acoustic and archival tag and a subset of green sea turtles would be lavaged prior to release. The permit would be valid for 10 years from the date of issuance.

File No. 22123: Jeffrey Schmid, Ph.D., Conservancy of Southwest Florida, 1495 Smith Preserve Way, Naples, FL 34102, proposes to continue long-term in-water studies of sea turtles inhabiting the Charlotte Harbor and Ten Thousand Islands estuarine complexes on the southwest coast of Florida to determine species composition, abundance, size-class distribution, migration patterns, growth, habitat preference, and site fidelity. Up to 60 Kemp's ridley and 30 loggerhead sea turtles, annually, would be captured by strike net, biologically sampled (blood, scute, tissue), tagged (PIT, flipper), transported to and temporarily held in a facility for opportunistic fecal collection, photographed, measured, and weighed prior to release. A subset of captured Kemp's ridley and loggerhead sea turtles also would receive a satellite tag or radio and sonic tags prior to release. Up to 20 green sea turtles, annually, would be captured by strike net, biologically sampled (blood, scute, tissue), tagged (PIT, flipper), photographed, measured, weighed, and receive a satellite tag or radio and sonic tags prior to release. Up to five hawksbill sea turtles, annually, would be captured by strike net, biologically sampled (blood, scute, tissue), tagged (PIT, flipper), photographed, measured, and weighed prior to release. The permit would be valid for 10 years from the date of issuance.

Dated: July 12, 2018.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–15196 Filed 7–16–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG336

International Whaling Commission; 67th Meeting; Announcement of Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: This notice announces the date, time, and location of the public meeting being held prior to the 67th meeting of the International Whaling Commission (IWC). Because the meeting will address U.S. positions, any U.S. citizen with an identifiable interest in U.S. whale conservation policy may participate, but NOAA reserves the authority to inquire about the interests of any person who appears at the meeting and to determine the appropriateness of that person's participation.

DATES: The public meeting will be held August 7, 2018 at 9:00 a.m.

ADDRESSES: The meeting will be held at the Silver Spring Civic Center, 1 Veterans Pl, Silver Spring, MD 20910, in the Spring Room.

FOR FURTHER INFORMATION CONTACT: Carolyn Doherty, Office of International Affairs and Seafood Inspection, NOAA Fisheries (phone: (301) 427–8385 or email: *Carolyn.Doherty@noaa.gov*).

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is responsible for discharging the domestic obligations of the United States under the International Convention for the Regulation of Whaling, 1946. The U.S. IWC Commissioner has responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. The U.S. IWC Commissioner is staffed by the Department of Commerce and assisted by the Department of State, the Department of the Interior, the Marine Mammal Commission, and other U.S. Government agencies.

Additional information about the IWC meeting, including a draft agenda for the meeting, is posted on the IWC Secretariat's website at *https://iwc.int/iwc67.*

NOAA will a hold public meeting to discuss the tentative U.S. positions for the September 2018 IWC meeting in Florianopolis, Brazil. Because the meeting will address U.S. positions, the substance of the meeting must be kept confidential. Any U.S. citizen with an identifiable interest in U.S. whale conservation policy may participate, but NOAA reserves the authority to inquire about the interests of any person who appears at the meeting and to determine the appropriateness of that person's participation. In particular, persons who represent foreign interests may not attend. Persons deemed by NOAA to be ineligible to attend will be asked to leave the meeting. These stringent measures are necessary to protect the confidentiality of U.S. negotiating positions.

The August 7, 2018, meeting will be held at 9:00 a.m. in the Spring Room of the Silver Spring Civic Center, 1 Veterans Pl, Silver Spring, MD 20910.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carolyn Doherty, *Carolyn.Doherty@noaa.gov* or (301) 427–8385, by July 23, 2018.

Dated: July 12, 2018.

Christopher W. Rogers,

Acting Director, Office of International Affairs and Seafood Inspection, National Marine Fisheries Service.

[FR Doc. 2018–15237 Filed 7–16–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Environmental Compliance Questionnaire for National Oceanic and Atmospheric Administration Federal Financial Assistance Applicants

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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.

DATES: Written comments must be submitted on or before September 17, 2018.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental

Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at *pracomments@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Frank M. Sprtel, (301) 628–1641 or *frank.sprtel@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a revision and extension of a currently approved information collection through the *Environmental Compliance Questionnaire for National Oceanic and Atmospheric Administration Federal Financial Assistance Applicants* (Questionnaire). This Questionnaire is used by the National Oceanic and Atmospheric Administration (NOAA) to collect information about proposed activities for the purpose of complying with the National Environmental Policy Act (''NEPA,'' 42 U.S.C. 4321–4370) and other environmental compliance requirements associated with proposed activities. NEPA requires federal agencies to complete an environmental analysis for all major federal actions, including funding non-federal activities through federal financial assistance awards where federal participation in the funded activity is expected to be significant. The Questionnaire is used in conjunction with NOAA Notices of Funding Opportunity (NOFO).

The NOFO will indicate the specific questions to which an applicant must respond in one of three ways: (1) The applicable questions are inserted directly into the NOFO with reference to the OMB Control Number (0648–0538) for this form; (2) the NOFO will specify which questions (*e.g.,* 1, 2) an applicant must answer, with the entire OMB-approved Questionnaire attached to the NOFO; or (3) applicants to be recommended for funding will be required to answer relevant questions from the Questionnaire. The federal program officer will determine which questions are relevant to each specific applicant. Answers must be provided before the application can be submitted for final funding approval.

This Questionnaire has been revised to (1) remove repetitive questions; (2) revise specific questions to use plain language; and (3) add questions that would be helpful to a wider range of NOAA programs.

II. Method of Collection

The information may be submitted electronically or on paper (faxed or mailed).

III. Data

OMB Control Number: 0648–0538.

Form Number(s): None.

Type of Review: Regular submission (revision and extension of a currently approved information collection).

Affected Public: Business or other for profit organizations; individuals or households; not-for-profit institutions; state, local, or tribal government; and Federal government.

Estimated Number of Respondents: 736.

Estimated Time per Response: 4 hours.

Estimated Total Annual Burden Hours: 1,030.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 12, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–15192 Filed 7–16–18; 8:45 am]

BILLING CODE 3510–NW–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

BroadbandUSA Webinar Series

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

ACTION: Notice of open meetings—monthly webinars.

SUMMARY: The National Telecommunications and Information Administration (NTIA), as part of its BroadbandUSA program, will host a series of webinars on a monthly basis to engage the public and stakeholders with information to accelerate broadband connectivity, improve digital inclusion, strengthen policies and support local priorities. The Practical Broadband Conversations webinar series will provide an ongoing source of information on a range of topics and issues being addressed by BroadbandUSA, including but not limited to best practices for improving broadband deployment, digital inclusion, workforce skills, and e-government.

DATES: BroadbandUSA will hold the webinars from 2:00 p.m. to 3:00 p.m. Eastern Time on the third Wednesday of every month, beginning October 17, 2018 and continuing through September 18, 2019.

ADDRESSES: This is a virtual meeting. NTIA will post the registration information on its BroadbandUSA website *https://broadbandusa.ntia.doc.gov* under Events.

FOR FURTHER INFORMATION CONTACT: Elaine Sloan, National Telecommunications and Information Administration, U.S. Department of Commerce, Room 4872, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8231; email: *broadbandusawebinars@ntia.doc.gov.* Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002; email *press@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION: NTIA's BroadbandUSA program serves as a trusted and neutral strategic advisor, collaborating with federal, state and local government, and industry leaders working to advance smart city and broadband initiatives designed to attract new employers, create quality jobs, improve educational opportunities, increase health outcomes and advance public safety.

BroadbandUSA convenes workshops on a regular basis to bring stakeholders together to discuss ways to improve broadband policies, share best practices, and connect state and local stakeholders to other federal agencies and funding sources for the purpose of expanding broadband infrastructure and adoption throughout America. Experts from NTIA's BroadbandUSA program are available to provide technical assistance and to connect stakeholders with additional resources, such as best practices, guides and program models.

NTIA's BroadbandUSA team convenes events around the country to bring together government, industry and non-profit personnel working to expand broadband connectivity and improve digital inclusion and workforce skills. These webinars are among the events BroadbandUSA uses to share broadband information with the public, broadband stakeholders, tribal, local and state governments and federal programs.

Details on specific webinar topics and webinar registration information will be posted on the BroadbandUSA website *https://broadbandusa.ntia.doc.gov* under Events. The presentation, transcript, and recording of the webinars will be posted on the BroadbandUSA website within 7 days following the live webinar.

The public is invited to participate in these webinars. General questions and comments are welcome at any time during webinars via email to *broadbandusawebinars@ntia.doc.gov.* The webinars are open to the public and press. Pre-registration is recommended. NTIA asks each registrant to provide their first and last name, city, state, zip code, job title, organization and email address for both registration purposes and to receive any updates on BroadbandUSA or via email at *BroadbandUSA@ntia.doc.gov.* Information on webinar content and how to register for one or more webinars will available on NTIA's website at *https://broadbandusa.ntia.doc.gov* under Events. Individuals requiring accommodations, such as language interpretation or other ancillary aids, are asked to notify the NTIA contact listed above at least seven (7) business days before the meeting.

Dated: July 11, 2018.

Kathy Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2018–15160 Filed 7–16–18; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2018–HQ–0009]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice of a new system of records.

SUMMARY: The Department of the Navy (DON) is proposing to establish a new system of records that will be used to verify eligibility of current DON law enforcement officers for assigned duties and to determine if reassignment, reclassification, detail or other administrative action is warranted based on an officer's ability to obtain or maintain credential qualification requirements; verify and validate eligibility of current, separating or separated and retired DON law enforcement officers to ship, transport, possess or receive Government-issued or private firearms or ammunition; and to verify and validate eligibility of current, separating or separated, and retired DON law enforcement officers to receive DON endorsed law enforcement credentials, to include Law Enforcement Officers Safety Act (LEOSA).

DATES: Comments will be accepted on or before August 16, 2018. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, Regulatory and Advisory Committee Division, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Sally A. Hughes, Head, FOIA/PA Programs (ARSF), Headquarters, U.S. Marine Corps, 3000 Marine Corps Pentagon, Washington, DC 20350–3000, telephone (703) 614–3685.

SUPPLEMENTARY INFORMATION: The Law Enforcement Officers Safety Act (LEOSA) is a United States federal law that allows two classes of persons—the ''qualified law enforcement officer'' and the ''qualified retired law enforcement officer''—to carry a concealed firearm in any jurisdiction in the United States.

The Department of the Navy's notices for systems of records subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Division website at *http://defense.gov/privacy.*

The proposed system report, as required by the Privacy Act of 1974, as amended, was submitted on May 16, 2018 to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 7 of OMB Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' revised December 23, 2016 (December 23, 2016 81 FR 94424).

Dated: July 12, 2018.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

Law Enforcement Officer Eligibility and Credential Records, NM05580–2.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Organization elements of the Department of the Navy (DON). Official mailing addresses are published in the Standard Navy Distribution List available, as an appendix to the Navy's compilation of system of records notices, or may be obtained from the system manager. Applications are submitted via Defense Consulting Services, 15750–W–1–10, San Antonio, TX 78249. Third Party services for USMC are provided by LEOSA Credential Manager, 701 South Courthouse Road, Building 2, Floor 2, Arlington, VA 22204. Tel: (703) 604–4502, Email: *leosa@usmc.mil.*

SYSTEM MANAGER(S):

LEOSA Program Manager, Commander, Navy Installations Command, 716 Sicard Street SE, Suite 1000, Washington Navy Yard, DC 20374–5140. Tel: (202)-433–9567.

Marine Corps Policy Official, Head, Law Enforcement and Corrections Branch, Security Division, Plans, Policies and Operations (PP&O), Headquarters, U.S. Marine Corps, 3000 Pentagon, Room 4A324, Washington, DC 20350–3000. Tel: (703) 614–1068.

Record Holders Commanding officers of the U.S. Navy activity in question and/or Marine Corps Credential Approving Authorities at Marine Corps Headquarters, installations, and units. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps function, composition; 18 U.S.C. 922, Unlawful Acts; 18 U.S.C. 926B and 926C, Carrying of concealed firearms by qualified retired law enforcement officers; DoD Instruction 5525.12 Implementation of the Law Enforcement Officers Safety Act of 2004 (LEOSA); and E.O. 9397 (SSN), as amended.

PURPOSE(S) OF THE SYSTEM:

To verify eligibility of current DON law enforcement officers for assigned duties and to determine if reassignment, reclassification, detail or other administrative action is warranted based on an officer's ability to obtain or maintain credential qualification requirements.

To verify and validate eligibility of current, separating or separated and retired DON law enforcement officers to ship, transport, possess or receive Government-issued or private firearms or ammunition.

To verify and validate eligibility of current, separating or separated, and retired DON law enforcement officers to receive DON endorsed law enforcement credentials, to include LEOSA credentials.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current, separating or separated, and retired DON law enforcement officers including military police, masters at arms, and civilian police officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN), Department of Defense (DoD) Identification (ID) Number, date and place of birth, gender, citizenship, badge number, physical description, passport type photograph, copy of military identification card, copy of state driver's license or state issued identification card, copy of Federal Bureau of Investigation (FBI) Identity History Summary, service status, dates of service, Military Occupational Specialty (MOS) code, title/series/grade, assignments, related education and training completed, statements of medical qualification, certifications granted and/or revoked, copies of credentials, clearances, notice of personnel actions, notice of convictions, type of separation, affiliated law enforcement experience including dates of employment, position/job title and reason for leaving, work and home phone numbers, email addresses, and mailing addresses, applications for DON issued certification of eligibility, applicant signed statements of eligibility and understanding of requirements, copies of DD 2760, DD–214, and SF–50.

RECORD SOURCE CATEGORIES:

Individuals, DoD, DON, Navy and U.S. Marine Corps security offices, the FBI, and system managers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To the Department of Justice for the purpose of inclusion in the National Instant Criminal Background Check System, which may be used by firearm licensees (importers, manufacturers or dealers) to determine whether individuals are qualified to receive or possess firearms and ammunition.

b. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government when necessary to accomplish an agency function related to this system of records.

c. To designated officers and employees of Federal, State, local, territorial or tribal, international, or foreign agencies maintaining civil, criminal, enforcement, or other pertinent information, such as current licenses, if necessary to obtain information relevant and necessary to a DoD Component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

d. To designated officers and employees of Federal, State, local, territorial, tribal, international, or foreign agencies in connection with the hiring or retention of an employee, the conduct of a suitability or security investigation, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter and the Department deems appropriate.

e. To the Office of Personnel Management (OPM) for the purpose of addressing civilian pay and leave, benefits, retirement deduction, and any other information necessary for the OPM to carry out its legally authorized government-wide personnel management functions and studies

f. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

g. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

h. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

i. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

j. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

k. To appropriate agencies, entities, and persons when (1) the DoD suspects or has confirmed that there has been a breach of the system of records; (2) the DoD has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

l. To another Federal agency or Federal entity, when the DoD determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper records and/or electronic storage media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Name, last four of SSN or DoD ID number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Current DON law enforcement officer general eligibility verification records: Destroy upon separation or transfer of employee or when 2 years old, whichever is earlier.

Application packages for active duty/currently employed Navy and Marine Corps law enforcement officer 926B LEOSA Credentials:

1. DD Form 2760, Qualification to Possess Firearms or Ammunition.

a. Enlisted military police (MP): Destroy 5 years after initial issuance of law enforcement credentials or upon submission of updated DD Form 2760 during law enforcement credential renewal.

b. Commissioned officers, warrant officers, and Navy and Marine Corps civilian police officers: Destroy 10 years after initial issuance of law enforcement credentials or upon submission of updated DD Form 2760 during law enforcement credential renewal.

2. LEOSA 926B Certificate of Eligibility.

Destroy 5 years after initial issuance of law enforcement credentials or upon submission of updated LEOSA 926B Certificate of Eligibility during law enforcement credential renewal.

Application packages for Retired/Separated Navy and Marine Corps law enforcement officer 926C LEOSA Credentials are destroyed 2 years after issuance of law enforcement credentials.

The DD Form 2760, Qualification to Possess Firearms or Ammunition and the LEOSA 926C Certification of Eligibility are PERMANENT records and transferred to the National Archives 2 years after issuance of law enforcement credentials.

a. Destroy paper/electronic copies upon receipt of acceptance by NARA.

Collection forms, paper and/or plastic badges/passes are shredded or incinerated using DoD approved procedures. If any IT system or data storage media fails and must be replaced, the data storage component (*e.g.,* disks/hard drives) is removed from the hardware and degaussed with DoD approved degaussing systems and are then mechanically shredded prior to disposal.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access is provided on a need-to-know basis only. Paper records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access is controlled by password and/or Primary Key Infrastructure (PKI)/Common Access Card (CAC). Computerized records maintained in a controlled area are accessible only to authorized personnel. Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Physical and electronic access is restricted to designated individuals having a need-to-know in the performance of official duties and who are properly screened and cleared for need-to-know.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to Commanding Officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List available as an appendix to the Navy's compilation of system of records notices or may be obtained from the system manager.

For Marine Corps LEOSA 926C and 926B Credential application records, individuals should address written inquiries to the Commandant of the Marine Corps, Plans, Policies, and Operations, Security Division, Law Enforcement and Corrections Branch (PSL), 3000 Marine Corps Pentagon, Washington, DC 20380–1775.

For verification purposes, the individual should provide full name, SSN and/or DoD ID Number, sufficient details to permit locating pertinent records, and either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)''.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5E; 32 CFR part 701; or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding Officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List available as an appendix to the Navy's compilation of system of records notices or may be obtained from the system manager.

For Marine Corps LEOSA 926C and 926B Credential application records, individuals should address written inquiries to the Commandant of the Marine Corps, Plans, Policies, and Operations, Security Division, Law Enforcement and Corrections Branch (PSL), 3000 Marine Corps Pentagon, Washington, DC 20380–1775.

For verification purposes, individual should provide full name, SSN and/or DoD ID Number, sufficient details to permit locating pertinent records, and either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)''.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2018–15226 Filed 7–16–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1894–211]

South Carolina Electric & Gas Company; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

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

a. *Type of Application:* New Major License.

b. *Project No.:* P–1894–211.

c. *Date filed:* June 28, 2018.

d. *Applicant:* South Carolina Electric & Gas Company (SCE&G).

e. *Name of Project:* Parr Hydroelectric Project.

f. *Location:* The existing project is located on the Broad River, in Newberry and Fairfield Counties, South Carolina. The project includes 162.61 acres of federal lands administered by the U.S. Forest Service.

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

h. *Applicant Contact:* Mr. William Argentieri, P.E., Manager of Civil Engineering, South Carolina Electric & Gas Company, 220 Operation Way, Mail Code A221, Cayce, SC 29033–3701; (803) 217–9162; or email at *bargentieri@scana.com.*

i. *FERC Contact:* Monte TerHaar at (202) 502–6035; or *monte.terhaar@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. *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 m 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).

l. 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.

m. *Deadline for filing additional study requests and requests for cooperating agency status:* August 27, 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–1894–211.

n. *Project Description:* The project consists of two developments; the 14.88 Megawatt (MW) Parr Shoals Development and the 511.2–MW Fairfield Pumped Storage Development.

The Parr Shoals Development consists of: (1) The 15-mile-long, 4,250-acre Parr Reservoir, at full pond elevation 265.3 feet North American Vertical Datum of 1988 (NAVD 88); (2) the 2,690-foot-long Parr Shoals Dam, which includes a non-overflow section and powerhouse intake section; (3) a powerhouse integral with the dam, with six generating units; and (4) transmission facilities that consist of three 950-foot-long, 13.8-kilovolt lines extending from the hydro station to the non-project Parr sub-station.

The Fairfield Pumped Storage Development consists of: (1) The 6,800-acre Monticello Reservoir (upper reservoir), at normal maximum elevation 424.3 feet NAVD 88, formed by four earthen dams (A, B, C, and D); (2) a 265-foot-long gated intake channel, located between dams B and C; (3) four 800-foot-long surface penstocks bifurcating into eight penstocks; (4) an underground generating station, which houses eight pumped-turbine units; and (5) transmission facilities that consist of three 7,000-foot-long lines extending from the Fairfield switch station to the non-project V.C. Summer switchyard.

The Fairfield Pumped Storage Development is operated to generate during peak demand periods. Generation usually occurs during the day, with the upper reservoir replenished by pumping water at night (non-peak period). The Parr Shoals Development serves as the lower reservoir for the pumped storage project.

o. 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.

p. *Procedural schedule and final amendments:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made, as appropriate.

Milestone	Target date
Issue Deficiency Letter (if necessary)	September 2018.
Request Additional Information	September 2018.
Issue Scoping Document 1 for comments	October 2018.
Comments on Scoping Document 1	December 2018.
Issue Notice of Ready for Environmental Analysis	August 2019.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	October 2019.
Commission issues EA or draft EA	February 2020.
Comments on EA or draft EA	April 2020.
Commission Issues Final EA (if necessary)	June 2020.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: July 11, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–15256 Filed 7–16–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–1990–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization: Stonepeak Kestrel Energy Marketing LLC

This is a supplemental notice in the above-referenced proceeding Stonepeak Kestrel Energy Marketing LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 31, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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.

Dated: July 11, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–15200 Filed 7–16–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

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

Docket Numbers: ER18–280–004.
Applicants: Lee County Generating Station, LLC.
Description: Compliance filing: Reactive Tariff Compliance Filing to be effective 10/11/2017.
Filed Date: 7/11/18.
Accession Number: 20180711–5131.
Comments Due: 5 p.m. ET 8/1/18.

Docket Numbers: ER18–366–000.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.
Description: Report Filing: 2018–07–11_Refund Report for Ameren-Kirkwood 1st Rev WDS to be effective N/A.
Filed Date: 7/11/18.
Accession Number: 20180711–5127.
Comments Due: 5 p.m. ET 8/1/18.

Docket Numbers: ER18–1607–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2018–07–11_Amendment to Manual Redispatch filing to be effective 5/16/2018.
Filed Date: 7/11/18.
Accession Number: 20180711–5107.
Comments Due: 5 p.m. ET 8/1/18.

Docket Numbers: ER18–1611–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Amendment to May 15, 2018 Limited Tariff Waiver Request of Midcontinent Independent System Operator, Inc.
Filed Date: 7/11/18.
Accession Number: 20180711–5129.
Comments Due: 5 p.m. ET 8/1/18.

Docket Numbers: ER18–1995–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA SA No. 5128; Queue No. AD1–156 to be effective 6/15/2018.
Filed Date: 7/11/18.
Accession Number: 20180711–5042.
Comments Due: 5 p.m. ET 8/1/18.

Docket Numbers: ER18–1996–000.
Applicants: Transource Pennsylvania, LLC.
Description: Application for Authorization Under Section 205 of the Federal Power Act of Transource Pennsylvania, LLC.
Filed Date: 7/11/18.
Accession Number: 20180711–5064.
Comments Due: 5 p.m. ET 8/1/18.

Docket Numbers: ER18–1997–000.
Applicants: Transource Maryland, LLC.
Description: Application for Authorization Under Section 205 of the Federal Power Act of Transource Maryland, LLC.
Filed Date: 7/11/18.
Accession Number: 20180711–5065.
Comments Due: 5 p.m. ET 8/1/18.

Docket Numbers: ER18–1998–000.
Applicants: Alabama Power Company.
Description: Tariff Cancellation: Teichos Energy (Wildwood Solar) SGIA Termination Filing to be effective 6/6/2018.
Filed Date: 7/11/18.
Accession Number: 20180711–5089.
Comments Due: 5 p.m. ET 8/1/18.

Docket Numbers: ER18–1999–000.
Applicants: FirstEnergy Solutions Corp.
Description: Request of FirstEnergy Solutions Corp. for Authorization to Make Wholesale Power Sales to an Affiliate.
Filed Date: 7/11/18.
Accession Number: 20180711–5106.
Comments Due: 5 p.m. ET 8/1/18.

Docket Numbers: ER18–2000–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions of APS to be effective 9/10/2018.
Filed Date: 7/11/18.
Accession Number: 20180711–5110.
Comments Due: 5 p.m. ET 8/1/18.

Docket Numbers: ER18–2001–000.
Applicants: Midcontinent Independent System Operator, Inc., MidAmerican Energy Company.

Description: § 205(d) Rate Filing: 2018–07–11_SA 3129 MidAmerican-Glaciers Edge Wind E&P (J506) to be effective 6/21/2018.

Filed Date: 7/11/18.

Accession Number: 20180711–5115.

Comments Due: 5 p.m. ET 8/1/18.

Docket Numbers: ER18–2002–000.

Applicants: Essential Power Rock Springs, LLC.

Description: § 205(d) Rate Filing: Reactive Rate Schedule to be effective 12/31/9998.

Filed Date: 7/11/18.

Accession Number: 20180711–5137.

Comments Due: 5 p.m. ET 8/1/18.

Docket Numbers: ER18–2003–000.

Applicants: Lorenzo Wind, LLC.

Description: Baseline eTariff Filing: Lorenzo Wind,LLC Application for Market-Based Rate Authority to be effective 9/1/2018.

Filed Date: 7/11/18.

Accession Number: 20180711–5153.

Comments Due: 5 p.m. ET 8/1/18.

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: July 11, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–15198 Filed 7–16–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1894–211]

Notice of Settlement Agreement and Soliciting Comments: South Carolina Electric & Gas Company

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

a. *Type of Application:* Settlement Agreement.

b. *Project No.:* P–1894–211.

c. *Date filed:* June 28, 2018.

d. *Applicant:* South Carolina Electric & Gas Company (SCE&G).

e. *Name of Project:* Parr Hydroelectric Project.

f. *Location:* The existing project is located on the Broad River, in Newberry and Fairfield Counties, South Carolina. The project includes 162.61 acres of federal lands administered by the U.S. Forest Service.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Mr. William Argentieri, P.E., Manager of Civil Engineering, South Carolina Electric & Gas Company, 220 Operation Way, Mail Code A221, Cayce, SC 29033–3701; (803) 217–9162; or email *bargentieri@scana.com.*

i. *FERC Contact:* Monte TerHaar at (202) 502–6035; or *monte.terhaar@ferc.gov.*

j. *Deadline for filing comments:* Comments on the Settlement Agreement are due August 13, 2018. Reply comments are due August 27, 2018.

The Commission strongly encourages electronic filing. Please file comments 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–1894–211.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Settlement:* SCE&G filed a Settlement Agreement on behalf of itself, American Rivers, American Whitewater, Congaree Riverkeeper, Mr. Jeffrey Carter, and the South Carolina Department of Natural Resources. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service are currently reviewing the Settlement Agreement. The purpose of the Settlement Agreement is to resolve, among the signatories, all issues associated with issuance of a new license for the project regarding recreation; flow fluctuations downstream from Parr Shoals Dam; fisheries habitat in Monticello Reservoir; monitoring of American eel and freshwater mussels; diadromous fish protection; enhancement of aquatic habitat; water quality; shoreline management and erosion in Parr and Monticello Reservoirs; and historic properties. SCE&G requests that the Commission accept and incorporate into any new license measures as described in Appendix A of the Settlement Agreement. In addition, Appendix B of the Settlement Agreement includes off-license agreements between the signatories of the Settlement Agreement.

l. A copy of the Settlement Agreement 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.

Dated: July 11, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–15255 Filed 7–16–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR18–64–000.

Applicants: Columbia Gas of Ohio, Inc.

Description: Tariff filing per 284.123(b),(e)/: COH Rates effective June 29 2018.
Filed Date: 7/9/18.
Accession Number: 201807095045.
Comments/Protests Due: 5 p.m. ET 7/30/18.

Docket Numbers: RP18–966–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Pioneer July 2018) to be effective 7/11/2018.
Filed Date: 7/10/18.
Accession Number: 20180710–5154.
Comments Due: 5 p.m. ET 7/23/18.

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 date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

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

Dated: July 11, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–15199 Filed 7–16–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: July 19, 2018, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.* **Note**—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's website at *http://ferc.capitolconnection.org/* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

1046th—Meeting

Item No.	Docket No.	Company
	Administrative	
A–1	AD18–1–000	Agency Administrative Matters.
A–2	AD18–2–000	Customer Matters, Reliability, Security and Market Operations.
	Electric	
E–1	RM18–2–000	Cyber Security Incident Reporting Reliability Standards.
E–2	RM18–15–000	Revisions to Parts 45 and 46 of the Commission's Regulations.
E–3	RR17–6–000	North American Electric Reliability Corporation.
E–4	EL15–67–003	Linden VFT, LLC v. PJM Interconnection, L.L.C.
	ER15–2562–002	PJM Interconnection, L.L.C.
	ER17–950–003	PJM Interconnection, L.L.C.
	EL17–68–000	Linden VFT, LLC v. PJM Interconnection, L.L.C.
	EL17–84–001	PJM Interconnection, L.L.C.
	EL17–90–001	Linden VFT, LLC v. Public Service Electric and Gas Company and PJM Interconnection, L.L.C.
	EL17–94–000	New York Power Authority v. PJM Interconnection, L.L.C. and PJM Transmission Owners in their Collective Capacity.
	ER18–579–002	PJM Interconnection, L.L.C.
	ER18–680–000 (Not Consolidated)	PJM Interconnection, L.L.C.
E–5	EL18–146–000	KCP&L Greater Missouri Operations Company.
E–6	EL15–95–003	Delaware Public Service Commission and Maryland Public Service Commission v. PJM Interconnection, L.L.C. and Certain Transmission Owners Designated under CTOA RS FERC No. 42.
	Gas	
G–1	OR14–4–002	Guttman Energy, Inc. and PBF Holding Company LLC v. Buckeye Pipe Line Company, L.P. and Laurel Pipe Line Company, L.P.
	Hydro	
H–1	OMITTED	
H–2	P–2114–296	Public Utility District No. 2 of Grant County, Washington.
H–3	P–12611–011	Verdant Power, LLC.
	Certificates	
C–1	CP17–80–000	Columbia Gas Transmission, LLC.

1046TH—MEETING—Continued

Item No.	Docket No.	Company
C–2	CP18–10–000	Texas Eastern Transmission, LP.
C–3	CP17–441–000, CP17–441–001	Northwest Pipeline LLC.
C–4	CP18–66–000	Gulf South Pipeline Company, LP.
	CP18–69–000	Tristate NLA, LLC.
C–5	CP18–5–001	Constitution Pipeline Company, LLC.
C–6	CP16–22–001	NEXUS Gas Transmission, LLC.
	CP16–23–001	Texas Eastern Transmission, LP.
	CP16–24–001	DTE Gas Company.
	CP16–102–001	Vector Pipeline L.P.
C–7	CP16–486–001	Millennium Pipeline Company, L.L.C.

Issued: July 12, 2018.

Kimberly D. Bose,

Secretary.

A free webcast of this event is available through *http://ferc.capitolconnection.org/.* Anyone with internet access who desires to view this event can do so by navigating to *www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://ferc.capitolconnection.org/* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2018–15318 Filed 7–13–18; 4:15 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

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

Docket Numbers: ER18–1985–000.

Applicants: Invenergy Solar Development North America LLC.

Description: Request for Limited Waiver, et al. of Invenergy Solar Development North America LLC.

Filed Date: 7/9/18.

Accession Number: 20180709–5132.

Comments Due: 5 p.m. ET 7/19/18.

Docket Numbers: ER18–1991–000.

Applicants: Pennsylvania Electric Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Penelec et al submit revised WASPs, Service Agreement Nos. 4221, 4222, and 4223 to be effective 9/8/2018.

Filed Date: 7/10/18.

Accession Number: 20180710–5127.

Comments Due: 5 p.m. ET 7/31/18.

Docket Numbers: ER18–1992–000.

Applicants: Forward Energy LLC.

Description: Tariff Cancellation: Notice of Cancellation of Market-Based Rate Tariff to be effective 9/10/2018.

Filed Date: 7/11/18.

Accession Number: 20180711–5000.

Comments Due: 5 p.m. ET 8/1/18.

Docket Numbers: ER18–1993–000

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA SA No. 5126; Queue No. AB1–169 to be effective 6/11/2018.

Filed Date: 7/11/18.

Accession Number: 20180711–5026.

Comments Due: 5 p.m. ET 8/1/18.

Docket Numbers: ER18–1994–000.

Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: NYISO & National Grid—amended/restated SGIA (SA2219) with Monroe County to be effective 6/26/2018.

Filed Date: 7/11/18.

Accession Number: 20180711–5033.

Comments Due: 5 p.m. ET 8/1/18.

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: July 11, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–15197 Filed 7–16–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0065; FRL 9980–91–OAR]

Proposed Information Collection Request; Comment Request; Application Requirements for the Approval and Delegation of Federal Air Toxics Programs to State, Territorial, Local, and Tribal Agencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Proposed Information Collection Request; Comment Request; Application Requirements for the Approval and Delegation of Federal Air Toxics Programs to State, Territorial, Local, and Tribal Agencies'' (EPA ICR No. 1643.09, OMB Control No. 2060–0264) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through August 31, 2018. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before September 17, 2018.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2004–0065, online using *https://www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

The EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: John Schaefer, Sector Policies and Programs Division (D205–02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: 919–541–0296; fax number: 919–541–4991; email address: *schaefer.john@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov* or in person at the EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about the EPA's public docket, visit *https://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (2) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and; (5) 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 EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: This information collection is an application from state, local, or tribal agencies (S/L/Ts) for delegation of regulations developed under section 112 of the Clean Air Act (CAA). The five options for delegation are (1) straight delegation, (2) rule adjustment, (3) rule substitution, (4) equivalency by permit, or (5) state program approval. The information is needed and used to determine if the entity submitting an application has met the criteria established in 40 CFR part 63, subpart E. This information is necessary for the EPA Administrator to determine the acceptability of approving S/L/T's rules, requirements, or programs in lieu of the Federal CAA section 112 rules or programs. The collection of information is authorized under 42 U.S.C. 7401–7671q.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are S/L/Ts participating in this voluntary program. These government establishments are classified as Air and Water Resource and Solid Waste Management Programs under Standard Industrial Classification (SIC) code 9511 and North American Industry Classification System (NAICS) code 92411. No industries under any SIC or NAICS codes will be included among respondents.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 119 S/L/Ts for maximum achievable control technology standards and 95 S/L/Ts for area source standards per year.

Frequency of response: One time per delegation request.

Total estimated burden: 30,383 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1,587,350 (per year). This includes an estimated labor burden cost of $1,585,000 and an estimated cost of $2,350 for operation and maintenance costs resulting from photocopying and postage expenses.

Changes in Estimates: Preliminary results indicate an increase of 588 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to an increase in the number of maximum achievable control technology standard promulgations compared to last period. We are still in the process of reviewing the key assumptions in the ICR that will affect the overall burden estimate. These include the number of delegation activities expected to occur during the upcoming collection period, the delegation options most likely to be used by the delegated S/L/Ts, and the burden associated with each of the options. Depending on the outcome of this review, there could be changes in the overall burden estimates.

Dated: July 11, 2018.

David Cozzie,

Acting Director, Sector Policies and Program Division.

[FR Doc. 2018–15204 Filed 7–16–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9980–10—Region 6]

Clean Air Act Operating Permit Program; Petitions for Objection to State Operating Permit for Motiva Enterprises LLC, Port Arthur Refinery, Jefferson County, Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final Order on Petition for objection to Clean Air Act title V operating permit.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an Order dated May 31, 2018, granting in part and denying in part a Petition dated November 8, 2016 from the Environmental Integrity Project, Sierra Club, and Air Alliance Houston. The Petition requested that the EPA object to a Clean Air Act (CAA) title V operating permit issued by the Texas Commission on Environmental Quality (TCEQ) to Motiva Enterprises LLC (Motiva) for its Port Arthur Refinery located in Jefferson County, Texas.

ADDRESSES: The EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view copies of the final Order, the Petition, and other supporting information. You may review copies of the final Order, the Petition, and other supporting information at the EPA Region 6 Office, 1445 Ross Avenue, Dallas, Texas 75202–2733. You may view the hard copies Monday through Friday, from 9 a.m. to 3 p.m., excluding federal holidays. If you wish to examine these documents, you should make an appointment at least 24 hours before the visiting day. Additionally, the final Order and Petition are available electronically at: *https://www.epa.gov/title-v-operating-permits/title-v-petition-database.*

FOR FURTHER INFORMATION CONTACT: Kyndall Cox, EPA Region 6, (214) 665–8567, *cox.kyndall@epa.gov.*

SUPPLEMENTARY INFORMATION: The CAA affords EPA a 45-day period to review and object to, as appropriate, operating permits proposed by state permitting authorities under title V of the CAA. Section 505(b)(2) of the CAA authorizes any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of the EPA's 45-day review period if the EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or unless the grounds for the issue arose after this period.

The EPA received the Petition from the Environmental Integrity Project, Sierra Club, and Air Alliance Houston dated November 8, 2016, requesting that the EPA object to the issuance of operating permit no. O1386, issued by TCEQ to Motiva's Port Arthur Refinery in Jefferson County, Texas. The Petition has six claims (1–6) that the proposed permit fails to require monitoring, recordkeeping and reporting sufficient to assure compliance with various emission limits and operational requirements for units authorized by New Source Review (NSR) permits and permits by rule (PBRs); one claim (7) that the proposed permit's incorporation by reference of permit by rule requirements fails to assure compliance with applicable requirements; and one claim (8) that the proposed permit fails to identify monitoring, recordkeeping and reporting for emission units subject to NSPS and NESHAP federal rules.

On May 31, 2018, the EPA Administrator issued an Order granting in part and denying in part the Petition. The Order explains the basis for EPA's decision.

Sections 307(b) and 505(b)(2) of the CAA provide that a petitioner may request judicial review of those portions of an order that deny issues in a petition. Any petition for review shall be filed in the United States Court of Appeals for the appropriate circuit no later than September 17, 2018.

Dated: July 3, 2018.

Anne L. Idsal,

Regional Administrator, Region 6.

[FR Doc. 2018–15205 Filed 7–16–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Request for Comment on the Exposure Draft of a Classified Interpretation of Federal Financial Accounting Standards (SFFAS) 56: Classified Activities

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued an exposure draft of a classified Interpretation of Federal Financial Accounting Standards (SFFAS) 56: *Classified Activities.*

Due to the classified nature of the proposal, the exposure draft will only be made available to those individuals who have been designated as having a need to know and who hold the proper clearances.

Additionally, FASAB staff will hold two classified reading sessions for those individuals without SIPR accounts to review the exposure draft. Only those individuals who have been designated as having a need to know and hold the proper clearances will be allowed to attend.

—Session I: Wednesday July 18, 2018 9:30–11:30 a.m.
—Session II: Wednesday August 1, 2018 1:30–3:30 p.m.

To request attendance at one of the reading sessions please contact Monica Valentine at *valentinem@fasab.gov* by July 16, 2018 for Session I and July 27, 2018 for Session II. Please provide your name, organization, and contact information.

The Board requests comments on the exposure draft by August 13, 2018 and encourages respondents to provide responses to all of the questions raised and the reasons for their positions.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy M. Payne, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: July 12, 2018.

Wendy M. Payne,

Executive Director.

[FR Doc. 2018–15234 Filed 7–16–18; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0979]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

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

DATES: Written PRA comments should be submitted on or before September 17, 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 contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0979.

Title: License Audit Letter.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit entities, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 25,000 respondents; 25,000 responses.

Estimated Time per Response: .50 hours.

Frequency of Response: One-time reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 152, 154(i), 155(c), 157, 201, 202, 208, 214, 301, 302a, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 331, 332, 333, 336, 534 and 535.

Total Annual Burden: 12,500 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: Yes. Records of the Wireless Radio Services may include information about individuals or households, and the use(s) and disclosure of this information is governed by the requirements of a system of records, FCC/WTB–1, ''Wireless Services Licensing Records''. However, the Commission makes all information within the Wireless Radio Services publicly available on its Universal Licensing System (ULS) web page.

Nature and Extent of Confidentiality: Respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of their rules. Information within Wireless Radio Services is maintained in the Commission's system or records notice or 'SORN', FCC/WTB–1, ''Wireless Services Licensing Records''. These licensee records are publicly available and routinely used in accordance with subsection b of the Privacy Act of 1973, 5 U.S.C. 552a(b), as amended. Material that is afforded confidential treatment pursuant to a request made under 47 CFR 0.459 of the Commission's rules will not be available for public inspection. The Commission has in place the following policy and procedures for records retention and disposal: Records will be actively maintained as long as the individual remains a licensee. Paper records will be archived after being keyed or scanned into the system and destroyed when 12 years old; electronic records will be backed up and deleted twelve years after the licenses are no longer valid.

Needs and Uses: The Commission is seeking OMB approval for an extension of this information collection in order to obtain their full three-year approval. There is no change to the reporting requirement. There is no change to the Commission's burden estimates. The Wireless Telecommunications (WTB) and Public Safety and Homeland Security Bureaus (PSHSB) of the FCC periodically conduct audits of the construction and/or operational status of various Wireless radio stations in its licensing database that are subject to rule-based construction and operational requirements. The Commission's rules for these Wireless services require construction within a specified timeframe and require a station to remain operational in order for the license to remain valid. The information will be used by FCC personnel to assure that licensees' stations are constructed and currently operating in accordance with the parameters of the current FCC authorization and rules.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–15155 Filed 7–16–18; 8:45 am]

BILLING CODE 6712–01–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 August 9, 2018.

A. Federal Reserve Bank of Minneapolis (Mark A. Rauzi, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *WNB Holding Company, Winona, Minnesota;* to acquire First State Bank of Wabasha, Wabasha, Minnesota.

Board of Governors of the Federal Reserve System, July 12, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–15236 Filed 7–16–18; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Determination Concerning a Petition To Add a Class of Employees to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a determination concerning a petition to add a class of employees from the Feed Materials Production Center (FMPC), in Fernald, Ohio, to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA).

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 1090 Tusculum Avenue, MS C–46, Cincinnati, OH 45226–1938, Telephone 1–877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

SUPPLEMENTARY INFORMATION: On June 21, 2018, the Secretary of HHS determined that the following class of employees does not meet the statutory criteria for addition to the SEC as authorized under EEOICPA:

> ''(1) All employees of the Department of Energy (DOE), its predecessor agencies, and their contractors and subcontractors who worked in any area of the Feed Materials Production Center at Fernald, Ohio, from January 1, 1984, through December 31, 1989; and (2) all employees of the DOE, its predecessor agencies, National Lead of Ohio, or NLO, Inc., in any area of the Feed Materials Production Center from January 1, 1979, through December 31, 1983.''

Authority: 42 U.S.C.7384q.

John J. Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2018–15094 Filed 7–16–18; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Determination Concerning a Petition To Add a Class of Employees to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a determination concerning a petition to add a class of employees from the Grand Junction Facilities, in Grand Junction, Colorado, to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA).

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 1090 Tusculum Avenue, MS C–46, Cincinnati, OH 45226–1938, Telephone 1–877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

SUPPLEMENTARY INFORMATION: On June 21, 2018, the Secretary of HHS determined that the following class of employees does not meet the statutory criteria for addition to the SEC as authorized under EEOICPA:

> ''All employees who worked in any area of the Grand Junction Facilities in Grand Junction, Colorado, from January 1, 1986, through July 31, 2010.''

Authority: 42 U.S.C.7384q.

John J. Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2018–15093 Filed 7–16–18; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10008, CMS–R–234, and CMS–R–194]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by September 17, 2018.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _________, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10008 Eligibility of Drugs, Biologicals, and Radiopharmaceutical Agents for Transitional Pass-Through Status Under the Hospital Outpatient Prospective Payment System (OPPS)
CMS–R–234 Subpart D-Private Contracts
CMS–R–194 Medicare Disproportionate Share Adjustment Procedures and Criteria

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Reinstatement with a change of a previously approved collection; *Title of Information Collection:* Eligibility of Drugs, Biologicals, and Radiopharmaceutical Agents for Transitional Pass-Through Status Under the Hospital Outpatient Prospective Payment System (OPPS); *Use:* Section 201(b) of the BBRA 1999 amended section 1833(t) of the Act by adding new section 1833(t)(6). This provision requires the Secretary to make additional payments to hospitals for a period of 2 to 3 years for certain drugs, radiopharmaceuticals, biological agents, medical devices and brachytherapy devices. Section 1833(t)(6)(A)(iv) establishes the criteria for determining the application of this provision to new items. Section 1833(t)(6)(C)(i) provides that the additional payment for drugs and biologicals be the amount by which the amount determined under section 1842(o) of the Act exceeds the portion of the otherwise applicable hospital outpatient department fee schedule amount that the Secretary determines to be associated with the drug or biological. Section 1833(t)(6)(D)(i) of the Act sets the payment rate for pass-through eligible drugs and biologicals (assuming that no pro rata reduction in pass-through payment is necessary) as the amount determined under section 1842(o) of the Act. Section 303(c) of Public Law 108–173 amended Title XVIII of the Act by adding new section 1847A. This new section establishes the use of the average sales price (ASP) methodology for payment for drugs and biologicals described in section 1842(o)(1)(C) of the Act furnished on or after January 1, 2005. Therefore, as we stated in the November 15, 2004 **Federal Register** (69 FR 65776), in CY 2005, we will pay under the OPPS for drugs, biologicals and radiopharmaceuticals with pass-through status consistent with the provisions of section 1842(o) of the Act as amended by Public Law 108–173 at a rate that is equivalent to the payment these drugs and biologicals will receive in the physician office setting, and established in accordance with the methodology described in the CY 2005 Physician Fee Schedule final rule. Information on Average Sales Price is found at *http://www.cms.hhs.gov/McrPartBDrugAvgSalesPrice/.* The intent of these provisions is to ensure that timely beneficiary access to new pharmacological technologies is not jeopardized by inadequate payment levels. *Form Number:* CMS–10008 (OMB Control Number 0938–0802); *Frequency:* Yearly; *Affected Public:* Private sector (Business or other for-profits); *Number of Respondents:* 30; *Total Annual Responses:* 30; *Total Annual Hours:* 480. (For policy questions regarding this collection contact Raymond Bulls at 410–786–7267).

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Subpart D—Private Contracts; *Use:* Section 4507 of the Balanced Budget Act of 1997 (BBA 1997) amended section 1802 of the Social Security Act (the Act) to permit certain physicians and practitioners to opt-out of Medicare and to provide through private contracts services that would otherwise be covered by Medicare. Under such contracts the mandatory claims submission and limiting charge rules of section 1848(g) of the Act would not apply. Subpart D and the supporting regulations contained in 42 CFR 405.410, 405.430, 405.435, 405.440, 405.445, and 405.455, counters the effect of certain provisions of Medicare law that, absent section 1802 of the Act, preclude physicians and practitioners from contracting privately with Medicare beneficiaries to pay without regard to Medicare limits. The most recent approval of this information collection request (ICR) was issued by the Office of Management and Budget on March 2, 2016. We are now seeking to renew this approval before it expires on March 31, 2019. We have made no changes to the information being collected. We updated our burden estimate to reflect changes in the number of physicians and practitioners who have opted out and refinements to our methodology for estimating the burden associated with contracts. We have also updated the cost estimate to account for the current Bureau of Labor Statistics (BLS) wage estimates and to include the estimated costs for Medicare Advantage plans. *Form Number:* CMS–R–234 (OMB Control Number 0938–0730); *Frequency:* Yearly; *Affected Public:* Private sector (Business or other for-profits); *Number of Respondents:* 57,722; *Total Annual Responses:* 57,722; *Total Annual Hours:* 23,557. (For policy questions regarding this collection contact Frederick Grabau at 410–786–0206).

3. *Type of Information Collection Request:* Reinstatement without a change of a previously approved collection; *Title of Information Collection:* Medicare Disproportionate Share Adjustment Procedures and Criteria; *Use:* Section 1886(d)(5)(F) of the Social Security Act established the Medicare disproportionate share adjustment (DSH) for hospitals, which provides additional payment to hospitals that serve a disproportionate share of the indigent patient population. This payment is an add-on to the set amount per case the Centers for Medicare and Medicaid Services (CMS) pays to hospitals under the Medicare Inpatient Prospective Payment System (IPPS). Under current regulations at 42 CFR 412.106, in order to meet the qualifying criteria for this additional DSH payment, a hospital must prove that a disproportionate percentage of its patients are low income using Supplemental Security Income (SSI) and Medicaid as proxies for this determination. This percentage includes two computations: (1) The ''Medicare fraction'' or the ''SSI ratio'' which is the percent of patient days for beneficiaries who are eligible for Medicare Part A and SSI and (2) the ''Medicaid fraction'' which is the percent of patient days for patients who are eligible for Medicaid but not Medicare. Once a hospital qualifies for this DSH payment, CMS also determines a hospital's payment adjustment based on these two fractions. 42 CFR 412.106 allows hospitals to request that the Medicare fraction of the DSH adjustment be calculated on a cost reporting basis rather than a federal fiscal year. Once requested, the hospital must accept the result irrespective of whether it increases or decreases their DSH payment. The routine use procedure and the DUA allows hospitals to request the detailed Medicare data so they can make an informed choice before deciding whether to request that the Medicare fraction be calculated on the basis of a cost reporting period rather than a federal fiscal year. *Form Number:* CMS–R–194 (OMB Control Number 0938–0691); *Frequency:* Yearly; *Affected Public:* Private sector (Business or other for-profits); *Number of Respondents:* 800; *Total Annual Responses:* 800; *Total Annual Hours:* 400. (For policy questions regarding this collection contact Emily Lipkin at 410–786–3633).

Dated: July 11, 2018.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2018–15169 Filed 7–16–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–153]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by August 16, 2018.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR*, Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicaid Drug Use Review (DUR) Program; *Use:* States must provide for a review of drug therapy before each prescription is filled or delivered to a Medicaid patient. This review includes screening for potential drug therapy problems due to therapeutic duplication, drug-disease contraindications, drug-drug interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse/misuse. Pharmacists must make a reasonable effort to obtain, record, and maintain Medicaid patient profiles. These profiles must reflect at least the patient's name, address, telephone number, date of birth/age, gender, history, *e.g.,* allergies, drug reactions, list of medications, and pharmacist's comments relevant to the individual's drug therapy.

The State must conduct RetroDUR which provides for the ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, inappropriate or medically unnecessary care. Patterns or trends of drug therapy problems are identified and reviewed to determine the need for intervention activity with pharmacists and/or physicians. States may conduct interventions via telephone, correspondence, or face-to-face contact.

Annual reports are submitted to CMS for the purposes of monitoring compliance and evaluating the progress of States' DUR programs. The information submitted by States is reviewed and results are compiled by CMS in a format intended to provide information, comparisons and trends related to States' experiences with DUR. The States benefit from the information and may enhance their programs each year based on State reported innovative practices that are compiled by CMS from the DUR annual reports. *Form Number:* CMS–R–153 (OMB control number: 0938–0659); *Frequency:* Yearly, quarterly, and occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 51; *Total Annual Responses:* 663; *Total Annual Hours:* 41,004. (For policy questions regarding this collection contact Emeka Egwim at 410–786–1092.)

Dated: July 12, 2018.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2018–15220 Filed 7–16–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Notice of Intent To Award a Single Supplement to the National Association of Area Agencies on Aging

ACTION: Notice of Intent to award a single supplement to the National Association of Area Agencies on Aging.

SUMMARY: The Administration for Community Living (ACL) is announcing supplemental funding for the National Resource Center for Engaging Older Adults program. The National Resource Center for Engaging Older Adults program works to identify and disseminate information about emerging trends, resources, and replication strategies that the Aging Network can use and tailor in their communities to support the engagement of older adults. The purpose of this announcement is to award supplemental funds to the National Association of Area Agencies on Aging to support staff and the development of enhanced resources and tools to support the Aging Network.

Program Name: The National Resource Center for Engaging Older Adults.

Award Amount: $62,000.

Budget Period: 9/1/2018 to 8/31/2019.

Award Type: Cooperative Agreement.

Statutory Authority: The statutory authority for grants under this notice is contained in Title IV of the Older Americans Act (OAA) (42U.S.C. 3032), as amended by the Older Americans Act Amendments of 2006.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.048 Discretionary Projects.

I. Program Description

The Administration on Aging, an agency of the U.S. Administration for Community Living, established the Engagement and Older Adults Resource Center to better ensure that the Aging Network has the tools and resources necessary for the development of programs that provide older adults effective ways to stay socially engaged. Through myriad approaches such as a website, webinars, fact sheets, and other materials the project is identifying, synthesizing, and disseminating innovative social engagements practices and programming.

II. Justification for the Supplemental Funding

In recent years with growing research demonstrating the correlation between social engagement and healthy aging, there has been an increase in the Aging Network's desire to seek new and innovative approaches to assist older adults remain active and engaged in the community. The Resource Center has been conducting webinars and identifying engagement resources to highlight on the Center's website, but there is a need for the project to accelerate the development of tools and resources, such as best practice profiles, fact sheets, and toolkits, to meet the needs of the Aging Network. The supplemental funding will be used to support additional staff to more rapidly identify successful engagement programs and strategies that can be shared with the aging network via the website, webinars, and other written products.

III. Eligible Applicants: Current Grantee

Evaluation Criteria: ACL will use the following evaluation criteria to ensure that proposed activities are within the approved scope and budget of the grant:

Approach

Is the purpose of the funding clearly described? Does it reflect a coherent and feasible approach for successfully achieving the identified outcome(s)? Is the project work plan clear and comprehensive? Does it include sensible and feasible timeframes for the accomplishment of tasks presented?

Budget

Is the budget justified with respect to the adequacy and reasonableness of resources requested? Are budget line items clearly delineated and consistent with project objectives?

Project Impact

Are the expected project benefits/results clear, realistic, and consistent with the objectives and purpose of the project?

IV. Application Review Information

Application will be reviewed by Federal staff.

V. Agency Contact

For further information or comments regarding this program expansion supplement, contact Sherri Clark, U.S. Department of Health and Human Services, Administration for Community Living, Administration on Aging, Washington, DC 20201; telephone (202) 795–7327; email *sherri.clark@acl.hhs.gov.*

Dated: July 6, 2018.

Lance Robertson,

Administrator and Assistant Secretary on Aging.

[FR Doc. 2018–15194 Filed 7–16–18; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–0391]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before August 16, 2018.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 0990–0391 and Hospital Preparedness Program Data Collection for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Hospital Preparedness Program.

Type of Collection: Extension.

OMB No.: 0990–0391.

Abstract: The Hospital Preparedness Program (HPP) within the Division of National Healthcare Preparedness Programs (NHPP), in the Office of Emergency Management (OEM), Office of Assistant Secretary for Preparedness and Response (ASPR), in the Department of Health and Human Services is seeking clearance by the Office of Management of Budget (OMB) for an extension on Generic Data Collection Form. The Generic Data Collection Form will serve as the foundation for assessment and evaluation for HPP stakeholders, recipients, and sub-recipient programs and performance under the HPP Cooperative Agreement (CA) Program.

Program data are gathered from recipients for both ad-hoc episodic reporting as well as required reporting as part of the HPP Cooperative Agreement. Ad-hoc reporting includes but is not limited to Coalition Assessment Tool (CAT) Data Collection Tool, Impact Survey, HPP Partner Survey, CA after action reports, Ebola and Other Special Pathogens. Required reporting include Mid-Year and End-of-Year Progress Reports and other similar information collections (ICs) that account for recipient spending and program performance on all activities conducted in pursuit of achieving the HPP Cooperative Agreement goals.

This generic data collection effort is crucial to HPP's decision-making process regarding the continued existence, design and funding levels of this program. Results from these data analyses enable HPP to monitor health care emergency preparedness and progress towards national preparedness and response goals. HPP supports priorities outlined by the National Preparedness Goal (the Goal) established by the Department of Homeland Security (DHS) in 2005.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
All program recipients with supporting data submitted by sub-recipients and participating HCCs and HPP stakeholders	62	1	58	3,596
Total	62	1	58	3,596

Terry Clark,

Asst Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2018–15185 Filed 7–16–18; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0937–0166]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before September 17, 2018.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–New–60D and project title for reference, to *Sherrette.funn@hhs.gov,* or call the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: HHS 42 CFR subpart B; Sterilization of Persons in Federally Assisted Family Planning Projects;

Type of Collection: Extension;

OMB No.: 0937–0166.

Abstract: This is a request for extension of a currently approved collection for the disclosure and recordkeeping requirements codified at 42 CFR part 50, subpart B (''Sterilization of Persons in Federally Assisted Family Planning Projects''). The consent form solicits information to assure voluntary and informed consent to persons undergoing sterilization in programs of health services which are supported by federal financial assistance administered by the PHS. It provides additional procedural protection to the individual and the regulation requires that the consent form be a copy of the form that is appended to the PHS regulation. In 2003, the PHS sterilization consent form was revised to conform to OMB government-wide standards for the collection of race/ethnicity data and to incorporate the PRA burden statement as part of the consent form. We are requesting a three-year extension.

Type of respondent: Individuals seeking sterilization. Frequency: Once; prior to procedure.

ANNUALIZED BURDEN HOUR TABLE

Forms	Type of respondents	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
Information Disclosure for *Sterilization Consent Form*.	Citizens Seeking Sterilization.	100,000	1	1	1000,000
Record-keeping for *Sterilization Consent Form*	Citizens Seeking Sterilization.	100,000	1	15/60	25,000
Total					125,000

Terry Clark,

Asst Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2018–15187 Filed 7–16–18; 8:45 am]

BILLING CODE 4150–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–0430, 0431, 0432, 0433, 0434, 0436]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed extensions of collections for public comment.

DATES: Comments on the ICR must be received on or before September 17, 2018.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–New–60D and project title for reference, to *Sherrette.funn@hhs.gov,* or call the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Crime Control Act—Requirement for Background Checks.

Type of Collection: Extension.

OMB No.: 0990–0430—Office of the Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy, and Accountability, Division of Acquisition.

Abstract: Crime Control Act—Requirement for Background Checks: Performance of HHS mission requires the support of contractors. In some circumstances, depending on the requirements of the specific contract, the contractor is tasked to provide personnel who will be dealing with children under the age of 18. After contract award contractor personnel must undergo a background check as required by HHS Acquisition Regulation (HHSAR) 337.103(d)(3) and the clause at HHSAR 352.237–72 Crime Control Act—Requirement for Background Checks before working on the contract as required by federal law (Crime Control Act of 1990). The contractor is therefore required to provide information on the individual so that a proper background check can be performed.

The Agency is requesting a 3 year extension to collect this information from public or private businesses.

ANNUALIZED BURDEN HOUR TABLE

Number of respondents	Total annual responses	Average burden per response (in hours)	Total burden hours
160	160	1	160

Title of the Collection: Acquisitions Involving Human Subjects.

Type of Collection: Extension.

OMB No.: 0990–0431—Office of the Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy, and Accountability, Division of Acquisition.

Abstract: Acquisitions Involving Human Subjects: Performance of HHS mission requires the support of contractors involving human subjects. Before awarding a contract to any contractor that will need to use human subjects, the Contracting Officer is required to verify that, the contractor holds a valid Federal Wide Assurance (FWA) approved by the Office for Human Research Protections (OHRP). The provisions are implemented via contract clauses found at HHSAR 352.270–4a (Protection of Human Subjects), the clause at HHSAR 352.270–4b (Protection of Human Subjects), the provision at HHSAR 352.270–10 (Notice to Offerors—Protection of Human Subjects, Research Involving Human Subjects Committee (RIHSC) Approval of Research Protocols Required), and the clause at HHSAR 352.270–11 (Protection of Human Subjects—Research Involving Human Subjects Committee (RIHSC) Approval of Research Protocols Required).

The Agency is requesting a 3-year extension to collect this information from public or private businesses.

ANNUALIZED BURDEN HOUR TABLE

Number of respondents	Total annual responses	Average burden per response (in hours)	Total burden hours
90	318	5	1590

Title of the Collection: Acquisitions Involving the Use of Laboratory Animals.

Type of Collection: Extension.

OMB No.: 0990–0432—Office of the Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy, and Accountability, Division of Acquisition.

Abstract: Acquisitions Involving the Use of Laboratory Animals: Performance of HHS mission requires the use of live vertebrate animals. Before awarding a contract to any contractor, which will need to use live vertebrate animals, the Contracting Officer is required to verify that the contractor holds a valid Animal Welfare Assurance from the Office of Laboratory Animal Welfare (OLAW) within NIH. Contractors are required to file the appropriate forms to obtain this approval. The applicable clauses are found at HHSAR 352.270–5a (Notice to Offerors of Requirement for Compliance with the Public Health Service Policy on Humane Care and Use of Laboratory Animals), and the clause at HHSAR 352.270–5b (Care of Live Vertebrate Animals).

The Agency is requesting a 3-year extension to collect this information from public or private businesses.

ANNUALIZED BURDEN HOUR TABLE

Number of respondents	Total annual responses	Average burden per response (in hours)	Total burden hours
36	41	3	123

Title of the Collection: Indian Child Protection and Family Violence Act.

Type of Collection: Extension.

OMB No. 0990–0433—Office of the Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy, and Accountability, Division of Acquisition

Abstract: Indian Child Protection and Family Violence Act: Performance of IHS mission requires the support of contractors. In some circumstances, depending on the requirements of the specific contract, the contractor is tasked to provide personnel who will be dealing with Indian children under the age of 18. After contract award contractor personnel must undergo a background check as required by HHSAR 337.103(d)(4) and the clause at HHSAR 352.237–73 Indian Child Protection and Family Violence Act before working on the contract as required by federal law (Indian Child Protection and Family Violence Act (ICPFVA)). The contractor is therefore required to provide information on the individual so that a proper background check can be performed, as stated in the HHS Acquisition Regulation.

The Agency is requesting a 3-year extension to collect this information from public or private businesses.

ANNUALIZED BURDEN HOUR TABLE

Number of respondents	Total annual responses	Average burden per response (in hours)	Total burden hours
40	160	1	160

Title of the Collection: Meetings, Conferences, and Seminars.

Type of Collection: Extension.

OMB No.: 0990–0434—Office of the Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy, and Accountability, Division of Acquisition.

Abstract: Meetings, Conferences, and Seminars: Performance of HHS mission requires the support of contractors. In some circumstances, depending on the requirements of the specific contract, the contractor is tasked to conduct meetings, conferences, and seminars. HHSAR 311.7101(a) (Responsibilities) and the clause at HHSAR 352.211–1 (Accessibility of meetings, conferences and seminars to persons with disabilities) require contractors to provide a plan describing the contractor's ability to meet the accessibility standards in 28 CFR part 36. HHSAR 311.7202(b) (Responsibilities) and the clause at HHSAR 352.211–2 (Conference sponsorship request and conference materials disclaimer) require contractors to provide funding disclosure and a content disclaimer statement on conference materials. As a result of these clauses, HHS contractors providing conference, meeting, or seminars services are required to provide specific information to HHS as stated in the HHS Acquisition Regulation.

The Agency is requesting a 3-year extension to collect this information from public or private businesses.

ANNUALIZED BURDEN HOUR TABLE

Number of respondents	Total annual responses	Average burden per response (in hours)	Total burden hours
1604	1604	1	1604

Title of the Collection: Contractor Collection of Information.

Type of Collection: Extension.

OMB No.: 0990–0436—Office of the Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy, and Accountability, Division of Acquisition.

Abstract: Contractor Collection of Information: Performance of HHS mission requires the support of contractors. In some circumstances, depending on the requirements of the specific contract, the contractor is tasked to gather data that involves requesting this data from sources outside of HHS (*i.e.,* the public). In those circumstances HHSAR 352.211–3 Paperwork Reduction Act is included in the contract and prevents the contractor from initiating the solicitation of information from third parties unless and until a proper clearance from OMB has been obtained, specific to that data collection. This clearance covers the data collection necessary to determine what information should be collected in order to prepare the contract-specific OMB clearance request as required by the Paperwork Reduction Act or 1995 44 U.S.C. 3501, and as stated in the HHS Acquisition Regulation.

The Agency is requesting a 3-year extension to collect this information from public or private businesses.

ANNUALIZED BURDEN HOUR TABLE

Number of respondents	Total annual responses	Average burden per response (in hours)	Total burden hours
1	1	1	1

Terry Clark,

Asst. Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2018–15186 Filed 7–16–18; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: International and Cooperative Projects 1.

Date: July 25, 2018.

Time: 2:00 p.m. to 3:00 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: Brian H. Scott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–7490, *brianscott@mail.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: Center for Scientific Review Special Emphasis Panel; AR16–215: Model Organisms to Predict Treatment Outcomes for Disorders Associated With Intellectual and Developmental Disabilities.

Date: July 25, 2018.

Time: 12:00 p.m. to 3:00 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: Pat Manos, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–408–9866, *manospa@csr.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: Center for Scientific Review Special Emphasis Panel; Member Conflict: Aging Neuronal and Non-Neuronal Studies and Other Topics.

Date: August 6, 2018.

Time: 10:00 a.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: Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Vision Impairment, Optic Neuropathy, Retinopathies and Cornea Responses to Wound and Infections.

Date: August 8, 2018.

Time: 10:30 a.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: Alessandra C. Rovescalli, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 5205 MSC7846, Bethesda, MD 20892, (301) 435–1021, *rovescaa@mail.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: July 11, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–15189 Filed 7–16–18; 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 PAR Panel: Alzheimer's Disease and Related Dementias.

Date: July 27, 2018.

Time: 12:00 p.m. to 2:00 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: Richard D Crosland, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7850, Bethesda, MD 20892, 301–694–7084, *crosland@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: Center for Scientific Review Special Emphasis Panel PAR–18–596: Research on Current Topics in

Alzheimer's Disease and Its Related Dementias (Human Studies).

Date: July 30, 2018.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Samuel C Edwards, Ph.D., Chief, BDCN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflicts: Respiratory Sciences.

Date: August 1, 2018.

Time: 1:00 p.m. to 3:00 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: Ghenima Dirami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 240–498–7546, *diramig@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: AIDS and Related Research.

Date: August 7, 2018.

Time: 1:00 p.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: Kenneth A Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@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: July 11, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–15188 Filed 7–16–18; 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 & 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 Special Emphasis Panel; Name of the meeting: Biomedical Assay Laboratory for the Division of Intramural Population Health Research (DIPHR).

Date: August 1, 2018.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6710 B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6710B Bethesda Drive, Bethesda, MD 20892 (301) 435–6680, *skandasa@mail.nih.gov.*

Name of Committee: National Children's Study (NCS) Biological and Environmental Sample Repository.

Date: August 6, 2018.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6710 B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6710B Bethesda Drive, Bethesda, MD 20892, (301) 435–6680, *skandasa@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Chemical Screening and Optimization Facility.

Date: August 8, 2018.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6710 B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6710B Bethesda Drive, Bethesda, MD 20892, (301) 435–6680, *skandasa@mail.nih.gov.*

Name of Committee: Male and Female Contraceptive Development SIBR.

Date: August 15, 2018.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6710 B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6710B Bethesda Drive, 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: July 10, 2018.

Michelle D. Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–15190 Filed 7–16–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Advisory Committee for Women's Services (ACWS); Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration's (SAMHSA) Advisory Committee for Women's Services (ACWS) on August 1, 2018.

The meeting will include discussions on assessing SAMHSA's current strategies and a discussion on American Indian/Native American women with behavioral health needs. Additionally, the ACWS will be speaking with the Assistant Secretary of Mental Health and Substance Use regarding priorities and directions around behavioral health services and access for women and children.

The meeting is open to the public and will be held at SAMHSA, 5600 Fishers Lane, Rockville, MD, 20857, in Conference Room 5E29. Attendance by the public will be limited to space available. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions should be forwarded to the contact person by July 24, 2018. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact person on or before July 24, 2018. Up to five minutes will be allotted for each presentation.

The meeting may be accesed via telephone. To attend on site, obtain the call-in number and access code, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register on-line at *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx,* or communicate with SAMHSA's Designated Federal Officer, Ms. Valerie Kolick.

Substantive meeting information and a roster of ACWS members may be obtained either by accessing the SAMHSA Committees' Web *https://www.samhsa.gov/about-us/advisory-councils/meetings,* or by contacting Ms. Kolick.

Committee Name: Substance Abuse and Mental Health Services Administration Advisory Committee for Women's Services (ACWS).

Date/Time/Type: Wednesday, August 1, 2018, from: 9:00 a.m. to 4:45 p.m. EDT, Open.

Place: SAMHSA, 5600 Fishers Lane, Conference Room 5E29, Rockville, Maryland 20857.

Contact: Valerie Kolick, Designated Federal Official, SAMHSA's Advisory Committee for Women's Services, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (240) 276–1738, Email: *Valerie.kolick@samhsa.hhs.gov.*

Carlos Castillo,

Committee Management Officer.

[FR Doc. 2018–15227 Filed 7–16–18; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public that the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties will remain the same from the previous quarter. For the calendar quarter beginning July 1, 2018, the interest rates for overpayments will be 4 percent for corporations and 5 percent for non-corporations, and the interest rate for underpayments will be 5 percent for both corporations and non-corporations. This notice is published for the convenience of the importing public and U.S. Customs and Border Protection personnel.

DATES: The rates announced in this notice are applicable as of July 1, 2018.

FOR FURTHER INFORMATION CONTACT: Shawn Kaus, Revenue Division, Collection Refunds & Analysis Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614–4485.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 provides different interest rates applicable to overpayments: One for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2018–18, the IRS determined the rates of interest for the calendar quarter beginning July 1, 2018, and ending on September 30, 2018. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (2%) plus three percentage points (3%) for a total of five percent (5%) for both corporations and non-corporations. For corporate overpayments, the rate is the Federal short-term rate (2%) plus two percentage points (2%) for a total of four percent (4%). For overpayments made by non-corporations, the rate is the Federal short-term rate (2%) plus three percentage points (3%) for a total of five percent (5%). These interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties are the same from the previous quarter. These interest rates are subject to change for the calendar quarter beginning October 1, 2018, and ending December 31, 2018.

For the convenience of the importing public and U.S. Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpayments (eff. 1–1–99) (percent)
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpayments (eff. 1–1–99) (percent)
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	123107	8	8	7
010108	033108	7	7	6
040108	063008	6	6	5
070108	093008	5	5	4
100108	123108	6	6	5
010109	033109	5	5	4
040109	123110	4	4	3
010111	033111	3	3	2
040111	093011	4	4	3
100111	033116	3	3	2
040116	033118	4	4	3
040118	093018	5	5	4

Dated: July 11, 2018.

Samuel D. Grable,

Assistant Commissioner and Chief Financial Officer, Office of Finance.

[FR Doc. 2018–15179 Filed 7–16–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0096]

Agency Information Collection Activities: Transfer of Cargo to a Container Station

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; 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 September 17, 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 1651–0096 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: Transfer of Cargo to a Container Station.

OMB Number: 1651–0096.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: Before the filing of an entry of merchandise for the purpose of breaking bulk and redelivering cargo, containerized cargo may be moved from the place of unlading to a designated container station or may be received directly at the container station from a bonded carrier after transportation in-bond in accordance with 19 CFR 19.41. This also applies to loose cargo as part of containerized cargo. In accordance with 19 CFR 19.42, the container station operator may make a request for the transfer of a container to the station by submitting to CBP an abstract of the manifest for the transferred containers including the bill of lading number, marks, numbers, description of the contents and consignee.

Estimated Number of Respondents: 14,327.

Estimated Number of Annual Responses per Respondent: 25.

Estimated Total Annual Responses: 358,175.

Estimated Time per Response: 7 minutes.

Estimated Total Annual Burden Hours: 41,548.

Dated: July 12, 2018.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2018–15249 Filed 7–16–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0002]

Agency Information Collection Activities: General Declaration

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; 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.

DATES: Comments are encouraged and will be accepted (no later than September 17, 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 1651–0002 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: General Declaration (Outward/Inward) Agriculture, Customs, Immigration, and Public Health.

OMB Number: 1651–0002.

Form Number: Form 7507.

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours. There is no change to the information collected or CBP Form 7507.

Type of Review: Extension (without change).

Abstract: An aircraft commander or agent must file CBP Form 7507, *General Declaration (Outward/Inward) Agriculture, Customs, Immigration, and Public Health* at the time of arrival for all aircraft required to enter pursuant to 19 CFR 122.41 and at the time of clearance for all aircraft departing to a foreign area with commercial airport cargo pursuant to 19 CFR 122.72. This form is used to document clearance and inspections by appropriate regulatory agency staffs. CBP Form 7507 collects information about the flight routing, the number of passengers embarking and disembarking, the number of crew members, a declaration of health for the persons on board, and details about disinfecting and sanitizing treatments during the flight. This form also includes a declaration attesting to the accuracy, completeness, and truthfulness of all statements contained in the form and in any document attached to the form.

CBP Form 7507 is authorized by 42 U.S.C 268, 19 U.S.C. 1431, 1433, and 1644a; and provided for by 19 CFR 122.43, 122.52, 122.54, 122.73, 122.144, 42 CFR 71.21 and 71.32. This form is accessible at: *https://www.cbp.gov/newsroom/publications/forms?title=7507&=Apply.*

Affected Public: Businesses.

Estimated Number of Respondents: 500.

Estimated Number of Total Annual Responses: 1,322,000.

Estimated Time per Response: 5 minutes.

Estimated Annual Burden Hours: 110,122.6.

Dated: July 12, 2018.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2018–15250 Filed 7–16–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

David I. Maurstad,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Colorado:					
Douglas (FEMA Docket No.: B–1816).	Town of Castle Rock (17–08–1320P).	The Honorable Jennifer Green, Mayor, Town of Castle Rock, 100 North Wilcox Street, Castle Rock, CO 80104.	Utilities Department, 175 Kellogg Court, Castle Rock, CO 80104.	June 1, 2018	080050

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Douglas (FEMA Docket No.: B–1816).	Unincorporated areas of Douglas County (17–08–1320P).	The Honorable Roger Partridge, Chairman, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	Douglas County Planning Department, 100 3rd Street, Castle Rock, CO 80104.	June 1, 2018	080049
Jefferson (FEMA Docket No.: B–1816).	City of Westminster (17–08–1102P).	The Honorable Herb Atchison, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, CO 80031.	City Hall, 4800 West 92nd Avenue, Westminster, CO 80031.	June 8, 2018	080008
Connecticut:					
Fairfield (FEMA Docket No.: B–1816).	City of Norwalk (17–01–2751P).	The Honorable Harry W. Rilling, Mayor, City of Norwalk, 125 East Avenue, Norwalk, CT 06851.	Planning and Zoning Department, 125 East Avenue, Norwalk, CT 06851.	May 29, 2018	090012
Fairfield (FEMA Docket No.: B–1816).	Town of Trumbull (17–01–1576P).	The Honorable Vicki A. Tesoro, First Selectman, Town of Trumbull Board of Selectmen, 5866 Main Street, Trumbull, CT 06611.	Town Hall, 5866 Main Street, Trumbull, CT 06611.	June 1, 2018	090017
Delaware: Kent (FEMA Docket No.: B–1810).	City of Dover (17–03–0901P).	The Honorable Robin R. Christiansen, Mayor, City of Dover, P.O. Box 475, Dover, DE 19903.	Department of Planning and Inspection, 15 Lookerman Plaza, Dover, DE 19901.	June 4, 2018	100006
Florida:					
Duval (FEMA Docket No.: B–1816).	City of Jacksonville (17–04–6148P).	The Honorable Lenny Curry, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32002.	Development Services Department, 214 North Hogan Street, Suite 2100, Jacksonville, FL 32002.	May 29, 2018	120077
Lee (FEMA Docket No.: B–1816).	Town of Fort Myers Beach (17–04–7870P).	The Honorable Dennis C. Boback, Mayor, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	Community Development Department, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	June 7, 2018	120673
Manatee (FEMA Docket No.: B–1816).	City of Bradenton Beach (18–04–0582P).	The Honorable John Chappie, Mayor, City of Bradenton Beach, 107 Gulf Drive North, Bradenton Beach, FL 34217.	Building and Planning Department, 107 Gulf Drive North, Bradenton Beach, FL 34217.	June 6, 2018	125091
Pasco (FEMA Docket No.: B–1816).	City of Port Richey (18–04–0510P).	The Honorable Dale Massad, Mayor, City of Port Richey, 6333 Ridge Road, Port Richey, FL 34668.	Building and Development Services Department, 6333 Ridge Road, Port Richey, FL 34668.	May 31, 2018	120234
Georgia:					
Douglas (FEMA Docket No.: B–1816).	City of Douglasville (17–04–6806P).	The Honorable Rochelle Robinson, Mayor, City of Douglasville, 6695 Church Street, Douglasville, GA 30134.	City Hall, 6695 Church Street, Douglasville, GA 30134.	June 4, 2018	130305
Douglas (FEMA Docket No.: B–1816).	Unincorporated areas of Douglas County (17–04–6806P).	The Honorable Ramona Jackson Jones, Chairman, Douglas County Board of Commissioners, 8700 Hospital Drive, Douglasville, GA 30134.	Douglas County Development Services Department, 8700 Hospital Drive, Douglasville, GA 30134.	June 4, 2018	130306
Kentucky: Fayette (FEMA Docket No.: B–1816).	Lexington-Fayette Urban County Government (18–04–0043P).	The Honorable Jim Gray, Mayor, Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, KY 40507.	LFUCG Phoenix Building, 101 East Vine Street, Lexington, KY 40507.	June 7, 2018	210067
Montana: Big Horn (FEMA Docket No.: B–1810).	Unincorporated areas of Big Horn County (17–08–0336P).	The Honorable Chad Fenner, Chairman, Big Horn County Board of Commissioners, P.O. Box 908, Hardin, MT 59034.	Big Horn County Health Department, 809 North Custer Avenue, Hardin, MT 59034.	June 1, 2018	300143
Oklahoma: Tulsa (FEMA Docket No.: B–1816).	City of Tulsa (18–06–0209P).	The Honorable G.T. Bynum, Mayor, City of Tulsa, 175 East 2nd Street, 15th Floor, Tulsa, OK 74103.	Planning and Development Department, 175 East 2nd Street, 4th Floor, Tulsa, OK 74103.	May 29, 2018	405381
South Carolina:					
Richland (FEMA Docket No.: B–1816).	City of Columbia (17–04–5518P).	The Honorable Stephen K. Benjamin, Mayor, City of Columbia, P.O. Box 147, Columbia, SC 29217.	Department of Utilities and Engineering, 1136 Washington Street, Columbia, SC 29201.	May 29, 2018	450172
Richland (FEMA Docket No.: B–1816).	City of Forest Acres (17–04–5518P).	The Honorable Frank Brunson, Mayor, City of Forest Acres, 5209 North Trenholm Road, Forest Acres, SC 29206.	City Hall, 5209 North Trenholm Road, Forest Acres, SC 29206.	May 29, 2018	450174
Texas:					
Bell (FEMA Docket No.: B–1816).	City of Belton (17–06–2281P).	The Honorable Marion Grayson, Mayor, City of Belton, P.O. Box 120, Belton, TX 76513.	City Hall, 333 Water Street, Belton, TX 76513.	June 8, 2018	480028
Bexar (FEMA Docket No.: B–1816).	City of San Antonio (17–06–2974P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	June 6, 2018	480045
Dallas (FEMA Docket No.: B–1816).	City of Dallas (17–06–3383P).	The Honorable Michael S. Rawlings, Mayor, City of Dallas, 1500 Marilla Street, Suite 5EN, Dallas, TX 75201.	Floodplain Management Department, 320 East Jefferson Boulevard, Room 301, Dallas, TX 75203.	May 29, 2018	480171
Dallas (FEMA Docket No.: B–1816).	City of Farmers Branch (17–06–3383P).	The Honorable Robert C. Dye, Mayor, City of Farmers Branch, 13000 William Dodson Parkway, Farmers Branch, TX 75234.	City Hall, 13000 William Dodson Parkway, Farmers Branch, TX 75234.	May 29, 2018	480174

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Ellis (FEMA Docket No.: B–1816).	City of Waxahachie (17–06–1666P).	The Honorable Kevin Strength, Mayor, City of Waxahachie, 401 South Rogers Street, Waxahachie, TX 75165.	Public Works Department, 401 South Rogers Street, Waxahachie, TX 75165.	May 31, 2018	480211
Ellis (FEMA Docket No.: B–1816).	Unincorporated areas of Ellis County (17–06–1666P).	The Honorable Carol Bush, Ellis County Judge, 101 West Main Street, Waxahachie, TX 75165.	Ellis County Courthouse, 101 West Main Street, Waxahachie, TX 75165.	May 31, 2018	480798
Tarrant (FEMA Docket No.: B–1816).	Town of Westlake (17–06–3364P).	The Honorable Laura Wheat, Mayor, Town of Westlake, 1500 Solana Boulevard, Building 7, Suite 7200, Westlake, TX 76262.	Planning and Development Department, 1500 Solana Boulevard, Building 7, Suite 7200, Westlake, TX 76262.	May 31, 2018	480614
Williamson (FEMA Docket No.: B–1816).	City of Leander (17–06–3902P).	The Honorable Christopher Fielder, Mayor, City of Leander, P.O. Box 319, Leander, TX 78646.	City Hall, 200 West Willis Street, Leander, TX 78641.	June 8, 2018	481536
Virginia:					
Stafford (FEMA Docket No.: B–1810).	Unincorporated areas of Stafford County (17–03–2308P).	Mr. Thomas C. Foley, Stafford County Administrator, P.O. Box 339, Stafford, VA 22555.	Stafford County Department of Planning and Zoning, 1300 Courthouse Road, Stafford, VA 22554.	May 31, 2018	510154
Wise (FEMA Docket No.: B–1816).	City of Norton (18–03–0175P).	The Honorable William J. Mays, Mayor, City of Norton, P.O. Box 618, Norton, VA 24273.	City Hall, 618 Virginia Avenue Northwest, Norton, VA 24273.	June 6, 2018	510108
Wise (FEMA Docket No.: B–1816).	Unincorporated areas of Wise County (18–03–0175P).	Mr. Shannon C. Scott, Wise County Administrator, P.O. Box 570, Wise, VA 24293.	Wise County Building and Zoning Department, 206 East Main Street, Room 210, Wise, VA 24293.	June 6, 2018	510174

[FR Doc. 2018–15211 Filed 7–16–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0018; OMB No. 1660–0131]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Threat and Hazard Identification and Risk Assessment (THIRA)—Stakeholder Preparedness Review (SPR) Reporting Tool

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before August 16, 2018.

ADDRESSES: 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 Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Dante Randazzo, Supervisory Emergency Management Specialist, FEMA, National Preparedness Assessment Division, *Dante.Randazzo@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection previously published in the **Federal Register** on March 13, 2018 at 83 FR 10864 with a 60 day public comment period. FEMA received a total of 17 public comments, 11 were anonymous public comments that were not relevant to the information collection.

Three commenters suggested that FEMA use the Tribal Consultation process for information collection 1660–0131. Two commenters stated that FEMA should not be placing additional unfunded requirements for Tribes to participate in the Tribal Homeland Security Grant Program (THSGP). One commenter stated that a Tribe should not be charged for FEMA's help and should be able to obtain help without any penalties. Two commenters stated that the Federal Government has a trust responsibility to meet its treaty obligations to all Tribes by providing for base level capability and capacities.

FEMA's Response: The information collection was not revised because of the comments as in 2017, FEMA involved Tribal partners in our discussions about the Threat and Hazard Identification Risk Assessment (THIRA)-Stakeholder Preparedness Review (SPR) methodology (ultimately FEMA received feedback from over 150 State, local, Tribal, and territorial representatives), and used their input to update the process. On April 10, 2018 and April 12, 2018, FEMA provided an overview of the updated THIRA/SPR methodology that included a detailed walkthrough of the specific requirements for THSGP recipients. Tribal participants had an opportunity to ask questions and share concerns about the updated methodology. On June 4, 2018, FEMA released a fact sheet outlining the requirements for THSGP recipients.

While THSGP recipients, generally 24 Tribes each year, will now have to complete the SPR in addition to the THIRA, FEMA has determined that the new Tribal requirements will not only likely decrease their reporting burden, but produce more useful information Tribes can use to support other emergency management activities. FEMA will also be able to use this information to improve the support it offers to Tribes. Previously, when

THSGP recipients were required to complete only the THIRA, they had to address all 32 core capabilities. This year, as they complete the THIRA and SPR, THSGP recipients will only be required to address 8 of the 32 core capabilities. Therefore, Tribal Governments' estimated average burden per response (in hours) has decreased from 408 to 290 hours. Only THSGP recipients are required to complete the THIRA/SPR, but FEMA encourages other Tribes to do so as well.

FEMA is hosting three in-person technical assistance sessions this year to help communities understand and complete the THIRA/SPR, and offered invitational travel for grantees required to complete the THIRA/SPR. The technical assistance sessions themselves are free for communities to attend, with no admission fee, nor are there any penalties for obtaining FEMA's help.

FEMA is also developing tools, materials, and guidance to help communities learn and complete the new methodology. Communities requiring assistance with their THIRA/SPR can also reach out to their Regional Preparedness Analysts and Planning Officers or the THIRA/SPR helpdesk at *FEMA-SPR@fema.dhs.gov.* These materials and services are provided at no cost to Tribes or other communities. It is also important to note that completing the THIRA and SPR are allowable expenses under the grant award. FEMA acknowledges the inherent sovereignty of Tribal governments, the trust responsibility of the Federal Government, and the nation-to-nation relationship between the U.S. government and Tribal governments as established by the U.S. Constitution, statutes, treaties, court decisions, executive orders, regulations, and policies as a foundation of the Tribal Homeland Security Grant Program.

The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Threat and Hazard Identification and Risk Assessment (THIRA)—Stakeholder Preparedness Review (SPR) Reporting Tool.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0131.

Form Titles and Numbers: FEMA Form 008–0–19 (THIRA), Threat and Hazard Identification and Risk Assessment (THIRA) Reporting Tool; FEMA Form 008–0–20 (SPR), Stakeholder Preparedness Review (SPR) Reporting Tool; FEMA Form 008–0–23, THIRA/SPR After-Action Call Questions.

Abstract: The assessment is structured by the 32 core capabilities from the 2015 National Preparedness Goal. States, Territories, urban areas, and Tribes provide information on capability targets, their current capability levels and capability gaps for each core capability. Respondent States, Territories, Tribes and urban areas gather the information and complete the THIRA and SPR following the ''Comprehensive Preparedness Guide (CPG) 201, Third Edition.''

Affected Public: State, Local or Tribal Government.

Estimated Number of Respondents: 113.

Estimated Number of Responses: 113.

Estimated Total Annual Burden Hours: 84,414.

Estimated Total Annual Respondent Cost: $4,328,749.92.

Estimated Respondents' Operation and Maintenance Costs: $12,404,962.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $2,648,063.63.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Tammi Hines,

Privacy Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2018–15219 Filed 7–16–18; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4372–DR; Docket ID FEMA–2018–0001]

Massachusetts; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Massachusetts (FEMA–4372–DR), dated June 25, 2018, and related determinations.

DATES: The declaration was issued June 25, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 25, 2018, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

> I have determined that the damage in certain areas of the Commonwealth of Massachusetts resulting from a severe winter storm and flooding during the period of March 2–3, 2018, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the Commonwealth of Massachusetts.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Massachusetts have been designated as adversely affected by this major disaster:

Barnstable, Bristol, Essex, Nantucket, Norfolk, and Plymouth Counties for Public Assistance.

All areas within the Commonwealth of Massachusetts are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–15223 Filed 7–16–18; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4369–DR; Docket ID FEMA–2018–0001]

Alaska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–4369–DR), dated June 8, 2018, and related determinations.

DATES: The declaration was issued June 8, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 8, 2018, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

> I have determined that the damage in certain areas of the State of Alaska resulting from a severe storm on December 4, 2017, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Alaska.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Public Assistance in the designated area and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.
>
> Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas J. Dargan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Alaska have been designated as adversely affected by this major disaster:

The Kenai Peninsula Borough for Public Assistance.

All areas within the State of Alaska are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–15218 Filed 7–16–18; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002; Internal Agency Docket No. FEMA–B–1840]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ‘‘Flood Insurance.’’)

David I. Maurstad,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Alabama:						
Mobile	City of Semmes (18–04–1945P).	The Honorable David Baker, Mayor, City of Semmes, P.O. Box 1757, Semmes, AL 36575.	City Hall, 7875 Moffett Road, Unit F, Semmes, AL 36575.	*https://msc.fema.gov/portal/advanceSearch.*	Sept. 10, 2018	015016
Mobile	Unincorporated areas of Mobile County (18–04–1945P).	The Honorable Connie Hudson, Chair, Mobile County Board of Commissioners, 205 Government Street, Mobile, AL 36644.	Mobile County Engineering Department, 205 Government Street, Mobile, AL 36644.	*https://msc.fema.gov/portal/advanceSearch.*	Sept. 10, 2018	015008
Colorado:						
Arapahoe	City of Aurora (18–08–0169P).	The Honorable Steve Hogan, Mayor, City of Aurora, 15151 East Alameda Parkway, 5th Floor, Aurora, CO 80012.	Engineering Department, 15151 East Alameda Parkway, Suite 3200, Aurora, CO 80012.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 17, 2018	080002
Arapahoe	City of Centennial (18–08–0169P).	The Honorable Stephanie Piko, Mayor, City of Centennial, 13133 East Arapahoe Road, Centennial, CO 80112.	Southeast Metro Stormwater Authority, 76 Inverness Drive East, Suite A, Englewood, CO 80112.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 17, 2018	080315
Arapahoe	Unincorporated areas of Arapahoe County (18–08–0169P).	The Honorable Jeff Baker, Chairman, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, CO 80120.	Arapahoe County Public Works and Development Department, 6924 South Lima Street, Centennial, CO 80112.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 17, 2018	080011
Boulder	City of Boulder (18–08–0166P).	The Honorable Suzanne Jones, Mayor, City of Boulder, P.O. Box 791, Boulder, CO 80306.	Planning and Development Services Department, 1739 Broadway, Boulder, CO 80302.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 3, 2018	080024
Eagle	Town of Basalt (17–08–1316P).	Mr. Ryan Mahoney, Manager, Town of Basalt, 101 Midland Avenue, Basalt, CO 81621.	Town Hall, 101 Midland Avenue, Basalt, CO 81621.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 28, 2018	080052

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Eagle	Unincorporated areas of Eagle County (17–08–1316P).	The Honorable Kathy Chandler-Henry, Chair, Eagle County Board of Commissioners, P.O. Box 850, Eagle, CO 81631.	Eagle County Building and Engineering Department, 500 Broadway Street, Eagle, CO 81631.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 28, 2018	080051
El Paso	Unincorporated areas of El Paso County (18–08–0013P).	The Honorable Darryl Glenn, President, El Paso County, Board of Commissioners, 200 South Cascade Avenue, Suite 100, Colorado Springs, CO 80903.	Pikes Peak Regional Building Department, 2880 International Circle, Colorado Springs, CO 80910.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 3, 2018	080059
Jefferson	City of Westminster (18–08–0279P).	The Honorable Herb Atchison, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, CO 80031.	Engineering Department, 4800 West 92nd Avenue, Westminster, CO 80031.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 21, 2018	080008
Larimer	Town of Wellington (17–08–1283P).	The Honorable Troy Hamman, Mayor, Town of Wellington, P.O. Box 127, Wellington, CO 80549.	Town Hall, 3735 Cleveland Avenue, Wellington, CO 80549.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 9, 2018	080008
Larimer	Unincorporated areas of Larimer County (17–08–1283P).	The Honorable Steve Johnson, Chairman, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, CO 80522.	Larimer County Engineering Department, 200 West Oak Street, Suite 3000, Fort Collins, CO 80522.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 9, 2018	080008
Pitkin	Unincorporated areas of Pitkin County (17–08–1316P).	The Honorable Patti Clapper, Chair, Pitkin County Board of Commissioners, 123 Emma Road, Suite 106, Basalt, CO 81621.	Pitkin County Building Community Development Department, 130 South Galena Street, 3rd Floor, Aspen, CO 81611.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 28, 2018	080287
Florida:						
Broward	City of Fort Lauderdale (18–04–3005P).	The Honorable Dean J. Trantalis, Mayor, City of Fort Lauderdale, 100 North Andrews Avenue, Fort Lauderdale, FL 33311.	Building Services Department, 700 Northwest 19th Avenue, Fort Lauderdale, FL 33311.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 3, 2018	125105
Broward	Unincorporated areas of Broward County (18–04–3005P).	The Honorable Bertha Henry, Administrator, Broward County, 115 South Andrews Avenue, Fort Lauderdale, FL 33301.	Broward County Environmental Engineering and Permitting Division, 1 North University Drive, Plantation, FL 33324.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 3, 2018	125093
Collier	City of Naples (18–04–2880P).	The Honorable Bill Barnett, Mayor, City of Naples, 735 8th Street South, Naples, FL 34102.	Building Department, 295 Riverside Circle, Naples, FL 34102.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 19, 2018	125130
Collier	City of Naples (18–04–3246P).	The Honorable Bill Barnett, Mayor, City of Naples, 735 8th Street South, Naples, FL 34102.	Building Department, 295 Riverside Circle, Naples, FL 34102.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 12, 2018	125130
Orange	Unincorporated areas of Orange County (17–04–3962P).	The Honorable Teresa Jacobs, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801.	Orange County Stormwater Management Department, 4200 South John Young Parkway, Orlando, FL 32839.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 4, 2018	120179
Osceola	Unincorporated areas of Osceola County (18–04–3037X).	The Honorable Fred Hawkins, Jr., Chairman, Osceola County Board of Commissioners, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	Osceola County Stormwater Department, 1 Courthouse Square, Suite 1400, Kissimmee, FL 34741.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 28, 2018	120189
Pinellas	Town of Indian Shores (18–04–2638P).	The Honorable Patrick Soranno, Mayor, Town of Indian Shores, 19305 Gulf Boulevard, Indian Shores, FL 33785.	Building Department, 19305 Gulf Boulevard, Indian Shores, FL 33785.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 17, 2018	125118
Sarasota	Unincorporated areas of Sarasota County (18–04–3583P).	The Honorable Nancy C. Detert, Chair, Sarasota County Board of Commissioners, 1660 Ringling Boulevard, Sarasota, FL 34236.	Sarasota County Planning and Development Services Department, 1001 Sarasota Center Boulevard, Sarasota, FL 34240.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 1, 2018	125144
Georgia:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Catoosa	City of Fort Oglethorpe (18–04–2533P).	The Honorable Earl Gray, Mayor, City of Fort Oglethorpe, 500 City Hall Drive, Fort Oglethorpe, GA 30742.	Building, Planning and Zoning Department, 500 City Hall Drive, Fort Oglethorpe, GA 30742.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 13, 2018	130248
Catoosa	Unincorporated areas of Catoosa County (18–04–2533P).	The Honorable Steven Henry, Chairman, Catoosa County Board of Commissioners, 800 Lafayette Street, Ringgold, GA 30736.	Catoosa County Planning and Inspections Department, 184 Tiger Trail, Ringgold, GA 30736.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 13, 2018	130028
Kentucky: Hardin	City of Elizabethtown (18–04–2385P).	The Honorable Edna Berger, Mayor, City of Elizabethtown, P.O. Box 550, Elizabethtown, KY 42702.	Department of Stormwater Management, 200 West Dixie Avenue, Elizabethtown, KY 42702.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 28, 2018	210095
Maryland: Baltimore.	Unincorporated areas of Baltimore County (17–03–2477P).	The Honorable Kevin Kamenetz, Baltimore County Executive, 400 Washington Avenue, Towson, MD 21204.	Baltimore County Planning Department, 105 West Chesapeake Avenue, Suite 101, Towson, MD 21204.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 19, 2018	240010
Mississippi:						
Rankin	City of Brandon (18–04–0648P).	The Honorable Butch Lee, Mayor, City of Brandon, 1000 Municipal Drive, Brandon, MS 39042.	City Hall, 1000 Municipal Drive, Brandon, MS 39042.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 14, 2018	280143
Rankin	City of Pearl (18–04–0648P).	The Honorable Jake Windham, Mayor, City of Pearl, 2420 Old Brandon Road, Pearl, MS 39208.	Community Development Department, 2420 Old Brandon Road, Pearl, MS 39208.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 14, 2018	280145
New Hampshire: Cheshire.	Town of Jaffrey (17–01–2389P).	Mr. Jon Frederick, Manager, Town of Jaffrey, 10 Goodnow Street, Jaffrey, NH 03452.	Town Hall, 10 Goodnow Street, Jaffrey, NH 03452.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 28, 2018	330215
New Mexico:						
Bernalillo	City of Albuquerque (18–06–0370P).	The Honorable Tim Keller, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	Development Review Services Division, 600 2nd Street Northwest, Albuquerque, NM 87102.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 12, 2018	350002
Bernalillo	Unincorporated areas of Bernalillo County (18–06–0370P).	Ms. Julie Morgas Baca, Bernalillo County Manager, 1 Civic Plaza Northwest, Albuquerque, NM 87102.	Bernalillo County Public Works Division, 2400 Broadway Boulevard Southeast, Albuquerque, NM 87102.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 12, 2018	350001
North Dakota: Cass.	City of Fargo (17–08–1355P).	The Honorable Tim Mahoney, Mayor, City of Fargo, 200 3rd Street North, Fargo, ND 58102.	City Hall, 200 3rd Street North, Fargo, ND 58102.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 18, 2018	385364
Ohio: Warren	City of Mason (17–05–6435P).	The Honorable Victor Kidd, Mayor, City of Mason, 6000 Mason Montgomery Road, Mason, OH 45040.	City Hall, 6000 Mason Montgomery Road, Mason, OH 45040.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 10, 2018	390559
Rhode Island: Bristol.	Town of Barrington (18–01–0572P).	Mr. James J. Cunha, Manager, Town of Barrington, 283 County Road, Barrington, RI 02806.	Town Hall, 283 County Road, Barrington, RI 02806.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 6, 2018	445392
South Dakota:						
Codington	City of Watertown (18–08–0263P).	The Honorable Sarah Caron, Mayor, City of Watertown, P.O. Box 910, Watertown, SD 57201.	Engineering Department, 23 2nd Street Northeast, Watertown, SD 57201.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 28, 2018	460016
Codington	Unincorporated areas of Codington County (18–08–0263P).	The Honorable Myron Johnson, Chairman, Codington County Board of Commissioners, P.O. Box 910, Watertown, SD 57201.	Codington County Extension Complex-Zoning Office, 1910 West Kemp Avenue, Watertown, SD 57201.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 28, 2018	460260
Minnehaha	City of Dell Rapids (17–08–1525P).	The Honorable Tom Earley, Mayor, City of Dell Rapids, P.O. Box 10, Dell Rapids, SD 57022.	City Hall, 302 East 4th Street, Dell Rapids, SD 57022.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 1, 2018	460059
Minnehaha	Unincorporated areas of Minnehaha County (17–08–1525P).	The Honorable Cindy Heiberger, Chair, Minnehaha County, Board of Commissioners, 415 North Dakota Avenue, Sioux Falls, SD 57104.	Minnehaha County Planning and Zoning Department, 415 North Dakota Avenue, Sioux Falls, SD 57104.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 1, 2018	460057
Texas:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Bexar	City of San Antonio (17–06–3172P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 17, 2018	480045
Bexar	City of San Antonio (18–06–0004P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 24, 2018	480045
Bexar	Unincorporated areas of Bexar County (18–06–0004P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 233 North Pecos-La Trinidad Street, Suite 420, San Antonio, TX 78207.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 24, 2018	480035
Bexar	Unincorporated areas of Bexar County (18–06–0285P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 233 North Pecos-La Trinidad Street, Suite 420, San Antonio, TX 78207.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 17, 2018	480035
Collin	City of Allen (18–06–0216P).	The Honorable Stephen Terrell, Mayor, City of Allen, 305 Century Parkway, Allen, TX 75013.	Engineering Department, 305 Century Parkway, Allen, TX 75013.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 21, 2018	480131
El Paso	City of El Paso (17–06–3843P).	Mr. Tommy Gonzalez, Manager, City of El Paso, 300 North Campbell Street, El Paso, TX 79901.	City Hall, 801 Texas Avenue, El Paso, TX 79901.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 24, 2018	480214
Harris	City of Houston (17–06–3450P).	The Honorable Sylvester Turner, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	Floodplain Management Department, 1002 Washington Avenue, 3rd Floor, Houston, TX 77002.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 24, 2018	480296
Harris	City of Hunter's Creek Village (17–06–3450P).	The Honorable Jim Pappas, Mayor, City of Hunter's Creek Village, 1 Hunters Creek Place, Houston, TX 77024.	City Hall, 1 Hunters Creek Place, Houston, TX 77024.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 24, 2018	480298
Hidalgo	Unincorporated areas of Hidalgo County (18–06–0700P).	The Honorable Ramon Garcia, Hidalgo County Judge, 100 East Cano Street, 2nd Floor, Edinburg, TX 78539.	Hidalgo County Drainage District No. 1, 902 North Doolittle Road, Edinburg, TX 78542.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 5, 2018	480334
Tarrant	City of Fort Worth (17–06–4215P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 16, 2018	480596
Tarrant	City of Mansfield (17–06–4321P).	The Honorable David L. Cook, Mayor, City of Mansfield, 1200 East Broad Street, Mansfield, TX 76063.	City Hall, 1200 East Broad Street, Mansfield, TX 76063.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 16, 2018	480606
Virginia:						
Fauquier	Unincorporated areas of Fauquier County (17–03–1930P).	Mr. Paul S. McCulla, Fauquier County Administrator, 10 Hotel Street, Suite 204, Warrenton, VA 20186.	Fauquier County Zoning and Development Services Department, 29 Ashby Street, 3rd Floor, Warrenton, VA 20186.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 20, 2018	510055
Loudoun	Unincorporated areas of Loudoun County (18–03–0512P).	Mr. Tim Hemstreet, Loudoun County Administrator, P.O. Box 7000, Leesburg, VA 20177.	Loudoun County Department of Development, 1 Harrison Street Southeast, Leesburg, VA 20175.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 28, 2018	510090
Wyoming:						
Laramie	City of Cheyenne (17–08–1565P).	The Honorable Marian J. Orr, Mayor, City of Cheyenne, 2101 O'Neil Avenue, Cheyenne, WY 82001.	Engineering Department, 2101 O'Neil Avenue, Cheyenne, WY 82001.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 10, 2018	560030
Teton	Town of Jackson (18–08–0346P).	The Honorable Pete Muldoon, Mayor, Town of Jackson, P.O. Box 1687, Jackson, WY 83001.	Public Works Department, 450 West Snow King Avenue, Jackson, WY 83001.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 13, 2018	560052

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Teton	Unincorporated areas of Teton County (18–08–0346P).	The Honorable Mark Newcomb, Chairman, Teton County Board of Commissioners, P.O. Box 3594, Jackson, WY 83001.	Teton County Public Works Department, 320 South King Street, Jackson, WY 83001.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 13, 2018	560094

[FR Doc. 2018–15213 Filed 7–16–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Agency Information Collection Activities: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Department of Homeland Security (DHS).

ACTION: 30-Day notice and request for comments; extension without change of a currently approved collection, 1601–0014.

SUMMARY: DHS will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. DHS previously published this ICR in the **Federal Register** on Wednesday, April 4, 2018 for a 60-day public comment period. No comments were received by DHS. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until August 16, 2018. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to OMB Desk Officer, DHS and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

This is an extension of a currently approved collection, 1601–0014. DHS previously published this ICR in the **Federal Register** on Wednesday, April 4, 2018 at 83 FR 14484 for a 60-day public comment period, and is soliciting public comment for another 30 days. OMB is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: The Department of Homeland Security.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Number: 1601–0014.

Frequency: One per Request.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Number of Respondents: 215,100.

Estimated Time per Respondent: 10 minutes.

Total Burden Hours: 34,732 Hours.

Dated: June 20, 2018.

Melissa Bruce,

Executive Director, Enterprise Business Management Office.

[FR Doc. 2018–15170 Filed 7–16–18; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Agency Information Collection Activities: Case Assistance Form (Ombudsman Form DHS–7001, and Instructions)

AGENCY: Office of the Citizenship and Immigration Services Ombudsman, Department of Homeland Security (DHS).

ACTION: 30-Day notice and request for comments; extension of a currently approved collection, 1601–0004.

SUMMARY: The DHS Office of the Citizenship and Immigration Services (CIS) Ombudsman will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collected on this form will allow the CIS Ombudsman to identify the problem such as: (1) A case problem which is a request for information about a case that was filed with U.S. Citizenship and Immigration Services (USCIS) (''case problem''); or (2) the identification of a systemic issue that may or may not pertain to an individual case which the individual, attorney or employer is seeking to bring to the attention of the CIS Ombudsman (''trend''). DHS previously published this information collection request (ICR) in the **Federal Register** on Tuesday, April 24, 2018 for a 60-day public comment period. One comment was received by DHS. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until August 16, 2018. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to OMB Desk Officer, DHS and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The CIS Ombudsman was created under section 452 of the Homeland Security Act of 2002 (Pub. L. 107–296) to: (1) Assist individuals and employers in resolving problems with the USCIS; (2) to identify areas in which individuals and employers have problems in dealing with USCIS; and (3) to the extent possible, propose changes in the administrative practices of USCIS to mitigate problems. This form is used by an applicant who is experiencing problems with USCIS during the processing of an immigration benefit.

The information collected on this form will allow the CIS Ombudsman to identify the problem such as: (1) A case problem which is a request for information about a case that was filed with USCIS (''case problem''); or (2) the identification of a systemic issue that may or may not pertain to an individual case which the individual, attorney or employer is seeking to bring to the attention of the CIS Ombudsman (''trend'').

For case problems, the CIS Ombudsman will refer case specific issues to the Customer Assistance Office for USCIS for further research, and review.

For trends received, the CIS Ombudsman notes the systemic issue identified in the correspondence which may or may not be incorporated into future recommendations submitted to the Director of USCIS pursuant to section 452(d)(4) of Public Law 107–296.

The use of this form provides the most efficient means for collecting and processing the required data. The CIS Ombudsman also employs the use of information technology in collecting and processing information by offering the option for electronic submission of the DHS Form 7001 through the Ombudsman Online Case Assistance System. Per PRA requirements, a fillable PDF version of the form is provided on the CIS Ombudsman's website. The PDF form can be completed online, printed out and sent to the CIS Ombudsman's office at the address indicated on the form. It is noted on the form that using the paper method can result in significant processing delays for the CIS Ombudsman's office to provide the requested case assistance. After approval of the changes to the form detailed in this supporting statement, both the online form and PDF will be updated and posted on the Ombudsman's website at *http://www.dhs.gov/case-assistance* for submission of the form.

The assurance of confidentiality provided to the respondents for this information collection is provided by: (a) The CIS Ombudsman authorizing legislation and mandate as established by Homeland Security Act of 2002 at Section 452; (b) the Privacy Impact Assessment and the (c) Systems of Records Notice titled ''Department of Homeland Security Citizenship and Immigration Services Ombudsman—001 Online Ombudsman Form DHS–7001 and Ombudsman Case Assistance Online System of Records''. The DHS Privacy Office will receive the entire package of documents for this information collection to assure authorization for renewal of the collection.

The Ombudsman Form DHS–7001 (PDF) and the Ombudsman Case Assistance Online System are constructed in compliance with all applicable DHS Privacy Office, DHS CIO, DHS Records Management, and OMB regulations regarding data collection, use, storage, and retrieval. The proposed public use data collection system is therefore intended to be distributed for public use primarily by electronic means with limited paper distribution and processing of paper forms.

The Ombudsman Form DHS–7001 (PDF) and the Online Ombudsman Form DHS–7001 (Ombudsman Case Assistance Online System) have been constructed in compliance with regulations and authorities under the purview of the DHS Privacy Office, DHS CIO, DHS Records Management, and OMB regulations regarding data collection, use, sharing, storage, information security and retrieval of information.

There has been an increase of 3,200 in the estimated annual burden hours previously reported for this information collection. The increase in burden hours is a reflection of agency estimates.

There is no change in the information being collected, however there have been cosmetic changes to the form including punctuation, formatting, and text changes to make the form more understandable and streamlined for use by respondents. In 2015, the following changes were made:

a. Number of response fields was reduced from 13 to 12 and arranged in a way that streamlines completion, submission and processing of the form.

b. The title of the form was changed from ''Case Problem Submission Worksheet (CIS Ombudsman Form DHS–7001)'' to ''Case Assistance Form (Ombudsman Form DHS–7001)''.

c. The name of the system was changed from ''Virtual Ombudsman System'' to ''Ombudsman Case Assistance Online System''.

The following narrative explains the changes made on the form in 2015 and the corresponding instructions. The ORIGINAL 7001 form had the sections arranged in the following order:

1. Name: Please identify the individual or employer encountering difficulties with USCIS (applicant/beneficiary/petitioner).
2. Contact Information: Please provide information on the individual or employer encountering difficulties with USCIS (applicant/beneficiary/petitioner).
3. Date of Birth.
4. Country of Birth and Citizenship.
5. Alien Registration Number (A-Number); The A-number appears in the following format: A123–456–789.
6. Person Preparing This Form: Please indicate who is completing this form.
7. Applications/Petitions Filed: List all applications and/or petitions

pending with USCIS related to your case inquiry.

8. Type of Immigration Benefit: Please provide the type of immigration benefit sought from USCIS.

9. Reason for Inquiry: Please indicate if any of the options apply. Provide a description in section 10.

10. Description: Describe the difficulties experienced with USCIS. Attach additional pages if needed.

11. Prior Actions Taken: Check all that apply: Please describe the response USCIS provided and attach any relevant correspondence.

12. Consent: If you are the beneficiary of an immigration petition, consent of the individual who submitted the petition on your behalf is required. The petitioner must sign.

13. Attorney or Accredited Representative: Please complete this section if you are an attorney, a representative of an organization, an accredited representative, or anyone else preparing this form on behalf of the individual or employer encountering difficulties with USCIS.

The AMENDED 7001 form has the sections arranged in the following order:

1. Name: Please identify the name of the individual or employer (applicant/beneficiary/petitioner) encountering or difficulties with USCIS. Do not enter the attorney/law firm's name here.

2. Date of Birth: Country of Birth: Country of Citizenship.

3. Alien Registration Number (A-Number); The A-number appears in the following format: A123–456–789.

4. Contact Information: Please provide the contact information of the individual or employer (applicant/beneficiary/petitioner) encountering difficulties with USCIS. Please include the primary E-Mail address for the CIS Ombudsman to provide updates.

5. Applications/Petitions Filed: List all applications and/or petitions pending with USCIS related to your case inquiry.

6. Type of Immigration Benefit Sought: Please provide the type of immigration benefit sought from USCIS.

7. Reason for Inquiry/Case Assistance Request: Check all that apply. Provide a description in section 8 and add documentation related to your inquiry.

8. Description of your Case Problem: Describe the difficulties experienced with USCIS including all responses USCIS provided. Attach relevant correspondence concerning actions taken to resolve the issue before submitting with the Ombudsman's Office including: Receipt notices; requests for evidence; decisions; notices and any other correspondence from USCIS about your case. Attach additional pages if needed.

9. Prior Actions Taken to Remedy the Problem:

Check all that apply and provide the additional information requested for each selection in the space provided. Note that if selecting Option a ''Visited USCIS My Case Status at *www.uscis.gov*'', you must indicate what additional actions (b through g) were taken to remedy the problem before submitting the form to the Ombudsman.

a. Visited USCIS My Case Status at *http://www.uscis.gov/.*

b. Contacted the National Customer Service Center (NCSC) for information and/or assistance regarding this case at their toll-free number 1–800–375–5283. Provide SRMT Number:

c. Attended an InfoPass Appointment with USCIS. Provide InfoPass Number:

d. Sent an Email to USCIS. Provide date E-Mail sent: Provide USCIS Email address:

e. Contacted a U.S. Government Department or Agency for assistance. Provide name and contact information:

f. Contacted a U.S. Congressional Representative for assistance. Provide name and contact information:

g. Other. Please describe.

10. Person Preparing This Form:

Please indicate who is completing this form.

11. Attorney or Accredited Representative:

Please complete this section if you are an attorney, a representative of an organization, an accredited representative, or anyone else preparing this form on behalf of the individual or employer encountering difficulties with USCIS. Please attach copy of your Form G–28.

12. Consent: Please note that if you are the beneficiary of an immigration petition, consent of the individual or employer that submitted the petition on your behalf is required. The petitioner must sign.

The instructions have been updated to reflect the electronic submission options as detailed in the previous paragraphs.

Instructions for electronic submission will be posted on the CIS Ombudsman website at *www.dhs.gov/cisombudsman.* The electronic version of the form was developed by DHS OCIO (Office of the Chief Information Officer) based upon the approved version of the amended 7001 form as described herein. Sample screenshots were provided with the 2015 submission.

There is no change in the terms of clearance from the previously approved collection as addressed by the: (a) Privacy Impact Assessment and (b) Systems of Records Notice titled ''Department of Homeland Security Citizenship and Immigration Services Ombudsman—001 Online Ombudsman Form DHS–7001 and Ombudsman Case Assistance Online System of Records''.

This is an extension of a currently approved collection, 1601–0004. DHS previously published this ICR in the **Federal Register** on Tuesday, April 24, 2018 at 83 FR 17833 for a 60-day public comment period, and is soliciting public comment for another 30 days. OMB is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Office of the Citizenship and Immigration Services Ombudsman, DHS.

Title: Case Assistance Form (Ombudsman Form DHS–7001, and Instructions).

OMB Number: 1601–0004.

Frequency: Annually.

Affected Public: Individuals or Households.

Number of Respondents: 12,000.

Estimated Time per Respondent: 1 hour.

Total Burden Hours: 12,000.

Dated: June 20, 2018.

Melissa Bruce,

Executive Director, Enterprise Business Management Office.

[FR Doc. 2018–15172 Filed 7–16–18; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0104]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Petition for U Nonimmigrant Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until September 17, 2018.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0104 in the body of the letter, the agency name and Docket ID USCIS–2010–0004. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2010–0004;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW, Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2010–0004 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for U Nonimmigrant Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–918; Form I–918, Supplement A; Form I–918, Supplement B; Biometric Services; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households; Federal Government. This information collection permits victims of certain qualifying criminal activity and their immediate family to petition for temporary nonimmigrant status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–918 is 36,000 and the estimated hour burden per response is 5 hours. The estimated total number of respondents for the information collection I–918, Supplement A is 25,000 and the estimated hour burden per response is 1.5 hours. The estimated total number of respondents for the information collection I–918, Supplement B is 36,000 and the estimated hour burden per response is 1 hour. The estimated total number of respondents for the biometric services is 61,000 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 324,870 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $259,250.

Dated: July 11, 2018.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2018–15215 Filed 7–16–18; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0028]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition To Classify Orphan as an Immediate Relative; Application for Advance Processing of an Orphan Petition; Supplement 1, Listing of an Adult Member of the Household; Supplement 2, Consent To Disclose Information

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information or new collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until September 17, 2018.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0028 in the body of the letter, the agency name and Docket ID USCIS–2008–0020. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2008–0020;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW, Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2008–0020 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition to Classify Orphan as an Immediate Relative; Application for Advance Processing of an Orphan Petition; Supplement 1, Listing of an Adult Member of the Household; Supplement 2, Consent to Disclose Information.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–600, Form I–600A, Form I–600A Supplement 1, Form I–600A Supplement 2; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. A U.S. adoptive parent may file a petition to classify an orphan as an immediate relative through Form I–600 under section 101(b)(1)(F) of the INA.A U.S. prospective adoptive parent may file Form I–600A in advance of the Form I–600 filing and USCIS will make a determination regarding the prospective adoptive parent's eligibility to file Form I–600A and their suitability and eligibility to properly parent an orphan. A U.S. adoptive parent may file a petition to classify an orphan as an immediate relative through Form I–600 under section 101(b)(1)(F) of the INA. If a U.S. prospective/adoptive parent has an adult member of his or her household, as defined at 8 CFR 204.301, the prospective/adoptive parent must include the Supplement 1 when filing both Form I–600A and Form I–600. The U.S. prospective/adoptive parent files Supplement 2 to authorize USCIS to disclose case-related information to adoption service providers that would otherwise be protected under the Privacy Act, 5 U.S.C. 552a. Authorized disclosures will assist USCIS in the adjudication of Forms I–600A and I–600.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–600 is 1,200 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I–600A is 2,000 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I–600A Supplement 1 is 301 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the

information collection Form I–600A Supplement 2 is 1,260 and the estimated hour burden per response is 0.25 hours; the estimated total number of respondents for the Home Study information collection is 2,500 and the estimated hour burden per response is 25 hours; the estimated total number of respondents for the Biometrics information collection is 2,520 and the estimated hour burden per response is 1.17 hours; the estimated total number of respondents for the Biometrics—DNA information collection is 2 and the estimated hour burden per response is 6 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 35,451 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $110,871,772.

Dated: July 3, 2018.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2018–15214 Filed 7–16–18; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R2–ES–2016–0141; FXES11140200000–189–FF02ENEH00]

Final Environmental Impact Statement and Draft Record of Decision on the Barton Springs/Edwards Aquifer Conservation District Habitat Conservation Plan for Two Salamander Species in Travis and Hays Counties, Texas

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, under the National Environmental Policy Act, make available the final environmental impact statement and draft record of decision analyzing the impacts of issuance of an incidental take permit for implementation of the Barton Springs/Edwards Aquifer Conservation District (BSEACD) Habitat Conservation Plan (HCP). Our decision is to issue a 20-year incidental take permit for implementation of the BSEACD HCP, which authorizes incidental take of two listed salamanders under the Endangered Species Act.

DATES: We will finalize the record of decision and issue a permit no sooner than August 13, 2018.

ADDRESSES: You may obtain copies of the documents in the following formats:

- *Electronic:*
  ○ *http://www.regulations.gov,* in Docket No. FWS–R2–ES–2016–0141.
  ○ *http://www.fws.gov/southwest/es/AustinTexas.*
  ○ *CD–ROM:* Contact Mr. Adam Zerrenner (see **FOR FURTHER INFORMATION CONTACT**).
  ○ *Telephone:* 512–490–0057.
- *Hard copy:* You may review the documents at the following locations (by appointment only):
  ○ Department of the Interior, Natural Resources Library, 1849 C Street NW, Washington, DC 20240. Call (202) 208–5815.
  ○ U.S. Fish and Wildlife Service, 500 Gold Avenue SW, Room 6034, Albuquerque, NM 87102. Call (505) 248–6920.
  ○ U.S. Fish and Wildlife Service, 10711 Burnet Road Suite 200, Austin, TX 78758. Call (512) 490–0057.

FOR FURTHER INFORMATION CONTACT: Mr. Adam Zerrenner, Field Supervisor, by phone at 512–490–0057, via fax at 512–490–0974, or by U.S. mail at U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of several documents related to an incidental take permit (ITP) application under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The final environmental impact statement (EIS) and draft record of decision (ROD) were developed in compliance with the agency decision-making requirements of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), and are based on the habitat conservation plan (HCP) as submitted by the Barton Springs/Edwards Aquifer Conservation District (BSEACD, or applicants). We described all four alternatives in detail, which were fully evaluated and analyzed in our 2018 final EIS. The draft ROD documents the rationale for our decision.

Our proposed action is to issue an ITP to the applicants under section 10(a)(1)(B) of the ESA that authorizes incidental take of the Barton Springs salamander (*Eurycea sosorum*) and Austin blind salamander (*Eurycea waterlooensis*) during management of the Barton Springs segment of the Edwards Aquifer. The aquifer is the primary water supply for more than 70,000 people in the region and the source water for the Barton Springs complex. The applicants requested a term of 20 years from the date of issuance. The applicants will fully implement minimization and mitigation measures to offset impacts to the covered species according to their HCP.

The minimization measures include: Providing the most efficient use of groundwater, controlling and preventing waste of groundwater, addressing conjunctive surface water management issues, addressing natural resource management issues, addressing drought conditions, addressing demand reduction through conservation, addressing supply through structural enhancement, and quantitatively addressing established desired future conditions.

The mitigation measures include a commitment to:

- Support the operations of an existing refugium through in-kind, contracted support, cash provision, or other appropriate means;
- conduct a feasibility study of dissolved oxygen augmentation and, if warranted, implement a pilot project at Main Spring at Barton Springs;
- maintain and operate the Antioch Recharge Enhancement Facility for the permit term;
- establish a new reserve fund for closing abandoned wells to eliminate high-risk abandoned wells as potential conduits for contaminants from the surface or adjacent formations into the aquifer, with priority given to problematic wells close to the Barton Springs outlets or those associated with water chemistry concerns under severe drought conditions; and
- provide leadership and technical assistance to other government entities, organizations, and individuals when prospective land-use and groundwater management activities in those entities' purview will, in the District's assessment, significantly affect the quantity or quality of groundwater in the Aquifer.

In addition to this notice, the Environmental Protection Agency (EPA) published a notice announcing the EIS on July 13, 2018, as required under the Clean Air Act, section 309 (42 U.S.C. 7401 *et seq.*; see EPA's Role in the EIS Process below).

Background

The applicants have applied for an ITP (TE10607C–0) under the ESA that would authorize incidental take of two covered species and would be in effect for a period of 20 years. The proposed incidental take of the covered species would occur from lawful, non-Federal activities from groundwater withdrawals from registered wells (non-exempt) in the Edwards Aquifer that are authorized and regulated under the BSEACD's permitting program and activities necessary to manage potential habitat for the covered species within the permit area (covered activities). The BSEACD HCP Plan Area includes Hays and Travis Counties, Texas. The final EIS considers the direct, indirect, and cumulative effects of implementing the HCP, including the measures that will be implemented to minimize and mitigate such impacts to the maximum extent practicable.

Section 9 of the ESA and its implementing regulations in title 50 of the Code of Federal Regulations (CFR) prohibit ''take'' of fish and wildlife species listed as endangered or threatened under the ESA. The ESA defines ''take'' as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or attempt to engage in such conduct'' (16 U.S.C. 1533). The term ''harm'' is defined in the regulations as significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). However, we may, under specified circumstances, issue permits that allow the take of federally listed species, provided that the take is incidental to, but not the purpose of, otherwise lawful activity. Regulations governing ITPs for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively.

On July 18, 2017, we issued a draft EIS and requested public comment on our evaluation of the potential impacts associated with issuance of an ITP for implementation of the BSEACD HCP and to evaluate alternatives (82 FR 32861). We held a public meeting in Austin, Texas, August 22, 2017. The public comment period closed on September 18, 2017.

We identified key issues and relevant factors through public scoping and meetings, working with other agencies and groups, and reviewing comments from the public. We received responses from one local government agency and two nongovernmental agencies. We believe these comments are addressed and reasonably accommodated in the final documents, and we have included the public's comments and our responses in Appendix A5–1 of the final EIS.

Decision

We intend to issue an ITP allowing the applicants to implement the BSEACD HCP. Our decision is based on a thorough review of the alternatives and their environmental consequences. Implementing this decision entails issuing an ITP to BSEACD and full implementation of the HCP by the applicants, including minimization and mitigation measures, monitoring and adaptive management, and complying with all terms and conditions in the ITP.

A final ITP decision will be made no sooner than 30 days after the publication of this notice of availability and completion of the record of decision.

EPA's Role in the EIS Process

In addition, EPA published a notice on July 13, 2018, in the **Federal Register** announcing the EIS for the April 2018 *Habitat Conservation Plan for Managed Groundwater Withdrawals from the Barton Springs Segment of the Edwards Aquifer,* as required under the Clean Air Act, section 309. The EPA's publication date of the notice of availability is the official beginning of the public review period. The EPA is charged with reviewing all Federal agencies' EISs and commenting on the adequacy and acceptability of the environmental impacts of proposed actions in EISs.

The EPA also serves as the repository (EIS database) for EISs, which Federal agencies prepare. All EISs must be filed with EPA, which publishes a notice of availability on Fridays in the **Federal Register**. For more information, see *https://www.epa.gov/nepa.* You may search for EPA comments on EISs, along with EISs themselves, at *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

Authority: We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Amy L. Lueders

Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. 2018–15222 Filed 7–16–18; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–739 (Fourth Review)]

Clad Steel Plate From Japan; Scheduling of a Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on clad steel plate from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days.

DATES: July 10, 2018.

FOR FURTHER INFORMATION CONTACT: Andrew Dushkes ((202) 205–3229), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On Monday April 9, 2018, the Commission determined that circumstances related to the subject five-year review were such that a full review should proceed (83 FR 17446, April 19, 2018); accordingly, a full review is being scheduled pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's website.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on October 3, 2018, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on Thursday, October 18, 2018, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 12, 2018. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on October 16, 2018, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is October 10, 2018. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is October 25, 2018. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before October 25, 2018. On November 9, 2018, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 13, 2018, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's website at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

The Commission has determined that this review is extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C.1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: July 12, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–15221 Filed 7–16–18; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

192nd Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 192nd meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans (also known as the ERISA Advisory Council) will be held on August 14–16, 2018.

The three-day meeting will take place at the U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, in C5521 Room 4. The meeting will run from 1:00 p.m. to approximately 5:30 p.m. on August 14 and from 9:00 a.m. to approximately 5:30 p.m. on August 15, with a one hour break for lunch, and from 9:00 a.m. to 11:00 a.m. on August 16. The purpose of the open meeting is for Advisory Council members to hear testimony from invited witnesses and to receive an update from the Employee Benefits Security Administration (EBSA). The EBSA update is scheduled for the morning of August 16, subject to change.

The Advisory Council will study the following topics: (1) Evaluating the Department's Regulations and Guidance on ERISA Bonding Requirements and Exploring Reform Considerations (on August 14); and, (2) Lifetime Income Products as a Qualified Default Investment Option (QDIA)—Focus on Decumulation and Rollovers (on August 15). It will continue with discussions of its topics on August 16. Descriptions of these topics are available on the Advisory Council page of the EBSA website, at *https://www.dol.gov/*

agencies/ebsa/about-ebsa/about-us/erisa-advisory-council.

Organizations or members of the public wishing to submit a written statement may do so by submitting 40 copies on or before August 7, 2018, to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue NW, Washington, DC 20210. Statements also may be submitted as email attachments in word processing or pdf format transmitted to *good.larry@dol.gov.* It is requested that statements not be included in the body of the email. Statements deemed relevant by the Advisory Council and received on or before August 7 will be included in the record of the meeting and made available through the EBSA Public Disclosure Room, along with witness statements. Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. Written statements submitted by invited witnesses will be posted on the Advisory Council page of the EBSA website, without change, and can be retrieved by most internet search engines.

Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 10 minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact the Executive Secretary by August 7.

Signed at Washington, DC, this 9th day of July 2018.

Preston Rutledge,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2018–15207 Filed 7–16–18; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0088]

Proposed Extension of Information Collection; Ventilation Plans, Tests, and Examinations in Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. 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. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Ventilation Plans, Tests, and Examinations in Underground Coal Mines.

DATES: All comments must be received on or before September 17, 2018.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2018–0025.
- *Regular Mail:* Send comments to USDOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452.
- *Hand Delivery:* USDOL-Mine Safety and Health Administration, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Under Section 101(a) of the Federal Mine Safety and Health Act of 1977 (Mine Act), the Secretary of Labor (Secretary) may by rule in accordance with procedures set forth in this section and in accordance with section 553 of Title 5, United States Code (without regard to any reference in such section to sections 556 and 557 of such title), develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines. In addition, section 303 requires that all underground coal mines be ventilated by mechanical ventilation equipment installed and operated in a manner approved by an authorized representative of the Secretary and such equipment be examined daily and a record be kept of such examination.

Underground coal mines usually present harsh and hostile working environments. The ventilation system is the most vital life support system in underground mining and a properly operating ventilation system is essential for maintaining a safe and healthful working environment. Lack of adequate ventilation in underground mines has resulted in fatalities from asphyxiation and explosions.

An underground mine is a maze of tunnels that must be adequately ventilated with fresh air to provide a safe environment for miners. Methane is liberated from the strata, and noxious gases and dusts from blasting and other mining activities may be present. The explosive and noxious gases and dusts must be diluted, rendered harmless, and carried to the surface by the ventilating currents. Sufficient air must be provided to maintain the level of respirable dust at or below specific exposure limits and air quality must be maintained in accordance with MSHA standards. Mechanical ventilation equipment of sufficient capacity must operate at all times while miners are in the mine. Ground conditions are subject to frequent changes, thus sufficient tests and examinations are necessary to ensure the integrity of the ventilation system and to detect any changes that may require adjustments in the system. Records of tests and examinations are necessary to ensure that the ventilation system is being maintained and that changes which could adversely affect the integrity of the system or the safety of the miners are not occurring. These examination, reporting and recordkeeping requirements of sections 75.310, 75.312, 75.342, 75.351, 75.360 through 75.364, 75.370, 75.371, and 75.382 also incorporate examinations of other critical aspects of the underground work environment such as roof conditions and electrical equipment which have historically caused numerous fatalities when not properly maintained and operated.

Section 75.362, On-shift Examinations, was revised at subsection 75.362 (a)(2) and (g)(2)-(4) by MSHA's rule titled ''Lowering Miners' Exposure to Respirable Coal Mine Dust, Including

Continuous Personal Dust Monitors, '' published May 1, 2014. This rule also revised subsection 75.371(f) and (j).

Subsection 75.362(a)(2) requires that a person designated by the operator conduct an examination and record the results and the corrective actions taken to assure compliance with the respirable dust control parameters specified in the approved mine ventilation plan.

Under subsection 75.362(g)(2)(i), the certified person directing the on-shift examination must certify by initials, date, and time on a board maintained at the section load out or similar location showing that the examination was made prior to resuming production. No increased burden is estimated for section 75.362(g)(2)(i) in this Information Collection Request (ICR) because MSHA does not expect the burden to be different from the burden in existing section 75.362(g)(2)).

Under section 75.362(g)(2)(ii), the certified person directing the on-shift examination must verify, by initials, date and time, the record of the results of the examination required under section 75.362(a)(2) to assure compliance with the respirable dust control parameters specified in the mine ventilation plan. Further, section 75.362(g)(3) requires a mine foreman or equivalent mine official to countersign each examination record required under section 75.362(a)(2) after it is verified by the certified person under section 75.362(g)(2)(ii), and no later than the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. Section 75.362(g)(2)(ii) and (g)(3) are additional burdens that are accounted for in this ICR and 75.362(g)(2)(ii)(4) requires the records be retained at a surface location at the mine for at least 1 year and shall be made available for inspection by authorized representatives of the Secretary and the representative of miners.

Paragraph (a)(2) in section 75.370 (Mine ventilation plan; submission and approval) contains the burden for underground coal mine operators to submit mine ventilation plan revisions for District Manager approval. Each mine ventilation plan must include information that is specified by section 75.371 (Mine ventilation plan; contents).

Section 75.371(f) adds the following information that a mine operator must include in the mine ventilation plan: the minimum quantity of air that will be delivered to the working section for each mechanized mining unit (MMU), and the identification by make and model, of each different dust suppression system used on equipment on each working section, including: (1) The number, types, location, orientation, operating pressure, and flow rate of operating water sprays; (2) the maximum distance that ventilation control devices will be installed from each working face when mining or installing roof bolts in entries and crosscuts; (3) procedures for maintaining the roof bolter dust collection system in approved condition; and (4) recommended best work practices for equipment operators to minimize dust exposure.

Section 75.371(j) adds a requirement that for machine mounted dust collectors, the ventilation plan must include the type and size of dust collector screens used and a description of the procedures to be followed to properly maintain dust collectors used on the equipment.

Section 75.370(a)(2) requires all underground coal mine operators to submit revisions for mine ventilation plans to MSHA. The burden to submit the additional information required by section 75.371(f) and (j) as proposed revisions to the plan is accounted for in this package under section 75.370(a)(2). In addition, section 75.370(a)(3)(i) requires underground coal mine operators to notify the miners' representative at least 5 days prior to submission of mine ventilation plan revisions and, if requested, provide a copy of the revisions to the miners' representative at the time of notification. Section 75.370(a)(3)(iii) and (f)(3) require the operator to post a copy of the plan revisions, and section 75.370(f)(1) requires that the operator provide a copy of the revisions to the miners' representative, if requested. MSHA assumes that a copy of the revisions will be requested. The burdens for notification, providing requested copies, and posting associated with mine ventilation plan revisions resulting from section 75.371(f) and (j) are accounted for in this package under section 75.370(a)(3)(i), (f)(1), (a)(3)(iii), and (f)(3) respectively.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Ventilation Plans, Tests, and Examinations in Underground Coal Mines. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to 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.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at USDOL-Mine Safety and Health Administration, 201 12th South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Ventilation Plans, Tests, and Examinations in Underground Coal Mines. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0088.

Affected Public: Business or other for-profit.

Number of Respondents: 255.

Frequency: On occasion.

Number of Responses: 1,164,908.

Annual Burden Hours: 142,550 hours.

Annual Respondent or Recordkeeper Cost: $91,870.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Sheila McConnell,

Certifying Officer.

[FR Doc. 2018–15217 Filed 7–16–18; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0121]

Proposed Extension of Information Collection; Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. 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. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines.

DATES: All comments must be received on or before September 17, 2018.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2018–0027.
- *Regular Mail:* Send comments to USDOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452.
- *Hand Delivery:* USDOL-Mine Safety and Health Administration, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

Accidents involving falls of roof, face, and rib in underground mines or falls of highwall in surface mines, historically, have been among the leading causes of injuries and deaths. Prevention or control of falls of roof, face, and rib is uniquely difficult because of the variety of conditions encountered in mines that can affect the stability of various types of strata and the changing nature of the forces affecting ground stability at any given operation and time. Roof and rock bolts and accessories are an integral part of ground control systems and are used to prevent the fall of roof, face, and rib. Advancements in technology of roof and rock bolts and accessories have aided in reducing the hazards associated with falls of roof, face, and rib.

The American Society for Testing and Materials (ASTM) publication ''Standard Specification for Roof and Rock Bolts and Accessories'' is a consensus standard used throughout the United States. It contains specifications for the chemical, mechanical, and dimensional requirements for roof and rock bolts and accessories used for ground support systems. The ASTM standard for roof and rock bolts and accessories is updated periodically to reflect advances in technology.

Title 30 Code of Federal Regulations, Parts 56 and 57 Subpart B-Ground Control, section 56.3203 and section 57.3203, and Part 75 Subpart C-Roof Support, section 75.204, address the quality of roof and rock bolts and accessories and their installation. MSHA's objective in these regulations is to ensure the quality and effectiveness of roof and rock bolts and accessories and, as technology evolves, to allow for the use of new materials which are proven to be reliable and effective in controlling the mine roof, face, and rib.

Title 30 CFR 56.3203(a), 57.3203(a), and 75.204(a) require: (1) That mine operators obtain a certification from the manufacturer that roof and rock bolts and accessories are manufactured and tested in accordance with the applicable ASTM specifications, and (2) that the manufacturer's certification is made available to an authorized representative of the Secretary.

Title 30 CFR 56.3203(h) and 57.3203(h) require that if the mine operator uses other tensioned and nontensioned fixtures and accessories for ground control that are not addressed by the applicable ASTM standard listed in sections 56.3203(a) and 57.3203(a), test methods must be established by the mine operator and used to verify their ground control effectiveness. Title 30 CFR 56.3203(i) and 57.3203(i) require that the mine operator certify that the tests developed under sections 56.3203(h) and 57.3203(h) were conducted and such certifications be made available to an authorized representative of the Secretary.

Title 30 CFR 75.204(f)(6) requires that the mine operator or a person designated by the operator certify by signature and date the measurements required by paragraph (f)(5) of this section have been made. Paragraph (f)(5) requires that in working places from which coal is produced during any portion of a 24-hour period, the actual torque or tension on at least one out of every ten previously installed mechanically anchored tensioned roof bolts is measured from the outby corner of the last open crosscut to the face in each advancing section. This certification shall be maintained for at least one year and shall be made available to an authorized representative of the Secretary and representatives of the miners.

MSHA has found that the certification requirements have been successful in maintaining compliance with requirements for roof and rock bolts and accessories.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;

- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to 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.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at USDOL-Mine Safety and Health Administration, 201 12th South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0121.

Affected Public: Business or other for-profit.

Number of Respondents: 452.

Frequency: On occasion.

Number of Responses: 61,086.

Annual Burden Hours: 585 hours.

Annual Respondent or Recordkeeper Cost: $0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Sheila McConnell,

Certifying Officer.

[FR Doc. 2018–15216 Filed 7–16–18; 8:45 am]

BILLING CODE 4510–43–P

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report of Rescissions Proposals Pursuant to the Congressional Budget and Impoundment Control Act of 1974

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of monthly cumulative report pursuant to the Congressional Budget and Impoundment Control Act of 1974.

SUMMARY: Pursuant to the Congressional Budget and Impoundment Control Act of 1974, OMB is issuing a monthly cumulative report (for July, 2018) from the Director detailing the status of rescission proposals that were previously transmitted to the Congress on May 8, 2018, and amended by the supplementary message transmitted on June 5, 2018.

DATES: *Release Date:* July 10, 2018.

ADDRESSES: The July, 2018 cumulative report is available on-line on the OMB website at: *https://www.whitehouse.gov/omb/budget-rescissions-deferrals/.*

FOR FURTHER INFORMATION CONTACT: Jessica Andreasen, 6001 New Executive Office Building, Washington, DC 20503, Email address: *jandreasen@omb.eop.gov,* telephone number: (202) 395–3645. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use electronic communications.

John Mulvaney,

Director.

[FR Doc. 2018–15238 Filed 7–16–18; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 5 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate:

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Sherry Hale, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *hales@arts.gov,* or call 202–682–5696.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of July 5, 2016, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

The upcoming meetings are:

Literature (review of applications): This meeting will be closed.

Date and time: August 1, 2018; 1:00 p.m. to 3:00 p.m.

Literature (review of applications): This meeting will be closed.

Date and time: August 2, 2018; 1:00 p.m. to 3:00 p.m.

Research Labs (review of applications): This meeting will be closed.

Date and time: August 16, 2018; 11:00 a.m. to 1:00 p.m.

Research Labs (review of applications): This meeting will be closed.

Date and time: August 17, 2018; 11:00 a.m. to 1:00 p.m.

Research Labs (review of applications): This meeting will be closed.

Date and time: August 17, 2018; 2:30 p.m. to 4:30 p.m.

Dated: July 11, 2018.

Sherry Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2018–15166 Filed 7–16–18; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: The National Endowment for the Humanities will hold twenty-one meetings of the Humanities Panel, a federal advisory committee, during August 2018. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** for meeting dates. The meetings will open at 8:30 a.m. and will adjourn by 5:00 p.m. on the dates specified below.

ADDRESSES: The meetings will be held at Constitution Center at 400 7th Street SW, Washington, DC 20506, unless otherwise indicated.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given of the following meeting:

1. *Date:* August 1, 2018.

This meeting will discuss applications on the topics of American History and Studies, and Media Studies, for the NEH-Mellon Fellowships, submitted to the Division of Research Programs.

2. *Date:* August 9, 2018.

This meeting will discuss applications on the topics of European History and Archaeology: Ancient to Modern, for the Fellowships grant program, submitted to the Division of Research Programs.

3. *Date:* August 9, 2018.

This meeting will discuss applications on the topic of Literature, for the Fellowships grant program, submitted to the Division of Research Programs.

4. *Date:* August 10, 2018.

This meeting will discuss applications on the topics of Religion and Asian Studies, for the Fellowships grant program, submitted to the Division of Research Programs.

5. *Date:* August 10, 2018.

This meeting will discuss applications on the topic of the Arts, for the Fellowships grant program, submitted to the Division of Research Programs.

6. *Date:* August 13, 2018.

This meeting will discuss applications on the topic of American History, for the Fellowships grant program, submitted to the Division of Research Programs.

7. *Date:* August 13, 2018.

This meeting will discuss applications on the topics of Arts & Languages (Level I projects), for Digital Humanities Advancement Grants, submitted to the Office of Digital Humanities.

8. *Date:* August 14, 2018.

This meeting will discuss applications on the topic of American Studies, for the Fellowships grant program, submitted to the Division of Research Programs.

9. *Date:* August 14, 2018.

This meeting will discuss applications on the topics of Political Science, Social Sciences, History of Science, and Philosophy, for the Fellowships grant program, submitted to the Division of Research Programs.

10. *Date:* August 15, 2018.

This meeting will discuss applications on the topics of Area Studies and Anthropology, for the Fellowships grant program, submitted to the Division of Research Programs.

11. *Date:* August 15, 2018.

This meeting will discuss applications on the topic of Literature, for the Fellowships grant program, submitted to the Division of Research Programs.

12. *Date:* August 15, 2018.

This meeting will discuss applications on the topic of History (Level I projects), for Digital Humanities Advancement Grants, submitted to the Office of Digital Humanities.

13. *Date:* August 15, 2018.

This meeting will discuss applications for the Preservation Education and Training grant program, submitted to the Division of Preservation and Access.

14. *Date:* August 16, 2018.

This meeting will discuss applications for the Preservation Education and Training grant program, submitted to the Division of Preservation and Access.

15. *Date:* August 16, 2018.

This meeting will discuss applications on the topics of Textual Analysis and Linguistics, for Digital Humanities Advancement Grants, submitted to the Office of Digital Humanities.

16. *Date:* August 20, 2018.

This meeting will discuss applications on the topic of Media Studies, for Digital Humanities Advancement Grants, submitted to the Office of Digital Humanities.

17. *Date:* August 21, 2018.

This meeting will discuss applications on the topics of Digital Collections and Archives, for Digital Humanities Advancement Grants, submitted to the Office of Digital Humanities.

18. *Date:* August 21, 2018.

This meeting will discuss applications on the topic of Cultural Heritage, for the Research and Development grant program, submitted to the Division of Preservation and Access.

19. *Date:* August 22, 2018.

This meeting will discuss applications on the topics of Geospatial and Visualization, for Digital Humanities Advancement Grants, submitted to the Office of Digital Humanities.

20. *Date:* August 22, 2018.

This meeting will discuss applications on the topics of Conservation and Material Studies, for the Research and Development grant program, submitted to the Division of Preservation and Access.

21. *Date:* August 23, 2018.

This meeting will discuss applications on the topic of Digital Preservation, for the Research and Development grant program, submitted to the Division of Preservation and Access.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: July 11, 2018.

Elizabeth Voyatzis,

Committee Management Officer, National Endowment for the Humanities.

[FR Doc. 2018–15165 Filed 7–16–18; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, August 7, 2018.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW, Washington, DC 20594.

STATUS: The one item is open to the public.

MATTERS TO BE CONSIDERED:

57568 Highway Accident Report—*Collision Between Freight Train and Charter Motorcoach at High-Profile Highway–Railroad Grade Crossing, Biloxi, Mississippi, March 7, 2017* (HWY17MH010)

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle McCallister at (202) 314–6305 or by email at *Rochelle.McCallister@ntsb.gov* by Wednesday, August 1, 2018.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *www.ntsb.gov.*

Schedule updates, including weather-related cancellations, are also available at *www.ntsb.gov.*

FOR FURTHER INFORMATION CONTACT: Candi Bing at (202) 314–6403 or by email at *bingc@ntsb.gov.*

FOR MEDIA INFORMATION CONTACT: Peter Knudson at (202) 314–6100 or by email at *peter.knudson@ntsb.gov.*

Dated: July 13, 2018.

LaSean McCray,

Assistant Federal Register Liaison Officer.

[FR Doc. 2018–15314 Filed 7–13–18; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0001]

Sunshine Act Meeting Notice

DATE: Weeks of July 16, 23, 30, August 6, 13, 20, 2018.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of July 16, 2018

There are no meetings scheduled for the week of July 16, 2018.

Week of July 23, 2018—Tentative

There are no meetings scheduled for the week of July 23, 2018.

Week of July 30, 2018—Tentative

There are no meetings scheduled for the week of July 30, 2018.

Week of August 6, 2018—Tentative

There are no meetings scheduled for the week of August 6, 2018.

Week of August 13, 2018—Tentative

There are no meetings scheduled for the week of August 13, 2018.

Week of August 20, 2018—Tentative

There are no meetings scheduled for the week of August 20, 2018.

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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: July 12, 2018.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2018–15286 Filed 7–13–18; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0104]

State of Wyoming: NRC Staff Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the State of Wyoming

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed state agreement; request for comment.

SUMMARY: By letter dated November 14, 2017, Governor Matthew H. Mead of the State of Wyoming requested that the U.S. Nuclear Regulatory Commission (NRC or Commission) enter into an Agreement with the State of Wyoming as authorized by Section 274b. of the Atomic Energy Act of 1954, as amended (AEA).

Under the proposed Agreement, the Commission would discontinue, and the State of Wyoming would assume, regulatory authority over the management and disposal of byproduct materials as defined in Section 11e.(2) of the AEA and a subcategory of source material associated with uranium or thorium milling within the State. Pursuit to Commission direction, the proposed Agreement would state that the NRC will retain regulatory authority over the American Nuclear Corporation (ANC) license.

As required by Section 274e. of the AEA, the NRC is publishing the proposed Agreement for public comment. The NRC is also publishing the summary of a draft assessment by the NRC staff of the State of Wyoming's regulatory program. Comments are requested on the proposed Agreement, especially its effect on public health and safety. Comments are also requested on the draft staff assessment, the adequacy of the State of Wyoming's program, and the State's program staff, as discussed in this notice.

The proposed Agreement would exempt persons who possess or use byproduct materials as defined in Section 11e.(2) of the AEA and a subcategory of source material involved in the extraction or concentration of uranium or thorium in source material or ores at uranium or thorium milling facilities in the State of Wyoming from portions of the Commission's regulatory authority. Radioactive materials not covered by the proposed Agreement will continue to be subject to the Commission's regulatory authority. Section 274e. of the AEA requires that the NRC publish these exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the NRC's regulations.

The NRC is giving notice once each week for four consecutive weeks of the proposed Agreement. This is the second notice that has been published.

DATES: Submit comments by July 26, 2018. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by the following method:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0104. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

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

FOR FURTHER INFORMATION CONTACT: Stephen Poy, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–7135, email: *Stephen.Poy@nrc.gov;* or Paul Michalak, telephone: 301–415–5804, email: *Paul.Michalak@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0104 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0104.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft application for a Section 274 Atomic Energy Act Agreement from the State of Wyoming, the final Wyoming Agreement State application, and the Draft Assessment of the Proposed Wyoming Program for the Regulation of Agreement Materials documents are available in ADAMS under Accession Nos. ML16300A294, ML17319A921, and ML18094B074.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2018–0104 in your comment submission. The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

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

II. Additional Information on Agreements Entered Under Section 274 of the AEA

Since Section 274 of the AEA was added in 1959, the Commission has entered into Agreements with 37 States (Agreement States). The 37 Agreement States currently regulate approximately 16,500 Agreement material licenses, while the NRC regulates approximately 2,800 licenses. Under the proposed Agreement, 14 NRC uranium mill licenses will transfer to the State of Wyoming. The NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of Section 274.

Section 274e. of the AEA requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This notice is being published in fulfillment of that requirement.

III. Proposed Agreement With the State of Wyoming

Background

(a) Section 274b. of the AEA provides the mechanism for a State to assume regulatory authority from the NRC over certain radioactive materials and activities that involve use of these materials. The radioactive materials, sometimes referred to as ''Agreement materials,'' are byproduct materials as defined in Sections 11e.(1), 11e.(2), 11e.(3), and 11e.(4) of the AEA; source material as defined in Section 11z. of the AEA; and special nuclear material as defined in Section 11aa. of the AEA, restricted to quantities not sufficient to form a critical mass.

The radioactive materials and activities (which together are usually referred to as the ''categories of materials'') that the State of Wyoming requests authority over are the possession and use of byproduct materials as defined in Section 11e.(2) of the AEA and a subcategory of source material involved in the extraction or concentration of uranium or thorium in source material or ores at uranium or thorium milling facilities (source material associated with milling activities).

(b) The proposed Agreement contains articles that

(i) Specify the materials and activities over which authority is transferred;

(ii) Specify the materials and activities over which the Commission will retain regulatory authority;

(iii) Continue the authority of the Commission to safeguard special nuclear material, and restricted data and protect common defense and security;

(iv) Commit the State of Wyoming and the NRC to exchange information as necessary to maintain coordinated and compatible programs;

(v) Provide for the reciprocal recognition of licenses;

(vi) Provide for the suspension or termination of the Agreement; and

(vii) Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the proposed Agreement, with the effective date, will be published after the Agreement is approved by the Commission and signed by the NRC Chairman and the Governor of Wyoming.

(c) The regulatory program is authorized by law under the State of Wyoming Statute Section 35–11–2001, which provides the Governor with the authority to enter into an Agreement with the Commission. The State of Wyoming law contains provisions for the orderly transfer of regulatory authority over affected licensees from the NRC to the State. In a letter dated November 14, 2017, Governor Mead certified that the State of Wyoming has a program for the control of radiation hazards that is adequate to protect public health and safety within the State of Wyoming for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. After the effective date of the Agreement, licenses issued by NRC would continue in effect as State of Wyoming licenses until the licenses expire or are replaced by State-issued licenses.

(d) The NRC draft staff assessment finds that the Wyoming Department of Environmental Quality, Land Quality Division, Uranium Recovery Program, is adequate to protect public health and safety and is compatible with the NRC program for the regulation of Agreement materials. Pursuant to Commission direction, the proposed Agreement includes a provision that the State of Wyoming has until the end of the 2019 legislative session to amend Wyoming Statute Section 35–11–2004(c) to be compatible with AEA Section 83b.(1)(A), or the Agreement will terminate without further NRC action. The proposed Agreement also explicitly states that, prior to the requisite amendment of Wyoming Statute Section 35–11–2004(c), the NRC will reject any State of Wyoming request to terminate a license that proposes to bifurcate the ownership of byproduct material and its disposal site between the State and the Federal government. Pursuant to Commission direction, the Agreement contains a provision that requires the State of Wyoming to revise Statute Section 35–11–2004(c) during the next legislative session to be compatible with AEA Section 83b.(1)(A). If the Wyoming Statute Section 35–11–2004(c) is not amended by the end of the 2019 legislative session, the Agreement will terminate.

Summary of the Draft NRC Staff Assessment of the State of Wyoming's Program for the Regulation of Agreement Materials

The NRC staff has examined the State of Wyoming's request for an Agreement with respect to the ability of the State's radiation control program to regulate Agreement materials. The examination was based on the Commission's Policy Statement, ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,'' (46 FR 7540; January 23, 1981, as amended by Policy Statements published at 46 FR 36969; July 16, 1981, and at 48 FR 33376; July 21, 1983) (Policy Statement), and the Office of Nuclear Material Safety and Safeguards Procedure SA–700, ''Processing an Agreement'' (available at *https://scp.nrc.gov/procedures/sa700.pdf* and *https://scp.nrc.gov/procedures/sa700_hb.pdf*). The Policy Statement has 36 criteria that serve as the basis for the NRC staff's assessment of the State of Wyoming's request for an Agreement. The following section will reference the appropriate criteria numbers from the Policy Statement that apply to each section.

(a) Organization and Personnel. These areas were reviewed under Criteria 1, 2, 20, 24, 33, and 34 in the draft staff assessment. The State of Wyoming's proposed Agreement materials program for the regulation of radioactive materials is the Uranium Recovery Program. The Uranium Recovery Program will be located within the existing Land Quality Division of the Wyoming Department of Environmental Quality.

The educational requirements for the Uranium Recovery Program staff members are specified in the State of Wyoming's personnel position descriptions and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold a Bachelor of Science Degree or Master's Degree in one of the following subject areas: environmental science, health physics, nuclear engineering, geology, or ecology. All have training and work experience in radiation protection. Supervisory level staff have at least 5 years of working experience in radiation protection, with most having more than 10 years of experience.

The State of Wyoming performed an analysis of the expected workload under the proposed Agreement. Based on the NRC staff review of the State of Wyoming's analysis, the State has an adequate number of staff to regulate radioactive materials under the terms of the proposed Agreement. The State of Wyoming will employ the equivalent of 7.2 full-time professional and technical staff to support the Uranium Recovery Program.

The State of Wyoming has indicated that the Uranium Recovery Program has an adequate number of trained and qualified staff in place. The State of Wyoming has developed qualification procedures for license reviewers and inspectors that are similar to the NRC's procedures. The Uranium Recovery Program staff is accompanying the NRC staff on inspections of NRC licensees in Wyoming. The Uranium Recovery Program staff is also actively supplementing their experience through direct meetings, discussions, and facility visits with the NRC licensees in the State of Wyoming and through self-study, in-house training, and formal training.

Overall, the NRC staff concluded that the Uranium Recovery Program staff identified by the State of Wyoming to participate in the Agreement materials program has sufficient knowledge and experience in radiation protection, the use of radioactive materials, the standards for the evaluation of applications for licensing, and the techniques of inspecting licensed users of Agreement materials.

(b) Legislation and Regulations. These areas were reviewed under Criteria 1–14, 17, 19, 21, and 23–33 in the draft staff assessment. The Wyoming Statutes Sections 35–11–2001(a) through (c) provide the authority to enter into the Agreement and establish the Wyoming Department of Environmental Quality as the lead agency for the State's Uranium Recovery Program. The Department has the requisite authority to promulgate regulations under Wyoming Statute Section 35–11–2002(b) for protection against radiation. The Wyoming Statutes Sections 35–11–2001 through –2005 also provide the Uranium Recovery Program the authority to issue licenses and orders; conduct inspections; and enforce compliance with regulations, license conditions, and orders. The Wyoming Statute Section 35–11–2003(d) requires licensees to provide access to inspectors.

The Wyoming Statute Section 35–11–2001(e) does not provide the State of Wyoming with authority over independent or commercial laboratories. Under the proposed Agreement, the NRC would retain regulatory authority over laboratory facilities that are not located at facilities licensed under the State of Wyoming's regulatory authority. The State of Wyoming would only regulate laboratory facilities located at uranium or thorium mills. The NRC staff verified that the State of Wyoming adopted the relevant NRC regulations in parts 19, 20, 40, 71, and 150 of title 10 of the *Code of Federal Regulations* (10 CFR), into the Wyoming Uranium Recovery Program Rules Chapters 1 through 9. Therefore, on the proposed effective date of the Agreement, the State of Wyoming will have adopted an adequate and compatible set of radiation protection regulations that apply to byproduct materials as defined in Section 11e.(2) of the AEA and source material associated with milling activities. The NRC staff also verified that the State of Wyoming will not attempt to enforce regulatory matters reserved to the Commission.

(c) Storage and Disposal. These areas were reviewed under Criteria 8, 9a, 11, 29, 30, 31, and 32 in the draft staff assessment. The State of Wyoming has adopted NRC compatible requirements for the handling and storage of radioactive material. The State of Wyoming has adopted an adequate and compatible set of radiation protection regulations that apply to byproduct material as defined in Section 11e.(2) of the AEA and source material associated with milling activities.

As a result of the class of byproduct material it will be regulating (Section 11e.(2) of the AEA), the State of Wyoming is not required to have regulations compatible to 10 CFR part 61 for waste disposal. Rather, the State of Wyoming is required to have regulations that are compatible with 10 CFR part 40 for the disposal of byproduct material as defined in Section 11e.(2) of the AEA and source material associated with milling activities. The NRC staff confirmed that the State of Wyoming has adopted regulations that are compatible with the NRC regulations in 10 CFR part 40 for the disposal of byproduct material and source material associated with milling activities, which are equivalent to the applicable standards contained in 10 CFR part 61.

These regulations address the general requirements for waste disposal and are applicable to all licensees covered under this proposed Agreement.

The NRC staff identified one portion of the Wyoming Statute that is potentially not compatible with NRC requirements. Section 83b.(1)(A) of the AEA ensures that ownership of the byproduct material itself is inseparable from the site on which it is disposed. Consequently, the State of Wyoming has the option of taking title to the material and its disposal site, but the Uranium Mill Tailings Radiation Control Act (UMTRCA) does not permit a State to bifurcate ownership of the disposed byproduct material and the property rights necessary to ensure its safe disposal. The Wyoming Statute Section 35–11–2004(c), enacted in anticipation of the State of Wyoming's assumption of the NRC's regulatory authority for uranium and thorium milling, could permit the bifurcation of the disposed byproduct material and its disposal site by the State. As discussed in Criterion 30c. of the draft staff assessment, this bifurcation of the land and the disposed byproduct material could conflict with the AEA (as amended by UMTRCA), and Article II.B.2.b. in the proposed Agreement.

Based on Commission direction, the NRC staff concluded that Criterion 30c. is satisfied in the following manner: the Commission could complete the process for the final application package for the Agreement, including publishing the proposed Agreement for comment, by noting that the Commission's finding of compatibility is contingent on the State of Wyoming revising this provision, during the next legislative session, to be compatible with AEA Section 83b.(1)(A). Thus, an Agreement could be executed, but it would include a provision that the State of Wyoming has until the end of the 2019 legislative session to amend Wyoming Statute Section 35–11–2004(c) to be compatible with AEA Section 83b.(1)(A), or the Agreement will terminate without further NRC action. The Agreement would also explicitly state that the NRC will reject any State of Wyoming request to terminate a license that proposes to bifurcate the ownership of byproduct material and its disposal site between the State and the federal government. The NRC staff determined that there is little practical risk that the State of Wyoming's current statutory provisions would result in the bifurcation of the 11e.(2) byproduct material from the land since the NRC is required to review and approve any State-proposed termination of a uranium mill license.

(d) Transportation of Radioactive Material. This area was reviewed under Criteria 10 and 35 in the draft staff assessment. The State of Wyoming has adopted compatible regulations to the NRC regulations in 10 CFR part 71. Part 71 contains the requirements licensees must follow when preparing packages containing radioactive material for transport.

Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials.

(e) Recordkeeping and Incident Reporting. These areas were reviewed under Criteria 1, 11, and 35 in the draft staff assessment. The State of Wyoming has adopted compatible regulations to the sections of the NRC regulations that specify requirements for licensees to keep records and to report incidents or accidents involving the State's regulated Agreement materials.

(f) Evaluation of License Applications. This area was reviewed under Criteria 1, 7, 8, 9a, 13, 14, 20, 23, 25, and 29–35 in the draft staff assessment. The State of Wyoming has adopted compatible regulations to the NRC regulations that specify the requirements a person must meet to get a license to possess or use radioactive materials. The State of Wyoming has also developed a licensing procedure manual, along with accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the program staff when evaluating license applications.

(g) Inspections and Enforcement. These areas were reviewed under Criteria 1, 16, 18, 19, 23, 35, and 36 in the draft staff assessment. The State of Wyoming has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by the NRC. The State of Wyoming's Uranium Recovery Program has adopted procedures for the conduct of inspections, reporting of inspection findings, and reporting inspection results to the licensees. Additionally, the State of Wyoming has also adopted procedures for the enforcement of regulatory requirements.

(h) Regulatory Administration. This area was reviewed under Criterion 23 in the draft staff assessment. The State of Wyoming is bound by requirements specified in its State law for rulemaking, issuing licenses, and taking enforcement actions. The State of Wyoming has also adopted administrative procedures to assure fair and impartial treatment of license applicants. The State of Wyoming law prescribes standards of ethical conduct for State employees.

(i) Cooperation with Other Agencies. This area was reviewed under Criteria 25, 26, and 27 in the draft staff assessment. The State of Wyoming law provides for the recognition of existing NRC and Agreement State licenses and the State has a process in place for the transition of active NRC licenses. Upon the effective date of the Agreement, all active uranium recovery NRC licenses issued to facilities in the State of Wyoming, with the exception of the ANC license, will be recognized as Wyoming Department of Environmental Quality licenses.

The State of Wyoming also provides for ''timely renewal.'' This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision.

The State of Wyoming regulations, in Chapter 4, Section 6(d), provide exemptions from the State's requirements for the NRC and the U.S. Department of Energy contractors or subcontractors; the exemptions must be authorized by law and determined not to endanger life or property and to otherwise be in the public interest. The proposed Agreement commits the State of Wyoming to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation, and to assure that the State's program will continue to be compatible with the Commission's program for the regulation of Agreement materials. The proposed Agreement specifies the desirability of reciprocal recognition of licenses, and commits the Commission and the State of Wyoming to use their best efforts to accord such reciprocity. The State of Wyoming would be able to recognize the licenses of other jurisdictions by order or specific license.

There are six UMTRCA Title II sites in the State of Wyoming (ADAMS Accession No. ML16300A294) undergoing decommissioning. These sites are: (1) Anadarko Bear Creek, Powder River Basin; (2) Pathfinder, Lucky Mc, Gas Hills; (3) Umetco Minerals Corporation, Gas Hills; (4) Western Nuclear Inc., Split Rock, Jeffrey City; (5) Exxon Mobile, Highlands, Converse County; and (6) ANC, Gas Hills.

The State of Wyoming indicated it was opposed to assuming regulatory authority over the ANC site because the licensee is insolvent. To address the State of Wyoming's proposed exclusion of the ANC site from the proposed Agreement, the NRC staff provided SECY–17–0081 ''Status and Resolution of Issues Associated with the Transfer of Six Decommissioning Uranium Mill Sites to the State of Wyoming'' (ADAMS Accession No. ML17087A355) to the Commission. In SRM–SECY–17–0081 (ADAMS Accession No. ML17277A783), the Commission approved the NRC staff's recommendation for the NRC to retain regulatory authority over the ANC site and stated that the Commission's retention of the ANC site ''is not a change to the Commission's current Agreement State policy, but is instead an exception to that policy based on case-specific facts.'' Article II.A.14. of the proposed Agreement specifies that the Commission retains regulatory authority over the ANC license.

With regard to the five other decommissioning UMTRCA sites, the NRC staff has developed a draft Memorandum of Understanding (MOU) between the NRC and the State of Wyoming as a separate document from the proposed Agreement. The objective of the MOU is to delineate specific actions that the NRC and the State of Wyoming would take to verify completion of the decommissioning of these sites. The MOU has been drafted and the NRC staff is currently working with the State of Wyoming to delineate how license termination will be addressed for each of the five sites. An assessment of the decommissioning status of the five UMTRCA sites and the activities that need to be completed prior to license termination (ADAMS Accession No. ML17040A501) has been completed. Once the MOU is completed and signed by both the NRC and the State of Wyoming, it will be published in the **Federal Register**.

Staff Conclusion

Section 274d. of the AEA provides that the Commission shall enter into an Agreement under Section 274b. with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the Agreement materials within the State and that the State desires to assume regulatory responsibility for the Agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o. and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

The NRC staff has reviewed the proposed Agreement, the certification of Wyoming Governor Mead, and the supporting information provided by the Uranium Recovery Program of the Wyoming Department of Environmental Quality and Wyoming's Office of the Attorney General. Based upon this review, the NRC staff concludes that the State of Wyoming Uranium Recovery Program satisfies the Section 274d. criteria as well as the criteria in the Commission's Policy Statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement.'' As noted above, the proposed Agreement includes a provision that the State of Wyoming has until the end of the 2019 legislative session to amend Wyoming Statute Section 35–11–2004(c) to be compatible with AEA Section 83b.(1)(A) or the Agreement will terminate without further NRC action. The proposed Agreement also explicitly states that the NRC will reject any State of Wyoming request to terminate a license that proposes to bifurcate the ownership of byproduct material and its disposal site between the State and the Federal government. Pursuant to Commission direction, the NRC staff finding of compatibility is contingent on the State of Wyoming revising Wyoming Statute Section 35–11–2004(c) during the next legislative session to be compatible with AEA Section 83b.(1)(A). The proposed State of Wyoming program to regulate Agreement materials, as comprised of statutes, regulations, procedures, and staffing is compatible with the Commission's program and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement. Therefore, the proposed Agreement meets the requirements of Section 274 of the AEA.

Dated at Rockville, Maryland, this 27th day of June 2018.

For the Nuclear Regulatory Commission.

Andrea L. Kock,

Acting Director, Division of Materials Safety, Security, State, and Tribal Programs, Office of Nuclear Material Safety and Safeguards.

Appendix A

An Agreement Between the United States Nuclear Regulatory Commission and the State of Wyoming for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as ''the Commission'') is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2011 *et seq.* (hereinafter referred to as ''the Act''), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct material as defined in Section 11e.(2) of the Act and source material involved in the extraction or concentration of uranium or thorium in source material or ores at milling facilities; and,

Whereas, The Governor of the State of Wyoming is authorized under Wyoming Statute Section 35–11–2001 to enter into this Agreement with the Commission; and,

Whereas, The Governor of the State of Wyoming certified on November 14, 2017, that the State of Wyoming (hereinafter referred to as ''the State'') has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement and that the State desires to assume regulatory responsibility for such materials; and,

Whereas, The Commission found on [date] that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, the Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and, *Whereas,* This Agreement is entered into pursuant to the Act;

Now, therefore, It is hereby agreed between the Commission and the Governor of the State of Wyoming acting on behalf of the State as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters, 7, and 8, and Section 161 of the Act with respect to the following materials:

A. Byproduct material as defined in Section 11e.(2) of the Act; and,

B. Source material involved in the extraction or concentration of uranium or thorium in source material or ores at uranium or thorium milling facilities (hereinafter referred to as ''source material associated with milling activities'').

Article II

A. This Agreement does not provide for the discontinuance of any authority, and the Commission shall retain authority and responsibility, with respect to:

1. Byproduct material as defined in Section 11e.(1) of the Act;

2. Byproduct material as defined in Section 11e.(3) of the Act;

3. Byproduct material as defined in Section 11e.(4) of the Act;

4. Source material except for source material as defined in Article I.B. of this Agreement;

5. Special nuclear material;

6. The regulation of the land disposal of byproduct, source, or special nuclear material received from other persons, excluding 11e.(2) byproduct material or source material described in Article I.A. and B. of this Agreement;

7. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear material and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;

8. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;

9. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

10. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear material waste as defined in the regulations or orders of the Commission;

11. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not to be so disposed without a license from the Commission;

12. The regulation of activities not exempt from Commission regulation as stated in 10 CFR part 150;

13. The regulation of laboratory facilities that are not located at facilities licensed under the authority relinquished under Article I.A. and B. of this Agreement; and,

14. Notwithstanding this Agreement, the Commission shall retain regulatory authority over the American Nuclear Corporation license.

B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.

2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as its disposal site for such material. Such reserved authority includes:

a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission and with ownership requirements for such material and its disposal site;

b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);

c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or a State pursuant to paragraph 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that the Commission determines that such use would not endanger public health, safety, welfare, or the environment;

d. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and interests therein and the ability of the licensee to transfer title and custody thereof to the United States or a State;

e. The authority to require the Secretary of the United States Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect public health and safety and other actions as the Commission deems necessary; and,

f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian Tribe or land owned by an Indian Tribe and subject to a restriction against alienation imposed by the United States.

3. The Commission retains the authority to reject any State request to terminate a license that proposes to bifurcate the ownership of 11e.(2) byproduct material and its disposal site between the State and the Federal government. Upon passage of a revised Wyoming Statute Section 35–11–2004(c) that the NRC finds compatible with Section 83b.(1)(A) of the Act, this paragraph expires and is no longer part of this Agreement.

Article III

With the exception of those activities identified in Article II, A.8 through A.11, this Agreement may be amended, upon application by the State and approval by the Commission to include one or more of the additional activities specified in Article II, A.1 through A.7, whereby the State may then exert regulatory authority and responsibility with respect to those activities.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption for licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under Subsection 161b. or 161i. of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State.

Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which reciprocity will be accorded.

Article VIII

A. The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State or upon request of the Governor of the State, may terminate or suspend all or part of this agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act.

1. This Agreement will terminate without further NRC action if the State does not amend Wyoming Statute Section 35–11–2004(c) to be compatible with Section 83b.(1)(A) of the Act by the end of the 2019 Wyoming legislative session. Upon passage of a revised Wyoming Statute Section 35–11–2004(c) that the NRC finds compatible with Section 83b.(1)(A) of the Act, this paragraph expires and is no longer part of the Agreement.

B. The Commission may also, pursuant to Section 274j. of the Act, temporarily suspend all or part of this agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act, which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

Article IX

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity that results in production of such material, the State shall comply with the provisions of Section 274o. of the Act, if in such licensing and regulation, the State requires financial surety arrangements for reclamation or long-term surveillance and maintenance of such material.

A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity that results in the production of such material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and,

B. Such surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site.

Article X

This Agreement shall become effective on [date], and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at [location] this [date] day of [month], 2018.

For the Nuclear Regulatory Commission.

Kristine L. Svinicki, *Chairman.*

Done at [location] this [date] day of [month], 2018.

For the State of Wyoming.

Matthew H. Mead,
Governor.

[FR Doc. 2018–14176 Filed 7–16–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0140]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from June 18, 2018, to June 29, 2018. The last biweekly notice was published on July 3, 2018.

DATES: Comments must be filed by August 16, 2018. A request for a hearing must be filed by September 17, 2018.

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

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0140. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* May Ma, Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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

FOR FURTHER INFORMATION CONTACT: Janet C. Burkhardt, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1384, email: *Janet.Burkhardt@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0140, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0140.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2018–0140, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

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

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

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in section 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Dominion Energy Nuclear Connecticut, Inc. (DENC), Docket No. 50–423, Millstone Power Station, Unit No. 3 (MPS3), New London County, Connecticut

Date of amendment request: April 4, 2018. A publicly-available version is in ADAMS under Accession No. ML18100A055.

Description of amendment request: The amendment would revise the MPS3 Technical Specifications (TSs). Specifically, with one Control Building Inlet Ventilation Radiation monitor channel inoperable for greater than 7 days, or if both radiation monitor channels are inoperable, DENC proposes to revise and reformat Action 18 in TS Table 3.3–3, Functional Unit 7.e, ''Control Building Inlet Ventilation Radiation,'' to allow control room operators to manually place one train of the Control Room Emergency Ventilation System (CREVS) in the emergency mode of operation to provide additional time to restore one channel of Control Building Inlet Ventilation Radiation monitoring to OPERABLE status.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Operation of MPS3 in accordance with the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change removes an overly restrictive requirement and adds a conservative requirement for actions to be taken when there is a loss of operability of the CREVS actuation instrumentation. This does not increase the probability of an accident previously evaluated since the CREVS actuation itself is not an accident initiator. The proposed change is consistent with standard TSs for Westinghouse plants (NUREG–1431) and provides assurance that the CREVS is in the conservative mode of operation for a response to an accident. Analysis demonstrates that with one train of the CREVS in the emergency mode of operation, control room operators are adequately protected from the radiological consequences of design basis accident events. Therefore, the probability or consequences of an accident previously evaluated is not significantly increased.

Based on the above, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Operation of MPS3 in accordance with the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not involve a physical alteration of the plant or change in the methods governing normal plant operation. The proposed change replaces the overly restrictive shutdown requirement with a conservative action to be taken upon loss of CREVS actuation instrumentation operability, thereby avoiding the risk associated with an immediate controlled shutdown. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

With one train of CREVS in the emergency mode of operation, DENC has confirmed that MPS3 is in compliance with the current radiological analyses of record for design basis accidents with dose consequences to the control room. Therefore, the proposed change does not affect the design basis analyses and does not alter the assumptions made in the MPS3 accident analysis.

Based on the above, the proposed amendment does not create the possibility of a new or different kind of accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

Operation of MPS3 in accordance with the proposed change does not involve a significant reduction in the margin of safety. The proposed change revises and reformats the Control Building lnlet Ventilation Radiation TS to place the CREVS in the conservative mode of operation for a response to an accident. The proposed change provides additional time to restore an inoperable radiation monitor channel instead of requiring an immediate controlled plant shutdown and suspension of movement of recently irradiated fuel assemblies, if applicable. A plant shutdown is a transient that may be avoided by providing a limited time to make repairs. In addition, the control room operators are adequately protected from the radiological consequences of design basis accident events with one train of the CREVS in the emergency mode of operation. The potential to avoid a plant transient in conjunction with protecting control room operators offsets any risk associated with the proposed change.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Energy, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: James G. Danna.

Duke Energy Progress, LLC, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2 (Brunswick or BSEP), Brunswick County, North Carolina

Date of amendment request: April 4, 2018, as supplemented by letter dated May 29, 2018. Publicly-available versions are in ADAMS under Accession Nos. ML18094B058 and ML18149A487, respectively.

Description of amendment request: The amendments would modify the BSEP Technical Specifications (TSs) to relocate the pressure-temperature limit curves to a licensee-controlled Pressure and Temperature Limits Report (PTLR). The amendment request was submitted in accordance with guidance provided in NRC Generic Letter 96–03, ''Relocation of the Pressure Temperature Limit Curves and Low Temperature Overpressure Protections System Limits,'' dated January 31, 1996.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed license amendment adopts the NRC approved methodology described in Boiling Water Reactor Owner's Group (BWROG) Licensing Topical Report (LTR) (BWROG–TP–11–022–A, SIR–05–044, Revision 1–A), ''Pressure Temperature Limits Report Methodology for Boiling Water Reactors.'' The BSEP PTLR was developed based on the methodology and template provided in the BWROG LTR.

10 CFR 50, Appendix G, establishes requirements to protect the integrity of the reactor coolant pressure boundary (RCPB) in nuclear power plants.

Implementing this NRC approved methodology does not reduce the ability to protect the reactor coolant pressure boundary as specified in Appendix G, nor will this change increase the probability of malfunction of plant equipment, or the failure of plant structures, systems, or components. Incorporation of the new methodology for calculating pressure and temperature limit curves, and the relocation of the pressure and temperature limit curves from the TS to the PTLR provides an equivalent level of assurance that the reactor coolant pressure boundary is capable of performing its intended safety functions.

The proposed changes do not adversely affect accident initiators or precursors, and do not alter the design assumptions, conditions, or configuration of the plant or the manner in which the plant is operated and maintained. The ability of structures, systems, and components to perform their intended safety functions is not altered or prevented by the proposed changes, and the assumptions used in determining the radiological consequences of previously evaluated accidents are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Creation of the possibility of a new or different kind of accident requires creating one or more new accident precursors. New accident precursors may be created by modifications of plant configuration, including changes in allowable modes of operation.

The change in methodology for calculating pressure and temperature limits and the relocation of those limits to the PTLR do not alter or involve any design basis accident initiators. Reactor coolant pressure boundary integrity will continue to be maintained in accordance with 10 CFR part 50, Appendix G, and the assumed accident performance of plant structures, systems and components will not be affected. The proposed changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed), and the installed equipment is not being operated in a new or different manner.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not affect the function of the reactor coolant pressure boundary or its response during plant transients. Calculating the Brunswick pressure temperature limits using the NRC approved structural integrity methodology ensures adequate margins of safety relating to reactor coolant pressure boundary integrity are maintained. The proposed changes do not alter the manner in which the Limiting Conditions for Operation pressure and temperature limits for the reactor coolant pressure boundary are determined. There are no changes to the setpoints at which protective actions are initiated, and the operability requirements for equipment assumed to operate for accident mitigation are not affected.

Therefore, the proposed amendment does not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kathryn B. Nolan, Deputy General Counsel, 550 South Tryon Street, M/C DEC45A, Charlotte, NC 28202.

NRC Acting Branch Chief: Booma Venkataraman.

Exelon FitzPatrick, LLC and Exelon Generation Company, LLC, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant (FitzPatrick), Oswego County, New York

Date of amendment request: January 31, 2018. A publicly-available version is in ADAMS under Accession No. ML18037A782.

Description of amendment request: The amendment would revise FitzPatrick's emergency plan by changing the emergency action level (EAL) schemes. The proposed changes are based on the Nuclear Energy Institute's (NEI's) guidance in NEI 99–01, Revision 6, ''Development of Emergency Action Levels for Non-Passive Reactors,'' which was endorsed by the NRC in a letter dated March 28, 2013 (ADAMS Accession No. ML12346A463).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to FitzPatrick's EAL schemes to adopt the NRC-endorsed guidance in NEI 99–01, Revision 6 do not reduce the capability to meet the emergency planning requirements established in 10 CFR 50.47 and 10 CFR part 50, Appendix E. The proposed changes do not reduce the functionality, performance, or capability of FitzPatrick's ERO [emergency response organization] to respond in mitigating the consequences of any design basis accident.

The probability of a reactor accident requiring implementation of Emergency Plan EALs has no relevance in determining whether the proposed changes to the EALs reduce the effectiveness of the Emergency Plans. As discussed in Section D, ''Planning Basis,'' of NUREG–0654, Revision 1, ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plants and Preparedness in Support of Nuclear Power Plants:''

''. . . The overall objective of emergency response plans is to provide dose savings (and in some cases immediate life saving) for a spectrum of accidents that could produce offsite doses in excess of Protective Action Guides (PAGs). No single specific accident sequence should be isolated as the one for which to plan because each accident could have different consequences, both in nature and degree. Further, the range of possible selection for a planning basis is very large, starting with a zero point of requiring no planning at all because significant offsite radiological accident consequences are unlikely to occur, to planning for the worst possible accident, regardless of its extremely low likelihood. . . .''

Therefore, Exelon did not consider the risk insights regarding any specific accident initiation or progression in evaluating the proposed changes.

The proposed changes do not involve any physical changes to plant equipment or systems, nor do they alter the assumptions of any accident analyses. The proposed changes do not adversely affect accident initiators or precursors nor do they alter the design assumptions, conditions, and configuration or the manner in which the plants are operated and maintained. The proposed changes do not adversely affect the ability of Structures, Systems, or Components (SSCs) to perform their intended safety functions in mitigating the consequences of an initiating event within the assumed acceptance limits.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of

accident from any accident previously evaluated?

Response: No.

The proposed changes to FitzPatrick's EAL schemes to adopt the NRC-endorsed guidance in NEI 99–01, Revision 6 do not involve any physical changes to plant systems or equipment. The proposed changes do not involve the addition of any new plant equipment. The proposed changes will not alter the design configuration, or method of operation of plant equipment beyond its normal functional capabilities. All FitzPatrick ERO functions will continue to be performed as required. The proposed changes do not create any new credible failure mechanisms, malfunctions, or accident initiators.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from those that have been previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes to FitzPatrick's EAL schemes to adopt the NRC-endorsed guidance in NEI 99–01, Revision 6 do not alter or exceed a design basis or safety limit. There is no change being made to safety analysis assumptions, safety limits, or limiting safety system settings that would adversely affect plant safety as a result of the proposed changes. There are no changes to setpoints or environmental conditions of any SSC or the manner in which any SSC is operated. Margins of safety are unaffected by the proposed changes to adopt the NEI 99–01, Revision 6 EAL scheme guidance. The applicable requirements of 10 CFR 50.47 and 10 CFR part 50, Appendix E will continue to be met.

Therefore, the proposed changes do not involve any reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Donald P. Ferraro, Assistant General Counsel, Exelon Generation Company, LLC, 200 Exelon Way, Suite 305, Kennett Square, PA 19348.

NRC Branch Chief: James G. Danna.

Exelon Generation Company, LLC, Docket No. 50–289 and 50–320, Three Mile Island Nuclear Station (TMI), Unit Nos. 1 and 2, Dauphin County, Pennsylvania

Date of amendment request: March 19, 2018. A publicly-available version is in ADAMS under Accession No. ML18078A578.

Description of amendment request: The amendment would revise the TMI Site Emergency Plan (SEP) on-shift and emergency response organization (ERO) staffing to support the planned permanent cessation of operations and permanent defueling of TMI, Unit 1. Specifically, the proposed changes would eliminate the on-shift positions not needed for the safe storage of spent fuel in the spent fuel pool during the initial decommissioning period and eliminate the ERO positions not necessary to effectively respond to credible accidents for a permanently shutdown and defueled power reactor facility. The proposed changes will also relocate full augmentation position requirements from the SEP to the Emergency Preparedness Implementing Procedures.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the TMI Emergency Plan do not impact the function of plant Structures, Systems, or Components (SSCs). The proposed changes do not involve the modification of any plant equipment or affect plant operation. The proposed changes do not affect accident initiators or precursors, nor do the proposed changes alter design assumptions. The proposed changes do not prevent the ability of the on-shift staff and ERO to perform their intended functions to mitigate the consequences of any accident or event that will be credible in the permanently defueled condition. The proposed changes only remove positions that will no longer be needed or credited in the Emergency Plan in the permanently defueled condition.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes reduce the number of on-shift and ERO positions commensurate with the hazards associated with a permanently shutdown and defueled facility. The proposed changes do not involve installation of new equipment or modification of existing equipment, so that no new equipment failure modes are introduced. Also, the proposed changes do not result in a change to the way that the equipment or facility is operated so that no new accident initiators are created.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed changes do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analyses. There are no changes being made to safety analysis assumptions, safety limits, or limiting safety system settings that would adversely affect plant safety as a result of the proposed changes. The proposed changes are associated with the Emergency Plan and staffing and do not impact operation of the plant or its response to transients or accidents. The proposed changes do not affect the Technical Specifications. The proposed changes do not involve a change in the method of plant operation, and no accident analyses will be affected by the proposed changes. Safety analysis acceptance criteria are not affected by the proposed changes and margins of safety are maintained. The revised Emergency Plan will continue to provide the necessary response staff with the proposed changes.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: James G. Danna.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Unit Nos. 1 and 2, Montgomery County, Pennsylvania

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–171, 50–277, and 50–278, Peach Bottom Atomic Power Station, Unit Nos. 1, 2, and 3, York and Lancaster Counties, Pennsylvania

Date of amendment request: May 10, 2018. Publicly-available version is in ADAMS under Package Accession No. ML18149A290.

Description of amendment request: The amendments would revise the emergency response organization (ERO) positions identified in the emergency plan for each site.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration for each site, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the [site] Emergency Plan do not increase the probability or consequences of an accident. The proposed changes do not impact the function of plant Structures, Systems, or Components (SSCs). The proposed changes do not affect accident initiators or accident precursors, nor do the changes alter design assumptions. The proposed changes do not alter or prevent the ability of the onsite ERO to perform their intended functions to mitigate the consequences of an accident or event. The proposed changes remove ERO positions no longer credited or considered necessary in support of Emergency Plan implementation.

Therefore, the proposed changes to the [site] Emergency Plan do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes have no impact on the design, function, or operation of any plant SSCs. The proposed changes do not affect plant equipment or accident analyses. The proposed changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed), a change in the method of plant operation, or new operator actions. The proposed changes do not introduce failure modes that could result in a new accident, and the proposed changes do not alter assumptions made in the safety analysis. The proposed changes remove ERO positions no longer credited or considered necessary in support of Emergency Plan implementation.

Therefore, the proposed changes to the [site] Emergency Plan do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public.

The proposed changes do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analyses. There are no changes being made to safety analysis assumptions, safety limits, or limiting safety system settings that would adversely affect plant safety as a result of the proposed changes. Margins of safety are unaffected by the proposed changes to the ERO staffing. The proposed changes are associated with the [site] Emergency Plan staffing and do not impact operation of the plant or its response to transients or accidents. The proposed changes do not affect the Technical Specifications. The proposed changes do not involve a change in the method of plant operation, and no accident analyses will be affected by the proposed changes. Safety analysis acceptance criteria are not affected by these proposed changes. The proposed changes to the Emergency Plan will continue to provide the necessary onsite ERO response staff.

Therefore, the proposed changes to the [site] Emergency Plan do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis for each site and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: David J. Wrona.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: May 4, 2018. A publicly-available version is in ADAMS under Accession No. ML18129A219.

Description of amendment request: The proposed change would modify technical specification (TS) requirements regarding Limiting Condition for Operation (LCO) and Surveillance Requirement (SR) usage, in accordance with NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF–529, Revision 4, ''Clarify Use and Application Rules.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to Section 1.3 and LCO 3.0.4 have no effect on the requirement for systems to be Operable and have no effect on the application of TS actions. The proposed change to SR 3.0.3 states that the allowance may only be used when there is a reasonable expectation the surveillance will be met when performed. Since the proposed change does not significantly affect system Operability, the proposed change will have no effect on the initiating events for accidents previously evaluated and will have no significant effect on the ability of the systems to mitigate accidents previously evaluated.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the TS usage rules does not affect the design or function of any plant systems. The proposed change does not change the Operability requirements for plant systems or the actions taken when plant systems are not operable.

Therefore, it is concluded that this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change clarifies the application of Section 1.3 and LCO 3.0.4 and does not result in changes in plant operation. SR 3.0.3 is revised to allow application of SR 3.0.3 when an SR has not been previously performed if there is reasonable expectation that the SR will be met when performed. This expands the use of SR 3.0.3 while ensuring the affected system is capable of performing its safety function. As a result, plant safety is either improved or unaffected.

Therefore, it is concluded that this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Robert B. Haemer, Senior Nuclear Counsel, One Cook Place, Bridgman, MI 49106.

NRC Branch Chief: David J. Wrona.

Southern Nuclear Operating Company, Inc., Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Unit Nos. 3 and 4, Burke County, Georgia

Date of amendment request: May 18, 2018. A publicly-available version is in ADAMS under Accession No. ML18138A396.

Description of amendment request: The amendment request proposes to change Technical Specifications Limiting Condition for Operation 3.3.8, Engineered Safety Feature Actuation System (ESFAS) Instrumentation, related to Safeguard Actuation Functions. Various ESFAS Functions require applicability and corresponding actions changes to more accurately reflect their operation and related safety analysis assumptions. This submittal requests approval of the license amendment necessary to implement these changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not involve changes to current plant design or safety analysis assumptions. These changes provide Technical Specifications consistency with the approved plant design and safety analysis assumptions. The changes do not affect the operation of any systems or equipment that initiate an analyzed accident or alter any structures, systems, and components (SSCs) accident initiator or initiating sequence of events. The proposed changes do not result in any increase in the probability of an analyzed accident occurring. Therefore, the requested amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve changes to current plant design or safety analysis assumptions. These changes provide Technical Specifications consistency with the approved plant design and safety analysis assumptions. The proposed changes do not affect plant protection instrumentation systems, and do not affect the design function, support, design, or operation of mechanical and fluid systems. The proposed changes do not result in a new failure mechanism or introduce any new accident precursors. No design function described in the Updated Final Safety Analysis Report (UFSAR) is affected by the proposed changes. Therefore, the requested amendment does not create the possibility of a new or different kind accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not involve changes to current plant design or safety analysis assumptions. These changes provide Technical Specifications consistency with the approved plant design and safety analysis assumptions. No safety analysis or design basis acceptance limit/criterion is involved. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

Tennessee Valley Authority (TVA), Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant (BFN), Unit Nos. 1, 2, and 3, Limestone County, Alabama

Date of amendment request: May 3, 2018. A publicly-available version is in ADAMS under Accession No. ML18124A053.

Description of amendment request: The amendments would revise the BFN Units 1, 2, and 3 renewed facility operating licenses (RFOLs) to provide a correction to previously submitted information in relation to their approved fire protection program under 10 CFR 50.48(c), ''National Fire Protection Association Standard NFPA 805.'' Specifically, TVA requested to modify the BFN licenses to reflect changes to Item 3.3.4 in Table B–1, ''Transition of Fundamental Fire Protection Program & Design Elements,'' of Attachment A in its NFPA 805 license amendment request dated March 27, 2013 (ADAMS Accession No. ML13092A393).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment adds the reference to this letter to the BFN RFOL License Condition paragraphs 2.C.(13), 2.C.(14), and 2.C.(7) for BFN Units 1, 2, and 3, respectively. The change encompassed by the proposed amendment is to correct the entry in Attachment A Table B–1 of the BFN Transition Report.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed change does not affect the ability of structures, systems and components (SSCs) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits.

Therefore, these proposed changes do not involve a significant increase in the probability of consequences of an accident previously identified.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment adds the reference to this letter to the BFN RFOL License Condition paragraphs 2.C.(13), 2.C.(14), and 2.C.(7) for BFN Units 1, 2, and 3, respectively. The change encompassed by the proposed amendment is to correct the entry in Attachment A Table B–1 of the BFN Transition Report.

There is no risk impact to Core Damage Frequency (CDF) or Large Early Release Frequency (LERF) because this is an administrative change. Plant secondary combustibles, including insulating materials, are considered in the fire modeling input to the Fire PRA [Probabilistic Risk Assessment].

The proposed change does not result in any new or different kinds of accident from that previously evaluated because it does not change any precursors or equipment that is previously credited for accident mitigation.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment adds the reference to this letter to the BFN RFOL License Condition paragraphs 2.C.(13), 2.C.(14), and 2.C.(7) for BFN Units 1, 2, and 3, respectively. The change encompassed by the proposed amendment are to correct the entry in Attachment A Table B–1 of the BFN Transition Report.

This proposed change corrects erroneous information to previously approved information in the BFN Transition Report. This proposed change will have an insignificant impact on the accident analysis as it is a clarifying or administrative change. Plant secondary combustibles, including insulating materials, are considered in the fire modeling input to the Fire PRA.

The proposed change will not result in any new or different kinds of accident from that previously evaluated because it does not change any precursors or equipment that is previously credited for accident mitigation.

Therefore, based on the above discussion, these proposed changes do not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, TN 37902.

NRC Acting Branch Chief: Booma Venkataraman.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Progress, LLC, Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit No. 1, Wake and Chatham Counties, North Carolina

Date of amendment request: June 5, 2017, as supplemented by letters dated October 30, 2017, November 27, 2017, and January 28, 2018.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) to restrict the steady-state voltage and frequency limits for emergency diesel generator (EDG) operation to ensure that accident mitigation equipment can perform as designed. In addition, the amendment revised a TS to increase the voltage limit for the EDG full load rejection test to provide additional operating margin to test acceptance criteria.

Date of issuance: June 20, 2018.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 165. A publicly-available version is in ADAMS under Accession No. ML18130A270; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–63: The amendment revised the Renewed Facility Operating License and TSs.

Date of initial notice in ***Federal Register:*** September 26, 2017 (82 FR 44851). The supplemental letters dated October 30, 2017, November 27, 2017, and January 28, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 20, 2018.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: July 13, 2017.

Brief description of amendment: The amendment approved the removal of the existing cyber security license condition from the facility operating license.

Date of issuance: June 27, 2018.

Effective date: As of the date the licensee notifies the NRC in writing that all spent nuclear fuel assemblies have been transferred out of the spent fuel pool and have been placed in dry storage within the independent spent fuel storage installation, and shall be implemented within 60 days of the effective date.

Amendment No.: 268. A publicly-available version is in ADAMS under Accession No. ML18145A208; documents related to this amendment are referenced in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–28: This amendment revised the License.

Date of initial notice in ***Federal Register:*** September 26, 2017 (82 FR 44852).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 27, 2018.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit 1 (ANO–1), Pope County, Arkansas

Date of amendment request: July 17, 2017.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) for ANO–1 and established a new Completion Time in ANO–1 TS 3.7.5, ''Emergency Feedwater (EFW) System,'' where one steam supply to the turbine-driven EFW pump is inoperable concurrent with an inoperable motor-driven EFW train. The amendment is consistent with NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF–412, Revision 3, ''Provide Actions for One Steam Supply to Turbine Driven AFW [Auxiliary Feedwater]/EFW Pump Inoperable,'' with certain plant-specific deviations.

Date of issuance: June 19, 2018.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 260. A publicly-available version is in ADAMS under Accession No. ML18115A282; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–51: Amendment revised the Renewed Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** October 10, 2017 (82 FR 47036).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 19, 2018.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2 (ANO–2), Pope County, Arkansas

Date of amendment request: July 17, 2017.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) for ANO–2 and established Actions and Allowable Outage Times in ANO–2 TS 3.7.1.2, ''Emergency Feedwater System,'' for several combinations of inoperable Emergency Feedwater (EFW) trains consistent with NUREG–1432, ''Standard Technical Specifications—Combustion Engineering Plants,'' Revision 4. The amendment includes changes incorporated by Technical Specifications Task Force (TSTF)-340, ''Allow 7 Day Completion Time for a Turbine-Driven AFW [Auxiliary Feedwater] Pump Inoperable,'' Revision 3 and TSTF–412, ''Provide Actions for One Steam Supply to Turbine Driven AFW/EFW Pump Inoperable,'' Revision 3.

Date of issuance: June 19, 2018.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 310. A publicly-available version is in ADAMS under Accession No. ML18134A253; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–6: Amendment revised the Renewed Facility Operating License and TSs.

Date of initial notice in ***Federal Register:*** October 10, 2017 (82 FR 47036).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 19, 2018.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland, Exelon Generation Company, LLC, Docket Nos. 50–220 and 50–410, Nine Mile, Point, Nuclear Station, Unit Nos. 1 and 2, Oswego County, New York, Exelon Generation Company, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: May 31, 2017.

Brief description of amendments: The amendments revised the emergency plans for each facility by changing the emergency action level schemes. The changes are based on the Nuclear Energy Institute's (NEI's) guidance in NEI 99–01, Revision 6, ''Development of Emergency Action Levels for Non-Passive Reactors,'' which was endorsed by the NRC by letter dated March 28, 2013 (ADAMS Package Accession No. ML13091A209).

Date of issuance: June 26, 2018.

Effective date: As of the date of issuance and shall be implemented on or before June 28, 2019.

Amendment Nos.: Calvert Cliffs—324/302; Nine Mile Point—230/171; and, Ginna—128. A publicly-available version is in ADAMS under Accession No. ML18137A614; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. DPR–53, DPR–69, DPR–63, NPF–69, and DPR–18: Amendments revised the emergency plans.

Date of initial notice in ***Federal Register:*** August 1, 2017 (82 FR 35838).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 26, 2018.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station (DNPS), Unit Nos. 2 and 3, Grundy County, Illinois

Date of amendment request: May 3, 2017, as supplemented by letter dated February 14, 2018.

Brief description of amendments: The amendments revised the DNPS Technical Specification (TS) 5.5.12, ''Primary Containment Leakage Rate Testing Program,'' to allow for the permanent extension of the Type A integrated leak rate testing and the Type C leak rate testing frequencies.

Date of issuance: June 29, 2018.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos.: 257 (Unit 2) and 250 (Unit 3). A publicly-available version is in ADAMS under Accession No. ML18137A271; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–19 and DPR–25: Amendments revised the Renewed Facility Operating Licenses and TS.

Date of initial notice in ***Federal Register:*** August 1, 2017 (82 FR 35838). The supplemental letter dated February 14, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 29, 2018.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–244, R. E. Ginna Nuclear Power Plant (Ginna), Wayne County, New York

Date of amendment request: June 30, 2017, as supplemented by letters dated October 25, 2017, and June 5, 2018.

Brief description of amendment: The amendment revised the license to delete the modification to install overcurrent protection on its emergency diesel generators which was required as part of Ginna's implementation of its risk-informed, performance-based fire protection program in accordance with 10 CFR 50.48(c).

Date of issuance: June 25, 2018.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 127. A publicly-available version is in ADAMS under Accession No. ML18114A025; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–18: Amendment revised the Renewed Facility Operating License.

Date of initial notice in ***Federal Register:*** October 3, 2017 (82 FR 46097). The supplemental letters dated October 25, 2017, and June 5, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 25, 2018.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois and Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of amendment request: June 30, 2017, as supplemented by letters dated October 25, 2017, and May 29, 2018.

Brief description of amendments: The amendments revised Technical Specification (TS) 3.1.4, ''Rod Group Alignment Limits,'' TS 3.1.5, ''Shutdown Bank Insertion Limits,'' TS 3.1.6, ''Control Bank Insertion Limits,'' and TS 3.1.7, ''Rod Position Indication.''

Date of issuance: June 27, 2018.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos: 196 (Braidwood, Unit 1) and 196 (Braidwood, Unit 2); 202 (Bryon, Unit 1) and 202 (Bryon, Unit 2). A publicly-available version is in ADAMS under Accession No. ML18065A529; documents related to these amendments are listed in the related Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–72, NPF–77, NPF–37, and NPF–66: The amendments revised the Renewed Facility Operating Licenses and TSs.

*Date of initial notice in **Federal Register:*** August 29, 2017 (82 FR 41069). The supplemental letters dated October 25, 2017, and May 29, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 27, 2018.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: September 11, 2017.

Brief description of amendment: The amendment revised the requirements in Technical Specification (TS) 3.3.6.1, ''Primary Containment and Drywell Isolation Instrumentation,'' by adding an ACTIONS note to Limiting Condition of Operation 3.3.6.1 to allow intermittent opening, under administrative control, of containment and drywell penetration flow paths that are isolated.

Date of issuance: June 25, 2018.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 181. A publicly-available version is in ADAMS under Accession No. ML18157A084; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–58: Amendment revised the Facility Operating License and TS.

*Date of initial notice in **Federal Register:*** November 7, 2017 (82 FR 51652).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 25, 2018.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: October 6, 2017, as supplemented by letter dated April 19, 2018.

Brief description of amendment: This amendment increased the Integrated Leak Rate Test Peak Calculated Containment Internal Pressure, Pa, listed in Technical Specification (TS) 6.8.4.g, ''Containment Leakage Rate Testing Program,'' from 45.1 pounds per square inch gauge (psig) to 46.0 psig. It also removed the reference to Regulatory Guide 1.163, ''Performance-Based Containment Leak Test Program,'' and American National Standards Institute/American Nuclear Society (ANSI/ANS)-56.8–2002, ''Containment System Leakage Testing Requirements,'' and replaced the reference of Nuclear Energy Institute (NEI) 94–01, Revision 3–A, ''Industry Guideline for Implementing Performance-Based Option of 10 CFR part 50, Appendix J,'' with NEI 94–01, Revision 2–A.

Date of issuance: June 28, 2018.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 210. A publicly-available version is in ADAMS under Accession No. ML18141A668, documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–12: Amendment revised the Renewed Facility Operating License and the TS.

*Date of initial notice in **Federal Register:*** November 21, 2017 (82 FR 55409). The supplemental letter dated April 19, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 2018.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date of amendment request: December 21, 2017.

Brief description of amendments: The amendments modified Technical Specification (TS) 3.7.5, ''Auxiliary Feedwater (AFW) System,'' to establish a new Completion Time for the Condition where one steam supply to the turbine driven AFW pump is inoperable concurrent with an inoperable motor driven AFW train. In addition, the amendments added specific Conditions and Action requirements: (1) For when two motor driven AFW trains are inoperable at the same time and; (2) for when the turbine driven AFW train is inoperable either (a) due solely to one inoperable steam supply, or (b) due to reasons other than one inoperable steam supply. The proposed changes are consistent with NRC-approved Technical Specification Task Force (TSTF) Traveler, TSTF–412, Revision 3, ''Provide Actions for One Steam Supply to Turbine Driven AFW/EFW [Emergency Feedwater] Pump Inoperable'' dated January 10, 2007.

Date of issuance: June 27, 2018.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: 219 (Unit 1) and 216 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML18151A174. Documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–2 and NPF–8: The amendments revised the Renewed Facility Operating Licenses and TS.

*Date of initial notice in **Federal Register:*** February 13, 2018 (83 FR 6234).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 27, 2018.

No significant hazards consideration comments received: No.

Susquehanna Nuclear, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Unit Nos. 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: December 14, 2017.

Brief description of amendments: The amendments revised Technical Specification (TS) 3.6.4.1, ''Secondary Containment,'' Surveillance Requirement (SR) 3.6.4.1.1. The SR was revised to address conditions during which the secondary containment pressure may not meet the SR pressure requirements. The changes are based on Technical Specification Task Force (TSTF) Traveler TSTF–551, Revision 3, ''Revise Secondary Containment Surveillance Requirements.''

Date of issuance: June 26, 2018.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 270 (Unit 1) and 252 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML18150A281. Documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Renewed Facility Operating Licenses and TS.

*Date of initial notice in **Federal Register:*** February 27, 2018 (83 FR 8520).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 26, 2018.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–390 and 50–391, Watts Bar Nuclear Plant, Units 1 and 2, Rhea County, Tennessee

Date of amendment request: November 23, 2016, as supplemented by letters dated September 29, November 16, and December 27, 2017, and May 11, 2018.

Brief description of amendments: The amendments revised the Technical Specification (TS) requirements on control and shutdown rods, and rod and bank position indication in the Units 1 and 2, TS 3.1.5, ''Rod Group Alignment Limits,'' TS 3.1.6, ''Shutdown Bank Insertion Limits,'' TS 3.1.7, ''Control Bank Insertion Limits,'' and TS 3.1.8, ''Rod Position Indication.''

Date of issuance: June 26, 2018.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 120 (Unit 1) and 20 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML18079A029; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. NPF–90 and NPF–96: Amendments revised the Facility Operating Licenses and TSs.

*Date of initial notice in **Federal Register:*** March 14, 2017 (82 FR 13672). The supplemental letters dated September 29, November 16, and December 27, 2017, expanded the scope of the amendment request as originally noticed in the **Federal Register**. A second notice was published in the **Federal Register** on February 21, 2018 (83 FR 7500), which superseded the original notice in its entirety. The supplemental letter dated May 11, 2018, provided additional information that clarified the application, did not expand the scope of the application as re-noticed, and did not change the NRC staff's proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 26, 2018.

No significant hazards consideration comments received: No.

IV. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendment. The Commission has determined for this amendment that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual notice of consideration of issuance of amendment, proposed no significant hazards consideration determination, and opportunity for a hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendment has been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that this amendment satisfies the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License or Combined License, as applicable, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Exelon Generation Company, LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3 (Peach Bottom), York County, Pennsylvania

Date of amendment request: June 21, 2018.

Description of amendments: The amendments revised the Peach Bottom Technical Specifications (TSs) for a one-time suspension of the emergency diesel generator (EDG) No. 4 (E–4) surveillance requirements. Specifically, the amendments revised TS Surveillance Requirements 3.8.1.2, 3.8.1.3, 3.8.1.6, and 3.8.3.4 to suspend performing required monthly surveillance testing on the E–4 EDG until the E–3 EDG is returned to operable status, not to exceed 2205 hours Eastern Time on June 27, 2018.

Date of issuance: June 23, 2018.

Effective date: June 23, 2018.

Amendment Nos.: 318 (Unit 1) and 321 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML18173A042. Documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the Renewed Facility Operating Licenses and TSs.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendments, finding of emergency circumstances, State consultation, and final no significant hazards consideration determination are contained in a Safety Evaluation dated June 23, 2018.

Attorney for licensee: J. Bradley Fewell, Vice President and Deputy General Counsel, Exelon Generation Company, LLC, 200 Exelon Way, Kennett Square, PA 19348.

NRC Branch Chief: James G. Danna.

Dated at Rockville, Maryland, this 5th day of July 2018.

For the Nuclear Regulatory Commission.

Gregory F. Suber,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–14779 Filed 7–16–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, July 19, 2018.

PLACE: Closed Commission Hearing Room 10800.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Stein, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: July 12, 2018.

Lynn M. Powalski,

Deputy Secretary.

[FR Doc. 2018–15292 Filed 7–13–18; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83618; File No. SR–NASDAQ–2018–050]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the First Trust Senior Loan Fund of First Trust Exchange Traded Fund IV

July 11, 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 June 27, 2018, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

[sic] Exchange's proposed rule change relating to the First Trust Senior Loan Fund (the ''Fund'') of First Trust Exchange-Traded Fund IV (the ''Trust''), the shares of which have been approved by the Commission for listing and trading under Nasdaq Rule 5735 (''Managed Fund Shares''). The shares of the Fund are collectively referred to herein as the ''Shares.''

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved the listing and trading of Shares under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange.[3] The Exchange believes the proposed rule change reflects no significant issues not previously addressed in the Prior Release.

The Fund is an actively-managed exchange-traded fund (''ETF''). The Shares are offered by the Trust, which was established as a Massachusetts business trust on September 15, 2010. The Trust, which is registered with the Commission as an investment company under the Investment Company Act of 1940 (the ''1940 Act''), has filed a registration statement on Form N–1A (''Registration Statement'') relating to the Fund with the Commission.[4] The Fund is a series of the Trust. The Adviser is the investment adviser to the Fund. First Trust Portfolios L.P. is the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon acts as the administrator, custodian and fund accounting and transfer agent to the Fund.

(1) Introduction

The purpose of this proposed rule change is to modify certain provisions set forth in the Prior Notice pertaining to (1) the meaning of the term ''under normal market conditions''; (2) the Fund's investments in Senior Loans[5] and other debt, including, in particular, its investments in Senior Loans and other floating rate loans that are in default; and (3) the Fund's ability to retain various instruments that, although not specifically selected by the Adviser, may be received by the Fund under certain circumstances.

It is important to note that notwithstanding the proposed changes, consistent with the Prior Notice, it is anticipated that the Fund, in accordance with its principal investment strategy, would continue to invest approximately 50% to 75% of its net assets in Senior Loans that are eligible for inclusion in and meet the liquidity thresholds of the S&P/LSTA U.S. Leveraged Loan 100 Index (the ''Primary Index'') and/or the Markit iBoxx USD Liquid Leveraged Loan Index (the ''Secondary Index''[6]). Brief descriptions of the eligibility criteria (including those relating to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR–NASDAQ–2008–039). The Commission previously approved the listing and trading of the Shares of the Fund. *See* Securities Exchange Act Release Nos. 69072 (March 7, 2013), 78 FR 16006 (March 13, 2013) (''Prior Notice'') and 69464 (April 26, 2013), 78 FR 25774 (May 2, 2013) (''Prior Order'' and, together with the Prior Notice, the ''Prior Release'') (SR–NASDAQ–2013–036).

[4] *See* Post-Effective Amendment No. 150 to Registration Statement on Form N–1A for the Trust, dated February 28, 2018 (File Nos. 333–174332 and 811–22559). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement, as amended. First Trust Advisors L.P. (the ''Adviser'') represents that the Adviser will not implement the changes described herein until the instant proposed rule change is operative.

[5] For purposes of this filing, consistent with the description included in the Prior Notice, the Adviser considers ''Senior Loans'' to be first lien senior secured floating rate bank loans.

[6] As a conforming change, the reference to the index that was defined as the Secondary Index in the Prior Notice has been updated to include ''Liquid'' in the name, which is consistent with footnote 9 (and accompanying text) of this filing and footnote 34 (and accompanying text) of the Prior Notice.

liquidity) for the Primary Index and the Secondary Index are set forth below.[7]

Primary Index:[8] The Primary Index measures the performance of 100 large loan facilities meeting specific inclusion criteria. All syndicated leveraged loans covered by the S&P/LSTA Leveraged Loan Index (''LLI'') universe are eligible for inclusion in the Primary Index. Term loans from syndicated credits must meet the following criteria at issuance in order to be eligible for inclusion in the LLI: (i) Senior secured; (ii) U.S. dollar denominated; (iii) minimum initial term of one year; (iv) minimum initial spread of LIBOR + 125 basis points (LIBOR is calculated as the average rate for US Loans in Markit's WSO Database); (v) US$ 50 million initially funded loans; and (vi) the loan must have been bought by an institutional investor, and must currently be in their portfolio. All constituents of the Primary Index (the index loans) must have a publicly assigned CUSIP. There is no minimum size requirement on individual facilities in the Primary Index, but the LLI universe minimum is US$ 50 million. Only the 100 largest facilities from the LLI that meet all eligibility requirements are considered for inclusion. The Primary Index covers all issuers regardless of origin; however, all facilities must be denominated in U.S. dollars.

Secondary Index:[9] The Secondary Index is a subset of the benchmark Markit iBoxx USD Leveraged Loan Index (''USD LLI''). The Secondary Index limits the number of constituent loans in the index by selecting larger and more liquid loans from the USD LLI index universe as determined by a liquidity ranking procedure. As described further below, the procedure utilizes daily liquidity scores from the Markit Loan Pricing Service, which is a broader measure of liquidity, summarizing the performance of each loan across several liquidity metrics, such as number of quotes, or bid-offer sizes.

The following selection criteria are used to derive the eligible universe from the Markit/WSO USD-denominated loan universe: (i) Loan type (only USD-denominated loans are eligible, and the Secondary Index Description includes a list of eligible loan types and ineligible loan types); (ii) minimum size (a minimum facility size of USD $500 million nominal is required); (iii) liquidity/depth of market (described below); (iv) credit rating (only sub-investment grade loans are eligible, defaulted loans are eligible provided they meet all other criteria, and loans designated as ''Not Rated'' by both Moody's Investors Service, Inc., and Standard & Poor's must have a minimum current spread of 125 basis points over LIBOR); (v) spread (rated loans must have a minimum current spread of 125 basis points over LIBOR); and (vi) minimum time to maturity (a minimum initial time to maturity of one year is required).

According to the Secondary Index Description, liquidity/depth of the market can be measured by the number of prices available for a particular loan and the length of time prices have been provided by the minimum required number of price contributors. The liquidity check is based on the 3-month period prior to the rebalancing cut-off date (liquidity test period). Only loans with a minimum liquidity/depth of 2 for at least 50% of trading days of the liquidity test period are eligible. Loans issued less than three months prior to the rebalancing cut-off date require a minimum liquidity/depth of 3 for at least 50% of trading days in the period from the issue date to the rebalancing cut-off date.

In conjunction with the liquidity ranking procedure referenced above, in order to determine the final Secondary Index constituents, the loans in the eligible universe are ranked according to their liquidity scores, as provided by the Markit Loan Pricing Service. Each loan in the MarkitWSO database is assigned a daily score based on the loan's performance on the following liquidity metrics:

—*Sources Quote:* The number of dealers sending out runs.
—*Frequency of Quotes:* Total number of dealer runs.
—*Number of Sources With Size:* The number of dealer runs with associated size.
—*Bid-Offer Spreads:* The average bid-offer spread in dealer runs.
—*Average Quote Size:* The average size parsed from quotes.
—*Movers Count:* The end of the day composite contributions which have moved on that day.

Each loan carries a score ranging from 1 to 5 in ascending order of liquidity, depending on the daily values for the above components. A loan with a score of 1 will have the best performance in each of the categories above. In the liquidity ranking procedure (described in detail in the Secondary Index Description), average liquidity scores are calculated for each loan, over a calendar one- or three-month period immediately preceding each rebalancing date.

In addition, consistent with the Prior Notice, the aggregate amount of the Fund's net assets permitted to be held in illiquid securities (calculated at the time of investment), including Rule 144A securities, junior subordinated loans and unsecured loans deemed illiquid by the Adviser, would continue to be limited to 15%.

(2) Proposed Changes to the Term ''Under Normal Market Conditions''

The Prior Notice stated that according to the Fund's Registration Statement, in pursuing its investment objective, the Fund, under normal market conditions, would seek to outperform a primary and secondary loan index by investing at least 80% of its net assets (plus any borrowings for investment purposes) in ''Senior Loans'' (the ''80% Requirement''). In conjunction with describing and defining the term ''under normal market conditions,'' footnote 10 of the Prior Notice provided the following (the ''Normal Market Conditions Definition''):

> The term ''under normal market conditions'' as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or *force majeure* type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. In periods of extreme market disturbance, the Fund may take temporary defensive positions, by overweighting its portfolio in cash/cash-like instruments; however, to the extent possible, the Adviser would continue to seek to achieve the Fund's investment objective. Specifically, the Fund would continue to invest in Senior Loans (as defined herein). In response to prolonged periods of constrained or difficult market conditions the Adviser will likely focus on investing in the largest and most liquid loans available in the market.

To provide additional flexibility and greater consistency with more recent proposed rule change filings relating to other ETFs advised by the Adviser,[10] the

[7] The Prior Notice included descriptions of, and information relating to, the Primary Index and the Secondary Index. However, except to the extent provided below, such descriptions and information have not been updated for purposes of this filing.

[8] The following information regarding the Primary Index is based on information in ''S&P/LSTA U.S. Leveraged Loan 100 Index Methodology (February 2018)''. Information on the Primary Index is available at *www.spindices.com.*

[9] The following information regarding the Secondary Index is based on ''Markit iBoxx USD Liquid Leveraged Loan Index—Index Guide (November 2014)'' (the ''Secondary Index Description''). Information on the Secondary Index is available at *www.markit.com.*

[10] *See* Securities Exchange Act Release No. 80745 (May 23, 2017), 82 FR 24755 (May 30, 2017) (SR–

Exchange is proposing that, going forward, the Normal Market Conditions Definition be replaced with the following:

> The term ''under normal market conditions'' as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or *force majeure* type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. The Fund may adopt a defensive strategy (and depart from its principal investment strategies) when the Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances. In addition, on a temporary basis, including for defensive purposes, during periods of extreme market disturbance and during periods of high cash inflows or outflows (*i.e.,* rolling periods of seven calendar days during which inflows or outflows of cash, in the aggregate, exceed 10% of the Fund's net assets as of the opening of business on the first day of such periods), the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. Under the circumstances described in the prior two sentences, the Fund may not be able to achieve its investment objectives; however, to the extent possible, the Adviser would continue to seek to achieve the Fund's investment objectives by continuing to invest in Senior Loans (as defined herein). In response to prolonged periods of constrained or difficult market conditions the Adviser will likely focus on investing in the largest and most liquid loans available in the market.

The proposed new Normal Market Conditions Definition reflects additional situations where it would be appropriate for the Fund to have the ability to depart from its principal investment strategies, including ''periods of high cash inflows or outflows'' and times when the Adviser believes that securities in which the Fund normally invests ''have elevated risks due to political or economic factors and in other extraordinary circumstances.'' The Exchange does not believe that the proposed changes to the Normal Market Conditions Definition raise concerns. Rather, the Exchange believes that the changes would provide the Fund with appropriate flexibility to adapt to challenging conditions. In particular, the Exchange notes that the term ''periods of high cash inflows or outflows'' is specifically and narrowly defined, and the proposed modifications would potentially help the Fund mitigate risks that may accompany adverse political or economic factors and other extraordinary circumstances.

(3) Proposed Changes to Provisions Pertaining to the Fund's Investments in Senior Loans and Other Debt

Under the heading ''Principal Investments'' (and in certain other provisions of the Prior Notice), the Prior Notice included various representations that were applicable to Senior Loans and, in certain cases, to other debt in which the Fund may invest. As described below, the Adviser is seeking to modify certain of these representations to permit the Fund to invest a limited portion of its net assets in Senior Loans and other floating rate loans that are in default. The Adviser believes that while the proposed changes would provide additional flexibility, the changes would not conflict with the Fund's investment objectives or overall investment strategies or be inconsistent with the Adviser's overall approach to managing the Fund. Rather, the proposed changes would enhance the Adviser's investment opportunities in managing the Fund. In this regard, as stated in the Prior Notice, in selecting securities for the Fund, the Adviser would continue to seek to construct a portfolio of loans that it believes is less volatile than the general loan market. In addition, as stated in the Prior Notice, when making investments, the Adviser would continue to seek to maintain appropriate liquidity and price transparency for the Fund, and the key considerations of portfolio construction would continue to include liquidity, diversification and relative value. The Exchange believes that concerns related to manipulation should be mitigated given that the proposed changes (a) would be limited in scope, and (b) would be subject to the provisions set forth below, which should provide support regarding the Fund's anticipated liquidity profile going forward.

The discussion set forth in the Prior Notice under the heading ''Principal Investments'' included the following ''Defaulted Senior Loan Representation'': ''The Adviser does not intend to purchase Senior Loans that are in default. However, the Fund may hold a Senior Loan that has defaulted subsequent to its purchase by the Fund.'' In addition, the discussion under the heading ''Other Investments'' (pursuant to which the Fund may invest a portion of its assets in, among other things, floating rate loans) included the following ''Floating Rate Loan Representation'': ''The Fund will not invest in floating rate loans of companies whose financial condition is troubled or uncertain and that have defaulted on current debt obligations, as measured at the time of investment.''

The Adviser believes that there may be situations where it would be desirable for the Fund, in pursuing its investment objectives, to have the ability to invest a limited portion of its net assets in Senior Loans and/or other floating rate loans that are in default (collectively, ''Defaulted Loans''). Therefore, to provide the Adviser with additional flexibility in managing the Fund, the Exchange is proposing that, going forward, the Defaulted Senior Loan Representation and the Floating Rate Loan Representation would be deleted and the Fund would be specifically permitted to purchase Defaulted Loans.[11] However, Defaulted Loans would comprise no more than 15% of the Fund's net assets, as determined at the time of purchase (the ''15% Limitation'').[12] If, subsequent to being purchased or otherwise obtained by the Fund, a Senior Loan or other floating rate loan defaults, the Fund may continue to hold such Senior Loan or other floating rate loan without regard to the 15% Limitation; however, such Senior Loan or other floating rate loan would be considered a Defaulted Loan for purposes of determining whether the Fund's purchase of additional Defaulted Loans would comply with the 15% Limitation.[13]

NASDAQ–2017–033) (order approving listing and trading of First Trust California Municipal High Income ETF); and Securities Exchange Act Release No. 78913 (September 23, 2016), 81 FR 69109 (October 5, 2016) (SR–NASDAQ–2016–002) (order approving listing and trading of First Trust Municipal High Income ETF).

[11] As a conforming matter, the representation set forth in footnote 37 of the Prior Notice, which indicated that the Adviser does not intend to invest in defaulted Senior Loans, would be deleted.

[12] For the avoidance of doubt, Defaulted Loans that are Senior Loans would be taken into account for purposes of compliance with the 80% Requirement. In addition, for the avoidance of doubt, the 15% Limitation would not restrict the Fund's ability to invest in loans of companies that have defaulted only on other debt obligations.

[13] Currently, the Prior Notice does not limit the Fund's ability to hold Senior Loans that have defaulted subsequent to being purchased by the Fund. In addition, the Commission has previously approved other proposed rule change filings involving actively-managed ETFs that incorporated the ability to invest a certain portion of their respective assets in defaulted securities. *See, e.g.,* Securities Exchange Act Release No. 80946 (June 15, 2017), 82 FR 28126 (June 20, 2017) (SR–NASDAQ–2017–039) (order approving listing and trading of Guggenheim Limited Duration ETF); Securities Exchange Act Release No. 80865 (June 6, 2017), 82 FR 26970 (June 12, 2017) (SR–NYSEArca–2017–48) (order approving listing and trading of Franklin Liberty Intermediate Municipal Opportunities ETF); Securities Exchange Act Release No. 80745 (May 23, 2017), 82 FR 24755

Continued

For consistency with the above proposed changes, the Exchange is proposing that certain other representations that are set forth under the heading ''Principal Investments'', but that apply to both Senior Loans and other debt, be modified. First, the discussion set forth under the heading ''Principal Investments'' included the following statement (the ''Credit Metrics Representation''): ''The Fund will include borrowers that the Adviser believes have strong credit metrics, based on its evaluation of cash flows, collateral coverage and management teams.'' In light of the proposed changes described above, the Exchange is proposing that the Credit Metrics Representation be modified to read as follows: ''As a general matter, the Fund will include borrowers that the Adviser believes have strong credit metrics, based on its evaluation of cash flows, collateral coverage and management teams.''

Additionally, to enhance consistency with the above proposed changes, the Exchange is proposing that the three paragraphs set forth in the Prior Notice immediately below the Defaulted Senior Loan Representation (which related to certain attributes that the Adviser intended to seek in selecting investments for the Fund) (the ''Senior Loan/Other Debt Representations'') be replaced with the following:

''As a general matter, the Adviser intends to invest in Senior Loans or other debt of companies that it believes have developed strong positions within their respective markets and exhibit the potential to maintain sufficient cash flows and profitability to service their obligations in a range of economic environments. The Adviser will generally seek to invest in Senior Loans or other debt of companies that it believes possess advantages in scale, scope, customer loyalty, product pricing, or product quality versus their competitors, thereby minimizing business risk and protecting profitability.

As a general matter, the Adviser will seek to invest in Senior Loans or other debt of established companies it believes have demonstrated a record of profitability and cash flows over several economic cycles. The Adviser does not generally intend to invest in Senior Loans or other debt of primarily start-up companies, companies in turnaround situations or companies with speculative business plans; however, it may invest in such companies from time to time.

As a general matter, the Adviser intends to focus on investments in which the Senior Loans or other debt of a target company has an experienced management team with an established track record of success. The Adviser will generally require companies to have in place proper incentives to align management's goals with the Fund's goals.''

The discussion set forth in the Prior Notice under the heading ''Criteria to Be Applied to the Fund'' included a representation by the Adviser that under normal market conditions, the Fund would generally satisfy the generic fixed income initial listing requirements in Nasdaq Rule 5705(b)(4) on a continuous basis measured at the time of purchase, as described in the discussion under such heading. The Adviser confirms that going forward, the Fund would generally satisfy the generic fixed income listing requirements in Nasdaq Rule 5705(b)(4) (as such requirements have been modified since the issuance of the Prior Order) on a continuous basis measured at the time of purchase,[14] as described in the discussion under such heading, subject to the exceptions and modifications described in the Prior Notice and in this filing.[15]

Additionally, the discussion set forth in the Prior Notice under the heading ''Description of Senior Loans and the Senior Loan Market'' (the ''Senior Loan Discussion'') included certain representations as well as information pertaining to the Senior Loan market as it existed at or close to the time of the Prior Notice. Given the time that has elapsed, the Adviser believes that although certain provisions of the Senior Loan Discussion continue to be relevant, much of such discussion is no longer particularly useful. Therefore, the Exchange is proposing that the Senior Loan Discussion and accompanying heading be deleted in their entirety and, for purposes of this filing, replaced with the following:

Additional Information About the Fund's Investments in Senior Loans

The Fund will primarily invest in the more liquid and higher rated segment of the Senior Loan market. In this regard, the average credit rating of the Senior Loans that the Fund typically will hold will be rated between the categories of BB and B as rated by S&P. Further, the most actively traded loans in the Senior Loan market will generally have a tranche size outstanding (or total float of the issue) in excess of $250 million. The borrowers of these broadly syndicated bank loans will typically be followed by many ''buy-side'' and ''sell-side'' credit analysts who will in turn rely on the borrower to provide transparent financial information concerning its business performance and operating results. The Adviser represents that such borrowers typically provide significant financial transparency to the market through the delivery of financial statements on at least a quarterly basis as required by the executed credit agreements. Additionally, bids and offers in the Senior Loans are available throughout the trading day on larger Senior Loans issues with multiple dealer quotes available.

The Adviser represents that the underwriters, or agent banks, which distribute, syndicate and trade Senior Loans are among the largest global financial institutions. It is common for multiple firms to act as underwriters and market makers for a specific Senior Loan issue.

The Adviser represents that the segment of the Senior Loan market that the Fund will focus on is highly liquid.[16]

(4) Proposed Changes to Provisions Pertaining to ''Received Instruments'' (as defined below)

As described in the Prior Notice, under normal market conditions, the Fund invests at least 80% of its net assets (plus any borrowings for investment purposes) in Senior Loans. Additionally, under the heading ''Other Investments'', the Prior Notice stated that the Fund ''may receive equity, warrants, corporate bonds and other such securities'' (collectively, ''Received

(May 30, 2017) (SR–NASDAQ–2017–033) (order approving listing and trading of First Trust California Municipal High Income ETF); Securities Exchange Act Release No. 78913 (September 23, 2016), 81 FR 69109 (October 5, 2016) (SR–NASDAQ–2016–002) (order approving listing and trading of First Trust Municipal High Income ETF); and Securities Exchange Act Release No. 68972 (February 22, 2013), 78 FR 13721 (February 28, 2013) (SR–NASDAQ–2012–147) (order approving listing and trading of First Trust High Yield Long/Short ETF).

[14] In conjunction with the Adviser's confirmation of this representation, the Exchange believes that is appropriate to retain the phrase ''at the time of purchase'' in order to be consistent with the Prior Notice and to avoid causing the representation to become more burdensome than originally approved. The Exchange also notes that the Fund is subject to extensive representations, set forth both in the Prior Notice and in this filing, that were specifically tailored for the Fund and are not included in Nasdaq Rule 5705(b)(4) or Nasdaq Rule 5735(b)(1)(B).

[15] *See infra* the discussions relating to the proposed changes regarding the ''Convertible Securities Restriction'' (referencing Nasdaq Rule 5705(b)(4)(A)(iii)) and the ''Par Amount Representation'' (referencing Nasdaq Rule 5705(b)(4)(A)(vi)).

[16] *See* the discussion under ''Introduction,'' *supra.* Further, based on data available from the Loan Syndications and Trading Association (''LSTA''), the average monthly market breadth (*i.e.,* the number of unique loans traded monthly) reached a record 1,472 loans during the first quarter of 2018, with March 2018 being the fifth consecutive month during which more than 1,450 unique loans traded. Further, secondary loan trading volume totaled $54.6 billion in March 2018, bringing first quarter 2018 volumes to $164 billion. Trade activity increased 10% quarter-over-quarter, but fell 11% year-over-year. However, a record-breaking $181.6 billion of secondary trading volume occurred during the first quarter of 2017.

Instruments'') as a result of the restructuring of the debt of an issuer, or a reorganization of a senior loan or bond, or acquired together with a high yield bond or senior loan(s) of an issuer (collectively, the ''Received Instruments Triggers''). Further, the Prior Notice stated that such investments (*i.e.,* the Received Instruments) would be subject to the Fund's investment objectives, restrictions and strategies, as described therein.

Although the Adviser's overall approach to managing the Fund would not change, the Adviser believes that under certain circumstances, a limited ability to retain Received Instruments beyond the parameters set forth in the Prior Notice may serve to benefit shareholders to the extent it helps the Fund to pursue its investment objectives by retaining an investment interest, which the Adviser believes has merit, relating to a particular issuer.[17] Accordingly, to provide the Fund with additional flexibility with respect to its ability to retain Received Instruments, going forward, the Exchange is proposing that the Received Instruments Triggers and certain other restrictions and representations set forth in the Prior Notice be modified, as described below. The Exchange believes that concerns related to manipulation should be mitigated given that the proposed changes (a) would be limited in scope, and (b) would be subject to the limits described below, which should provide support regarding the Fund's anticipated liquidity profile going forward. Additionally, in this regard, the Exchange believes that the Adviser's expectation that generally, over time, significantly less than 20% of the Fund's net assets would be comprised of Equity-Based Received Instruments (which means that significantly less than 20% of the Fund's net assets are expected to be comprised of instruments that do not satisfy the ''ISG Restriction'' (as defined below)) should help to alleviate manipulation concerns.

Received Instruments Triggers. Going forward, the Exchange is proposing that the Received Instruments Triggers be modified to provide that the Fund may receive Received Instruments (a) in conjunction with the restructuring or reorganization, as applicable, of an issuer or any debt issued by an issuer, whether accomplished within or outside of a bankruptcy proceeding under 11 U.S.C. 101 *et seq.* (or any other similar statutory restructuring or reorganization proceeding) or (b) together with one or more Senior Loans (or other debt instruments) of an issuer.[18] The Fund's ability to retain Received Instruments would be subject to the Fund's investment objectives, restrictions and strategies, as described in the Prior Notice, subject to the modifications set forth in this filing. The Fund's aggregate holdings in (1) Received Instruments that are not Senior Loans and (2) Received Instruments that are Senior Loans and do not satisfy the Par Amount Representation (as defined below) would be limited to 20% of the Fund's net assets.

Equity and Equity-Like Instruments and Interests. Under the heading ''Other Investments,'' the Prior Notice stated that except for investments in ETFs that may hold non-U.S. issues, the Fund would not otherwise invest in non-U.S. equity issues (the ''Non-U.S. Equity Restriction''). The Prior Notice also stated that the equity securities in which the Fund may invest would be limited to securities that trade in markets that are members of the Intermarket Surveillance Group (''ISG''), which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange (the ''ISG Restriction''). In light of the many types of interests that may be received under the circumstances described above in the proposed Received Instruments Triggers and variations in nomenclature, the Exchange is proposing that, going forward, the Fund may retain, without regard to the Non-U.S. Equity Restriction or the ISG Restriction, Received Instruments that would encompass a broad range of U.S. and non-U.S. equity and equity-like positions and interests (''Equity-Based Received Instruments''). For the avoidance of doubt, for purposes of this filing, such Equity-Based Received Instruments shall mean any one or more of the following (whether received individually or as part of a unit or package of securities and/or other instruments): (i) Common and preferred equity interests in corporations; (ii) membership interests (*e.g.,* in limited liability companies), partnership interests, and interests in other types of entities (*e.g.,* state law business trusts and real estate investment companies); (iii) warrants; (iv) Tax Receivable Agreement (TRA) rights; (v) claims (generally, rights to payment, which can come in various forms, including without limitation claims units and claims trusts); (vi) trust certificates representing an interest in a trust established under a confirmed plan of reorganization; (vii) interests in liquidating, avoidance or other types of trusts; (viii) interests in joint ventures; and (ix) rights to acquire any of the Equity-Based Received Instruments described in clauses (i) through (viii).[19]

Except as described in this filing, the Fund's ability to retain Equity-Based Received Instruments would continue to be subject to the Fund's investment objectives, restrictions and strategies, as described in the Prior Notice. As indicated above, the Fund would not hold more than 20% of its net assets in Equity-Based Received Instruments.[20]

Convertible Securities/Debt Instruments. Under the heading ''Principal Investments'', the Prior Notice included a representation that each of the Fund's Senior Loan investments was expected to have no less than $250 million USD par outstanding (the ''Par Amount Representation'').[21] Further, under the heading ''Criteria to Be Applied to the Fund,'' in connection with certain criteria to be applied to the Fund based on the generic listing standards for Index Fund Shares set forth under Nasdaq Rule 5705(b)(4), the Prior Notice included a representation by the Adviser that the Fund would not typically invest in convertible securities, but that should the Fund make such investments, the Adviser would direct the Fund to divest any

[17] For example, a situation may arise where in lieu of a Senior Loan, bond, or other debt instrument that the Adviser originally selected, the Fund would be presented with new equity of or relating to the applicable issuer, but, in light of certain restrictions and representations in the Prior Notice, would be precluded from retaining the instrument and would therefore be required to dispose of the instrument despite its perceived benefit to shareholders of the Fund, in order to maintain compliance with the continued listing standards of the Exchange.

[18] For example, incidental to the Fund's purchase of a Senior Loan, the Fund may from time to time receive warrants and/or other equity securities as part of a unit or package combining a Senior Loan and such warrants and/or other equity securities.

[19] The Fund may be entitled to acquire additional Equity-Based Received Instruments by exercising warrants (included in clause (iii)) and/or rights (included in clause (ix)). For the avoidance of doubt, the Fund's ability to retain Equity-Based Received Instruments that it acquires by exercising such warrants and/or rights will be the same as its ability to retain Equity-Based Received Instruments that it otherwise receives.

[20] In this regard, however, the Adviser expects that, generally, over time, significantly less than 20% of the Fund's net assets would be comprised of Equity-Based Received Instruments. In addition, for the avoidance of doubt, Equity-Based Received Instruments would not be taken into account for purposes of compliance with the 80% Requirement.

[21] The Par Amount Representation is also deemed to include the similar representation set forth under ''Criteria to Be Applied to the Fund'' which provided that the Fund may invest in Senior Loans borrowed by entities that would not meet the criteria set forth in Nasdaq Rule 5705(b)(4)(A)(vi) provided the borrower has at least $250 million outstanding in Senior Loans.

converted equity security as soon as practicable (the ''Convertible Securities Restriction'').

Going forward, the Exchange is proposing that the Fund may retain in its portfolio, without regard to the Credit Metrics Representation (modified as described above), the Senior Loan/Other Debt Representations (modified as described above), the Par Amount Representation or the Convertible Securities Restriction, Received Instruments. Further, the Exchange is proposing that the Fund would be permitted to continue to retain in its portfolio Received Instruments that are convertible securities after such securities have converted (*i.e.,* as Equity-Based Received Instruments, which would not be taken into account for purposes of compliance with the 80% Requirement) without regard to the Convertible Securities Restriction, the Non-U.S. Equity Restriction or the ISG Restriction. In addition, for the avoidance of doubt, Received Instruments that are convertible securities, bonds, loans or other debt instruments of any type may be issued by U.S. and/or non-U.S. issuers.[22]

Except as described in this filing, the Fund's investments in, and ability to hold, Senior Loans, convertible securities and other debt instruments would continue to be subject to the Fund's investment objectives, restrictions and strategies, as described in the Prior Notice. As indicated above, the Fund would not hold more than 20% of its net assets, in the aggregate, in (1) Received Instruments that are not Senior Loans and (2) Received Instruments that are Senior Loans and do not satisfy the Par Amount Representation. Although it is possible that the Fund's holdings may include certain Received Instruments that are Senior Loans that *do not* satisfy the Par Amount Representation, at least 80% of the Fund's net assets would be comprised of Senior Loans that *do* satisfy the Par Amount Representation.

Availability of Information

Intra-day executable price quotations for the Senior Loans, fixed income securities and other assets (including any Received Instruments and Defaulted Loans) held by the Fund would be available from major broker-dealer firms and/or market data vendors (and/or, if applicable, on the exchange on which they are traded). Intra-day price information for the holdings of the Fund would be available through subscription services, such as Markit, Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors, and/or from independent pricing services.[23] In addition, the Fund's Disclosed Portfolio, as defined in Nasdaq Rule 5735(c)(2), would include the Received Instruments and Defaulted Loans held by the Fund. Further, for the Fund, an estimated value, defined in Nasdaq Rule 5735(c)(3) as the ''Intraday Indicative Value'' that reflects an estimated intraday value of the Fund's portfolio, would continue to be disseminated.

Surveillance

The Exchange represents that trading in the Shares would be subject to the existing trading surveillances, administered by both Nasdaq and also the Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[24] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, would communicate as needed regarding trading in the Shares and the exchange-listed instruments held by the Fund (including exchange-listed Equity-Based Received Instruments (if any) and any other exchange-listed equity securities) with other markets and other entities that are members of ISG or exchanges with which the Exchange has a comprehensive surveillance sharing agreement[25] and FINRA and the Exchange both may obtain trading information regarding trading in the Shares and such exchange-listed instruments held by the Fund from markets and other entities that are members of ISG, which include securities exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, would be able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Continued Listing Representations

All statements and representations made in this filing regarding (a) the description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, (c) dissemination and availability of the reference asset or intraday indicative values, or (d) the applicability of Exchange listing rules shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

The Adviser represents that there would be no change to the Fund's investment objectives. Except as provided herein, all other representations made in the Prior Notice would remain unchanged.[26] Except for the generic listing provisions of Nasdaq Rule 5735(b)(1) (the ''generic listing standards'')[27] and as otherwise

[22] This is consistent with the terms of the Prior Release, which, as set forth under the heading ''Principal Investments'' in the Prior Notice, stated that the Fund would invest in Senior Loans that are made predominantly to businesses operating in North America, but may also invest in Senior Loans made to businesses operating outside of North America, and, as set forth under the heading ''Other Investments'' in the Prior Notice, permits the Fund to invest in debt securities issued by non-U.S. companies that are traded over-the-counter or listed on an exchange.

[23] In conjunction with the information provided in this paragraph, the Exchange is proposing that the second sentence of footnote 40 of the Prior Notice (which provided that International Data Corporation (''IDC'') is the primary price source for ''Other Investments'') be deleted.

[24] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[25] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[26] Certain provisions of the Prior Notice, however, were based on information as of a particular date and there has not been an undertaking to update such information for purposes of this filing.

[27] In particular, consistent with the statements in the Prior Notice to the effect that the Fund may not meet the criteria set forth in Nasdaq Rule

provided in this filing, the Fund and the Shares would continue to comply with the requirements applicable to Managed Fund Shares under Nasdaq Rule 5735.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The purpose of the proposed rule change is to modify certain provisions set forth in the Prior Notice pertaining to (1) the Normal Market Conditions Definition; (2) the Fund's investments in Senior Loans and other debt, including, in particular, its investments in Defaulted Loans; and (3) the Fund's ability to retain Received Instruments. Except as provided herein, all other representations made in the Prior Notice would remain unchanged. Except for the generic listing standards and as otherwise provided in this filing, the Fund and the Shares would continue to comply with the requirements applicable to Managed Fund Shares under Nasdaq Rule 5735.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares would continue to be listed and traded on the Exchange pursuant to Nasdaq Rule 5735. The Exchange also notes the continued listing representations set forth above and that except as provided herein, all other representations made in the Prior Notice would remain unchanged. The Exchange represents that trading in the Shares would continue to be subject to the existing trading surveillances, administered by both Nasdaq and also FINRA, on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, would communicate as needed regarding trading in the Shares and the exchange-listed instruments held by the Fund (including exchange-listed Equity-Based Received Instruments (if any) and any other exchange-listed equity securities) with other markets and other entities that are members of ISG or exchanges with which the Exchange has a comprehensive surveillance sharing agreement and FINRA and the Exchange both may obtain information regarding trading in the Shares and such exchange-listed instruments held by the Fund from markets and other entities that are members of ISG, which include securities exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, would be able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE. The Exchange notes that although the proposed changes in this filing would permit the Fund to retain, without regard to the ISG Restriction and the Non-U.S. Equity Restriction, Equity-Based Received Instruments, the Fund would not hold more than 20% of its net assets in Equity-Based Received Instruments (which would not be taken into account for purposes of compliance with the 80% Requirement), and the Adviser expects that generally, over time, significantly less than 20% of the Fund's net assets would be comprised of Equity-Based Received Instruments, which, together, should mitigate the risks associated with manipulation.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Adviser represents that the purpose of the proposed changes is to provide it with greater flexibility in meeting the Fund's investment objectives by modifying certain provisions in the Prior Notice. Notwithstanding the proposed changes, however, consistent with the Prior Notice, it is anticipated that the Fund, in accordance with its principal investment strategy, would continue to invest approximately 50% to 75% of its net assets in Senior Loans that are eligible for inclusion in and meet the liquidity thresholds of the Primary Index and/or the Secondary Index.[28] Additionally, consistent with the Prior Notice, the aggregate amount of the Fund's net assets permitted to be held in illiquid securities (calculated at the time of investment), including Rule 144A securities, junior subordinated loans and unsecured loans deemed illiquid by the Adviser, would continue to be limited to 15%.

With respect to the proposed changes relating to the Normal Market Conditions Definition, the Exchange does not believe that the proposed changes raise concerns. Rather, the Exchange believes that the proposed changes would provide the Fund with appropriate flexibility to adapt to challenging conditions and would potentially help the Fund mitigate risks that may accompany adverse political or economic factors and other extraordinary circumstances. Moreover, the proposed changes are consistent with prior Commission approvals of proposed rule changes relating to other ETFs advised by the Adviser.

With respect to the proposed changes relating to Defaulted Loans, the Exchange notes that the Adviser believes that while the proposed changes would provide additional flexibility, the changes would not conflict with the Fund's investment objectives or overall investment strategies or be inconsistent with the Adviser's overall approach to managing the Fund. Rather, the proposed changes would enhance the Adviser's investment opportunities in managing the Fund. In this regard, as stated in the Prior Notice, in selecting securities for the Fund, the Adviser would continue to seek to construct a portfolio of loans that it believes is less volatile than the general loan market.

In addition, when making investments, the Adviser would continue to seek to maintain appropriate liquidity and price transparency for the Fund, and the key considerations of portfolio construction would continue to include liquidity, diversification and relative value. The Exchange believes that concerns related to manipulation should be mitigated given that the proposed changes (a) would be limited in scope, and (b) would be subject to the provisions described above, which should provide support regarding the Fund's anticipated liquidity profile going forward. In particular, pursuant to the 15% Limitation, Defaulted Loans would comprise no more than 15% of the Fund's net assets, as determined at the time of purchase. If, subsequent to being purchased or otherwise obtained by the Fund, a Senior Loan or other floating rate loan defaulted, the Fund could continue to hold such Senior

5705(b)(4)(A)(vi), the Fund may not meet the similar criteria of Nasdaq Rule 5735(b)(1)(B)(iv); however, under normal market conditions, the Fund would generally be expected to meet the other criteria set forth in Nasdaq Rule 5735(b)(1)(B). Additionally, the Fund's investments in equity securities are not generally expected to meet the criteria set forth in Nasdaq Rule 5735(b)(1)(A) and, to the extent the Fund invests in cash equivalents, such investments may not necessarily satisfy the criteria set forth in Nasdaq Rule 5735(b)(1)(C) (for example, the requirement that maturities be less than three months). The criteria set forth in Nasdaq Rules 5735(b)(1)(D), (E) and (F) are irrelevant given that the Fund does not and will not invest in listed or over-the-counter derivatives (and, for the avoidance of doubt, Equity-Based Received Instruments (including without limitation warrants and rights referenced above in footnote 19 and the accompanying text) will not be considered to be options or any other type of derivative).

[28] *See supra* footnotes 6–9 and accompanying text.

Loan or other floating rate loan without regard to the 15% Limitation; however, such Senior Loan or other floating rate loan would be considered a Defaulted Loan for purposes of determining whether the Fund's purchase of additional Defaulted Loans would comply with the 15% Limitation. Based on the foregoing, the Exchange does not believe that the proposed changes will adversely affect investors or Exchange trading.

With respect to the proposed changes relating to Received Instruments, although the Adviser's overall approach to managing the Fund would not change, the Adviser believes that under certain circumstances, a limited ability to retain Received Instruments beyond the parameters set forth in the Prior Notice may serve to benefit shareholders to the extent it helps the Fund to pursue its investment objectives by retaining an investment interest, which the Adviser believes has merit, relating to a particular issuer. The Exchange believes that concerns related to manipulation should be mitigated given that the proposed changes (a) would be limited in scope, and (b) would be subject to the limits described above, which should provide support regarding the Fund's anticipated liquidity profile going forward. As indicated above, the Fund would not hold more than 20% of its net assets, in the aggregate, in (1) Received Instruments that are not Senior Loans and (2) Received Instruments that are Senior Loans and do not satisfy the Par Amount Representation. Further, although it is possible that the Fund's holdings may include certain Received Instruments that are Senior Loans that *do not* satisfy the Par Amount Representation, at least 80% of the Fund's net assets would be comprised of Senior Loans that *do* satisfy the Par Amount Representation.

Additionally, the Exchange believes that the Adviser's expectation that generally, over time, significantly less than 20% of the Fund's net assets would be comprised of Equity-Based Received Instruments (which means that significantly less than 20% of the Fund's net assets are expected to be comprised of instruments that do not satisfy the ISG Restriction) should help to alleviate manipulation concerns. Further, Equity-Based Received Instruments would not be taken into account for purposes of compliance with the 80% Requirement. Based on the foregoing, the Exchange does not believe that the proposed changes will adversely affect investors or Exchange trading.

In addition, a large amount of information would continue to be publicly available regarding the Fund and the Shares, thereby promoting market transparency. For example, the Intraday Indicative Value, available on the Nasdaq Information LLC proprietary index data service, would continue to be widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund would continue to disclose on the applicable website[29] the Disclosed Portfolio that will form the basis for the Fund's calculation of net asset value (''NAV'') at the end of the business day. Intra-day executable price quotations for the Senior Loans, fixed income securities and other assets (including any Received Instruments and Defaulted Loans) held by the Fund would be available from major broker-dealer firms and/or market data vendors (and/or, if applicable, on the exchange on which they are traded). Intra-day price information for the holdings of the Fund would be available through subscription services, such as Markit, Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors, and/or from independent pricing services. In addition, the Fund's Disclosed Portfolio would include the Received Instruments and Defaulted Loans held by the Fund.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that the additional flexibility to be afforded to the Adviser under the proposed rule change is intended to enhance its ability to meet the Fund's investment objectives, to the benefit of investors. In addition, consistent with the Prior Notice, NAV per Share would continue to be calculated daily, and NAV and the Disclosed Portfolio would continue to be made available to all market participants at the same time. Further, as noted above and/or in the Prior Notice, investors would continue to have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change would provide the Adviser with additional flexibility, thereby helping the Fund to achieve its investment objectives. As such, it is expected that the Fund may become a more attractive investment product in the marketplace and, therefore, that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2018–050 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2018–050. This

[29] *www.ftportfolios.com.*

file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2018–050 and should be submitted on or before August 7, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–15177 Filed 7–16–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33159; 812–14829]

TriLine Index Solutions, LLC and ETF Series Solutions

July 11, 2018.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements in rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6–07(2)(a), (b), and (c) of Regulation S–X ("Disclosure Requirements"). The requested exemption would permit an investment adviser to hire and replace certain sub-advisers without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the sub-advisers.

APPLICANTS: ETF Series Solutions (the "Trust"), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and TriLine Index Solutions, LLC (the "Initial Adviser"), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940.

FILING DATES: The application was filed on October 4, 2017 and amended on May 2, 2018.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 3, 2018, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. Applicants: ETF Series Solutions, 615 E Michigan Street, Milwaukee, WI 53202, and TriLine Index Solutions, LLC, 8117 Preston Road, Suite 260, Dallas, TX 75225.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817, or Kaitlin C. Bottock, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. The Initial Adviser is the investment adviser to the Trust's Pickens Oil Response ETF ("Initial Fund") pursuant to an investment management agreement with the Trust ("Investment Management Agreement").[1] Under the terms of the Investment Management Agreement, the Adviser, subject to the supervision of the board of trustees of the Trust ("Board"), provides continuous investment management of the assets of each Subadvised Fund. Consistent with the terms of the Investment Management Agreement, the Adviser may, subject to the approval of the Board, delegate portfolio management responsibilities of all or a portion of the assets of a Subadvised Fund to one or more Sub-Advisers.[2] The Adviser will continue to have overall responsibility for the management and investment of the assets of each Subadvised Fund. The Adviser will evaluate, select, and recommend Sub-Advisers to manage the assets of a Subadvised Fund and will oversee, monitor and review the Sub-Advisers and their performance and

[30] 17 CFR 200.30–3(a)(12).

[1] Applicants request relief with respect to the Initial Fund, as well as to any future series of the Trust and any other existing or future registered open-end management investment company or series thereof that, in each case, is advised by the Initial Adviser or any entity controlling, controlled by, or under common control with, the Initial Adviser or its successors (each, also an "Adviser"), uses the multi-manager structure described in the application, and complies with the terms and conditions set forth in the application (each, a "Subadvised Fund"). For purposes of the requested order, "successor" is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. Future Subadvised Funds may be operated as a master-feeder structure pursuant to section 12(d)(1)(E) of the Act. In such a structure, certain series of the Trust (each, a "Feeder Fund") may invest substantially all of their assets in a Subadvised Fund (a "Master Fund") pursuant to section 12(d)(1)(E) of the Act. No Feeder Fund will engage any sub-advisers other than through approving the engagement of one or more of the Master Fund's sub-advisers.

[2] As used herein, a "Sub-Adviser" for a Subadvised Fund is (1) an indirect or direct "wholly owned subsidiary" (as such term is defined in the Act) of the Adviser for that Subadvised Fund, or (2) a sister company of the Adviser for that Subadvised Fund that is an indirect or direct "wholly-owned subsidiary" of the same company that, indirectly or directly, wholly owns the Adviser (each of (1) and (2) a "Wholly-Owned Sub-Adviser" and collectively, the "Wholly-Owned Sub-Advisers"), or (3) not an "affiliated person" (as such term is defined in section 2(a)(3) of the Act) of the Subadvised Fund, any Feeder Fund invested in a Master Fund, the Trust, or the Adviser, except to the extent that an affiliation arises solely because the Sub-Adviser serves as a sub-adviser to a Subadvised Fund ("Non-Affiliated Sub-Advisers").

recommend the removal or replacement of Sub-Advisers.

2. Applicants request an order to permit the Adviser, subject to the approval of the Board, to enter into investment sub-advisory agreements with the Sub-Advisers (each, a ''Sub-Advisory Agreement'') and materially amend such Sub-Advisory Agreements without obtaining the shareholder approval required under section 15(a) of the Act and rule 18f–2 under the Act.[3] Applicants also seek an exemption from the Disclosure Requirements to permit a Subadvised Fund to disclose (as both a dollar amount and a percentage of the Subadvised Fund's net assets): (a) The aggregate fees paid to the Adviser and any Wholly-Owned Sub-Adviser; (b) the aggregate fees paid to Non-Affiliated Sub-Advisers; and (c) the fee paid to each Affiliated Sub-Adviser (collectively, Aggregate Fee Disclosure'').[4]

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions provide for, among other safeguards, appropriate disclosure to Subadvised Funds' shareholders and notification about sub-advisory changes and enhanced Board oversight to protect the interests of the Subadvised Funds' shareholders.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such relief is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard because, as further explained in the application, the Investment Management Agreements will remain subject to shareholder approval, while the role of the Sub-Advisers is substantially equivalent to that of individual portfolio managers, so that requiring shareholder approval of Sub-Advisory Agreements would impose unnecessary delays and expenses on the Subadvised Funds. Applicants believe that the requested relief from the Disclosure Requirements meets this standard because it will improve the Adviser's ability to negotiate fees paid to the Sub-Advisers that are more advantageous for the Subadvised Funds.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–15174 Filed 7–16–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33158; 812–14828]

SL Advisors, LLC and ETF Series Solutions

July 11, 2018.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements in rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6–07(2)(a), (b), and (c) of Regulation S–X (''Disclosure Requirements''). The requested exemption would permit an investment adviser to hire and replace certain sub-advisers without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the sub-advisers.

APPLICANTS: ETF Series Solutions (the ''Trust''), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and SL Advisors, LLC (the ''Initial Adviser''), a New Jersey limited liability company registered as an investment adviser under the Investment Advisers Act of 1940.

FILING DATES: The application was filed on October 2, 2017 and amended on May 3, 2018.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 3, 2018, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. Applicants: ETF Series Solutions, 615 E Michigan Street, Milwaukee, WI 53202, and SL Advisors, LLC, 210 Elmer Street, Westfield, NJ 07090–2128.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817, or Kaitlin C. Bottock, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. The Initial Adviser is the investment adviser to the American Energy Independence ETF (''Initial Fund'') pursuant to an investment management agreement with the Trust (''Investment Management Agreement'').[1] Under the terms of the Investment Management Agreement, the Adviser, subject to the supervision of

[3] The requested relief will not extend to any sub-adviser, other than a Wholly-Owned Sub-Adviser, who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Subadvised Fund, of any Feeder Fund, or of the Adviser, other than by reason of serving as a sub-adviser to one or more of the Subadvised Funds (''Affiliated Sub-Adviser'').

[4] For any Subadvised Fund that is a Master Fund, the relief would also permit any Feeder Fund invested in that Master Fund to disclose Aggregate Fee Disclosure.

[1] Applicants request relief with respect to the Initial Fund, as well as to any future series of the Trust and any other existing or future registered open-end management investment company or series thereof that, in each case, is advised by the Initial Adviser or any entity controlling, controlled by, or under common control with, the Initial Adviser or its successors (each, also an ''Adviser''), uses the multi-manager structure described in the application, and complies with the terms and conditions set forth in the application (each, a ''Subadvised Fund''). For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. Future Subadvised Funds may be operated as a master-feeder structure pursuant to section 12(d)(1)(E) of the Act. In such a structure, certain series of the Trust (each, a ''Feeder Fund'') may invest substantially all of their assets in a Subadvised Fund (a ''Master Fund'') pursuant to section 12(d)(1)(E) of the Act. No Feeder Fund will engage any sub-advisers other than through approving the engagement of one or more of the Master Fund's sub-advisers.

the board of trustees of the Trust (''Board''), provides continuous investment management of the assets of each Subadvised Fund. Consistent with the terms of the Investment Management Agreement, the Adviser may, subject to the approval of the Board, delegate portfolio management responsibilities of all or a portion of the assets of a Subadvised Fund to one or more Sub-Advisers.[2] The Adviser will continue to have overall responsibility for the management and investment of the assets of each Subadvised Fund. The Adviser will evaluate, select, and recommend Sub-Advisers to manage the assets of a Subadvised Fund and will oversee, monitor and review the Sub-Advisers and their performance and recommend the removal or replacement of Sub-Advisers.

2. Applicants request an order to permit the Adviser, subject to the approval of the Board, to enter into investment sub-advisory agreements with the Sub-Advisers (each, a ''Sub-Advisory Agreement'') and materially amend such Sub-Advisory Agreements without obtaining the shareholder approval required under section 15(a) of the Act and rule 18f–2 under the Act.[3] Applicants also seek an exemption from the Disclosure Requirements to permit a Subadvised Fund to disclose (as both a dollar amount and a percentage of the Subadvised Fund's net assets): (a) The aggregate fees paid to the Adviser and any Wholly-Owned Sub-Advisers; (b) the aggregate fees paid to Non-Affiliated Sub-Advisers; and (c) the fee paid to each Affiliated Sub-Adviser (collectively, Aggregate Fee Disclosure'').[4]

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions provide for, among other safeguards, appropriate disclosure to Subadvised Funds' shareholders and notification about sub-advisory changes and enhanced Board oversight to protect the interests of the Subadvised Funds' shareholders.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such relief is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard because, as further explained in the application, the Investment Management Agreements will remain subject to shareholder approval, while the role of the Sub-Advisers is substantially equivalent to that of individual portfolio managers, so that requiring shareholder approval of Sub-Advisory Agreements would impose unnecessary delays and expenses on the Subadvised Funds. Applicants believe that the requested relief from the Disclosure Requirements meets this standard because it will improve the Adviser's ability to negotiate fees paid to the Sub-Advisers that are more advantageous for the Subadvised Funds.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–15173 Filed 7–16–18; 8:45 am]

BILLING CODE 8011–01–P

[2] As used herein, a ''Sub-Adviser'' for a Subadvised Fund is (1) an indirect or direct ''wholly owned subsidiary'' (as such term is defined in the Act) of the Adviser for that Subadvised Fund, or (2) a sister company of the Adviser for that Subadvised Fund that is an indirect or direct ''wholly-owned subsidiary'' of the same company that, indirectly or directly, wholly owns the Adviser (each of (1) and (2) a ''Wholly-Owned Sub-Adviser'' and collectively, the ''Wholly-Owned Sub-Advisers''), or (3) not an ''affiliated person'' (as such term is defined in section 2(a)(3) of the Act) of the Subadvised Fund, any Feeder Fund invested in a Master Fund, the Trust, or the Adviser, except to the extent that an affiliation arises solely because the Sub-Adviser serves as a sub-adviser to a Subadvised Fund (''Non-Affiliated Sub-Advisers'').

[3] The requested relief will not extend to any sub-adviser, other than a Wholly-Owned Sub-Adviser, who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Subadvised Fund, of any Feeder Fund, or of the Adviser, other than by reason of serving as a sub-adviser to one or more of the Subadvised Funds (''Affiliated Sub-Adviser'').

[4] For any Subadvised Fund that is a Master Fund, the relief would also permit any Feeder Fund invested in that Master Fund to disclose Aggregate Fee Disclosure.

DEPARTMENT OF STATE

[Public Notice: 10464]

Notice of Renewal of the Charter of the International Telecommunication Advisory Committee (ITAC)

This notice announces the renewal of the Charter for the International Telecommunication Advisory Committees (ITAC). In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. Appendix) and the general authority of the Secretary of State and the Department of State set forth in Title 22 of the United States code, in particular Sections 2656 and 2707, the charter of the International Telecommunication Advisory Committee has been renewed for another two years. The ITAC consists of members of the telecommunications industry, ranging from network operators and service providers to equipment vendors, members of academia, members of civil society, and officials of interested government agencies. The ITAC provides views and advice to the Department of State on positions on international telecommunications and information policy matters. This advice has been a major factor in ensuring that the United States was well prepared to participate effectively in the international telecommunications and information policy arena, including the International Telecommunication Union (ITU), the Organization of American States Inter-American Telecommunication Commission (CITEL), the Organization for Economic Cooperation and Development (OECD), the Asia Pacific Economic Cooperation Forum Telecommunications and Information Working Group, and other international bodies addressing communication and information policy issues.

FOR FURTHER INFORMATION CONTACT: Please contact Franz Zichy at 202–647–5778, *zichyfj@state.gov.*

Stephan A. Lang,

Acting Director, Multilateral Affairs, Cyber and International Communications and Information Policy, U.S. Department of State.

[FR Doc. 2018–15258 Filed 7–16–18; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Public Meeting: National Dialogue on Highway Automation

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice of public meetings.

SUMMARY: The FHWA is holding a National Dialogue on Highway Automation through a series of public meetings across the country to seek input on the integration of automated vehicles on the Nation's roadways. The objectives of the public meetings are: (1) To engage with a diverse group of stakeholders to understand key issues regarding automated vehicles and their implications for the roadway infrastructure; and (2) to gather input on highway automation to help inform FHWA research, policy, and programs. The public meetings will have

presentations and breakout sessions during which participants can provide input to FHWA and DOT representatives. The National Dialogue meetings began on June 26 and will continue through the end of 2018.

DATE AND TIME: The FHWA will hold the public meetings in approximately five locations across the country. A tentative schedule is outlined below and is subject to change. Meeting information will be updated and made available on the FHWA National Dialogue on Highway Automation website: *https://ops.fhwa.dot.gov/automationdialogue/index.htm.*

Tentative meetings include the following:

- *Week of July 30, 2018:* National Workshop 2: Data and Digital Infrastructure (Seattle, Washington)
- *September 2018:* National Workshop 3: Freight (Chicago, Illinois)
- *October 24–25, 2018:* National Workshop 4: Operations (Phoenix, Arizona)
- *November 14–15, 2018:* National Workshop 5: Infrastructure and Multi-Modal Safety (Austin, Texas)

FOR FURTHER INFORMATION CONTACT: If you have questions about the public meeting, please contact John Corbin at *john.corbin@dot.gov* or *highwayautomation@dot.gov.*

SUPPLEMENTARY INFORMATION: Registration is necessary for all attendees. Registration information will be available at *https://ops.fhwa.dot.gov/automationdialogue/index.htm.* In-person attendance will be limited, so advance registration is required for all attendees. Should it be necessary to cancel the meeting due to inclement weather or other emergency, FHWA will take all available measures to notify registered participants beforehand.

Background

Automated vehicles have the potential to significantly transform the Nation's roadways. They could help save lives, expand access to transportation, and improve the convenience of travel. However, even as these technologies offer new opportunities, they may introduce new challenges for the agencies responsible for the planning, design, construction, operation, and maintenance of the Nation's roadway infrastructure. As a result, FHWA is interested in better understanding the implications of highway automation.

This National Dialogue on Highway Automation is an opportunity to engage the public and broader stakeholder community to understand their key areas of interest. These stakeholders will include original equipment manufacturers, technology suppliers, transportation network companies, associations, and public sector partners. The National Dialogue will help inform national research, policy, and implementation assistance activities to support automation readiness.

Meeting Format

The National Dialogue meetings are designed to support significant interaction among participants. Workshops will include discussions with government and industry leaders, breakout sessions, listening sessions, and opportunities to collaborate with meeting participants. Each workshop will run from 1 to 1.5 days and will have opportunities for general and topic-specific input. Focus areas identified include policy and planning, data and digital infrastructure, freight, operations, safety, infrastructure, and multi-modal safety.

Authority: 49 U.S.C. 1.25a.

Issued on: July 6, 2018.

Brandye L. Hendrickson,

Acting Administrator, Federal Highway Administration.

[FR Doc. 2018–15232 Filed 7–16–18; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2017–0023]

Proposed Guidance on Safe Harbor Rate Streamlining for Engineering and Design Services Consultant Contracts

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice; request for comment.

SUMMARY: The FHWA is soliciting comments regarding proposed guidance on implementation of a Safe Harbor indirect cost rate for certain engineering design service firms that find establishing such rates to be costly and a barrier to participating in engineering and design service contracts reimbursed with Federal-aid Highway Program (FAHP) Funds. The FHWA seeks comment on its proposed implementation of a Safe Harbor indirect cost rate and its intention to notify all contracting agencies receiving FAHP funds that an agency-developed Safe Harbor indirect cost rate for eligible consulting firms may be used as a component of a risk-based oversight process to provide reasonable assurance to FHWA that consultant costs on FAHP-funded contracts are allowable in accordance with the Federal regulations.

DATES: Comments must be received on or before August 16, 2018. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, or fax comments to (202) 493–2251. Alternatively, comments may be submitted to the Federal eRulemaking portal at: *http://www.regulations.gov.* All comments must include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. Those desiring notifications of receipt of comments must include a self-addressed, stamped postcard, or you may print the acknowledgment page that appears after submitting comments electronically. Anyone can search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). Anyone may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78).

FOR FURTHER INFORMATION CONTACT: For questions about the program discussed herein, contact John McAvoy, Consultant Services Program Manager, FHWA Office of Program Administration, (202) 853–5593 or via email at *john.mcavoy@dot.gov.* For legal questions, please contact Steve Rochlis, Office of the Chief Counsel, (202) 366–1395, or via email at *steve.rochlis@dot.gov.* Office hours are from 8:00 a.m. to 4:30 p.m., ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Federal eRulemaking portal at: *http://www.regulations.gov.* The website is available 24 hours each day, 365 days each year. Please follow the instructions. Electronic submission and retrieval help and guidelines are available under the help section of the website. An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: *http://www.archives.gov* and the U.S. Government Publishing

Office's web page at: *http://www.access.gpo.gov/nara.*

Purpose of This Notice

The FHWA is requesting comment on its proposed guidance for implementation of a Safe Harbor indirect cost rate and its intention to notify all contracting agencies receiving FAHP funds that an agency-developed Safe Harbor indirect cost rate for eligible consulting firms may be used as a component of a risk-based oversight process to provide reasonable assurance to FHWA that consultant costs on FAHP-funded contracts are allowable in accordance with the Federal regulations. Comments received through this notice will be considered by FHWA to assess implementation of a Safe Harbor indirect cost rate.

Background

Consulting firms and contractors providing services under a contract reimbursed with FAHP funds are required to account for, and bill, costs in accordance with the Federal cost principles of 48 CFR part 31. In addition, Federal law and regulations for the FAHP require contracting agencies to accept indirect cost rates developed in accordance with the Federal cost principles and to apply those rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment (as specified in 23 U.S.C. 112(b)(2) and 23 CFR 172.7). As such, consulting firms providing engineering and design-related services to a contracting agency under a contract funded by the FAHP are required to develop indirect cost rates in accordance with the Federal cost principles on an annual basis. Similarly, contracting agencies must provide reasonable assurance that consulting firm costs claimed under FAHP-funded contracts, including both direct and indirect costs, are allowable in accordance with the Federal cost principles.

Adhering to these accounting requirements can place a significant burden on some consulting firms and may create a barrier for otherwise eligible and qualified firms to compete for FAHP-funded contracts. For example, small firms, including many Disadvantaged Business Enterprise firms, may lack the financial expertise to develop an indirect cost rate that would be acceptable to a cognizant Federal or State government agency, or lack the resources to hire a Certified Public Accountant (CPA) to conduct an audit to provide assurance as to the development of an indirect cost rate compliant with Federal requirements. Often, a CPA audit is cost-prohibitive given the size and scope of the federally funded contracts for which the firm could compete. In addition, new or start-up firms generally do not have a contract-related cost history to use as a base for development of an indirect cost rate. Other well-established firms may not have previous experience with federally funded contracts for which a compliant indirect cost rate could be developed. Currently, these firms are prohibited from participating in FAHP-funded contracts without the development and application of a provisional indirect cost rate for the specific contract, which is adjusted based upon a contracting agency conducted final audit at the completion of the contract. Even the smallest final audit requires a significant commitment of contracting agency audit resources.

To remove these barriers for otherwise qualified consulting firms, and to enhance contracting agency oversight of compliance with Federal cost principles, in 2012, the FHWA developed the Safe Harbor Indirect Cost Rate Test and Evaluation pilot. Ten contracting agencies representing a diversity of location and size participated in the test. Eligible consulting firms with whom the contracting agencies do business have the option of applying a Safe Harbor indirect cost rate to contracts in instances where the firm does not have an established rate for the reasons stated above. The selected Safe Harbor indirect cost rate is significantly lower than the industry average rate, providing an incentive for firms to develop an actual rate, when able to do so and consistent with their cost experience, in accordance with the Federal cost principles as required in Federal law and regulation.

Test results have shown a reduction in the financial management barriers that prevented new, small, or disadvantaged but qualified consulting firms from entering the federally funded engineering services market, and creation of a framework for these consulting firms to establish a cognizant agency approved indirect cost rate. Contracting agencies report that 17 consulting firms have graduated from the program after developing a cost history leading to an approved indirect cost rate. In addition, following a risk-based approach allows contracting agency oversight and audit resources to shift focus from those firms opting to apply a Safe Harbor indirect cost rate (which are generally employed on fewer contracts or on smaller contracts) to those firms with multiple, higher dollar contracts and more complex accounting structures.

The test and evaluation of the Safe Harbor indirect cost rate was conducted by the following contracting agencies and respective FHWA Division Offices: Alabama DOT, California Department of Transportation, Michigan DOT, Missouri DOT, North Carolina DOT, North Dakota DOT, Ohio DOT, South Carolina DOT, Texas DOT, and Washington State DOT. In these States, eligible consulting firms have the option of using a Safe Harbor indirect cost rate on contracts executed within the established test period. A consulting firm is considered eligible if it has not had an indirect cost rate previously accepted by a cognizant agency (*i.e.,* a governmental agency that has performed or reviewed an audit in accordance with generally accepted government auditing standards (GAGAS) to test compliance with the requirements of the Federal cost principles (as specified in 48 CFR part 31) and issued an audit report of the consultant's indirect cost rate, as described in 23 CFR 172.3). Consulting firms with an audited, or otherwise accepted, actual indirect cost rate, developed in accordance with the Federal cost principles, are not considered eligible to participate in the Safe Harbor Program. Contracting agencies are given discretion to determine the eligibility of consulting firms for a Safe Harbor indirect cost rate for use on a case-by-case basis and are required to document their decision.

Through collaboration with the test contracting agencies, FHWA's test and evaluation pilot used a nationwide Safe Harbor indirect cost rate of 110 percent of a firm's direct salary rate. The test contracting agencies agreed that this rate was conservative and significantly lower than the industry average of typically claimed indirect cost rates. As such, while still providing for reimbursement of a significant portion of basic overhead costs, the use of this conservative rate incentivized consulting firms to develop an actual indirect cost rate when able to do so. The Safe Harbor indirect cost rate also provided a minimal risk to contracting agencies for overpayment to those consulting firms participating in the program. Based on FHWA's experience with this pilot, FHWA is proposing to expand the use of the Safe Harbor indirect cost rate, beyond the 10 pilot States, to allow eligible consulting firms to use a State contracting agency–developed indirect cost rate.

A Safe Harbor indirect cost rate is not intended for use on field-based contracts involving field overhead rates. Other direct costs that are not considered to be included within the Safe Harbor Program include: Travel costs (airfare, rental car, mileage, lodging, per diem, etc.), external printing and reproduction costs, mailing and shipping costs, equipment rental fees, sub-consultants, and other direct costs as appropriate to the contracted services.

A Safe Harbor indirect cost rate is applied to new contracts executed with a contracting agency, or subrecipient. Once applied to a contract, the Safe Harbor indirect cost rate should be used for the duration of the contract. It is not uncommon for new or start-up firms to show large fluctuations in an indirect cost rate in the initial years of operation, before contract workload normalizes. Using the Safe Harbor indirect cost rate for the duration of a contract provides cost certainty in estimating the total contract amount and helps reduce the risk of costly contract modifications, necessary due to a significant fluctuation of an indirect cost rate. Similarly, a Safe Harbor indirect cost rate may be used in the determination of the fixed fee portion of the contract, which would not be subject to adjustment unless warranted by changes to the scope of work or duration of the contract.

Eligible consulting firms that use the Safe Harbor indirect cost rate, and do not have established salaries or wage rates for employees or classes of employees, use negotiated, fixed hourly labor rates for the direct labor portion of the contracted services. The negotiated direct labor rate should meet the reasonableness provisions as set forth in 2 CFR 200.404, considering the nature of the services to be provided. Where appropriate for the scope of services under contract, a ''fully loaded'' hourly rate could be established utilizing a reasonable hourly direct labor rate, a Safe Harbor indirect cost rate as the overhead rate component, and an appropriate amount of fixed fee that considers the complexity and risk involved.

The Safe Harbor indirect cost rate is intended to be a component of a contracting agency's risk-based oversight process. Contracting agencies using the Safe Harbor indirect cost rate must first develop written risk-based oversight procedures designed to provide reasonable assurance of consultant compliance with the Federal cost principles in accordance with 23 CFR 172.11(c)(2). The use of the Safe Harbor indirect cost rate is voluntary for both the contracting agency and for eligible firms. In reviewing the eligibility of a consulting firm opting to use the Safe Harbor indirect cost rate, it may be necessary to contact the State department of transportation in the home State of the consulting firm to verify the audit history of the firm and ensure the firm does not have an audited or otherwise accepted indirect cost rate developed in accordance with the Federal cost principles. Use and application of the Safe Harbor indirect cost rate by eligible firms is one component of this risk-based oversight process. Some evaluation of the accounting system of the consulting firms choosing to use the Safe Harbor indirect cost rate may be necessary to verify the capability of accumulating and tracking direct labor for applying the Safe Harbor indirect cost rate, as well as for billing other direct costs by contract, segregating indirect costs, etc. The Internal Control Questionnaire provided in Appendix B of the *AASHTO Uniform Audit and Accounting Guide (2016 Edition)* may be used by contracting agencies as a tool for assessing the accounting system capabilities of firms opting to use the Safe Harbor indirect cost rate. A contracting agency may wish to conduct post contract audits or other evaluations to verify accurate accumulation and billing of direct contract costs. However, an audit of indirect costs is not necessary for Safe Harbor indirect cost rate contracts, as the rate should be applied for the duration of the contract, and retroactive adjustments to indirect costs incurred on these contracts is not necessary.

If a contracting agency elects to use a Safe Harbor indirect cost rate program as an element of a risk-based oversight process in compliance with 23 CFR 172.11(c)(2), the agency shall prepare and maintain written policies and procedures establishing the program in accordance with 23 CFR 172.5(c)(10). In conjunction with the development of written risk-based oversight procedures, the contracting agency should consider any actions necessary to comply with State regulation, policy, and/or procedures, as well as any revisions needed in boilerplate contract language or cost certifications on contracts applying the Safe Harbor indirect cost rate.

The FHWA Division Office will serve as the primary point of contact and liaison for the contracting agency. The FHWA Division Offices also will monitor the respective contracting agency's use of the Safe Harbor indirect cost rate in accordance with the approved, written risk-based oversight procedures.

Request for Comment

Federal regulations require contracting agencies to provide reasonable assurance to the FHWA that consultant costs on contracts reimbursed with FAHP funding are allowable in accordance with the Federal cost principles. The FHWA is seeking public comment on expanding the use of the Safe Harbor indirect cost rate, beyond the 10 pilot States, to allow other interested contracting agencies to use a self-administered Safe Harbor Program, under a risk-based approach compliant with 23 CFR 172.11(c), to provide that reasonable assurance. A self-administered Safe Harbor Program would involve, but not be limited to, the following:

(1) A contracting agency developed risk-based analysis compliant with 23 CFR 172.11(c)(2);

(2) Written policies and procedures (Work Plan) consistent with the pilot program detailed above; and

(3) Approval from the FHWA Division Office in the relevant State.

The workplan used in the test evaluation has been posted on the docket as an example of the elements that should be included in a risk-based oversight procedure submitted to FHWA for approval.

Commenters are encouraged to address any or all the areas listed above. The FHWA encourages commenters to submit any information or data demonstrating the benefits, costs, and cost-savings of this program. For example, FHWA would be interested in receiving quantifiable estimates of the burden associated with the annual development of an indirect cost rate, hiring a CPA to conduct necessary audits, and any other costs that would be avoided by a consulting firm or contracting agency in utilizing this Safe Harbor indirect cost rate. Commenters are also encouraged to focus on matters within the control of FHWA. The FHWA will consider public comment before adopting its final guidance on the application of a Safe Harbor indirect cost rate under a risk-based stewardship approach.

Authority: 23 U.S.C. 112, 145 and 315; 23 CFR 1.32, and 172; 49 CFR 1.85.

Issued on: July 9, 2018.

Brandye L. Hendrickson,

Acting Administrator, Federal Highway Administration.

[FR Doc. 2018–15231 Filed 7–16–18; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0181]

Hours of Service of Drivers: Waste Management Holdings, Inc.; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from Waste Management Holdings, Inc., (WMH) requesting an exemption from the requirement of the hours-of-service (HOS) regulations that drivers of commercial motor vehicles (CMVs) qualifying for the ''short-haul—100 air-mile radius driver'' exception must return to the original work reporting location within 12 hours of coming on duty. WMH asks that its short-haul CMV drivers be permitted to return within 14 hours withour losing their short-haul status. FMCSA requests public comment on WMH's application for exemption.

DATES: Comments must be received on or before August 16, 2018.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2018–0181 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the *Public Participation and Request for Comments* section below for further information.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number of this notice. DOT posts all comments received without change to *www.regulations.gov,* including personal information in a comment. Please see the *Privacy Act* heading below.

Docket: To read background documents or comments, go to *www.regulations.gov* or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

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

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, please contact Mr. Robert Schultz, FMCSA Driver and Carrier Operations Division; Telephone: (202) 366–2718; Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2018–0181), the specific section of this document to which the comment applies, and provide reasons for suggestions or recommendations. You may submit online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in your document so the Agency can contact you if it has questions about your submission.

To submit your comments online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2018–0181'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on the ''Submit a Formal Comment'' button and type your comment into the text box in the following screen. Indicate whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or deny this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

Drivers qualifying for the HOS short-haul exception in 49 CFR 395.1(e)(1) do not have to maintain a record of duty status (RODS) on board the vehicle, provided that (among other things) they return to their normal work reporting location and are relased from work within 12 hours after coming on duty. A driver who exceeds the 12-hour limit loses the short-haul exception and must immediately prepare RODS for the entire day, often by means of an electronic logging device (ELD) (49 CFR 395.8(a)(1)(i)).

WMH seeks an exemption for approximately 18,000 drivers in 84 separate subsidiaries or affiliates who operate CMVs to collect waste and recycling materials. These drivers routinely qualify for the short-haul exception. 395.1(e)(1). However, occasionally they cannot complete their duty day within 12 hours. WMH seeks an exemption to allow its drivers to continue to qualify for the short-haul exception up to the 14th hour after coming on duty.

WM states that ELDs delay and distract its drivers working to collect waste and recycling materials because they require excessive interaction. The exemption application states that, as a result of frequent stops to pick up trash, its drivers re required to interact with the ELD ''hundreds if not thousands of times a day.'' WMH asserts that ELDs are not designed for such operations and that they lack ''a provision for blocking service time.'' WMH also states that the ELDs do not accurately capture the duty status of its drivers. According to the application, WMH has been actively working with its ELD provider to improve ELD performance in this environment, but that progress has been limited. WMH also asserts that the excessive driver-ELD interaction impacts ''driver safety and the safety of the communities we serve.''

WMH notes that certain CMV drivers may already operate up to 14 hours without forfeiting short-haul status, for example those in the ready-mixed concrete industry [49 CFR 395.1(e)(1)(ii)(B)] or the asphalt-paving business [83 FR 3864, Jan. 26, 2018]. It asserts that WMH's operations are similar to these industries because its drivers ''spend a significant portion of their days conducting non-driving duties.'' It states that WMH anticipates ''no reduction in safety from the exemption requested, and a potential for increased safety due to reduced [driver] distraction.''

WMH cites its fatigue management program as further evidence that operations with the exemption in place would equal or exceed the level of safety under the current HOS regulations. This program includes the use of video event recorders triggered by unusual events suggestive of driver fatigue, like aggressive braking, steering, or acceleration. When WMH's assessment of the recording indicates that driver fatigue is involved, WMH managers may discipline the driver. More commonly, WMH managers assess the driver's overall lifestyle and health, including his or her off-duty activities and medical history, and counsel the individual on changes he or she can undertake to ameliorate fatigue. WMH managers also ride with each employee-driver several times a year to observe his or her performance.

WMH requests a 5-year exemption. WMH's application for exemption, including a list of its 84 operating companies, is available for review in the docket for this notice.

Issued on: June 22, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–15264 Filed 7–16–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0014]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 13 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions will enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Comments must be received on or before August 16, 2018.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2018–0014 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *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.*

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a five-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The 13 individuals listed in this notice have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal

Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

In July 1992, the Agency first published the criteria for the Vision Waiver Program, which listed the conditions and reporting standards that CMV drivers approved for participation would need to meet (Qualification of Drivers; Vision Waivers, 57 FR 31458, July 16, 1992). The current Vision Exemption Program was established in 1998, following the enactment of amendments to the statutes governing exemptions made by § 4007 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 401 (June 9, 1998). Vision exemptions are considered under the procedures established in 49 CFR part 381 subpart C, on a case-by-case basis upon application by CMV drivers who do not meet the vision standards of 49 CFR 391.41(b)(10).

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past three years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrated the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used three consecutive years of data, comparing the experiences of drivers in the first two years with their experiences in the final year.

II. Qualifications of Applicants

Ronald D. Blakely

Mr. Blakely, 63, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/50. Following an examination in 2018, his optometrist stated, ''I feel that Ron has sufficient vision to perform the driving tasks required to operate a commercial vehicle since the amblyopia is longstanding, stable, and he is well adjusted.'' Mr. Blakely reported that he has driven straight trucks for 35 years, accumulating 1.58 million miles, and buses for one year, accumulating 25,000 miles. He holds a Class CB CDL from Michigan. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Homero Dominguez

Mr. Dominguez, 51, has a prosthetic left eye due to a traumatic incident in 2000. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2018, his optometrist stated, ''In my opinion Mr. Dominguez has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Dominguez reported that he has driven tractor-trailer combinations for four years, accumulating 340,000 miles. He holds a Class A CDL from Texas. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Larry L. George

Mr. George, 59, has had a corneal scar in his right eye since childhood. The visual acuity in his right eye is counting fingers, and in his left eye, 20/25. Following an examination in 2018, his ophthalmologist stated, ''Mr. George's vision is sufficient to drive a commercial vehicle.'' Mr. George reported that he has driven straight trucks for two years, accumulating 100,000 miles, and tractor-trailer combinations for 30 years, accumulating 6 million miles. He holds an operator's license from Louisiana. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Jason C. Hetrick

Mr. Hetrick, 38, has complete loss of vision in his left eye due to a traumatic incident in 1987. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2018, his optometrist stated, ''Based on my understanding of the visual requirements for commercial vehicle operation, Mr. Hetrick has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Hetrick reported that he has driven straight trucks for 25 years, accumulating 381,250 miles, and tractor-trailer combinations for seven years, accumulating 3,500 miles. He holds an operator's license from Pennsylvania. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Michael A. Hildebrand

Mr. Hildebrand, 40, has had posterior staphyloma in his right eye since childhood. The visual acuity in his right eye is count fingers, and in his left eye, 20/20. Following an examination in 2018, his optometrist stated, ''In my medical opinion, Michael Hildebrand has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Hildebrand reported that he has driven straight trucks for 12 years, accumulating 374,400 miles. He holds an operator's license from Pennsylvania. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Junior M. Isenberg

Mr. Isenberg, 63, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2018, his optometrist stated, ''In my opinion, Junior Isenberg has sufficient vision to perform the driving task to operate a commercial vehicle.'' Mr. Isenberg reported that he has driven straight trucks for 30 years, accumulating 1.5 million miles. He holds a Class B CDL from Kentucky. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

David G. Livingston

Mr. Livingston, 55, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2018, his optometrist stated, ''This is a second letter to express that it is my medical opinion that Mr. Livingston has sufficient vision in his left eye to perform the driving tasks required to operate a commercial vehicle.'' Mr. Livingston reported that he has driven straight trucks for 18 years, accumulating 360,000 miles, and tractor-trailer combinations for 18 years, accumulating 360,000 miles. He holds a Class A CDL from Vermont. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Joseph P. Markley

Mr. Markley, 61, has had macular myelinated nerve fibers in his right eye since birth. The visual acuity in his right eye is counting fingers, and in his left eye, 20/25. Following an examination in 2018, his ophthalmologist stated, ''Mr. Markley has sufficient vision in left eye to perform the tasks required to operate a commercial vehicle.'' Mr. Markley reported that he has driven straight trucks for 39 years, accumulating 42,900 miles, and tractor-trailer combinations for 39 years, accumulating 91,650 miles. He holds a Class AM CDL from Pennsylvania. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Derek L. Redford

Mr. Redford, 65, has an irregularly shaped pupil in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, counting fingers. Following an examination in 2018, his optometrist stated, ''I hereby certify that in my medical opinion the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Redford reported that he has driven straight trucks for ten years, accumulating 500,000 miles. He holds an operator's license from Idaho. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

David Tavarez

Mr. Tavarez, 49, has had amblyopia in his right eye since birth. The visual acuity in his right eye is hand motion, and in his left eye, 20/20. Following an examination in 2018, his optometrist stated, ''Based upon the color vision testing,binocular *[sic]* field of vision tests and quality of vision in his left eye, it is my medical opinion that Mr. David Tavarez can adequately operate a commercial motor vehicle at this time.'' Mr. Tavarez reported that he has driven straight trucks for 21 years, accumulating 630,000 miles. He holds an operator's license from New Jersey. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

William B. Van Drielen

Mr. Van Drielen, 56, has a macular scar in his left eye due to a traumatic incident in 2012. The visual acuity in his right eye is 20/20, and in his left eye, 20/50. Following an examination in 2018, his optometrist stated, ''In my medical opinion, Mr. Vandrielen *[sic]* has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Van Drielen reported that he has driven straight trucks for five years, accumulating 1 million miles, and tractor-trailer combinations for 36 years, accumulating 3.85 million miles. He holds a Class AM CDL from Nevada. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Willie R. White, Jr.

Mr. White, 62, has had optic nerve damage in his left eye since 2012. The visual acuity in his right eye is 20/20, and in his left eye, light perception. Following an examination in 2018, his optometrist stated, ''In my medical opinion this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. White reported that he has driven straight trucks for ten years, accumulating 150,000 miles, and tractor-trailer combinations for 20 years, accumulating two million miles. He holds a Class A CDL from Nevada. His driving record for the last three years shows no crashes and one conviction for a moving violation in a CMV; he exceeded the speed limit by 9 mph.

Curtis C. Williams

Mr. Williams, 63, has a retinal detachment in his right eye due to a traumatic incident in 2010. The visual acuity in his right eye is hand motion, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''In my opinion Mr. Williams has sufficient vision to perform the daily task required to operate a commercial vehicle.'' Mr. Williams reported that he has driven straight trucks for 26 years, accumulating 1.24 million miles, and tractor-trailer combinations for 26 years, accumulating 1.24 million miles. He holds a Class A CDL from Missouri. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments and material received before the close of business on the closing date indicated in the dates section of the notice.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2018–0014 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2018–0014 and click ''Search.''

Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: July 12, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–15261 Filed 7–16–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–24210; FMCSA–2010–0162; FMCSA–2012–0162; FMCSA–2012–0163; FMCSA–2014–0018]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 94 individuals from its prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals with ITDM to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before August 16, 2018.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2006–24210; FMCSA–2010–0162; FMCSA–2012–0162; FMCSA–2012–0163; FMCSA–2014–0018 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

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FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5:30 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for five years if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding diabetes found in 49 CFR 391.41(b)(3) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control.

The 94 individuals listed in this notice have requested renewal of their exemptions from the diabetes standard in 49 CFR 391.41(b)(3), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable two-year period.

II. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 94 applicants has satisfied the renewal conditions for obtaining an exemption from the diabetes requirement (71 FR 32177; 71 FR 45097; 75 FR 36775; 75 FR 50797; 77 FR 36333; 77 FR 40941; 77 FR 46791; 77 FR 51845; 79 FR 41723; 79 FR 56105; 81 FR 91242). They have maintained their required medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous two-year exemption period. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315, the following groups of drivers received renewed exemptions in the month of August and are discussed below:

As of August 6, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following ten individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (77 FR 36333; 77 FR 46791; 81 FR 91242):

Bruce R. Bennett (MN)
Stephen W. Best (PA)
Steven D. Hancock (IN)
Michael A. Hendrickson (OR)
James B. Hills (KS)
Charles Keegan, Jr. (NJ)
Londell W. Luther (MD)
Darrell L. Meadows (TX)
Allyn E. Smith (SD)
Jason R. Zeorian (NE)

The drivers were included in docket number FMCSA–2012–0162. Their exemptions are applicable as of August 6, 2018, and will expire on August 6, 2020.

As of August 8, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 23 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (71 FR 32177; 71 FR 45097; 81 FR 91242):

Scott R. Anderson (WI)
Robert R. Chase (NE)
Todd A. Dean (WV)
Dale R. Gansz (IL)
Donald W. Havourd, Sr. (CT)
Jeffrey M. King (OR)
Jeffrey S. Knight (WA)
Edward V. Kruse (IA)
Lee P. Lembke (WI)
Dominick T. Mastroni (KS)
Derril W. Nunnally (GA)
Robert L. Pflugler, Jr. (PA)
Ronald B. Purdum (IL)
Wilbert C. Rasely, Jr. (PA)
Ron R. Rawson (AZ)
Duane C. Rieger (ND)
Gregory A. Rigg (MI)
Vernon L. Small (CO)
Walter D. Stowman (NJ)
Henry B. Walker-Waltz (OR)
Arthur C. Webber (PA)
Scott A. Wertz (ND)
Danny R. Wood (MO)

The drivers were included in docket number FMCSA–2006–24210. Their exemptions are applicable as of August 8, 2018, and will expire on August 8, 2020.

As of August 17, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 7 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (75 FR 36775; 75 FR 50797; 81 FR 91242):

Gary L. Alexander (MO)
Daniel E. Bergstresser (NY)
Stephen F. Clendenin (NY)
Pradip B. Desai (PA)
Howard M. Galton (IL)
Steve Gumienny (CA)
Hubert S. Paxton (KY)

The drivers were included in docket number FMCSA–2010–0162. Their exemptions are applicable as of August 17, 2018, and will expire on August 17, 2020.

As of August 19, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 45 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (79 FR 41723; 79 FR 56105; 81 FR 91242):

Charles Ackerman Jr. (NJ)
William J. Applebee (WI)
Benjamin L. Baxter (MI)
Stephen M. Berggren (MN)
Patrick J. Burns (MN)
Robert L. Caudill (OH)
Charles L. Cran (WI)
Kevin W. Elder (NC)
Michael J. Eldridge, Sr. (IA)
Kevin D. Erickson (WI)
Dale A. Godejohn (ND)
Robert R. Gonzales (CA)
Norman D. Groves (MO)
Kenneth F. Gwaltney (IN)
Mathew R. Hale (KS)
Donald K. Hamilton (FL)
John L. Holtzclaw (MO)
Christopher H. Horn (NH)
Kip J. Kauffman (WI)
Christopher J. Kittoe (WI)
Joshua L. Kroetch (MN)
Salvador Lopez (AZ)
Joseph M. Macias (NM)
Robert J. Marino (NJ)
David J. McCoy (UT)
William E. Medlin (MN)
Carlos A. Napoles, Jr. (NJ)
Kathryn J. Nelms (KS)
Antonio C. Oliveira (PA)
Christopher P. Overton (IL)
Stephen J. Pelton (PA)
Bryant S. Perry (NC)
Kenneth R. Perschon (IL)
Joseph R. Polhamus (LA)
Rodney B. Roberts (MS)
Mark J. Rone (IL)
John J. Steigauf (MN)
William L. Thompson (MN)
Robert D. Watts (TX)
Cindy L. Wells (NY)
Charles W. White (IN)
Michael G. Worl (MT)
Tommy W. Wornick (TX)
Robert T. Yeftich (IN)
Chad C. Yerkey (PA)

The drivers were included in docket number FMCSA–2014–0018. Their exemptions are applicable as of August 19, 2018, and will expire on August 19, 2020.

As of August 27, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (77 FR 40941; 77 FR 51845; 81 FR 91242):

Randall W. Amtower (WV)
Steven Brickey (CO)
Randall L. Corrick (ND)
Raymond G. Gravesandy (NY)
Gregory M. Harris (TX)
Kelly M. Keller (ND)
Joseph L. Miska (MN)
Jacob D. Oxford (ID)
Ramon I. Zamora-Ortiz (WA)

The drivers were included in docket number FMCSA–2012–0163. Their exemptions are applicable as of August 27, 2018, and will expire on August 27, 2020.

IV. Conditions and Requirements:

The exemptions are extended subject to the following conditions: (1) Each driver must submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) each driver must report within two business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) each driver must submit an annual ophthalmologist's or optometrist's report; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

V. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the 94 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce. In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: July 12, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–15263 Filed 7–16–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0032]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 54 individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with insulin-treated diabetes mellitus (ITDM) operating a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before August 16, 2018.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2018–0032 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day e.t., 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *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.*

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a five-year period if it finds ‘‘such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.’’ The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The 54 individuals listed in this notice have requested an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding diabetes found in 49 CFR 391.41(b)(3) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control. The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population.

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ‘‘A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.’’ The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441). The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305). Section 4129 requires: (1) Elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the three-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136 (e). Section

4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003, notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003, notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

II. Qualifications of Applicants

David V. Amado

Mr. Amado, 45, has had ITDM since 2015. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Amado understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Amado meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from California.

Allan D. Arcand

Mr. Arcand, 60, has had ITDM since 1972. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Arcand understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Arcand meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Wisconsin.

Nickie D. Archuleta

Mr. Archuleta, 58, has had ITDM since 2004. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Archuleta understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Archuleta meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

Mathew B. Bartlett

Mr. Bartlett, 28, has had ITDM since 2005. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Bartlett understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bartlett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa

Sean S. Bateman

Mr. Bateman, 28, has had ITDM since 2005. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Bateman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bateman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from New York.

Marvin E. Battle, Jr.

Mr. Battle, 40, has had ITDM since 2017. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Battle, Jr. understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Battle, Jr. meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Georgia

Gordon R. Bayles

Mr. Bayles, 66, has had ITDM since 2015. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Bayles understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bayles meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Utah.

Kirk W. Behrer

Mr. Behrer, 55, has had ITDM since 2017. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Behrer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Behrer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Benjamin J. Boeding

Mr. Boeding, 39, has had ITDM since 1980. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Boeding understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Boeding meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Minnesota.

Robert A. Bowman

Mr. Bowman, 61, has had ITDM since 2017. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Bowman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bowman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Kentucky.

Michael G. Cohen

Mr. Cohen, 48, has had ITDM since 2014. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Cohen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cohen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

John R. Delucca

Mr. Delucca, 69, has had ITDM since 2015. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Delucca understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Delucca meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Indiana.

James M. Dubay

Mr. Dubay, 57, has had ITDM since 2018. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Dubay understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dubay meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Michigan.

Larry I. Frizell

Mr. Frizell, 57, has had ITDM since 2015. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Frizell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Frizell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Gerson A. Gonzalez

Mr. Gonzalez, 32, has had ITDM since 2017. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Gonzalez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gonzalez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Jersey.

David D. Gross

Mr. Gross, 57, has had ITDM since 2018. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Gross understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gross meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Ricky A. Kirby

Mr. Kirby, 58, has had ITDM since 2008. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Kirby understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kirby meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Kentucky.

Dustin M. Kirkland

Mr. Kirkland, 37, has had ITDM since 2018. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Kirkland understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kirkland meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Scott M. Kiser

Mr. Kiser, 45, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Kiser understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kiser meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Georgia.

Lee E. Koehn

Mr. Koehn, 68, has had ITDM since 2017. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Koehn understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Koehn meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Alabama.

Wayne L. Kracht

Mr. Kracht, 48, has had ITDM since 2015. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Kracht understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kracht meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Iowa.

Jeffrey L. Kramer

Mr. Kramer, 56, has had ITDM since 1992. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Kramer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kramer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Ohio.

Brad M. Ligols

Mr. Ligols, 54, has had ITDM since 2000. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Ligols understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ligols meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Massachusetts.

Kenneth J. Lubanski

Mr. Lubanski, 29, has had ITDM since 2011. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Lubanski understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lubanski meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Jersey.

Thomas W. Markham

Mr. Markham, 61, has had ITDM since 2017. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Markham understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Markham meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Richard T. McAtee II

Mr. McAtee, 49, has had ITDM since 2014. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. McAtee understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McAtee meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

John T. McEntire III

Mr. McEntire, 24, has had ITDM since 2007. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. McEntire understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McEntire meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from South Carolina.

Jonathan D. Miles

Mr. Miles, 45, has had ITDM since 2017. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Miles understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Miles meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Brian J. Morgan

Mr. Morgan, 46, has had ITDM since 2001. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Morgan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Morgan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Vermont.

Cecil M. Morris, Jr.

Mr. Morris, 60, has had ITDM since 2014. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Morris understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Morris meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Kentucky.

Nicholas C. O'Connor

Mr. O'Connor, 32, has had ITDM since 2004. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. O'Connor understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. O'Connor meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Massachusetts.

Rowdy V. Orr

Mr. Orr, 38, has had ITDM since 2010. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Orr understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Orr meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Texas.

Neal J. Pangrazio

Mr. Pangrazio, 60, has had ITDM since 2017. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Pangrazio understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pangrazio meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

William T. Phipps, Jr.

Mr. Phipps, 48, has had ITDM since 2010. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Phipps understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Phipps meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he has stable nonproliferative and stable proliferative diabetic retinopathy. He holds a Class A CDL from Maryland.

Robert A. Pope

Mr. Pope, 53, has had ITDM since 2017. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Pope understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pope meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Micky J. Powers

Mr. Powers, 71, has had ITDM since 2017. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Powers understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Powers meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

Shawn K. Richardson

Mr. Richardson, 54, has had ITDM since 2012. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Richardson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Richardson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Washington.

Joselito Rosario

Mr. Rosario, 49, has had ITDM since 2004. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Rosario understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rosario meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Massachusetts.

Gregory L. Ryan

Mr. Ryan, 61, has had ITDM since 2018. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Ryan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ryan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Delaware.

Howard G. Schrepp

Mr. Schrepp, 63, has had ITDM since 2013. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Schrepp understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schrepp meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Georgia.

James W. Shirk

Mr. Shirk, 59, has had ITDM since 2017. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Shirk understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shirk meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Michael J. Simko

Mr. Simko, 28, has had ITDM since 2013. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Simko understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Simko meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Roderick Q. Smith

Mr. Smith, 57, has had ITDM since 2005. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Smith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Illinois.

Walter C. Snodgrass, Jr.

Mr. Snodgrass, 57, has had ITDM since 2017. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Snodgrass understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Snodgrass meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Robert W. Stewart

Mr. Stewart, 70, has had ITDM since 2017. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Stewart understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stewart meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

Joseph W. Symons

Mr. Symons, 36, has had ITDM since 2018. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Symons understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Symons meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Michigan.

Felipe D. Torres

Mr. Torres, 48, has had ITDM since 2013. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Torres understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Torres meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Texas.

James J. Triplett

Mr. Triplett, 77, has had ITDM since 2004. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Triplett understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Triplett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Tennessee.

Amos L. Trujillo

Mr. Trujillo, 50, has had ITDM since 2012. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Trujillo understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Trujillo meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Mexico.

Lynda D. Vance

Ms. Vance, 34, has had ITDM since 2018. Her endocrinologist examined her in 2018 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. Her endocrinologist certifies that Ms. Vance understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Vance meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2018 and certified that she does not have diabetic retinopathy. She holds an operator's license from Tennessee.

Christopher E. Vazquez

Mr. Vazquez, 21, has had ITDM since 1997. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Vazquez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Vazquez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Connecticut.

Michael J. Vigna

Mr. Vigna, 61, has had ITDM since 2017. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Vigna understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Vigna meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Brian P. Walsh

Mr. Walsh, 47, has had ITDM since 1998. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Walsh understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Walsh meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2018 and certified that he does not have diabetic retinopathy. He holds an operator's license from Iowa.

Nathan L. Watson

Mr. Watson, 25, has had ITDM since 1994. His endocrinologist examined him in 2018 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Watson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Watson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Texas.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the dates section of the notice.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2018–0032 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2018–0032 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: July 12, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–15262 Filed 7–16–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms, and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of the OMB review of information collection; request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below will be submitted to the Office of Management and Budget (OMB) for review. A **Federal Register** Notice with a 60-day comment period soliciting public comments on this information collection was published on August 24, 2017 (**Federal Register**/Vol. 82, No. 109/ pp. 34152–34154).

DATES: Submit comments on or before August 16, 2018.

ADDRESSES: Submit comments through one of the following methods:

- Electronically through *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail and Hand Delivery/Courier to:* Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), 725 17th Street NW, Washington, DC 20503, Attention NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Kathryn Wochinger, Office of Behavioral Safety Research (NPD–310), NHTSA, W46–487, 1200 New Jersey Avenue SE, Washington, DC 20590. Dr. Wochinger's phone number is (202) 366–4300, and email address is *kathryn.wochinger@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: State of the Practice of Ignition Interlock Programs.

Form No.: NHTSA Form 1450 (questionnaire) and 1451 (discussion guide).

Type of Review: Regular.

Abstract: Alcohol impairment is one of the primary causes of motor vehicle crashes on the Nation's highways. For example, 28 percent of all motor vehicle traffic fatalities in 2016 involved alcohol-impairment. One countermeasure to alcohol-impaired driving is the ignition interlock, and nearly every State, the District of Columbia and Puerto Rico deliver interlock services for Driving While Impaired (DWI) offenders. Highway safety officials and traffic safety advocates identified a need for an inventory of interlock programs to support program management by documenting lessons learned and identifying solutions to common problems. The collected information would be from publicly available sources such as program websites, and from program administrators and staff. Administrators would be invited to take a 15-minute online self-administered questionnaire, and administrators and staff would be invited to participate in a semi-structured interview over the telephone, up to one hour (with one interview per program).

Respondents: Respondents will be administrators and staff of alcohol ignition interlock programs. There are up to 52 interlock programs; with nearly one in each state, the District of Columbia, and Puerto Rico.

Estimated Number of Respondents: 260 (If 52 administrators and four staff per program were to respond).

Estimated Time per Response: The expected average completion time for the questionnaire is 15 minutes, and for the group phone interview it is 60 minutes.

Estimate of the Total Annual Reporting and Record Keeping Burden Resulting from the Collection of Information: Participants will incur no burden related to annual reporting or record keeping due to the collection of information.

Total Estimated Annual Burden Hours: A total of 273 hours: The estimated burden hours for the questionnaire is 13 hours (52 administrators × .25 hours to take the questionnaire), and the estimated burden hours for the group interviews is 260 hours (260 people × 1 hour).

Frequency of Collection: The information collection will be administered a single time.

Previous Notice: A 60-day notice in the **Federal Register** on August 24, 2017 received three comments. The first comment recommended that the questionnaire and the topics of the group interview be provided ahead of time with the managers of each program's transportation department, to allow managers the opportunity to provide guidance to the staff. NHTSA concurs with this request. The second request was that the information collection should ''not ask for judgments'' about a department. NHTSA concurs with this request, as the collected information is on features and facts of the programs. The third comment was that ''other approaches to combatting impaired driving'' warrant support. NHTSA concurs with this comment.

Comments are Invited: Comments are invited on whether the proposed collection of information is (a) 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.

A comment to OMB is most effective if OMB receives it within 30 days of publication of this notice.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Section 3506(c)(2)(A).

Issued in Washington, DC, on July 12, 2018.

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2018–15210 Filed 7–16–18; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2018–XXXX]

Drugs that Impair Safe Driving; Request for Comments

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

ACTION: Request for comment.

SUMMARY: NHTSA is reviewing the literature on drug use and driving with the aim of updating its Drugs and Human Performance Fact Sheets that are used by the criminal justice community and others as they address drug-impaired driving. The current edition of the Fact Sheets was released in 2004 and included information on the following drugs: Carisoprodol, cocaine, dextromethorphan, diazepam, diphenhydramine, gamma-hydroxybutyrate (GHB), ketamine, lysergic acid diethylamide (LSD), marijuana, methadone, methamphetamine, methylenedioxymethamphetamine (MDMA), morphine, phencyclidine (PCP), toluene, and zolpidem. NHTSA welcomes comments and suggestions for additional drugs to be considered for inclusion in the new edition of the Fact Sheets as well as relevant research studies that have become available since 2004 that could be included in the updated fact sheets. To the extent possible, such comments and suggestions should be accompanied by information about the drug, including the extent of its use, its pharmacology and pharmodynamics, and how impairing it is for driving, along with references.

DATES: Interested parties are invited to submit comments and suggestions on or before September 1, 2018.

FOR FURTHER INFORMATION CONTACT: If you have questions about this request for comment, please contact Richard Compton at *NHTSAdruginfo@dot.gov* or 202–366–2699.

Written Comments: Written statements and supporting information submitted during the comment period will be considered. Please submit all written comments no later than September 1, 2018, by any of the following methods:

- *Federal Rulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.
- *Fax:* 202–366–1767.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below.

Docket: For access to the docket go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: 202–366–9826.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://www.regulations.gov/privacy.html.*

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, 1200 New Jersey Ave. SE, W41–326, Washington DC 20590. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should submit a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512).

SUPPLEMENTARY INFORMATION:

Background

In the early 2000s, NHTSA convened a panel of international experts on drug-impaired driving to review developments in the field of drugs and human performance and to identify the specific effects that both high priority illicit and prescription drugs have on driving. The experts represented the fields of psychopharmacology, behavioral psychology, drug chemistry, forensic toxicology, medicine, and law enforcement. That effort resulted in the publication of a document entitled Drugs and Human Performance Fact Sheets (DOT HS 809 725) in June 2004.

Each Fact Sheet covered one of the selected sixteen drugs that impair driving. The selected drugs included over-the-counter medications such as dextromethorphan and diphenhydramine; prescription medications such as carisoprodol, diazepam, and zolpidem; and abused and/or illegal drugs such as cocaine, GHB, ketamine, LSD, marijuana, methadone, methamphetamine, MDMA, morphine, PCP, and toluene. Each individual drug Fact Sheet covered information regarding drug chemistry, usage and dosage information, pharmacology, drug effects, effects on driving, drug evaluation and classification, and the panel's assessment of driving risks. More specifically, the Fact Sheets provided details on the physical description of the drug, synonyms, and pharmaceutical or illicit sources; medical and recreational uses, recommended and abused doses, typical routes of administration, and potency and purity; mechanism of drug action and major receptor sites; drug absorption, distribution, metabolism and elimination data; blood and urine concentrations; psychological and physiological effects, and drug interactions; drug effects on psychomotor performance effects; driving simulator and epidemiology studies; and drug recognition evaluation profiles. Each Fact Sheet concludes with general statements about the drugs' ability to impair driving performance. A list of key references and recommended reading was also provided for each drug.

Since 2004, new research on these and other impairing drugs has become available. As a result, NHTSA plans to evaluate whether additional drugs that impair driving should be included in the Fact Sheets and to add them as appropriate, as well as to update information on the effects of the sixteen aforementioned drugs on driving. NHTSA will base the revised Fact Sheets on the state of current scientific knowledge. The agency intends to design the revised Fact Sheets to continue to provide practical guidance to toxicologists, pharmacologists, law enforcement officers, attorneys, and the general public to use in the evaluation of future cases.

In order to assist on the development of the new edition of the Fact Sheets, NHTSA invites comments and suggestions from the general public on additional drugs as well as relevant research studies that have become available since 2004 that could be included in the updated fact sheets. To the extent possible, such comments and suggestions should be accompanied by information about the drug, including the extent of its use, its pharmacology and pharmodynamics, and how impairing it is for driving, along with references.

Authority: 44 U.S.C. Section 3506(c)(2)(A).

Issued in Washington, DC, on July 12, 2018.

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2018–15209 Filed 7–16–18; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–2018–0060]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. This document describes the collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before September 17, 2018.

ADDRESSES: You may submit comments identified by DOT Docket Number NHTSA–2018–0060 using any of the following methods:

Electronic submissions: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail: Docket Management Facility, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590.

Hand Delivery: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Fax: 1–202–493–2251.

Instructions: Each submission must include the agency name and the docket number for this Notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mary Byrd, Contracting Officer's Representative, Office of Behavioral Safety Research (NPD–320), National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Ms. Byrd's phone number is 202–366–5595, and her email address is *mary.byrd@dot.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected; and

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

Title: Emergency Medical Services Sleep Health and Fatigue Education

Type of Request: New information collection.

OMB Clearance Number: None.

Form Number: NHTSA Forms 1460, 1461, 1462, 1463, 1464, 1465, 1466, and 1467.

Requested Expiration Date of Approval: Three years from date of approval.

Summary of the Collection of Information: The National Highway Traffic Safety Administration (NHTSA) proposes to collect information from Emergency Medical Services (EMS) personnel who operate ambulances on the roadway for a one-time voluntary study to evaluate the effectiveness of a fatigue mitigation intervention that delivers education and training. Up to 200 EMS agencies across the United States will be contacted and screened in order to recruit a total of 30 agencies to participate in the study. NHTSA anticipates contacting up to 100 EMS personnel per participating agency (3,000 total) to screen and recruit 1,500 eligible participants for the study. NHTSA expects 1,200 voluntary participants to complete the sign-up process, including providing demographic information and shift schedules, and to consent to participate in the 24-week study. Participants will complete a baseline survey that includes self-reported fatigue and sleepiness and will retake the survey halfway through the study and again at the end of the study. All participants will complete the ten ten-minute training modules during the study period. Once the study is underway, participants will be asked to respond to daily text messages about sleepiness and fatigue for eight weeks of the 24-week study. Finally, NHTSA will ask 30 of the 1,200 participants to provide additional information by keeping a daily sleep diary for eight weeks and by taking a brief vigilance task test to measure fatigue at the beginning and end of each shift over eight days.

Background: The mission of the NHTSA is to save lives, prevent injuries and reduce economic costs due to motor vehicle crashes. In support of this mission, NHTSA's Office of Behavioral Safety Research studies behaviors and attitudes in highway safety, focusing on drivers, passengers, pedestrians, and motorcyclists, and it uses the results to develop and refine countermeasures to deter unsafe behaviors and promote safe alternatives. An efficient EMS system is integral to reducing injury and mortality on and off our Nation's highways and is key to ensuring prompt emergency response to any type of illness or injury. The Nation's best preparation for any incident, large or small, is a comprehensive EMS system, ready every day for every emergency.

A 2015 NHTSA study published at EMSworld.com found that on average there are 4,500 crashes per year involving ambulances, and these crashes result in an average of 33 deaths per year. As indicated in various media reports of high profile crashes, fatigue and sleep deprivation are likely contributors. Furthermore, a 2012 study by Patterson, Weaver, Frank, et al. published in *Prehospital Emergency Care* found that the odds of injury, medical error, and safety-compromising behaviors among fatigued EMS personnel are twice that of personnel who do not report fatigue. A 2015 study by Patterson, Weaver and Hostler in *Emergency Medical Services: Clinical Practice and Systems Oversight* found that more than half of EMS personnel report fatigue, poor sleep, or inadequate recovery between shifts.

While greater than half of EMS personnel report work-related fatigue, there are no guidelines for the management of fatigue in EMS. In 2013, the National EMS Advisory Council (NEMSAC) adopted an advisory that recommended NHTSA and federal partners disseminate evidence-based information to aid the EMS community in efforts to develop fatigue risk management programs. In response, NHTSA kicked off the ''Fatigue in EMS'' initiative in 2016. The project aims to address the potential dangers of drowsiness and fatigue among EMS workers, including the risk of traffic crashes, injuries to providers and patients, and medical errors. After an extensive review of more than 30,000 published research articles, the project team released its evidence-based guidelines for fatigue risk management, along with companion materials and expert commentaries in January 2018. The guidelines, which are described in a 2018 publication by Patterson, Higgins, Van Dogen, et al. in *Prehospital Emergency* Care, intend to combat the effects of fatigue through the following five recommendations:

1. Reliable and/or valid fatigue and sleepiness survey instruments should be used to measure and monitor fatigue in EMS personnel.
2. EMS personnel should work shifts shorter than 24 hours in duration.
3. EMS workers should have access to caffeine as a fatigue countermeasure.
4. EMS personnel should have the opportunity to nap while on duty to mitigate fatigue.
5. EMS personnel should receive education and training to mitigate fatigue and fatigue-related risks.

Description of the Need for the Information and Proposed Use of the Information: After developing and disseminating the evidence-based guidelines for fatigue risk management, the second phase of NHTSA's ''Fatigue in EMS'' initiative is to test the impact of one or more of the recommendations. NHTSA proposes to use the information collected to evaluate the effectiveness of the fifth recommendation, education and training, on reducing fatigue among EMS personnel. The overarching goals of this project are to determine whether providing education and training to EMS personnel on the importance of sleep health and dangers of fatigue affect diverse indicators of sleep, fatigue, and safety as well as to enhance our general understanding of the relationships between shift work, sleep, and fatigue in EMS operations. If the training is demonstrated to be effective at improving sleep quality and reducing fatigue, then it will be more widely distributed to the EMS community through State offices as well as through the National Association of State Emergency Medical Services Officials.

Data Collection Plan: Members of the research team will coordinate recruitment and enrollment of EMS organizations and individual EMS personnel. Recruitment will be limited to EMS organizations and affiliated personnel located in the United States. The research team will use webinars, conference calls, and a website to advertise the research study to those that may be interested. The team expects to collect information from as many as 200 organizations to recruit the target of 30 moderately-sized EMS organizations (50 to 300 personnel) who provide around-the-clock ground-based services. The team will measure interest and eligibility using an agency-level screening form, which is estimated to take 5 minutes to complete for a total expected burden of 17 hours. The 30 participating agencies will then recruit EMS clinicians currently working full-time or part-time using a recruitment flyer distributed to employees. The research team expects to collect information from as many as 3,000 individuals to identify up to 1,500 eligible participants. The team will measure eligibility using an individual-level screening form, which is estimated to take 5 minutes to complete for a total expected burden of 250 hours.

The research team will have the 1,500 eligible individuals watch a video explaining the study and the consent process and will then ask them to indicate their consent to participate. The consenting process is expected to take 10 minutes for a total expected burden of 250 hours. The research team expects 1,200 eligible individuals to consent and agree to participate. These individuals will then complete the registration process including providing demographic information and shift schedules, complete a baseline survey including self-reported fatigue and sleepiness. Half of the participants will be asked to complete ten training sessions of ten minutes each within ten days. The other half will be asked to complete the training within ten days of the mid-point of the study. The expected burden for the registration process, baseline survey and training intervention is 145 minutes per participant for a total burden of 2,900 hours. Once the study is underway, participants will be asked to respond to daily text messages about sleepiness and fatigue for eight weeks of the 24-week study. The expected burden of responding is 5 minutes per response for a total burden of 5,600. The research team also will ask participants to complete follow-up surveys at the study mid-point and at the end of the study. The expect burden of responding is 25 minutes per survey for a total burden of 1,000 hours.

A subset of participants (30 of the 1,200) will complete a daily sleep diary for eight weeks of the 24-week study. Completing the diary is expected to take 3 minutes per day for a total burden of 84 hours. This subset also will be asked to take a brief Psychomotor Vigilance Task test twice per day (at the start and at the end of shift) for a total of eight days spread across the study period. Completing each test is expected to take five minutes for a total burden of 40 hours. The purpose of these additional data collections is to assess the validity and reliability of the self-reported study measures.

Estimate of the Total Annual Reporting and Record Keeping Burden Resulting from the Collection of Information: The total estimated burden for EMS agency recruitment (17 hours), recruitment of EMS clinicians (250 hours), the consenting process (250 hours), initial data collection and training (2,900), follow-up data collection (6,600), and additional data collection for assessing measurement error (124) is 10,141 hours.

Authority: 44 U.S.C. Section 3506(c)(2)(A).

Issued in Washington, DC, on July 12, 2018.

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2018–15212 Filed 7–16–18; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

Health Services 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 Health Services Research and Development Service Scientific Merit Review Board will conduct in-person and teleconference meetings of its eleven Health Services Research (HSR) subcommittees on the dates below from 8:00 a.m. to approximately 4:30 p.m. (unless otherwise listed) at the FHI 360 Conference Center, 1825 Connecticut Avenue NW, Washington, DC 20009 (unless otherwise listed):

- HSR 0—Community Care on August 21, 2018;
- HSR 1—Health Care and Clinical Management on August 21–22, 2018;
- HSR 2—Behavioral, Social, and Cultural Determinants of Health and Care on August 23–24, 2018;
- HSR 3—Healthcare Informatics on August 23, 2018;
- HSR 4—Mental and Behavioral Health on August 21–22, 2018;
- HSR 5—Health Care System Organization and Delivery on August 23–24, 2018;
- HSR 6—Post-acute and Long-term Care on August 22, 2018;
- HSR 7—Opioid and Pain Management Special Emphasis on August 24, 2018;
- MRA 0—Mentored Research on August 24, 2018;
- HSR 8—Implementation Research Project on August 23, 2018;
- HS8 A—Randomized Program Evaluations on August 23, 2018; and
- HSR 9—Learning Health Initiative on August 23, 2018.

The purpose of the Board is to review health services research and development applications involving: the measurement and evaluation of health care services; the testing of new methods of health care delivery and management; and mentored research. Applications are reviewed for scientific and technical merit, mission relevance, and the protection of human and animal subjects. Recommendations regarding funding are submitted to the Chief Research and Development Officer.

Each subcommittee meeting of the Board will be open to the public the first day for approximately one half-hour from 8:00 a.m. to 8:30 a.m. at the start of the meeting on August 21 (HSR 0, 1, 4), August 22 (HSR 1, 4, 6), August 23 (HSR 2, 3, 5, 8, 9, and HS8A), and August 24 (HSR 2, 5, 7, and MRA 0) 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 subcommittee meetings may dial 1 (800) 767–1750, participant code 10443#.

The remaining portion of each subcommittee meeting will be closed for the discussion, examination, reference to, and oral review of the intramural research proposals 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 participate during the open portion of a subcommittee meeting should contact Ms. Liza Catucci, Administrative Officer, Department of Veterans Affairs, Health Services Research and Development Service (10P9H), 810 Vermont Avenue NW, Washington, DC 20420, or by email at *Liza.Catucci@va.gov.* For further information, please call Ms. Catucci at (202) 443–5797.

Dated: July 12, 2018.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2018–15257 Filed 7–16–18; 8:45 am]

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Part II

Federal Housing Finance Agency

12 CFR Parts 1206 and 1240

Department of Housing and Urban Development

Office of Federal Housing Enterprise Oversight

12 CFR Part 1750

Enterprise Capital Requirements; Proposed Rule

FEDERAL HOUSING FINANCE AGENCY

12 CFR Parts 1206 and 1240

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1750

RIN 2590–AA95

Enterprise Capital Requirements

AGENCY: Federal Housing Finance Agency; Office of Federal Housing Enterprise Oversight

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Housing Finance Agency (FHFA or the Agency) is proposing a new regulatory capital framework for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises), which includes a new framework for risk-based capital requirements and two alternatives for an updated minimum leverage capital requirement. The risk-based framework would provide a granular assessment of credit risk specific to different mortgage loan categories, as well as market risk, operational risk, and going-concern buffer components. The proposed rule would maintain the statutory definitions of core capital and total capital.

FHFA has suspended the Enterprises' capital requirements since the beginning of conservatorship, and FHFA plans to continue this suspension while the Enterprises remain in conservatorship. Despite this suspension, FHFA believes it is appropriate to update the Agency's standards on Enterprise capital requirements to provide transparency to all stakeholders about FHFA's supervisory view on this topic. In addition, while the Enterprises are in conservatorship, FHFA will expect Fannie Mae and Freddie Mac to use assumptions about capital described in the rule's risk-based capital requirements in making pricing and other business decisions. Feedback on this proposed rule will also inform FHFA's views in evaluating Enterprise business decisions while the Enterprises remain in conservatorship.

DATES: Comments must be received on or before September 17, 2018.

ADDRESSES: You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590–AA95, by any one of the following methods:

- *Agency Website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: Comments/RIN 2590–AA95.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA95, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219. Deliver the package at the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA95, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219. Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.

FOR FURTHER INFORMATION CONTACT: Naa Awaa Tagoe, Senior Associate Director, Office of Financial Analysis, Modeling & Simulations, (202) 649–3140, *NaaAwaa.Tagoe@fhfa.gov*; Andrew Varrieur, Associate Director, Office of Financial Analysis, Modeling & Simulations, (202) 649–3141, *Andrew.Varrieur@fhfa.gov*; or Miriam Smolen, Associate General Counsel, Office of General Counsel, (202) 649–3182, *Miriam.Smolen@fhfa.gov.* These are not toll-free numbers. The mailing address is: Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Comments

FHFA invites comments on all aspects of the proposed rule and will take all comments into consideration before issuing a final rule. Copies of all comments will be posted without change, and will include any personal information you provide such as your name, address, email address, and telephone number, on the FHFA website at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public through the electronic rulemaking docket for this proposed rule also located on the FHFA website.

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I. Introduction

A. Rationale for Proposing a Capital Rule

FHFA's predecessor agency, the Office of Federal Housing Enterprise Oversight (OFHEO), last adopted capital rules for Fannie Mae and Freddie Mac in 2001. The Housing and Economic Recovery Act of 2008 (HERA) gave FHFA greater authority to determine capital standards for the Enterprises. Each Enterprise was placed into conservatorship shortly after the enactment of HERA. FHFA suspended the statutory capital classifications and regulatory capital requirements during conservatorship, due to the Enterprises having entered the control of the conservator. Today, the Senior Preferred Stock Purchase Agreements (PSPAs) with the U.S. Department of the Treasury (Treasury Department) limit each Enterprise's ability to hold capital.

Prior to proposing this rule, FHFA has taken other steps to assess adequate capital assumptions for the Enterprises while they operate in conservatorship. Despite the Enterprises' limited ability to hold capital, FHFA identified the need to develop an aligned risk measurement framework to better evaluate each Enterprise's business decisions while they are in conservatorship. FHFA's purpose in pursuing this effort was to ensure that the Enterprises make prudent business decisions when pricing transactions and managing their books of business. The initial framework developed as a result of this effort is called the Conservatorship Capital Framework (CCF) and was put into place in 2017 under FHFA's oversight as conservator.

The CCF is the foundation for FHFA's proposed capital regulation. Although the capital requirements in the rule would need to be suspended after adoption of a final rule because the Enterprises remain in conservatorship and are supported by the Treasury Department through the PSPAs which limit their ability to retain capital, the updated rule would achieve several objectives. The proposed rule serves to transparently communicate FHFA's views as a financial regulator about capital adequacy for the Enterprises under current statutory language and authorities. The fact that FHFA has suspended the Enterprises' capital requirements does not eliminate FHFA's responsibility, as a prudential regulator, to articulate a view about Enterprise capital requirements. It also prepares the Agency to modify the capital standards for future housing finance entities, even if they are significantly different from the Enterprises, upon completion of housing finance reform by Congress and the Administration, instead of starting from the outdated OFHEO rules. In addition, publication of this proposed rule will enable the public to provide input on these important issues.

While the Enterprises currently operate under the PSPAs with the Treasury Department, the proposed rule does not take the PSPAs into account. The proposed risk-based capital requirements are designed to establish the necessary minimum capital for the Enterprises to continue operating after a stress event comparable to the recent financial crisis. In a reformed housing finance system, policymakers would need to determine whether to retain support like that provided by the PSPAs for future housing finance entities.

In proposing this rule, FHFA is not attempting to take a position on housing finance reform. Similarly, this proposed rule is not a step towards recapitalizing the Enterprises and administratively releasing them from conservatorship. FHFA's position continues to be that it is the role of Congress and the Administration to determine the future of housing finance reform and what role, if any, the Enterprises should play in that system.

Publication of this proposed rule will assist with FHFA's administration of the conservatorships of Fannie Mae and Freddie Mac by potentially refining the CCF. As with other proposed rules, the rulemaking provides the public with an opportunity to comment on the proposed capital requirements. As FHFA reviews the public comments and works to finalize the rule, the Agency expects to adopt material and appropriate changes into the existing CCF.

B. Overview of the Proposed Rule

FHFA is proposing a regulatory capital framework for the Enterprises that would implement two components: A new framework for risk-based capital requirements and a revised minimum leverage capital requirement specified as a percentage of total assets and off-balance sheet guarantees. FHFA's proposed rule is based on a capital framework that is generally consistent with the regulatory capital framework for large banks, but reflects differences in the charters, business operations, and risk profiles of the Enterprises. The proposed rule uses concepts from the Basel framework with appropriate modifications for the Enterprises. FHFA's proposed framework recognizes that the Enterprises are monoline businesses with assets and guarantees heavily concentrated in residential mortgages with risk profiles that differ from large diversified banks.

In order to fulfill their charter responsibilities of providing stability to the secondary mortgage market, the Enterprises must remain as functioning entities both during and after a period of severe financial stress. To achieve this objective, the proposed risk-based capital framework targets a risk-invariant minimum capital level after surviving a stress event, referred to as the going-concern buffer.

The Enterprises' assets and operations are exposed to different types of risks. The proposed risk-based capital framework would address the key exposures by explicitly covering credit risk, including counterparty risk, as well as market risk and operational risk. The proposed framework would define the requirements by risk factor for each key group of the Enterprises' assets and guarantees.

In establishing risk-based capital requirements and updating the minimum leverage requirement, FHFA is seeking to ensure that the two sets of requirements complement one another. For the risk-based capital requirements, FHFA is proposing a comprehensive framework that provides a detailed assessment of the Enterprises' risk of incurring unexpected losses. Instead of applying the Basel standardized approach of a 50 percent risk weight for all mortgage assets regardless of different product features or terms, FHFA's proposed risk-based capital requirements would use a series of approaches, which include base grids, risk multipliers, assessments of counterparty risk, and capital relief due to credit risk transfer transactions, to produce tailored capital requirements for mortgage loans, guarantees, and securities. These asset-specific capital requirements would then be applied across each Enterprise's book of business to produce total risk-based capital requirements.

By differentiating between the types and features of mortgage assets, guarantees, and securities purchased by the Enterprises, FHFA believes the proposed risk-based capital requirements would represent a substantial step forward in articulating the relative risk levels of mortgage loans and quantifying the associated capital requirements for the Enterprises.

In coordination with the proposed risk-based capital requirements, FHFA is also proposing two alternative minimum leverage capital requirements. Each of these alternatives would update the existing minimum leverage requirements established by statute for the Enterprises. Under the first alternative, the ''2.5 percent alternative,'' the Enterprises would be required to hold capital equal to 2.5 percent of total assets (as determined in accordance with generally accepted accounting principles (GAAP)) and off-balance sheet guarantees related to securitization activities, regardless of the risk characteristics of the assets and guarantees or how they are held on the Enterprises' balance sheets. Under the second alternative, the ''bifurcated alternative,'' the Enterprises would be required to hold capital equal to 1.5 percent of trust assets and 4 percent of non-trust assets, where trust assets are defined as Fannie Mae mortgage-backed securities or Freddie Mac participation certificates held by third parties and off-balance sheet guarantees related to securitization activities, and non-trust assets are defined as total assets as determined in accordance with GAAP plus off-balance sheet guarantees related to securitization activities minus trust assets. The Enterprises' retained portfolios would be included in non-trust assets. In proposing these two alternatives, FHFA seeks to obtain feedback about how to balance the following considerations.

On the one hand, FHFA seeks to establish a minimum leverage requirement that would serve as a backstop capital requirement to guard against the potential that the risk-based capital requirements would be underestimated or would become too low in the future following periods of sustained, strong economic conditions. A meaningful minimum leverage requirement would also guard against the risk that the risk-based capital measure significantly underestimates necessary capital levels. An underestimation of capital could occur for different reasons, including the potential for model estimation error, the possibility that loans perform differently than similar loans did in the historical periods used to estimate the models, the emergence of new products that are inadequately capitalized because of a lack of historical performance data as occurred during the financial crisis, and the possibility that the proposed risk-based capital approach would overestimate the amount of capital relief attributed to CRT transactions. A leverage backstop would also protect against a reduced risk-based capital measure during times of overly aggressive house price appreciation and low unemployment, which would result in lower capital requirements and the release of capital when loan-to-value ratios fall. In the absence of a meaningful minimum leverage capital requirement, aggressively low risk-based capital requirements could result in the Enterprises facing difficulty raising capital in worsening economic conditions when capital is most needed. A leverage backstop would also mitigate the risk of rapid deleveraging for institutions that depend on short-term funding, though, as discussed herein, this rationale applies more to large depository institutions than to the Enterprises. Lastly, a leverage backstop would provide a floor beyond the proposed going-concern buffer and operational risk capital requirement for the amount of capital released as a result of credit risk transfer transactions.

On the other hand, FHFA also seeks to avoid setting a minimum leverage requirement that is too high and would regularly eclipse the risk-based capital requirements, which could have adverse consequences. Because leverage requirements generally require firms to hold the same amount of capital for any type of asset irrespective of the asset's risk profile, a binding leverage requirement could incent firms to hold riskier assets on their balance sheets. Instead of reducing risk to the Enterprises, a high leverage requirement that surpasses risk-based capital requirements could encourage the Enterprises to forgo lower-risk assets in favor of those with higher-risks because the same capital requirement would apply for either asset. In addition, a binding leverage requirement could lead an Enterprise to reduce or halt its CRT transactions. This could occur because the proposed risk-based capital requirements provide capital relief for CRT transactions, whereas the minimum leverage capital requirements in this proposed rule do not provide capital relief for CRT transactions. As a result, a binding leverage ratio could reduce an Enterprise's economic incentive to engage in these transactions, potentially resulting in greater concentration of credit risk at the Enterprise.

Each of these proposed capital requirements are discussed in section II.

C. Legislative Authority and History

Effective July 30, 2008, HERA created FHFA as a new independent agency of the Federal Government. The part of HERA that applies to FHFA is the Federal Housing Finance Regulatory Reform Act of 2008,[1] which amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act or statute).[2] The 1992 statute created OFHEO, one of FHFA's predecessor agencies.

HERA transferred to FHFA the supervisory and oversight responsibilities of OFHEO over Fannie Mae and Freddie Mac. HERA also transferred the oversight responsibilities of the Federal Housing Finance Board over the Federal Home Loan Banks (Banks) and the Office of Finance, which acts as the Banks' fiscal agent, and certain functions of the Department of Housing and Urban Development (HUD) with respect to the affordable housing mission of the Enterprises. In addition to transferring supervisory responsibilities to FHFA, HERA gave the Agency greater authority than OFHEO had to determine the capital standards for the Enterprises.

1992 Statute and OFHEO Risk-Based Capital Rulemaking

As originally enacted, the 1992 statute specified a minimum capital requirement in the form of a leverage ratio for the Enterprises and a highly prescriptive approach to risk-based capital requirements for the Enterprises. The statute required that OFHEO establish a risk-based capital stress test by regulation such that each Enterprise could survive a ten-year period with large credit losses and large movements in interest rates. The statute specified two interest rate scenarios, with falling and rising rates, and provided the interest rate paths for each scenario. The statute set parameters for a benchmark loss experience for default and loss severity, but provided OFHEO discretion to determine other aspects of the capital test.

To implement this statutory language, OFHEO developed a risk-based capital standard for the Enterprises, and issued a series of **Federal Register** notices to solicit public comment. Initially, the Agency issued an Advance Notice of Proposed Rulemaking (ANPR) to seek comment on a number of issues related to the rule's development. Those comments were considered when OFHEO subsequently developed two Notices of Proposed Rulemaking (NPRs). The first NPR contained the methodology for identifying the benchmark loss experience and the use of OFHEO's House Price Index (HPI). The second NPR proposed the remaining specifications of the stress test. OFHEO also issued a notice to give interested parties an opportunity to respond to comments received by the Agency from the second NPR. OFHEO's Final Rule included consideration of the comments received in the first and second NPRs, as well as the reply comments.

Suspension of Capital Requirements During Conservatorship and Existing Regulatory Capital Requirements

On September 6, 2008, the Director of FHFA appointed FHFA as the conservator for each Enterprise, pursuant to authority in the Safety and Soundness Act. Conservatorship is a statutory process intended to preserve and conserve the assets of the Enterprises and to put the companies in a sound and solvent condition. FHFA suspended the capital classifications and the regulatory capital requirements applicable at that time, and they remain suspended.[3]

Although the capital requirements are suspended while the Enterprises are in conservatorship, this section reviews the Enterprise capital standards in the prior OFHEO rule, which, though suspended, has not yet been replaced.[4] The OFHEO regulations on the Enterprises' minimum capital (leverage ratio) and risk-based capital requirements would be superseded by this rulemaking.

The Enterprises are required by statute to maintain the capital necessary to meet certain minimum leverage and risk-based capital levels. Under HERA, the Enterprises continue to operate under the regulations issued by OFHEO until those regulations are superseded by regulations issued by FHFA. The OFHEO rule's minimum leverage and risk-based capital requirements are applied simultaneously, but are not additive. The Enterprises must meet both requirements in order to be classified as adequately capitalized.

If any Enterprise is classified as other than adequately capitalized, it triggers a series of prompt corrective actions. Since the ability of the Enterprises to obtain adequate capital was fatally impaired due to the financial crisis, capital support for the Enterprises was provided by the PSPAs with the Treasury Department when the Enterprises were put into conservatorship. Accordingly, FHFA suspended the capital classifications as well as the OFHEO capital regulation.

The minimum leverage capital requirement specified in the Safety and Soundness Act is equal to 2.5 percent of on-balance sheet assets and 0.45 percent of off-balance sheet obligations. These levels are applied to the retained portfolio and guarantee business, respectively.[5] The statute, today as in 1992, requires the minimum leverage capital requirement to be met with core capital, which per the statute is composed of outstanding common stock (par value and paid-in capital), retained earnings, and outstanding non-cumulative perpetual preferred stock.

The statute, as amended by HERA, also requires the Enterprises to meet a risk-based capital standard, to be prescribed by FHFA by regulation. The OFHEO capital rule contains a stress test, which is to be applied to each Enterprise's book of business. As prescribed by the 1992 statute, the stress test is designed such that each Enterprise could survive a ten-year period with large credit losses and large movements in interest rates. There are two interest rate scenarios, with falling and rising rates, and interest rate paths for each scenario. The test has parameters for a benchmark loss experience for default and loss severity, and uses the House Price Index produced by OFHEO (which FHFA now produces).

The statute, both in 1992 and today, requires the risk-based capital requirement to be met with total capital, which is the sum of core capital and a general allowance for foreclosure losses, plus ''[a]ny other amounts from sources of funds available to absorb losses incurred by the enterprise, that the Director by regulation determines are appropriate to include in determining

[1] Public Law 110–289, Div. A, July 30, 2008, 122 Stat. 2659.

[2] Public Law 102–550, Title XIII, October 28, 1992, 106 Stat. 3941.

[3] Press Release, ''FHFA Announces Suspension of Capital Classifications During Conservatorship,'' Oct. 9, 2008.

[4] 12 CFR part 1750.

[5] Due to changes in GAAP after the statute was enacted, guaranteed mortgage-backed securities held by third parties are now consolidated by each Enterprise onto its balance sheet. However, for minimum leverage capital purposes, FHFA has interpreted the statute as continuing to apply the 0.45 percent capital requirement to these loans. *See* Regulatory Interpretation 2010–RI–1, Jan. 12, 2010.

total capital'' (a determination that OFHEO never made).

The statute, both in 1992 and today, defines a critical capital level, which is the amount of core capital below which an Enterprise is classified as critically undercapitalized. The critical capital level is 1.25 percent of on-balance sheet assets (retained portfolio) and 0.25 percent of off-balance sheet obligations (guarantee business).

Under the statute, both in 1992 and today, an Enterprise is considered adequately capitalized when core capital meets, or exceeds, the minimum capital requirement and total capital meets, or exceeds, the risk-based capital requirement. An Enterprise is considered undercapitalized if it fails the risk-based requirement, but meets the minimum capital requirement. It is significantly undercapitalized when it fails both the minimum and risk-based capital requirements, but still has enough critical capital. It becomes critically undercapitalized when it fails both the minimum and risk-based capital requirements, as well as the critical capital requirement.

If an Enterprise becomes undercapitalized or significantly undercapitalized, under the prompt corrective action framework in the statute the Enterprise is subject to heightened supervision. This includes being required to submit a capital restoration plan, and having restrictions imposed on capital distributions and asset growth. A significantly undercapitalized Enterprise must also improve management through a change in the board of directors or executive officers. If an Enterprise becomes critically undercapitalized, then the Enterprise may be placed in conservatorship or receivership.

HERA Amendments on Enterprise Capital Requirements

FHFA's broader capital regulation authority provided by the amendments made by HERA creates an opportunity for FHFA to develop a new risk-based capital standard and an increased minimum leverage requirement. FHFA's authority to establish risk-based capital requirements was amended under HERA by removing the specific stress test requirements that had been mandated for OFHEO's rulemaking and providing FHFA with the authority to establish risk-based capital requirements ''to ensure that the enterprises operate in a safe and sound manner, maintaining sufficient capital and reserves to support the risks that arise in the operations and management of the enterprises.'' [6] While HERA did not change the minimum leverage ratio levels specified in the statute, the legislation provided FHFA with authority to increase the minimum leverage requirement above those levels as necessary,[7] and to temporarily increase the minimum capital level for a regulated entity.[8] FHFA issued a final regulation to implement the temporary increase authority in 2011.[9] Additionally, as amended by HERA, the statute provides FHFA with the authority to establish capital or reserve requirements for specific products and activities as deemed appropriate by the Agency.[10] HERA also enhanced the Safety and Soundness Act's prompt-corrective-action provisions and added the agency's conservatorship and receivership authorities.

Dodd-Frank Act Stress Tests

Section 165 [11] of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 [12] (Dodd-Frank Act) required the capital adequacy stress testing of large financial companies with assets over $10 billion that are supervised by a federal regulator. FHFA issued regulations to implement this requirement.[13] However, the Dodd-Frank Act Stress Test is a reporting requirement, not a capital requirement. The purpose of the test is to assist in the evaluation of capital sufficiency, but it does not set any capital requirements for the Enterprises.

D. The Enterprises' Pre-Conservatorship Business and the Financial Crisis

Pre-Conservatorship Business

The Enterprises' business model of supporting single-family and multifamily housing consists of both a guarantee business and a portfolio business. In the portfolio business, the Enterprises issue debt and invest the proceeds in whole loans and mortgage-backed securities. The mortgage securities held in the retained portfolio were traditionally the Enterprises' own guaranteed mortgage-backed securities. In the years leading up to the crisis, however, the Enterprises became active participants in the market for private-label mortgage securities, which exposed the Enterprises to significant fair value losses.

The Enterprises earned net interest income on the difference between rates on the mortgage securities (interest income) and the debt costs (interest expense) on their retained portfolio business. The net interest income was at risk since longer-term assets were funded by shorter-term debt. The Enterprises managed this duration mismatch using interest-rate swaps and ''swaptions'' in the derivatives market. By holding leveraged positions in mortgage securities and funding them with shorter-term debt, the Enterprises took on substantial market risks, in addition to supporting core business functions. Sources of this market risk include the risk of loss from changes in interest rates and the basis risk associated with imperfect hedging.

The Enterprises also used the retained portfolios to hold whole loans that could not be easily securitized, such as certain affordable loans and loans being reworked through loss mitigation. In addition, the retained portfolios were used to support the cash window for smaller lenders. This use of the retained portfolio supported core business functions and helped the Enterprises to fulfill their mission. However, during the pre-conservatorship period, the purchase of mortgage securities dominated the portfolio business.

In the guarantee business, private lenders participated in the mortgage-backed security swap program and cash window program. Through these programs, private lenders originated loans according to Enterprises' standards, and either exchanged those loans for securities that were guaranteed by either Enterprise, or sold loans directly to the Enterprises for cash. When lenders in the swap program received guaranteed mortgage-backed securities, they often sold those securities to replenish funds, enabling the lenders to make more loans. When smaller lenders sold their loans to the Enterprises for cash, the price they received was the market price for the loans less an implied guarantee fee. The Enterprises were able to quickly aggregate the cash window purchases from multiple smaller lenders and issue the guaranteed securities with a larger pool size directly. In addition, loans purchased through Freddie Mac's cash window or Fannie Mae's whole loan conduit (collectively referred to

[6] 12 U.S.C. 4611(a)(1).

[7] 12 U.S.C. 4612(c).

[8] 12 U.S.C. 4612(d), implemented at 12 CFR part 1225.

[9] 76 FR 11668 (March 3, 2011).

[10] 12 U.S.C. 4612(e).

[11] 12 U.S.C. 5365(i). The stress testing requirements of the Dodd-Frank Act have been adjusted by Title IV of the Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174, May 24, 2018, 132 Stat. 1356, to, among other things, reflect new asset thresholds and to reduce from 3 to 2 the number of testing scenarios. The effect, if any, of the new requirements will be considered and accounted for in any final rule FHFA issues.

[12] Public Law 111–203, July 21, 2010, 124 Stat. 1376.

[13] 12 CFR part 1238.

henceforth as the cash window) noted above were aggregated and later securitized. In both the swap and cash programs, the Enterprises assumed the credit risk on the loans in exchange for a guarantee fee. The lenders earned income through originating and servicing loans, and selling MBS they received from the Enterprises; and private investors assumed the market risk from price changes driven by movements in interest rates.

Growth in Subprime and Other High Risk Loans

In the years leading up to the financial crisis, competition in the primary mortgage market for revenue and market share led mortgage lenders to relax underwriting standards and originate riskier mortgages to less creditworthy borrowers. Many of these loans were packaged into subprime and ''Alt-A'' private-label securities that were sold without backing from the Enterprises. Investor appetite for these loans enabled lenders to lower standards for underwriting, including credit scores, which increased the potential pool of borrowers and helped to drive up house prices. Consequently, subprime mortgages were given to borrowers with lower credit scores and low down payments.

In addition, Alt-A loans were increasingly offered to borrowers considered riskier than ''A'' or prime paper and less risky than subprime. Alt-A mortgages were characterized by less than the full documentation by the lender of a borrower's income and assets, which markedly increased the credit risk and fueled speculation. These high-risk loans often had features that made it increasingly difficult for borrowers to repay the loans, including low teaser rates that would reset, balloon payments, prepayment penalties, interest-only periods, and negative amortization. Weak underwriting standards during this period often included inflated appraised values, which compounded the problems. In addition, many loans had ''risk-layering'' of more than one higher risk attribute, significantly increasing credit exposures.

The private-label securities were divided into tranches with different terms and credit risk attributes. Prior to 2003, the Enterprises maintained relatively high underwriting standards. However, as the Enterprises faced declining market shares of the total mortgage market with the growth of the private-label market, the Enterprises sought to increase business revenue by buying significant amounts of the AAA-rated tranches of private-label subprime and Alt-A securities for their retained portfolios. In addition, the Enterprises guaranteed increasingly larger amounts of Alt-A whole mortgage loans with non-traditional credit standards from lenders through bulk sales, outside of the normal business standards for the guarantee business.

2007–2008 Financial Crisis

The financial crisis began in 2007 with stresses in the subprime and Alt-A mortgage market. The crisis grew to other financial sectors in the United States and globally. Several large financial firms failed and others had to be supported through government intervention. After the crisis, the Dodd-Frank Act was enacted in the United States, and the Basel III capital standards were adopted globally to promote financial stability.

In the build-up to the crisis, growth in subprime and Alt-A lending drove house prices increasingly higher. The overvaluation of non-traditional mortgages was based on the assumption that house prices would continue to rise. However, as the market for those loans began to weaken, house prices started to decline nationwide, further exacerbating the problems and spreading stress to markets beyond the housing sector. By September 2008 when the Enterprises entered conservatorship, the average U.S. house price had declined by over 20 percent from its mid-2006 peak. Many borrowers were faced with underwater mortgages such that the unpaid balances of the loans exceeded the value of the homes. The economic stress affected not only the subprime and Alt-A mortgages in the Enterprises' guarantee book, but also the mortgages in the guarantee book that had been approved under more traditional mortgage underwriting standards.

The financial crisis had a major impact on the value of the private-label securities held by the Enterprises in their retained portfolios. From 2002 to 2008, Fannie Mae purchased $240 billion of subprime and Alt-A private-label single-family mortgage securities. From 2006 to 2008, Freddie Mac purchased $160 billion of these securities.[14] When the financial crisis hit, the Enterprises suffered sharp declines in the value of these securities, due to weakening collateral and credit rating downgrades.

The SFAS 157 accounting standard issued in 2006 for fair value accounting required that tradable assets such as mortgage securities that were purchased with the intent to resell in either a short time frame (trading securities) or in a longer time frame (available-for-sale securities) be valued according to their current market value rather than historic cost or some future expected value. When the market for private-label securities collapsed, the value losses had a major financial effect on the holders of these securities. Upon entering conservatorship, the Enterprises ceased buying both subprime and Alt-A securities, and began to wind down those positions.

In addition to the private-label security losses in the portfolio, the guarantee book experienced severe stress from the financial crisis. Fannie Mae's single-family serious delinquency rate rose from 0.65 percent in 2006 to 2.42 percent in 2008, peaking at 5.38 percent in 2009. Subsequently, the delinquency rate fell below 2.00 percent by 2014 and to 1.24 percent at the end of 2017. Freddie Mac's delinquency rate rose from 0.42 percent in 2006 to 1.83 percent in 2008, peaking at 3.98 percent in 2009. At the end of 2017, ten years after the start of the financial crisis, Freddie Mac's delinquency rate had fallen to 1.08 percent.

The serious delinquency rates from the financial crisis translated into high credit losses for the Enterprises and a sharp increase in real estate owned properties (REO)[15]—properties acquired through foreclosure. Fannie Mae's credit losses as a percent of its guarantee book increased from 0.02 percent in 2006 to a peak of 0.77 percent in 2010. REO increased from 0.09 percent in 2006 to a peak of 0.53 percent in 2010. Freddie Mac experienced a similar loss and REO experience. Its credit losses grew from 0.01 percent in 2006 to a peak of 0.72 percent in 2010, and REO grew from 0.04 percent to 0.36 percent over this period.

As asset prices fell and other large financial firms failed, it became increasingly difficult for the Enterprises to issue debt to fund their retained portfolios, to raise new capital to cover the mark-to-market losses from private-label securities, and to build reserves for projected credit losses from credit guarantees. In the financial crisis, it became apparent that the Enterprises were not adequately capitalized to absorb these types of shocks.

In response to the substantial deterioration in the housing market that

[14] *See* FHFA's Report to Congress for private-label security holdings, serious delinquency rate, and credit loss data.

[15] When a borrower is unable to repay a mortgage, and a loan goes through the foreclosure process, the lender takes possession of the property that was pledged as collateral. When the property is conveyed to an Enterprise, it becomes real estate owned (REO) on the Enterprise's book.

left Fannie Mae and Freddie Mac unable to fulfill their mission without government intervention, FHFA used its conservatorship authority in the newly amended Safety and Soundness Act. On September 6, 2008, the Director of FHFA appointed FHFA as the conservator for each Enterprise to preserve and conserve the assets of the Enterprises and to put the companies in a sound and solvent condition. The goals of conservatorship are to restore confidence in the Enterprises, enhance the Enterprises' abilities to fulfill their missions, and mitigate the systemic risk that contributed directly to the instability during the financial crisis.[16]

As conservator, FHFA directs the operations of each Enterprise. The Agency has empowered the Enterprises' boards of directors and senior management to manage most day-to-day operations of the Enterprises, so that the companies can continue to support the mortgage markets without interruption. The approach that FHFA uses to exercise control and manage the conservatorships of Fannie Mae and Freddie Mac is discussed in the next section.

While the Enterprises are in conservatorship, the Treasury Department provides Fannie Mae and Freddie Mac with financial support through PSPAs. This support is unprecedented, and was necessary for the Enterprises to be able to meet their outstanding obligations and to continue to provide liquidity to the mortgage market. The initial PSPAs in September 2008 included an initial issuance to the Treasury Department of preferred stock with a liquidation preference of $1 billion each in Fannie Mae and Freddie Mac and warrants for a 79.9 percent common equity stake in each Enterprise.

Quarterly draws were designed to allow each Enterprise to maintain positive net worth. The maximum permitted amount was set at $100 billion for each Enterprise. The dividend rate on senior preferred stock purchased by the Treasury Department was set at 10 percent. In addition, the PSPAs provided for a ''periodic commitment fee'' to compensate the Treasury Department for its continuing commitment to purchase further senior preferred stock, up to a maximum commitment amount, as necessary to maintain the solvency of the Enterprises. (The Treasury Department regularly waived that fee, and in the August 2012 third amendment to the PSPAs, the fee was indefinitely suspended for so long as the ''net worth sweep'' established by that amendment remained in effect.) The PSPAs also included a requirement for each Enterprise to reduce the size of the retained portfolio by at least 10 percent each year, but allowed a $250 billion portfolio per Enterprise to support core business functions. The first amendment to the agreement in May 2009 doubled the maximum cumulative draw per Enterprise to $200 billion, and a second amendment in December 2009 replaced the maximum draw amount with a formulaic approach.

The third amendment to the agreement in August 2012 replaced the 10 percent dividend and the periodic commitment fee with a variable structure, under which the net income of each Enterprise in excess of a small capital buffer (the ''Applicable Capital Reserve Amount'') is swept to the Treasury Department. In many quarters, the payment equals quarterly net profits. With this amendment, all of the Enterprises' earnings are used to benefit taxpayers. The third amendment also provided for the uniform reduction of the Applicable Capital Reserve Amount from $3 billion to $0 at the end of 2017. In addition, the third amendment increased the rate of reduction in the size of the retained portfolios. Each Enterprise must reduce its portfolio by 15 percent per year, which is a faster reduction rate than the previous 10 percent annual reduction. This reduces the maximum retained portfolios to $250 billion by the end of 2018.

In December 2017, the PSPAs were revised to restore the Applicable Capital Reserve Amount to $3 billion. FHFA considers this capital reserve amount to be sufficient to cover normal fluctuations in income in the course of each Enterprise's business.[17]

E. Enterprises' Business Model and Changes in Conservatorship

FHFA uses four key approaches to manage the conservatorships of Fannie Mae and Freddie Mac. First, it establishes the overall strategic direction for the Enterprises in the Strategic Plan for the Conservatorships and an annual scorecard. Next, within the scope of the Strategic Plan and annual scorecard, FHFA authorizes the board of directors and senior management of each Enterprise to carry out the day-to-day operations of the companies. Third, for certain actions which FHFA has carved out as requiring advance approval by the Agency, it reviews and considers those requests. Finally, FHFA oversees and monitors the Enterprises' activities.

FHFA's conservatorship strategic plan has three goals: (1) To maintain foreclosure prevention activities and new credit availability in a safe and sound manner, (2) to reduce taxpayer risk through increasing the role of private capital, and (3) to build a new securitization infrastructure. The annual scorecards provide more specific direction for meeting these goals. FHFA reports to the public on its yearly activities through a number of reports, including an Annual Report to Congress, scorecard progress reports, credit risk transfer progress reports, and updates on the implementation of the common securitization platform and single security.

As discussed earlier, the Enterprises' business model before conservatorship of supporting single-family and multifamily housing traditionally consisted of both a guarantee business and a portfolio business. In the guarantee business, lenders may exchange loans for a guaranteed mortgage-backed security, which may then be sold by the lender into the secondary market to recoup funds to make more loans, or they may sell loans directly to an Enterprise through the cash window. The Enterprises purchase loans through the cash window from multiple smaller-volume lenders to aggregate and later securitize and guarantee. Loans purchased through the cash window are held in portfolio until they are securitized and become part of the guarantee business. The Enterprises charge a guarantee fee to cover the costs of providing the guarantee. In the portfolio business, the Enterprises invest in assets such as whole loans or mortgage-backed securities, and funds those purchases with debt issuances.

Consistent with the terms of the PSPAs with the Treasury Department, the portfolio business has been reduced substantially in size during conservatorship, with the guarantee business assuming a much larger role. While the portfolio business involves both credit and market risk, in the guarantee business the Enterprises assume the credit risk and the market risk is borne by private investors in the guaranteed mortgage-backed securities. In conservatorship, consistent with direction provided by FHFA in its strategic plan and annual scorecard, the Enterprises have developed programs to transfer a significant portion of the credit risk in the single-family guarantee business to the private sector.

In addition to reducing the size of the retained portfolios, the Enterprises have also strengthened underwriting and

[16] *https://www.fhfa.gov/Conservatorship.*

[17] *https://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-from-FHFA-Director-Melvin-L-Watt-on-Capital-Reserve-for-Fannie-Mae-and-Freddie-Mac.aspx.*

eligibility standards, aligned certain business processes, and worked toward implementing a common securitization platform.

Guarantee Fees

The Enterprises charge fees to lenders in return for guaranteeing the credit risk on mortgage-backed securities. In response to the housing crisis and in conservatorship, the Enterprises have made a number of changes to these guarantee fees. As a result, the average single-family guarantee fee increased from 22 basis points in 2007 to 57 basis points in 2016.

In 2008, to better align fees with credit risk, the Enterprises increased ongoing guarantee fees and added two new upfront fees: A fee based on the combination of a borrower's credit score and loan-to-value ratio, and a 25 basis point adverse market charge. In late 2008 through 2011, the Enterprises gradually raised fees and further refined their upfront fee schedules. In late 2011, as mandated by the Temporary Payroll Tax Cut Continuation Act of 2011,[18] FHFA directed the Enterprises to increase guarantee fees by 10 basis points on average to offset the cost to the Treasury Department of a temporary payroll tax cut enacted by Congress.

In 2012, FHFA directed the Enterprises to raise fees by an additional 10 basis points on average to better compensate taxpayers for the Enterprises' credit risk. Fees were raised in a manner that helped eliminate volume-based discounts and thereby provide a level playing field for lenders of all sizes.

In 2013, FHFA announced another round of fee increases but subsequently suspended the implementation of those changes in order to perform a comprehensive review of the Enterprises' guarantee fees. After completing that review in 2015, FHFA directed the Enterprises to implement certain adjustments. These adjustments included the elimination of the adverse market charge in all markets and targeted increases for specific loan groups. The set of fee changes was approximately revenue neutral with little to no impact for most borrowers.

In 2016, in response to findings in its ongoing quarterly guarantee fee reviews, FHFA established minimum guarantee fees by product type to help ensure the continued safety and soundness of the Enterprises.

Retained Portfolio

Under the PSPAs with the Treasury Department and direction from FHFA, the unpaid balance of each Enterprise's mortgage portfolio is subject to a cap that decreases by 15 percent each year until the cap reaches $250 billion. The Enterprises have made significant progress on reducing their retained portfolios, and toward using the portfolios to support core business activities rather than as a source of investment income. The Enterprises have reduced their retained portfolios by over 60 percent since 2009, and both Enterprises are ahead of schedule in meeting the 2018 maximum portfolio limits.

Most of the portfolio reduction has resulted from prepayments and regular amortization of mortgages. The Enterprises have also sold less-liquid assets, such as private-label securities and non-performing and re-performing loans, in order to transfer risk to private investors. The Enterprises also securitized certain re-performing mortgages held on their books and sold those securities into the market. Fannie Mae's holdings of Fannie Mae-guaranteed securities fell from $229 billion at the end of 2008 to $49 billion in 2017, and holdings of other securities fell from $133 billion to $5 billion over the same period. Freddie Mac's retained portfolio experienced similar declines, as holdings of Freddie Mac-guaranteed securities fell from $425 billion in 2008 to $132 billion in 2017, and other mortgage securities fell from $269 billion to $14 billion over the same period.

The Enterprises' retained portfolios now primarily support the core business activities of aggregating loans from single-family and multifamily lenders to facilitate securitization, and holding delinquent loans in portfolio to facilitate loan modifications in order to keep borrowers in their homes and reduce Enterprise losses. The portfolios also support certain affordable products that cannot be easily securitized. In addition, the Enterprises' retained portfolios may be used to support underserved markets under Duty-to-Serve Plans that the Enterprises have begun to implement in 2018.

Credit Risk Transfer

The Enterprises have significantly expanded their practice of transferring credit risk to the private sector in recent years. Credit risk transfer (CRT) has long been a part of each Enterprise's multifamily business. In 2016, the Enterprises transferred a portion of credit risk to private investors on over 90 percent of their combined multifamily acquisition volume. In 2013, the Enterprises began to develop programs to transfer a portion of the credit risk on their single-family new-acquisition businesses. The purpose is to reduce the risk to the Enterprises and taxpayers of future borrower defaults where it is economically sensible to do so.

FHFA assesses the Enterprises' CRT programs using certain core principles. The transactions must transfer a meaningful amount of credit risk to private investors to reduce taxpayer risk, and the cost of the credit risk transfers must be economically sensible in relation to the cost of the Enterprises self-insuring the risk. In addition, the transactions may not interfere with the Enterprises' core business, including the ability of borrowers to access credit. The CRT programs are intended to attract a broad investor base, be scalable, and incorporate a regular program of issuances. In transactions where credit risk may not be not fully collateralized, the program counterparties must be financially strong and able to fulfill their commitments even in adverse market conditions.

Loans targeted for single-family CRT include fixed-rate mortgages with loan-to-value ratios greater than 60 percent and original term greater than 20 years. These loans carry the majority of the Enterprises' credit risk exposure. Loans targeted for credit risk transfer have grown from 42 percent of total Enterprise acquisitions in 2013 to 62 percent of acquisitions in the first half of 2017. The Enterprises continue to assume the full credit risk on less risky loans with lower loan-to-value ratios and shorter terms, as well as on certain higher risk legacy loans where the economics do not favor CRT transactions. The Enterprises also transfer risk on loans outside of the targeted loan population.

The single-family CRT programs, implemented since 2013, supplement the more traditional credit enhancements required by the Enterprises' charters. The charters require loans with loan-to-value ratios above 80 percent to have loan-level credit enhancement, most often obtained through private mortgage insurance. From 2013 through the first half of 2017, the Enterprises transferred a portion of the credit risk through their single-family CRT programs on $1.8 trillion of mortgages with a combined risk in force of $61 billion, or 3.4 percent of the credit risk. During the same period, primary mortgage insurers also covered a portion of credit risk on $837 billion of unpaid principal

[18] Public Law 112–78, Dec. 23, 2011, 125 Stat. 1280.

balances (UPB) through traditional loan-level insurance.

Since 2013, the CRT programs have become a core part of the single-family business. In the second quarter of 2017, the Enterprises transferred risk on $213 billion of mortgages, with risk in force of $6 billion or nearly 3 percent of risk. Debt issuances accounted for 70 percent of the risk in force, insurance and reinsurance transactions accounted for 25 percent, and lender risk sharing accounted for the remaining 5 percent. Front-end reinsurance transactions increased from 2 percent of the risk in force in the first quarter of 2017 to 4 percent in the second quarter. In the first half of 2017, loans targeted for CRT represented 62 percent of the Enterprises' single-family loan production.

Enterprise debt issuances have been the primary risk transfer vehicle to date. Fannie Mae uses a structure called Connecticut Avenue Securities (CAS), while Freddie Mac issues Structured Agency Credit Risk (STACR) securities. CAS and STACR have been designed to track the performance of a reference pool of loans previously securitized in Enterprise guaranteed MBS. These debt transactions are fully collateralized, since investors pay for the notes in full and absorb credit losses through a reduction in the principal due on the underlying notes. The Enterprises typically retain the first 50 basis points of expected losses in most transactions because purchasing protection for this portion may not offer economic benefits. While debt transactions have been the primary CRT method, the Enterprises have worked to broaden their investor base through other structures, and to compare executions across different structures and market environments.

Insurance and reinsurance transactions are considered part of the Enterprises' CRT programs and are separate from the Enterprises' charter requirements for loans with loan-to-value ratios above 80 percent. These transactions generally involve pool-level policies that cover a specified amount of credit risk for a large pool of loans. Fannie Mae uses a structure called Credit Insurance Risk Transfer (CIRT), while Freddie Mac uses the Agency Credit Insurance Structure (ACIS). These structures are partially collateralized, and the Enterprises distribute risk among a group of highly-rated insurers and reinsurers to reduce counterparty and correlation risk.

In senior/subordinate transactions, an Enterprise sells a group of mortgages to a trust that securitizes the cash flows into different bond tranches. Prior to 2017, super conforming loans that would otherwise have backed Freddie Mac mortgage-backed securities were used as collateral in Freddie Mac's single-family senior/subordinate transactions called Whole Loan Securities (WLS). The subordinate and mezzanine tranches, which are not guaranteed, absorb the expected and unexpected credit losses. The senior bonds, which were guaranteed by the Enterprise, have historically traded at a slight discount to comparable Freddie Mac mortgage-backed securities. In order to provide a more scalable and economic solution, in 2017 Freddie Mac introduced a revised structure to its WLS, called STACR Securitized Participation Interests (SPI). This new structure allows for the issuance of mortgage-backed securities rather than guaranteed senior certificates to improve the pricing execution in the credit risk transfer. The STACR SPI trust will continue to issue unguaranteed credit certificates as subordinate and mezzanine tranches. In contrast to synthetic CRT structures, the senior/subordinate structure is eligible for purchase by real estate investment trusts (REITs).

Another form of single-family risk structure is lender front-end CRT, where the credit risk is transferred prior to or simultaneous with the Enterprise loan acquisition. Lender front-end risk transfer can be structured through the issuance of securities with the lender holding the credit risk by retaining the securities, or by selling the securities to credit risk investors. Alternatively, in traditional lender recourse transactions, the lender may forgo securities issuance and simply retain the credit risk. The lender will often, but not always, fully collateralize its obligation. While the Enterprise charter requirement for loan-level credit enhancement is typically through private mortgage insurance, the charters allow the Enterprises to accept lender recourse as an alternative, so lender retention of credit risk has been used to a lesser extent in the past. However, this lender recourse has not always been fully collateralized.

While the newest forms of single-family CRT started in 2013, risk sharing has been an integral part of the Enterprises' multifamily business for many years. Fannie Mae's primary multifamily risk-transfer program exists through its Delegated Underwriting and Servicing (DUS). In this program, lenders typically share up to one-third of the credit losses on a pro-rata basis with the Enterprises. In an effort to broaden its program offerings, Fannie Mae completed the first non-DUS CRT in 2016 when it transferred a portion of its credit risk to the reinsurance industry. Freddie Mac's multifamily risk-transfer program generally exists through its K-Deal program in which Freddie Mac purchases loans that are put into diversified pools, and placed into multiclass securities for sale to private investors. The subordinate and mezzanine bond tranches are not guaranteed by Freddie Mac. Instead, the subordinate or ''B-piece'' holders are in the first-loss position in the event of a mortgage default. If losses exceed the ''B-piece'' level, holders of the mezzanine bond tranche assume the additional losses. The subordinate and mezzanine tranches are sized such that virtually all credit risk is transferred to the investors in those securities. The senior bonds comprise the remainder of the K-Deal and are guaranteed by Freddie Mac.

Underwriting Standards and Qualified Mortgages

The Enterprises are required to emphasize sound underwriting practices in their purchase guidelines. Since entering conservatorship, the Enterprises have continued to refine automated underwriting systems to better assess risk, reduce risk layering, improve the use of compensating factors, and enable access to credit in a safe and sound manner. The Enterprises launched the Uniform Mortgage Data Program to standardize data in the mortgage industry to help improve loan quality and mortgage risk management. The Enterprises also revamped the Representation and Warranty Framework to reduce lender uncertainty around requirements to repurchase loans from the Enterprises and to support access to credit.

In the Dodd-Frank Act, Congress adopted ability-to-repay requirements for nearly all closed-end residential mortgage loans. Congress also established a presumption of compliance with these requirements for a certain category of loans called Qualified Mortgages (QM). The Consumer Financial Protection Bureau (CFPB) adopted an ability-to-repay rule to implement these provisions.

A loan is generally considered a Qualified Mortgage if: (1) The points and fees do not exceed 3 percent of the loan amount, (2) the term does not exceed 30 years, (3) the loan is fully amortizing with no negative amortization, interest-only, or balloon features, and (4) the borrower's debt-to-income (DTI) ratio does not exceed 43 percent. CFPB also defined a special transitional class of QM loans that are not subject to the 43 percent DTI limit if they are eligible for sale to either Enterprise.

Before the CFPB rule became final, the Enterprises had already improved underwriting standards and eliminated purchases of the higher risk products such as negative amortization and interest-only loans. In 2013, after the CFPB rule became final, FHFA directed each Enterprise to acquire only loans that meet the points and fees, term and amortization requirements of the CFPB's rule for Qualified Mortgages.

Loss Mitigation

FHFA has also worked with the Enterprises to develop effective loss mitigation programs to minimize losses and enable borrowers to avoid foreclosure whenever possible. The Enterprises aligned their loss mitigation standards and developed updated loan modification and streamlined refinance products. The Enterprises are also pursuing efforts to stabilize distressed neighborhoods through the Neighborhood Stabilization Initiative. Better underwriting standards, improved loss mitigation, and an improving economy have resulted in the Enterprises' serious delinquency rates falling to their lowest level since the Enterprises entered into conservatorship in 2008.[19]

Common Securitization Platform and Single Security

During conservatorship, the Enterprises have worked to build a new single-family securitization infrastructure. This includes development of a common securitization platform (CSP) and a single Enterprise mortgage-backed security. Fannie Mae and Freddie Mac established Common Securitization Solutions, LLC (CSS) as a jointly-owned company to develop and operate the platform. The platform will replace some of the proprietary systems used by the Enterprises to securitize mortgages and perform the back office functions.

In 2015, FHFA announced a two-part process for the CSP and single security. Release 1, which was implemented in 2016, uses the CSP to issue Freddie Mac's existing single-class securities. Release 2, the implementation of which is planned for the second quarter of 2019, will enable the issuance of the single security called the Uniform Mortgage Backed Security (UMBS) through the CSP. The single security initiative will increase the liquidity of the TBA market for newly issued mortgage-backed securities and will eliminate the differences in pricing between Fannie Mae and Freddie Mac securities.

Governance and Supervision

When FHFA placed the Enterprises into conservatorship, it replaced most members of the boards of directors and many senior managers. Through conservatorship and regular supervisory oversight, the Agency required the Enterprises to improve risk management, update legacy systems, and improve data management. As part of its supervision function, FHFA issues advisory bulletins, which communicate FHFA's supervisory expectations to the Enterprises on specific supervisory matters and topics. In addition, through its supervision program, FHFA's on-site examiners conduct supervisory activities to ensure safe and sound operations of the Enterprises. These supervisory activities include the examination of the Enterprises to determine whether they comply with their own policies and procedures and regulatory and statutory requirements, and whether they comply with FHFA directives and meet the expectations set in FHFA's advisory bulletins.

F. Comparison of Enterprises and Large Depository Institutions

FHFA has reviewed and used the regulatory capital standards applicable to commercial banks as a point of comparison in developing the proposed capital requirements for the Enterprises. In conducting this evaluation, it was important for FHFA to consider both similarities and differences in the Enterprise and bank business models. This section reviews capital requirements for depository institutions and then discusses the differences in Enterprise and bank business models.

Bank Capital Requirements

Basel Accords

The Basel Accords set the international framework for bank capital requirements. The initial framework, Basel I, was replaced by Basel II, which was in place during the financial crisis. After the financial crisis, regulators adopted standards consistent with Basel III. Each country has a different way of applying the Basel standards to meet their national legal framework. The Federal Reserve Board (Board), Office of the Comptroller of the Currency, and Federal Deposit Insurance Corporation have federal regulatory and supervisory jurisdiction over banks in the United States.

The Basel Accords have evolved over time. The 1988 Basel Accord, also known as Basel I, was implemented by the Group of Ten (G–10) countries in 1992. In Basel I, credit risk was addressed by using simple ratios, there was little attention given to market risk, and no provision was made for operational risk. The Basel II update was initially published in 2004 to make the capital calculation more risk sensitive. Basel II had three pillars: Risk-based capital requirements, supervisory review, and market discipline. For the risk-based capital requirements under Basel II, credit risk, market risk, and operational risk were all quantified based on data, and credit risk could be quantified using either the standardized approach or internal ratings based (IRB) approach. Under the supervisory review pillar, Basel II provided a framework for supervisory review of systemic, concentration, and liquidity risk among others. Under the market discipline pillar, Basel II included a set of disclosure requirements to allow market participants to better understand an institution's capital adequacy.

When the U.S. banking regulators issued the final Basel II rules in late 2007 and in 2008, the regulators required each bank to follow the set of rules that was the most conservative for the bank. The largest banks were required to use the internal ratings based approach, while the smaller banks were given a choice between using the standardized approach or the internal ratings based approach.

Basel III was developed in response to the financial crisis and was agreed to by Basel members in 2010–11. Basel III strengthened the requirements in Basel II and introduced bank liquidity requirements to reduce the risk of a run on a bank. Basel III also added capital buffers as extra capital cushions on top of regulatory capital minimums, to absorb unexpected shocks. Basel III is being phased in through 2019.

U.S. Risk-Based and Leverage Capital Requirements for Banks

Under current regulations implemented by U.S. regulators to align with Basel III, U.S. banks must meet certain leverage and risk-based capital requirements to be considered adequately capitalized. These capital adequacy standards protect deposit holders and the stability of the financial system. Two types of capital are measured: Tier 1 and Tier 2. Tier 1 capital comprises common stock, retained earnings, non-cumulative perpetual preferred stock, and accumulated other comprehensive income (AOCI). Common equity Tier 1 capital excludes cumulative preferred stock. Tier 2 capital is supplementary

[19] Fannie Mae's single-family serious delinquency rate fell from 2.42 percent at the end of 2008 to 1.24 percent at the end of 2017. Freddie Mac's single-family serious delinquency rate fell from 1.83 percent to 1.08 percent over the same period.

capital consisting of items such as, but not limited to, cumulative preferred stock, subordinated debt, and certain reserves that provide less protection.

Banks must also meet certain risk-based capital ratios and leverage ratios under existing regulations. As part of the risk-based capital standard for credit risk, the capital ratio is the ratio of capital to risk-weighted assets (RWA). Basel allows banks to choose between two methods for calculating their capital requirement for credit risk, and U.S. regulators have implemented both methods under existing regulations: The standardized approach and the internal ratings based approach. Under the standardized approach, regulators require use of prescribed risk weights for every type of exposure to determine the credit risk RWA amount. Mortgages have a risk weight of 50 percent under the standardized approach, regardless of the loan-to-value ratio, credit score, and other risk attributes. The largest banks in the U.S. are required to use the internal ratings based (IRB) approach to determine the risk weights of asset classes. In the IRB approach, the capital charge for a mortgage varies based on the risk attributes of the specific mortgage loan using the credit model and loss experience of the bank. However, when calculating minimum capital requirements, under the Dodd-Frank Act's Collins Amendment large U.S. banks must compute their risk-weighted assets using both a standardized approach and the advanced approach, and must use the higher of these two numbers when computing pre-stress risk-based capital ratios. Because the standardized approach often results in a higher ratio, the Collins Amendment effectively makes the standardized approach the binding requirement for large U.S. banks, and serves to place all banks, regardless of size, on equal footing in terms of minimum risk-based capital requirements. In contrast to the risk-based capital ratios, the leverage ratios compare capital to assets without any weighting for risk.

Prompt Corrective Action Framework

The Federal Deposit Insurance Act requires insured depository institutions and federal banking regulators to take prompt corrective action to resolve capital deficiencies as defined under the prompt corrective action framework.[20] To be considered well capitalized, banks must have a total risk-based capital ratio of 10 percent, Tier 1 risk-based capital ratio of 8 percent, common equity Tier 1 risk-based capital ratio of 6.5 percent, and Tier 1 leverage ratio of 5 percent. To be considered adequately capitalized, banks must have a total risk-based capital ratio of 8 percent, Tier 1 risk-based capital ratio of 6 percent, common equity Tier 1 risk-based capital ratio of 4.5 percent, and Tier 1 leverage ratio of 4 percent. Lower levels of capital result in a bank being classified as undercapitalized, significantly undercapitalized, or critically undercapitalized. At the extreme lower end, a bank would be placed into receivership.

The banking regulators also mandate three capital buffers relative to the risk-based capital ratios: The capital conservation buffer, the countercyclical capital buffer, and the global systemically important bank (G–SIB) surcharge. Banks must meet applicable buffers to avoid restrictions on capital distributions.

The capital conservation buffer requires banks to maintain each of the three risk-based capital ratios (Common Equity Tier 1, Tier 1, and Total Capital) at levels in excess of 2.5 percent above the minimum required levels. The countercyclical capital buffer requires banks to maintain an additional amount of excess capital during economic periods of non-stress. The countercyclical buffer has a potential range of 0 percent to 2.5 percent, and is currently set to zero. As it is structured, the countercyclical capital buffer functions as an extension of the capital conservation buffer. The G–SIB surcharge is applied in addition to the capital conservation buffer, but only on the largest banks identified as globally systemically important. The G–SIB surcharge is based on defined criteria that determine the size of the bank's systemic footprint, which represents the risk that the bank poses to the global financial system in excess of risk posed by financial institutions not subject to the surcharge. The different buffers are being phased-in through 2019.

In addition to the risk-based capital requirement, federal banking regulators have also established a 4 percent Tier 1 leverage ratio that measures the Tier 1 capital available relative to average consolidated assets. This measure does not capitalize off-balance sheet exposures.

Bank regulatory capital rules also require calculation of a supplementary leverage ratio (Tier 1 capital/total leverage exposure) for banks that are subject to that requirement starting in January 2018.[21] The supplementary leverage ratio is 3 percent of on-balance sheet assets and off-balance sheet exposures and applies to those banking institutions that must adhere to the advanced approach. In addition, those institutions with more than $700 billion in total consolidated assets are also subject to the enhanced supplementary leverage buffer of an additional 2 percent, totaling 5 percent when combined with the supplementary leverage ratio of 3 percent.[22] Banks must meet each of these minimum regulatory capital ratios, as required, after making all capital actions included in the capital plan, under both the baseline and stress scenarios over the nine-quarter planning horizon.[23]

Comprehensive Capital Analysis and Review (CCAR) and Capital Plan Requirements

In addition to the requirements that are tied to a prompt corrective action framework, the Federal Reserve Board's annual CCAR also assesses the capital adequacy of large bank holding companies with at least $50 billion in assets. The CCAR review is based on a going-concern structure, where the bank holding company must hold enough capital to withstand a severely adverse scenario, continue to lend, and meet creditor obligations over a nine-quarter period of time. The CCAR stress tests are tied to the Board's capital plan requiring that these bank holding companies submit a capital plan to the Federal Reserve each year. The bank holding companies are required to report the results of stress tests conducted under supervisory scenarios provided by the Board and under a baseline scenario and a stress scenario designed by the bank holding company.

The Board's qualitative assessment of each bank holding company's capital plan considers the institution's capital planning process, including the stress testing methods, internal controls, and governance. The quantitative assessment of the plan is based on the supervisory and institution-run stress tests that are conducted in part under the Dodd-Frank Act stress test rules.[24]

[20] 12 CFR 324.403.

[21] The supplemental leverage ratio includes off-balance sheet exposures for large banks.

[22] The Federal Reserve Board and the Office of the Comptroller of the Currency (OCC) recently proposed a rule that included changes to the enhanced supplementary leverage ratio standards. *See https://www.gpo.gov/fdsys/pkg/FR-2018-04-19/pdf/2018-08066.pdf.*

[23] *See* Table 1 at *https://www.federalreserve.gov/publications/comprehensive-capital-analysis-and-review-summary-instructions.htm.* Some banks, depending on their size and complexity, must meet additional buffers—capital conservation buffer, countercyclical buffer and globally systemically important bank surcharge—but these are not included in the stress test assessment.

[24] The DFAST and CCAR capital analyses use the same projections of income, assets and RWA, but

The Board may object to a capital plan based on the qualitative and quantitative assessments, and, as a result, may restrict capital distributions.[25] However, the stress test results do not trigger prompt corrective actions as described above under the Federal Deposit Insurance Act.

Under CCAR, during anticipated stress periods defined by the stress test scenarios required by the Board, banks are expected to maintain capital levels above the minimum risk-based and leverage capital ratios for adequately capitalized institutions under the prompt corrective action framework described earlier.[26]

Comparison of Enterprise and Bank Business Models

While the Enterprises are comparable in size to some of the largest depository institutions, the relative risks of banks compared to the Enterprises differ in important ways. These differences include, among others, the sources and associated risk level of income and assets, differences in funding risk, and the relative exposure to mortgage assets. Each of these differences is discussed below.

First, while banks have a more diversified source of income and assets compared to the Enterprises, the overall risk of Enterprise mortgage assets is lower than that of banks. Banks are depository institutions that attract customer deposits on which banks pay interest expense, and lend those funds through loans in diversified asset classes to other customers from whom the bank earns interest income, thereby earning net interest income. Bank lending covers a number of different asset classes, not just real estate lending, such as credit cards, car loans, and business loans. Since the repeal of the Glass-Steagall Act in 1999, banks have also been more active in earning non-interest income through brokerage fees and other business activities. However, traditional depository institutions still rely primarily on net-interest income, as compared to investment banks.

The Enterprises are monoline businesses focused on mortgage assets. For banks, mortgage assets carry a 50 percent risk weight in the Basel standardized framework. Therefore, the Enterprises' aggregate risk weight is lower than the average risk weight of banks with an abundance of assets with risk weights higher than 50 percent. To derive the risk-weighted asset density of bank assets, FHFA looked at the 31 largest bank holding companies subject to CCAR, to calculate an average risk-weighted asset density using end-of-quarter data from the first quarter of 2011 through the fourth quarter of 2014. The analysis estimated an overall risk-weighted asset density of 72 percent for the banks compared to 50 percent for residential mortgages.

Second, banks rely on more volatile funding sources compared to the Enterprises, which exposes banks to a greater degree of funding risk during times of market and economic stress. Banks use short-term customer deposits and debt as sources of funding for their business activity, both of which can leave a bank in need of new funding sources during times of economic uncertainty, such as during the recent financial crisis. In such situations, a bank could find that new sources of debt become considerably more expensive, if such sources are available at all. This type of funding risk is commonly referred to as rollover risk. By comparison, the Enterprises' core credit guarantee business of purchasing and securitizing mortgage loans provides a more stable source of funding that cannot be withdrawn during periods of market and economic stress, and is therefore not subject to rollover risk. Investors purchasing Enterprise mortgage-backed securities provide the companies with match-funding for these mortgage assets. The funding risk associated with the Enterprises' retained portfolios is more comparable to the funding risks of banks described above.

Third, even when comparing risk specifically associated with mortgage lending the Enterprises hold less risk compared to the mortgage investments of banks. Banks hold a larger portion of mortgages—both single-family and multifamily loans—as whole loans on their balance sheets. This exposes banks to interest rate, market, and credit risks associated with those loans. On the other hand, through their core guarantee business of purchasing mortgage loans and issuing mortgage-backed securities, the Enterprises transfer the interest rate and market risk of these loans to private investors. In addition, as mentioned above, the Enterprises also face substantially less funding risk compared to banks because of the match funding provided through mortgage-backed securities investors.

While the Enterprises remain responsible following securitizations for guaranteeing the credit risk of securitized loans, they have also developed ways to transfer significant parts of their credit risk to private market participants. During conservatorship, the Enterprises have developed credit risk transfer programs to transfer a portion of the credit risk for single-family mortgage purchases to private investors. In addition, the Enterprises' unique business models transfer credit risk on multifamily loans to private investors. Thus, the Enterprises have transferred a significant portion of the credit risk associated with their whole mortgage loans, whereas comparable whole mortgage loans are typically held by banks on their balance sheets.

The risk associated with the Enterprises' retained portfolios is similar in nature to risks held by banks. However, the Enterprises' retained portfolios have declined by more than a combined 60 percent while in conservatorship and are required by the PSPAs not to exceed $250 billion. While the Enterprises still have legacy assets that were purchased before conservatorship as part of their retained portfolios, their ongoing use of retained portfolios during conservatorship has focused on supporting their core credit guarantee business. The Enterprises use their cash window to purchase single-family and multifamily loans directly from lenders, often smaller lenders, and aggregate these loans for subsequent securitization. The cash window enables smaller lenders to access the secondary market at competitive rates. The Enterprises also use their retained portfolios to repurchase non-performing loans as part of loss mitigation efforts to reduce losses for the Enterprises and taxpayers, and to help homeowners stay in their homes whenever possible.

FHFA is also not including separate buffers in this proposed rule beyond the proposed risk-invariant going-concern buffer for several reasons. First, FHFA believes that the robust features it selected for the proposed risk-based capital requirements make including a separate buffer unnecessary. These features include (1) covering losses for different loan categories for a severe stress event comparable to the recent financial crisis,[27] with somewhat more

use different capital action assumptions to project post-stress capital levels.

[25] The Federal Reserve Board recently published a notice of proposed rulemaking that would create a single, integrated capital requirement by combining the quantitative assessment of the CCAR with the buffer requirements in the Board's regulatory capital rule, and eliminate the CCAR quantitative objection in the process. *See* 83 FR 18160 (April 25, 2018).

[26] The stress test uses RWA based on the standardized approach, but these large banks may use the model-based internal ratings-based approach for capital adequacy under the prompt corrective action framework.

[27] The 25 percent home price decline assumption in the severe stress event is also consistent with assumptions used in the DFAST severely adverse scenario over the past several years, although the

Continued

conservative house price recoveries than were observed following the recent financial crisis, (2) setting capital requirements without including future revenue, consistent with the Basel methodology, (3) requiring the full life-of-loan capital be put in place for each loan acquisition, and (4) the proposed risk-based capital requirements would include components for operational risk, market risk, and a risk-invariant going-concern buffer. Second, FHFA has the authority to increase capital requirements when prudent—either for risk-based capital or minimum leverage capital requirements—by order or regulation. Third, while bank capital buffers are used to decide whether to restrict distributions of income, rather than changing the level of capital that is necessary to declare a bank undercapitalized and activate the prompt-corrective-action framework if the level is not met, the primary intent of the FHFA capital rule would be to establish the level of capital that should be considered ''adequate'' for the prompt-corrective-action framework of the Safety and Soundness Act.

G. Dodd-Frank Act Stress Test Process

Section 165 of the Dodd-Frank Act required the annual stress testing of certain financial companies with consolidated assets over $10 billion that are supervised by a federal regulator. Consistent with the Act, FHFA conducts stress tests of the Enterprises to determine whether each firm has the capital necessary to absorb losses during a period of adverse economic conditions. While in conservatorship, the Enterprises receive financial support through the PSPAs with the Treasury Department. Although the PSPAs restrict the ability of the Enterprises to hold equity capital beyond their approved capital buffers, FHFA expects the Enterprises to have procedures in place to support sound business decisions and the Enterprises have continued to consider capital levels and return on capital as integral parts of their business decision-making processes.

FHFA's stress testing rule establishes the basic requirements for the Enterprises on how to conduct the Dodd-Frank Act Stress Test (DFAST) each year. The Dodd-Frank Act requires financial regulators to use generally consistent and comparable stress scenarios. FHFA has generally aligned the stress scenarios for the Enterprises with the Federal Reserve Board's supervisory scenarios for annual stress testing required under the DFAST rule and CCAR. Each year, FHFA provides the Enterprises with specific instructions and guidance for conducting the stress tests, as well as for reporting and publishing results.

The annual stress testing process includes three distinct scenarios—baseline, adverse, and severely adverse—with each scenario covering a nine-quarter period. The scenarios include macroeconomic variables, interest-rate variables, and indices (*e.g.,* unemployment rates, mortgage rates, house price paths, and gross domestic product). The Enterprises use these variables and indices as model inputs to stress the retained portfolios and guarantee business.

Since the Enterprises began conducting the annual DFAST process in 2014, the severely adverse scenario has generally represented economic conditions similar to those that occurred during the 2008 financial crisis. Although the specific scenario variables differ from year to year, the conditions represented by the macroeconomic, interest rate, and asset price shocks in the severely adverse scenario are consistent with a major market disruption similar to the disruption experienced in the 2008 crisis.

The severely adverse scenario also includes a global market shock component which is tailored to include particular risks faced by the Enterprises. This shock is treated as an add-on to the macroeconomic scenario and is taken as an instantaneous loss and reduction of capital in the first quarter of the nine-quarter planning horizon. It is assumed that none of these losses are recovered over the nine quarters. The Enterprises apply the shock to portfolio assets that are subject to fair value accounting (*i.e.,* assets classified as held-for-trading, available-for-sale, and held-for-sale). In addition, the global market shock includes a default of each Enterprise's largest counterparty. The shock assumes that each Enterprise incurs losses due to the sudden and unexpected default of the counterparty to which it has the greatest financial exposure. Counterparties within the scope of the largest counterparty default component include security dealers for derivatives, private mortgage insurers, and multifamily credit enhancement providers.

The Federal Reserve Board releases DFAST supervisory scenarios in January or February of each year. FHFA provides the Enterprises with summary instructions and guidance within 30 days following the issuance of the Federal Reserve Board's final element of its supervisory scenarios. The instructions include submission templates for use in compiling and reporting the DFAST results for the three stress scenarios. The Enterprises conduct the stress tests and submit their results to FHFA on or before May 20 each year. For capital planning purposes, the Enterprises focus on the severely adverse scenario. FHFA requires the Enterprises to publicly disclose the DFAST stress test results under the severely adverse scenario between August 1 and August 15 each year.

For DFAST reporting purposes, FHFA requires the Enterprises to report two sets of financial results for the severely adverse scenario: One with and one without the establishment of a valuation allowance on deferred tax assets. In general, deferred tax assets are considered a capital component because these assets have loss absorbing capability by offsetting losses through the reduction of taxes. A valuation allowance on deferred tax assets is typically established to reduce deferred tax assets when it is more likely than not that an institution would not generate sufficient taxable income in the foreseeable future to realize all or a portion of its deferred tax assets. A valuation allowance on deferred tax assets is a non-cash charge resulting in a reduction in income and the retained earnings component of capital.

In 2008, during the financial crisis, Fannie Mae and Freddie Mac established partial valuation allowances on deferred tax assets of $30.8 billion and $22.4 billion, respectively. The reduction in capital from partial valuation allowances in 2008 contributed to the Enterprises' draws from the Treasury Department. Both Enterprises released the valuation allowances on deferred tax assets several years later, which resulted in a benefit to income at both Enterprises. For full transparency of the potential impact of deferred tax assets on the Enterprises' capital positions in a stress scenario, FHFA requires the Enterprises to disclose the severely adverse results both with and without the establishment of a valuation allowance on deferred tax assets. In the 2017 DFAST severely adverse scenario, for results that do not include establishing a valuation allowance on deferred tax assets, Fannie Mae's cumulative stress losses were $15 billion and Freddie Mac's cumulative stress losses were $20 billion. For results that include establishing a valuation allowance on deferred tax assets, Fannie Mae's cumulative stress losses were $58 billion and Freddie Mac's cumulative stress losses were $42 billion.

2017 DFAST cycle assumes a 30 percent home price decline in its severely adverse scenario.

H. Important Considerations for the Proposed Rule

In summary, in developing the proposed rule, FHFA considered all information in this proposal and developed the proposed rule with the following factors in mind:

1. The Enterprises should operate under a robust capital framework that is similar to capital frameworks applicable to banks and other financial institutions, but appropriately differentiates from other capital requirements based on the actual risks associated with the Enterprises' businesses;
2. In proposing capital requirements, FHFA should use the substantial expertise and experience gained during the protracted conservatorships of the Enterprises to ensure that the capital requirements secure the safety and soundness of the Enterprises while also supporting their statutory missions to foster and increase liquidity of mortgage investments and promote access to mortgage credit throughout the Nation;
3. FHFA considers it prudent to have risk-based capital requirements that include components of credit risk, operational risk, market risk, and a risk-invariant going-concern buffer; that require full life-of-loan capital for each loan acquisition; that are calculated to cover losses in a severe stress event comparable to the recent financial crisis, but with house price recoveries that are somewhat more conservative than experienced following that crisis; and that do not count future Enterprise revenue toward capital;
4. FHFA's ongoing authority under the Safety and Soundness Act to increase by order or regulation capital requirements—either risk-based or minimum leverage—reduces the need to put in place at this time specific limited-purpose or countercyclical buffers; and
5. It may be necessary in the future for FHFA to revise this rule or to develop a separate capital planning rule to more fully address stress testing of the Enterprises, the timing and substance of which will depend on the status of the Enterprises after housing finance reform.

II. The Proposed Rule

A. Components of the Proposed Rule

Risk-Based Capital Requirements

The Enterprises' assets and operations are exposed to different types of risk, and the proposed risk-based capital requirements would provide a granular and comprehensive approach for assigning capital requirements to individual asset and guarantee categories. The proposed risk-based capital requirements cover credit risk, including counterparty risk, as well as market risk and operational risk capital requirements for each asset and guarantee category. The proposed risk-based capital requirements also include a going-concern buffer, which would require the Enterprises to hold additional capital beyond what is required to cover economic losses during a severe financial stress event in order to maintain market confidence.

The credit risk capital requirements in the proposed rule are based on unexpected losses (stress losses minus expected losses) over the lifetime of mortgage assets. The proposed requirements were developed using historical loss data, including loss experience from the recent financial crisis. In addition, the proposed rule requires the Enterprises to hold this capital at the time of purchasing or guaranteeing an asset, and it does not, in general, count any future revenue toward the credit risk capital requirements.

For single-family and multifamily whole loans and guarantees, the proposed credit risk capital requirements use look-up tables consisting of base grids and risk multipliers to adjust capital requirements for the risk characteristics of each type of mortgage asset. Under this approach, an Enterprise's required capital will change with the composition of its book of business.

The proposed rule also includes a framework through which the Enterprises' credit risk capital requirements would be reduced to reflect the benefit of credit risk transfer transactions that protect the Enterprises and taxpayers from bearing potential credit losses. FHFA's proposed approach to calculating the capital relief provided by credit risk transfer transactions seeks to capture the credit risk protection provided while also accounting for counterparty risk for those transactions that are not fully funded up front.

The market risk component of the proposed risk-based capital framework establishes specific requirements for the market risk associated with certain Enterprise assets. The proposed approach focuses on capturing the spread risk associated with holding different assets in the retained portfolio: Single-family whole loans, multifamily whole loans, private label securities (PLS), commercial mortgage-backed securities (CMBS) and other assets with market risk exposure.[28] These mortgages include legacy assets acquired by the Enterprises prior to conservatorship and assets purchased as part of the Enterprises' ongoing aggregation function, including aggregating single-family loans through the cash window before securitizing the loans into MBS, and Freddie Mac's aggregation of multifamily loans before placing the loans in K-deals or other securitizations.

The operational risk component of the proposed risk-based capital framework establishes an operational risk capital requirement of 8 basis points for all assets and guarantees to reflect the inherent risk in ongoing business operations.

The going-concern buffer component of the proposed risk-based capital framework establishes a 75 basis point requirement for most assets and guarantees, regardless of credit, market, or operational risk capital requirements. This buffer would ensure that the Enterprises maintain at least 75 basis points of capital on any mortgage guarantee, whole loan, or mortgage-related security held by the Enterprises. Based on the current size and composition of the Enterprises' books of business, FHFA estimates that the going-concern buffer would provide the Enterprises with sufficient capital to continue operating without external capital support for one to two years after a stress event.

FHFA sought to reduce model risk by developing the proposed risk-based requirements using a combination of the results from multiple models.[29] The proposed capital requirements are based on the model results from both Enterprises, and in some cases on model results from both Enterprises and from FHFA. In all cases the models were estimated to the extent possible using the Enterprises' historical loss data, including experiences from the recent housing crisis. While the proposed risk-based capital requirements reflect the Agency's view of the relative risk of Enterprise assets, which is subject to model risk, the two proposed alternative minimum leverage capital requirements are intended to provide a backstop to offset and balance this risk.

[28] The Enterprises are no longer acquiring PLS and CMBS, and their holdings of these assets are currently in run-off mode.

[29] FHFA acknowledges that multiple models could increase the burden of ongoing model risk management. However, FHFA sought to increase the reliability of the estimations used in the proposed grids and multiplier framework by combining the results of multiple models, and hence decreasing overall model risk.

Minimum Leverage Capital Requirement

The proposed rule includes two alternative minimum leverage capital requirement proposals for consideration. Under the first approach, the 2.5 percent alternative, the Enterprises would be required to hold capital equal to 2.5 percent of total assets (as determined in accordance with GAAP) and off-balance sheet guarantees related to securitization activities, regardless of the risk characteristics of the assets and guarantees or how they are held on the Enterprises' balance sheets. Under the second approach, the bifurcated alternative, the Enterprises would be required to hold capital equal to 1.5 percent of trust assets and 4 percent of non-trust assets, where trust assets are defined as Fannie Mae mortgage-backed securities or Freddie Mac participation certificates held by third parties and off-balance sheet guarantees related to securitization activities, and non-trust assets are defined as total assets as determined in accordance with GAAP plus off-balance sheet guarantees related to securitization activities minus trust assets. The Enterprises' retained portfolios would be included in non-trust assets. Both the 2.5 percent alternative and the bifurcated alternative are discussed in greater detail in the Minimum Leverage Capital Requirements section.

In considering both the need for and the structure of an updated minimum leverage capital requirement, FHFA has taken into consideration several factors, including (1) how to best set the minimum leverage requirement as a backstop to the risk-based capital requirements; and (2) how to appropriately capture the funding risks of the Enterprises. The Safety and Soundness Act requires that FHFA establish, like other financial regulators, a minimum leverage requirement that can serve as a backstop in the event the risk-based capital standard becomes too low. As discussed earlier, risk-based capital requirements depend on models and, therefore are subject to the risk that the applicable model will underestimate or fail to address a developing risk. Another factor relevant in considering the leverage requirement's role as a backstop is the pro-cyclicality of a risk-based capital framework. Because the proposed risk-based requirements use mark-to-market LTVs for loans held or guaranteed by the Enterprises in determining capital requirements, as home prices appreciate the Enterprises would be allowed to release capital as LTVs fall. Should home prices continue to rise and unemployment continue to fall, as each have done over the last several years, risk-based capital requirements such as the requirements in this proposed rule, would be expected to fall. In this context, a minimum leverage capital requirement would reduce the amount of capital released as risk-based capital levels fell below an applicable leverage requirement. In addition, and as discussed further below, FHFA has authority to adjust components of the risk-based capital requirements as a means of avoiding the pro-cyclical release of capital.

In the banking regulatory context, leverage requirements serve to help mitigate the risk that short-term funding, on which many banks rely, will become unavailable during a stress event. In proposing minimum leverage requirements, FHFA has considered the unique funding risks facing the Enterprises. As discussed in more detail below, in both the single-family and multifamily guarantee business lines the Enterprises are provided a stable source of funding that is match-funded with the mortgage assets they purchase. While these mortgage assets are reflected on the balance sheets of the Enterprises and represent the vast majority of their assets, the funding for these assets has already been provided and cannot be withdrawn during times of market stress.

FHFA is seeking comment on all aspects of both the 2.5 percent alternative and the bifurcated alternative proposed minimum leverage capital requirements, including how the different approaches relate to and complement the proposed risk-based capital measure.

B. Impact of the Proposed Rule

This section provides information about the impact of the proposed rule both at the end of 2007 (December 31, 2007) and at the end of the third quarter of 2017 (September 30, 2017). FHFA is providing this information to inform commenters about the impact the proposed rule would have on the Enterprises' capital requirements both leading up to the crisis and under the Enterprises' current operations in conservatorship. The summary information through the third quarter of 2017 is intended solely to provide context for commenters about what the impact of the proposed rule would be on the Enterprises if the Enterprises were able to build capital, and is specifically not intended by FHFA as suggesting steps toward recapitalizing the Enterprises while the Enterprises are in conservatorship. The summary information also provides context about the impact of the proposed rule on Enterprise business decisions being made while the Enterprises operate in conservatorship. While they are in conservatorship, FHFA expects the Enterprises to include capital assumptions in pricing and business decisions even though the Enterprises are unable to build capital and FHFA has suspended their regulatory capital classifications.

Impact of the Proposed Rule at the End of 2007

In 2008, the entire net worth of both Enterprises was depleted by losses. The Treasury Department invested in senior preferred stock of both Enterprises in order to offset losses. To offset losses and eliminate negative capital positions, Fannie Mae drew $116 billion from the Treasury Department between 2008 and the fourth quarter of 2011, while Freddie Mac drew $71 billion between 2008 and the first quarter of 2012. Including the loss of net worth at the start of 2008, Fannie Mae lost a total of $167 billion and Freddie Mac lost a total of $98 billion in the housing and financial crisis.[30]

FHFA assessed whether the capital requirements in the proposed rule would have required the Enterprises to hold sufficient capital at the end of 2007, when combined with the Enterprises' revenues, to absorb losses sustained between 2008 and the dates at which the Enterprises no longer required draws from the Treasury Department to eliminate negative net worth—the fourth quarter of 2011 for Fannie Mae and the first quarter of 2012 for Freddie Mac.

FHFA compared each Enterprise's estimated minimum leverage capital requirement under both alternatives and the risk-based capital requirement based on the proposed rule for the entire portfolio of business at the end of 2007 to the Enterprises' peak cumulative capital losses as described above. The

[30] Between the second quarter of 2012 and the third quarter of 2017, neither Enterprise required additional funds from the Treasury Department, and the PSPA's capital reserve had been set to decline to zero in 2018. However, in December 2017, FHFA entered into a letter agreement with the Treasury Department on behalf of the Enterprises to reinstate a $3.0 billion capital reserve amount under the PSPA for each Enterprise, beginning in the fourth quarter of 2017, against income fluctuations and future losses. Since the agreement was reached, Congress passed and the President signed the Tax Cut and Jobs Act of 2017 on December 22, 2017, that lowered the corporate tax rate from 35 percent to 21 percent. As a result, the value of Fannie Mae's net deferred tax assets declined by $9.9 billion in the fourth quarter of 2017, necessitating a $3.7 billion draw from the Treasury Department, while the value of Freddie Mac's net deferred tax assets declined by $5.4 billion, necessitating a draw from the Treasury Department of $312 million.

peak cumulative capital losses include losses due to establishing valuation allowances on deferred tax assets (DTAs) during the crisis. To calculate the minimum leverage capital requirement at the end of 2007, FHFA made a simplifying assumption because accounting rules have changed since 2007. Credit-guaranteed loans are now reported as assets, while in 2007 most credit guarantees were not on the balance sheet as they were netted with guarantee obligations. For purposes of this analysis FHFA treated the credit guarantees in 2007 as assets.[31]

FHFA also compared each Enterprise's single-family credit risk capital requirement as of December 31, 2007 to the Enterprise's single-family lifetime credit losses, where lifetime losses are defined in this section as actual single-family credit losses through June 30, 2017 plus projected remaining lifetime single-family credit losses on the December 31, 2007 portfolio.

A significant portion of the Enterprises' credit losses since 2007 resulted from higher risk loans which the Enterprises no longer purchase or guarantee due to the Ability to Repay and Qualified Mortgage rule issued by the CFPB in 2013 and due to the Enterprises' strengthened underwriting standards. Because the Enterprises no longer purchase these loans, FHFA also assessed whether the credit risk capital requirement under the proposed rule would have been sufficient to cover projected lifetime losses on loans that meet the Enterprises' current acquisition criteria.

In sum, the amount of capital required by the Enterprises under the proposed risk-based capital requirements would have exceeded the cumulative losses, net of revenues earned, at both Enterprises between 2008 and the respective date at which each Enterprise no longer required draws from the Treasury Department. In this analysis, cumulative losses include credit losses on all loans purchased, including those no longer eligible for purchase, and losses due to establishing a valuation allowance on DTAs. In evaluating how the proposed risk-based capital requirements would have applied to the Enterprises at the end of 2007, it is important to note that the proposed rule would establish a risk-based capital requirement for DTAs that would offset the DTAs included in core capital in a manner generally consistent to the U.S. financial regulators' treatment of DTAs.[32] In addition, the credit risk capital component of the proposed risk-based capital requirements exceeded projected credit losses for both Enterprises for all loans acquired or guaranteed, excluding those that are not currently eligible for purchase.

Fannie Mae

Fannie Mae's statutory minimum leverage capital requirement was $42 billion as of December 31, 2007. For comparison, and as illustrated in the table below, Fannie Mae's estimated minimum leverage capital requirement as of December 31, 2007 based on the proposed rule would have been $76 billion under the 2.5 percent alternative or $68 billion under the bifurcated alternative. Fannie Mae's estimated minimum leverage capital requirement under either proposed alternative as of December 31, 2007 would have been insufficient to cover Fannie Mae's peak cumulative capital losses of $167 billion. However, Fannie Mae's estimated risk-based capital requirement of $171 billion based on the proposed rule would have exceeded Fannie Mae's peak cumulative capital losses of $167 billion. We include in Fannie Mae's peak cumulative capital losses the valuation allowance on deferred tax assets of $64 billion and revenues of $78 billion earned between 2008 and the fourth quarter of 2011.

TABLE 1—FANNIE MAE'S CAPITAL REQUIREMENT COMPARISON TO PEAK CUMULATIVE CAPITAL LOSSES

	$ in billions	% of total assets and off-balance sheet guarantees as of Dec 31, 2007 *
Net Worth as of Dec 31, 2007	$44	1.4
Equity Issuance in 2008	7	0.2
Cumulative Draws **	116	3.8
Peak Cumulative Losses since Dec 31, 2007	167	5.5
Statutory Minimum Capital Requirement as of Dec 31, 2007	42	1.4
. . . Relative to Peak Capital Losses	(126)	(4.1)
2.5% Alternative as of Dec 31, 2007	76	2.5
. . . Relative to Peak Capital Losses	(91)	(3.0)
Bifurcated Alternative as of Dec 31, 2007	68	2.2
. . . Relative to Peak Capital Losses	(100)	(3.3)
Proposed Risk-based Capital Requirement as of Dec 31, 2007	171	5.6
. . . Relative to Peak Capital Losses	3	0.1

* Includes Fannie Mae MBS and Freddie Mac participation certificates held by third parties, and off-balance sheet guarantees related to securitization activities.

** Includes the valuation allowance on deferred tax assets of $64 billion, Treasury draws of $20 billion related to senior preferred dividends paid to the Treasury Department between 2008 and the fourth quarter of 2011, and revenues of $78 billion earned over the same period.

Next, we analyzed Fannie Mae's single-family portfolio in the fourth quarter of 2007 and stripped out the loans that would not be acquired today under Fannie Mae's current acquisition criteria. We then added projected future credit losses for the loans that remained to the already realized credit losses to determine Fannie Mae's lifetime single-family credit losses on that portfolio. In both cases, the credit risk capital requirement would have exceeded the projected lifetime credit losses. As illustrated in the table below, Fannie Mae's estimated single-family credit risk

[31] The Enterprises continue to report their capital levels based on prior accounting rules. *See* Regulatory Interpretation 2010–RI–1, Jan. 12, 2010.

[32] *See* section II.C.8 for a detailed discussion of DTAs.

capital requirement of $94 billion as of December 31, 2007 based on the proposed rule would have exceeded Fannie Mae's lifetime single-family credit losses of $85 billion on the December 31, 2007 guarantee portfolio for all loans purchased. In addition, excluding loans that the Enterprises no longer acquire, Fannie Mae's credit risk capital requirement per the proposed rule of $30 billion would have exceeded projected lifetime losses of $21 billion.

TABLE 2—FANNIE MAE'S SINGLE-FAMILY CREDIT RISK CAPITAL REQUIREMENT COMPARISON TO LIFETIME SINGLE-FAMILY CREDIT LOSSES

	$ in billions	% of UPB as of Dec 31, 2007
Lifetime Single-Family Credit Losses on the Dec 31, 2007 Guarantee Portfolio	$85	3.4
Proposed SF Credit Risk Capital Requirement as of Dec 31, 2007	94	3.7
. . . Relative to Lifetime Credit Losses	9	0.4
Lifetime Single-Family Credit Losses on the Dec 31, 2007 Guarantee Portfolio using Current Acquisition Criteria *	21	1.5
Proposed SF Credit Risk Capital Requirement using Current Acquisition Criteria *	30	2.1
. . . Relative to Lifetime Credit Losses	9	0.7

* Excludes loans with the following characteristics: Debt-to-income ratio at origination greater than 50 percent, cash out refinances with total LTV greater than 85 percent, investor loans with total LTV greater than or equal to 90 percent, Alt-A, Negative Amortization, Interest-only, Low or No Documentation, and other legacy programs.

Freddie Mac

Freddie Mac's statutory minimum capital requirement was $26 billion as of December 31, 2007. For comparison, and as illustrated in the table below, Freddie Mac's estimated minimum leverage capital requirement as of December 31, 2007 based on the proposed rule would have been $54 billion under the 2.5 percent alternative or $53 billion under the bifurcated alternative. Freddie Mac's estimated minimum leverage capital requirement under either proposed alternative as of December 31, 2007 would have been insufficient to cover Freddie Mac's peak cumulative capital losses of $98 billion. However, Freddie Mac's estimated risk-based capital requirement of $110 billion based on the proposed rule would have exceeded Freddie Mac's peak cumulative capital losses of $98 billion by $12 billion. We include in Freddie Mac's peak cumulative capital losses the valuation allowance on deferred tax assets of $34 billion and revenues of $64 billion earned between 2008 and the first quarter of 2012.

TABLE 3—FREDDIE MAC'S CAPITAL REQUIREMENT COMPARISON TO PEAK CUMULATIVE CAPITAL LOSSES

	$ in billions	% of total assets and off-balance sheet guarantees as of Dec 31, 2007 *
Net worth as of Dec 31, 2007	$27	1.2
Cumulative Treasury Draws **	71	3.3
Peak cumulative losses since Dec 31, 2007	98	4.5
Statutory Minimum Capital Requirement as of Dec 31, 2007	26	1.2
. . . Relative to Peak Capital Losses	(72)	(3.3)
2.5% Alternative as of Dec 31, 2007	54	2.5
. . . Relative to Peak Capital Losses	(44)	(2.0)
Bifurcated Alternative as of Dec 31, 2007	53	2.4
. . . Relative to Peak Capital Losses	(45)	(2.1)
Proposed Risk-based Capital Requirement as of Dec 31, 2007	110	5.0
. . . Relative to Peak Capital Losses	12	0.5

* Includes Fannie Mae MBS and Freddie Mac participation certificates held by third parties, and off-balance sheet guarantees related to securitization activities.

** Includes the valuation allowance on deferred tax assets of $34 billion, Treasury draws of $18 billion related to senior preferred dividends paid to the Treasury Department between 2008 and the first quarter of 2012, and revenues of $64 billion earned over the same period.

Next, we analyzed Freddie Mac's single-family portfolio in the fourth quarter of 2007 and stripped out the loans that would not be acquired today under Freddie Mac's current acquisition criteria. We then added projected future credit losses for the loans that remained to the already realized credit losses to determine Freddie Mac's lifetime single-family credit losses on that portfolio. After stripping out the loans that would not be acquired under Freddie Mac's current acquisition criteria, the credit risk capital requirement would have exceeded the projected lifetime credit losses. As illustrated in the table below, Freddie Mac's estimated single-family credit risk capital requirement of $59 billion as of December 31, 2007 based on the proposed rule would not have exceeded Freddie Mac's lifetime single-family credit losses of $64 billion on the December 31, 2007 guarantee portfolio for all loans purchased. However, excluding loans that the Enterprises no longer acquire, Freddie Mac's credit risk capital requirement per the proposed rule of $24 billion would have exceeded projected lifetime losses of $20 billion.

TABLE 4—FREDDIE MAC'S SINGLE-FAMILY CREDIT RISK CAPITAL REQUIREMENT COMPARISON TO LIFETIME SINGLE-FAMILY CREDIT LOSSES

	$ in billions	% of UPB as of Dec 31, 2007
Lifetime Single-Family Credit Losses on the Dec 31, 2007 Guarantee Portfolio	$64	3.7
Proposed SF Credit Risk Capital Requirement as of Dec 31, 2007	59	3.4
. . . Relative to Lifetime Credit Losses	(5)	(0.3)
Lifetime Single-Family Credit Losses on the Dec 31, 2007 Guarantee Portfolio using Current Acquisition Criteria *	20	1.7
Proposed SF Credit Risk Capital Requirement using Current Acquisition Criteria *	24	2.1
. . . Relative to Lifetime Credit Losses	4	0.4

* Excludes loans with the following characteristics: Debt-to-income ratio at origination greater than 50 percent, cash out refinances with total LTV greater than 85 percent, investor loans with total LTV greater than or equal to 90 percent, Alt-A, Negative Amortization, Interest-only, Low or No Documentation, and other legacy programs.

Impact of the Proposed Rule as of September 30, 2017

FHFA estimated the impact of the proposed rule on the Enterprises as of September 30, 2017. Under the 2.5 percent alternative, FHFA estimates a combined minimum leverage capital requirement for both Enterprises of $139.4 billion as of September 30, 2017, while under the bifurcated alternative FHFA estimates a combined minimum leverage capital requirement for both Enterprises of $103 billion. FHFA also estimates a combined risk-based capital requirement of $180.9 billion or 3.2 percent of the Enterprises' portfolios as of September 30, 2017. Credit risk capital accounts for $112.0 billion before CRT and $90.5 billion after CRT, market risk capital accounts for $19.4 billion, operational risk capital accounts for $4.3 billion, and the going-concern buffer accounts for $39.9 billion. The capital requirement for the Enterprises' DTAs accounts for the remaining $26.8 billion. A detailed breakdown of FHFA's estimated risk-based capital requirements by risk category for the Enterprises combined, and separately for Fannie Mae and Freddie Mac, as of September 30, 2017 is presented in Table 5. A breakdown of FHFA's estimated risk-based capital requirements by asset category for the Enterprises combined, as of September 30, 2017, is presented in Table 6. A breakdown of FHFA's estimated minimum leverage capital requirement under both proposed alternatives for the Enterprises combined, and separately for Fannie Mae and Freddie Mac, as of September 30, 2017, is presented in Table 7.

TABLE 5—FANNIE MAE AND FREDDIE MAC ESTIMATED RISK-BASED CAPITAL REQUIREMENTS AS OF SEPTEMBER 30, 2017—BY RISK CATEGORY

	Fannie Mae capital requirement			Freddie Mac capital requirement			Enterprises' combined capital requirement		
	$billions	bps	Share (%)	$billions	bps	Share (%)	$billions	bps	Share (%)
Net Credit Risk	$70.5			$41.5			$112.0		
Credit Risk Transferred	(11.5)			(10.0)			(21.5)		
Post-CRT Net Credit Risk	59.0	176	51	31.5	142	48	90.5	162	50
Market Risk	9.5	28	8	9.9	44	15	19.4	35	11
Going-Concern Buffer	24.0	72	21	15.9	71	24	39.9	72	22
Operational Risk	2.6	8	2	1.7	8	3	4.3	8	2
Other (DTA) * **	19.9	59	17	6.8	31	10	26.8	48	15
Total Capital Requirement	115.0	343	100	65.9	296	100	180.9	324	100
Total Assets and Off-Balance Sheet Guarantees, $billions	3,353.1			2,226.0			5,579.0		

* The DTA capital requirement is a function of Core Capital. Both Enterprises have negative Core Capital as of September 30, 2017. In order to calculate the DTA capital requirement, we assume Core Capital is equal to the Risk-Based Capital Requirement without consideration of the DTA capital requirement.

** Both Enterprises' DTAs were reduced in December 2017 as a result of the change in the corporate tax rate. The risk-based capital requirement for DTAs as of December 31, 2017 would be $10.0 billion or 30 bps for Fannie Mae and $1.2 billion or 5 bps for Freddie Mac. See Table 33 and Table 34 for more detail.

TABLE 6—FANNIE MAE AND FREDDIE MAC COMBINED ESTIMATED RISK-BASED CAPITAL REQUIREMENTS FOR THE ENTERPRISES AS OF SEPTEMBER 30, 2017—BY ASSET CATEGORY

	Capital requirement		
	$billions	bps *	Share (%)
Single-family Whole Loans, Guarantees and Related Securities	$130.5	273	72
Multifamily Whole Loans, Guarantees and Related Securities	13.9	278	8
PLS	3.4	2,336	2
CMBS	0.02	279	0
Other (DTA)	26.8	811	15
Other Assets	6.3	192	3
Total Capital Requirement	180.9		100

* Basis points (bps) are calculated based on UPB of the respective asset category.

TABLE 7—FANNIE MAE AND FREDDIE MAC ESTIMATED MINIMUM LEVERAGE CAPITAL REQUIREMENT ALTERNATIVES AS OF SEPTEMBER 30, 2017

	$billions		
	Fannie Mae	Freddie Mac	Enterprises combined
2.5% Minimum Capital Alternative			
2.5% Minimum Capital Alternative Requirement	$83.8	$55.6	$139.5
% of Total Assets and off-balance sheet guarantees	*2.5%*	*2.5%*	*2.5%*
Bifurcated Minimum Capital Alternative			
Bifurcated Minimum Capital Alternative Requirement	$60.4	$43.1	$103.5
% of Total Assets and off-balance sheet guarantees	*1.8%*	*1.9%*	*1.9%*
Requirement for Non-Trust Assets	$16.1	$15.5	$31.6
% of Non-trust Assets	*4%*	*4%*	*4%*
Requirement for Trust Assets	$44.3	$27.6	$71.8
% of Trust Assets	*1.5%*	*1.5%*	*1.5%*
Total Assets plus off-balance sheet guarantees	$3,353	$2,226	$5,579
Non-trust Assets	$403	$388	$791
Trust Assets	$2,950	$1,838	$4,788

C. Risk-Based Capital Requirements

1. Overall Approach

The proposed rule would establish risk-based capital requirements across five categories of the Enterprises' mortgage guarantees and portfolio holdings: (1) Single-family whole loans, guarantees, and related securities, (2) private-label mortgage-backed securities (PLS), (3) multifamily whole loans, guarantees, and related securities, (4) commercial mortgage-backed securities (CMBS), and (5) other assets. An additional category, ''Unassigned Assets,'' would provide an approach to assigning capital requirements to new products or activities that do not have an explicit treatment in this rule. Under this proposal, each of these asset and guarantee categories may include capital requirements for three kinds of risk: Credit risk, market risk, and operational risk. FHFA's proposal for the credit risk and market risk associated with the five asset and guarantee categories reflects the Agency's view about the relative risks of these assets. The proposed rule would also establish a risk-invariant capital requirement for operational risk that applies across all asset and guarantee categories. Lastly, the proposal would apply a going-concern buffer across all asset and guarantee categories.

Each of the three risk categories (credit risk, market risk, and operational risk), in addition to the going-concern buffer, is further summarized below.

Credit Risk

In evaluating the credit risk faced by the Enterprises, mortgage credit risk can be segmented into the following categories: (1) Expected loss; (2) unexpected loss; and (3) catastrophic loss. Expected losses result from the failure of some borrowers to make their payments during stable housing market conditions. Even in a stable and healthy housing market, some borrowers are likely to default on their loan as a result of certain life events such as illness, job loss, or divorce. Unexpected losses are the potentially much larger losses that could occur above expected losses should there be a stressful, yet plausible, macroeconomic event, such as a severe downturn in house price levels as might accompany a recession. For example, the credit losses that took place during the recent financial crisis and were in excess of the predicted loss amounts would be considered unexpected losses. Catastrophic losses are those losses beyond unexpected loss and would be deemed highly unlikely to occur. In general, losses beyond those experienced during the recent financial crisis would be considered catastrophic losses. However, there is not a bright line marking the transition from unexpected to catastrophic loss.

For purposes of this proposed rule, FHFA defines the risk-based credit risk capital requirement for single-family and multifamily whole loans and guarantees as unexpected loss. As described above, these stress losses are forecasted under scenarios that are generally comparable to stress experienced during the recent financial crisis. The proposed rule would calculate unexpected loss as the difference in the present value of lifetime losses under a stressful macroeconomic event scenario and lifetime losses under an expected scenario. Losses under the expected scenario (''expected losses'') are netted out from losses under the stressful macroeconomic event scenario (''stress losses'') in order to be consistent with other regulatory regimes. In particular, the loss scenarios draw on conceptual and methodological inputs from regulatory frameworks such as DFAST, CCAR, and the Basel Accords. The Enterprises set guarantee fees at a level to cover the lifetime cost of expected losses; therefore, there is no need for the Enterprises to hold capital for expected loss.

The starting point of the proposed risk-based credit risk capital requirement for single-family and multifamily whole loans and guarantees would be implemented through a series of look-up tables (''grids and risk multipliers'') that take into account loan risk characteristics. The proposed rule would utilize look-up tables because they are simple and transparent, are easily implemented, and allow easy comparison to other capital standards by regulators and the public. As an alternative to the use of look-up tables to implement the risk-based credit risk capital requirement for single-family and multifamily whole loans, FHFA considered using collections of econometric equations (''models''), either the Enterprises' internal models or an FHFA-specified model. FHFA determined that the use of a model would produce more nuanced results than the look-up tables, but would result in greater opacity and operational complexity. Furthermore, the use of the Enterprises' internal models for credit risk was rejected because it would result in inconsistent requirements between the Enterprises for assets with the same risk characteristics.

The proposed rule would use lifetime losses, as opposed to using a shorter horizon, in calculating the credit risk capital requirement in order to fully capture any variation in losses due to differences in loan risk characteristics. For example, if a seven year horizon were used, the risk associated with the payment reset of a multifamily loan with a ten year interest-only period would not be captured in the credit risk capital requirement. Furthermore, the use of lifetime losses is more conservative than a requirement based on losses over a shorter horizon as it covers the unexpected losses over the lifetime of the loan.

FHFA considered the inclusion of revenues into the credit risk capital requirements to reflect the fact that the Enterprises would be conducting new business and that vast majority of borrowers would continue to pay their mortgage even during a stressful macroeconomic event. For example, at the lowest point during the Great Recession, approximately 92 percent of borrowers with Enterprise guaranteed mortgages were current on their mortgages.[33] On the other hand, FHFA believes there is greater benefit to having a risk-based capital requirement that ensures sufficient capital without considering new revenue. Inclusion of revenues could result in very low or zero risk-based capital requirements for specific portfolio segments. FHFA also considered additional reasons for excluding revenues such as that Basel capital requirements exclude revenue, and that revenue serves to build capital during stress events so that the Enterprises can continue as going concerns.

The proposed rule also would not incorporate the tax deductibility of losses in order to create a simple and transparent measure of risk and to maintain general consistency with other regulatory regimes. Inclusion of the tax deductibility of losses would add significant complexity to the proposed rule. Additionally, FHFA already has an assessment of capitalization, the annual Dodd-Frank Act Stress Test exercise which incorporates revenue, the tax deductibility of losses and accounting impacts.

Question 1: FHFA is soliciting comments on all aspects of the proposed risk-based capital framework. What modifications to the proposed risk-based capital framework should be considered and why?

Market Risk

The Enterprises are exposed to market risk, including interest rate risk and spread risk, through their ownership of whole loans and their investments in MBS. Interest rate risk is the risk of loss from adverse changes in the value of the Enterprises' assets or liabilities due to changes in interest rates. Spread risk is the risk of a loss in value of an asset relative to a risk free or funding benchmark due to changes in perceptions of performance or liquidity. The Enterprises have historically actively managed interest rate risk but have not fully hedged spread risk.

The proposed rule would establish risk-based capital requirements for the market risk associated with single-family whole loans, multifamily whole loans, single-family mortgage-backed securities (MBS) and collateralized mortgage obligations (CMOs), Government National Mortgage Association (Ginnie Mae) single-family and multifamily MBS, PLS, commercial mortgage-backed securities (CMBS), and other assets with market risk exposure held in the Enterprises' respective retained portfolios. While the Enterprises have legacy assets acquired prior to entering conservatorship, such as certain private-label securities investments, the ongoing use of the Enterprises' retained portfolios during conservatorship is now limited to transactions that support the Enterprises' core mortgage guarantee business activities. This includes supporting acquisitions through the cash window primarily for smaller lenders and buying delinquent loans out of securities in order to facilitate loss mitigation activities that benefit both borrowers and taxpayers. Because the Enterprises' retained portfolio activities have been greatly limited through conservatorship, these portfolios now represent a small share of the Enterprises' overall risk exposure, and the proposed methodology for calculating market risk capital requirements is therefore simple and straightforward. Although FHFA will automatically suspend a final rule because the Enterprises are in conservatorship and cannot build capital, the proposed rule is only intended to address market risks for the Enterprises as they are currently established under conservatorship. In a post-conservatorship housing finance system, FHFA may consider additional methodologies for calculating market risk capital requirements, and FHFA would have the regulatory flexibility to undertake such actions outside the scope of this proposed rulemaking.

The primary target of the risk-based capital requirement for market risk would be spread risk, as the Enterprises closely hedge interest rate risk at the portfolio level through the use of callable debt and derivatives. Spread risk is a loss in value of an asset relative to a risk free or funding benchmark. Generally, spread risk is calculated by multiplying the amount of spread widening by the spread duration of the asset. Spread widening is typically based on historical spread shocks. Spread duration, or the sensitivity of the market value of an asset to changes in the spread, is determined by using

[33] February 2010 Foreclosure Prevention and Refinance Report.

models that involve assumptions about interest rate movements and prepayment sensitivity. Prepayment sensitivity reflects the relationship between the volume and timing of cash flows and changes in the interest rate or the spread.

The proposed rule would establish three approaches to determining the risk-based market risk capital requirement, each tailored to the Enterprises' businesses. The first approach defines market risk capital as a single point estimate provided by the proposed rule. The second approach is a spread duration approach that defines market risk capital by multiplying a spread shock, provided by the proposed rule, by a spread duration generated from an Enterprise's internal models. The third approach defines market risk capital through the exclusive use of an Enterprise's internal models. The proposed rule would assign the Enterprises' assets to one of the three approaches based on: (i) Whether the asset belongs to a small and declining portfolio where acquisition is limited as the result of conservatorship, (ii) the relative importance of market risk to credit risk for the asset, and (iii) the complexity of the product structure or prepayment sensitivity.

In general, the proposed rule would assign the simplified single point estimate to assets that are either (i) part of a small and declining portfolio or (ii) where credit risk is the predominant risk. A single point estimate, while simple, may inadequately capture the market risk attributes for assets with complex structures or products with high prepayment sensitivity. For instance, assets with complex structures, such as CMOs, can have different prepayment risk across different tranches, and products with high prepayment sensitivity can have spread durations varying across a wide range of characteristics.

For products with complex structures or high prepayment sensitivity, market risk capital results that rely on internal model calculations (the second and third approaches) could provide more accurate market risk capital estimates when compared with a single point estimate. Therefore, the proposed rule would rely on an Enterprise's internal models only when the market risk complexity is sufficiently high that using a single point estimate would inadequately represent the product's underlying market risk.

Market risk capital requirements resulting from the Enterprises' internal models are derived under an established model risk management governance process that includes FHFA's supervisory review. In particular, FHFA issues advisory bulletins, which are public documents that communicate FHFA's supervisory expectations to FHFA supervision staff and to the Enterprises on specific supervisory matters and topics. In addition, through FHFA's supervision program, FHFA on-site examiners conduct supervisory activities to ensure safe and sound operations of the Enterprises. These supervisory activities may include the examination of the Enterprises to determine whether they meet the expectations set in the advisory bulletins. Examinations may also be conducted to determine whether the Enterprises comply with their own policies and procedures, regulatory and statutory requirements, or FHFA directives.

FHFA's 2013–07 Advisory Bulletin reflects supervisory expectations for an Enterprise's model risk management. The Advisory Bulletin sets minimum thresholds for model risk management and differentiates between large, complex entities and smaller, less complex entities. As the Enterprises are large complex entities that develop and maintain internal market risk models, the Advisory Bulletin subjects them to heightened standards for internal audit, model risk management, model control framework, and model lifecycle management.

Question 2: FHFA is soliciting comments on alternative approaches to determining market risk including using the global market shock component of DFAST, discussed in section I.G. Should alternative approaches be considered and why?

Operational Risk

The proposed rule would establish a risk-invariant capital requirement for operational risk as discussed below. The operational risk capital requirement would be assessed as a fixed capital requirement on the unpaid principal balance of instruments with credit risk or on the market value of instruments with market risk. The Basel Basic Indicator Approach for operational risk would be used to determine the fixed capital requirement.

Going-Concern Buffer

As also discussed below, the proposed rule would also establish a going-concern buffer to ensure the Enterprises have sufficient capital to support the mortgage markets during and after a period of severe financial stress. The going-concern buffer would be assessed as a fixed capital requirement on the unpaid principal balance of instruments with credit risk or on the market value of instruments with market risk.

Question 3: FHFA is soliciting comments on the use of updated risk characteristics, including LTV and credit score, in the proposed risk-based capital requirements, particularly as it relates to the pros and cons of having risk-based capital requirements with elements of pro-cyclicality. Risk-based capital requirements that rely on inputs like house prices and loan risk characteristics that change over time have benefits and drawbacks. On the one hand, using updated risk characteristics such as performance history to determine risk-based capital requirements would result in a more accurate assessment of the risks faced by the Enterprises at any particular point in time within credit and economic cycles. On the other hand, using updated risk characteristics would result in pro-cyclical risk-based capital requirements, which may make it more difficult for the Enterprises to raise capital during periods of deteriorating credit or economic conditions.

As discussed above, the proposed rule's approach of using mark-to-market LTVs to determine credit risk capital requirements would more accurately represent the Enterprises' current risk profile than would using original LTVs. This is because the current value of a house influences both the probability that a homeowner will default on the mortgage and the magnitude of losses if a homeowner defaults. In times of house price appreciation mark-to-market LTVs would fall and credit risk capital requirements would decrease, while in times of house price depreciation mark-to-market LTVs would rise and credit risk capital requirements would increase. Therefore, not updating LTVs during a market downturn with decreasing house prices would, all else held constant, result in lower risk-based capital requirements relative to using mark-to-market LTVs. In such a scenario, not updating risk characteristics during a stress event could result in risk-based capital requirements being too low because original LTVs would be understated relative to current LTVs that account for decreased home values during the stress event. Whether using original LTVs or mark-to-market LTVs, the proposed credit risk capital requirements in the base grids for new originations are designed to account for a decline in house prices comparable to the 2008 financial crisis.

However, using original LTVs to determine credit risk capital requirements would reduce the pro-cyclicality of the proposed risk-based capital requirements and smooth out the Enterprises' credit risk capital requirements across economic and credit cycles, making the Enterprises' capital planning more predictable. Maintaining original LTVs for single-family loans would, for example, result in higher credit risk capital requirements during times of house price appreciation, such as the present time, relative to the proposed rule. Because the credit risk capital requirements in the proposed rule are determined using grids based on LTVs, if original LTVs were not updated over time credit risk capital requirements would not increase as a direct result of falling house prices during a market downturn.

Comparing the use of constant or mark-to-market LTVs under the U.S. regulatory implementation of Basel III requires consideration of how the standardized approach and internal ratings-based approach interact with one another. The standardized approach maintains a 50 percent risk weight for mortgages and does not update this risk weight as house prices increase or decrease. The internal ratings-based approach allows, but does not require, institutions to use updated risk factors such as mark-to-market LTVs.

Should FHFA consider reducing the pro-cyclicality of the proposed risk-based capital requirement? For example, should FHFA consider holding LTVs and/or other risk factors constant? What modifications or alternatives, if any, should FHFA consider to the proposed risk-based capital framework, and why?

The next sections discuss the components of FHFA's proposed risk-based capital requirements in more detail. This discussion begins with operational risk, which applies consistently across all of the Enterprises' mortgage loan/asset categories. The discussion continues with the proposed going-concern buffer, which would also apply consistently across all of the Enterprises' asset and guarantee categories. The following sections then discuss risk-based capital requirements for each asset and guarantee category, with subsections that address credit risk and market risk in detail along with summaries of the operational risk and going-concern buffer provisions.

2. Operational Risk

The proposed rule would include an operational risk capital requirement of 8 basis points in the risk-based capital requirement. For assets and guarantees with credit risk, the 8 basis points would be multiplied by the unpaid principal balance of the asset or guarantee. For assets with market risk, the 8 basis points would be multiplied by the market value of the asset. For assets and guarantees with both credit and market risk, the 8 basis points would be multiplied by the unpaid principal balance.

Operational risk is the risk of loss resulting from inadequate or failed internal processes, errors made by people and systems, or from external events. Operational risk is inherent in each Enterprise's business operations. Given the nature of such risks, it is challenging to quantify or estimate operational risk at the asset level. Under the Basel II framework, which requires banks to hold capital related to operational risk, there are three approaches used to measure the operational risk capital requirement: The Basic Indicator Approach, the Standardized Approach, and the Advanced Measurement Approach.[34]

The Basic Indicator Approach is the simplest approach of the three, and it is generally used by banks without significant international operations. The Standardized Approach and the Advanced Measurement Approach employ increasing complexity for calculating operational risk capital requirements. The Advanced Measurement Approach is the most advanced approach and is subject to supervisory approval.[35] In the proposed rule, FHFA uses the Basic Indicator Approach to calculate the operational risk capital requirement for the Enterprises, as it is simple and transparent, and it ensures a consistent treatment across the Enterprises.

The Basic Indicator Approach requires banks to hold capital for operational risk equal to a fixed percentage (scalar) of the average positive gross income relative to total assets over the previous three years. The scalar of 15 percent is the fixed percentage set by the Basel Committee on Banking Supervision (BCBS), representing the prescribed relationship between operational risk loss and the aggregate level of gross income. The prescribed scalar of 15 percent is consistent with the percentage prescribed for the commercial banking business line under the Basel Standardized Approach. Gross income is defined as net interest income plus net non-interest income. The measure is gross of any provisions and operating expenses, and excludes realized profits or losses from the sale of securities and extraordinary or irregular items.

As reflected in the table below, FHFA calculated the operational risk capital requirement for each Enterprise based on a three-year average of gross income from 2014 to 2016.

TABLE 8—OPERATIONAL RISK CAPITAL REQUIREMENT

[Three year average (2014–2016)]

Amounts in $billions	Fannie Mae	Freddie Mac	Weighted average
(1) Gross consolidated income	$17.9	$9.8	
(2) Scalar	15%	15%	
(3) Guarantee book of business	$3,064	$1,954	
Capital Requirement (bps) = (1 × 2)/3	8.7	7.5	8.2

The Basic Indicator Approach

Banks using the Basic Indicator Approach must hold capital for operational risk equal to the average over the previous three years of a fixed percentage (denoted alpha) of positive annual gross income. Figures for any year in which annual gross income is negative or zero should be excluded from both the numerator and denominator when calculating the

[34] *See* the Basel Committee on Banking Supervision—International Convergence of Capital Measurement and Capital Standards, June 2004.

[35] The Basel III framework replaces the collection of Basel II approaches used to measure operational risk with a single, risk-sensitive standardized approach based on two components: (1) A measure of a bank's income, and (2) a measure of a bank's historical losses. The new standardized approach would be used by all banks. *See https://www.bis.org/bcbs/publ/d424.htm.*

average. The requirement may be expressed as follows:

$$KBIA = [\Sigma(GI1 \ldots n \times \alpha)]/n$$

Where:

KBIA = the capital requirement under the Basic Indicator Approach
GI = annual gross income, where positive, over the previous three years
n = number of the previous three years for which gross income is positive
α = 15 percent, which is set by the Committee, relating the industry wide level of required capital to the industry wide level of the indicator.

Gross income is defined as net interest income plus net non-interest income. It is intended that this measure should: (i) Be gross of any provisions (*e.g.,* for unpaid interest); (ii) be gross of operating expenses, including fees paid to outsourcing service providers; (iii) exclude realized profits/losses from the sale of securities in the banking book; and (iv) exclude extraordinary or irregular items as well as income derived from insurance.

FHFA combined the Enterprises' results to determine an operational risk capital requirement of 8 basis points.

Question 4: FHFA is soliciting comments on the proposed operational risk capital requirements. Should FHFA consider requiring the Enterprises to calculate operational risk capital requirements using the new standardized approach for operational risk included in the Basel III framework? What additional modifications to the proposed operational risk capital requirements should be considered and why?

3. Going-Concern Buffer

The proposed rule would include a going-concern buffer of 75 basis points in the risk-based capital requirement. For assets and guarantees with credit risk, the 75 basis points would be multiplied by the unpaid principal balance of the asset or guarantee. For assets or guarantees with market risk, the 75 basis points would be multiplied by the market value of the asset or guarantee. For assets and guarantees with both credit and market risk, the 75 basis points would be multiplied by the unpaid principal balance.

The Enterprises are required by charter to provide liquidity to the mortgage markets during and after a period of severe financial stress. During a period of severe financial distress, the Enterprises would need capital to offset credit and market losses on their existing portfolios, to support the mortgage market by purchasing new loans, and more generally, to maintain market confidence in the Enterprises' securities. Losses on the Enterprises' existing portfolios would deplete capital and would incent the Enterprises to withdraw from riskier segments of the mortgage market in order to preserve capital. Raising new capital during a period of severe housing market stress, like that envisioned in this rule, would be very expensive, if not impossible; therefore, the proposed rule would require the Enterprises to hold additional capital on an on-going basis (''going-concern buffer'') in order to continue purchasing loans and to maintain market confidence during a period of severe distress.

To quantify the size of the going-concern buffer, FHFA looked to the Enterprises' DFAST results for the severely adverse scenario. The DFAST severely adverse scenario specified by FHFA incorporates an assumption that the Enterprises will originate new business during the stress period. DFAST results reflect the impact of the stress scenario on the earnings and capital of each Enterprise.

FHFA calculated the amount of capital necessary for the Enterprises to meet a 2.5 percent leverage requirement at the end of each quarter of the simulation of the severely adverse DFAST scenario (without DTA valuation allowance) and compared that amount to the aggregate risk-based capital requirement. The difference between these two measures provided an indicator for the size of the going-concern buffer. FHFA ultimately determined that the size of the going-concern buffer should be 75 basis points and that the going-concern buffer would be risk-invariant. This approach is useful because it includes a severe stress, an assumption of new business during the severe stress, and an assumption that an Enterprise has enough capital to meet its minimum leverage requirement during and at the end of the stress period, which should contribute to maintaining market confidence. As further validation of the proposed 75 basis points going-concern buffer, FHFA compared the capital obtained by applying the proposed going-concern buffer to the 2017 single-family book of business with the capital required to fund each Enterprise's 2017 new acquisitions. FHFA found the proposed going-concern buffer would provide sufficient capital for each Enterprise to fund an additional one to two years of new acquisitions comparable to their 2017 new acquisitions.

Question 5: FHFA is soliciting comments on the proposed going-concern buffer. What modifications to the proposed going-concern buffer should be considered and why?

4. Single-Family Whole Loans, Guarantees, and Related Securities

This section corresponds to Proposed Rule §§ 1240.5 through 1240.23.

Overview

The proposed rule would establish risk-based capital requirements for the Enterprises' single-family whole loans, guarantees, and securities held for investment. The core of the Enterprises' single-family businesses is acquiring and packaging single-family loans into mortgage-backed securities (MBS) and providing credit guarantees on the issued securities. The aim of the proposed single-family capital requirements is to ensure the continued operation of these important single-family business operations throughout periods of economic uncertainty. In the context of the proposed rule, single-family whole loans are single-family mortgage loans acquired by the Enterprises and held in portfolio, including those purchased out of MBS trusts due to issues related to payment performance. Likewise, single-family guarantees are guarantees provided by the Enterprises of the timely receipt of principal and interest payments to investors in mortgage-backed securities (MBS) that have been issued by the Enterprises and are backed by single-family mortgage loans. Except in cases where they transfer the risk to private investors, the Enterprises are exposed to credit risk through their ownership of single-family whole loans and guarantees issued on MBS. In addition, the Enterprises are exposed to market risk through their ownership of single-family whole loans and mortgage-backed securities held for investment purposes.

To implement the proposed single-family capital requirements, the Enterprises would use a set of single-family grids and risk multipliers to calculate credit risk capital, as well as a collection of straightforward formulas to calculate market risk capital, operational risk capital, and a going-concern buffer.

The proposed rule would first establish a framework through which the Enterprises would calculate their gross single-family credit risk capital requirements. The proposed methodology is simple and transparent, relying on a set of look-up tables (grids and risk multipliers) that would account for many important single-family risk factors in the calculation of gross credit risk capital requirements, including loan characteristics such as age, payment performance, loan-to-value (LTV), and credit score.

The proposed grid and multiplier framework is consistent with existing financial regulatory regimes, and would therefore facilitate comparison to those regimes and promote understanding of the framework's methodology and resulting capital requirements. In particular, the proposed rule is conceptually and methodologically similar to regulatory frameworks such as DFAST, CCAR, and the Basel Accords. FHFA believes that this straightforward and transparent approach, as opposed to one involving a complex set of credit models and econometric equations, would provide sufficient risk differentiation across the Enterprises' single-family businesses without obfuscating capital calculations or placing undue implementation and compliance burdens on the Enterprises.

Next, the proposed rule would provide a mechanism through which the Enterprises would calculate net credit risk capital requirements for single-family whole loans and guarantees by accounting for the benefits associated with loan-level credit enhancements such as mortgage insurance, while also accounting for the counterparty credit risk associated with third parties such as mortgage insurance companies.

The proposed rule would then provide a mechanism for the Enterprises to calculate capital relief by reducing net single-family credit risk capital requirements based on the amount of loss shared or risk transferred to private sector investors through the Enterprises' respective credit risk transfer programs. Collectively, the Enterprises engage in a variety of types of single-family credit risk transfer transactions, and this aspect of the proposed rule would account for differences in the Enterprises' single-family business models.

The proposed rule would establish market risk capital requirements for single-family whole loans and mortgage-backed securities held for investment. The proposed methodology would account for spread risk using either simple formulas or the Enterprises' internal models, depending on the risk characteristics of the single-family whole loans or guarantees being considered.

In addition, the proposed rule would establish an operational risk capital requirement for the Enterprises' single-family businesses that is invariant to risk. The proposed operational risk capital requirement is based on the Basel Basic Indicator Approach and would require the Enterprises to calculate operational risk capital as a fixed percentage of total unpaid principal balances or market values, depending on whether the Enterprises retain both credit and market risk for particular single-family assets or merely market risk.

Finally, as described above, the proposed rule would establish a going-concern buffer for the Enterprises' single-family businesses that is also invariant to risk with the objective of ensuring that, when combined with Enterprise revenue, the Enterprises have sufficient capital to continue operating their single-family businesses during and after a period of severe financial distress. Under the proposed rule, the Enterprises would be required to calculate the single-family going-concern buffer as a fixed percentage of total unpaid principal balances or market values, depending on whether the Enterprises retain both credit and market risk for particular single-family assets or merely market risk.

Single-Family Business Model

The proposed rule would apply equally to both Enterprises regardless of differences in their single-family business models. Although the Enterprises operate independently of one another, the common core of their single-family businesses is the acquisition of single-family mortgage loans from mortgage companies, commercial banks, credit unions, and other financial institutions, packaging those loans into mortgage-backed securities (MBS), and selling the MBS either back to the original lenders or to other private investors in exchange for a fee that represents a guarantee of timely principal and interest payments on those securities.

The Enterprises engage in the acquisition and securitization of single-family mortgages primarily through two types of transactions: Lender swap transactions and cash window transactions. In a lender swap transaction, lenders pool similar single-family loans together and deliver the pool of loans to an Enterprise in exchange for an MBS backed by those single-family mortgage loans, which the lenders generally then sell in order to use the proceeds to fund more mortgage loans. In a cash window transaction, an Enterprise purchases single-family loans from a large, diverse group of lenders and then securitizes the acquired loans into an MBS to sell at a later date. For MBS issued as a result of either lender swap transactions or cash window transactions, the Enterprises provide investors with a guarantee of the timely receipt of payments in exchange for a guarantee fee. Single-family loans that have been purchased but have not yet been securitized are held in the Enterprises' whole loan portfolios. In addition, the Enterprises also repurchase loans that have been delinquent for four or more consecutive months from the MBS they guarantee.

The Enterprises are exposed to credit risk through their ownership of single-family whole loans and the guarantees they issue on MBS. The Enterprises may incur a credit loss when borrowers default on their mortgage payments, so the Enterprises attempt to mitigate the likelihood of incurring such a loss in a variety of ways. One way to reduce potential credit losses is through the use of credit enhancements such as primary mortgage insurance. Credit enhancement is required by the Enterprises' charter acts for single-family loans with loan-to-value ratios over 80 percent.[36] In addition to loan-level credit enhancements, the Enterprises may, and indeed often do, engage in pool-level credit risk transfer transactions (CRT) in order to transfer a portion of their retained single-family credit risk to investors.

Rule Framework and Implementation

The proposed rule would establish risk-based capital requirements for the Enterprises' single-family businesses, including requirements for their whole loans, guarantees, and securities held for investment. Using the proposed requirements, the Enterprises would calculate the minimum amount of funds needed to continue their single-family business operations under stressed economic conditions, as discussed in detail below. The proposed single-family capital requirements would have the following components: Credit risk capital, including relief for credit risk transfers; market risk capital; operational risk capital; and a going-concern buffer. Each component is discussed in detail in the ensuing subsections.

a. Credit Risk

This section corresponds to Proposed Rule §§ 1240.5 through 1240.13.

Single-Family Whole Loans and Guarantees

The proposed rule would establish credit risk capital requirements for the Enterprises' conventional single-family whole loans and guarantees. For reasons discussed below, loans with a government guarantee would not be subject to the credit risk capital requirement. The single-family credit risk capital requirements would

[36] The charter acts permit three types of credit enhancement for such high-LTV loans, but private mortgage insurance is by far the most commonly used.

determine the minimum funding necessary to cover the difference between estimated lifetime credit losses in severely adverse economic conditions (alternatively referred to as stress losses) and expected losses. As adverse economic conditions are not explicitly defined, the loss projections that underpin the credit risk capital requirements in the proposed rule are based on several different economic scenarios.

Each Enterprise used economic scenarios that they defined to project loan-level credit risk capital. In addition, FHFA leveraged the baseline and severely adverse scenario defined in the Dodd-Frank Act Stress Tests (DFAST) to project expected and stress losses. The DFAST scenarios are well understood economic conditions updated annually by the Federal Reserve Board. FHFA used these pre-existing scenarios as a starting point for its estimations in order to provide economic scenarios consistent with those issued by other regulators to large financial institutions for stress tests required under DFAST. FHFA also used these scenarios to ensure a straightforward, transparent approach to the proposed rule's capital requirements. The DFAST scenarios include forecasts for macroeconomic variables including home prices, interest rates, and unemployment rates.

Home prices are generally considered to be the most important determinant of a strong single-family housing market. Home prices are used to define the loan-to-value ratio, where the likelihood of a loss occurring upon default increases as the proportion of equity to loan value deceases. Therefore, the projected home price path is the predominant macroeconomic driver for the requirements single-family stress scenarios.

The Enterprises used similar house price paths to project credit risk capital. In the stress scenarios used by FHFA and the Enterprises, nationally averaged home prices declined by 25 percent from peak to trough (the period of time between the shock and the recovery), which is consistent with the decline in home prices observed during the recent financial crisis. The 25 percent home price decline is also consistent with assumptions used in the DFAST severely adverse scenario over the past several years, although the 2017 DFAST cycle assumes a 30 percent home price decline in its severely adverse scenario. However, the trough and recovery assumptions used by FHFA and the Enterprises are somewhat more conservative than the observed house price recoveries post crisis. The single-family credit risk capital grids, discussed below, reflect estimations of stress losses and expected losses under these severely adverse economic conditions.

The proposed rule would require the Enterprises to calculate credit risk capital requirements for single-family whole loans and guarantees by completing the following simplified steps:

(1) Determine base single-family credit risk capital requirements using single-family-specific credit risk capital grids;

(2) Determine gross single-family credit risk capital requirements by adjusting base single-family credit risk capital requirements for additional risk characteristics using a set of single-family-specific risk multipliers;

(3) Determine net single-family credit risk capital requirements by adjusting gross single-family credit risk capital requirements for loan-level credit enhancements, including accounting for counterparty risk; and

(4) Determine capital relief from net single-family credit risk capital requirements due to credit risk transfer transactions.

Base Credit Risk Capital Requirements

This section corresponds to Proposed Rule §§ 1240.5 through 1240.16.

The proposed rule would require the Enterprises to calculate base credit risk capital requirements for single-family whole loans and guarantees using a set of five look-up tables or grids, one for each single-family loan segment. Accordingly, for the purpose of the proposed rule, the Enterprises would categorize their single-family whole loans and guarantees into five loan segments, with each loan segment representing a different period in the possible life cycle of a single-family mortgage loan.

The proposed single-family loan segments are based on age and payment performance because the expectation of a credit loss depends heavily on these two risk factors. Additional risk factors affect the expectation of credit loss differently depending on where a loan is in its life cycle. The amount of credit risk capital required for a single-family whole loan or guarantee therefore would change over the life cycle of a loan, decreasing when the loan is seasoned and performing, and increasing when the loan is delinquent or has recently experienced delinquency. These dynamics are often captured in credit loss forecasts by estimating different mortgage performance equations for loans in different life-cycle stages. The proposed rule would capture these dynamics in a similar fashion by having five different single-family credit risk capital grids and sets of multipliers for whole loans and guarantees in different life-cycle stages. The five proposed loan segments for single-family whole loans and guarantees are:

- *New originations:* Loans that were originated within 5 months of the capital calculation date and have never been 30-days delinquent. Streamlined refinance loans, including HARP loans, are excluded from this category.
- *Performing seasoned:* Loans that were originated at least 5 months before the capital calculation date and have been neither 30-days delinquent nor modified within 36 months of the capital calculation date. Newly originated streamlined refinance loans, including HARP loans, are included in this category.
- *Non-modified re-performing:* Loans that are currently performing and have had a prior 30-day delinquency, but not a prior modification.
- *Modified re-performing:* Loans that are currently performing and have had a prior 30-day delinquency and a prior modification.
- *Non-performing:* Loans that are currently at least 30-days delinquent.

Each single-family loan segment would have a unique two-dimensional credit risk capital grid that the Enterprises would use to calculate base credit risk capital requirements for every whole loan and guarantee in the loan segment. The dimensions of the credit risk capital grids would vary by loan segment to allow the grids to differentially incorporate key risk drivers into the base credit risk capital requirements on a segment-by-segment basis. For example, current (refreshed) credit scores and mark-to-market LTV (MTMLTV) are two primary drivers of credit losses in performing seasoned loans, while a primary driver of credit losses in modified re-performing loans (RPL) is the payment change due to modification. Accordingly, the dimensions of the credit risk capital grids for these segments would reflect the respective primary drivers of risk.

The credit risk capital grid for each single-family loan segment would determine the base credit risk capital requirement for any single-family whole loan or guarantee in that loan segment (where the base credit risk capital requirement refers to a capital calculation that does not yet recognize either the full impact of risk factors that are not one of the base grid's two dimensions or loan-level credit enhancements). The proposed grids were populated after carefully considering a combination of estimates of credit risk capital from the Enterprises' internal models and FHFA's models. To derive the underlying estimates for each loan segment's credit risk capital grid, the Enterprises were asked to run their single-family credit models using comparable stressed economic conditions, as discussed above, and synthetic loans with a baseline risk profile with respect to risk factors other than those represented in the dimensions of the segment's credit risk capital grid.[37] In the proposed rule, each single-family loan segment has its own baseline risk profile, which is discussed segment-by-segment below. Consequently, each cell of the single-family credit risk capital grids represents an estimated difference, in basis points, between estimated stress losses and expected losses for a segment-specific, baseline synthetic loan with a particular combination of primary risk factors as described in the grid's dimensions. In the proposed rule, this capital requirement, in basis points, would be applied to the unpaid principal balance (UPB) of each conventional single-family whole loan and guarantee held by the Enterprises with exposure to credit risk.

FHFA believes that constructing the proposed base credit risk capital grids in this manner provides for sufficient levels of granularity, accuracy, and transparency in the credit risk capital calculations. Each single-family whole loan and guarantee is segmented first by age and payment performance, then broken down further by its two primary risk drivers while simultaneously considering ''typical'' values for secondary risk drivers (which are further accounted for in the calculation of gross credit risk capital requirements using risk multipliers). FHFA carefully evaluated its own model estimations using these categorizations, as well as estimations provided by the Enterprises. The credit risk capital requirements in the five proposed grids do not take into account the effect of credit enhancements such as mortgage insurance and generally represent averages of the individual estimations, although in certain cases adjustments were made to ensure the capital requirements were reasonable. In addition, the risk factor breakpoints and ranges represented in the grids' dimensions were chosen in light of FHFA analysis and internal discussions, as well as discussions with the Enterprises. FHFA concluded that the proposed breakpoints and ranges would combine to form sufficiently granular pairwise buckets without imposing an undue compliance burden on the Enterprises. The proposed process for calculating credit risk capital requirements is therefore straightforward, and does not rely on quarterly calculations of complicated, opaque economic models or econometric equations.

Base Credit Risk Capital Grids by Loan Segment

New Originations

The primary risk factors for single-family whole loans and guarantees in the new originations loan segment are original credit score and original loan-to-value (OLTV). The dimensions in the segment's credit risk capital grid would reflect these two risk factors. Original credit score correlates strongly with the probability of a borrower default, while OLTV relates to the severity of a potential loss should a borrower default (loss given default). Credit score and OLTV are often used by lenders to price new loans.

The proposed single-family credit risk capital grid for new originations is presented in Table 9.

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[37] In the context of this rule, a baseline risk profile means that the secondary risk factors included in each baseline synthetic loan take values such that they would receive a risk multiplier of 1.0, as discussed further in section II.C.4.a.

Table 9: Single-Family New Originations Base Credit Risk Capital (in bps)

	OLTV <= 30%	30% < OLTV <= 60%	60% < OLTV <= 70%	70% < OLTV <= 75%	75% < OLTV < 80%	OLTV = 80%	80% < OLTV <= 85%	85% < OLTV <= 90%	90% < OLTV <= 95%	95% < OLTV <= 97%	OLTV > 97%
Original Credit Score < 620	10	108	293	437	571	652	779	958	1134	1219	1357
620 <= Original Credit Score < 640	10	84	234	350	459	518	617	764	913	969	1108
640 <= Original Credit Score < 660	10	73	203	305	400	451	537	667	802	864	974
660 <= Original Credit Score < 680	10	63	177	264	346	390	468	589	719	779	865
680 <= Original Credit Score < 700	10	53	154	230	300	339	405	528	656	716	802
700 <= Original Credit Score < 720	10	46	134	199	259	293	344	452	566	620	700
720 <= Original Credit Score < 740	10	39	115	171	222	251	300	400	507	557	633
740 <= Original Credit Score < 760	10	31	95	141	183	206	244	326	417	459	525
760 <= Original Credit Score < 780	10	25	77	114	148	166	195	262	339	374	431
Original Credit Score >= 780	10	19	59	87	113	127	148	200	258	286	331

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Credit scores have values ranging from 300 to 850, and LTVs at origination typically range from 10 percent to 97 percent. FHFA chose the ranges and breakpoints represented in the dimensions of the Table 9 after reviewing the distributions of unpaid principal balances in the Enterprises' single-family businesses. FHFA notes that the Enterprises currently rely on Classic FICO for product eligibility, loan pricing, and financial disclosure purposes, and therefore the base grid for new originations was estimated using Classic FICO credit scores.[38] Furthermore, throughout the proposed rule, the use of credit scores should be interpreted to mean Classic FICO credit scores. If the Enterprises were to begin using a different credit score for these purposes, or multiple scores, the grid for new originations, along with any other grid reliant on credit scores, would need to be recalibrated. In the proposed grid for new originations, OLTV ranges are more granular between OLTVs of 70 and

[38] FHFA has issued a Request for Input on Fannie Mae and Freddie Mac Credit Score Requirements. *See https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Issues-Request-for-Input-on-Fannie-Mae-and-Freddie-Mac-Credit-Score-Requirements.aspx.*

95 percent, where the Enterprises conduct the majority of their new single-family businesses. In addition, the credit risk capital grid for new originations has a separate category for loans with an 80 percent OLTV to account for the high volume and distinct features of these particular loans. Under the Enterprises' charter acts, 80 percent represents the maximum LTV for which loans do not require credit enhancement, which creates an incentive for borrowers to finance exactly 80 percent of a home's value. The grid in Table 9 presents proposed capital requirements before taking into account credit enhancements such as mortgage insurance, which would lower the Enterprises' net capital requirements for single-family loans with an OLTV greater than 80 percent. For example, for a single-family 30-year amortizing loan with guide-level mortgage insurance coverage and an OLTV of 93 percent, mortgage insurance would reduce the Table 9 gross credit risk capital requirement by 69 percent (see Table 15) prior to counterparty haircut adjustments. Subsequent tables 10 through 13 are also presented before taking into account credit enhancements.

Aside from the primary risk factors represented in the dimensions of Table 9, there are several secondary risk factors accounted for in the risk profile of the synthetic loan used in the estimations underlying the credit risk capital requirements presented in Table 9. Those secondary risk factors, along with the values that determine the baseline risk profile for the credit risk capital grid for new originations, are as follows: Loan age less than six months, 30-year fixed rate, purchase, owner-occupied, single-unit, retail channel sourced, debt-to-income ratio between 25 percent and 40 percent, loan size greater than $100,000, no second lien, and has multiple borrowers. Variations from these risk characteristics would make the whole loan or guarantee more or less risky and would result in a higher or lower credit risk capital requirement relative to the base credit risk capital requirement. In the proposed rule, variations in these secondary risk factors would be captured using risk multipliers as described in the next section.

Performing Seasoned Loans

The primary risk factors for single-family whole loans and guarantees in the performing seasoned loan segment are refreshed credit score and mark-to-market loan-to-value (MTMLTV). The dimensions in the segment's credit risk capital grid would reflect these two risk factors. The more seasoned a loan gets, or the longer it has been since the loan was originated, the less relevant its original credit score and original LTV become.

But since credit score and LTV still relate strongly to the probability of default and loss given default, respectively, refreshed (updated) values of these two important risk factors are used as the primary risk factors and dimensions. The proposed single-family credit risk capital grid for whole loans and guarantees in the performing seasoned loan segment is presented in Table 10.

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Table 10: Single-Family Performing Seasoned Loans Base Credit Risk Capital (in bps)

	MTMLTV <= 30%	30% < MTMLTV <= 60%	60% < MTMLTV <= 70%	70% < MTMLTV <= 75%	75% < MTMLTV <= 80%	80% < MTMLTV <= 85%	85% < MTMLTV <= 90%	90% < MTMLTV <= 95%	95% < MTMLTV <= 100%	100% < MTMLTV <= 110%	110% < MTMLTV <= 120%	MTMLTV > 120%
Refreshed Credit Score < 620	10	108	293	437	636	779	958	1134	1312	1491	1656	1911
620 <= Refreshed Credit Score < 640	10	84	234	350	506	617	764	913	1075	1252	1426	1700
640 <= Refreshed Credit Score < 660	10	73	203	305	441	537	667	802	959	1124	1291	1555
660 <= Refreshed Credit Score < 680	10	63	177	264	381	468	589	719	852	1010	1172	1425
680 <= Refreshed Credit Score < 700	10	53	154	230	331	405	528	656	754	905	1059	1295
700 <= Refreshed Credit Score < 720	10	46	134	199	286	344	452	566	663	806	950	1168
720 <= Refreshed Credit Score < 740	10	39	115	171	245	300	400	507	578	710	842	1037
740 <= Refreshed Credit Score < 760	10	31	95	141	201	244	326	417	483	599	715	884
760 <= Refreshed Credit Score < 780	10	25	77	114	162	195	262	339	393	493	594	737
Refreshed Credit Score >= 780	10	19	59	87	124	148	200	258	301	382	463	578

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Credit scores have values ranging from 300 to 850, and MTMLTVs typically range from 10 percent to upwards of 120 percent. FHFA chose the ranges and breakpoints represented in the dimensions of the Table 10 after reviewing the distributions of unpaid principal balances in the Enterprises' single-family seasoned loan businesses. In the proposed credit risk capital grid for performing seasoned loans, FHFA included MTMLTV buckets beyond 95 percent to account for adverse changes in home prices subsequent to loan origination, as well as to account for the inclusion of streamlined refinance loans in the segment. In addition, loans with an 80 percent LTV are no longer highlighted.

Aside from the primary risk factors represented in the dimensions of Table 10, there are several secondary risk factors accounted for in the risk profile of the synthetic loans used in the estimations underlying the credit risk capital requirements presented in Table 10. Those secondary risk factors, along with the values that determine the baseline risk profile for the credit risk capital grid for performing seasoned loans, are: Loan age between six months and 12 months, 30-year fixed rate, purchase, owner-occupied, single-unit, retail channel sourced, debt-to-income ratio between 25 percent and 40 percent, loan size greater than $100,000, no second lien, has multiple borrowers, full documentation for documentation level, non-interest-only for amortization type, not streamlined refinance loans, and zero refinance (cohort) burnout (described below). Several of these risk factors, such as documentation level, interest-only, and those related to refinancing, are included in the performing seasoned loan segment despite the fact that they are not included in the new originations segment, in some cases due to the Qualified Mortgage rule that prohibits interest-only and low-documentation loans on new originations. However, these risk factors may be present on loan originated prior to the financial crisis. Variations from these risk characteristics would make the whole loan or guarantee more or less risky and would result in a higher or lower credit risk capital requirement relative to the base credit risk capital requirement. In the proposed rule, variations in these secondary risk factors would be captured using risk multipliers as described in the next section.

Non-Modified Re-Performing Loans

The primary risk factors for single-family whole loans and guarantees in the non-modified re-performing loan segment are re-performing duration and MTMLTV. The dimensions in the segment's credit risk capital grid would reflect these two risk factors. Re-performing duration is the number of months since a whole loan or guarantee was last delinquent, and is a strong predictor of the likelihood of a subsequent default for re-performing loans that have cured without prior modifications. MTMLTV is a strong predictor of loss given default for whole loans and guarantees in this segment.

The proposed single-family credit risk capital grid for whole loans and guarantees in the non-modified re-performing loan segment is presented in Table 11.

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Table 11: Single-Family Non-Modified Re-Performing Loans Base Credit Risk Capital (in bps)

		MTMLTV <= 30%	30% < MTMLTV <= 60%	60% < MTMLTV <= 70%	70% < MTMLTV <= 75%	75% < MTMLTV <= 80%	80% < MTMLTV <= 85%	85% < MTMLTV <= 90%	90% < MTMLTV <= 95%	95% < MTMLTV <= 100%	100% < MTMLTV <= 110%	110% < MTMLTV <= 120%	MTMLTV > 120%
Months Since Last Delinquency	0 < Months <= 3	8	122	315	433	525	658	763	843	929	1002	1085	1125
	3 < Months <= 12	7	88	245	340	421	522	623	708	791	882	1002	1106
	12 < Months <= 36	6	67	202	285	353	431	523	607	693	795	938	1093
	36 < Months <= 48	8	46	132	198	285	349	447	550	642	766	893	1088

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In the proposed rule, re-performing duration is divided into four categories such that credit risk capital requirements would decrease as re-performing duration increases. When the re-performing duration is greater than three years, the proposed credit risk capital requirement for a re-performing loan would approximate the credit risk capital requirements for a performing seasoned loan. Loans that re-perform for greater than four years, and have not been modified, would revert to being classified as performing seasoned and use the appropriate credit risk capital grid. The proposed ranges and breakpoints for MTMLTV are unchanged from those found in the performing seasoned loan grid (Table 10).

Aside from the primary risk factors represented in the dimensions of Table 11, there are many secondary risk factors accounted for in the risk profile of the synthetic loan used in the estimations underlying the credit risk capital requirements presented in Table 11. In particular, although much of the predictive power of current credit score is captured by re-performing duration, variations in credit score are still accounted for through a multiplier. These secondary risk factors, along with the values that determine the baseline risk profile for the credit risk capital grid for non-modified re-performing loans, are the same as those for performing seasoned loans with the inclusion of two additional features: Refreshed credit scores between 660 and 700, and a maximum previous delinquency of one month. Variations from these risk characteristics would make the whole loan or guarantee more or less risky and would result in a higher or lower credit risk capital requirement relative to the base credit risk capital requirement. In the proposed rule, variations in these secondary risk factors would be captured using risk multipliers as described in the next section.

Modified Re-Performing Loans

The primary risk factors for single-family whole loans and guarantees in the modified re-performing loan segment are similar to those in the non-modified re-performing loan segment. However, along with the MTMLTV, the second primary risk factor in the modified re-performing segment is either the re-performing duration or the performing duration, whichever is smaller. The re-performing duration measures the number of months since the last delinquency, while the performing duration measures the number of months a loan has been performing since it was last modified. The dimensions in the segment's credit risk capital grid would reflect these risk factors.

The proposed single-family credit risk capital grid for whole loans and guarantees in the modified re-performing loan segment is presented in Table 12.

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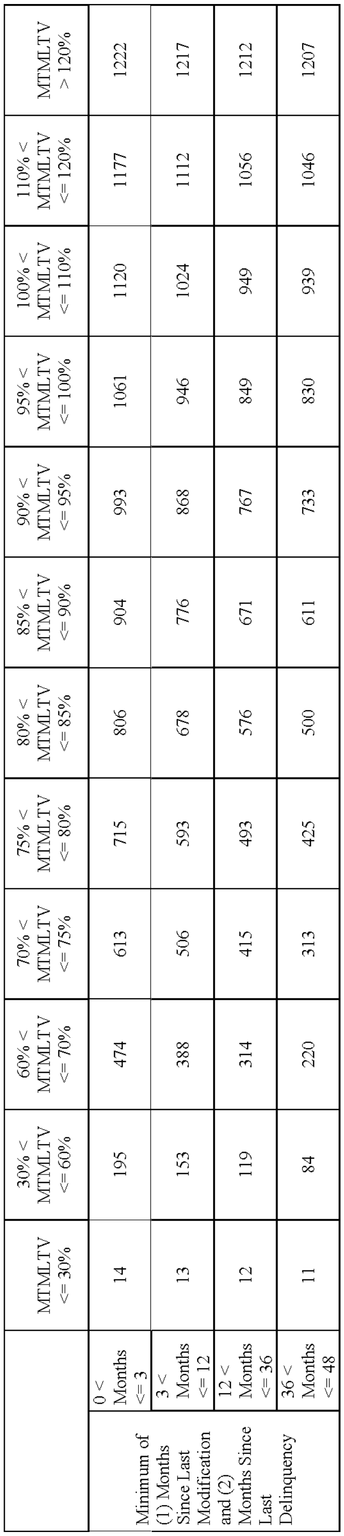
Table 12: Single-Family Modified Re-Performing Loans Base Credit Risk Capital (in bps)



		MTMLTV <= 30%	30% < MTMLTV <= 60%	60% < MTMLTV <= 70%	70% < MTMLTV <= 75%	75% < MTMLTV <= 80%	80% < MTMLTV <= 85%	85% < MTMLTV <= 90%	90% < MTMLTV <= 95%	95% < MTMLTV <= 100%	100% < MTMLTV <= 110%	110% < MTMLTV <= 120%	MTMLTV > 120%
Minimum of (1) Months Since Last Modification and (2) Months Since Last Delinquency	0 < Months <= 3	14	195	474	613	715	806	904	993	1061	1120	1177	1222
	3 < Months <= 12	13	153	388	506	593	678	776	868	946	1024	1112	1217
	12 < Months <= 36	12	119	314	415	493	576	671	767	849	949	1056	1212
	36 < Months <= 48	11	84	220	313	425	500	611	733	830	939	1046	1207

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Aside from the primary risk factors represented in the dimensions of Table 12, there are many secondary risk factors accounted for in the risk profile of the synthetic loan used in the estimations underlying the credit risk capital requirements presented in Table 12. These secondary risk factors, along with the values that determine the baseline risk profile for the credit risk capital grid for modified re-performing loans, are the same as those for non-modified re-performing loans. Variations from these risk characteristics would make the whole loan or guarantee more or less risky and would result in a higher or lower credit risk capital requirement relative to the base credit risk capital requirement. In the proposed rule, variations in these secondary risk factors would be captured using risk multipliers as described in the next section.

Contrary to re-performing single-family loans that have not been modified, loans in the modified re-performing loan segment never revert to being classified as performing seasoned loans, even after four or more years of re-performance.

Non-Performing Loans

The primary risk factors for single-family whole loans and guarantees in the non-performing loan (NPL) segment are delinquency level and MTMLTV. The dimensions in the segment's credit risk capital grid would reflect these two risk factors. In the proposed rule, a non-performing single-family loan is a loan where at least the most recent payment has been missed. The delinquency level of a non-performing whole loan or guarantee is the number of payments missed since the loan became delinquent, and is a strong predictor of the likelihood of default for non-performing loans. MTMLTV is a strong predictor of loss given default for whole loans and guarantees in this segment. The proposed single-family credit risk capital grid for whole loans and guarantees in the non-performing loan segment is presented in Table 13.

TABLE 13—SINGLE-FAMILY NON-PERFORMING LOANS BASE CREDIT RISK CAPITAL

[In bps]

	MTMLTV <= 30%	30% < MTMLTV <= 60%	60% < MTMLTV <= 70%	70% < MTMLTV <= 75%	75% < MTMLTV <= 80%	80% < MTMLTV <= 85%	85% < MTMLTV <= 90%	MTMLTV > 90%
Number of Missed Payments:								
1	46	387	1,054	1,195	1,300	1,404	1,496	1,663
2	60	507	1,233	1,374	1,462	1,535	1,612	1,695
3–6	80	603	1,315	1,437	1,503	1,556	1,600	1,638
>=7	198	884	1,565	1,619	1,650	1,659	1,667	1,577

The capital requirements detailed in Table 13 are non-monotonic as the number of missed payments increases, particularly in the highest (right-most) MTMLTV column. This is because as the number of missed payments increases for a non-performing loan with a very high LTV, so does the expected loss. Because capital is defined as the difference between stress loss and expected loss, when expected loss increases and grows closer to stress loss, the capital requirement shrinks. The increase in expected loss is reflected in commensurately higher loss reserves.

Aside from the primary risk factors represented in the dimensions of Table 13, there are many secondary risk factors accounted for in the risk profile of the synthetic loan used in the estimations underlying the credit risk capital requirements presented in Table 13. These secondary risk factors, along with the values that determine the baseline risk profile for the credit risk capital grid for non-performing loans, are the same as those for performing seasoned loans, with the inclusion of one additional feature: Refreshed credit scores between 640 and 700. Variations from these risk characteristics would make the whole loan or guarantee more or less risky and would result in higher or lower credit risk capital requirement relative to the base credit risk capital requirement. In the proposed rule, variations in these secondary risk factors would be captured using risk multipliers as described in the next section.

Gross Credit Risk Capital Requirements

After the Enterprises calculate base credit risk capital requirements for single-family whole loans and guarantees using the single-family credit risk capital grids, the proposed rule would require the Enterprises to calculate gross credit risk capital requirements by adjusting the base credit risk capital requirements to account for additional loan characteristics using a set of single-family-specific risk multipliers. The proposed risk multipliers would refine single-family base credit risk capital requirements to account for risk factors beyond the primary risk factors reflected in the credit risk capital grids, and for variations in secondary risk factors not captured in the risk profiles of the synthetic loans underlying the credit risk capital grids. Gross single-family credit risk capital requirements would be the product of base single-family credit risk capital requirements and the single-family risk multipliers.

The proposed single-family risk multipliers represent common characteristics that increase or decrease the riskiness of a single-family whole loan or guarantee. Therefore, the proposed rule would provide a mechanism through which single-family credit risk capital requirements would be adjusted and refined up or down to reflect a more or less risky loan profile, respectively. FHFA believes that risk multipliers would provide for a simple and transparent characterization of the risks associated with different types of single-family whole loans and guarantees, and an effective way of adjusting credit risk capital requirements for those risks. Although the specified risk characteristics are not exhaustive, they capture key real estate loan performance drivers, and are commonly used in mortgage loan underwriting and rating. For these reasons, FHFA believes the use of risk multipliers in general, and the proposed risk multipliers in particular, would facilitate analysis and promote understanding of the Enterprises' single-family credit risk capital requirements while mitigating concerns associated with compliance and complex implementation.

The proposed risk multiplier values were determined using FHFA staff analysis and expertise, and in consideration of the Enterprises' contribution of model results and business expertise. To derive the proposed risk multiplier values, the Enterprises were asked to run their single-family credit models using comparable stressed economic conditions, as discussed above, and synthetic loans with a baseline risk profile with respect to risk factors other than those represented in the dimensions of each segment's credit risk capital grid. The segment-specific secondary risk factors, and their segment-specific baseline risk values, are discussed in detail in the prior section. The Enterprises then varied the secondary risk factors, by loan segment, to estimate each risk factor's multiplicative effects on the Enterprises' base credit risk capital projections (stress losses minus expected losses) for baseline whole loans and guarantees in each loan segment. FHFA then considered the multiplier values estimated by the Enterprises, which were generally consistent in magnitude and direction, in conjunction with its own estimated values before combining values to determine the proposed single-family risk multipliers. The proposed single-family risk multipliers are presented in Table 14.

TABLE 14—SINGLE-FAMILY RISK MULTIPLIERS

Risk factor	Value or range	Risk multipliers by single-family loan segment				
		New originations	Performing seasoned	Non-modified RPL	Modified RPL	NPL
Loan Purpose	Purchase	1.0	1.0	1.0	1.0	
	Cashout Refinance	1.4	1.4	1.4	1.4	
	Rate/Term Refinance	1.3	1.3	1.2	1.3	
	Other	1.0	1.0	1.0	1.0	
Occupancy Type	Owner Occupied or Second Home.	1.0	1.0	1.0	1.0	1.0
	Investment	1.2	1.2	1.5	1.3	1.2
Property Type	1-Unit	1.0	1.0	1.0	1.0	1.0
	2–4 Unit	1.4	1.4	1.4	1.3	1.1
	Condominium	1.1	1.1	1.0	1.0	1.0
	Manufactured Home	1.3	1.3	1.8	1.6	1.2
Number of Borrowers	Multiple borrowers	1.0	1.0	1.0	1.0	1.0
	One borrower	1.5	1.5	1.4	1.4	1.1
Third-Party Origination Channel.	Non-TPO	1.0	1.0	1.0	1.0	1.0
	TPO	1.1	1.1	1.1	1.1	1.0
DTI	DTI <= 25%	0.8	0.8	0.9	0.9	
	25% < DTI <= 40%	1.0	1.0	1.0	1.0	
	DTI > 40%	1.2	1.2	1.2	1.1	
Product Type	FRM 30 year	1.0	1.0	1.0	1.0	1.0
	ARM 1/1	1.7	1.7	1.1	1.0	1.1
	FRM 15 year	0.3	0.3	0.3	0.5	0.5
	FRM 20 year	0.6	0.6	0.6	0.5	0.8
Loan Size	UPB <= $50,000	2.0	2.0	1.5	1.5	1.9
	$50,000 < UPB <= $100,000.	1.4	1.4	1.5	1.5	1.4
	UPB > $100,000	1.0	1.0	1.0	1.0	1.0
Subordination (OLTV × Second Lien).	No subordination	1.0	1.0	1.0	1.0	
	30% < OLTV <= 60% and 0% < subordination <= 5%.	1.1	1.1	0.8	1.0	
	30% < OLTV<= 60% and subordination > 5%.	1.5	1.5	1.1	1.2	
	OLTV > 60% and 0% < subordination <= 5%.	1.1	1.1	1.2	1.1	
	OLTV > 60% and subordination > 5%.	1.4	1.4	1.5	1.3	
Loan Age	Loan Age <= 24 months		1.0			
	24 months < Loan Age <= 36 months.		0.95			
	36 months < Loan Age <= 60 months.		0.8			
	Loan Age > 60 months		0.75			
Cohort Burnout	No Burnout		1.0			
	Low		1.2			
	Medium		1.3			
	High		1.4			
Interest-Only (IO)	No IO		1.0	1.0	1.0	
	Yes IO		1.6	1.4	1.1	
Loan Documentation Level	Full Documentation		1.0	1.0	1.0	
	No Documentation or Low Documentation.		1.3	1.3	1.2	
Streamlined Refinance	No		1.0	1.0	1.0	
	Yes		1.0	1.2	1.1	
Refreshed Credit Score for RPLs.	Refreshed Credit Score < 620.			1.6	1.4	
	620 <= Refreshed Credit Score < 640.			1.3	1.2	
	640 <= Refreshed Credit Score < 660.			1.2	1.1	
	660 <= Refreshed Credit Score < 700.			1.0	1.0	
	700 <= Refreshed Credit Score < 720.			0.7	0.8	
	720 <= Refreshed Credit Score < 740.			0.6	0.7	

TABLE 14—SINGLE-FAMILY RISK MULTIPLIERS—Continued

Risk factor	Value or range	Risk multipliers by single-family loan segment				
		New originations	Performing seasoned	Non-modified RPL	Modified RPL	NPL
	740 <= Refreshed Credit Score < 760.			0.5	0.6	
	760 <= Refreshed Credit Score < 780.			0.4	0.5	
	Refreshed Credit Score >= 780.			0.3	0.4	
Payment change from modification.	Payment Change >= 0%				1.1	
	−20% <= Payment Change < 0%.				1.0	
	−30% <= Payment Change < −20%.				0.9	
	Payment Change < −30%				0.8	
Previous Maximum Delinquency (in the last 36 months).	0–1 Months			1.0	1.0	
	2–3 Months			1.2	1.1	
	4–5 Months			1.3	1.1	
	6+ Months			1.5	1.1	
Refreshed Credit Score for NPLs.	Refreshed Credit Score < 580.					1.2
	580 <= Refreshed Credit Score < 640.					1.1
	640 <= Refreshed Credit Score < 700.					1.0
	700 <= Refreshed Credit Score < 720.					0.9
	720 <= Refreshed Credit Score < 760.					0.8
	760 <= Refreshed Credit Score < 780.					0.7
	Refreshed Credit Score >= 780.					0.5

Table 14 is structured in the following way: The first column represents secondary risk factors, the second column represents the values or ranges each secondary risk factor can take, and the third through seventh columns contain proposed risk multipliers, with each column containing proposed risk multipliers pertaining only to the single-family loan segment designated at the top of the column. There would be a different set of risk multipliers for each of the five single-family loan segments.

In the proposed rule, each risk factor could take multiple values, and each value or range of values would have a risk multiplier associated with it. For any particular single-family whole loan or guarantee, each risk multiplier could take a value of 1.0, above 1.0, or below 1.0. A multiplier of 1.0 would imply that the risk factor value for a whole loan or guarantee is similar to, or in a certain range of, the particular risk characteristic found in the segment's synthetic loans. A multiplier value above 1.0 would be assigned to a risk factor value that represents a riskier characteristic than the one found in the segment's synthetic loans, while a multiplier value below 1.0 would be assigned to a risk factor value that represents a less risky characteristic than the one found in the segment's synthetic loans. Finally, the risk multipliers would be multiplicative, so each single-family whole loan and guarantee in a loan segment would receive a risk multiplier for every risk factor pertinent to that loan segment, even if the risk multiplier is 1.0 (implying no change to the base credit risk capital requirement for that risk factor). The total combined risk factor for a single-family whole loan or guarantee would be, in general, the product of all individual risk multipliers pertinent to the appropriate loan segment.

There are two general types of single-family risk factors in the proposed rule for which risk multipliers are applied: Risk factors determined at origination and risk factors that change as a loan seasons, or ages.

Risk factors determined at origination include common characteristics such as loan purpose, occupancy type, and property type. The impacts of this type of risk factor on single-family mortgage performance and credit losses are well understood and commonly used in mortgage pricing and underwriting. Many of these risk factors can be quantified and applied in a straightforward manner using risk multipliers as indicated in Table 14. The full set of single-family risk factors determined at origination for which the proposed rule requires risk multipliers is:

- *Loan purpose.* Loan purpose reflects the reason for the mortgage at origination. The proposed risk multiplier would be at least 1.0 for any purpose other than ''purchase,'' suggesting any other purpose would imply a mortgage that is at least as risky.
- *Occupancy type.* Occupancy type reflects the borrowers' intended use of the property, with an owner-occupied property representing a baseline level of risk (a multiplier of 1.0), and an investment property being more risky (a multiplier greater than 1.0).
- *Property type.* Property type describes the physical structure of the property, with a 1-unit property representing a baseline level of risk (a multiplier of 1.0), and other property types such as 2–4 unit properties or manufactured homes being more risky (a multiplier greater than 1.0).
- *Number of borrowers.* Number of borrowers reflects the number of borrowers on the mortgage note, with multiple borrowers representing a baseline level of risk (a multiplier of

1.0), and one borrower being more risky (a multiplier greater than 1.0).

- *Third party origination channel.* Third party origination channel reflects the source of the loan, and whether or not it originated from a third party, including a broker or correspondent. Loans that did not originate from a third party represent a baseline level of risk (a multiplier of 1.0).
- *Product type.* Product type reflects the mortgage product type as of the origination date, with a 30-year fixed rate mortgage and select adjustable rate mortgages (including ARM 5/1 and ARM 7/1, captured in the ''Other'' category) representing a baseline level of risk (a multiplier of 1.0). Adjustable rate loans with an initial one year fixed rate period followed by a rate that adjusts annually (ARM 1/1) are considered more risky (a multiplier greater than 1.0), while shorter-term fixed rate loans are considered less risky (a multiplier less than 1.0).
- *Interest-only.* Interest-only reflects whether or not a loan has an interest-only payment feature. Interest-only loans are generally considered more risky (a multiplier greater than 1.0) than non interest-only loans due to their slower principal accumulation and an increased risk of default driven by the potential increase in principal payments at the expiration of the interest-only period. Interest-only loans are not permitted at origination under the Qualified Mortgage rule.
- *Loan documentation level.* Loan documentation level refers to the level of income documentation used to underwrite the loan. Loans with low or no documentation have a high degree of uncertainty around a borrower's ability to pay, and are considered more risky (a multiplier greater than 1.0) than loans with full documentation where a lender is able to verify the income, assets, and employment of a borrower. Loans with low or no documentation are not permitted at origination under the Qualified Mortgage rule.
- *Streamlined refinance.* Streamlined refinance reflects an indicator for a loan that was refinanced through one of the streamlined refinance programs offered by the Enterprises, including HARP. These loans generally cannot be refinanced under normal circumstances due to high MTMLTV, and therefore would be considered more risky (a multiplier greater than 1.0).

Risk factors that change dynamically and are updated as a loan seasons include characteristics such as loan age, loan size, current credit score, and delinquency or modification history. While not important for underwriting or original loan pricing, these risk factors are strongly associated with probability of default and/or loss given default, and are therefore important in estimating capital requirements. The full set of dynamic single-family risk factors for which the proposed rule requires risk multipliers is:

- *DTI.* DTI, or debt-to-income ratio, is the back-end ratio of the sum of the borrowers' monthly payment for principal, interest, taxes, homeowners' association fees and insurance, plus all fixed debts to the total monthly income of all borrowers as determined at the time of origination. DTI affects and reflects a borrower's ability to make payments on a loan. A DTI between 25 percent and 40 percent would reflect a baseline level of risk (a multiplier of 1.0), and as a borrower's income rises relative to the borrower's debt obligations (a lower DTI), the loan would be considered less risky (a multiplier less than 1.0). If a borrower's income shrinks relative to the borrower's debt obligations (a higher DTI), the loan would be considered more risky (a multiplier greater than 1.0).
- *Loan size.* Loan size reflects the current unpaid principal balance of a loan. Loans with a low unpaid principal balance would be considered more risky than loans with a high unpaid principal balance due to the fact that fixed foreclosure costs represent a higher percentage of the unpaid principal balance for loans with a low unpaid principal balance. As a result, loans with a low balance would require higher capital in basis points than an otherwise identical loan with a high balance. Consequently, loans with an unpaid principal balance under $100,000 would receive a multiplier greater than 1.0.
- *Subordination (OLTV × second lien).* Subordination refers to the ratio of the original loan amount of the second lien to the lesser of the appraised value of a loan or the sale price. Loans with no subordination would represent a baseline level of risk (a multiplier of 1.0), whereas loans with varying combinations of original loan-to-value (OLTV) and subordination percentages would be generally considered more risky (a multiplier greater than 1.0).
- *Loan age.* Loan age reflects the number of months since the loan was originated. In the proposed rule, older loans are considered less risky because in general as loans age the likelihood of events occurring that would trigger mortgage default decreases. Older loans have relatively low potential cumulative losses remaining, and would require lower credit risk capital requirements than newer loans.
- *Cohort burnout.* Cohort burnout reflects the number of times a borrower has not taken advantage of the opportunity to refinance the mortgage when the borrower's mortgage rate exceeds the current mortgage rate by 50 basis points. When a borrower refinances a mortgage, the lender's credit risk decreases because the loan is repaid. Cohort burnout is an indicator that a borrower is less likely to refinance in the future given the opportunity to do so. Borrowers that demonstrate a lower propensity to refinance thus have higher credit risk, and a loan with a cohort burnout greater than zero would receive a multiplier greater than 1.0.
- *Refreshed credit score for re-performing loans (RPLs) and non-performing loans (NPLs).* Refreshed credit scores refer to credit scores that have been updated as of the capital calculation date. In general, a credit score reflects the credit worthiness of a borrower, and a higher credit score implies lower risk and a lower multiplier. For RPLs, a refreshed credit score between 660 and 700 reflects a baseline level of risk (a multiplier of 1.0). For NPLs, a refreshed credit score between 640 and 700 represents a baseline level of risk (a multiplier of 1.0).
- *Payment change from modification.* For modified loans, the payment change from modification reflects the change in the monthly payment, as a percentage of the original monthly payment, resulting from a permanent loan modification. In general, higher payment reductions tend to reduce the likelihood of future default, so loans with higher payment reductions from modifications would have a lower capital requirement (a multiplier less than 1.0).
- *Previous maximum delinquency.* For RPLs, previous maximum delinquency reflects the maximum number of months a loan has been at least 30-days delinquent during the prior three years. The longer a loan has been delinquent, the more likely it will default in the future, and the more risky it is considered. Therefore, loans with a previous maximum delinquency between 0 and 1 month represent a baseline level of risk (a multiplier of 1.0), and loans with a maximum delinquency greater than 1 month would be considered more risky (a multiplier greater than 1.0).

Not all risk multipliers would apply to every loan segment, because the multipliers were estimated separately for each single-family loan segment. In cases where a risk factor did not influence the estimated credit risk of whole loans and guarantees in a loan segment, or a risk factor did not apply at all (refreshed credit scores in the new origination segment, for example), there would be no multiplier for that risk factor in that loan segment.

In the proposed rule, single-family risk multipliers would adjust base credit risk capital requirements in a multiplicative manner. Consequently, and as a result of the simple and straightforward structure of the proposed multiplier framework, certain combinations of risk factors may result in over-capitalizing certain types of single-family whole loans and guarantees. This could occur in part because the risk factors for which multipliers would be applied are not independent. Single-family whole loans and guarantees with a MTMLTV greater than 95 percent were particularly vulnerable to this phenomenon. Thus, the proposed rule would implement a multiplier cap of 3.0 for the product of risk multipliers for single-family whole loans and guarantees with a MTMLTV greater than 95 percent. Based on FHFA empirical analysis, less than 3 percent of loans with a MTMLTV greater than 95 percent would be affected by the cap.

Net Credit Risk Capital Requirements: Loan-Level Credit Enhancements

Loan-level credit enhancements are credit guarantees on individual loans. The Enterprises primarily use loan-level credit enhancements to satisfy the credit enhancement requirement of their charter acts. The Enterprises' charter acts require single-family mortgage loans with an unpaid principal balance exceeding 80 percent of the value of the property to have one of three forms of credit enhancement. The credit enhancement requirement can be satisfied through: The seller retaining a participation of at least 10 percent in the mortgage (participation agreement); the seller agreeing to repurchase or replace the mortgage in the event the mortgage is in default (repurchase or replacement agreements; recourse and indemnification agreements); or a guarantee or insurance on the unpaid principal balance which is in excess of 80 percent LTV (guarantee or insurance). The third form, mortgage insurance, is the most common form of charter-required credit enhancement.

The proposed rule would require the Enterprises to calculate net credit risk capital requirements by reducing the gross credit risk capital requirement on single-family loans to reflect the benefits from loan-level credit enhancements. Similar to the use of multipliers to adjust the base credit risk capital requirement for various risk factors, the proposed rule would use multipliers (''CE multipliers'') to reduce the gross credit risk capital requirement for the benefit from loan-level credit enhancements. CE multipliers would take values of less than or equal to 1.0 to reflect a reduction in the gross credit risk capital requirement. For example, a CE multiplier of 0.65 on a single-family loan would imply that an Enterprise is responsible for 65 percent of the credit risk of the loan and that the counterparty providing the credit enhancement is responsible for the remaining 35 percent of the credit risk. A higher CE multiplier would imply an Enterprise is taking a greater share of the losses and a lower CE multiplier would imply the counterparty is taking a greater share of the losses.

Participation Agreements

Participation agreements are rarely utilized by the Enterprises and for reasons of simplicity, the proposed rule would not assign any benefit for these agreements (a CE multiplier of 1.0).

Repurchase, Replacement, Recourse, and Indemnification Agreements

Repurchase, replacement, recourse, and indemnification agreements may be unlimited or limited. Unlimited agreements provide full coverage for the life of the loan, while limited agreements provide partial coverage or have a limited duration. In the proposed rule, a counterparty would be responsible for all credit risk in the presence of an unlimited agreement, and the loan would be assigned a CE multiplier of zero. For limited agreements, the proposed rule would require the Enterprises to use the single-family CRT techniques described section II.C.4.b to determine the appropriate benefit from the limited agreement.

Mortgage Insurance

Mortgage insurance (MI) is an insurance policy where an insurance company covers a portion of the loss if a borrower defaults on a single-family mortgage loan. In the proposed rule, the benefit from MI would vary based on a number of MI coverage and loan characteristics, including (i) whether MI is cancellable or non-cancellable, (ii) whether MI is charter-coverage or guide-coverage, and (iii) loan characteristics, including original LTV, loan age, amortization term, and loan performance segment.

- *Non-cancellable versus cancellable MI.* Non-cancellable MI provides coverage for the life of the loan. Non-cancellable MI is typically associated with single premium insurance policies. Cancellable MI allows for the cancellation of coverage upon a borrower's request, when the loan balance falls to 80 percent of the original property value, or automatic cancellation when the loan balance falls below 78 percent of the original property value or the loan reaches the midpoint of the loan's amortization schedule, if the mortgage is current. Due to the longer period of coverage, non-cancellable MI provides more credit risk protection than cancellable MI. In the proposed rule, non-cancellable MI CE multipliers would be lower than cancellable MI CE multipliers. The proposed rule would provide separate sets of multipliers for non-cancellable and cancellable MI to reflect this difference in risk protection.
- *Charter-level versus guide-level MI coverage.* Charter-level coverage provides the minimum level of coverage required by the Enterprises' charter acts for loans with LTVs greater than 80 percent. Guide-level coverage provides deeper coverage, roughly double the coverage provided by charter-level coverage. Guide-level coverage implies greater credit risk protection from the MIs. Therefore, in the proposed rule, the CE multipliers for guide-level coverage would be lower than the CE multipliers for charter-level coverage to reflect the Enterprises having a lower share of the credit risk.
- *Original LTV.* Loans with higher original LTV require higher MI coverage levels than loans with lower original LTV. Higher MI coverage levels imply greater credit risk protection from the MIs. Therefore, in the proposed rule, loans with higher original LTVs would have lower CE multipliers.
- *Amortization term.* For cancellable MI, loans with a 15- to 20-year amortization period will have MI cancellation triggered earlier than loans with a 30-year amortization period. Therefore, loans with longer amortization terms have a longer period of credit risk protection from MIs and the Enterprises have a lower share of the risk. In the proposed rule, loans with a 30-year amortization period would have a lower CE multiplier than loans with a 15- to 20-year amortization period for loans with cancellable MI.
- *Loan segment.* MI coverage on delinquent loans cannot be cancelled. Cancellation of MI coverage on modified performing loans is based on the modified LTV and the modified amortization term, which are typically higher than the original LTV and the original amortization term. In both of these cases, the MI coverage is extended for a longer period, resulting in greater credit risk protection, relative to performing loans. Therefore, in the proposed rule, delinquent and modified

loans would have a lower CE multiplier than performing loans.

- *Loan age.* MI cancellation will be triggered sooner for older loans than for younger loans because the older loans will reach an amortized LTV of 78 percent or the mid-point of the loan's amortization period first. Therefore, older loans with cancellable MI have a shorter period of remaining MI coverage and thus have less credit risk protection from MI. In the proposed rule, older loans with cancellable MI would have a higher CE multiplier than would younger loans.

The proposed rule would use the following set of tables to present the CE multipliers for loans with MI. These tables take into consideration the MI factors that were discussed above.

The first table contains proposed CE multipliers for non-cancellable MI coverage. This table would be used for all loan segments, except the NPL loan segment. The table differentiates multipliers by type of coverage (charter and guide), original LTV, amortization term, and coverage percent.

TABLE 15—CE MULTIPLIERS FOR NEW ORIGINATIONS, PERFORMING SEASONED LOANS, AND RPLS WHEN MI IS NON-CANCELLABLE

Product/coverage type	Coverage category	CE multiplier
15/20 Year Amortizing Loan with Guide-level Coverage	80% < OLTV <= 85% and MI Coverage Percent = 6%	0.846
	85% < OLTV <= 90% and MI Coverage Percent = 12%	0.701
	90% < OLTV <= 95% and MI Coverage Percent = 25%	0.408
	95% < OLTV <= 97% and MI Coverage Percent = 35%	0.226
	OLTV > 97% and MI Coverage Percent = 35%	0.184
30 Year Amortizing Loan with Guide-level Coverage	80% < OLTV <= 85% and MI Coverage Percent = 12%	0.706
	85% < OLTV <= 90% and MI Coverage Percent = 25%	0.407
	90% < OLTV <= 95% and MI Coverage Percent = 30%	0.312
	95% < OLTV <= 97% and MI Coverage Percent = 35%	0.230
	OLTV > 97% and MI Coverage Percent = 35%	0.188
15/20 Year Amortizing Loan with Charter-level Coverage	80% < OLTV <= 85% and MI Coverage Percent = 6%	0.846
	85% < OLTV <= 90% and MI Coverage Percent = 12%	0.701
	90% < OLTV <= 95% and MI Coverage Percent = 16%	0.612
	95% < OLTV <= 97% and MI Coverage Percent = 18%	0.570
	OLTV > 97% and MI Coverage Percent = 20%	0.535
30 Year Amortizing Loan with Charter-level Coverage	80% < OLTV <= 85% and MI Coverage Percent = 6%	0.850
	85% < OLTV <= 90% and MI Coverage Percent = 12%	0.713
	90% < OLTV <= 95% and MI Coverage Percent = 16%	0.627
	95% < OLTV <= 97% and MI Coverage Percent = 18%	0.590
	OLTV > 97% and MI Coverage Percent = 20%	0.558

The proposed rule would have three tables for cancellable MI. The first cancellable MI table contains proposed CE multipliers for the new originations loan segment, the performing seasoned loans segment, and the non-modified RPL loan segment. The table differentiates multipliers by type of coverage (charter-level and guide-level), original LTV, coverage percent, amortization term, and loan age.

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Table 16: CE Multipliers for New Originations, Performing Seasoned, and Non-Modified RPLs when MI is Cancellable

		Loan Age (months)											
		Loan Age <= 5	5 < Loan Age <= 12	12 < Loan Age <= 24	24 < Loan Age <= 36	36 < Loan Age <= 48	48 < Loan Age <= 60	60 < Loan Age <= 72	72 < Loan Age <= 84	84 < Loan Age <= 96	96 < Loan Age <=108	108 < Loan Age <=120	Loan Age >120
15/20 Year Amortizing Loan with Guide-level Coverage	80% < OLTV <= 85% and MI Coverage = 6%	0.997	0.998	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	85% < OLTV <= 90% and MI Coverage = 12%	0.963	0.971	0.988	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	90% < OLTV <= 95% and MI Coverage = 25%	0.826	0.853	0.912	0.973	0.996	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	95% < OLTV <= 97% and MI Coverage = 35%	0.732	0.765	0.848	0.936	0.986	0.998	1.000	1.000	1.000	1.000	1.000	1.000
	OLTV > 97% and MI Coverage = 35%	0.630	0.673	0.762	0.865	0.945	0.980	0.996	1.000	1.000	1.000	1.000	1.000
30 Year Amortizing Loan with Guide-level Coverage	80% < OLTV <= 85% and MI Coverage = 12%	0.867	0.884	0.928	0.962	0.994	0.999	1.000	1.000	1.000	1.000	1.000	1.000
	85% < OLTV <= 90% and MI Coverage = 25%	0.551	0.584	0.627	0.679	0.785	0.893	0.950	0.986	0.998	1.000	1.000	1.000
	90% < OLTV <= 95% and MI Coverage = 30%	0.412	0.440	0.456	0.484	0.547	0.654	0.743	0.845	0.932	0.969	0.992	1.000
	95% < OLTV <= 97% and MI Coverage = 35%	0.322	0.351	0.369	0.391	0.449	0.535	0.631	0.746	0.873	0.925	0.965	1.000
	OLTV > 97% and MI Coverage = 35%	0.272	0.295	0.314	0.353	0.410	0.462	0.515	0.607	0.756	0.826	0.887	1.000
15/20 Year Amortizing Loan with Charter-level Coverage	80% < OLTV <= 85% and MI Coverage = 6%	0.997	0.998	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	85% < OLTV <= 90% and MI Coverage = 12%	0.963	0.971	0.988	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	90% < OLTV <= 95% and MI Coverage = 16%	0.887	0.904	0.943	0.983	0.997	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	95% < OLTV <= 97% and MI Coverage = 18%	0.854	0.874	0.918	0.966	0.992	0.999	1.000	1.000	1.000	1.000	1.000	1.000
	OLTV > 97% and MI Coverage = 20%	0.788	0.810	0.859	0.922	0.969	0.989	0.998	1.000	1.000	1.000	1.000	1.000
30 Year Amortizing Loan with Charter-level Coverage	80% < OLTV <= 85% and MI Coverage = 6%	0.934	0.943	0.964	0.981	0.997	0.999	1.000	1.000	1.000	1.000	1.000	1.000
	85% < OLTV <= 90% and MI Coverage = 12%	0.780	0.795	0.819	0.845	0.896	0.948	0.976	0.993	0.999	1.000	1.000	1.000
	90% < OLTV <= 95% and MI Coverage = 16%	0.679	0.690	0.703	0.719	0.755	0.813	0.861	0.916	0.963	0.983	0.995	1.000
	95% < OLTV <= 97% and MI Coverage = 18%	0.642	0.652	0.662	0.676	0.708	0.756	0.806	0.866	0.933	0.960	0.981	1.000
	OLTV > 97% and MI Coverage = 20%	0.597	0.607	0.617	0.629	0.658	0.686	0.715	0.765	0.845	0.882	0.914	1.000

The second cancellable MI table contains proposed CE multipliers for the modified RPL loan segment for loans with 30-year post-modification amortization. The table differentiates multipliers by type of coverage (charter and guide), original LTV, coverage percent, amortization term, and loan age.

Table 17: CE Multipliers for Modified RPLs with 30-Year Post-Mod Amortization when MI is Cancellable

		Months (Mths) Since Last Modification											
		Mths <= 5	5 < Mths <= 12	12 < Mths <= 24	24 < Mths <= 36	36 < Mths <= 48	48 < Mths <= 60	60 < Mths <= 72	72 < Mths <= 84	84 < Mths <= 96	96 < Mths <=108	108 < Mths <= 120	Mths >120
15/20 Year Amortizing Loan with Guide-level Coverage	80% < OLTV <= 85% and MI Coverage = 6%	0.997	0.998	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	85% < OLTV <= 90% and MI Coverage = 12%	0.963	0.971	0.988	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	90% < OLTV <= 95% and MI Coverage = 25%	0.826	0.853	0.912	0.973	0.996	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	95% < OLTV <= 97% and MI Coverage = 35%	0.732	0.765	0.848	0.936	0.986	0.998	1.000	1.000	1.000	1.000	1.000	1.000
	OLTV > 97% and MI Coverage = 35%	0.630	0.673	0.762	0.865	0.945	0.980	0.996	1.000	1.000	1.000	1.000	1.000
30 Year Amortizing Loan with Guide-level Coverage	80% < OLTV <= 85% and MI Coverage = 12%	0.867	0.906	0.978	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	85% < OLTV <= 90% and MI Coverage = 25%	0.551	0.568	0.653	0.839	0.968	0.992	0.998	1.000	1.000	1.000	1.000	1.000
	90% < OLTV <= 95% and MI Coverage = 30%	0.412	0.426	0.470	0.601	0.794	0.889	0.951	0.981	0.992	1.000	1.000	1.000
	95% < OLTV <= 97% and MI Coverage = 35%	0.322	0.337	0.380	0.492	0.689	0.810	0.899	0.945	0.965	1.000	1.000	1.000
	OLTV > 97% and MI Coverage = 35%	0.272	0.284	0.334	0.436	0.561	0.682	0.791	0.857	0.887	1.000	1.000	1.000
15/20 Year Amortizing Loan with Charter-level Coverage	80% < OLTV <= 85% and MI Coverage = 6%	0.997	0.998	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	85% < OLTV <= 90% and MI Coverage = 12%	0.963	0.971	0.988	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	90% < OLTV <= 95% and MI Coverage = 16%	0.887	0.904	0.943	0.983	0.997	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	95% < OLTV <= 97% and MI Coverage = 18%	0.854	0.874	0.918	0.966	0.992	0.999	1.000	1.000	1.000	1.000	1.000	1.000
	OLTV > 97% and MI Coverage = 20%	0.788	0.810	0.859	0.922	0.969	0.989	0.998	1.000	1.000	1.000	1.000	1.000
30 Year Amortizing Loan with Charter-level Coverage	80% < OLTV <= 85% and MI Coverage = 6%	0.934	0.954	0.989	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	85% < OLTV <= 90% and MI Coverage = 12%	0.780	0.788	0.832	0.922	0.985	0.996	0.999	1.000	1.000	1.000	1.000	1.000
	90% < OLTV <= 95% and MI Coverage = 16%	0.679	0.685	0.711	0.784	0.889	0.940	0.973	0.989	0.995	1.000	1.000	1.000
	95% < OLTV <= 97% and MI Coverage = 18%	0.642	0.647	0.669	0.732	0.836	0.900	0.947	0.971	0.981	1.000	1.000	1.000
	OLTV > 97% and MI Coverage = 20%	0.597	0.602	0.623	0.672	0.740	0.805	0.864	0.898	0.914	1.000	1.000	1.000

The third cancellable MI table contains proposed CE multipliers for the modified RPL loan segment for loans with 40-year post-modification amortization. The table differentiates multipliers by type of coverage (charter-level and guide-level), original LTV, coverage percent, and loan age.

Table 18: CE Multipliers for Modified RPLs with 40-Year Post-Mod Amortization when MI is Cancellable

		Months (Mths) Since Last Modification											
		Mths <= 5	5 < Mths <= 12	12 < Mths <= 24	24 < Mths <= 36	36 < Mths <= 48	48 < Mths <= 60	60 < Mths <= 72	72 < Mths <= 84	84 < Mths <= 96	96 < Mths <=108	108 < Mths <=120	Mths >120
15/20 Year Amortizing Loan with Guide-level Coverage	80% < OLTV <= 85% and MI Coverage = 6%	0.997	0.998	0.999	0.999	0.999	0.999	1.000	1.000	1.000	1.000	1.000	1.000
	85% < OLTV <= 90% and MI Coverage = 12%	0.963	0.971	0.971	0.971	0.980	0.988	0.994	0.999	1.000	1.000	1.000	1.000
	90% < OLTV <= 95% and MI Coverage = 25%	0.826	0.853	0.853	0.853	0.883	0.912	0.943	0.973	0.996	1.000	1.000	1.000
	95% < OLTV <= 97% and MI Coverage = 35%	0.732	0.765	0.765	0.765	0.807	0.848	0.892	0.936	0.986	0.998	1.000	1.000
	OLTV > 97% and MI Coverage = 35%	0.630	0.673	0.673	0.673	0.718	0.762	0.814	0.865	0.945	0.980	0.996	1.000
30 Year Amortizing Loan with Guide-level Coverage	80% < OLTV <= 85% and MI Coverage = 12%	0.867	0.884	0.928	0.962	0.994	0.999	1.000	1.000	1.000	1.000	1.000	1.000
	85% < OLTV <= 90% and MI Coverage = 25%	0.551	0.584	0.627	0.679	0.785	0.893	0.950	0.986	0.998	1.000	1.000	1.000
	90% < OLTV <= 95% and MI Coverage = 30%	0.412	0.440	0.456	0.484	0.547	0.654	0.743	0.845	0.932	0.969	0.992	1.000
	95% < OLTV <= 97% and MI Coverage = 35%	0.322	0.351	0.369	0.391	0.449	0.535	0.631	0.746	0.873	0.925	0.965	1.000
	OLTV > 97% and MI Coverage = 35%	0.272	0.295	0.314	0.353	0.410	0.462	0.515	0.607	0.756	0.826	0.887	1.000
15/20 Year Amortizing Loan with Charter-level Coverage	80% < OLTV <= 85% and MI Coverage = 6%	0.997	0.998	0.998	0.999	0.998	0.998	1.000	1.000	1.000	1.000	1.000	1.000
	85% < OLTV <= 90% and MI Coverage = 12%	0.963	0.971	0.971	0.971	0.980	0.988	0.994	0.999	1.000	1.000	1.000	1.000
	90% < OLTV <= 95% and MI Coverage = 16%	0.887	0.904	0.904	0.904	0.924	0.943	0.963	0.983	0.997	1.000	1.000	1.000
	95% < OLTV <= 97% and MI Coverage = 18%	0.854	0.874	0.874	0.874	0.896	0.918	0.942	0.966	0.992	0.999	1.000	1.000
	OLTV > 97% and MI Coverage = 20%	0.788	0.810	0.810	0.810	0.835	0.859	0.891	0.922	0.969	0.989	0.998	1.000
30 Year Amortizing Loan with Charter-level Coverage	80% < OLTV <= 85% and MI Coverage = 6%	0.934	0.943	0.964	0.981	0.997	0.999	1.000	1.000	1.000	1.000	1.000	1.000
	85% < OLTV <= 90% and MI Coverage = 12%	0.780	0.795	0.819	0.845	0.896	0.948	0.976	0.993	0.999	1.000	1.000	1.000
	90% < OLTV <= 95% and MI Coverage = 16%	0.679	0.690	0.703	0.719	0.755	0.813	0.861	0.916	0.963	0.983	0.995	1.000
	95% < OLTV <= 97% and MI Coverage = 18%	0.642	0.652	0.662	0.676	0.708	0.756	0.806	0.866	0.933	0.960	0.981	1.000
	OLTV > 97% and MI Coverage = 20%	0.597	0.607	0.617	0.629	0.658	0.686	0.715	0.765	0.845	0.882	0.914	1.000

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The final MI table contains proposed CE multipliers for the NPL loan segment. MI on delinquent loans cannot be cancelled; therefore, there is no differentiation between cancellable and non-cancellable MI for the NPL loan segment. The table differentiates multipliers by type of coverage (charter-level and guide-level), original LTV, amortization term, and coverage percent.

TABLE 19—CE MULTIPLIERS FOR NPLS

		CE multiplier
15/20 Year Amortizing Loan with Guide-level Coverage	80% < OLTV <= 85% and MI Coverage Percent = 6%	0.893
	85% < OLTV <= 90% and MI Coverage Percent = 12%	0.803

TABLE 19—CE MULTIPLIERS FOR NPLS—Continued

		CE multiplier
	90% < OLTV <= 95% and MI Coverage Percent = 25%	0.597
	95% < OLTV <= 97% and MI Coverage Percent = 35%	0.478
	OLTV > 97% and MI Coverage Percent = 35%	0.461
30 Year Amortizing Loan with Guide-level Coverage	80% < OLTV <= 85% and MI Coverage Percent = 12%	0.813
	85% < OLTV <= 90% and MI Coverage Percent = 25%	0.618
	90% < OLTV <= 95% and MI Coverage Percent = 30%	0.530
	95% < OLTV <= 97% and MI Coverage Percent = 35%	0.490
	OLTV > 97% and MI Coverage Percent = 35%	0.505
15/20 Year Amortizing Loan with Charter-level Coverage	80% < OLTV <= 85% and MI Coverage Percent = 6%	0.893
	85% < OLTV <= 90% and MI Coverage Percent = 12%	0.803
	90% < OLTV <= 95% and MI Coverage Percent = 16%	0.775
	95% < OLTV <= 97% and MI Coverage Percent = 18%	0.678
	OLTV > 97% and MI Coverage Percent = 20%	0.663
30 Year Amortizing Loan with Charter-level Coverage	80% < OLTV <= 85% and MI Coverage Percent = 6%	0.902
	85% < OLTV <= 90% and MI Coverage Percent = 12%	0.835
	90% < OLTV <= 95% and MI Coverage Percent = 16%	0.787
	95% < OLTV <= 97% and MI Coverage Percent = 18%	0.765
	OLTV > 97% and MI Coverage Percent = 20%	0.760

The proposed CE multipliers reflect the average of the Enterprises' estimates. The Enterprises, however, would not necessarily apply the CE multipliers in isolation, but would first adjust the multipliers to account for the probability that a counterparty may not fully meet its payment obligations. The following section describes the proposed approach for adjusting CE multipliers for counterparty risk.

Counterparty Credit Risk

Sharing loss with counterparties exposes the Enterprises to counterparty credit risk. To account for this exposure, the proposed rule would reduce the recognized benefits from credit enhancements to incorporate the risk that counterparties are unable to meet claim obligations. For this reason, the proposed rule would establish a counterparty haircut multiplier (CP multiplier) to the CE benefit. The CP haircut multiplier would take values from zero to one. A value of zero, the smallest haircut, would imply a counterparty will fully meet its claim obligations, while a value of one, the largest haircut, would imply a counterparty will not meet its claim obligations. A value between zero and one would imply a counterparty will meet a portion of its claim obligations.

The CP haircut multiplier would depend on a number of factors that reflect counterparty credit risk. The two main factors are the creditworthiness of the counterparty and the counterparty's level of concentration in mortgage credit risk. The proposed rule would require the Enterprises to assign a counterparty rating using the rating scheme provided in Table 20. In assigning a rating, the Enterprises would assign the counterparty rating that most closely aligns to the assessment of the counterparty from its internal counterparty risk framework. Similarly, the proposed rule would require the Enterprises to utilize their counterparty risk management frameworks to assign each counterparty a rating of ''not high'' or ''high'' to reflect the counterparty's concentration in mortgage credit risk.

TABLE 20—COUNTERPARTY FINANCIAL STRENGTH RATINGS

Counterparty rating	Description
1	The counterparty is exceptionally strong financially. The counterparty is expected to meet its obligations under foreseeable adverse events.
2	The counterparty is very strong financially. There is negligible risk the counterparty may not be able to meet all of its obligations under foreseeable adverse events.
3	The counterparty is strong financially. There is a slight risk the counterparty may not be able to meet all of its obligations under foreseeable adverse events.
4	The counterparty is financially adequate. Foreseeable adverse events will have a greater impact on ’4’ rated counterparties than higher rated counterparties.
5	The counterparty is financially questionable. The counterparty may not meet its obligations under foreseeable adverse events.
6	The counterparty is financially weak. The counterparty is not expected to meet its obligations under foreseeable adverse events.
7	The counterparty is financially extremely weak. The counterparty's ability to meet its obligations is questionable.
8	The counterparty is in default on an obligation or is under regulatory supervision.

During the most recent financial crisis, three out of seven mortgage insurance companies were placed in run-off by their state regulators, and payments on the Enterprises' claims were deferred by the state regulators. This posed a serious counterparty risk and financial losses for the Enterprises. More generally, the crisis highlighted that counterparty risk can be amplified when the counterparty's credit exposure is highly correlated with the Enterprises' credit exposure. This amplification of counterparty risk due to the correlation between counterparties' credit exposures is referred to as wrong-way risk. Counterparties whose main lines of business are highly concentrated in mortgage credit risk have a higher probability to default on payment obligations when the mortgage default rate is high. Therefore, counterparties with higher levels of mortgage credit risk concentration have higher counterparty risk relative to diversified counterparties. The proposed rule would assign larger haircuts to counterparties with higher levels of mortgage credit risk concentration relative to diversified counterparties. The Enterprises would assess the level of mortgage risk concentration for each individual counterparty to determine whether the insurer is well diversified or whether it has a high concentration risk.

To calculate the CP haircut, the proposed rule would use a modified version of the Basel Advanced Internal Ratings Based (IRB) approach. The modified version leverages the IRB approach to account for the creditworthiness of the counterparty but makes changes to reflect the level of mortgage credit risk concentration. The Basel IRB framework provides the ability to differentiate haircuts between counterparties with different levels of risk. The proposed rule would augment the IRB approach to capture risk across counterparties. In this way, the proposed adjustment would help capture wrong-way risk between the Enterprises and their counterparties.

In particular, the proposed approach calculates the counterparty haircut by multiplying stress loss given default by the probability of default and a maturity adjustment for the asset:

$$CP\ Haircut = LGD_{\text{stress}} * PD_{\text{stress}} * MA$$

where LGD_{stress} denotes stress loss given default, PD_{stress} is stress default probability, and MA is maturity adjustment. MA is calculated as follows:

$$MA = \left(\frac{1+(M-2.5)*b}{1-1.5*b}\right),$$

where

$$b = [0.11852 - 0.05478 * \ln(PD)]^2.$$

$\text{PD}_{\text{stress}}$ is a function of expected probability of default *PD,* asset value correlation ρ, and an asset value correlation multiplier (*AVCM*). $\text{PD}_{\text{stress}}$ is calculated as follows:

$$PD_{stress} = \left[N\left(\left(\frac{1}{\sqrt{1-AVCM*\rho}}\right) * G(PD) - \left(\sqrt{\frac{AVCM*\rho}{1-AVCM*\rho}}\right) * G(SCI)\right)\right],$$

$$\rho = \left[0.12 * \left(\frac{1-\exp(-50*PD)}{1-\exp(-50)}\right) + 0.24 * \left(1 - \frac{1-\exp(-50*PD)}{1-\exp(-50)}\right)\right]$$

where *SCI* is supervisory confidence interval, N(.) is the standard normal distribution, and G(.) is the inverse standard normal distribution.

The following table highlights the parameterization of the proposed approach.

TABLE 21—PARAMETERIZATION OF THE SINGLE-FAMILY COUNTERPARTY HAIRCUT MULTIPLIERS

Parameters	Proposed values
$\text{LGD}_{\text{Stress}}$	45%.
SCI	99.9%.
Correlation function (ρ)	Basel (PD).
AVCM for High level of Mortgage Concentration Risk	175%.
AVCM for Not High level of Mortgage Concentration Risk	125%.
Maturity 30yr (M)	5.
Maturity 15/20yr (M)	3.5.
NPL Maturity (M)	1.5.

From the parameters table, stress loss given default (LGD) is calibrated to 45 percent according to the historic average stress severity rates. The maturity adjustment is calibrated to 5 years for 30-year products and to 3.5 years for 15- to 20-year products to approximately reflect the average life of the assets. The expected probability of default (PD) is calculated using a historical 1-year PD matrix for all financial institutions.

As mentioned earlier, counterparties with a lower concentration of mortgage credit risk and therefore a lower potential for wrong-way risk would be afforded a lower haircut relative to the counterparties with higher concentrations of mortgage credit risk. This difference is captured through the asset valuation correlation multiplier, AVCM. An AVCM of 1.75 is assigned to counterparties with high exposure to mortgage credit risk and 1.25 is assigned to diversified counterparties. The parameters of the Basel IRB formula, including the AVCM, were augmented to best fit the internal counterparty credit risk haircuts developed by the Enterprises. This method of accounting for wrong-way risk is transparent and parsimonious.

The NPL loan segment represents a different level of counterparty risk relative to the performing loans segment. Unlike performing loans, the Enterprises expect to submit claims for non-preforming loans in the near future. The proposed rule would reduce Basel's effective maturity from 5 (or 3.5 for 15/20Yr) to 1.5 for all loans in the NPL loan segment. The reduced effective maturity would lower counterparty haircuts on loans in the NPL loan segment.

The proposed rule would use the following look-up table to determine the counterparty risk haircut multiplier.

TABLE 22—SINGLE-FAMILY COUNTERPARTY RISK HAIRCUT (CP HAIRCUT) MULTIPLIERS BY RATING, MORTGAGE CONCENTRATION RISK, SEGMENT, AND PRODUCT

Counterparty rating (%)	CP haircut					
	Mortgage concentration risk: Not high			Mortgage concentration risk: High		
	New originations, performing seasoned, and re-performing loans		Non-performing loans (%)	New originations, performing seasoned, and re-performing loans		Non-performing loans (%)
	30 Yr product (%)	20/15 Yr product (%)		30 Yr product (%)	20/15 Yr product (%)	
1	1.8	1.3	0.6	2.8	2.0	0.9
2	4.5	3.5	2.0	7.3	5.6	3.2
3	5.2	4.0	2.4	8.3	6.4	3.9
4	11.4	9.5	6.9	17.2	14.3	10.4
5	14.8	12.7	9.9	20.9	18.0	14.0
6	21.2	19.1	16.4	26.8	24.2	20.8
7	40.0	38.2	35.7	43.7	41.7	39.0
8	47.6	46.6	45.3	47.6	46.6	45.3

Net Credit Risk Capital Requirement for Single-Family Whole Loans and Guarantees

The proposed rule would use the following formula to calculate the net credit risk capital requirement for single-family whole loans and guarantees with loan-level credit enhancement, taking into account the credit enhancement benefit adjusted for the counterparty haircut:

Net Credit Risk Capital = Gross Credit Risk Capital * (1 − (1 − CE Multiplier) * (1 − CP Haircut Multiplier)).

For single-family whole loans and guarantees without loan-level credit enhancements, the net credit risk capital requirement would equal the gross credit risk capital requirement.

Question 6: FHFA is soliciting comments on the proposed framework for calculating credit risk capital requirements for single-family whole loans and guarantees, including the loan segments, base grids, and risk multipliers. What modifications should FHFA consider and why?

Question 7: FHFA is soliciting comments on the proposed use of separate single-family credit risk capital grids for new originations and performing seasoned loans. The proposed new originations grid has a unique requirement for loans with an OLTV of 80 percent due to the volume of such loans, but this could lead to increases in capital requirements for loans originated with an OLTV between 75 percent and 80 percent when those loans season. Should FHFA consider combining the single-family new originations and performing seasoned loan grids? What other modifications should FHFA consider and why?

Enterprise- and Ginnie Mae-Guaranteed Single-Family Mortgage-Backed Securities

There is no credit risk capital requirement in the proposed rule for single-family mortgage-backed securities (MBS) held in portfolio that were issued and guaranteed by an Enterprise or Ginnie Mae, and collateralized mortgage obligations (CMOs) held in portfolio that are collateralized by Enterprise or Ginnie Mae whole loans or securities. Ginnie Mae securities are backed by the U.S. government and therefore do not have credit risk. For MBS and CMOs issued by an Enterprise and later purchased by the same Enterprise for its portfolio, the credit risk is already reflected in the credit risk capital requirement on the underlying single-family whole loans and guarantees (section II.C.4.a). For MBS and CMOs held by an Enterprise that were issued by the other Enterprise, there is counterparty risk. However, these holdings are typically small and, for reasons of simplicity, the proposed rule does not include a capital requirement for this exposure.

Question 8: Should single-family MBS and CMOs held by an Enterprise that were issued by the other Enterprise be subject to a counterparty haircut to reflect counterparty risk?

b. Credit Risk Transfer

This section corresponds to Proposed Rule §§ 1240.14 through 1240.16.

Overview

The Enterprises systematically reduce the credit risk on their single-family books of business by transferring and sharing risk beyond loan-level credit enhancements through single-family credit risk transfers (CRTs). These CRTs include capital markets and insurance/reinsurance transactions, among others. In the proposed rule, single-family capital relief for the Enterprises would be equal to the reduction in credit risk capital from transferring all or part of a credit risk exposure that remains after considering loan-level credit enhancements. For a given single-family CRT, the proposed rule would restrict capital relief to be no greater than total net credit risk capital requirements on all single-family whole loans and guarantees underlying the CRT (or belonging to the reference pool underlying the CRT). Therefore, the single-family operational risk capital requirement and the single-family going-concern buffer would not contribute to capital relief.

The proposed rule would require the Enterprises to calculate capital relief on every CRT. If a CRT has multiple pool groups, the requirement would apply separately to each pool group. The proposed rule would then require each Enterprise to calculate total capital relief as the sum of capital relief across all its CRTs, including across all pool groups.

This section provides (i) a background on single-family CRTs, (ii) types of single-family CRTs offered by the Enterprises, (iii) the proposed rule's approach for CRT capital relief, (iv) alternative approaches considered, and (v) estimated effects of the proposed rule's approach.

Background

CRT transactions provide credit protection beyond that provided by loan-level credit enhancements. CRTs can be viewed as the Enterprise paying a portion of the guarantee fee as a cost of transferring credit risk to private sector investors. To date, single-family

CRTs have been focused on transferring expected and unexpected credit risk. This amounts to the Enterprises obtaining the equivalent of insurance to cover their potential credit losses. The proposed rule proposes an approach to measuring capital relief on CRT transactions from the transfer of unexpected losses while also accounting for potential counterparty credit risks where appropriate.

Types of Single-Family CRTs

The Enterprises have developed a variety of single-family CRTs. The types of transactions include structured debt issuances known as Structured Agency Credit Risk (STACR) for Freddie Mac and Connecticut Avenue Securities (CAS) for Fannie Mae, insurance/reinsurance transactions, front-end lender risk sharing transactions, and senior-subordinate securities.

Enterprise Debt Issuance

The STACR and CAS securities account for the majority of single-family CRTs to date. These securities are issued as Enterprise debt and do not constitute the sale of mortgage loans or their cash flows. Instead, STACR and CAS are considered to be synthetic notes or derivatives because their cash flows track to the credit risk performance of a notional reference pool of mortgage loans. For the STACR and CAS transactions, the Enterprises receive the proceeds of the note issuance at the time of sale to investors. The Enterprises pay interest to investors on a monthly basis and allocate principal to investors based on the repayment and credit performance of the loans in the underlying reference pool. Investors ultimately receive a return of their principal, less any covered credit losses. The debt transactions are fully collateralized since investors pay for the notes in full. Thus, the Enterprises do not bear any counterparty credit risk on debt transactions.

Insurance or Reinsurance

Insurance or reinsurance transactions that are over and above loan-level mortgage insurance are considered CRTs. To date, the insurance and reinsurance CRTs have focused primarily on pool-level insurance transactions. In contrast to loan-level insurance structures such as MI, pool-level insurance covers an entire pool of hundreds or thousands of loans. Pool insurance transactions are typically structured with an aggregated loss amount. The Enterprises, as policy holders, typically retain some portion (or all) of the first loss. The cost of pool-level insurance is generally paid by the Enterprise, not the lender or borrower. In general, because the insurance transactions are partly collateralized the Enterprises may bear some counterparty credit risk.

Reinsurance companies have been the primary provider of pool-level insurance for the Enterprises' CRTs.[39] Fannie Mae's reinsurance risk transfer transactions are known as Credit Insurance Risk Transfer (CIRT), and Freddie Mac's reinsurance transactions are known as Agency Credit Insurance Structure (ACIS). One advantage of conducting transactions with reinsurers is that they are generally diversified in their risk exposures. This may result in lower counterparty risk because their books of business risk should be less correlated with the Enterprise's book of business risk and thus may be better able to withstand a home price stress cycle than a monoline mortgage insurer. The Enterprises further reduce counterparty risk in pool-level transactions through collateral requirements.

Front-End Lender Risk Sharing Transactions

Front-end (or upfront) lender risk sharing transactions include various methods of CRT where an originating lender or aggregator retains a portion of the credit risk associated with the loans that they sell to or service for the Enterprises. In this case, the credit risk sharing arrangement is entered into prior to the lender delivering the loans to the Enterprise. In exchange, the lender is compensated for the risk. In these transactions, the Enterprises bear some counterparty credit risk. However, the Enterprise typically requires some form of collateral or other arrangement to offset the counterparty risk inherent in the front-end transaction. Front-end lender risk sharing transactions are generally described as lender recourse or indemnification arrangements, or collateralized recourse. One benefit of the lender recourse or indemnification structure in which the credit risk is retained by the lender is that it aligns the interest of the lender and servicer with the credit risk purchaser and the Enterprise.

Senior-Subordinate Securitization

In a senior-subordinate (senior-sub) securitization, the Enterprise sells a pool of mortgages to a trust that securitizes cash flows from the pool into several tranches of bonds, similar to private label security transactions. A tranche refers to all securitization exposures associated with a securitization that have the same seniority. The subordinated bonds, also called mezzanine and first-loss bonds, provide the credit protection for the senior bond. Unlike STACR and CAS, the bonds created in a senior-sub transaction are mortgage-backed securities, not synthetic securities. In addition, unlike typical MBS issued by the Enterprises, only the senior tranche is credit-guaranteed by the Enterprise.

Proposed Approach for Single-Family CRT Capital Relief

The proposed rule would require that the Enterprises calculate capital relief using a step-by-step approach. To identify capital relief, the proposed rule would combine credit risk capital and expected losses on the underlying single-family whole loans and guarantees, tranche structure, ownership, timing of coverage, and counterparty credit risk. In general, the proposed rule would require five steps when calculating capital relief.

In the first step, the Enterprises would distribute credit risk capital on the underlying single-family whole loans and guarantees to the tranches of the CRT independent of tranche ownership, while controlling for expected losses, such that the riskiest, most junior tranches would be allocated capital before the most senior tranches. Under the proposed approach, an Enterprise would hold the same level of capital if the Enterprise held every tranche of its risk transfer vehicle or held the underlying assets in portfolio. The total credit risk capital across all tranches of the CRT would equal credit risk capital on the underlying single-family whole loans and guarantees.

In the second step, the Enterprises would calculate capital relief accounting for tranche ownership. The proposed approach would provide the Enterprises capital relief from transferring all or part of a credit risk exposure. For each tranche or exposure, the Enterprises would identify the portion of the tranche owned by private investors or covered by a loss sharing agreement. Then, in general, the Enterprises would calculate the capital relief as the product of the credit risk

[39] Many reinsurance companies do not wish to be or are not licensed to write polices directly to non-insurance companies, such as the Enterprises. Thus, although it is the reinsurance company that ultimately provides all of the risk capital, if the reinsurer is not writing the policy directly to the Enterprise, an insurance company must stand in the middle of the transaction. In many cases, this insurance company is a "protected cell," that is, a vehicle established to write insurance policies solely for the insured and to transfer that risk to reinsurers. The cell is used exclusively for Enterprise CRT purposes. The protected cell acts purely as a pass-through entity and takes no credit risk itself.

capital allocated to the exposure and the portion of the tranche owned by private investors or covered by a loss sharing agreement.

However, this initial calculation of capital relief must be adjusted to account for loss timing and counterparty credit risk. In particular, CRT coverage can expire before the underlying loans mature. Also, loss sharing agreements may be subject to counterparty credit risk. Capital relief afforded by credit risk transfers would be overstated absent such an adjustment.

Therefore in the third step, for each tranche, capital relief would be lowered by a loss timing factor that accounts for the timing of coverage. The loss timing factor would address the mismatch between lifetime single-family losses on the whole loans and guarantees underlying the CRT and the term of coverage on the CRT.

In the fourth step, for loss sharing agreements, the Enterprises would apply haircuts to previously calculated capital relief to adjust for counterparty credit risk. In particular, the Enterprises would consider the credit worthiness of each counterparty when assessing the contribution of loss sharing arrangements such that the capital relief is lower for less credit worthy counterparties. At the same time, in the proposed approach, collateral posted by a counterparty would be considered when determining the counterparty credit risk, as posted collateral would at least partially offset the effect of the counterparty exposure.

Lastly, the Enterprises would calculate total capital relief by adding up capital relief for each tranche in the CRT. Further, in the event that the CRT has multiple pool groups, then the proposed rule would calculate each group's capital relief separately.

Overall, the proposed approach would afford relatively higher levels of capital relief to the riskier, more junior tranches of a CRT that are the first to absorb unexpected losses, and relatively low levels of capital relief to the most senior tranches. The proposed approach would also afford greater capital relief for transactions that provide coverage (i) on a higher percentage of unexpected losses, (ii) for a longer period of time, and (iii) with lower levels of counterparty credit risk.

For comparison, the proposed approach is analogous to the Simplified Supervisory Formula Approach (''SSFA'') under the banking regulators' capital rules applicable to banks, savings associations, and their holding companies.[40] However, the proposed approach deviates from SSFA in that it: (i) Provides for a more refined view of risk differentiation across transactions by accounting for differences in maturities between the CRT and its underlying whole loans and guarantees, and (ii) does not discourage CRT transactions by elevating aggregate post-transaction risk-based capital requirements above risk-based capital requirements on the underlying whole loans and guarantees. In particular, the SSFA requires more capital on a transaction-wide basis than would be required if the underlying assets had not been part of a risk transfer to account for the complexity introduced by the securitization structure. Under SSFA, if an Enterprise held every tranche of a CRT, its overall capital requirement would be greater than if the Enterprise held the underlying assets in portfolio. In order to avoid creating incentives that would discourage the Enterprises from selling tranches as part of their credit risk transfer programs, under the proposed rule, an Enterprise would be required to hold the same level of capital whether the Enterprise held every tranche of its CRT or whether the Enterprise held the underlying assets in portfolio.

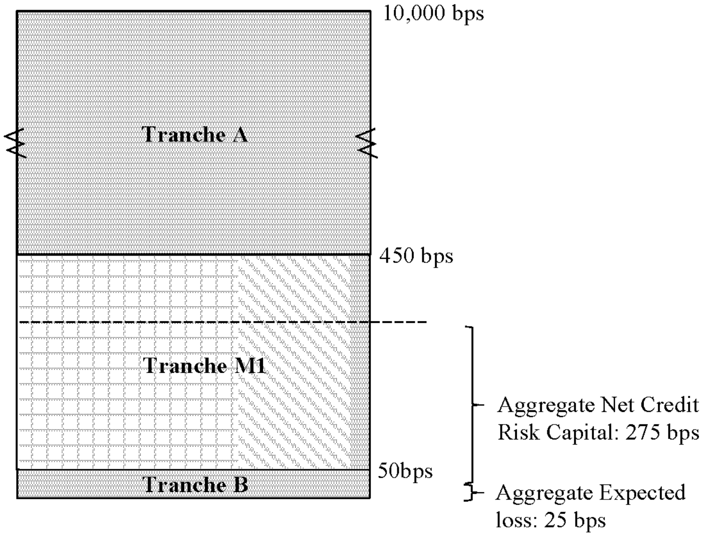
Single-Family CRT Example

The proposed rule would require each Enterprise to calculate capital relief using a five-step approach. The following example provides an illustration of the five steps. Consider the following inputs from an illustrative CRT (see Figure 1):

- $1,000 million in UPB of performing 30-year fixed rate single-family whole loans and guarantees with original LTVs greater than 60 percent and less than or equal to 80 percent;
- CRT coverage term of 10 years;
- Three tranches—B, M1, and A—where tranche B attaches at 0 bps and detaches at 50 bps, tranche M1 attaches at 50 bps and detaches at 450 bps, and tranche A attaches at 450 bps and detaches at 10,000 bps;
- Tranches B and A are retained by the Enterprise, and ownership of tranche M1 is split between capital markets (60 percent), a reinsurer (35 percent), and the Enterprise (5 percent);
- An aggregate net credit risk capital requirement on the single-family whole loans and guarantees underlying the CRT of 275 bps;
- Aggregate expected losses on the single-family whole loans and guarantees underlying the CRT of 25 bps; and
- The reinsurer posts $2.8 million in collateral, has a counterparty financial strength rating of 3, and does not have a high level of mortgage concentration risk.

[40] *See* 12 CFR 3.211 (OCC); 12 CFR 217.43 (Federal Reserve Board); 12 CFR 324.43 (FDIC).

Figure 1: Single-Family CRT Example


10,000 bps
Tranche A
450 bps
Tranche M1
Aggregate Net Credit Risk Capital: 275 bps
50bps
Tranche B
Aggregate Expected loss: 25 bps

Ownership:
Tranche A: 100% retained (in solid gray).
Tranche M1: 60% to capital markets (gray grid lines), 35% reinsured (in gray diagonal lines), and 5% retained (in solid gray).
Tranche B: 100% retained (in solid gray).

In the first step, the Enterprises would distribute the aggregate net credit risk capital to the tranches of the CRT independent of tranche ownership, while controlling for aggregate expected losses. For the illustrative CRT, the Enterprise would allocate aggregate net credit risk capital and expected losses to the riskiest, most junior tranche (tranche B) before the mezzanine tranche (tranche M1) and the most senior tranche (tranche A).

For the illustrative CRT, the Enterprise would allocate aggregate net credit risk capital and expected losses such that the riskiest, most junior tranche (tranche B) would receive its allocation before the mezzanine tranche (tranche M1) and the most senior tranche (tranche A). In particular, the Enterprise would first distribute aggregate expected losses (25 bps) and 25 bps of aggregate net credit risk capital to tranche B. The Enterprise would then distribute the remaining aggregate credit risk capital (250 bps) to tranche M1. As tranche A's attachment point exceeds the sum of aggregate expected losses and aggregate net credit risk capital, the Enterprise would not allocate net credit risk capital to tranche A.

In the second step, the Enterprises would calculate capital relief accounting for tranche ownership. This approach would provide the Enterprise capital relief from transferring all or part of a credit risk exposure. For the illustrative CRT, the Enterprise would only receive capital relief from 95 percent of tranche M1 since the Enterprise retains all of tranches A and B and retains only 5 percent of tranche M1. The Enterprise would calculate the capital relief on tranche M1 as the product of the allocated aggregate net credit risk capital (250 bps) and sum of the portion of the tranche owned by private investors (60 percent) and covered by a reinsurer (35 percent). Thus, the Enterprise would calculate initial capital relief of 237.5 bps or the product of 250 bps and 95 percent.

However, this initial calculation of capital relief must be adjusted to account for loss timing and counterparty credit risk. Therefore, in the third step the proposed rule lowers initial capital relief by a loss timing factor that accounts for the timing of coverage. The loss timing factor addresses the mismatch between lifetime losses on the 30-year fixed-rate single-family whole loans and guarantees underlying the illustrative CRT and the CRT's coverage of 10 years. The loss timing factor for the illustrative CRT with 10 years of coverage and backed by 30-year fixed-rate single-family whole loans and guarantees with original LTVs greater than 60 percent and less than or equal to 80 percent is 88 percent. Therefore, the Enterprise would lower the capital relief to 209 bps by multiplying together the loss timing factor (88 percent) and initial capital relief (237.5 bps).

In the fourth step, the Enterprise would apply haircuts to previously calculated capital relief to adjust for counterparty credit risk from the reinsurance arrangement. In practice, the Enterprise would identify the reinsurer's uncollateralized exposure and apply a haircut. For the illustrative CRT, the Enterprise would first determine the reinsurer's uncollateralized exposure by subtracting the reinsurer's collateral amount ($2.8 million) from the reinsurer's exposure as follows:

$$\$1{,}000\ million * \left(\frac{35\%}{60\%+35\%}\right) * \left(\frac{209\ bps}{10{,}000}\right) - \$2.8\ million = \$4.9\ million$$

The Enterprise would then consider the credit worthiness of the reinsurer and apply a haircut. For the illustrative CRT, the reinsurer has a counterparty financial strength rating of 3 and does not have a high level of mortgage concentration risk. Further, the single-family whole loans and guarantees backing the illustrative CRT are performing and have a 30-year term. Thus, the CP Haircut from Table 22 is 5.2 percent. The Enterprise would calculate counterparty credit risk from the reinsurer as the product of the CP Haircut and the reinsurer's uncollateralized exposure. The product would be converted into basis points as follows:

$$10{,}000 * \left(\frac{\$4.9\,million * 5.2\%}{\$1{,}000\,million}\right) = 2.5\ bps$$

Lastly, the Enterprise would calculate total capital relief by adding up capital relief for each tranche in the CRT and reducing capital relief by any counterparty credit risk capital. For the illustrative CRT, the Enterprise would calculate total capital relief at 206.5 bps or capital relief after adjusting for ownership and loss timing (209 bps) less counterparty credit risk (2.5 bps).

Seasoned Single-Family CRT Capital Relief

A seasoned single-family CRT differs from when it was newly-issued due to the changing risk profile on the whole loans and guarantees underlying the CRT. Therefore, under the proposed rule, the Enterprises would be required to re-calculate capital relief on their seasoned single-family CRT transactions with each submission of capital results.

For each seasoned single-family CRT, the proposed rule would require the Enterprises to update the data elements originally considered. In particular, the proposed rule would require the Enterprises to update credit risk capital and expected losses on the underlying whole loans and guarantees, tranche structure, ownership, and counterparty credit risk.

CRT Prepayments

The rate at which principal on a CRT's underlying loans is paid down (principal paydowns) affects the allocation of credit losses between the Enterprises and investors/reinsurers. Principal paydowns include regularly scheduled principal payments and unscheduled principal prepayments. In general, a CRT's tranches are paid down in the order of their seniority outlined in the CRT's transaction documents. For tranches with shared ownership, principal paydowns are allocated on a pro-rata basis. As CRT analysts have noted, under certain conditions unusually fast prepayments can erode the credit protection provided by the CRT by paying down the subordinate tranches and leave the Enterprises more vulnerable to credit losses. In particular, unexpectedly high prepayments can compromise the protection afforded by CRTs and reduce the CRT's benefit or capital relief.

FHFA reviewed the effect on capital relief of applying stressful prepayment and loan delinquency projections to recent CRTs. FHFA concluded that deal features, specifically triggers, mitigate the effects of fast prepayments by diverting unscheduled principal prepayments to the Enterprise-held senior tranche. For example, a minimum credit enhancement trigger redirects prepayments to the senior tranche when the senior credit enhancement falls below a pre-specified threshold. Similarly, a delinquency trigger diverts prepayments when the average monthly delinquency balance (*i.e.,* underlying single-family whole loans and guarantees that are 90 days or more delinquent, in foreclosure, bankruptcy, or REO) exceeds a pre-specified threshold.

In addition to triggers, FHFA considered three other possible approaches to address the impact of stressful CRT prepayments. First, FHFA considered whether it would be desirable to include language in the proposed rule requiring specific triggers in the Enterprises' CRT transactions. However, FHFA decided against such language because variations across transactions complicate the establishment of fixed triggers that could be prudently applied uniformly across deals. Further, mandating a fixed set of triggers could reduce innovation in managing principal paydowns. Moreover, FHFA has the authority to review CRT terms before issuance and therefore can ensure transactions include appropriate triggers. Second, FHFA considered using a simple multiplier to reduce the capital relief from CRTs. However, this would inadequately capture differences in collateral, subordination, and trigger structures between transactions. Finally, FHFA considered an approach that would define capital relief based on a weighted average of losses arising from averaging cash flows derived under multiple prepayment scenarios. However, FHFA decided that the complexity and opacity of this approach would be inconsistent with the overall goal of having simple and transparent credit risk capital requirements.

After considering these alternatives, FHFA believes that the proposed rule appropriately considers single-family CRT prepayments. However, FHFA is seeking public comment on CRT prepayments and is soliciting specific alternative approaches for addressing CRT prepayments in the proposed capital framework.

Question 9: FHFA is soliciting detailed proposals for a simple and transparent approach to reflect the impact of stressful prepayments on CRT capital relief. What modifications or alternatives should FHFA consider and why?

FHFA is soliciting comments on the capital relief treatment of single-family CRTs in the proposed rule. Providing capital relief for the Enterprises' credit risk transfer transactions is an aspect of the proposed rule that has received much consideration.

Credit risk transfer transactions reduce risk to taxpayers. Providing capital relief for CRTs, no matter what form the CRTs take, gives the Enterprises an incentive to transfer credit risk to third parties to reduce the risk the Enterprises pose to taxpayers. The Enterprises design their credit risk transfer transactions to protect against the risk that an investor might not have the funds to cover agreed-upon credit losses—often referred to as reimbursement risk—when such losses occur. The Enterprises use a number of different approaches to transfer credit risk, including transaction structures that are fully funded upfront and, therefore, have no reimbursement risk, and other transactions that require investors to partially or fully collateralize the investment to provide the Enterprises with assurance of available funds in the future. In addition, the credit risk protection provided by investors on fully funded CRT transactions is solely dedicated to absorbing credit risk and cannot be redirected for other uses. The Enterprises target loans that have the highest relative credit risk for CRT transactions, thereby providing a significant amount of credit risk protection.

While CRT transactions are designed to provide credit risk protection for the

Enterprises, this protection is not the same as the protection provided by capital. Because third parties assume the credit risk on the specific loans included in CRT reference pools, the credit protection for individual CRTs is not fungible to cover losses on other loans, whereas capital can be used to absorb losses at the portfolio level and is available to cover all loans.

In addition to the remaining reimbursement risk of certain CRT transactions, there is also the risk that loan prepayments could reduce the amount of credit risk protection able to be provided by investors. As discussed above, the Enterprises work to mitigate this prepayment risk by incorporating deal triggers into CRT transactions, but there remains risk that these triggers will not act as intended during a credit event. Additionally, the Enterprises' single-family CRTs have not been tested in a period of market stress because the programs started in 2013 and have expanded in a period of strong house price appreciation. Lastly, U.S. bank regulators have not given banks capital relief for credit risk transfers as FHFA has proposed to do in this rule for the Enterprises.

Question 10: Does the proposed rule's approach of providing capital relief for CRTs adequately capture the risk and benefits associated with the Enterprises' CRT transactions? Should FHFA consider modifications or alternatives to the proposed rule's approach of providing capital relief for the Enterprises' CRTs, and if so, what modifications or alternatives, and why?

Question 11: FHFA is soliciting comments on the proposed approaches for calculating CRT loss timing factors. Should the CRT loss timing factors be updated as the CRT ages? What modifications should FHFA consider and why?

c. Market Risk

This section corresponds to Proposed Rule §§ 1240.17 through 1240.18.

Single-Family Whole Loans and Guarantees

Single-family whole loans held in the Enterprises' portfolios have market risk from changes in value due to movements in interest rates and credit spreads. As the Enterprises currently hedge interest rate risk at the portfolio level, the market risk capital requirements in the proposed rule focus on spread risk.

The proposed rule would determine market risk capital requirements for single-family whole loans using both single point estimates and the Enterprises' internal models.

Single-Family Re-Performing and Non-Performing Whole Loans

The proposed rule would require an Enterprise to calculate market risk capital on single-family re-performing and non-performing whole loans using a single point estimate approach. The primary risk on these loans is credit risk and, in general, borrowers in these categories tend to have limited refinancing opportunities due to recent or current delinquencies. Therefore, re-performing and non-performing loans are relatively insensitive to prepayment risk, and FHFA believes the market risk profile of these loans would be sufficiently represented by a single point capital requirement.

The proposed rule would assign a single point estimate of 4.75 percent of the market value of assets for re-performing and non-performing whole loans. This proposal reflects the average of the Enterprises' internal model estimates.

New Originations and Performing Seasoned Loans

The proposed rule would require an Enterprise to calculate market risk capital on single-family new originations and performing seasoned whole loans using the internal models approach.

In general, the complexity of the market risk profile on newly originated and performing seasoned whole loans is amplified due to high prepayment sensitivity. In particular, prepayment risk on performing whole loans may vary significantly across amortization terms, vintages, and mortgage rates. The high prepayment sensitivity might suggest that more simplified approaches, such as the single point estimate approach, would not capture key risk drivers. Also, spread shocks may vary across a variety of single-family loan characteristics. Thus, the spread duration approach, which relies on a constant spread shock, may not capture key single-family market movements. An internal models approach, however, would allow the Enterprises to differentiate market risk across multiple risk characteristics such as amortization term, vintage, and mortgage rates. Further, the Enterprises could account for important market risk factors, such as updated spread shocks, to reflect market changes.

Enterprise- and Ginnie Mae-Guaranteed Single-Family Mortgage-Backed Securities

Enterprise and Ginnie Mae single-family MBS and CMOs held in the Enterprises' portfolios have market risk stemming from changes in value due to movements in interest rates and credit spreads. As discussed in Section II.C.4.c with regard to the market risk capital requirements for single-family whole loans, the Enterprises currently hedge interest rate risk at the portfolio level, and therefore the market risk capital requirements in the proposed rule focus on spread risk. In the proposed rule, the market risk capital requirement for Enterprise and Ginnie Mae single-family MBS and CMOs would be determined using the internal models approach and the Enterprises' internal models for market risk.

In general, the complexity of the market risk profile on single-family MBS and CMOs is amplified due to high prepayment sensitivity of the underlying collateral. Further, CMOs can often contain complex features and structures that alter prepayments across different tranches based on the CMO's structure. As a result, within this category of assets, spread durations may vary significantly across mortgage products, amortization terms, vintages and mortgage rates and tranches. The use of an Enterprise's internal models to calculate market risk capital requirements would allow the Enterprise to account for important market risk factors that affect spreads and spread durations.

Notably, capital results that rely on internal model calculations can be opaque and result in different capital requirements across Enterprises for the same or similar exposures. Hence, the proposed rule would rely on an Enterprise's internal models solely only when the market risk complexity is sufficiently high that using a single point estimate or spread duration approach would inadequately represent the exposure's underlying single-family market risk. Further, internal models used in the determination of market risk capital requirements will be subject to ongoing supervisory review. Finally, an Enterprise's model risk management is subject to FHFA's 2013–07 Advisory Bulletin.

Question 12: FHFA is soliciting comments on the proposed approaches for calculating market risk capital requirements for single-family whole loans. What modifications should FHFA consider and why?

Question 13: FHFA is soliciting comments on the proposed approach for calculating market risk capital requirements for Enterprise and Ginnie Mae single-family MBS and CMOs. What modifications should FHFA consider and why?

d. Operational Risk

This section corresponds to Proposed Rule §§ 1240.19 through 1240.20.

As described in section II.C.2 above, the proposed rule would establish an operational risk capital requirement of 8 basis points for all assets. For single-family whole loans and guarantees, and Enterprise and Ginnie Mae single-family MBS and CMOs, the operational risk capital requirement would be 8 basis points of the unpaid principal balance of assets with credit risk or 8 basis points of the market value of assets with market risk.

e. Going-Concern Buffer

This section corresponds to Proposed Rule §§ 1240.21 through 1240.22.

As described in section II.C.3 above, the proposed rule would establish a going-concern buffer of 75 basis points for all assets. For single-family whole loans and guarantees, and Enterprise and Ginnie Mae single-family MBS and CMOs, the going-concern buffer would be 75 basis points of the unpaid principal balance of assets with credit risk or 75 basis points of the market value of assets with market risk.

f. Impact

TABLE 23—FANNIE MAE AND FREDDIE MAC COMBINED ESTIMATED TOTAL RISK-BASED CAPITAL REQUIREMENTS FOR SINGLE-FAMILY WHOLE LOANS, GUARANTEES, AND RELATED SECURITIES AS OF SEPTEMBER 30, 2017

	Capital requirement		
	$billions	bps	Share (%)
Net Credit Risk	$91.2		
Credit Risk Transferred	(13.5)		
Post-CRT Net Credit Risk	77.7	163	60
Market Risk	14.2	30	11
Going-Concern Buffer	34.9	73	27
Operational Risk	3.7	8	3
Total Capital Requirement	130.5	273	100
Total UPB, $billions	4,778.3		

TABLE 24—FANNIE MAE AND FREDDIE MAC COMBINED ESTIMATED CREDIT RISK CAPITAL REQUIREMENTS FOR SINGLE-FAMILY WHOLE LOANS AND GUARANTEES AS OF SEPTEMBER 30, 2017—BY LOAN CATEGORY *

	Capital requirement ($billions)	UPB ($billions)	Capital requirement (bps)
New Originations	$7.6	$296	257
Performing Seasoned Loans	52.2	3,787	138
Re-Performing Loans	19.7	472	418
Non-Performing Loans	11.8	102	1,149
Net Credit Risk	91.2	4,657	196
Credit Risk Transferred	(13.5)		
Post-CRT Net Credit Risk	77.7	4,657	167

* Excludes both Enterprises' retained portfolio holdings of MBS guaranteed by the other Enterprise, and Ginnie Mae MBS.

5. Private-Label Securities

This section corresponds to Proposed Rule §§ 1240.24 through 1240.29.

The Enterprises have exposure to residential private-label securities (PLS) in that they hold PLS in portfolio as investments and guarantee PLS that have been re-securitized by an Enterprise (PLS wraps). The proposed rule would establish risk-based capital requirements for the credit risk associated with private-label securities, including PLS wraps, and the market risk associated with private-label securities with market risk exposure. The risk-based capital requirement for PLS and PLS wraps would also include a risk-invariant operational risk capital requirement and a going-concern buffer.

Credit Risk

The proposed rule would use the SSFA methodology to determine the credit risk capital requirement for private-label securities with credit risk exposure in a manner based upon how banks use the SSFA to determine the capital requirements for securitized assets. For each private-label security, the proposed rule would set forth a minimum risk-based capital requirement as provided in the SSFA methodology, which would be adjusted based upon SSFA methodology to account for the performance of the underlying collateral and the level of subordination. The SSFA formulas would impose high capital requirements on subordinated risky tranches of a securitization relative to more senior positions that are less subject to credit losses.

Defining the PLS capital requirements using the SSFA methodology provides two advantages. First, the SSFA is a relatively simple and transparent approach to calculate private-label securities capital requirements. Second, using the SSFA methodology would create consistency in capital calculations between the Enterprises and private industry, as the banking agencies apply the SSFA to banking institutions subject to their jurisdiction. While there are shortcomings associated with using the SSFA methodology, the relatively high data demands associated with alternative loan-level approaches, along with the Enterprises' relatively limited amount of PLS holdings, lead

FHFA to believe that the straightforward SSFA methodology would be appropriate for determining credit risk capital requirements for PLS and PLS wraps.

Market Risk

Because PLS wraps do not expose the Enterprises to market risk, PLS wraps would have a zero market risk capital requirement. For each private-label security with market risk exposure, the proposed rule would define market risk capital only with respect to spread risk, namely a loss in value of an asset relative to a risk free or funding benchmark due to changes in perceptions of performance or liquidity. Absent hedging, changes in interest rates would also have a direct effect on the value of private label securities. However, the Enterprises make extensive use of callable debt and derivatives to hedge interest rate risk. Therefore, in the proposed rule, market risk would affect the capital requirements for private-label securities only through changes in spreads.

In particular, the market risk capital requirement for PLS would be defined as the product of a change in the spread of the private-label security (spread shock) and the sensitivity of a private-label security's expected price to changes in the private-label security's spread (spread duration). The constant spread shock would be set at 265 basis points, reflecting estimates provided to FHFA by the Enterprises, while the Enterprises would use their own internal approaches to estimate the spread duration for each PLS in order to account for variation in spread durations across private-label securities. Finally, the product of the PLS market risk capital requirement in basis points and the market value of a private-label security would yield the PLS market risk capital requirement in dollars. Internal models used in the determination of market risk capital requirements would be subject to ongoing supervisory review.

Operational Risk

As described in section II.C.2 above, the proposed rule would require the Enterprises to hold an operational risk capital requirement of 8 bps for all assets. For private label securities, the operational risk capital requirement would be 8 bps of the securities' market value.

Going-Concern Buffer

As described in section II.C.3 above, the proposed rule would require the Enterprises to hold a going-concern buffer of 75 bps for all assets. For private label securities, the going-concern buffer would be 75 bps of the securities' market value.

Impact

TABLE 25—FANNIE MAE AND FREDDIE MAC COMBINED ESTIMATED RISK-BASED CAPITAL REQUIREMENTS FOR PRIVATE-LABEL SECURITIES AS OF SEPTEMBER 30, 2017

	Capital requirement		
	$billions	bps	Share (%)
Credit Risk	$2.2	1,502	64
Market Risk	1.1	767	33
Going-Concern Buffer	0.1	60	3
Operational Risk	0.01	6	0
Total Capital Requirement	3.4	2,336	100
Total UPB, $billions	14.4		

Question 14: FHFA is soliciting comments on the proposed risk-based capital requirements for private-label securities. What modifications should FHFA consider and why?

6. Multifamily Whole Loans, Guarantees, and Related Securities

This section corresponds to Proposed Rule §§ 1240.31 through 1240.45.

Overview

The proposed rule would establish risk-based capital requirements for the Enterprises' multifamily businesses. It is important to specify separate multifamily capital requirements in order to capture the unique nature of the multifamily lending business and its particular risk drivers. A typical multifamily loan, including those packaged together into mortgage-backed securities (MBS), is roughly $10 million, requires a 10-year balloon payment, and includes a 30-year amortization period. In addition, multifamily loans finance the acquisition and operation of commercial property collateral, as opposed to single-family dwellings. Multifamily properties are typically apartment buildings owned by real estate investors who rent the apartment units expecting to realize a profit after paying property operating and financing expenses.

The proposed rule would apply to multifamily whole loans, guarantees, and related securities held for investment. Multifamily whole loans are those that the Enterprises keep in their portfolios after acquisition. Multifamily guarantees are guarantees provided by the Enterprises of the timely receipt of payments to investors in mortgage-backed securities that have been issued by the Enterprises or other security issuers and are backed by previously acquired multifamily whole loans. Except in cases where the Enterprises transfer credit risk to third-party private investors, the Enterprises retain the credit risk from whole loans and guarantees. The Enterprises also retain market risk on whole loans held in portfolio and loans that they retain but intend to sell at a later date.

To implement the proposed capital requirements, the Enterprises would use a set of multifamily grids and risk multipliers to calculate credit risk capital, as well as a collection of straightforward formulas to calculate market risk capital, operational risk capital, and a going-concern buffer.

The proposed rule would first establish a framework through which the Enterprises would determine their gross multifamily credit risk capital requirements. The proposed methodology is simple and transparent, relying on a set of look-up tables (grids and risk multipliers) that take into account several important loan characteristics including debt-service-coverage ratio (DSCR), loan-to-value ratio (LTV), payment performance, loan term, interest-only (IO), loan size, and special products, among others.

The proposed grid and multiplier framework is consistent with existing financial regulatory regimes and would thereby facilitate comparison and examination of the Enterprises' risk-based capital requirements. FHFA believes that this straightforward and transparent approach, as opposed to one involving a complex set of credit models and econometric equations, would provide sufficient risk differentiation across the Enterprises' different types of multifamily business exposures without placing an undue compliance burden on the Enterprises.

The proposed rule would then provide a mechanism for the Enterprises to calculate multifamily capital relief by reducing gross credit risk capital requirements based on the amount of loss shared or risk transferred to other parties. The proposed CRT calculation would include a capital requirement for multifamily counterparty credit risk stemming from contractual arrangements with lenders, re-insurers, and other counterparties with which the Enterprises engage. In doing so, the rule would account for differences in the Enterprises' multifamily business models.

The proposed rule would establish market risk capital requirements for multifamily whole loans using the spread duration approach. For multifamily securities held for investment, the parameters would apply to two asset types: Whole loans and Enterprise—and Ginnie Mae-issued mortgage-backed securities (MBS).

In addition, the proposed rule would establish an operational risk capital requirement for the Enterprises' multifamily businesses that is invariant to risk. The proposed rule would base the operational risk capital requirement on the Basel Basic Indicator Approach, which accounts for gross income and assets by product line.

Lastly, the proposed rule would establish a going-concern buffer for the Enterprises' multifamily businesses that is invariant to risk. The purpose of the going-concern buffer is to allow the Enterprises, in this case as it pertains to their multifamily businesses, to remain as functioning entities during and after a period of severe financial distress.

Multifamily Business Models

The proposed rule would apply to both Enterprises equally. However, when appropriate, the proposed rule would account for differences in the Enterprises' multifamily business models. These differences are evident, for example, when considering certain elements of the proposed rule related to credit risk transfer.

As of late 2017, Fannie Mae's multifamily business relied on the Delegated Underwriting and Servicing (DUS) program. The DUS program is a loss-sharing program that seeks to facilitate the implementation of common underwriting and servicing guidelines across a defined group of multifamily lenders. The number of multifamily lenders in the DUS program has historically ranged between 25 and 30 since the program's inception in the late 1980s. Fannie Mae typically transfers about one-third of the credit risk to those lenders, while retaining the remaining two-thirds of the credit risk plus the counterparty risk associated with the DUS lender business relationship. The proportion of risk transferred to the lender may be more or less than one-third under a modified version of the typical DUS loss-sharing agreement.

In contrast, as of late 2017, Freddie Mac's multifamily model focused almost exclusively on structured, multi-class securitizations. While Freddie Mac has a number of securitization programs for multifamily loans, the most heavily used program is the K-Deal program. Under the K-Deal program, which started in 2009, Freddie Mac sells a portion of unguaranteed bonds (mezzanine and subordinate), generally 10 to 15 percent, to private market participants. These sales typically result in a transfer of a very high percentage of, if not all of, the credit risk. Freddie Mac generally assumes credit and market risk during the period between loan acquisition and securitization. In addition, after securitization, Freddie Mac generally retains a portion of the credit risk through ownership or guarantee of senior K-Deal tranches.

Despite these differences in the Enterprises' multifamily business models, the proposed rule would accommodate both Enterprises' current lending practices, and would not preclude them from adopting a version of one another's lending practices in the future. Specifically, the proposed rule would explicitly include variations in the estimation of required credit risk capital under each Enterprise's risk transfer approach, but would not limit an Enterprise to a particular approach.

Rule Framework and Implementation

The proposed rule would establish risk-based capital requirements for the Enterprises' multifamily businesses, including their whole loans and guarantees and securities held for investment. Using the proposed capital requirements, the Enterprises would calculate the minimum amount of funds needed to support their multifamily operations under stressed economic conditions, as discussed briefly above and in detail below. The proposed multifamily capital requirements would comprise the following components: Credit risk capital, including adjustments for credit risk transfers; market risk capital; operational risk capital; and a going-concern buffer. Each component is discussed individually below.

a. Credit Risk

This section corresponds to Proposed Rule §§ 1240.31 through 1240.36.

Multifamily Whole Loans and Guarantees

The proposed rule would establish credit risk capital requirements for the Enterprises' multifamily whole loans and guarantees. The multifamily credit risk capital requirements would be determined by the minimum funding necessary to cover the difference between estimated lifetime stress losses in severely adverse economic conditions and expected losses. For the purpose of the proposed rule, the multifamily-specific stress scenario involves two parameters:

- Net Operating Income (NOI), where NOI represents Gross Potential Income (gross rents) net of vacancy and operating expenses, and
- Property values.

Adverse economic conditions are generally accompanied by either a decrease in expected property revenue or an increase in perceived risk in the multifamily asset class, or both. A decrease in expected occupancy would lead to a decline in income generated by the property, or a lower NOI, while an increase in perceived risk would lead to an increase in the capitalization rate used to discount the NOI when assessing property value. A capitalization rate, or cap rate, is defined as NOI divided by property value, so if NOI is held constant, an increase in the cap rate is directly related to a decrease in property values. For the purpose of the proposed rule, the multifamily-specific stress scenario assumes an NOI decline of 15 percent and a property value decline of 35 percent. This stress scenario is consistent with market conditions observed during the recent financial crisis, views from third-party market participants and data vendors, and assumptions behind the Dodd-Frank Act Stress Test (DFAST) severely adverse scenario. The estimated differences between stress losses in a severely adverse scenario and expected losses are reflected in the multifamily credit risk capital grids discussed below.

Under the proposed rule, the Enterprises would calculate credit risk capital for multifamily whole loans and guarantees by completing the following simplified steps:

(1) Determine gross multifamily credit risk capital through the use of multifamily-specific credit risk capital grids;

(2) Adjust gross multifamily credit risk capital for additional risk characteristics using a set of multifamily-specific risk multipliers; and

(3) Determine net multifamily credit risk capital by adjusting gross multifamily credit risk capital for credit risk transfers.

Base Credit Risk Capital Requirements

The proposed rule would require the Enterprises to determine base multifamily credit risk capital using a set of two look-up tables, or grids—one for each multifamily segment. Accordingly, for the purpose of the proposed rule, the Enterprises would divide their multifamily whole loans and guarantees into two segments by interest rate contract: One segment for whole loans and guarantees with fixed rate mortgages (FRMs), and one segment for whole loans and guarantees with adjustable rate mortgages (ARMs). Multifamily whole loans that have both a fixed rate period and an adjustable rate period, also known as hybrid loans, would be classified and treated as a multifamily FRM during the fixed rate period, and classified and treated as a multifamily ARM during the adjustable rate period.

Each segment would have a unique two-dimensional multifamily credit risk capital grid which the Enterprises would use to determine base credit risk capital for each whole loan and guarantee before applying subsequent credit risk multipliers, discussed in the next section. The dimensions of the multifamily credit risk capital grids would be ranges based on two important underlying multifamily loan characteristics: Debt-service-coverage ratio (DSCR) and loan-to-value ratio (LTV). These two risk factors are crucial for forecasting the future performance of loans on commercial real estate properties, including multifamily properties. DSCR is the ratio of property Net Operating Income (NOI) to the loan payment. A DSCR greater than 1.0 indicates that the property generates sufficient funds to cover the loan obligation, while the opposite is true for a DSCR less than 1.0. LTV, in turn, is the ratio of loan amount to property value. In commercial real estate financing, a DSCR of 1.25 and an LTV of 80 percent represent common and reasonable standards for underwriting and performance evaluation purposes.

In the proposed rule, the multifamily credit risk capital grids were populated using model estimates from both Enterprises, averaged to determine the capital requirement associated with each cell in the multifamily credit risk capital grids. To derive the estimates, the Enterprises were asked to run their multifamily credit models using the multifamily-specific stress scenario described above and a synthetic loan with a baseline risk profile with respect to risk factors other than DSCR and LTV. Specifically, the proposed FRM credit risk capital grid was populated using loss estimates (stress losses minus expected losses) for a multifamily loan with varying DSCR and LTV combinations and the following risk characteristics: $10 million loan amount, 10-year balloon with a 30-year amortization period, non-interest-only, not a special product, and never been delinquent or modified. Similarly, the proposed ARM credit risk capital grid was populated using loss estimates (stress losses minus expected losses) for a multifamily loan with varying DSCR and LTV combinations and the following risk characteristics: 3 percent origination interest rate, $10 million loan amount, 10-year balloon with a 30-year amortization period, non-interest-only, not a special product, and never been delinquent or modified. Thus, each cell of the proposed FRM (ARM) credit risk capital grid represents the average estimated difference, in basis points, between stress losses and expected losses for synthetic FRM (ARM) loans described above with a DSCR and LTV in the tabulated ranges. This capital requirement, in basis points, would be applied to the unpaid principal balance (UPB) of each multifamily whole loan and guarantee held by the Enterprises with exposure to credit risk.

The proposed rule would require that the Enterprises use the multifamily credit risk capital grids in their regulatory capital calculations for both newly acquired multifamily whole loans and guarantees, as well as seasoned multifamily whole loans and guarantees. A newly acquired multifamily whole loan or guarantee is a whole loan or guarantee originated within the prior 5 months, while a seasoned multifamily whole loan or guarantee is a whole loan or guarantee originated more than 5 months ago. For newly acquired whole loans and guarantees, the proposed rule would require the Enterprises to use DSCRs and LTVs determined at acquisition to calculate capital requirements using the multifamily credit risk capital grids. For seasoned whole loans and guarantees, the proposed rule would require the Enterprises to use DSCRs and LTVs updated as of the relevant capital calculation date, also known as the mark-to-market DSCR (MTMDSCR) and mark-to-market LTV (MTMLTV), to calculate capital requirements using the multifamily credit risk capital grids.

The proposed multifamily credit risk capital grids for the FRM and ARM loan segments are presented in Tables 26 and 27, respectively:

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Table 26: Multifamily FRM Base Credit Risk Capital (in bps)

		Acquisition LTV or MTMLTV									
		LTV <=35%	35% < LTV <=45%	45% < LTV <=55%	55% < LTV <=65%	65% < LTV <=70%	70% < LTV <=75%	75% < LTV <=80%	80% < LTV <=90%	90% < LTV <=100%	LTV >100%
Acquisition DSCR or MTMDSCR	DSCR<1.00	415	480	610	870	996	1119	1226	1328	1378	1453
	1.00<= DSCR <1.15	359	413	520	735	843	943	1028	1118	1160	1224
	1.15<= DSCR< 1.20	321	368	460	645	740	825	895	978	1015	1071
	1.20<= DSCR< 1.25	298	338	418	578	660	733	778	855	895	955
	1.25<= DSCR< 1.30	266	303	375	520	593	645	690	755	790	843
	1.30<= DSCR< 1.35	251	283	345	470	528	568	608	670	700	745
	1.35<= DSCR< 1.50	231	259	315	428	475	510	548	610	640	685
	1.50<= DSCR< 1.65	201	218	250	315	345	375	408	455	498	561
	1.65<= DSCR< 1.80	175	185	205	245	270	298	330	378	423	490
	1.80<= DSCR< 1.95	129	138	155	190	210	235	258	325	375	450
	1.95<= DSCR< 2.10	118	122	130	163	180	204	221	299	351	430
	2.10<= DSCR< 2.25	106	110	118	149	165	188	203	286	339	420
	DSCR>=2.25	100	104	111	142	158	180	194	279	333	415

Table 27: Multifamily ARM Base Credit Risk Capital (in bps)

		Acquisition LTV or MTMLTV									
		LTV <=35%	35% < LTV <=45%	45% < LTV <=55%	55% < LTV <=65%	65% < LTV <=70%	70% < LTV <=75%	75% < LTV <=80%	80% < LTV <=90%	90% < LTV <=100%	LTV >100%
Acquisition DSCR or MTMDSCR	DSCR<1.00	647	691	745	1060	1223	1375	1508	1691	1831	2041
	1.00<= DSCR <1.25	569	603	638	902	1034	1159	1264	1424	1542	1720
	1.25<= DSCR< 1.30	506	535	567	797	908	1014	1101	1245	1349	1505
	1.30<= DSCR< 1.36	454	478	503	704	810	901	956	1089	1190	1341
	1.36<= DSCR< 1.42	410	430	452	630	720	789	847	962	1050	1183
	1.42<= DSCR< 1.47	361	390	408	568	637	688	747	854	931	1046
	1.47<= DSCR< 1.53	298	332	372	511	565	619	674	773	849	962
	1.53<= DSCR< 1.70	236	265	293	376	410	451	501	577	660	784
	1.70<= DSCR< 1.87	186	208	237	288	322	358	406	478	562	686
	1.87<= DSCR< 2.03	154	164	179	223	247	283	317	412	498	628
	2.03<= DSCR< 2.21	137	143	150	191	210	245	272	379	467	599
	2.21<= DSCR< 2.38	129	132	136	175	191	226	250	362	451	585
	DSCR>=2.38	125	127	128	167	182	217	239	354	443	577

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The proposed multifamily credit risk capital grids provide for a straightforward determination of multifamily credit risk capital that is easy to interpret. In both multifamily credit risk capital grids, the credit risk capital requirement would increase as DSCR decreases (moving toward the top of a grid) and as LTV increases (moving toward the right of the grid). Thus, the Enterprises would generally be required to hold more capital for a multifamily whole loan or guarantee with a low DSCR and a high LTV (the upper-right corner of each grid) than for a multifamily whole loan or guarantee with a high DSCR and a low LTV (the lower-left corner of each grid).

The risk factor breakpoints and ranges represented in the multifamily credit risk capital grids were chosen following internal FHFA analysis and discussions with the Enterprises. After reviewing the distributions of the Enterprises' multifamily whole loan and guarantee unpaid principal balances (UPBs) across both dimensional risk factors (DSCR and LTV), FHFA concluded that the proposed breakpoints and ranges would combine to form sufficiently granular pairwise buckets without sacrificing simplicity or imposing an undue compliance burden on the Enterprises. Furthermore, for ease of interpretation and implementation, the proposed rule would contain one set of DSCR and LTV ranges for both newly acquired and seasoned whole loans and guarantees.

However, as discussed, and as labeled on the grids, the risk factor dimensions would apply to acquisition DSCR and LTV for newly acquired whole loans and guarantees, and updated MTMDSCR and MTMLTV for seasoned whole loans and guarantees.

The proposed rule would require a unique treatment for interest-only (IO) loans. IO loans allow for payment of interest without any principal amortization during all or part of the loan term, creating increased amortization risk and additional leveraging incentives for the borrower. To partially capture these increased risks, the proposed rule would require the Enterprises to use the fully amortized payment to calculate DSCR (or MTMDSCR) during the IO period in order to calculate base capital requirements using one of the two multifamily credit risk capital grids. Specifically, the proposed rule would require the Enterprises to assign each multifamily IO loan into a multifamily loan segment, either FRM or ARM, and to calculate a base credit risk capital requirement for each IO whole loan and guarantee using the corresponding segment-specific multifamily credit risk capital grid, where the DSCR (in the case of a new acquisition) or the MTMDSCR (in the case of a seasoned loan) is based on the IO loan's fully amortized payment.

Gross Credit Risk Capital Requirements

After the Enterprises calculate base credit risk capital requirements for multifamily whole loans and guarantees using the multifamily credit risk capital grids, the proposed rule would require the Enterprises to adjust these capital requirements to account for additional risk characteristics using a set of multifamily-specific risk multipliers. The proposed risk multipliers would refine multifamily base credit risk capital requirements for whole loans and guarantees that possess additional risk factors beyond those reflected in the dimensions of the multifamily credit risk capital grids, and would include considerations for both seasoned loans and new acquisitions. Accordingly, the Enterprises would apply these risk multipliers on top of the base credit risk capital requirements obtained from the multifamily credit risk capital grids. The proposed rule would include multipliers to capture variations in the following multifamily loan characteristics: Payment performance, interest-only, loan term, amortization term, loan size, and special products.

The proposed multifamily risk multipliers represent common characteristics that increase or decrease the riskiness of a particular multifamily whole loan or guarantee. The proposed rule would provide a mechanism through which multifamily credit risk capital requirements would be adjusted and refined up or down to reflect a more or less risky loan profile, respectively. FHFA believes that risk multipliers would provide for a simple and transparent characterization of the risks associated with different types of multifamily whole loans and guarantees, and an effective way of adjusting credit risk capital requirements for those risks. Although the specified risk characteristics are not exhaustive, they capture key commercial real estate loan performance drivers, and are common in commercial real estate loan underwriting and rating. Therefore, FHFA believes the use of risk multipliers in general, and the proposed multipliers in particular, would facilitate analysis of the Enterprises' multifamily credit risk capital requirements while mitigating concerns associated with compliance and complex implementation.

The proposed multifamily risk multipliers would capture variations in risk specific to individual whole loans and guarantees, and augment the base credit risk capital requirements. The numerical multipliers populating the multifamily risk multiplier table were determined using FHFA staff analysis and expertise, along with the Enterprises' contributions of model results and business expertise. Specifically, FHFA asked the Enterprises to run their multifamily credit models using the multifamily-specific stress scenario described above and synthetic loans with a baseline risk profile with respect to risk factors other than DSCR and LTV, in the same way the Enterprises populated the multifamily credit risk capital grids. However, FHFA then asked the Enterprises to vary the additional risk factors to estimate the risk factors' multiplicative effects on the Enterprises' loss estimates (stress losses minus expected losses). In general, the multiplier values estimated by the Enterprises were consistent with one another in magnitude and direction. Using judgement, FHFA combined the estimates to determine the final multifamily risk multiplier values.

The proposed rule would require that multifamily whole loans and guarantees with characteristics similar to, and within a certain range of, the risk characteristics of the synthetic loans underlying the multifamily credit risk capital grids would take a multiplier of 1.0. Risk factor values dissimilar to the characteristics of the synthetic loans would be assigned risk multiplier values greater than or less than 1.0, such that the total risk multiplier applied to a given multifamily whole loan or guarantee could be above 1.0, below 1.0, or 1.0, depending on how the risk factor values compare to the pertinent risk factor values in the synthetic loans. A multiplier value above 1.0 would be assigned to risk factor values that represent riskier loan characteristics, while a multiplier value below 1.0 would be assigned to risk factor values that represent less risky characteristics. For each multifamily whole loan and guarantee, the individual risk multipliers would be multiplicative, and their product would be applied to the gross credit risk capital requirements determined by the multifamily credit risk capital grids.

The proposed multifamily risk multiplier values are presented in Table 28:

TABLE 28—MULTIFAMILY RISK MULTIPLIERS

Risk factor	Value or range	Risk multiplier
Payment Performance	Performing	1.00.
	Delinquent	1.10.
	Re-Performing (without Modification)	1.10.
	Modified	1.20.
Interest-Only	Not Interest-Only	1.00.
	Interest-Only	1.10.
Original/Remaining Loan Term	Loan Term <= 1Yr	0.70.
	1Yr < Loan Term <= 2Yr	0.75.
	2Yr < Loan Term <= 3Yr	0.80.
	3Yr < Loan Term <= 4Yr	0.85.

TABLE 28—MULTIFAMILY RISK MULTIPLIERS—Continued

Risk factor	Value or range	Risk multiplier
	4Yr < Loan Term <= 5Yr	0.90.
	5Yr < Loan Term <= 7Yr	0.95.
	7Yr < Loan Term <= 10Yr	1.00.
	Loan Term > 10Yr	1.15.
Original Amortization Term	Amort. Term <= 20Yr	0.70.
	20Yr < Amort. Term <= 25Yr	0.80.
	25Yr < Amort. Term <= 30Yr	1.00.
	Amort. Term > 30Yr	1.10.
Original Loan Size	Loan Size <= $3M	1.45.
	$3m < Loan Size <= $5M	1.15.
	$5m < Loan Size <= $10M	1.00.
	$10m < Loan Size <= $25M	0.80.
	Loan Size > $25M	0.70.
Special Products	Government-Subsidized	0.60.
	Not a Special Product	1.00.
	Student Housing	1.15.
	Rehab/Value-Add/Lease-Up	1.25.
	Supplemental	Use FRM or ARM Capital Grid by adding supplemental UPB to the base loan and recalculating DSCR and LTV.

Each multifamily risk factor represented in Table 28 can take multiple values, and each value or range of values has a risk multiplier associated with it. FHFA determined these values and ranges after analyzing the Enterprises' multifamily portfolios and the associated distributions of UPBs, and subsequent to significant discussions both internally and with the Enterprises. FHFA believes that the proposed values and ranges would provide an appropriate level of granularity in the risk multiplier framework, both within each risk factor and cumulatively across risk factors, to sufficiently capture the variations in observable risk given the Enterprises' multifamily businesses and without imposing an undue compliance or implementation burden on the Enterprises. The risk factors in the multifamily risk multiplier table are:

- *Payment performance.* The payment performance risk multiplier captures risks associated with historical payment performance of whole loans and guarantees. In the proposed risk multiplier table, multifamily whole loans and guarantees would be assigned one of four values: Performing, delinquent (defined as 30-days for multifamily whole loans and guarantees in the context of the proposed rule), re-performing (without modification), and modified. A performing loan is one that has never been delinquent in its payments; a delinquent loan is one that is not current in its payments at the time of the capital calculation; a re-performing loan is one that is current in its payments at the time of the capital calculation, but has been delinquent in its payments at least once since origination and has cured without modification; and a modified loan is one that is current in its payments at the time of the capital calculation, but has been modified at least once since origination or has gone through a workout plan. In the proposed rule, the Enterprises would be required to hold more capital for multifamily whole loans and guarantees that have a delinquency and/or modification history than for those that do not. Specifically, performing whole loans and guarantees would receive a risk multiplier of 1.0, while delinquent, re-performing, and modified whole loans and guarantees would receive a risk multiplier greater than 1.0.
- *Interest-only.* The interest-only (IO) risk multiplier captures risks associated with IO whole loans and guarantees during the IO period. As discussed earlier, IO loans are generally considered riskier than non-IO loans, and the proposed rule would partially account for this increased amortization and leveraging risk by requiring the Enterprises to use fully amortized payments to calculate DSCR (for new acquisitions) and MTMDSCR (for seasoned loans) for use in the multifamily credit risk capital grids. The use of the amortized payment would lower the DSCR, resulting in a higher capital requirement all else equal. In addition, the proposed rule would further account for IO risk in the risk multiplier table. Specifically, non-IO whole loans and guarantees would receive a risk multiplier of 1.0, while IO whole loans and guarantees would receive a risk multiplier of 1.1 during the IO period.
- *Original or remaining loan term.* The loan term risk multiplier captures risks associated with the term of a multifamily whole loan or guarantee, either the original loan term for new acquisitions or the remaining loan term for seasoned loans. The majority of the Enterprises' multifamily whole loans and guarantees have a loan term of 5 years or longer, and in general, whole loans and guarantees with a shorter term are less risky than those with a longer term. Loans with shorter loan terms carry relatively less uncertainty about eventual changes in property performance and future refinancing opportunities, while loans with longer loan terms carry relatively higher uncertainty about the borrower's ability to refinance in the future. In the proposed rule, a 10-year loan term would be considered a baseline risk, so whole loans and guarantees with a loan term between 7 years and 10 years would receive a risk multiplier of 1.0. The 7- to 10-year range represents a conservative range FHFA believes is appropriate. Whole loans and guarantees with loan terms shorter than 7 years would receive risk multipliers less than 1.0, and whole loans and guarantees with loan terms longer than 10 years would receive a risk multiplier greater than 1.0. Whole loans and guarantees that are new acquisitions would use the original loan term, while those that are seasoned would use the remaining loan term.
- *Original amortization term.* The amortization term risk multiplier captures risks associated with the amortization term of a multifamily whole loan or guarantee. In general, whole loans and guarantees with a

shorter repayment period face less risk of a borrower defaulting on its payments than do those with a longer repayment period. The most common amortization term for multifamily whole loans and guarantees is 30 years, even though most have an original loan term with a balloon payment due earlier, often in 10 years. While amortization terms can potentially take any value, FHFA believes that given the very high number of whole loans and guarantees with an amortization term between 25 and 30 years, the values represented in the risk multiplier table would sufficiently account for the differences in risk associated with amortization term. In the proposed rule, a 30-year amortization term would represent a baseline level of risk, and multifamily whole loans and guarantees with a 30-year amortization term would receive a risk multiplier of 1.0. Whole loans and guarantees with an amortization term less than 25 years would receive a risk multiplier less than 1.0, while whole loans and guarantees with an amortization term greater than 30 years would receive a risk multiplier of 1.1.

- *Original loan size.* Multifamily whole loans and guarantees with larger original loan balances are generally considered less risky than those with smaller balances, because larger balances are usually associated with larger investors with more access to capital and experience. In addition, the collateral securing a large loan is often a larger, more established, and/or newer property. Alternatively, whole loans and guarantees with smaller original balances are often associated with investors with limited funding and smaller, less competitive properties. In the proposed rule, an original loan size of $10 million represents a baseline level of risk, and multifamily whole loans and guarantees meeting that criterion would receive a risk multiplier of 1.0. Whole loans and guarantees with an original loan balance greater than $10 million would receive a risk multiplier less than 1.0, and whole loans and guarantees with an original loan balance less than $5 million would receive a risk multiplier greater than 1.0.
- *Special products.* The final risk factor in the multifamily risk multiplier table captures risks associated with certain special products. The special products represented in the table contain risks unique to each product, and, while not exhaustive, were selected for their importance based on FHFA staff analysis and expertise and pursuant to discussions with the Enterprises and their collective multifamily business experiences. The special products, discussed individually below, are government subsidized, student housing, rehab/value-add/lease-up, and supplemental.

In the context of the proposed rule, multifamily whole loans and guarantees that are government-subsidized have financing that includes HUD or FHA subsidies. These subsidies could have value to an investor or to a renter, depending on the specific HUD or FHA program used, through their effect on the loan balance or on any tax credits related to the operation of the property supporting the loan. The benefits of these subsidies to investors and/or renters generally lead to property incomes that are less volatile than incomes associated with otherwise comparable whole loans and guarantees. Less volatile income broadly translates to lower risk, and as a result, government-subsidized whole loans and guarantees would be assigned a risk multiplier lower than 1.0.

Student housing loans provide financing for the operation of apartment buildings for college students. The rental periods for units in these properties often correspond with the institution's academic calendar, so the properties have a high annual turnover of occupants. Student renters, by and large, are not as careful with the use and maintenance of the rental units as more mature households. As a result, apartment buildings focusing on student housing customarily have more volatile occupancy and less predictable maintenance expenses. In the proposed rule, this would imply higher risk, which would lead to a risk multiplier greater than 1.0 for student housing whole loans and guarantees.

The third type of special product in the risk multiplier table would include loans issued to finance rehab/value-add/lease-up projects. In the context of the proposed rule, rehab and value-add projects are different types of renovations, where a rehab project is a like-for-like renovation and a value-add project is one that increases a property's value by adding a new feature to an existing property or converts one component of a property into a more marketable feature, such as converting unused storage units into a fitness center. A lease-up property is one that is recently constructed and still in the process of securing tenants for occupancy. Recently built properties, and those subject to improvements, typically require more intense marketing efforts in the early stages of property operation. It often takes longer for these properties to reach and stabilize at reasonable occupancy levels. In the proposed rule, this would elevate the property's risk, which would lead to a risk multiplier greater than 1.0 for whole loans and guarantees backing these properties.

Finally, supplemental loans, in the context of the proposed rule, are multifamily loans issued to a borrower for a property for which the borrower has previously received a loan. There can be more than one supplemental loan. These loans, by definition, increase loan balances, which would lead to higher LTVs and could lead to lower DSCRs, which could lead to higher risk. Therefore, the proposed rule would require the Enterprises to account for this potentially higher risk by recalculating DSCRs and LTVs for the original and supplemental loans using combined loan balances and income/payment information, and calculating the capital requirement for a supplemental loan as the marginal increase in total capital due to the addition of the supplemental loan. In practice, however, supplemental loans do not exist in a vacuum and the capital calculation for supplemental loans could be slightly more complicated than just described. For example, a higher loan balance due to a supplemental loan could push the total loan balance into a loan size bucket with a size multiplier smaller than it had before the supplemental was added, which could lower the overall credit risk capital requirement for the group of loans as a whole.

Multifamily Risk Multiplier Floor

In the proposed rule, multifamily risk multipliers would adjust base credit risk capital requirements in a multiplicative manner. As a result, combinations of overlapping characteristics could potentially result in an extremely low risk assessment of certain multifamily whole loans and guarantees, which would arguably undermine the conservative approach to capital requirements FHFA aims to take in the proposed rule. Thus, in the proposed rule, the Enterprises would be required to impose a floor of 0.5 to any combined multifamily risk multiplier calculation. This floor would ensure that combinations of overlapping characteristics would not result in potentially dangerous risk assessments, which is important since the proposed multipliers themselves are designed to represent the average behavior of loans with the associated multiplier characteristics.

Question 15: FHFA is soliciting comments on the proposed framework for calculating credit risk capital requirements for multifamily whole loans and guarantees, including comments on the loan segments, base grids, and risk multipliers. What modifications should FHFA consider and why?

Question 16: FHFA is soliciting comments on the proposed multifamily size multiplier and how it is applied to a loan's entire balance, rather than marginally to a portion of a loan that exceeds a certain size threshold. What modifications to the multifamily size multiplier should FHFA consider and why?

Question 17: FHFA is soliciting comments on the proposed multifamily IO multiplier, and how it is applied to full-IO loans with no amortization term and IO loans that have seasoned beyond the IO period. What modifications to the proposed multifamily IO multiplier should FHFA consider and why?

Question 18: FHFA is soliciting comments on the proposed risk multiplier for government-subsidized multifamily whole loans, and how the proposed multiplier would be applied to all such multifamily whole loans. What modifications to the proposed multiplier for government-subsidized multifamily whole loans should FHFA consider and why?

Enterprise- and Ginnie Mae-Guaranteed Multifamily Mortgage-Backed Securities

There is no credit risk capital requirement in the proposed rule for multifamily MBS held in portfolio that were issued and guaranteed by an Enterprise or Ginnie Mae or are collateralized by Enterprise or Ginnie Mae multifamily whole loans or securities. Ginnie Mae securities are backed by the U.S. government and therefore do not have credit risk. For MBS issued by an Enterprise and later purchased by the same Enterprise for its portfolio, the credit risk is already reflected in the credit risk capital requirement on the underlying multifamily whole loans and guarantees (Section II.C.7.a). For MBS held by an Enterprise that were issued by the other Enterprise, there is counterparty risk. However, these holdings are typically small and, for reasons of simplicity, the proposed rule does not include a capital requirement for this exposure.

Question 19: Should multifamily MBS held by an Enterprise that were issued by the other Enterprise be subject to a counterparty haircut to reflect counterparty risk?

b. Credit Risk Transfer

This section corresponds to Proposed Rule §§ 1240.37 through 1240.38.

The Enterprises often seek to reduce the credit risk on their multifamily guarantee books of business by transferring and sharing risk through multifamily Credit Risk Transfers (CRTs). In the proposed rule, the Enterprises would be able to reduce their multifamily credit risk capital requirements by engaging in CRTs. In the context of the proposed rule, multifamily capital relief would be the reduction in required credit risk capital afforded to the Enterprises from transferring all or part of a credit risk exposure using a multifamily CRT transaction. To calculate capital relief, the proposed rule would require the Enterprises to use a formulaic approach that accounts for counterparty credit risk on each CRT.

To date, the Enterprises have generally utilized two broad types of CRTs for their multifamily books of business: Loss sharing and securitizations. Within these broad types, CRT transactions can have unique structures. The proposed approach is general enough to accommodate the variable nature of CRTs.

The first type of multifamily CRT transaction used by the Enterprises utilizes a loss sharing structure. In this type of CRT, which can be regarded as a front-end risk transfer with a vertical tranche, an Enterprise enters into a loss sharing agreement with a lender before the lender delivers the loan to the Enterprise. The Enterprise and lender share future losses according to a specified arrangement, commonly from the first dollar of loss, and in exchange the lender is compensated for the risk. For loss sharing CRT transactions, the proposed capital relief would be a proportional share of the gross credit risk capital requirements implied by the underlying multifamily whole loans and guarantees. However, because these transactions are not necessarily fully collateralized, loss sharing CRTs generally expose the Enterprises to counterparty credit risk. Therefore, the proposed rule would reduce capital relief to account for counterparty credit risk.

The second type of multifamily CRT transaction used by the Enterprises utilizes a multiclass securitization structure. In this type of CRT, an Enterprise sells a pool of loans to a trust that securitizes cash flows from the pool into several tranches of bonds. The subordinated bonds, also called mezzanine and first-loss bonds, are sold to market participants. These subordinated bonds provide credit protection for the senior bond, which is the only tranche that is credit-guaranteed by the Enterprises. For securitization CRT transactions, the proposed rule would require that the Enterprises calculate capital relief using a step-by-step approach. To identify capital relief, the proposed approach would combine credit risk capital and expected losses on the underlying whole loans and guarantees, tranche structure, and ownership.

Multifamily Credit Risk Transfer Models

Under the loss sharing and securitization umbrellas, the Enterprises have generally used two distinct models. Fannie Mae's multifamily business has relied heavily on its Delegated Underwriting and Servicing (DUS) program, a loss sharing CRT program. Freddie Mac's multifamily business, in turn, has focused almost exclusively on securitizations, predominately through its K-Deal program.

Under the DUS program, Fannie Mae typically transfers about one-third of the credit risk per deal under a pari-passu DUS arrangement. Fannie Mae retains the remaining two-thirds of the credit risk plus the counterparty credit risk associated with the DUS lender business relationship. To offset the counterparty credit risk, the program requires lenders to post a certain amount of collateral, primarily in the form of restricted liquidity, which Fannie Mae can access in the event of lender default. The collateral, which for the purposes of restricted liquidity is treated uniformly in the proposed rule, includes Treasury money market funds, Treasury securities, and Enterprise MBS, and is currently marked-to-market on a monthly basis by a custodian. Fannie Mae currently has agreements with 25 lenders to deliver multifamily loans that meet the criteria specified in the DUS underwriting and servicing guidelines.

Freddie Mac, on the other hand, typically transfers credit risk by tranching pools of multifamily loans and selling unguaranteed bonds (mezzanine and subordinate) to private market participants. These sales, which generally account for 10 to 15 percent of the underlying loans, typically result in a transfer of more than 80 percent of the credit risk, and often result in a transfer of close to 100 percent of the credit risk. Freddie Mac, however, does assume credit and market risk during the period between loan acquisition and securitization. In addition, after securitization, Freddie Mac retains a portion of the credit risk through ownership and/or guarantee of senior K-Deal tranches.

Despite these differences in the Enterprises' multifamily business models, the proposed rule accommodates both Enterprises' lending practices.

Proposed Approach for Multifamily CRT Capital Relief

In general, the proposed approach would require four steps when calculating capital relief. In the first step, the Enterprises would distribute credit risk capital on the underlying whole loans and guarantees to the tranches of the CRT independent of tranche ownership, while controlling for expected losses. In practice, the Enterprises would allocate credit risk capital such that the riskiest, most junior tranches would be allocated capital before the most senior tranches.

In the second step, the Enterprises would calculate capital relief accounting for tranche ownership. The proposed approach would provide the Enterprises with capital relief from transferring all or part of a credit risk exposure. For each tranche or exposure, the Enterprises would identify the portion of the tranche owned by private investors or covered by a loss sharing agreement. Then, in general, the Enterprises would calculate the capital relief as the product of the credit risk capital allocated to the exposure and the portion of the tranche owned by private investors or covered by a loss sharing agreement.

However, this initial calculation of capital relief must be adjusted to account for counterparty credit risk because loss sharing agreements may be subject to counterparty credit risk. Capital relief afforded by credit risk transfers would be overstated absent such an adjustment.

In the third step, for loss sharing agreements, the Enterprises would apply haircuts to previously calculated capital relief to adjust for counterparty credit risk. In particular, the Enterprises would consider the credit worthiness of each counterparty when assessing the contribution of loss sharing arrangements such that the capital relief is lower for less credit worthy counterparties. At the same time, in the proposed approach, collateral posted by a counterparty would be considered when determining the counterparty credit risk, as posted collateral would at least partially offset the effect of the counterparty exposure.

Lastly, the Enterprises would calculate total capital relief by adding up capital relief for each tranche in the CRT.

The proposed approach would afford relatively higher levels of capital relief to the riskier, more junior tranches of a CRT that are the first to absorb unexpected losses, and relatively low levels of capital relief to the most senior tranches. The approach would also afford greater capital relief for transactions that provide coverage: (i) On a higher percentage of unexpected losses, (ii) for a longer period of time, and (iii) with lower levels of counterparty credit risk.

Loss Sharing Approach

The distinguishing feature of the loss sharing CRT approach is the addition of a counterparty. To calculate capital relief under the loss sharing approach, the proposed rule would require the Enterprises to conduct a counterparty risk analysis in which the Enterprises would calculate counterparty exposure as per the loss sharing agreement, consider applicable restricted liquidity rules, determine if the counterparty has posted collateral, and assess the uncollateralized exposure to apply a haircut.

In the proposed rule, the counterparty haircut would be calculated using a modified version of the Basel Advanced IRB approach that takes into account the creditworthiness of the counterparty. Echoing the single-family discussion from Section II.C.4.a of how counterparty risk is amplified due to the correlation between a counterparty's credit exposure and the Enterprises' credit exposure (concentration risk), the proposed rule would assign larger haircuts to multifamily counterparties with higher levels of concentration risk relative to diversified counterparties. The Enterprises would assess the level of multifamily mortgage risk concentration for each individual counterparty to determine whether the counterparty is well diversified or whether it has a high concentration risk, and counterparties with a lower concentration risk would be assigned a smaller counterparty haircut relative to counterparties with higher concentration risk. This difference is captured through the asset valuation correlation multiplier, AVCM. An AVCM of 1.75 would be assigned to counterparties with high concentration risk and an AVCM of 1.25 would be assigned to more well-diversified counterparties.

The proposed approach calculates the haircut by multiplying stress loss given default by stress probability of default and by a maturity adjustment for the asset. Along with the AVCM, other parameterization assumptions in the proposed rule include a stress LGD of 45 percent, a maturity adjustment calibrated to 5 years, a stringency level of 99.9 percent, and expected probabilities of default calculated using historical 1-year PD matrix for all financial institutions. The multifamily counterparty risk haircut multipliers are presented below in Table 29.

TABLE 29—MULTIFAMILY COUNTERPARTY RISK HAIRCUT MULTIPLIERS BY CONCENTRATION RISK

Counterparty rating	CP haircut for concentration risk: Not high (%)	CP haircut for concentration risk: High (%)
1	2.1	3.4
2	5.3	8.5
3	6.0	9.6
4	12.7	19.2
5	16.2	22.9
6	22.5	28.5
7	41.2	45.1
8	48.2	48.2

The Enterprises would select a counterparty haircut from Table 29 and would apply the haircut to the uncollateralized exposure in a CRT. Further, if in the case of lender failure an Enterprise has contractual control of the lender's guarantee fee revenue, then the uncollateralized exposure would also be adjusted for lender guarantee fee revenue associated with the multifamily loan guarantee fees. In this lender loss sharing case, lender revenue would generally reduce the Enterprises' required counterparty credit risk capital. In particular, under the DUS framework, Fannie Mae has contracted with lenders to service the loans while retaining control of the servicing rights.

Securitization Approach

To calculate capital relief under the securitization approach, the proposed rule would require the Enterprises to analyze the levels of subordination involved in the securitization structure, and identify the portion of the tranches owned by private investors or covered by a loss sharing agreement. The Enterprises would then apply risk transfer calculations that resemble those used for the single-family CRT transactions, with minor changes to some of the required parameters.

Other Multifamily CRT Considerations

The Enterprises may engage in other forms of CRT, which can be generally thought of as loss sharing with multiple tranches—vertical, horizontal, or both. These types of CRT could include back-end reinsurance coverage (*e.g.,* Fannie Mae's CIRT program), through which the Enterprises enter into an agreement with a third party (typically a lender) to cover first losses on a pool of loans up to a certain percentage. In the back-end reinsurance model, the Enterprises, as policy holders, typically retain some portion (or all) of the first loss on a pool of covered multifamily loans, and compensate the reinsurer directly. In this design, the Enterprises bear some counterparty credit risk. Accordingly, calculating capital relief for reinsurance CRT transactions in the proposed rule would require the Enterprises to determine the amount of transferrable capital and stress losses, allocate stress losses to each tranche in the deal, determine the losses owned by the reinsurers, and adjust the calculated capital relief for counterparty credit risk, including any reinsurer haircut or posted collateral. Under the top-loss approach, the Enterprises are responsible for losses after the counterparty pays the agreed top-loss coverage percentage. In this model, the Enterprises also bear counterparty risk, which requires an adjustment of the capital relief to account for counterparty credit risk.

In general, the Enterprises would calculate the multifamily CRT capital relief as the product of the credit risk capital allocated to the exposure and the portion of the tranche owned by private investors or covered by a loss sharing agreement. The Enterprise would then adjust capital relief for counterparty credit risk, if applicable. The proposed approach implies that the CRT provides loss coverage through the entire duration of the loans subject to risk transfer. This includes the period at which a balloon payment, if the loan involves one, is due. If multifamily CRT coverage expires before the underlying loans mature, then capital relief afforded by the multifamily CRT may be overstated absent such a loss timing adjustment. However, because multifamily loans typically include a balloon payment, it is assumed that CRT coverage includes all potential losses including those associated with the borrower's failure to make the balloon payment.

Seasoned CRT Capital Calculations

In the proposed rule, the Enterprises would need to recalculate post-deal CRT capital on seasoned multifamily CRT transactions.

Fannie Mae's current risk transfer method (the DUS program) largely involves proportional front-end loss-sharing. In the proposed rule, for each group of loans that have been acquired through a loss-sharing transaction, including Fannie Mae's DUS program, the Enterprises would recalculate capital relief to reflect changes in restricted liquidity and counterparty exposure.

The majority of Freddie Mac's current risk transfer method involves structured securitizations through the K-deal program. Prepayment penalty structures, including defeasance, that prevent unpaid balances from changing significantly are often part of multifamily structured securitizations. These situations limit the effect of updating and recalculating the post-deal CRT capital. Nevertheless, in anticipation of future growth in multifamily CRT activities, the proposed rule would establish guidelines for post-deal CRT capital reporting.

In the proposed rule, for each group of loans remaining in a securitization CRT transaction, including those in Freddie Mac's K-deals, the Enterprises would recalculate capital relief by aggregating the updated loan-level capital requirements for each pool to determine how much capital is effectively transferred through the CRT at the time of the update. For each deal, the Enterprises would be required to update asset fundamentals that may affect the amount of expected or unexpected losses associated with the deal, as well as any potential changes in the deal's loan balances as a result of voluntary or involuntary terminations, including prepayments within or outside any applicable prepayment penalty period. In addition, for each tranche, the Enterprises would be required to update which parties are responsible for changes in a given tranche's exposure. A deal may involve different forms of credit enhancements in addition to the typical senior-subordinated structure (*e.g.,* retention, insurance, re-insurance). This step would require the Enterprises to consider changes to risk exposure due to changes in expected or unexpected losses associated with the deal and any potential changes in UPB following voluntary or involuntary terminations, including prepayments within or outside any applicable prepayment penalty period.

Question 20: FHFA is soliciting comments on the proposed approaches for calculating multifamily CRT capital relief. What modifications should FHFA consider and why?

Question 21: Should the proposed multifamily CRT formulae differentiate the capital relief allowed in CRT transactions with low loan counts from that allowed in CRT transactions with high loan counts?

Question 22: FHFA is soliciting comments on multifamily counterparty haircuts. What modifications should FHFA consider and why?

Question 23: FHFA is soliciting comments on whether CRT loss timing should be accounted for in measuring CRT capital relief. What modifications should FHFA consider and why?

c. Market Risk

This section corresponds to Proposed Rule §§ 1240.39 through 1240.40.

Multifamily Whole Loans and Guarantees

Multifamily whole loans held in the Enterprises' portfolios have market risk stemming from changes in value due to movements in interest rates and credit spreads. As the Enterprises currently hedge interest rate risk closely at the portfolio level, the market risk capital requirements in the proposed rule would focus on spread risk.

The proposed rule would require the Enterprises to calculate market risk capital requirements on fixed- and adjustable-rate multifamily whole loans using a spread duration approach, which relies, in part, on the Enterprises' internal models.

For the spread duration approach in the proposed rule, the Enterprises would calculate market risk capital as the product of a spread shock and spread duration. The proposed rule would include a specified spread shock and require an Enterprise to use its internal models to estimate spread durations.

Capital results that rely on internal model calculations can be opaque and result in different capital requirements across Enterprises for the same or similar exposures. Hence, the proposed rule would partly rely on an Enterprise's internal models only when the market risk complexity is sufficiently high that using a single point estimate would inadequately represent the exposure's underlying multifamily market risk.

Notably, internal models used in the determination of multifamily market risk capital requirements would be subject to ongoing supervisory review. As an example, an Enterprise's model risk management is subject to FHFA's 2013–07 Advisory Bulletin.

The market risk capital requirement for the Enterprises' multifamily fixed- and adjustable-rate whole loans would be the product of a defined credit spread shock (15 bps) and the spread duration, calculated individually by the Enterprises using each Enterprise's internal models. For a given multifamily whole loan, the product of the spread shock and the spread duration would then be multiplied by the market value of the asset to compute the market risk capital requirement in dollars. The proposed 15 basis point spread duration assumes strong historical multifamily market performance, high multifamily whole loan liquidity, and low cash flow pricing sensitivity to changes in interest rate spreads.

Question 24: FHFA is soliciting comments on the proposed approach for calculating market risk capital requirements for multifamily whole loans. What modifications should FHFA consider and why?

Enterprise- and Ginnie Mae-Guaranteed Multifamily Mortgage-Backed Securities

Enterprise- and Ginnie Mae-guaranteed multifamily MBS held in the Enterprises' portfolios have market risk stemming from changes in value due to movements in interest rates and credit spreads. As discussed in Section II.C.6.c with regard to the market risk capital requirements for multifamily whole loans, the Enterprises currently hedge interest rate risk closely at the portfolio level, and therefore the market risk capital requirements in the proposed rule would focus on spread risk.

In the proposed rule, the market risk capital requirement for Enterprise- and Ginnie Mae-guaranteed multifamily MBS would be determined using a spread duration approach, which would rely, in part, on the Enterprises' internal models. For the spread duration approach in the proposed rule, the Enterprises would calculate market risk capital as the product of a spread shock and spread duration. The proposed rule would include a specific spread shock and require an Enterprise to use its internal models to estimate spread durations.

The use of internal models would allow the Enterprises to more frequently update spread durations to reflect market changes. However, capital results that rely on internal model calculations can be opaque and result in different capital requirements across Enterprises for the same or similar exposures. Hence, the proposed rule would partly rely on an Enterprise's internal models only when the market risk complexity is sufficiently high that using a single point estimate inadequately represents the exposure's underlying multifamily market risk.

Notably, internal models used in the determination of multifamily market risk capital requirements would be subject to ongoing supervisory review. As an example, an Enterprise's model risk management is subject to FHFA's 2013–07 Advisory Bulletin.

The market risk capital requirement for Enterprise- and Ginnie Mae-guaranteed multifamily MBS would be the product of a defined credit spread shock (100 bps) and the spread duration calculated individually by the Enterprises using each Enterprise's internal models. The proposed 100 basis point spread shock reflects a combination of the Enterprises' estimates, and is driven by the complexity of structured products relative to whole loans which could decrease liquidity and increase cash flow pricing sensitivity to changes in interest rate spreads.

Question 25: FHFA is soliciting comments on the proposed approach for calculating risk-based capital requirements for Enterprise and Ginnie Mae multifamily MBS. What modifications should FHFA consider and why?

d. Operational Risk

This section corresponds to Proposed Rule §§ 1240.41 through 1240.42.

As described in section II.C.2 above, the proposed rule would establish an operational risk capital requirement of 8 basis points for all assets. For multifamily whole loans and guarantees, and Enterprise and Ginnie Mae multifamily MBS, the operational risk capital requirement would be 8 basis points of the unpaid principal balance of assets with credit risk or 8 bps of the market value of assets with market risk.

e. Going-Concern Buffer

This section corresponds to Proposed Rule §§ 1240.43 through 1240.44.

As described in section II.C.3 above, the proposed rule would establish a going-concern buffer of 75 basis points for all assets. For multifamily whole loans and guarantees, and Enterprise and Ginnie Mae multifamily MBS, the going-concern buffer would be 75 basis points of the unpaid principal balance of assets with credit risk or 75 basis points of the market value of assets with market risk.

f. Impact

TABLE 30—FANNIE MAE AND FREDDIE MAC COMBINED ESTIMATED TOTAL RISK-BASED CAPITAL REQUIREMENTS FOR MULTIFAMILY WHOLE LOANS, GUARANTEES, AND RELATED SECURITIES AS OF SEPTEMBER 30, 2017

	Capital requirement		
	$billions	bps	Share (%)
Net Credit Risk	$16.5		
Credit Risk Transferred	(8.0)		
Post-CRT Net Credit Risk	8.5	171	61
Market Risk	1.3	25	9
Going-Concern Buffer	3.7	74	27
Operational Risk	0.4	8	3
Total Capital Requirement	13.9	278	100

TABLE 30—FANNIE MAE AND FREDDIE MAC COMBINED ESTIMATED TOTAL RISK-BASED CAPITAL REQUIREMENTS FOR MULTIFAMILY WHOLE LOANS, GUARANTEES, AND RELATED SECURITIES AS OF SEPTEMBER 30, 2017—Continued

	Capital requirement		
	$billions	bps	Share (%)
Total UPB, $billions	499.6		

TABLE 31—FANNIE MAE AND FREDDIE MAC COMBINED ESTIMATED CREDIT RISK CAPITAL REQUIREMENTS FOR MULTIFAMILY WHOLE LOANS AND GUARANTEES AS OF SEPTEMBER 30, 2017—BY LOAN CATEGORY *

	Capital requirement ($billions)	UPB ($billions)	Capital requirement (bps)
New Originations	$1.9	$42	449
Performing Seasoned Loans	14.6	449	325
Non-Performing Loans	0.0	1	511
Net Credit Risk	16.5	492	336
Credit Risk Transferred	(8.0)		
Post-CRT Net Credit Risk	8.5	492	174

* Excludes both Enterprises' retained portfolio holdings of MBS guaranteed by the other Enterprise, and Ginnie Mae MBS.

7. Commercial Mortgage-Backed Securities

This section corresponds to Proposed Rule § 1240.46.

Credit Risk and Market Risk

In the proposed rule, the capital requirement for multifamily commercial mortgage-backed securities (CMBS) held by the Enterprises that are not guaranteed by an Enterprise or by Ginnie Mae would be a single 200 basis point requirement that accounts for both credit and market risk. The 200 basis point requirement reflects a combination of the Enterprises' internal model estimates. FHFA chose this approach based on internal staff analysis and discussions with the Enterprises. FHFA believes this simple approach is justified given the small, and shrinking, non-Enterprise and non-Ginnie Mae CMBS portfolios held by the Enterprises.

Operational Risk

As described in section II.C.2 above, the proposed would require the Enterprises to hold an operational risk capital requirement of 8 bps for all assets. For multifamily CMBS held by the Enterprises that were not issued by the Enterprises or by Ginnie Mae, the operational risk capital requirement would be 8 bps of the securities' market value.

Going-Concern Buffer

As described in section II.C.3 above, the proposed rule uses a going-concern buffer of 75 bps for all assets. For multifamily CMBS held by the Enterprises that were not issued by the Enterprises or by Ginnie Mae, the going-concern buffer would be 75 bps of the securities' market value.

Impact

TABLE 32—FANNIE MAE AND FREDDIE MAC COMBINED ESTIMATED RISK-BASED CAPITAL REQUIREMENTS FOR COMMERCIAL MORTGAGE-BACKED SECURITIES AS OF SEPTEMBER 30, 2017

	Capital requirement		
	$billions	bps	Share (%)
Credit Risk and Market Risk	$0.013	197	71
Going-Concern Buffer	0.005	74	27
Operational Risk	0.001	8	3
Total Capital Requirement	0.018	279	100
Total UPB, $billions	0.656		

Question 26: FHFA is soliciting comments on the proposed approach for calculating risk-based capital requirements for CMBS. What modifications should FHFA consider and why?

8. Other Assets and Guarantees

This section corresponds to Proposed Rule § 1240.47.

This section describes the proposed rule for certain assets and guarantees that are not covered by the Enterprises' core business activities. This section also describes the proposed rule for new products that are not covered in the proposed rule.

For assets with credit risk exposure, the proposed rule defines credit risk capital requirements. The proposed rule allows the Enterprises to use internal methodologies to calculate market risk capital requirements for other assets and guarantees.

Deferred Tax Assets

The proposed rule would establish a risk-based capital requirement for deferred tax assets (DTAs) that would offset the DTAs included in core capital in a manner generally consistent to the Basel III treatment of DTAs. DTAs are recognized based on the expected future tax consequences related to existing temporary differences between the financial reporting and tax reporting of existing assets and liabilities given established tax rates. In general, DTAs are considered a component of capital because these assets are capable of absorbing and offsetting losses through the reduction to taxes. However, DTAs may provide minimal to no loss-absorbing capability during a period of stress as recoverability (via taxable income) may become uncertain.

In 2008, during the financial crisis, both Enterprises recognized a valuation allowance to reduce their DTAs to amounts that were more likely than not to be realized based on the facts that existed at the time and estimated future taxable income. A valuation allowance on DTAs is typically recognized when all or a portion of DTAs is unlikely to be realized considering projections of future taxable income. The recognition of the valuation allowances on DTAs resulted in non-cash charges to income and reductions to the Enterprises' net DTA balances (included in the retained earnings components of capital). Fannie Mae established a partial valuation allowance on DTAs of $30.8 billion in 2008, which was a major contributor to the overall capital reduction of $66.5 billion at Fannie Mae in 2008. Similarly, Freddie Mac established a partial valuation allowance on DTAs of $22.4 billion in 2008, which was also a major contributor to the overall capital reduction of $71.4 billion at Freddie Mac in 2008.

Other financial regulators recognize the limited loss absorbing capability of DTAs, and therefore limit the amount of DTAs that may be included in Common Equity Tier 1 (CET1) capital. Under Basel III guidance, certain DTAs are excluded from CET1, while other DTAs are included in CET1 capital up to a cap of 10 percent of CET1 capital. Most other DTAs are included in risk-weighted assets.

Given the Enterprises' experiences with DTAs during the financial crisis, FHFA would like to limit the amount of DTAs counted as capital, similar to the limitations of the other financial regulators. However, FHFA does not have the authority to change the statutory definition of core capital for the Enterprises. The proposed rule would instead adopt a modified version of the Basel III treatment whereby DTA amounts that would be deducted from CET1 under Basel are included in the risk-based capital requirement. The result of this modification would be to neutralize the impact of DTAs on Enterprise capital to the same degree that the Basel framework limits the amount of DTAs included in CET1. Similarly, DTA amounts included in risk weighted assets under Basel would also be included in the risk-based capital requirement. Specifically, the risk-based capital requirement for DTAs would be the sum of:

- 100 percent of DTAs that arise from net operating losses and tax credit carryforwards, net of any related valuation allowances and net of deferred tax liabilities (DTLs);
- 100 percent of DTAs arising from temporary differences that could not be realized through net operating loss carrybacks, net of related valuation allowances and net of DTLs that exceed 10 percent of adjusted core capital; [41]
- 20 percent (8 percent × 250 percent) of DTAs arising from temporary differences that could not be realized through net operating loss carrybacks, net of related valuation allowances and net of DTLs that do not exceed 10 percent of adjusted core capital; and
- 8 percent of DTAs arising from temporary differences that could be realized through net operating loss carrybacks, net of related valuation allowances and net of DTLs.

The capital requirement for DTAs is highly sensitive to the amount of core capital held by an Enterprise. While the Enterprises currently have negative core capital, Table 33 below shows the impact of the proposed DTA treatment for the third and fourth quarters of 2017, assuming the Enterprises held core capital equal to the risk-based capital requirement (before DTAs), in order to show the DTA impact on a post-conservatorship basis. The fourth quarter impact is significantly lower due to the reduction in DTAs because of the Tax Cuts and Jobs Act of 2017.

TABLE 33—FANNIE MAE AND FREDDIE MAC ESTIMATED RISK-BASED CAPITAL REQUIREMENTS FOR DEFERRED TAX ASSETS ASSUMING CORE CAPITAL EQUAL TO RISK-BASED CAPITAL REQUIREMENT *

	As of September 30, 2017 (in $billions)			As of December 31, 2017 (in $billions)		
	Fannie Mae	Freddie Mac	Total	Fannie Mae	Freddie Mac	Total
Category 1	$2.5	$1.4	$3.9	$2.5		$2.5
Category 2	15.3	4.0	19.3	5.6		6.6
Category 3	1.9	1.2	3.0	1.8	$0.9	1.8
Category 4	0.3	0.3	0.5		0.3	0.3
Total Capital Requirement	19.9	6.8	26.8	10.0	1.2	11.2

* The DTA capital requirement is a function of Core Capital. Both Enterprises have negative Core Capital as of September 30, 2017 and December 31, 2017. In order to calculate the DTA capital requirement, we assume Core Capital is equal to the Risk-Based Capital Requirement without consideration of the DTA capital requirement.

Category 1: 100 percent of DTAs arising from net operating losses and tax credit carryforwards, net of any related valuation allowances and net of DTLs.

Category 2: 100 percent of DTAs arising from temporary differences that could not be realized through net operating loss carry backs, net of related valuation allowances and net of DTLs that exceed 10 percent of adjusted core capital. Adjusted core capital is core capital, per the statute, less DTAs that arise from net operating losses and tax credit carryforwards, net of any related valuation allowances and net of deferred tax liabilities.

Category 3: 20 percent of DTAs arising from temporary differences that could not be realized through net operating loss carrybacks, net of related valuation allowances and net of DTLs that do not exceed 10 percent of adjusted core capital.

Category 4: 8 percent of DTAs arising from temporary differences that could be realized through net operating loss carrybacks, net of related valuation allowances and net of DTLs.

[41] Adjusted core capital is core capital, per the statute, less DTAs that arise from net operating losses and tax credit carryforwards, net of any related valuation allowances and net of deferred tax liabilities.

Table 34 shows the impact of the proposed DTA treatment with the Enterprises' actual negative core capital in the third and fourth quarters of 2017.

TABLE 34—FANNIE MAE AND FREDDIE MAC ESTIMATED RISK-BASED CAPITAL REQUIREMENTS FOR DEFERRED TAX ASSETS ASSUMING CORE CAPITAL AS OF SEPTEMBER 30, 2017

	As of September 30, 2017 (in $billions)			As of December 31, 2017 (in $billions)		
	Fannie Mae	Freddie Mac	Total	Fannie Mae	Freddie Mac	Total
Category 1	$2.5	$1.4	$3.9	$2.5		$2.5
Category 2	24.5	9.8	34.3	14.8	$4.7	19.6
Category 3						
Category 4	0.3	0.3	0.5		0.3	0.3
Total Capital Requirement	27.3	11.5	38.8	17.4	5.0	22.4

Municipal Debt

Municipal debt is debt securities issued by states, local governments, or state agencies such as state housing finance agencies. As municipal debt generally has minimal default risk, the proposed rule would assign a zero credit risk capital requirement to municipal debt. The proposed rule would assign a market risk capital requirement of 760 bps, an operational risk capital requirement of 8 bps, and a going-concern buffer of 75 bps to municipal debt. The 760 basis point market risk capital requirement reflects a combination of the Enterprises' internal model estimates.

The proposed rule would use the single point estimate approach to market risk for a number of reasons. Municipal debt is a shrinking component of the Enterprises' portfolios. A more complicated approach would not be warranted, as it would not result in a material change to the Enterprises' overall capital position. Municipal debt has a simple market risk profile due to the absence of a prepayment option. Additionally, the credit spread for municipal debt is stable across maturities. The single point estimate for market risk capital represents the average of estimates from the Enterprises.

Reverse Mortgages and Reverse Mortgage Securities

The proposed rule would not subject reverse mortgages and securities backed by reverse mortgages to a credit risk capital requirement due to Federal Housing Administration insurance on the mortgages. The proposed rule would assign a market risk capital requirement of 500 bps to reverse mortgages and 410 bps to reverse mortgage securities, an operational risk capital requirement of 8 bps to reverse mortgages and reverse mortgage securities, and a going-concern buffer of 75 bps to reverse mortgages and reverse mortgage securities. The 500 and 410 basis point market risk capital requirements reflect Fannie Mae's internal model estimates since Freddie Mac did not own reverse mortgages.

The rationale for applying the single point estimate approach to market risk for reverse mortgages and reverse mortgage securities is that (i) these assets are a shrinking component of the Enterprises' portfolios and (ii) these assets have low and stable market risk resulting from low prepayment sensitivity. In particular, for reverse mortgages, refinance is rare and not driven by changes in interest rates. As a result, market value on reverse mortgages and reverse mortgage securities is relatively insensitive to prepayment.

Cash and Cash Equivalents

Cash and cash equivalents are highly liquid investment securities that have a maturity at the date of acquisition of three months or less and are readily convertible to known amounts of cash. The proposed rule would assign a zero credit risk capital requirement and a zero market risk capital requirement to cash and cash equivalents as they are not subject to default and market risks. Further, cash and cash equivalents would receive a zero operational risk capital requirement and a zero going-concern buffer.

Single-Family Rentals

The proposed rule would include a credit risk capital requirement for single-family rentals. Single-family rentals are multiple income-producing single-family units owned by an investor for the purpose of renting them and deriving a profit from their operation. The concept of single-family rentals has been traditionally associated with individual-investor single-family units, which are usually covered under the single-family framework and include either single or two-to-four unit assets. However, the single-family rental market also includes investors that own portfolios of more than ten units, and sometimes up to thousands of units across different cities. The Enterprises have explored and have already executed deals on this type of assets.

Although this type of multi-unit ownership cannot be defined as a typical multifamily investment, the income-producing nature would allow the Enterprises to evaluate them as a traditional multifamily investment for the purpose of estimating capital. To do so would require the Enterprises to calculate a DSCR and LTV on the portfolio of single-family rentals, which is a relatively simple calculation once income and values for every property are available. The proposed rule would require the Enterprises to calculate DSCR and LTV in this manner for this type of single-family rental deals, and to subsequently calculate base credit risk capital requirements using the appropriate multifamily FRM or ARM base credit risk capital grid.

Impact

TABLE 35—FANNIE MAE AND FREDDIE MAC COMBINED ESTIMATED RISK-BASED CAPITAL REQUIREMENTS FOR OTHER ASSETS AS OF SEPTEMBER 30, 2017

	Capital requirement		
	$billions	bps	Share (%)
Credit Risk	$2.1	64	6
Market Risk	2.9	88	9
Going-Concern Buffer	1.2	36	4
Operational Risk	0.1	4	0
Other (DTA)	26.8	811	81
Total Capital Requirement	33.1	1,002	100
Total UPB, $billions	330.0		

Question 27: FHFA is soliciting comments on the proposed approaches for calculating risk-based capital requirements for other assets and guarantees. What modifications should FHFA consider and why?

9. Unassigned Activities

This section corresponds to Proposed Rule § 1240.48.

Given the continuing evolution and innovation in the financial markets, FHFA recognizes that the Enterprises could continue to develop and purchase new products and engage in other new activities.

The proposed rule would require an Enterprise to provide written notice of an Unassigned Activity, which includes any asset, guarantee, off-balance sheet guarantee, or activity for which the proposed rule does not have an explicit risk-based capital treatment. An Enterprise must provide a proposed capital treatment along with sufficient information about the Unassigned Activity for FHFA to understand the risks and benefits of the activity. The proposed rule would require FHFA to analyze the Unassigned Activity and to provide the Enterprise with written notice of the appropriate capital treatment. If FHFA does not provide the Enterprise with written notice of a treatment in time for the Enterprise to prepare its quarterly capital report, the proposed rule would require an Enterprise to use its proposed capital treatment to determine an interim capital requirement. FHFA will monitor the Enterprises' activities and when appropriate propose amendments to this regulation addressing the treatment of activities that do not have an explicit risk-based capital treatment.

Given the dynamics of the marketplace and the Enterprises' business, it is not possible to construct a regulation that specifies a detailed treatment for every new type of instrument or capture every new type of risk that might emerge from quarter to quarter. It will not always be possible for FHFA to analyze and determine an appropriate treatment for a new asset or activity in time for an Enterprise to file its capital report, either due to the timing of the notice from the Enterprise or due to the complexity of the new product or activity. The proposed rule strikes a balance between accuracy and timeliness by requiring FHFA to determine the appropriate long-term treatment of an Unassigned Activity, while allowing the Enterprises to use their internal models on an interim basis.

D. Minimum Leverage Capital Requirements

This section corresponds to Proposed Rule § 1240.50.

Overview

The proposed rule includes two alternative minimum leverage capital requirement proposals for public comment. Under the first approach, the Enterprises would be required to hold capital equal to 2.5 percent of total assets (as determined in accordance with GAAP) and off-balance sheet guarantees related to securitization activities, regardless of the risk characteristics of the assets and guarantees or how they are held on the Enterprises' balance sheets (the ''2.5 percent alternative''). Under the second approach, the Enterprises would be required to hold capital equal to 1.5 percent of trust assets and 4 percent of non-trust assets (the ''bifurcated alternative''), where trust assets are defined as Fannie Mae mortgage-backed securities or Freddie Mac participation certificates held by third parties and off-balance sheet guarantees related to securitization activities, and non-trust assets are defined as total assets as determined in accordance with GAAP plus off-balance sheet guarantees related to securitization activities minus trust assets. The Enterprises' retained portfolios would be included in non-trust assets.

The considerations for the two alternative approaches to the minimum leverage capital requirement in the proposed rule are discussed below, followed by a more detailed discussion of each alternative. FHFA seeks feedback from commenters on both alternatives to the minimum leverage capital requirement.

Considerations for Establishing an Updated Minimum Leverage Capital Requirement

Establishing an updated minimum leverage capital requirement is an important component of the proposed regulatory capital requirements for the Enterprises. While FHFA believes that the proposed risk-based capital requirements included in this rulemaking reflect a detailed and robust assessment of risk to Fannie Mae and Freddie Mac, FHFA also believes that it is appropriate and prudent to establish a backstop to guard against the potential that the risk-based requirements underestimate the risk of an Enterprises' assets. The Safety and Soundness Act authorizes FHFA to set a higher leverage ratio than the minimum required by the statute, and this proposed rule, under either of the proposed alternatives, would do so.

In considering both the need for and the structure of an updated minimum leverage capital requirement, FHFA has taken into consideration how to best set the minimum leverage requirement as a backstop to the proposed risk-based capital framework. These considerations include the model risk associated with any risk-based measure, the pro-cyclicality of using mark-to-market LTV ratios in the proposed risk-based capital requirement, the funding risks of the Enterprises' business, and the impact of having a leverage ratio serve as the binding capital constraint. Each of these considerations is discussed below.

First, because risk-based capital requirements are subject to a number of assumptions and can change over time, a minimum leverage requirement can serve as a backstop in the event that risk-based requirements become too low. As discussed earlier, risk-based capital frameworks depend on models and, thus, are subject to the risk that the applicable model will underestimate or fail to address a developing risk. In particular, new activities, given their lack of historical performance data, are subject to significant uncertainty. As a result, any models that assess new activities may under-predict risk.

Second, a leverage requirement can serve as a backstop because the proposed risk-based capital requirements are pro-cyclical, while a leverage requirement is risk-invariant. Because the proposed risk-based requirements use mark-to-market LTVs for loans held or guaranteed by the Enterprises in determining capital requirements, as home prices appreciate and LTVs consequently fall, the Enterprises would be allowed to release capital. In this context, a minimum leverage capital requirement could mitigate the amount of capital released as risk-based capital levels fell below the applicable leverage requirement. The housing market can be highly cyclical and downturns are often preceded by rapid and unsustainable home price appreciation, resulting in the potential for the Enterprises to release capital ahead of a downturn when their access to the capital markets may be constrained.

In addition to the two minimum capital requirement alternatives included in this proposed rule, FHFA also has the authority to temporarily increase the Enterprises' leverage requirements through order or regulation to address pro-cyclical or other concerns about the Enterprises' capital levels. It is also important to note that, separate from the leverage requirement proposals discussed in this section, FHFA's authority to address pro-cyclicality concerns also includes tools on the risk-based capital requirements proposed in this rule. Specifically, as is discussed in section II.F, FHFA could make upward adjustments by regulation or order to the risk-based capital requirements under the provisions of the Safety and Soundness Act to take into account changing economic conditions, such as rising house prices and asset levels, and to adjust the risk-based capital requirements for specified products or activities.

Third, ensuring a sufficient minimum leverage capital requirement could also address the funding risks of the Enterprises' business activities. Both in the single-family and multifamily mortgage-backed security guarantee business lines, investors provide the Enterprises a stable source of funding that is match-funded with the mortgage assets that Fannie Mae and Freddie Mac purchase and hold in trust accounts. While these mortgage assets are reflected on the balance sheets of the Enterprises and represent the vast majority of their assets, the funding for these assets has already been provided and cannot be withdrawn during times of market stress.

As discussed previously, this stable funding for trust assets is in contrast to the banking deposits and short-term debt that banks rely on, which could become unavailable during a stress event and force a rapid and disorderly sale of assets into a declining market. While the securitization process does not transfer credit risk from the Enterprises, Fannie Mae and Freddie Mac also currently engage in significant credit risk transfer transactions that transfer a substantial portion of credit risk to private investors. As a result of both their securitization funding and credit risk transfer practices, the risk profile of Enterprise assets held in trusts differs markedly from mortgage assets held by depository institutions.

In contrast, however, the Enterprises' retained portfolio assets do pose funding risk to Fannie Mae and Freddie Mac. These retained portfolio assets must be funded in much the same way that bank assets are generally funded, through the issuance of debt. During conservatorship, Enterprise retained portfolio asset levels have declined considerably since the financial crisis, and the majority of the Enterprises' recent portfolio asset purchases support their core credit guarantee business, in particular the purchase of mortgages via their respective cash windows for aggregation purposes and the repurchase of mortgages out of securitizations for purposes of loss mitigation. The amount of Enterprise legacy assets held for investment has been reduced significantly during conservatorship. The reduction of the Enterprises' retained portfolios is required by limits imposed by the PSPAs and also furthers the conservatorship objectives of reforming the Enterprises' business models and reducing their volume of non-credit-guarantee-related investments and illiquid assets.

Fourth, in setting the minimum leverage capital requirement as a backstop capital measure, FHFA is also considering the potential adverse impact of having the leverage requirement exceed the risk-based requirement and become the binding capital constraint for the Enterprises. Because a leverage requirement is designed to be risk-insensitive, a binding leverage requirement could influence Enterprise decision-making in ways that encourage risk-taking. For instance, during periods of rising home prices, leverage requirements could exceed risk-based capital requirements and this could reduce an Enterprise's economic incentive to differentiate among the relative riskiness of different mortgages. A binding leverage requirement could also reduce an Enterprise's incentive to enter into credit risk transfer transactions.

The two alternatives included in this proposed rule offer different methodologies for establishing the Enterprises' minimum leverage capital requirement, and these methodologies reflect different considerations and trade-offs in weighing the factors discussed above. FHFA requests feedback on how best to balance the benefits of a leverage requirement that would serve as a backstop to the proposed risk-based capital requirements and therefore mitigate the risk that risk-based requirements would be insufficient, with the downsides of a leverage requirement that could influence how the Enterprises evaluate risk.

Asset Base

In the proposed rule, each minimum leverage capital alternative would be applied to total assets as determined in accordance with GAAP and off-balance sheet guarantees related to securitization activities. This would differ from the approach used by commercial banks that are subject to multiple leverage ratio requirements, some of which exclude off-balance sheet items from the asset base. For both the 2.5 percent alternative and the bifurcated alternative, FHFA believes it is appropriate, and generally consistent with the Safety and Soundness Act's capital requirements and the Supplementary Leverage Ratio for banks, to include off-balance sheet guarantees as part of the minimum leverage capital requirement to ensure that these risks are capitalized.

Consistent with the treatment in bank capital regulations and the Safety and Soundness Act, FHFA includes cash and cash equivalents in the asset base for both the 2.5 percent alternative and the bifurcated alternative for the minimum leverage capital requirement.

Under the bifurcated alternative, cash and cash equivalents would be treated as a non-trust asset and receive a 4 percent leverage requirement. Cash and cash equivalents are highly liquid investment securities that have a maturity at the date of acquisition of three months or less and are readily convertible to known amounts of cash. However, cash and cash equivalents remain subject to funding risk in much the same way as other Enterprise portfolio assets. While securitized mortgage assets benefit from matched funding in the Enterprises' single-family and multifamily business lines, funding for short-term, even highly liquid, assets, must be separately obtained. Therefore, FHFA is proposing to include cash and cash equivalents in the asset base for the minimum leverage capital requirement under both of the alternatives included in this proposed rulemaking.

The 2.5 Percent Minimum Leverage Capital Requirement Alternative

FHFA's first proposed alternative for a minimum leverage capital requirement would establish a single leverage requirement of 2.5 percent of total assets (as determined in accordance with GAAP) and off-balance sheet guarantees related to securitization activities, which is referred to here as the 2.5 percent alternative. This compares to the current minimum leverage capital requirement, set by statute, of 2.5 percent of retained portfolio assets, 0.45 percent of mortgage-backed securities outstanding to third parties, and 0.45 percent of other off-balance sheet obligations.

The 2.5 percent alternative would set the proposed threshold based on a number of analyses that are designed to supplement the total proposed risk-based capital framework in identifying the minimum capital that would be required to fund all of an Enterprise's assets through economic and credit cycles, and therefore minimize the probability that the Enterprises would again require public support. The proposed risk-based capital requirements are pro-cyclical in that the capital requirements decrease in favorable economic scenarios and increase in stress economic scenarios. In the absence of a credible minimum leverage capital requirement, an Enterprise could release or redeploy capital during favorable economic periods when the risk-based capital requirements are low, and could be unable to raise sufficient capital to meet increasing risk-based capital requirements in a subsequent stress scenario. In the 2.5 percent alternative, FHFA is proposing a minimum leverage capital requirement that would provide a substantial, risk-insensitive backstop to the total proposed risk-based capital requirements, including credit risk, market risk, operational risk, and the going-concern buffer.

Impact of the 2.5 Percent Minimum Leverage Capital Requirement Alternative

If the proposed 2.5 percent alternative had been in place at the end of the third quarter of 2017, the combined minimum leverage capital requirement would have been $139.5 billion for the Enterprises. Fannie Mae's requirement would have been $83.8 billion based on total ending assets and guarantees of $3.4 trillion, and Freddie Mac's requirement would have been $55.6 billion based on total ending assets and guarantees of $2.2 trillion. Similarly, if the proposed risk-based capital requirements had been in place, Fannie Mae's risk-based capital requirement would have been $115 billion or 3.4 percent, including the going-concern buffer of 75 bps. Similarly, Freddie Mac's risk-based capital requirement would have been $66 billion or 3.0 percent, including the going-concern buffer of 75 bps. Therefore, in considering the proposed risk-based capital requirements, the 2.5 percent minimum leverage capital requirement alternative would represent a backstop to the Enterprises' total proposed risk-based capital requirement including a going-concern buffer.

If the capital requirements in the proposed rule were implemented today, both Enterprises' risk-based capital requirements would, by significant margins, be the binding constraint regardless of which proposed leverage requirement alternative was in place. However, should home prices continue to increase and benign unemployment trends continue, as has occurred over the past several years, and should the credit quality of the Enterprises' new acquisitions continue to remain at historically high levels, FHFA expects that the 2.5 percent alternative would become the binding capital constraint for one or both Enterprises in 2018 or 2019.

Methodology for Developing the 2.5 Percent Minimum Leverage Capital Requirement Alternative

FHFA conducted five analyses that together support a risk-invariant minimum leverage capital requirement of 2.5 percent:

1. Adjusting the 4 percent bank leverage ratio for the relative risk of the Enterprises' business;
2. Determining the capital threshold for bank downgrades and adjusting the threshold for the relative risk of the Enterprises' business;
3. Determining the capital threshold for bank failures and adjusting the threshold for the relative risk of the Enterprises' business;
4. Analyzing the lifetime credit losses on the Enterprises' December 2007 books of business, with adjustments for loans the Enterprises no longer acquire and for credit risk transfers; and
5. Analyzing the CCF risk-based capital requirement on the Enterprises' September 2017 books of business, with adjustments for loans the Enterprises no longer acquire and for credit risk transfers.

These analyses produced estimates for the minimum leverage capital requirement in the 2.2 to 2.8 percent range, and FHFA selected 2.5 percent as the midpoint of the estimates for this proposed leverage requirement alternative. The five analyses are described below.

Adjusting the 4 Percent Bank Leverage Ratio

In the first analysis, FHFA considered the requirements in place for commercial banks. Specifically, FHFA adjusted the commercial bank leverage ratio requirement to recognize the lower risk of the Enterprises' assets compared to risk of the average bank's assets, where risk is defined using Basel risk weights. This adjustment recognizes the Enterprises' concentration in residential mortgage assets, which under the Basel Accords are assigned a 50 percent risk weight.

Under the U.S. implementation of Basel III, U.S. financial regulators require that banks maintain a Tier 1 leverage ratio of 4 percent to be considered adequately capitalized. FHFA adjusted this ratio to take into account the Enterprises' lower risk-weighted asset density (risk-weighted assets divided by total assets) relative to the risk-weighted asset density of commercial banks.

Most of the Enterprises' assets are conforming residential mortgages, which have a 50 percent risk weight in the Basel standardized approach. In contrast, FHFA found that for the 34 bank holding companies subject to CCAR in 2017, the banks' assets had higher risk weights on average than the Enterprises' assets. FHFA calculated the average risk-weighted density as of the fourth quarter of 2016 for the 34 bank holding companies subject to CCAR. The analysis yielded an estimated overall risk-weighted asset density of 72 percent for the banks compared to 50 percent for the Enterprises. This suggests that the risk weighted asset density for the Enterprises' assets is about 69 percent (calculated as 50 percent divided by 72 percent) of the risk weighted asset density for the largest bank holding companies. Through this approach, FHFA estimated a minimum leverage capital requirement for the Enterprises of 2.8 percent (69 percent multiplied by 4 percent).

Determining the Capital Threshold for Bank Downgrades

In the second analysis, FHFA estimated a minimum leverage capital requirement from empirical analyses of bank credit rating downgrades. The Agency reviewed capital levels for banks that experienced downgrades in credit ratings. FHFA found that the number of credit rating downgrades declined markedly for banks with Tier 1 common equity capital levels in excess of 5.5 percent of risk-weighted assets. The credit downgrades reflected a lack of market confidence that the banks could survive as going concerns, despite the banks still having positive levels of capital.

The bank credit rating downgrade analysis was based on 72 banks that had both ratings from Standard & Poor's and total assets over $5 billion during a ten-year study period. The Agency found that banks with a risk-based capital ratio below 5.5 percent had a notable increase in the occurrence of a two-notch or three-or-more-notch rating downgrade within 4 quarters. For example, 53.0 percent of the banks with less than 4 percent risk-based capital experienced a two-notch credit rating downgrade and 37.0 percent experienced a three-or-more-notch downgrade. High rates of credit rating downgrades were also observed for banks with risk-based capital ratios between 4.0 percent and 5.5 percent.[42] Banks with at least 5.5 percent risk-based capital performed substantially better, and had a two-notch downgrade rate of between 7.0 percent and 19.0 percent depending on the risk-based capital ratio group (*e.g.,* 5.5 percent–6.0 percent, 6.0–6.5 percent, etc.), and a three-or-more-notch downgrade rate of between 4.0 percent to 10.0 percent depending on the risk-based capital group.

It was clear from the analysis of credit rating downgrades that considerably better outcomes for depository institutions were associated with a risk-based capital ratio above 5.5 percent. A 50 percent average risk weight for Enterprise assets as applied in the previous analysis of bank leverage ratios corresponds to a minimum leverage capital requirement of 2.8 percent for the Enterprises.

Determining the Capital Threshold for Bank Failures

In the third analysis, FHFA estimated a minimum leverage capital requirement from empirical analyses of bank failures in a manner similar to the analysis for credit rating downgrades. The Agency reviewed capital levels for banks that experienced failures. FHFA found that the number of bank failures declined markedly for banks with Tier 1 common equity capital levels in excess of 5.5 percent of risk-weighted assets.

FHFA's bank failure analysis was based on 122 bank holding companies with assets of over $5 billion each. The Agency reviewed Tier 1 common equity capital ratios for each bank across a nearly 9-year study period (between the fourth quarter of 2004 and the first quarter of 2013). Banks with a risk-based capital ratio below 5.5 percent at the end of any quarter during the study period showed a marked increase in the rate of failure or government takeover. Almost half of the banks with a risk-based capital ratio below 4.0 percent failed. Less severe, but still high rates of failure were observed for banks with risk-based capital ratios between 4.0 percent and 5.5 percent.[43] Banks with at least 5.5 percent risk-based capital over the time horizon performed much better with a failure rate below 5.0 percent.

Similar to the analysis of credit rating downgrades, FHFA found that considerably better outcomes in the bank failure data were associated with a risk-based capital ratio above 5.5 percent. A 50 percent average risk weight for Enterprise assets as applied in the previous analysis of bank leverage ratios corresponds to a minimum leverage capital requirement of 2.8 percent for the Enterprises.

Analyzing the Lifetime Credit Losses on the Enterprises' December 2007 Books of Business

In the fourth analysis, and as discussed above in section II.B, FHFA estimated the Enterprises' lifetime credit losses for the December 31, 2007 book of business, excluding loans that the Enterprises would no longer acquire according to their current acquisition criteria. FHFA also adjusted (*i.e.,* reduced) the Enterprises' lifetime credit losses for the December 31, 2007 book of business to account for current business practices of credit risk transfer. To calculate an Enterprise leverage ratio, FHFA added estimated requirements for market risk, operational risk, and a going-concern buffer to the adjusted lifetime losses on the December 31, 2007 book. Based on this approach, FHFA estimated a minimum leverage capital requirement for the Enterprises of 2.2 percent consisting of adjusted lifetime credit losses of 1.2 percent, market risk capital requirements of 0.2 percent, operational risk capital requirements of 0.08 percent, and a going-concern buffer of 0.75 percent.

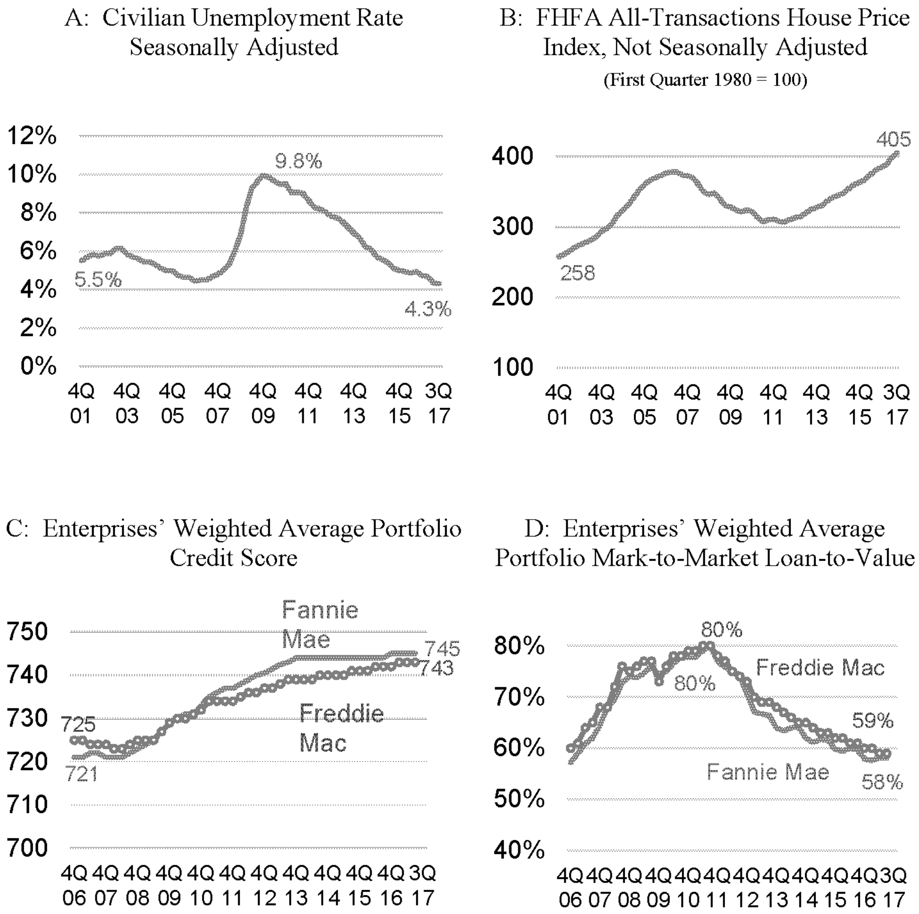
Analyzing the Risk-Based Capital Requirements on the Enterprises' June 2017 Books of Business

In the fifth and final analysis, and in order to establish a point of comparison using recent data, FHFA calculated risk-based capital requirements per the proposed rule for all loans held or guaranteed by the Enterprises as of June 30, 2017, excluding assets that the Enterprises no longer acquire. The level of the Enterprises' aggregate risk-based capital requirements as of June 30, 2017 provides a point-in-time benchmark for a minimum, non-risk-based capital backstop to the proposed risk-based capital requirements because of the recent long stretch of favorable economic conditions and several years of the Enterprises acquiring predominately high-credit quality loans. Specifically, as presented below in Figure 2, the FHFA U.S. Purchase-Only House Price Index reached an all-time high in the second quarter of 2017, the U.S. unemployment rate of 4.3% as of May 2017 was at its lowest level in 16 years, and as of June 2017, the average credit scores of the Enterprises' guarantee books of business were at all-time highs (approximately 745), and the average loan-to-value ratios (60 percent) were nearing lows last seen in 2006. The risk-based capital requirements as of June 30, 2017 could represent close to a cyclical low point for the proposed risk-based capital requirements, and would therefore be nearing the point at which a non-risk-based leverage requirement would provide a useful backstop to the risk-based requirements.

[42] The two- and three-or-more-notch downgrade rates were 45%/40% for 4–4.5% capital, 50%/39% for 4.5%–5% capital, and 37%/27% for 5–5.5% capital.

[43] The failure or takeover rate was 25% for 4–4.5% capital, 40% for 4.5%–5% capital, and 13% for 5–5.5% capital.

Figure 2: Market, Fannie Mae, and Freddie Mac Statistics



A: Civilian Unemployment Rate Seasonally Adjusted

B: FHFA All-Transactions House Price Index, Not Seasonally Adjusted (First Quarter 1980 = 100)

C: Enterprises' Weighted Average Portfolio Credit Score

D: Enterprises' Weighted Average Portfolio Mark-to-Market Loan-to-Value

Source for Panels A and B: Federal Reserve Economic Data (FRED), Federal Reserve Bank of St. Louis

The analysis described above resulted in risk-based capital requirements net of CRT and excluding loans the Enterprises no longer acquire of $61 billion for Fannie Mae, or 2.3 percent of UPB, and $39 billion for Freddie Mac, or 2.4 percent of UPB.

The estimates derived from the Enterprises' 2007 results, 2017 data, current acquisition criteria, and the proposed risk-based capital requirements complement the prior bank-based estimates and further suggest a minimum capital leverage requirement for the Enterprises in the range of 2 percent to 3 percent. FHFA considered factors that would indicate an appropriate requirement more towards either side of the range. Selecting a lower requirement would recognize that the Enterprises have largely passed market risk onto mortgage-backed security investors, while the banks continue to hold large amounts of whole loans on their balance sheet. A lower requirement would also recognize that the Enterprises have more stable funding sources than banking deposits, which are callable. Selecting a higher requirement would recognize that the Enterprises pose a greater level of systemic risk than many of the banks. The Enterprises have an asset base that is less diversified than the banks, which can increase loss severity during periods of stress. After considering the relevant factors, FHFA selected the 2.5 percent mid-point of the range for this proposed minimum leverage capital requirement alternative, which aligns with the estimates derived from the analyses previously cited in this subsection.

The 2.5 Percent Minimum Leverage Capital Requirement Alternative

As illustrated in Table 1 and Table 3, the statutory minimum capital requirement for the Enterprises was far too low during the recent financial crisis. In proposing the 2.5 percent alternative, FHFA considered the need for a leverage requirement to serve as a backstop to risk-based capital requirements, such as those in this proposed rulemaking, that would provide the Enterprises with sufficient capital to continue to operate effectively through all economic and credit cycles while simultaneously providing protection against the model risk inherent in risk-based capital standards, including the possibility that capital relief allocated to the Enterprises' risk transfer mechanisms is overestimated.

While model risk broadly covers errors and omissions in the design and implementation of models, one common manifestation of model risk is the high level of uncertainty around the performance of new products in a stress event given the lack of historical performance data on new products. This was made evident in the recent financial crisis when the risk-based capital rule then in place for the Enterprises did not adequately identify the risk in the Enterprises' assets, reinforcing the need for a leverage ratio to serve as a backstop for total risk-based capital requirements.

In addition, there are also non-economic risks that are typically not captured in a risk-based capital framework. For example, there is a mismatch with risk-based capital being measured on an economic basis, while available capital is measured on an accounting basis. Changes in accounting standards, regulatory standards, or tax law can cause accounting losses, which deplete available capital, potentially contributing to insolvency. The proposed risk-based capital requirements, which are based on estimates of unexpected economic losses, make no provision for non-economic losses.

While an excessively high minimum leverage capital requirement could have adverse consequences on the Enterprises' economic incentives to conduct certain business transactions, the absence of a credible minimum leverage capital requirement could lead an Enterprise to release or redeploy capital during favorable economic periods when the risk-based capital requirements are low and could result in the Enterprise being unable to raise sufficient capital to meet increasing risk-based capital requirements in a subsequent stress scenario. The economic environment in which this rule is being proposed could indicate the approach of such an economic scenario, and could indicate a cyclical low in risk-based capital requirements in light of the large increase in home prices in recent years and the steep drop in national unemployment, combined with the historically high credit quality of recent Enterprise acquisitions. The 2.5 percent alternative could avoid a situation in which declining Enterprise capital levels affect their ability to raise capital and provide the market with a certain level of stability. This alternative would indicate a plan to maintain capital and demonstrate a commitment to safety and soundness, and present a market-facing statement of a significant baseline level of capital in good or bad market conditions.

The Bifurcated Minimum Leverage Capital Requirement Alternative

The second minimum leverage capital requirement alternative included in this proposed rule, the bifurcated alternative, would establish different minimum leverage capital requirements for different Enterprise business segments, which would be applied to total assets (as determined in accordance with GAAP) and off-balance sheet guarantees related to securitization activities. Specifically, under the bifurcated alternative, the Enterprises would be required to hold 4 percent capital for non-trust assets and 1.5 percent capital for trust assets. This compares to the current minimum leverage capital requirement, set by statute, of 2.5 percent of retained portfolio assets, 0.45 percent of mortgage-backed securities outstanding to third parties, and 0.45 percent of other off-balance sheet obligations.

The bifurcated alternative proposes a minimum leverage capital requirement that would differentiate between the greater funding risks of the Enterprises' non-trust assets and the minimal funding risks of the Enterprises' trust assets, while also providing a backstop that is anchored to the proposed risk-based capital framework itself. The proposed approach of a minimum leverage capital requirement equal to 1.5 percent of trust assets would identify the risk-based capital requirements as the ''primary'' capital measure for the Enterprises because it was derived using empirical losses experienced during the recent financial crisis and reflects a refined approach to risk. This approach would result in a combined minimum leverage capital requirement that would more frequently fall below the risk-based capital requirements than the 2.5 percent alternative. As a result, as discussed below, the bifurcated alternative would be less likely to produce a binding leverage requirement that could negatively impact an Enterprises' marginal economic decision-making.

For the Enterprises' non-trust assets, the 4 percent requirement would be comparable to the 4 percent leverage requirement for commercial banks, because these assets face similar stability concerns that motivated the Basel Committee to adopt a leverage ratio on top of the Basel risk-based capital framework in the wake of the recent financial crisis.[44] For the Enterprises' trust assets, the 1.5 percent requirement is calibrated to be comparable to the proposed post-CRT credit risk capital requirements for the Enterprises' single-family and multifamily portfolios as of September 30, 2017. The intention of this 1.5 percent requirement, therefore, would be to provide a backstop to the proposed credit risk capital requirements to address the possibility of credit risk model mis-estimation and pro-cyclicality risks. The 1.5 percent requirement is also calibrated to be lower than the proposed aggregate risk-based capital requirements in order to avoid incentives that could reduce the amount of CRT transactions conducted by the Enterprises and other distortions in the Enterprises' marginal economic decision-making. Finally, the 1.5 percent requirement is calibrated to recognize that the risk composition of the Enterprises' business has fundamentally shifted through conservatorship and the requirements of the PSPAs that limit the Enterprises' retained portfolios to $250 billion.

Under the bifurcated alternative, as under the 2.5 percent alternative, FHFA would retain its authority to increase an Enterprise's leverage requirement by regulation or order if the Agency determined that capital levels had become too low—for example, because of pro-cyclical concerns during a housing bubble—and that it was appropriate to increase these levels. FHFA would also have the authority, as discussed below, to increase the risk-based capital requirements by regulation or order as determined to be appropriate, including as a result of pro-cyclical concerns.[45]

Using the Agency's authority in this way would provide FHFA with the ability to increase capital requirements in the event it was deemed necessary without the negative consequences of a minimum leverage ratio that was the binding constraint, thus discouraging CRT transactions in the interim period. One downside of this authority, however, is that this flexibility could make it more challenging for the Enterprises to make capital allocation decisions as FHFA's use of this authority may be difficult to anticipate.

Impact of the Bifurcated Minimum Leverage Capital Requirement Alternative

If the bifurcated minimum leverage capital requirement alternative had been in place at the end of the third quarter of 2017, the combined requirement for the Enterprises would have been $103 billion or 1.9 percent of assets. Of this, $72 billion would have been for trust assets and $32 billion would have been for non-trust assets. Fannie Mae's requirement would have been $60 billion based on total ending assets of $3.4 trillion, representing a 1.8 percent total minimum leverage requirement, with $44 billion of capital required for trust assets and $16 billion for non-trust assets. Freddie Mac's minimum leverage capital requirement would have been

[44] ''An underlying cause of the global financial crisis was the build-up of excessive on- and off-balance sheet leverage in the banking system. In many cases, banks built up excessive leverage while apparently maintaining strong risk-based capital ratios. At the height of the crisis, financial markets forced the banking sector to reduce its leverage in a manner that amplified downward pressures on asset prices. This deleveraging process exacerbated the feedback loop between losses, falling bank capital and shrinking credit availability.'' Basel Committee on Banking Supervision, ''Basel III leverage ratio framework and disclosure requirements'' (Jan. 2014), p. 1.

[45] This authority is discussed in greater detail in section II.F.

$43 billion based on total ending assets of $2.2 trillion representing a 1.9 percent total minimum leverage requirement, with $28 billion of capital required for trust assets and $16 billion for non-trust assets.

If implemented today, both Enterprises' risk-based capital requirements would, by significant margins, be the binding constraints. Fannie Mae's risk-based capital requirement would have been $115 billion or 3.4 percent as of September 30, 2017, while Freddie Mac's risk-based capital requirement would have been $66 billion or 3.0 percent as of September 30, 2017.

TABLE 36—BIFURCATED MINIMUM LEVERAGE CAPITAL REQUIREMENT ALTERNATIVE COMPARISON TO THE PROPOSED RISK-BASED CAPITAL REQUIREMENTS

	Fannie Mae	Freddie Mac	Enterprises combined
	Capital requirement ($billions)	Capital requirement ($billions)	Capital requirement ($billions)
Bifurcated Alternative	$60.4	$43.1	$103.5
Risk-Based Capital Requirement	$115.0	$65.9	$180.9
Bifurcated Alternative as % of Risk-based Capital Requirement	*53%*	*65%*	*57%*
Going-Concern Buffer	($24.0)	($15.9)	($39.9)
Risk-Based Capital Requirement Less Going-Concern Buffer	$91.0	$50.0	$141.0
Bifurcated Alternative as % of Risk-based Capital Requirement Less Going-Concern Buffer	*66%*	*86%*	*73%*
Net Credit Risk Capital Requirement *	$70.5	$41.5	$112.0
Bifurcated Alternative as % of Net Credit Risk Capital Requirement	*86%*	*104%*	*92%*
Credit Risk Transferred	($11.5)	($10.0)	($21.5)
Post-CRT Net Credit Risk Capital Requirement	$59.0	$31.5	$90.5
Bifurcated Alternative as % of Post-CRT Net Credit Risk Capital Requirement	*102%*	*137%*	*114%*

* Risk-based capital requirement less going-concern buffer, market risk, operational risk, and DTA capital requirements.

Methodology for Developing the Bifurcated Minimum Leverage Capital Requirement Alternative

The bifurcated alternative considers the relative funding risks of the Enterprises' trust assets compared to the Enterprises' non-trust assets, and includes different requirements for each of these categories. In developing the bifurcated alternative, FHFA considered how to design the leverage requirement so it would serve as a backstop for the risk-based capital requirements proposed in this rulemaking without adversely impacting the Enterprises' marginal economic decision-making. For the non-trust asset component of the bifurcated alternative, FHFA further considered its comparability to the bank leverage requirement. For the trust asset component of the bifurcated alternative, FHFA considered its comparability to the credit risk capital requirements in the proposed rule.

Funding and Other Risks of the Enterprises' Business Model

As discussed earlier, the Enterprises' assets can be distinguished between non-trust assets funded by debt and derivatives, which could be subject to deleveraging pressures, and MBS and participation certificate trust assets, which are not funded by the Enterprises or subject to such pressure, and consequently would have a lower leverage requirement under the bifurcated alternative. That distinction is also consistent with the distinction made in the Safety and Soundness Act minimum leverage ratios between on-balance sheet assets (under then-applicable accounting treatment) and off-balance sheet assets, with the latter having a much lower leverage ratio. While FHFA believes that both of the statutory leverage minimums are much too low to be safe and sound, the concept of different ratios for different aspects of the Enterprises' business could be implemented at higher levels as proposed under the bifurcated alternative. The relative funding and other risks of the Enterprises' trust assets and non-trust assets are described below.

Trust Assets

For the Enterprises' credit guarantee business, the bifurcated minimum leverage capital requirement alternative would require less capital for mortgage assets held in trust accounts than for non-trust assets (including those held in the retained portfolio). This lower level reflects that both Fannie Mae and Freddie Mac purchase single-family and multifamily mortgages that they package into mortgage-backed securities and sell to investors, which substantially reduces the funding risk of purchasing these mortgage assets.

On the single-family side, the Enterprises operate nearly identical securitization models. Fannie Mae and Freddie Mac sell MBS to investors through either of two methods—first, where lenders provide loans to an Enterprise in exchange for mortgage-backed securities based on those same loans, or second where lenders sell loans to an Enterprise in exchange for cash. When purchasing loans through the second method, the Enterprise aggregates the loans, securitizes them, and then sells the resulting MBS to investors for cash. In both cases, the Enterprises guarantee the timely payment of principal and interest to MBS investors and charge a guarantee fee for doing so.

The single-family securitization process provides the Enterprises with a stable funding source that is match-funded with the mortgage assets they purchase. The securitizations are consolidated on the Enterprises' balance sheets, showing both the mortgage assets held in trust accounts as well as the payments owed to MBS investors. Investments in MBS cannot be withdrawn from existing securities during times of market stress, which differentiates them from the banking deposits and short-term debt relied upon by banks, which can leave banks in need of new funding at times when debt funding becomes harder and more expensive to obtain. In contrast, the Enterprises' stable funding reduces risk to the Enterprises during times of market stress and economic downturns.

In addition to transferring funding risk to investors, the Enterprises transfer other risks of single-family mortgages held in trust accounts in several ways. The securitization process itself results in transferring the interest rate and market risk of these mortgages to investors. In addition, because the securitization process does not transfer the credit risk of securitized single-family mortgages, the Enterprises have also developed credit risk transfer programs that transfer a substantial portion of the credit risk on these loans to private investors through separate CRT transactions. The credit risk of an individual loan is the same whether it is securitized or held as a whole loan in a retained portfolio, but the Enterprises' existing CRT programs currently focus on transferring credit risk on loans held in trust accounts.

The resulting risks the Enterprises must manage for single-family mortgage assets held in trust accounts differ substantially from the risks faced by the Enterprises and banks from the assets they hold in their retained portfolios—both when looking at the overall asset composition of banks and the relative risk of the mortgage assets held on bank balance sheets. Most of the Enterprises' assets are conforming residential mortgages, which have a 50 percent risk weight in the Basel standardized approach. When FHFA looked at the average risk weight for a group of large banks, as discussed earlier, it estimated an overall risk-weighted asset density of 72 percent for the banks compared to 50 percent for residential mortgages guaranteed by the Enterprises. In addition, banks hold a greater degree of risk for the whole residential mortgage loans on their balance sheets compared to Enterprise mortgage assets held in trust accounts. First, whole loans held on-balance sheet do not benefit from the match-funding securitization benefit of transferring interest rate and market risk to investors. Second, banks also do not have CRT programs comparable to the Enterprises to transfer the credit risk of these loans to other private actors.

With respect to the Enterprises' multifamily business lines, the Enterprises use different business models but both multifamily credit guarantee businesses involve securitizing the multifamily loans each company purchases and providing for credit risk sharing with the private sector. Fannie Mae primarily utilizes a loss-sharing model referred to as DUS (Delegated Underwriting and Servicing), and Freddie Mac predominately uses a structured mortgage-backed securities model referred to as K-deals.

Fannie Mae's DUS program delegates most underwriting of multifamily loans to a set of approved lenders. In general, the vast majority of multifamily loans purchased by Fannie Mae are individually securitized in a trust and sold to investors as MBS as opposed to held on Fannie Mae's balance sheet as whole loans. These lenders usually participate in loss-sharing agreements with Fannie Mae under which they agree to take on a pro rata share of losses. Nearly every multifamily loan purchased by Fannie Mae includes a loss-sharing agreement with the originating lender. The amount of loss borne by the lender varies based on their financial strength, but a majority of purchased loans include a significant portion of risk shared with the lender (between 25 and 33 percent of the unpaid principal balance). As with its single-family business line, Fannie Mae guarantees the timely payment of principal and interest on the multifamily MBS it issues.

Freddie Mac's principal multifamily model—referred to as K-deals—involves purchasing and aggregating multifamily loans and then securitizing those loans. Once the loans are aggregated, Freddie Mac sells a pool of them to a third party trust. The trust issues subordinated tranches of MBS, which are sold, without a guarantee, to investors. The subordinated tranches, in general, represent between 15 and 17 percent of underlying UPB of the mortgage pool and assume a first loss position in the securitization structure. The trust also issues senior tranches representing the balance of the mortgage pool, which are then purchased by Freddie Mac. Freddie Mac places the senior tranches of securities in a trust that issues pass-through certificates (K-certificates) that Freddie Mac guarantees and sells. This securitization structure transfers the vast majority of the underlying credit risk from these mortgages, as well as all the funding risk.

Despite the difference in executions, both Enterprises' multifamily models result in the same match-funding that exists for single-family securitizations, and, with the exception of Freddie Mac's K-deals, the senior tranches of which are reported as off-balance sheet guarantees, both the multifamily assets held in trust accounts and the liabilities owed to multifamily investors are reflected on the Enterprises' balance sheets. Like the Enterprises' single-family securitizations, the approach to securitizing and transferring credit risk on multifamily loans also distinguishes it from whole multifamily loans held on a bank's balance sheet.

Non-Trust Assets

The bifurcated minimum leverage capital requirement alternative would require more capital for the Enterprises' non-trust assets, including assets held in the Enterprises' retained portfolios, than for trust assets, which takes into consideration the higher risks the Enterprises must manage for these assets. Unlike their credit guarantee business, the Enterprises' retained portfolios expose the companies to leverage and funding risks for these assets, as well as interest rate, operational, and credit risk.

Prior to conservatorship, the Enterprises held large retained portfolios to generate investment returns. While in conservatorship, the Enterprises have substantially reduced their legacy asset levels but continue to hold assets in their retained portfolios for three purposes that support their credit guarantee business: (1) Purchasing loans to support single-family and multifamily loan aggregation for subsequent securitizations; (2) purchasing delinquent loans out of MBS and engaging in loss mitigation options with borrowers; and (3) supporting limited, approved affordable housing objectives where securitization is not yet a viable market option. Single-family loan aggregation may expose the Enterprises to credit, interest rate, and funding risk as Enterprises hold onto newly originated loans ahead of securitization. The Enterprises hold these loans on balance sheet for a limited period, generally no more than 90 days, in order to aggregate sufficient quantities before securitization. In addition, Freddie Mac's multifamily business includes a similar aggregation function, whereas Fannie Mae's multifamily MBS are primarily single loan securities and, thus, do not require significant portfolio capacity for loan aggregation.

The Enterprises have reduced their retained portfolios by a combined 60 percent since entering conservatorship, which has reduced their overall risk exposure but has not eliminated risk for the remaining assets held in their retained portfolios. These assets include some pre-conservatorship assets held on their books, such as PLS, although the Enterprises have disposed of the majority of these assets.

Both companies issue unsecured debt to fund their retained portfolios holdings, and this debt exposes the companies to funding risk for retained portfolio assets, which mortgage assets held in trust accounts do not have. In times of market stress or economic downturns, as debt matures the

Enterprises would need to issue new, unsecured debt in order to fund and support assets already held on their retained portfolios. Because this funding could be more expensive or harder to obtain in a stressed market, this could result in increased risk to the Enterprise.

The nature of the Enterprises' retained portfolios makes these assets more comparable to the risks banks have from assets held on their balance sheets. In addition to having more funding risk, the Enterprises must also manage interest rate, operational, and credit risk for the mortgage assets held in their retained portfolio, which is like the risks managed by banks for whole mortgage loans.

By specifying a higher leverage requirement for non-trust assets under the bifurcated alternative, the minimum leverage capital requirement would significantly increase in the event the Enterprises' grew their retained portfolio in the future, as could occur during a downturn if the Enterprises purchased significant numbers of newly delinquent loans out of mortgage-backed securities in order to mitigate losses and facilitate loss mitigation options for borrowers. Conversely, under the bifurcated alternative, the minimum leverage capital requirement for the Enterprises could decline in the future as the Enterprises continue to dispose of legacy retained portfolio assets and to sell or re-securitize seriously delinquent or re-performing loans.

Minimum Leverage Requirement as a Backstop to the Proposed Risk-Based Capital Requirements

The bifurcated alternative seeks to calibrate the minimum leverage requirement so that it provides a backstop to the proposed risk-based capital requirements, but with less likelihood that it becomes the binding capital constraint for the Enterprises. The bifurcated alternative identifies the proposed risk-based capital requirements as the primary or benchmark capital measure for the Enterprises. Such an approach would rely on the view that the proposed risk-based capital requirements included in this rulemaking are a detailed and robust assessment of risk to Fannie Mae and Freddie Mac and that the purpose of the minimum leverage capital requirement would be to serve as a backstop to guard against the potential that the risk-based requirements would underestimate the risk of an Enterprises' assets, due to model risk or pro-cyclicality for example.

As detailed earlier, the risk-based capital portion of the proposed rule provides a granular assessment of credit risk specific to different mortgage loan categories, as well as market risk and operational risk components. The proposed risk-based requirements are, in part, modeled on empirical losses experienced by the Enterprises as a result of the recent severe financial crisis over the full life of the loans. The capital required for the Enterprises would be required and in place at the date of loan acquisition and would not take into account any revenues from guarantee fees that they will earn. On top of these risk-based components, the proposed rule includes a risk-insensitive going-concern buffer as part of the risk-based capital requirements to ensure that an Enterprise could continue to write new business for what is projected to be a year or two following a period of market stress or a severe economic downturn.

The leverage requirements under the proposed bifurcated alternative also take into consideration the potential impacts that a binding minimum leverage requirement could have on an Enterprise's economic incentives to conduct—or not conduct—certain business transactions. This impact on business transactions could be felt across an Enterprises' business, including which mortgage loans to purchase for securitization, whether to buy or sell particular assets for their retained portfolios, whether to engage in CRT transactions and which transactions to engage in, and what liquidity positions to hold for periods of market stress. The economic incentives created by a binding leverage ratio could increase the overall risk profile of an Enterprises' book of business relative to its current operations. As a result, while a binding minimum leverage requirement would result in higher Enterprise capital levels, such a requirement would not necessarily make an Enterprise more safe and sound.

More specifically, under a binding minimum leverage requirement, an Enterprise could have reduced economic incentives to differentiate among the relative riskiness of different mortgage loans purchased for securitization. For example, under a scenario where the total risk-based capital requirement was 2.5 percent and the minimum leverage requirement was 4 percent, an Enterprise would have an economic incentive to increase the risk-level of its aggregate loan purchases up to the 4 percent level since the Enterprise would be required to hold 4 percent capital regardless of the riskiness of its assets. This could encourage an Enterprise to purchase loans with multiple risk layers—such as loans with higher LTVs, adjustable rates, and investor owned properties—in order to earn enough of a return to be commensurate with the capital requirement. Conversely, under this hypothetical, an Enterprise would have a disincentive to purchase lower-risk loans—such as loans with lower LTVs and 15-year terms—because they would make it more difficult to earn a sufficient return relative to the binding capital requirement. Taken together, these economic incentives could lead an Enterprise to purchase more loans with multiple risk-layering features that could, in turn, result in a higher risk composition of assets. By contrast, under the proposed risk-based capital rule, whenever the Enterprise purchases or guarantees a riskier asset, its required capital would automatically increase. If the minimum leverage requirement were the binding capital constraint and did not distinguish between retained portfolio and trust assets, an Enterprise would also have an economic incentive to increase the risk of assets held or reduce holding of low-risk assets in their retained portfolio until the risk-based capital requirement increases to the level of the minimum leverage requirement.

A binding minimum leverage ratio could also have an impact on the Enterprises' incentives to conduct credit risk transfer transactions. In this proposed rule, an Enterprise would receive capital relief for CRT transactions under the risk-based capital framework but not the minimum leverage requirement. As a result, a minimum leverage ratio that is set too high could lead to a capital requirement that exceeds the post-CRT risk-based capital requirement. An example helps illustrate this dynamic. If an Enterprise transferred credit risk to private investors through fully-funded STACR or CAS transactions with no counterparty exposure, an Enterprise's pre-CRT risk-based capital requirement would be reduced to account for the credit risk transferred for these loans. For example, a pre-CRT risk-based requirement of 4.5 percent could be reduced to a post-CRT risk-based requirement of 2 percent. However, a minimum leverage requirement that is set at 4 percent would become the binding capital requirement, because it would not be reduced by the equivalent amount of credit risk transferred through CRT transactions.

Under this example, a minimum leverage requirement of 4 percent would likely result in an Enterprise declining to conduct these CRT transactions because the Enterprise would need to pay for credit risk protection twice—

once through the cost of holding more capital than required under the risk-based capital requirement and a second time through the cost of paying private investors for the credit risk protection provided through CRT transactions.

As illustrated by this example, it is important to consider how a minimum leverage requirement and the proposed risk-based capital requirements would interact with one another, and what the resulting effect would be on the Enterprises' incentives to conduct CRT transactions or other risk reducing transactions. As conservator of the Enterprises, FHFA has required Fannie Mae and Freddie Mac to develop CRT programs that transfer a meaningful amount of credit risk to private investors in an economically sensible manner. FHFA believes that these programs are an effective way to reduce risk to the Enterprises and, therefore, to taxpayers. Enterprise CRT transactions effectively transfer credit risk to the private sector, and, for many transactions, do so in a way that is fully funded up-front, without counterparty risk. In other CRT transactions, the Enterprises require that the transactions be partially collateralized to mitigate counterparty risk. If capital requirements caused the Enterprises to reduce the amount of CRT transactions they conducted, this could result in a greater concentration of credit risk with the Enterprises and could be counter to FHFA's overall objective of reducing credit risk to the Enterprises and taxpayers.

Proposed Leverage Requirements Under the Bifurcated Alternative

The total leverage requirement under the proposed bifurcated alternative would be the result of blending the 4 percent requirement for non-trust assets and the 1.5 percent requirement for trust assets. While the bifurcated alternative would provide an overall minimum leverage capital requirement that would almost certainly be less than the 2.5 percent alternative, it could also provide a backstop to guard against Enterprise capital becoming too low. The requirements included in the bifurcated alternative are intended to limit the instances in which the minimum leverage capital requirement would serve as the Enterprises' binding capital constraint and, as a result, limit the negative impacts of a binding leverage requirement.

The proposed leverage requirements under the bifurcated alternative would produce a total leverage requirement that is calibrated to provide a significant backstop to the post-CRT credit risk capital component of the proposed risk-based capital requirements for both single-family and multifamily whole loans and guarantees currently on the Enterprises' balance sheets. For Fannie Mae, the bifurcated alternative would produce a 1.8 percent minimum leverage requirement as of September 30, 2017. The total leverage requirement of 1.8 percent compares to a total risk-based capital requirement of 3.4 percent as currently calculated under the proposed rule, which includes credit risk, operational risk, market risk, and the going-concern buffer, and 2.7 percent excluding the going-concern buffer. In making a comparison specifically with the credit risk component of the proposed risk-based capital framework, the 1.8 percent total leverage requirement compares to a 1.8 percent post-CRT net credit risk capital requirement. As a result, the 1.8 percent leverage level would reach 100 percent of Fannie Mae's proposed post-CRT net credit risk capital requirement for the third quarter of 2017.

For Freddie Mac, the proposed leverage requirements under the bifurcated alternative would produce a 1.9 percent minimum leverage requirement as of September 30, 2017. The total leverage requirement of 1.9 percent compares to a total risk-based capital requirement of 3.0 percent as currently calculated under the proposed rule, which includes credit risk, operational risk, market risk, and the going-concern buffer, and 2.3 percent excluding the going-concern buffer. In making a comparison specifically with the credit risk component of the proposed risk-based capital framework, the 1.9 percent total leverage requirement compares to a 1.4 percent post-CRT net credit risk capital requirement. As a result, the 1.9 percent leverage level would reach 135 percent of Freddie Mac's proposed post-CRT net credit risk capital requirement for the third quarter of 2017.

Non-Trust Assets

As noted earlier, under the bifurcated alternative the proposed 4 percent leverage requirement for the Enterprises' non-trust assets, which include the retained portfolios, would be comparable to the leverage requirement for depository institutions. This approach would align the riskiest part of the Enterprises' business, the part that is most comparable with the funding risk of depository institutions, with the leverage requirement established by other federal financial regulators.[46]

Because cash and cash equivalents are components of the retained portfolio, the bifurcated alternative would include cash and cash equivalents in the asset base for the 4 percent minimum leverage capital requirement. While cash and cash equivalents are highly liquid investment securities, they remain subject to funding risk in much the same way as other Enterprise portfolio assets, although because of their liquidity deleveraging with respect to them would not create the same downward pressure on asset values as for other types of assets.

Trust Assets

The bifurcated alternative includes a 1.5 percent leverage requirement for trust assets.[47] This proposed requirement seeks to balance the objectives of providing a sufficient backstop to the risk-based capital requirements and avoiding negative economic incentives that could reduce the usage of CRT transactions or otherwise increase Enterprise risk levels.

The 1.5 percent requirement for trust assets under the proposed bifurcated alternative could provide a significant backstop when compared to the credit risk capital requirements for Enterprise trust assets under the proposed risk-based capital requirements. In this comparison, FHFA has defined trust assets to include new single-family acquisitions, performing single-family seasoned loans, and all multifamily loans held in trust accounts. Trust assets exclude re-performing single-family loans and non-performing single-family loans that are now held by the Enterprises in their retained portfolios, and these assets would have a 4 percent minimum leverage requirement under the bifurcated alternative.

For Fannie Mae, the proposed 1.5 percent leverage requirement for trust assets would compare to a 1.3 percent

[46] Federal financial regulators have established a 4 percent leverage ratio for depository institutions and the asset base does not include off-balance sheet assets. In addition, regulators have established a 3 percent supplemental leverage ratio that applies to designated depository institutions and the asset base includes off-balance sheet assets. Similarly, the enhanced supplemental leverage ratio is set at 5 percent and applies to an even narrower subset of depository institutions and the asset base also includes off-balance sheet assets.

[47] The bifurcated alternative would also assign the 1.5 percent minimum leverage ratio to assets categorized under accounting standards as off-balance sheet assets. Both Enterprises have limited legacy off-balance sheet assets. In addition, Freddie Mac's guaranteed senior tranches of its multifamily securities, most commonly through its K-deal securitizations, are the only off-balance sheet assets either Enterprise currently acquires. These guarantees do constitute credit risk that Freddie Mac assumes, although the deep subordination provided by the junior tranches that are not guaranteed and are sold to private investors provide significant credit protection to these guarantees.

post-CRT net credit risk capital requirement. As a result, the 1.5 percent leverage requirement would reach 115 percent of Fannie Mae's proposed post-CRT net credit risk capital requirement for all trust assets. For Freddie Mac, the proposed 1.5 percent leverage requirement for trust assets would compare to a 1.1 percent post-CRT net credit risk capital requirement. As a result, the 1.5 percent leverage requirement would reach 136 percent of Freddie Mac's proposed post-CRT net credit risk capital requirement for all trust assets as of the third quarter of 2017.

While this bifurcated minimum leverage capital requirement alternative could provide a significant backstop for the capital necessary to withstand credit losses in a severe stress scenario, the proposed risk-based capital requirements would in most circumstances remain the binding capital constraint for the Enterprises even after accounting for CRT. This is because the post-CRT net credit risk capital requirement is only one component of the total risk-based capital framework proposed in this rulemaking, which also has components for market risk, operational risk, and a going-concern buffer.

Considering the Enterprises' current use of CRT, a 1.5 percent minimum leverage requirement for trust assets could provide additional protection during a period of rapid appreciation in home prices beyond the protection provided by the proposed credit risk capital requirements, and could be a sufficient backstop for potential shortcomings of the proposed credit risk capital requirements such as mis-estimations of stress losses. Should FHFA determine that the leverage requirement is insufficient to address rapid and unsustainable home price appreciation, FHFA could also use its authority, described above, to adjust by order or regulation either the risk-based capital requirement, the leverage requirement, or both.

Question 28: Should FHFA consider additional capital buffers, such as buffers to address pro-cyclical risks, in addition to the leverage ratio and FHFA's existing authority to temporarily increase Enterprise leverage requirements and why?

Question 29: FHFA is soliciting comments on the advantages and disadvantages of setting a single minimum leverage capital requirement under the 2.5 percent alternative. FHFA is seeking views both on this general approach and the minimum requirements proposed in the 2.5 percent alternative. FHFA is requesting data and supplementary analysis that would support consideration of alternative requirements for a single minimum capital requirement.

Question 30: FHFA is soliciting comments on the advantages and disadvantages of the bifurcated alternative and establishing minimum leverage capital requirements of 1.5 percent for mortgage assets held in trusts and 4 percent for retained portfolio assets. FHFA is seeking views both on this general approach and the minimum requirements proposed in the bifurcated alternative. FHFA is requesting data and supplementary analysis that would support consideration of alternative approaches or requirements.

Question 31: FHFA is soliciting comments that provide feedback on the relative advantages and disadvantages of the 2.5 percent alternative and the bifurcated alternative.

Question 32: Instead of adopting the 2.5 percent alternative or bifurcated alternative as proposed, should FHFA, instead, adopt another approach to the minimum leverage capital requirement that provides a separate leverage requirement specifically for assets that are part of credit risk transfer transactions? If so, why? FHFA is requesting data and supplementary analysis that would support consideration of alternative measures.

Question 33: Given the high quality and short duration of cash and cash equivalent assets, should FHFA consider a lower and separate leverage ratio for these assets so as to not discourage the Enterprises from holding cash and cash equivalent assets to support liquidity? For the bifurcated alternative, should cash and cash equivalent assets be subject to the 1.5 percent leverage requirement rather than the 4 percent requirement? FHFA is requesting data and supplementary analysis that would support consideration of alternative measures.

Question 34: FHFA is soliciting comments on the advantages and disadvantages of including off-balance sheet exposures in the 2.5 percent leverage ratio alternative, and whether off-balance sheet assets should be included in the non-trust assets (which includes the retained portfolio) or trust assets component of the bifurcated alternative. FHFA is requesting data and supplementary analysis that would support alternative perspectives.

E. Definition of Capital

This section corresponds to Proposed Rule § 1240.1(a).

The Safety and Soundness Act includes definitions of core capital and total capital. FHFA does not have the authority to change those definitions in the proposed rule, in contrast to the banking regulators who have greater definitional flexibility under their statutes. Therefore, the proposed rule uses the statutory definitions of core capital and total capital for the Enterprises.

Using the statutory definitions, core capital means the sum of the following (as determined in accordance with GAAP): (i) The par or stated value of outstanding common stock; (ii) the par or stated value of outstanding perpetual, noncumulative preferred stock; (iii) paid-in capital; and (iv) retained earnings.

The statutory definition of core capital for the Enterprises does not reflect any specific considerations for deferred tax assets (DTAs). DTAs are recognized based on the expected future tax consequences related to existing temporary differences between the financial reporting and tax reporting of existing assets and liabilities given established tax rates. In general, DTAs are considered a component of capital because these assets are capable of absorbing and offsetting losses through the reduction to taxes. However, DTAs may provide minimal to no loss-absorbing capability during a period of stress as recoverability (via taxable income) may become uncertain.

In 2008, during the financial crisis, both Enterprises concluded that the realization of existing DTAs was uncertain based on estimated future taxable income. Accordingly, both Enterprises established partial valuation allowances on DTAs. A valuation allowance on DTAs is typically established when all or a portion of DTAs is unlikely to be realized considering projections of future taxable income, resulting in a non-cash charge to income and a reduction to the retained earnings component of capital. Fannie Mae established a partial valuation allowance on DTAs of $30.8 billion in 2008, which was a major contributor to the overall capital reduction of $66.5 billion at Fannie Mae in 2008. Similarly, Freddie Mac established a partial valuation allowance on DTAs of $22.4 billion in 2008, which was also a major contributor to the overall capital reduction of $71.4 billion at Freddie Mac in 2008.

Other financial regulators recognize the limited loss absorbing capability of DTAs, and therefore limit the amount of DTAs that may be included in CET1 capital. Under Basel III guidance, federally regulated bank holding companies are subject to threshold deductions, up to and including full deductions, associated with DTAs related to temporary timing differences.

Basel III capital rules also include accumulated other comprehensive income (AOCI) in the determination of regulatory Tier 1 capital. For the Enterprises, the statutory definition of core capital does not include AOCI. Generally, AOCI primarily consists of unrealized gains and losses on available-for-sale securities, which are measured at fair value on the Enterprises' consolidated balance sheets. Consequently, AOCI can be positive or negative depending on the prevailing market conditions for the Enterprises' available-for-sale securities. For example, at the end of 2008, AOCI at Fannie Mae and Freddie Mac was negative $7.7 billion and negative $26.4 billion, respectively. As a result, by excluding AOCI from core capital, an Enterprise may be adequately capitalized for regulatory purposes, but insolvent under GAAP.

Total capital, using the statutory definition, means the sum of the following: (1) Core capital of an Enterprise; (2) a general allowance for foreclosure losses, which (i) shall include an allowance for portfolio mortgage losses, non-reimbursable foreclosure costs on government claims, and an allowance for liabilities reflected on the balance sheet for the Enterprise for estimated foreclosure losses on mortgage-backed securities; and (ii) shall not include any reserves of the Enterprise made or held against specific assets; and (3) any other amounts from sources of funds available to absorb losses incurred by the Enterprise, that the Director by regulation determines are appropriate to include in determining total capital.

Question 35: FHFA is soliciting comments on the capital treatment of DTAs and AOCI. How should FHFA incorporate the potential impact of DTAs and AOCI, given that FHFA cannot change the definition of core capital as provided in the statute? What additional modifications to the proposed capital requirement for DTAs should FHFA consider, and why? What additional modifications to the proposed capital requirement for AOCI should FHFA consider, and why? Is AOCI a suitable other source of loss-absorbing capacity for purposes of the statutory definition of total capital?

Question 36: FHFA is soliciting comments on the capital treatment of outstanding perpetual, noncumulative preferred stock. Given that FHFA cannot change the definition of core capital as provided in the statute, what modifications should FHFA consider and why?

Question 37: Given that loss reserves are for expected losses and capital is for unexpected losses, FHFA is soliciting comments on the appropriateness of including loss reserves in the definition of total capital. Should loss reserves be added to the proposed risk-based capital requirements in order to offset their inclusion in total capital?

F. Temporary Adjustments to Minimum Leverage and Risk-Based Capital Requirements

FHFA has additional existing regulatory flexibility so that capital requirements can be adjusted by order to address periods of heightened risk. While the proposed risk-based and leverage capital requirements may be amended by subsequent regulation, revising them would generally require soliciting and incorporating public input and would likely be time-intensive. This process would make it difficult for the capital requirements to quickly address new developments and anticipate rapidly emerging risks. The current provisions authorizing FHFA to adjust both risk-based and minimum leverage capital requirements allow FHFA to respond more quickly to market and business developments and require greater retention of capital when circumstances warrant it. This additional flexibility also mitigates the pro-cyclicality of risk-based capital standards.

Risk-based capital requirements may fail to adequately capture the risks facing an institution. For example, any capital framework that depends on models to assign risk-weights will be subject to model estimation error risk. In addition, such an approach may not adequately account for the risk related to a new asset or product. As discussed earlier, new or previously unassigned activities would be given an interim risk-weighting under the proposed risk-based capital requirements. The lack of historical performance data for new products increases the risk that an interim risk-weight assessment may prove inadequate and that this risk would be compounded by growth of the new product.

Risk-based capital requirements are sensitive to changes in house prices because risk weights are tied to LTV ratios. During periods of rapid house price appreciation, risk-based capital requirements for the Enterprises will fall as LTVs fall. As the experience from the most recent financial crisis reflects, housing downturns are often preceded by rapid house price appreciation. This means that the risk-based capital requirements, considered in isolation, can be pro-cyclical and can lead to the shedding of loss-absorbing capital ahead of a period of sustained credit losses.

HERA anticipated the need for flexibility in developing capital standards and granted FHFA discretion to make capital adjustments for both risk-based capital requirements and leverage requirements in order to maintain the safety and soundness of the Enterprises. In 2011, FHFA promulgated regulations describing how FHFA could implement a temporary increase through order in the leverage requirements under HERA.[48] Under the regulation, FHFA may consider different factors in making a determination to increase minimum leverage capital requirements, including the value of Enterprise assets; the Enterprises' ability to access liquidity as well as credit and market risk; initiatives that entail heightened risks; current and potential declines in Enterprise capital; housing finance market conditions; and other conditions as described by the Director.

This authority provides FHFA with the flexibility to adjust leverage requirements in an overheating mortgage market when risk-based capital requirements may otherwise lead to the shedding of loss-absorbing capital. This authority also provides FHFA with the flexibility, using the leverage ratio, to address the potential inadequacy of capital requirements for new products and it provides FHFA with a way to mitigate a latent modeling error on an interim basis while risk-based capital requirements are being corrected.

FHFA also possesses statutory flexibility with respect to the risk-based capital requirements themselves. While the authority to increase minimum leverage capital requirements can mitigate some of the pro-cyclicality and other issues inherent in a model-based set of standards, it can only do so indirectly by requiring more capital to be held across all asset classes to which the leverage requirement applies. For this reason, FHFA wishes to highlight its statutory authority to adjust the risk-based capital requirements for particular asset classes directly during periods of heightened risk, when the risk-based capital requirements might otherwise be inadequate. Elaborating on the earlier example, sustained single-family house

[48] 12 CFR part 1225. ''FHFA is responsible for ensuring the safe and sound operation of regulated entities. In furtherance of that responsibility, this part sets forth standards and procedures FHFA will employ to determine whether to require or rescind a temporary increase in the minimum capital levels for a regulated entity or entities pursuant to 12 U.S.C. 4612(d).''

price appreciation may suggest that the single-family housing sector is overheating ahead of a downturn. In this scenario, home prices may be artificially inflated and LTV ratios would fall, allowing the Enterprises to release capital. FHFA's ability to step in to adjust capital treatment for single-family loans, or to augment the single-family businesses' going-concern buffer, during this period would directly address the risk that risk-based capital treatment for these assets may become inadequate.

Authority to adjust the minimum leverage capital requirement can address this risk as well, but does so in a less targeted way. Relying on the minimal leverage capital adjustment exclusively may lead to raising Enterprise-wide capital requirements when a more narrow adjustment would suffice from a safety and soundness perspective. This overly-broad approach may lead to skewed Enterprise decision-making as the leverage requirement becomes greater and approaches becoming the binding capital allocation restraint. This concern is discussed in greater detail in the section II.D.

FHFA's existing authority to adjust risk-based capital requirements comes from the Safety and Soundness Act. Section 1362(e) provides FHFA with authority to implement additional capital requirements with respect to any product or activity by the Enterprises ''as the Director considers appropriate to ensure that the regulated entity operates in a safe and sound manner with sufficient capital and reserves to support the risks that arise in the operations and management of the regulated entity.''[49] This authority may be exercised through order, as opposed to regulation, and thus can be implemented swiftly should the need to do so arise.

Question 38: FHFA is soliciting comments on the advantages and disadvantages of the existing authority to temporarily increase minimum leverage requirements, in particular with respect to the view that use of this authority can serve a countercyclical role across economic cycles. FHFA is requesting data and supplementary analysis that would support alternative perspectives.

Question 39: Commenters are asked to discuss the advantages and disadvantages of adjusting risk-based capital requirements by order during periods of heightened risk.

Question 40: FHFA is soliciting views on how best to identify periods of heightened market and Enterprise risk. In particular, what economic indicators or other triggers should be considered in determining when to require an adjustment to capital requirements and how such adjustments might impact capital planning?

III. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) requires that regulations involving the collection of information receive clearance from the Office of Management and Budget (OMB). The proposed rule contains no such collection of information requiring OMB approval under the PRA. Therefore, no information has been submitted to OMB for review.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. FHFA need not undertake such an analysis if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that the proposed rule, if adopted as a final rule, would not have a significant economic impact on a substantial number of small entities because the proposed rule is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 1206

Federal home loan banks, Reporting and recordkeeping requirements.

12 CFR Part 1240

Capital, Credit, Enterprise, Investments, Reporting and recordkeeping requirements.

12 CFR Part 1750

Banks, banking, Capital classification, Mortgages, Organization and functions (Government agencies), Risk-based capital, Securities.

Authority and Issuance

For the reasons stated in the preamble, under the authority of 12 U.S.C. 4511, 4513, 4514, 4526 and 4612, FHFA proposes to amend chapters XII and XVII, of title 12 of the Code of Federal Regulations as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

SUBCHAPTER A—ORGANIZATION AND OPERATIONS

PART 1206—ASSESSMENTS

■ 1. The authority citation for part 1206 continues to read as follows:

Authority: 12 U.S.C. 4516.

■ 2. Amend § 1206.2 by revising the definition of ''*Total exposure*'' to read as follows:

§ 1206.2 Definitions.

* * * * *

Total exposure means the sum of total assets as determined according to GAAP, and off-balance sheet guarantees related to securitization activities that are used to calculate the quarterly minimum leverage capital requirement of the Enterprise under 12 CFR part 1240.

* * * * *

SUBCHAPTER C—ENTERPRISES

■ 3. Add part 1240 to subchapter C to read as follows:

PART 1240—ENTERPRISE CAPITAL REQUIREMENTS

Sec.

1240.1 Definitions and abbreviations.
1240.2 Board oversight of capital adequacy.
1240.3 Reporting procedure and timing.
1240.4 Risk-based capital requirement components.
1240.5 Single-family whole loans, guarantees, and related securities risk-based capital requirement components.
1240.6 Single-family whole loans and guarantees credit risk capital requirement methodology.
1240.7 Loan segments for single-family whole loans and guarantees credit risk capital requirement.
1240.8 Base credit risk capital requirement for single-family whole loans and guarantees.
1240.9 Risk multipliers for single-family whole loans and guarantees.
1240.10 Gross credit risk capital requirement for single-family whole loans and guarantees.
1240.11 Loan-level credit enhancement impact on gross credit risk capital requirement.
1240.12 Counterparty Haircut for single-family whole loans and guarantees.
1240.13 Net credit risk capital requirement for single-family whole loans and guarantees.
1240.14 Single-family credit risk transfer capital relief for single-family whole loans and guarantees.
1240.15 Calculation of capital relief from a single-family CRT.
1240.16 Calculation of total capital relief for single-family whole loans and guarantees.
1240.17 Market risk capital requirement for single-family whole loans.

[49] 12 U.S.C. 4612(e).

1240.18 Market risk capital requirement for single-family securities.
1240.19 Operational risk capital requirement for single-family whole loans and guarantees.
1240.20 Operational risk capital requirement for single-family securities.
1240.21 Going-concern buffer requirement for single-family whole loans and guarantees.
1240.22 Going-concern buffer requirement for single-family securities.
1240.23 Aggregate risk-based capital requirement for single-family whole loans, guarantees, and related securities.
1240.24 Private-label securities risk-based capital requirement components.
1240.25 Credit risk capital requirement for a PLS.
1240.26 Market risk capital requirement for a PLS.
1240.27 Operational risk capital requirement for a PLS.
1240.28 Going-concern buffer requirement for a PLS.
1240.29 Aggregate risk-based capital requirement for PLS.
1240.30 Multifamily whole loans, guarantees, and related securities risk-based capital requirement components.
1240.31 Multifamily whole loans and guarantees credit risk capital requirement methodology.
1240.32 Loan segments for multifamily whole loans and guarantees credit risk capital requirement.
1240.33 Base credit risk capital requirement for multifamily whole loans and guarantees.
1240.34 Risk multipliers for multifamily whole loans and guarantees.
1240.35 Gross credit risk capital requirement for multifamily whole loans and guarantees.
1240.36 Net credit risk capital requirement for multifamily whole loans and guarantees.
1240.37 Multifamily credit risk transfer capital relief for multifamily whole loans and guarantees.
1240.38 Calculation of capital relief for a multifamily CRT.
1240.39 Multifamily whole loans market risk capital requirement.
1240.40 Multifamily securities market risk capital requirement.
1240.41 Operational risk capital requirement for multifamily whole loans and guarantees.
1240.42 Operational risk capital requirement for multifamily securities.
1240.43 Going-concern buffer requirement for multifamily whole loans and guarantees.
1240.44 Going-concern buffer requirement for multifamily securities.
1240.45 Aggregate risk-based capital requirement for multifamily whole loans, guarantees, and related securities.
1240.46 Non-Enterprise and non-Ginnie Mae commercial mortgage backed securities risk-based capital requirement.
1240.47 Other assets and exposures risk-based capital requirement.
1240.48 Unassigned Activities.
1240.49 Aggregate risk-based capital requirement calculation.
1240.50 Minimum leverage capital requirement: 2.5 percent alternative.
1240.51 Minimum leverage capital requirement: Bifurcated alternative.

Authority: 12 U.S.C. 4511, 4513, 4514, 4526, 4612.

§ 1240.1 Definitions and abbreviations.

(a) The definitions in this section are used to define terms for purposes of this part.

Amortization term refers to the time period over which the loan is contractually scheduled to amortize at origination.

Basis points (bps) means more than one basis point where a basis point equals one hundredth of one percent.

Charter Act(s) means the Federal National Mortgage Association Charter Act, 12 U.S.C. 1716, *et seq.,* and/or the Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1451 note, *et seq.*

Charter-level coverage means mortgage insurance coverage levels that meet the minimum requirements of the Enterprises' Charter Acts for loans with a loan-to-value ratio (LTV) greater than 80%.

CMBS means commercial mortgage backed securities.

CMOs means collateralized mortgage obligations held in portfolio that are collateralized by an Enterprise or Ginnie Mae MBS.

Core capital has the meaning provided at 12 U.S.C. 4502(7).

(i) Core capital is the sum of (as determined in accordance with generally accepted accounting principles (GAAP))

(A) The par or stated value of outstanding common stock;

(B) The par or stated value of outstanding perpetual, noncumulative preferred stock;

(C) Paid-in capital; and

(D) Retained earnings.

(ii) Core capital does not include any amounts the Enterprise could be required to pay, at the option of investors, to retire capital instruments.

Counterparty risk haircut (CPHaircut) means a reduction in the contractual payments from a counterparty due to the risk that the counterparty is unable to meet its obligations.

Coverage Percent or Coverage Percentage means the percentage provided as the benefit under a mortgage insurance policy of the sum of UPB, lost interest and foreclosure costs.

Credit risk means the risk of financial loss to an Enterprise from nonperformance by borrowers or other obligors on instruments in which an Enterprise has a financial interest.

Credit risk transfer (CRT) means the transfer of credit risk from an Enterprise to an unaffiliated third party or parties through capital markets and loss sharing transactions.

Days means calendar days.

Deferred tax assets (DTA) mean assets on the balance sheet that may be used to reduce taxable income.

Deferred tax liabilities (DTL) mean tax liabilities deferred to a future period.

Delinquent means one or more missed scheduled payments.

Enterprise guarantee means a credit guarantee from an Enterprise.

Ginnie Mae means the Government National Mortgage Association.

Government guarantee means a credit guarantee from the Federal Housing Administration (FHA), United States Department of Agriculture (USDA), or the Veterans Administration (VA).

Guide-level coverage means mortgage insurance coverage levels, specified by an Enterprise's Seller Guide, that provide higher levels of coverage than required by an Enterprise's Charter Act for loans with LTVs greater than 80%. Guide-level coverage is also referred to as standard coverage.

Loan-level credit enhancement means a credit guarantee on an individual single-family whole loan. An Enterprise primarily uses a loan-level credit enhancement to meet the requirements of its Charter Act for a conventional loan with LTV greater than 80%. A conventional loan, also known as a conventional mortgage, has the meaning provided in the Enterprises' Charter Acts at 12 U.S.C. 1717(b)(2) (Fannie Mae) and 12 U.S.C. 1451(i) (Freddie Mac).

Market risk means the risk that the market value, or estimated fair value if market value is not available, of an Enterprise's portfolio will decline as a result of changes in interest rates, spreads, foreign exchange rates, or equity or commodity prices.

MBS means a mortgage backed security issued by an Enterprise or Ginnie Mae.

Mortgage insurance (MI) means a loan-level credit enhancement provided by an insurance company.

Multifamily property means a property with five or more residential units.

Multifamily whole loan means a whole loan secured by a mortgage on a multifamily property.

Non-trust assets mean the total assets of an Enterprise as determined in accordance with GAAP plus off-balance sheet guarantees related to securitization activities minus Trust assets.

Off-balance sheet guarantees means guarantees of mortgage loan securitizations and resecuritizations transactions, and other guaranty commitments over which an Enterprises does not have control.

Operational risk means the risk of loss resulting from inadequate or failed internal processes, people, or systems, or from external events.

Original means at the origination of the loan.

Participation certificate means an MBS issued by Freddie Mac.

Private-label security (PLS) means a single-family residential mortgage-backed security issued by an entity other than Fannie Mae, Freddie Mac, or Ginnie Mae.

PLS wrap means a PLS resecuritized with an Enterprise guarantee.

Refi Plus means Fannie Mae's streamlined refinance program or other similar refinance programs that the Director determines should receive the same capital treatment.

Relief Refi means Freddie Mac's streamlined refinance program, or other similar refinance programs that the Director determines should receive the same capital treatment.

Reporting date means the date of the portfolio used for risk-based capital and minimum capital calculations.

Single-family property means a property with one-to-four-family residential units.

Single-family whole loan means a whole loan secured by a mortgage on a single-family property.

Spread duration means a measure of the sensitivity of an asset's expected price to changes in the asset's spread.

Spread risk means the risk of a loss in value of an asset relative to a risk free or funding benchmark due to changes in perceptions of performance or liquidity.

Supplemental loan means a multifamily loan made to a borrower for a property for which the borrower has previously received a loan. There can be more than one supplemental loan.

Total assets mean the total assets of an Enterprise as determined in accordance with GAAP.

Total capital has the meaning provided at 12 U.S.C. 4502(23). It is the sum of the following:

(i) The core capital of an Enterprise.

(ii) A general allowance for foreclosure losses, which:

(A) Shall include an allowance for portfolio mortgage losses, nonreimbursable foreclosure costs on government claims, and an allowance for liabilities reflected on the balance sheet for the Enterprise for estimated foreclosure losses on mortgage backed securities; and

(B) Shall not include any reserves of the Enterprise made or held against specific assets.

(iii) Any other amounts from sources of funds available to absorb losses incurred by the Enterprise, that the Director by regulation determines are appropriate to include in determining total capital.

Tranche means all securitization exposures associated with a CRT that have the same seniority.

Trust assets means Fannie Mae mortgage-backed securities or Freddie Mac participation certificates held by third parties, and off-balance sheet guarantees related to securitization activities.

Whole loan means a single loan that a lender has issued to a borrower or borrowers.

(b) The abbreviations in this paragraph are used as short forms for terms used in calculations in this part.

ATCH	Attachment point for a tranche.
$BaseCapital_{bps}$	Base credit risk capital requirement in basis points.
$CapRelief_{\$}$	Capital relief in dollars for an entire CRT.
CEMultiplier	Credit enhancement multiplier.
$CM_{\%}$	Capital markets risk relief percentage for single-family CRTs.
$CMTCRC_{bps}$	Tranche credit risk capital associated with the single-family CRT capital markets transaction, in basis points.
$CntptyCollat_{\$}$	Counterparty collateral in dollars.
$CntptyCreditRisk_{bps}$	Counterparty credit risk capital in basis points.
$CntptyCreditRisk_{\$}$	Counterparty credit risk capital in dollars.
$CntptyExposure_{bps}$	Counterparty exposure in basis points.
$CntptyExposure_{\$}$	Counterparty exposure in dollars.
$CntptyShare_{\%}$	Counterparty quota share in percent.
CombRiskMult	Combined risk multiplier.
$CreditAndMarketRiskCapReq_{\$}$	Credit and market risk capital requirement in dollars for a CMBS.
$CreditAndMarketRiskCapReq_{\$\_CMBS}$	Credit and market risk capital requirement in dollars in aggregate for all CMBSs.
$CreditRiskCapReq_{\$}$	Credit risk capital requirement in dollars.
$CreditRiskCapReq_{bps}$	Credit risk capital requirement in basis points.
$CRTLT_{\%}$	CRT loss timing factor in percent.
DTCH	Detachment point for a tranche.
$GCBufferReq_{\$}$	Going-concern buffer requirement in dollars.
$GCBufferReq_{\$\_CMBS}$	Going-concern buffer requirement in dollars in aggregate for all CMBS.
$GCBufferReq_{\$\_MD}$	Going-concern buffer requirement in dollars for all municipal debt.
$GCBufferReq_{\$\_MFMBS}$	Going-concern buffer requirement in dollars for all multifamily MBS.
$GCBufferReq_{\$\_MFWL}$	Going-concern buffer requirement in dollars for all multifamily family whole loans and guarantees.
$GCBufferReq_{\$\_SFREV}$	Going-concern buffer requirement in dollars for all reverse mortgage loans and securities.
$GCBufferReq_{\$\_SFWL}$	Going-concern buffer requirement in aggregate for all single-family whole loans and guarantees.
$GrossCreditRiskCapReq_{bps}$	Gross credit risk capital requirement in basis points.
K_G	The weighted-average total capital requirement of the underlying exposures in a PLS.
$LenderCapital_{\$}$	The portion of capital associated with the lender's exposure.
$LS_{\%}$	Contractual loss sharing risk relief percentage for single-family CRTs.
$LSTCRC_{bps}$	Tranche credit risk capital associated with the single-family CRT loss sharing transaction, in basis points.
$MarketRiskCapReq_{bps}$	Market risk capital requirement in basis points.
$MarketRiskCapReq_{\$}$	Market risk capital requirement in dollars.
$MarketRiskCapReq_{\$\_MD}$	Market risk capital requirement in dollars for all municipal debt.
$MarketRiskCapReq_{\$\_MFMBS}$	Market risk capital requirement in dollars for all multifamily MBS.
$MarketRiskCapReq_{\$\_MFWL}$	Market risk capital requirement in dollars for all multifamily whole loans and guarantees.
$MarketRiskCapReq_{\$\_SFREV}$	Market risk capital requirement in dollars for all reverse mortgage loans and securities.

$MarketRiskCapReq_{\$\_SFWL}$	Market risk capital requirement in dollars for all single-family whole loans and guarantees.
$MF\_LS_{\%}$	Lender loss sharing risk relief percentage for multifamily CRTs.
$MF\_MTLS_{\%}$	Multiple tranche loss sharing risk relief percentage for multifamily CRTs.
$MF\_S_{\%}$	Capital market risk relief percentage for multifamily CRTs.
$MTLSTCRC_{bps}$	Capital relief from multiple tranche loss sharing.
$NetCreditRiskCapReq_{bps}$	Net credit risk capital requirement in basis points.
$NetCreditRiskCapReq_{\$}$	Net credit risk capital requirement in dollars.
$NetCreditRiskCapReq_{\$\_MFWL}$	Net credit risk capital requirement in dollars for all multifamily whole loans and guarantees.
$NetCreditRiskCapReq_{\$\_SFWL}$	Net credit risk capital requirement in dollars for all single-family whole loans and guarantees.
$OperationalRiskCapReq_{bps}$	Operational risk capital requirement in basis points.
$OperationalRiskCapReq_{\$}$	Operational risk capital requirement in dollars.
$OperationalRiskCapReq_{\$\_MD}$	Operational risk capital requirement in dollars for all municipal debt.
$OperationalRiskCapReq_{\$\_MFMBS}$	Operational risk capital requirement in dollars for all multifamily MBS.
$OperationalRiskCapReq_{\$\_MFWL}$	Operational risk capital requirement in dollars for all multifamily whole loans and guarantees.
$OperationalRiskCapReq_{\$\_SFREV}$	Operational risk capital requirement in dollars for all reverse mortgage loans and securities.
$OperationalRiskCapReq_{\$\_SFWL}$	Operational risk capital requirement in dollars for all single-family whole loans and guarantees.
$PGCRC_{bps}$	Credit risk capital on a pool group of whole loans and guarantees underlying a CRT, in basis points.
$PGEL_{bps}$	Lifetime net expected losses on a pool group of whole loans and guarantees underlying the CRT, in basis points.
$PGCapRelief_{bps}$	Capital relief for a pool group in basis points.
$PGUPB_{\$}$	A pool group's aggregate unpaid principal balance.
$RiskBasedCapReq_{\$\_CMBS}$	Risk-based capital requirement in dollars in aggregate for all CMBS.
$RiskBasedCapReq_{\$\_DTA}$	Risk-based capital requirement in dollars in aggregate for all deferred tax assets.
$RiskBasedCapReq_{\$\_MD}$	Risk-based capital requirement in dollars for all municipal debt.
$RiskBasedCapReq_{\$\_MFWLGS}$	Risk-based capital requirement in dollars for all multifamily whole loans, guarantees, and related securities.
$RiskBasedCapReq_{\$\_PLS}$	Risk-based capital requirement in dollars for all single-family PLS.
$RiskBasedCapReq_{\$\_SFREV}$	Risk-based capital requirement in dollars for all reverse mortgage loans and securities.
$RiskBasedCapReq_{\$\_SFWLGS}$	Risk-based capital requirement in dollars for all single-family whole loans, guarantees, and related securities.
$RiskBasedCapReq_{\$\_TOTAL}$	Total risk-based capital requirement in dollars.
RW	Risk weight of a PLS.
$SpreadDuration$	Spread duration for a given loan or security.
$STCRC_{bps}$	Capital relief from securitization.
$TCRC_{bps}$	Tranche credit risk capital.
$TotalCapRelief_{\$\_MFWL}$	Total capital relief across all multifamily CRTs.
$TotalCapRelief_{\$\_SFWL}$	Total capital relief across all single-family CRTs.
$TotalCombRiskMult$	Total combined risk multiplier.
$UncapTotalCombRiskMult$	Uncapped total combined risk multiplier.
$UPB_{\$}$	Unpaid principal balance in dollars.

§ 1240.2 Board oversight of capital adequacy.

(a) The board of directors of each Enterprise is responsible for overseeing that the Enterprise maintains capital at a level that is sufficient to ensure the continued financial viability of the Enterprise and that equals or exceeds the capital requirements contained in this part.

(b) Nothing in this part permits or requires an Enterprise to engage in any activity that would otherwise be inconsistent with its Charter Act or the Safety and Soundness Act, 12 U.S.C. 4501 *et seq.*

§ 1240.3 Reporting procedure and timing.

(a) *Capital report.* Each Enterprise shall file a capital report with the Director every quarter. The capital report must be made using the format separately provided to the Enterprises by FHFA. The report shall include, but not be limited to, the following:

(1) The minimum capital requirement as calculated as of the end of each quarter.

(2) The risk-based capital requirement as calculated as of the end of each quarter.

(b) *Timing.* The capital report shall be submitted not later than sixty days after quarter end or at such other time as the Director requires.

(c) *Approval.* The capital report must be approved by the Chief Risk Officer and the Chief Financial Officer of an Enterprise prior to submission to FHFA.

(d) *Adjustment.* In the event an Enterprise makes an adjustment to its financial statements for a quarter or a date for which information was provided pursuant to this part, which would cause an adjustment to a capital report, an Enterprise shall file with the Director an amended capital report not later than 15 days after the date of such adjustment.

(e) *Additional reports.* The Director may request from an Enterprise additional reports, information, and data, as appropriate, from time to time.

§ 1240.4 Risk-based capital requirement components.

Each Enterprise shall maintain at all times total capital in an amount at least equal to the sum of the risk-based capital requirements for:

(a) Single-family whole loans, guarantees, and related securities as provided in §§ 1240.5 through 1240.23;

(b) Private-label securities (PLS) as provided in §§ 1240.24 through 1240.29;

(c) Multifamily loans, guarantees, and related securities as provided in §§ 1240.30 through 1240.45;

(d) Non-Enterprise and non-Ginnie Mae Commercial Mortgage Backed Securities (CMBS) as provided in § 1240.46;

(e) Other assets and exposures as provided in § 1240.47; and

(f) Unassigned activities as provided in § 1240.48.

§ 1240.5 Single-family whole loans, guarantees, and related securities risk-based capital requirement components.

The risk-based capital requirement for single-family whole loans, guarantees, and related securities is the cumulative total of the following capital requirements:

(a) A credit risk capital requirement as provided in §§ 1240.6 through 1240.16;

(b) A market risk capital requirement for single-family whole loans and securities having market exposure as provided in §§ 1240.17 through 1240.18;

(c) An operational risk capital requirement as provided in §§ 1240.19 through 1240.20; and

(d) A going-concern buffer requirement as provided in §§ 1240.21 through 1240.22.

§ 1240.6 Single-family whole loans and guarantees credit risk capital requirement methodology.

(a) The methodology for calculating the credit risk capital requirement for single-family whole loans and guarantees uses tables to determine the base credit risk capital requirement, risk factor multipliers to adjust the base credit risk capital requirement for risk factor variations not captured in the base credit risk requirement, credit enhancement multipliers to reduce the capital requirement due to the presence of loan-level credit enhancement, and reductions in credit enhancement benefits due to counterparty risk. The methodology also provides for a reduction in the credit risk capital requirement for single-family whole loans and guarantees subject to credit risk transfer (CRT) transactions.

(b) The steps for calculating the credit risk capital requirement for single-family whole loans and guarantees are as follows:

(1) Identify the loan data needed for the calculation of the single-family whole loans and guarantees credit risk capital requirement.

(2) Assign each loan to a single-family loan segment, as specified in § 1240.7.

(3) Determine the base credit risk capital requirement using the assigned single-family loan segment, as specified in § 1240.8.

(4) Determine the loan's total combined risk multiplier using the assigned single-family loan segment and risk factor multipliers, as specified in § 1240.9.

(5) Determine the loan's gross credit risk capital requirement using the total combined risk multiplier and the base capital, as specified in § 1240.10.

(6) Determine the reduction of capital from the gross credit risk capital requirement due to the presence of loan-level credit enhancement benefit, as specified in § 1240.11.

(7) Determine the reduction in loan-level credit enhancement benefit due to counterparty risk for the credit enhancement counterparty, as specified in § 1240.12.

(8) Determine the net credit risk capital requirement by reducing for the loan-level credit enhancement benefit due to counterparty risk for the credit enhancement counterparty, as specified in § 1240.13.

(9) Determine the aggregate net credit risk capital requirement for single-family whole loans and guarantees, as specified in § 1240.13.

(10) Determine the capital relief from single-family CRTs, as specified in §§ 1240.14 through 1240.16.

(c) The credit risk capital requirement applies to any Enterprise conventional single-family whole loan and guarantee with exposure to credit risk.

(d) Table 1 to part 1240 lists the data needed for the calculation of the single-family whole loans and guarantees credit risk capital requirement. Table 1 contains variable names, definitions, acceptable values, and treatments for missing or unacceptable values.

TABLE 1 TO PART 1240—SINGLE-FAMILY WHOLE LOANS AND GUARANTEES DATA INPUTS

Variable	Definition/logic	Acceptable values	Treatment of missing or unacceptable values
Back-end Debt-to-Income (DTI) Ratio.	DTI is calculated as the ratio of debt to income. Debt consists of the borrowers' monthly mortgage payments for principal and interest, mortgage-related obligations (property taxes, Home Owners Association (HOA) fees, condominium fees, cooperative fees, and insurance), current debt obligations, alimony, and child support. Income consists of the total pre-tax monthly income of all borrowers as determined at the time of origination. DTI at origination should be used for Home Affordable Modification Program (HAMP) and HAMP-like modifications.	0% < DTI < 100%	Set to 42%.
Loan-level Credit Enhancement Types.	Types of loan-level credit enhancement that provide credit protection to the Enterprises for conventional single-family whole loans. Loan-level credit enhancements are typically used to meet the Charter requirements for loans with LTVs greater than 80%.	Participation Agreements, Repurchase or replacement Agreements, Recourse and Indemnification Agreements, Mortgage Insurance, Not Applicable.	Not Applicable.
Streamlined Refi	Indicator for a loan that was refinanced through one of an Enterprise's streamlined refinance programs, including, for example Home Affordable Refinance Program (HARP), Relief Refi and Refi-Plus.	Yes, No	No.
Interest-Only (IO)	A loan that requires only payment of interest without any principal amortization during all or part of the loan term.	Yes, No	Yes.

TABLE 1 TO PART 1240—SINGLE-FAMILY WHOLE LOANS AND GUARANTEES DATA INPUTS—Continued

Variable	Definition/logic	Acceptable values	Treatment of missing or unacceptable values
Loan Age	Loan age is calculated as the difference in months between the origination month and the month of the reporting date.	0 months <= Loan Age <= 500 months.	If the difference in months between the origination month and the month of the reporting date is negative, set Loan Age to 0. If the difference is greater than 500, set Loan Age to 500.
Loan Documentation Level	The level of income documentation used to underwrite the loan.	No Documentation, Low Documentation, Full Documentation.	Set to No Documentation.
Loan Purpose	Purpose of the mortgage at origination	Purchase, Cashout Refinance, Rate/Term Refinance.	Set to Cashout Refinance.
Mark-to-Market Loan-to-Value (MTMLTV) Ratio.	MTMLTV is calculated as $UPB/((UPB_{Original}/OLTV) \times house\_price\_growth\_factor)$ Special instructions for determining house_price_growth_factor: • Use the FHFA Purchase Only State-Level House Price Index (HPI). • Use the USA HPI for Puerto Rico and the Virgin Islands. • Use the Hawaii HPI for Guam. • If a loan was originated before 1991, use an Enterprise's proprietary HPI. • If an HPI series ends before the reporting date, keep the HPI series constant (flat line). • Use geometric interpolation to convert quarterly HPI data to monthly HPI data. • house_price_growth_factor is equal to the ratio of HPI at the reporting date (or latest available HPI) to HPI at the loan's origination date.	0% < MTMLTV <= 300%	Set MTMLTV to 300% if any of the following conditions apply: • The calculated MTMLTV is less than or equal to 0. • The calculated MTMLTV is greater than 300%.
Market Value	The value of the loan used to inform an Enterprise's fair value disclosures.		Set to UPB.
Months since Last Delinquency.	For re-performing loans, months since last delinquency is calculated as the difference in months between the ending date of the last delinquency period and the reporting date.	Non-negative integer	Set to 0.
Months since Last Modification.	For modified loans, months since last modification is calculated as the difference in months between the effective date of the modification and the reporting date.	Non-negative integer	Set to 0.
Mortgage Insurance (MI) Cancellation Feature.	Mortgage insurance is cancellable if coverage can or will terminate before the maturity date of the mortgage (*e.g.*, due to the Homeowners Protection Act). Mortgage insurance is non-cancellable if the coverage extends to the maturity of the mortgage.	Cancellable, Non-Cancellable.	Set to Cancellable.
MI Coverage Percent	The percentage of the sum of UPB, lost interest and foreclosure costs used to determine the benefit under a mortgage insurance policy.	0% <= MI Coverage Percent <= 100%.	Set to 0%.
Number of Borrowers	The number of borrowers on the mortgage note	Multiple borrowers, One borrower.	Set to One borrower.
Number of Missed Payments.	For delinquent loans, the number of missed payments, measured in months, as of the reporting date.	Non-negative integer	Set to 7.
Occupancy Type	The borrowers' intended use of the property	Investment, Owner Occupied, Second Home.	Set to Investment.
Original Credit Score	The borrower's credit score as of the origination date If there are credit scores from multiple credit repositories for a borrower, use the following logic to determine a single Original Credit Score: • If there are credit scores from two repositories, take the lower credit score. • If there are credit scores from three repositories, use the middle credit score. • If there are credit scores from three repositories and two of the credit scores are identical, use the identical credit score. If there are multiple borrowers, use the following logic to determine a single Original Credit Score: • Using the logic above, determine a single credit score for each borrower.	300 <= Original Credit Score <= 850.	Set to 600.

TABLE 1 TO PART 1240—SINGLE-FAMILY WHOLE LOANS AND GUARANTEES DATA INPUTS—Continued

Variable	Definition/logic	Acceptable values	Treatment of missing or unacceptable values
	• Select the lowest single credit score across all borrowers.		
Original Loan-to-Value (OLTV).	OLTV is calculated as the ratio between the original loan amount and the lesser of appraised value or sale price.	0% < OLTV <= 300%	Set OLTV to 300% if any of the following conditions apply: • The calculated OLTV is less than or equal to 0. • The calculated OLTV is greater than 300%. • Both the sales price and appraised value are missing.
Origination Channel	Source of the loan	Retail, Third-Party Origination (TPO) (includes Broker and Correspondent).	Set to TPO.
Payment Change from Modification.	The change in the monthly payment resulting from a permanent loan modification. Payment Change from Modification is calculated as: 100% * (post-modification monthly payment/pre-modification monthly payment − 1). If the modified loan has an adjustable or step rate feature, the post-modification monthly payment is calculated using the initial modified rate. The Payment Change from Modification is not updated subsequent to any rate resets.	−80% < Payment Change from Modification < 50%.	Set to 0% if missing. If the change in the monthly payment resulting from a permanent loan modification is greater than or equal to 50%, set Payment Change from Modification to 49%. If the change in the monthly payment resulting from a permanent loan modification less than or equal to −80%, set Payment Change from Modification to −79%.
Previous Maximum Delinquency.	For re-performing loans, the maximum number of months delinquent at any point in the prior 36 months.	Non-negative integer	Set to 6 months.
Product Type	The mortgage product type as of the loan's origination date. Fixed rate loans are classified according to their original amortization terms: FRM30 = Fixed Rate with amortization term > 309 months and <= 429 months. FRM20 = Fixed Rate with amortization term > 189 months and <= 309 months. FRM15 = Fixed Rate with amortization term <= 189 months. The ARM 1/1 is an adjustable-rate mortgage (ARM) where the rate and the payment adjust annually. Product types other than FRM30, FRM20, FRM15 or ARM 1/1 should be assigned to FRM30. Use the post-modification product type for modified loans.	FRM 30, FRM 20, FRM 15, ARM 1/1.	Set to ARM 1/1.
Property Type	The physical structure of the property	Single-family 1-Unit, Single-family 2–4 Units, Condominium, Manufactured Home.	Set to Single-family 2–4 Units.
Refreshed Credit Score	The borrower's credit score as of the reporting date. If there are credit scores from multiple credit repositories for a borrower, use the following logic to determine a single Refreshed Credit Score: • If there are credit scores from two repositories, take the lower credit score. • If there are credit scores from three repositories, use the middle credit score. • If there are credit scores from three repositories and two of the credit scores are identical, use the identical credit score. If there are multiple borrowers, use the following logic to determine a single Refreshed Credit Score: • Using the logic above, determine a single credit score for each borrower. • Select the lowest single credit score across all borrowers.	300 <= Refreshed Credit Score <= 850.	If a refreshed credit score is not available, use the most recent score. If no credit score is available set the credit score to 600.

TABLE 1 TO PART 1240—SINGLE-FAMILY WHOLE LOANS AND GUARANTEES DATA INPUTS—Continued

Variable	Definition/logic	Acceptable values	Treatment of missing or unacceptable values
Subordination (Second lien Original LTV).	The ratio of the original loan amount of the second lien to the lesser of appraised value or sale price.	0% <= Subordination <= 80%.	Set to 80% if greater than 80%.
Unpaid Principal Balance (UPB).	The remaining unpaid principal balance on the loan as of the reporting date.	$0 < UPB < $2,000,000	Set to $45,000.

(e) Table 2 to part 1240 lists the data needed to determine the *CPHaircut* used in the calculation of the single-family whole loans and guarantees credit risk capital requirement. The table contains variable names, definitions, acceptable values, and treatments for missing or unacceptable values.

TABLE 2 TO PART 1240—DATA INPUTS FOR *CPHaircut* CALCULATION

Variable	Definition/logic	Acceptable values	Treatment of missing or unacceptable values
Counterparty Name	The name of the counterparty.		
Counterparty Rating	Counterparty rating as defined in Table 3. An Enterprise should assign the counterparty rating that most closely aligns to the assessment of the counterparty from the Enterprise's internal counterparty risk framework.	1 2. 3. 4. 5. 6. 7. 8.	Set to 8.
Mortgage Concentration Risk	An Enterprise's assessment of a counterparty's exposure to mortgage credit risk relative to the counterparty's exposure to other lines of business. This assessment may include both quantitative and qualitative factors.	High, Not High	Set to High.

(f) An Enterprise must have internally generated ratings for counterparties. The internally generated ratings must be converted into the counterparty ratings provided in Table 3 to part 1240. Table 3 provides the counterparty financial strength ratings and descriptions used in this part to determine *CPHaircuts*.

TABLE 3 TO PART 1240—COUNTERPARTY FINANCIAL STRENGTH RATINGS

Counterparty rating	Description
1	The counterparty is exceptionally strong financially. The counterparty is expected to meet its obligations under foreseeable adverse events.
2	The counterparty is very strong financially. There is negligible risk the counterparty may not be able to meet all of its obligations under foreseeable adverse events.
3	The counterparty is strong financially. There is a slight risk the counterparty may not be able to meet all of its obligations under foreseeable adverse events.
4	The counterparty is financially adequate Foreseeable adverse events will have a greater impact on '4' rated counterparties than higher rated counterparties.
5	The counterparty is financially questionable. The counterparty may not meet its obligations under foreseeable adverse events.
6	The counterparty is financially weak. The counterparty is not expected to meet its obligations under foreseeable adverse events.
7	The counterparty is financially extremely weak. The counterparty's ability to meet its obligations is questionable.
8	The counterparty is in default on an obligation or is under regulatory supervision.

(g) Table 4 to part 1240 provides the data inputs supplied by FHFA needed for the calculation of the single-family whole loans and guarantees credit risk capital requirement.

TABLE 4 TO PART 1240—DATA INPUTS PROVIDED BY FHFA

Item	Description
Cohort Burnout	A table containing historical origination dates and the number of opportunities, measured in months, a loan originated on a given origination date has had to refinance to a lower interest rate. For a given origination month/year cohort, an opportunity to refinance occurs when the Primary Mortgage Market Survey (PMMS) rate for the cohort exceeds the prevailing PMMS rate by more than 50 basis points.

TABLE 4 TO PART 1240—DATA INPUTS PROVIDED BY FHFA—Continued

Item	Description
	Cohort Burnout is designated as ''No Burnout'' if the cohort has not experienced a refinance opportunity. Cohort Burnout is ''Low'' if the cumulative occurrence of refinance opportunities is between 1 month and 12 months. Cohort Burnout is ''Medium'' if the cumulative occurrence of refinance opportunities is between 13 months and 24 months. Cohort Burnout is ''High'' if the cumulative occurrence of refinance opportunities exceeds 24 months.
House Price Index (HPI)	FHFA's seasonally adjusted purchase-only HPI by state.

§ 1240.7 Loan segments for single-family whole loans and guarantees credit risk capital requirement.

(a) An Enterprise must assign each single-family whole loan and guarantee with exposure to credit risk to a single-family loan segment. The single-family loan segments are: New Origination Loan; Performing Seasoned Loan; Non-Modified Re-Performing Loan (RPL); Modified RPL; Non-Performing Loan (NPL).

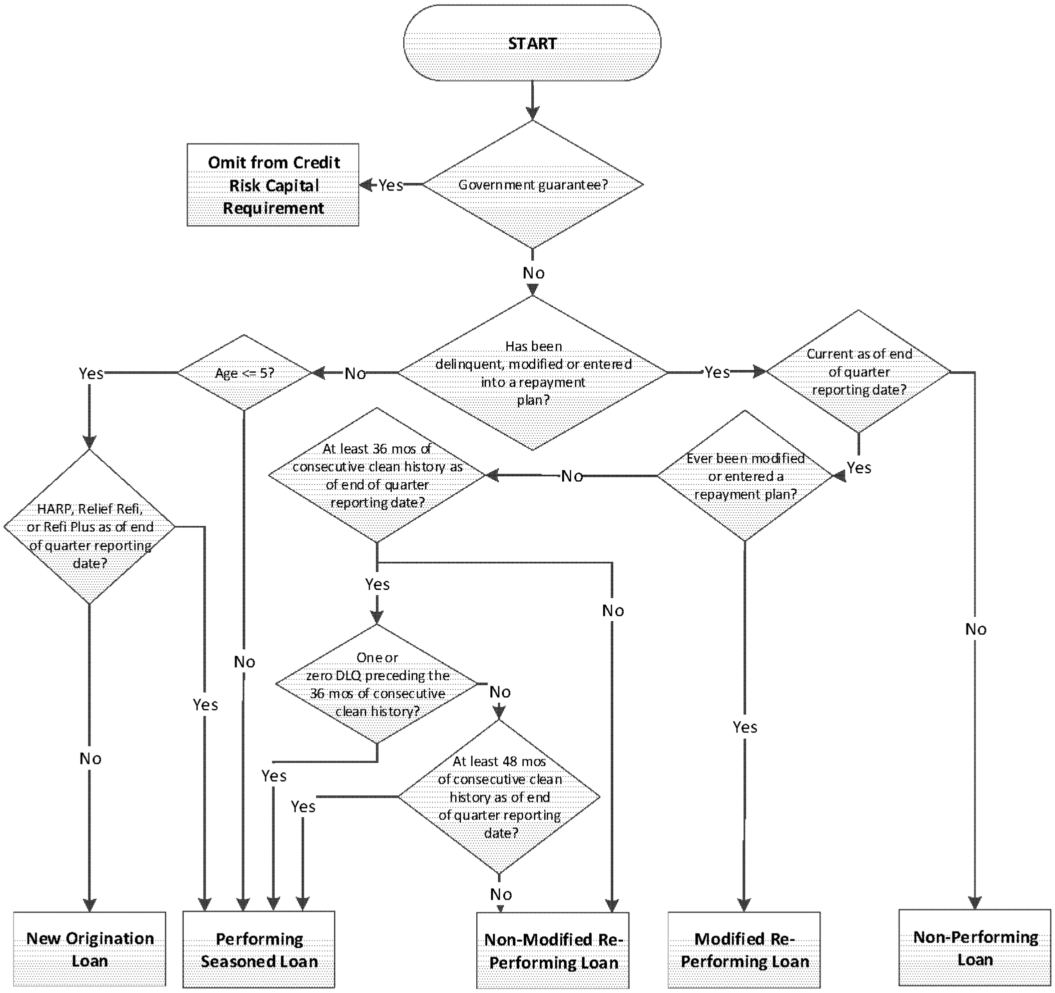
(b) The definitions for the single-family loan segments are provided in Table 5 to part 1240.

TABLE 5 TO PART 1240—DEFINITIONS FOR SINGLE-FAMILY LOAN SEGMENTS

Segment	Definition
New Origination Loan	• Loan age less than or equal to 5 months, and • Never delinquent. Excludes: • Streamlined Refi loans.
Performing Seasoned Loan	• Loan age greater than 5 months, and • Never delinquent. Also includes: • Newly funded Streamlined Refi loans. • Loans that were delinquent, were not modified or put on a repayment plan, and have made 48 consecutive payments as of the reporting date. • Loans that were delinquent, were not modified or put on a repayment plan, and have made 36 consecutive payments as of the reporting date and had no more than one missed payment in the 12 months preceding the 36 months.
Non-Modified RPL	• Performing, • Had a prior delinquency, and • Never modified or entered a repayment plan. Excludes: • Loans that have made 48 consecutive payments as of the reporting date. • Loans that have made 36 consecutive payments as of the reporting date and had no more than one missed payment in the 12 months preceding the 36 months.
Modified RPL	• Performing and • Modified or entered into a repayment plan.
NPL	• Delinquent.

(c) The process for assigning a loan to the appropriate single-family loan segment is presented in the decision tree shown in Figure 1 to part 1240.

Figure 1 to Part 1240: Single-family Loans Segments Decision Tree


START
Government guarantee?
Yes
Omit from Credit Risk Capital Requirement
No
Has been delinquent, modified or entered into a repayment plan?
No
Age <= 5?
Yes
HARP, Relief Refi, or Refi Plus as of end of quarter reporting date?
No
Yes
No
Yes
Current as of end of quarter reporting date?
Yes
Ever been modified or entered a repayment plan?
No
At least 36 mos of consecutive clean history as of end of quarter reporting date?
Yes
One or zero DLQ preceding the 36 mos of consecutive clean history?
Yes
No
At least 48 mos of consecutive clean history as of end of quarter reporting date?
Yes
No
No
Yes
No
New Origination Loan
Performing Seasoned Loan
Non-Modified Re-Performing Loan
Modified Re-Performing Loan
Non-Performing Loan

§ 1240.8 Base credit risk capital requirement for single-family whole loans and guarantees.

An Enterprise must determine the base credit risk capital requirement in basis points ($BaseCapital_{bps}$) for a loan by using the Table that corresponds to a particular loan segment.

(a) Single-family New Origination Loan $BaseCapital_{bps}$ is shown in Table 6 to part 1240. For each loan classified as a New Origination Loan, $BaseCapital_{bps}$ is the value in the cell in Table 6 determined using the original credit score and OLTV of the loan.

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Table 6 to Part 1240: Single-family New Origination Loan *$BaseCapital_{bps}$*

	OLTV <= 30%	30% < OLTV <= 60%	60% < OLTV <= 70%	70% < OLTV <= 75%	75% < OLTV < 80%	OLTV = 80%	80% < OLTV <= 85%	85% < OLTV <= 90%	90% < OLTV <= 95%	95% < OLTV <= 97%	OLTV > 97%
Original Credit Score < 620	10	108	293	437	571	652	779	958	1134	1219	1357
620 <= Original Credit Score < 640	10	84	234	350	459	518	617	764	913	969	1108
640 <= Original Credit Score < 660	10	73	203	305	400	451	537	667	802	864	974
660 <= Original Credit Score < 680	10	63	177	264	346	390	468	589	719	779	865
680 <= Original Credit Score < 700	10	53	154	230	300	339	405	528	656	716	802
700 <= Original Credit Score < 720	10	46	134	199	259	293	344	452	566	620	700
720 <= Original Credit Score < 740	10	39	115	171	222	251	300	400	507	557	633
740 <= Original Credit Score < 760	10	31	95	141	183	206	244	326	417	459	525
760 <= Original Credit Score < 780	10	25	77	114	148	166	195	262	339	374	431
Original Credit Score >= 780	10	19	59	87	113	127	148	200	258	286	331

(b) Single-family Performing Seasoned Loan *$BaseCapital_{bps}$* is shown in Table 7 to part 1240. For each loan classified as a Performing Seasoned Loan, *$BaseCapital_{bps}$* is the value in the cell in Table 7 determined using the refreshed credit score and MTMLTV of the loan.

Table 7 to Part 1240: Single-family Performing Seasoned Loan *BaseCapital$_{bps}$*

	MTMLTV <= 30%	30% < MTMLTV <= 60%	60% < MTMLTV <= 70%	70% < MTMLTV <= 75%	75% < MTMLTV <= 80%	80% < MTMLTV <= 85%	85% < MTMLTV <= 90%	90% < MTMLTV <= 95%	95% < MTMLTV <= 100%	100% < MTMLTV <= 110%	110% < MTMLTV <= 120%	MTMLTV > 120%
Refreshed Credit Score < 620	10	108	293	437	636	779	958	1134	1312	1491	1656	1911
620 <= Refreshed Credit Score < 640	10	84	234	350	506	617	764	913	1075	1252	1426	1700
640 <= Refreshed Credit Score < 660	10	73	203	305	441	537	667	802	959	1124	1291	1555
660 <= Refreshed Credit Score < 680	10	63	177	264	381	468	589	719	852	1010	1172	1425
680 <= Refreshed Credit Score < 700	10	53	154	230	331	405	528	656	754	905	1059	1295
700 <= Refreshed Credit Score < 720	10	46	134	199	286	344	452	566	663	806	950	1168
720 <= Refreshed Credit Score < 740	10	39	115	171	245	300	400	507	578	710	842	1037
740 <= Refreshed Credit Score < 760	10	31	95	141	201	244	326	417	483	599	715	884
760 <= Refreshed Credit Score < 780	10	25	77	114	162	195	262	339	393	493	594	737
Refreshed Credit Score >= 780	10	19	59	87	124	148	200	258	301	382	463	578

(c) Single-family Non-Modified RPL *BaseCapital$_{bps}$* is shown in Table 8 to part 1240. For each loan classified as a Non-Modified RPL, *BaseCapital$_{bps}$* is the value in the cell in Table 8 determined using the Months Since Last Delinquency and the MTMLTV of the loan.

Table 8 to Part 1240: Single-family Non-Modified RPL *BaseCapital$_{bps}$*

		MTMLTV <= 30%	30% < MTMLTV <= 60%	60% < MTMLTV <= 70%	70% < MTMLTV <= 75%	75% < MTMLTV <= 80%	80% < MTMLTV <= 85%	85% < MTMLTV <= 90%	90% < MTMLTV <= 95%	95% < MTMLTV <= 100%	100% < MTMLTV <= 110%	110% < MTMLTV <= 120%	MTMLTV > 120%
Months Since Last Delinquency	0 < Months <= 3	8	122	315	433	525	658	763	843	929	1002	1085	1125
	3 < Months <= 12	7	88	245	340	421	522	623	708	791	882	1002	1106
	12 < Months <= 36	6	67	202	285	353	431	523	607	693	795	938	1093
	36 < Months <= 48	8	46	132	198	285	349	447	550	642	766	893	1088

(d) Single-family Modified RPL *BaseCapital$_{bps}$* is shown in Table 9 to part 1240. For each loan classified as a Modified RPL, *BaseCapital$_{bps}$* is the value in the cell in Table 9 determined using the minimum of the Months Since Last Modification and Months Since Last Delinquency and the MTMLTV of the loan.

Table 9 to Part 1240: Single-Family Modified RPL *$BaseCapital_{bps}$*

		MTMLTV <= 30%	30% < MTMLTV <= 60%	60% < MTMLTV <= 70%	70% < MTMLTV <= 75%	75% < MTMLTV <= 80%	80% < MTMLTV <= 85%	85% < MTMLTV <= 90%	90% < MTMLTV <= 95%	95% < MTMLTV <= 100%	100% < MTMLTV <= 110%	110% < MTMLTV <= 120%	MTMLTV > 120%
Minimum of (1) Months Since Last Modification and (2) Months Since Last Delinquency	0 < Months <= 3	14	195	474	613	715	806	904	993	1061	1120	1177	1222
	3 < Months <= 12	13	153	388	506	593	678	776	868	946	1024	1112	1217
	12 < Months <= 36	12	119	314	415	493	576	671	767	849	949	1056	1212
	36 < Months <= 48	11	84	220	313	425	500	611	733	830	939	1046	1207

(e) Single-family NPL *$BaseCapital_{bps}$* is shown in Table 10 to part 1240. For each loan classified as an NPL, *$BaseCapital_{bps}$* is the value in the cell in Table 10 determined using the Number of Missed Payments and the MTMLTV of the loan.

Table 10 to Part 1240: Single-Family NPL $\mathit{BaseCapital}_{bps}$

		MTMLTV <= 30%	30% < MTMLTV <= 60%	60% < MTMLTV <= 70%	70% < MTMLTV <= 75%	75% < MTMLTV <= 80%	80% < MTMLTV <= 85%	85% < MTMLTV <= 90%	MTMLTV > 90%
Number of Missed Payments	1	46	387	1054	1195	1300	1404	1496	1663
	2	60	507	1233	1374	1462	1535	1612	1695
	3-6	80	603	1315	1437	1503	1556	1600	1638
	>=7	198	884	1565	1619	1650	1659	1667	1577

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§ 1240.9 Risk multipliers for single-family whole loans and guarantees.

(a) Risk multiplier values increase or decrease the credit risk capital requirement for single-family whole loans and guarantees based on a loan's assigned loan segment and risk characteristics. The Single-family Risk Multipliers are presented in Table 11 to part 1240.

(b) The steps for calculating the total combined risk multiplier (*TotalCombRiskMult*) are as follows:

(1) Determine the appropriate risk multipliers values from Table 11 based on the loan's characteristics and assigned loan segment.

(2) Apply the appropriate formula as set forth in paragraph (c) of this section to calculate the uncapped total combined risk multiplier (*UncapTotalCombRiskMult*).

(3) For high LTV loans, the combined risk multiplier is subject to a cap. For those loans, apply the calculation set forth in paragraph (d) of this section, to determine *TotalCombRiskMult.*

(4) For loans not subject to the cap, *TotalCombRiskMult* will equal *UncapTotalCombRiskMult.*

TABLE 11 TO PART 1240—SINGLE-FAMILY RISK MULTIPLIERS

Risk factor	Value or range	Risk multipliers by single-family loan segment				
		New origination loan	Performing seasoned loan	Non-modified RPL	Modified RPL	NPL
Loan Purpose	Purchase	1.0	1.0	1.0	1.0	
	Cashout Refinance	1.4	1.4	1.4	1.4	
	Rate/Term Refinance	1.3	1.3	1.2	1.3	
	Other	1.0	1.0	1.0	1.0	
Occupancy Type	Owner Occupied or Second Home.	1.0	1.0	1.0	1.0	1.0
	Investment	1.2	1.2	1.5	1.3	1.2
Property Type	1-Unit	1.0	1.0	1.0	1.0	1.0
	2–4 Unit	1.4	1.4	1.4	1.3	1.1
	Condominium	1.1	1.1	1.0	1.0	1.0
	Manufactured Home	1.3	1.3	1.8	1.6	1.2
Number of Borrowers	Multiple borrowers	1.0	1.0	1.0	1.0	1.0
	One borrower	1.5	1.5	1.4	1.4	1.1
Third-Party Origination Channel.	Non-TPO	1.0	1.0	1.0	1.0	1.0
	TPO	1.1	1.1	1.1	1.1	1.0
DTI	DTI <= 25%	0.8	0.8	0.9	0.9	
	25% < DTI <= 40%	1.0	1.0	1.0	1.0	
	DTI > 40%	1.2	1.2	1.2	1.1	
Product Type	FRM 30 year	1.0	1.0	1.0	1.0	1.0
	ARM 1/1	1.7	1.7	1.1	1.0	1.1
	FRM 15 year	0.3	0.3	0.3	0.5	0.5
	FRM 20 year	0.6	0.6	0.6	0.5	0.8
Loan Size	UPB <= $50,000	2.0	2.0	1.5	1.5	1.9
	$50,000 < UPB <= $100,000.	1.4	1.4	1.5	1.5	1.4
	UPB > $100,000	1.0	1.0	1.0	1.0	1.0
Subordination (OLTV × Second Lien).	No subordination	1.0	1.0	1.0	1.0	
	30% < OLTV <= 60% and 0% < subordination <= 5%.	1.1	1.1	0.8	1.0	
	30% < OLTV <= 60% and subordination > 5%.	1.5	1.5	1.1	1.2	
	OLTV > 60% and 0% < subordination <= 5%.	1.1	1.1	1.2	1.1	
	OLTV > 60% and subordination > 5%.	1.4	1.4	1.5	1.3	
Loan Age	Loan Age <= 24 months		1.0			
	24 months < Loan Age <= 36 months.		0.95			
	36 months < Loan Age <= 60 months.		0.80			
	Loan Age > 60 months		0.75			
Cohort Burnout	No Burnout		1.0			
	Low		1.2			
	Medium		1.3			
	High		1.4			
Interest-Only (IO)	No IO		1.0	1.0	1.0	
	Yes IO		1.6	1.4	1.1	
Loan Documentation Level	Full Documentation		1.0	1.0	1.0	
	No Documentation or Low Documentation.		1.3	1.3	1.2	
Streamlined Refi	No		1.0	1.0	1.0	
	Yes		1.0	1.2	1.1	
Refreshed Credit Score for RPLs.	Refreshed Credit Score < 620.			1.6	1.4	
	620 <= Refreshed Credit Score < 640.			1.3	1.2	
	640 <= Refreshed Credit Score < 660.			1.2	1.1	
	660 <= Refreshed Credit Score < 700.			1.0	1.0	
	700 <= Refreshed Credit Score < 720.			0.7	0.8	
	720 <= Refreshed Credit Score < 740.			0.6	0.7	
	740 <= Refreshed Credit Score < 760.			0.5	0.6	
	760 <= Refreshed Credit Score < 780.			0.4	0.5	

TABLE 11 TO PART 1240—SINGLE-FAMILY RISK MULTIPLIERS—Continued

Risk factor	Value or range	Risk multipliers by single-family loan segment				
		New origination loan	Performing seasoned loan	Non-modified RPL	Modified RPL	NPL
	Refreshed Credit Score >= 780.	....	....	0.3	0.4	....
Payment change from modification.	Payment Change >= 0%	....	....	....	1.1	....
	−20% <= Payment Change < 0%.	....	....	....	1.0	....
	−30% <= Payment Change < −20%.	....	....	....	0.9	....
	Payment Change < −30%	....	....	....	0.8	....
Previous Maximum Delinquency (in the last 36 months).	0–1 Months	....	....	1.0	1.0	....
	2–3 Months	....	....	1.2	1.1	....
	4–5 Months	....	....	1.3	1.1	....
	6+ Months	....	....	1.5	1.1	....
Refreshed Credit Score for NPLs.	Refreshed Credit Score < 580.	....	....	....	....	1.2
	580 <= Refreshed Credit Score < 640.	....	....	....	....	1.1
	640 <= Refreshed Credit Score < 700.	....	....	....	....	1.0
	700 <= Refreshed Credit Score < 720.	....	....	....	....	0.9
	720 <= Refreshed Credit Score < 760.	....	....	....	....	0.8
	760 <= Refreshed Credit Score < 780.	....	....	....	....	0.7
	Refreshed Credit Score >= 780.	....	....	....	....	0.5

(c) The following loan characteristics risk multiplier calculations are to be used for each respective loan segment to determine the *UncapTotalCombRiskMult:*

(1) For each loan classified as a Single-family New Origination Loan determine the risk multiplier values associated with the relevant risk factors from Table 11 and apply the following formula to calculate *UncapTotalCombRiskMult:*

UncapTotalCombRiskMult = Loan Purpose Multiplier × Occupancy Type Multiplier × Property Type Multiplier × Number of Borrowers Multiplier × Third-Party Origination Channel Multiplier × Back-End Debt-to-Income Multiplier × Product Type Multiplier × Loan Size Multiplier × Subordination Multiplier.

(2) For each loan classified as a Seasoned Performing Loan determine the risk multiplier values associated with the relevant risk factors from Table 11 and apply the following formula to calculate *UncapTotalCombRiskMult:*

UncapTotalCombRiskMult = Loan Purpose Multiplier × Occupancy Type Multiplier × Property Type Multiplier × Number of Borrowers Multiplier × Third-Party Origination Channel Multiplier × Back-End Debt-to-Income Multiplier × Product Type Multiplier × Loan Size Multiplier × Subordination Multiplier × Loan Age Multiplier × Cohort Burnout Multiplier × Interest-Only Multiplier × Loan Documentation Level Multiplier × Streamlined Refi Multiplier.

(3) For each loan classified as a Non-Modified RPL determine the risk multiplier values associated with the relevant risk factors from Table 11 and apply the following formula to calculate *UncapTotalCombRiskMult:*

UncapTotalCombRiskMult = Loan Purpose Multiplier × Occupancy Type Multiplier × Property Type Multiplier × Number of Borrowers Multiplier × Third-Party Origination Channel Multiplier × Back-End Debt-to-Income Multiplier × Product Type Multiplier × Loan Size Multiplier × Subordination Multiplier × Loan Age Multiplier × Interest-Only Multiplier × Loan Documentation Level Multiplier × Streamlined Refi Multiplier × Refreshed Credit Score for RPLs Multiplier × Previous Maximum Delinquency Multiplier.

(4) For each loan classified as a Modified RPL determine the risk multiplier values associated with the relevant risk factors from Table 11 and apply the following formula to calculate *UncapTotalCombRiskMult:*

UncapTotalCombRiskMult = Loan Purpose Multiplier × Occupancy Type Multiplier × Property Type Multiplier × Number of Borrowers Multiplier × Third-Party Origination Channel Multiplier × Back-End Debt-to-Income Multiplier × Product Type Multiplier × Loan Size Multiplier × Subordination Multiplier × Loan Age Multiplier × Interest-Only Multiplier × Loan Documentation Level Multiplier × Streamlined Refi Multiplier × Refreshed Credit Score for RPLs Multiplier × Payment change from modification Multiplier × Previous Maximum Delinquency Multiplier.

(5) For each loan classified as an NPL determine the risk multiplier values associated with the relevant risk factors from Table 11 and apply the following formula to calculate *UncapTotalCombRiskMult:*

UncapTotalCombRiskMult = Occupancy Type Multiplier × Property Type Multiplier × Number of Borrowers Multiplier × Product Type Multiplier × Loan Size Multiplier × Prior Maximum Delinquency Multiplier × Refreshed Credit Score for NPLs Multiplier.

(d) *TotalCombRiskMult* is calculated as described below:

(1) For high LTV loans, the combined risk multiplier is subject to a cap. If the OLTV for a loan classified as a New Origination Loan or the MTMLTV for a loan classified in any other loan segment is greater than 95%, *TotalCombRiskMult* is capped at 3.0 according to the following formula:

TotalCombRiskMult = MIN(*UncapTotalCombRiskMult,* 3.0)

(2) If the OLTV for a loan classified as a New Origination Loan or the MTMLTV for a loan classified in any other loan segment is less than or equal to 95%, then *TotalCombRiskMult* equals *UncapTotalCombRiskMult.*

§ 1240.10 Gross credit risk capital requirement for single-family whole loans and guarantees.

An Enterprise must determine the gross credit risk capital requirement in basis points ($GrossCreditRiskCapReq_{bps}$) for a loan by taking the product of $BaseCapital_{bps}$ and *TotalCombRiskMult,* where the product is subject to a limit of 3,000 basis points according to the following formula:

$GrossCreditRiskCapReq_{bps}$ = MIN($BaseCapital_{bps}$ × *TotalCombRiskMult,* 3,000)

§ 1240.11 Loan-level credit enhancement impact on gross credit risk capital requirement.

(a) Loan-level credit enhancement comprises participation agreements, repurchase or replacement agreements, recourse and indemnification agreements and mortgage insurance.

(b) Loan-level credit enhancement reduces an Enterprise's gross credit risk capital requirement. Only loans covered by a loan-level credit enhancement as of the reporting date receives a loan-level credit enhancement benefit.

(c) An Enterprise must determine the credit enhancement multiplier (*CEMultiplier*) using Tables 12, 13, 14, 15, and 16, and the special provisions in paragraphs (d) through (i) of this section.

(1) Table 12 to part 1240 shows *CEMultipliers* for New Origination Loan, Performing Seasoned Loan, and Non-Modified RPL loan segments where MI Cancellation Feature is set to Non-Cancellable.

TABLE 12 TO PART 1240—*CEMultipliers* FOR NEW ORIGINATION LOAN, PERFORMING SEASONED LOAN, AND NON-MODIFIED RPL LOAN SEGMENTS WHEN MI CANCELLATION FEATURE IS SET TO NON-CANCELLABLE

Amortization term/coverage type	Coverage category	*CEMultiplier*
15/20 Year Amortizing Loan with Guide-level Coverage	80% < OLTV <= 85% and MI Coverage Percent = 6%	0.846
	85% < OLTV <= 90% and MI Coverage Percent = 12%	0.701
	90% < OLTV <= 95% and MI Coverage Percent = 25%	0.408
	95% < OLTV <= 97% and MI Coverage Percent = 35%	0.226
	OLTV > 97% and MI Coverage Percent = 35%	0.184
30 Year Amortizing Loan with Guide-level Coverage	80% < OLTV <= 85% and MI Coverage Percent = 12%	0.706
	85% < OLTV <= 90% and MI Coverage Percent = 25%	0.407
	90% < OLTV <= 95% and MI Coverage Percent = 30%	0.312
	95% < OLTV <= 97% and MI Coverage Percent = 35%	0.230
	OLTV > 97% and MI Coverage Percent = 35%	0.188
15/20 Year Amortizing Loan with Charter-level Coverage	80% < OLTV <= 85% and MI Coverage Percent = 6%	0.846
	85% < OLTV <= 90% and MI Coverage Percent = 12%	0.701
	90% < OLTV <= 95% and MI Coverage Percent = 16%	0.612
	95% < OLTV <= 97% and MI Coverage Percent = 18%	0.570
	OLTV > 97% and MI Coverage Percent = 20%	0.535
30 Year Amortizing Loan with Charter-level Coverage	80% < OLTV <= 85% and MI Coverage Percent = 6%	0.850
	85% < OLTV <= 90% and MI Coverage Percent = 12%	0.713
	90% < OLTV <= 95% and MI Coverage Percent = 16%	0.627
	95% < OLTV <= 97% and MI Coverage Percent = 18%	0.590
	OLTV > 97% and MI Coverage Percent = 20%	0.558

(2) Table 13 to part 1240 shows *CEMultipliers* for New Origination Loan, Performing Seasoned Loan, and Non-Modified RPL loan segments where MI Cancellation Feature is set to Cancellable.

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Table 13 to Part 1240: *CEMultipliers* for New Origination Loan, Performing Seasoned Loan, and Non-Modified RPL Loan Segments when MI Cancellation Feature is set to Cancellable

		Loan Age (months)											
		Loan Age <= 5	5 < Loan Age <= 12	12 < Loan Age <= 24	24 < Loan Age <= 36	36 < Loan Age <= 48	48 < Loan Age <= 60	60 < Loan Age <= 72	72 < Loan Age <= 84	84 < Loan Age <= 96	96 < Loan Age <=108	108 < Loan Age <=120	Loan Age >120
15/20 Year Amortizing Loan with Guide-level Coverage	80% < OLTV <= 85% and MI Coverage = 6%	0.997	0.998	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	85% < OLTV <= 90% and MI Coverage = 12%	0.963	0.971	0.988	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	90% < OLTV <= 95% and MI Coverage = 25%	0.826	0.853	0.912	0.973	0.996	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	95% < OLTV <= 97% and MI Coverage = 35%	0.732	0.765	0.848	0.936	0.986	0.998	1.000	1.000	1.000	1.000	1.000	1.000
	OLTV > 97% and MI Coverage = 35%	0.630	0.673	0.762	0.865	0.945	0.980	0.996	1.000	1.000	1.000	1.000	1.000
30 Year Amortizing Loan with Guide-level Coverage	80% < OLTV <= 85% and MI Coverage = 12%	0.867	0.884	0.928	0.962	0.994	0.999	1.000	1.000	1.000	1.000	1.000	1.000
	85% < OLTV <= 90% and MI Coverage = 25%	0.551	0.584	0.627	0.679	0.785	0.893	0.950	0.986	0.998	1.000	1.000	1.000
	90% < OLTV <= 95% and MI Coverage = 30%	0.412	0.440	0.456	0.484	0.547	0.654	0.743	0.845	0.932	0.969	0.992	1.000
	95% < OLTV <= 97% and MI Coverage = 35%	0.322	0.351	0.369	0.391	0.449	0.535	0.631	0.746	0.873	0.925	0.965	1.000
	OLTV > 97% and MI Coverage = 35%	0.272	0.295	0.314	0.353	0.410	0.462	0.515	0.607	0.756	0.826	0.887	1.000
15/20 Year Amortizing Loan with Charter-level Coverage	80% < OLTV <= 85% and MI Coverage = 6%	0.997	0.998	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	85% < OLTV <= 90% and MI Coverage = 12%	0.963	0.971	0.988	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	90% < OLTV <= 95% and MI Coverage = 16%	0.887	0.904	0.943	0.983	0.997	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	95% < OLTV <= 97% and MI Coverage = 18%	0.854	0.874	0.918	0.966	0.992	0.999	1.000	1.000	1.000	1.000	1.000	1.000
	OLTV > 97% and MI Coverage = 20%	0.788	0.810	0.859	0.922	0.969	0.989	0.998	1.000	1.000	1.000	1.000	1.000
30 Year Amortizing Loan with Charter-level Coverage	80% < OLTV <= 85% and MI Coverage = 6%	0.934	0.943	0.964	0.981	0.997	0.999	1.000	1.000	1.000	1.000	1.000	1.000
	85% < OLTV <= 90% and MI Coverage = 12%	0.780	0.795	0.819	0.845	0.896	0.948	0.976	0.993	0.999	1.000	1.000	1.000
	90% < OLTV <= 95% and MI Coverage = 16%	0.679	0.690	0.703	0.719	0.755	0.813	0.861	0.916	0.963	0.983	0.995	1.000
	95% < OLTV <= 97% and MI Coverage = 18%	0.642	0.652	0.662	0.676	0.708	0.756	0.806	0.866	0.933	0.960	0.981	1.000
	OLTV > 97% and MI Coverage = 20%	0.597	0.607	0.617	0.629	0.658	0.686	0.715	0.765	0.845	0.882	0.914	1.000

(3) Table 14 to part 1240 shows *CEMultipliers* for the Modified RPL loan segment with 30-Year Post-Modification Amortization when MI Cancellation Feature is set to Cancellable. The 30 Year and 15/20 Year Amortizing Loan characteristics refer to pre-modification original amortization terms.

Table 14 to Part 1240: *CEMultipliers* for the Modified RPL loan segment with 30-Year Post-Modification Amortization when MI Cancellation Feature is set to Cancellable

		Months (Mths) Since Last Modification											
		Mths <= 5	5 < Mths <= 12	12 < Mths <= 24	24 < Mths <= 36	36 < Mths <= 48	48 < Mths <= 60	60 < Mths <= 72	72 < Mths <= 84	84 < Mths <= 96	96 < Mths <=108	108 < Mths <= 120	Mths >120
15/20 Year Amortizing Loan with Guide-level Coverage	80% < OLTV <= 85% and MI Coverage = 6%	0.997	0.998	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	85% < OLTV <= 90% and MI Coverage = 12%	0.963	0.971	0.988	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	90% < OLTV <= 95% and MI Coverage = 25%	0.826	0.853	0.912	0.973	0.996	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	95% < OLTV <= 97% and MI Coverage = 35%	0.732	0.765	0.848	0.936	0.986	0.998	1.000	1.000	1.000	1.000	1.000	1.000
	OLTV > 97% and MI Coverage = 35%	0.630	0.673	0.762	0.865	0.945	0.980	0.996	1.000	1.000	1.000	1.000	1.000
30 Year Amortizing Loan with Guide-level Coverage	80% < OLTV <= 85% and MI Coverage = 12%	0.867	0.906	0.978	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	85% < OLTV <= 90% and MI Coverage = 25%	0.551	0.568	0.653	0.839	0.968	0.992	0.998	1.000	1.000	1.000	1.000	1.000
	90% < OLTV <= 95% and MI Coverage = 30%	0.412	0.426	0.470	0.601	0.794	0.889	0.951	0.981	0.992	1.000	1.000	1.000
	95% < OLTV <= 97% and MI Coverage = 35%	0.322	0.337	0.380	0.492	0.689	0.810	0.899	0.945	0.965	1.000	1.000	1.000
	OLTV > 97% and MI Coverage = 35%	0.272	0.284	0.334	0.436	0.561	0.682	0.791	0.857	0.887	1.000	1.000	1.000
15/20 Year Amortizing Loan with Charter-level Coverage	80% < OLTV <= 85% and MI Coverage = 6%	0.997	0.998	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	85% < OLTV <= 90% and MI Coverage = 12%	0.963	0.971	0.988	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	90% < OLTV <= 95% and MI Coverage = 16%	0.887	0.904	0.943	0.983	0.997	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	95% < OLTV <= 97% and MI Coverage = 18%	0.854	0.874	0.918	0.966	0.992	0.999	1.000	1.000	1.000	1.000	1.000	1.000
	OLTV > 97% and MI Coverage = 20%	0.788	0.810	0.859	0.922	0.969	0.989	0.998	1.000	1.000	1.000	1.000	1.000
30 Year Amortizing Loan with Charter-level Coverage	80% < OLTV <= 85% and MI Coverage = 6%	0.934	0.954	0.989	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	85% < OLTV <= 90% and MI Coverage = 12%	0.780	0.788	0.832	0.922	0.985	0.996	0.999	1.000	1.000	1.000	1.000	1.000
	90% < OLTV <= 95% and MI Coverage = 16%	0.679	0.685	0.711	0.784	0.889	0.940	0.973	0.989	0.995	1.000	1.000	1.000
	95% < OLTV <= 97% and MI Coverage = 18%	0.642	0.647	0.669	0.732	0.836	0.900	0.947	0.971	0.981	1.000	1.000	1.000
	OLTV > 97% and MI Coverage = 20%	0.597	0.602	0.623	0.672	0.740	0.805	0.864	0.898	0.914	1.000	1.000	1.000

(4) Table 15 to part 1240 shows *CEMultipliers* for Modified RPL with 40-Year Post-Modification Amortization when MI Cancellation Feature is set to Cancellable. The 30 Year and 15/20 Year Amortizing Loan characteristics refer to pre-modification original amortization terms.

Table 15 to Part 1240: *CEMultipliers* for Modified RPL with 40-Year Post-Modification Amortization when MI Cancellation Feature is set to Cancellable

		Months (Mths) Since Last Modification											
		Mths <= 5	5 < Mths <= 12	12 < Mths <= 24	24 < Mths <= 36	36 < Mths <= 48	48 < Mths <= 60	60 < Mths <= 72	72 < Mths <= 84	84 < Mths <= 96	96 < Mths <=108	108 < Mths <=120	Mths >120
15/20 Year Amortizing Loan with Guide-level Coverage	80% < OLTV <= 85% and MI Coverage = 6%	0.997	0.998	0.999	0.999	0.999	0.999	1.000	1.000	1.000	1.000	1.000	1.000
	85% < OLTV <= 90% and MI Coverage = 12%	0.963	0.971	0.971	0.971	0.980	0.988	0.994	0.999	1.000	1.000	1.000	1.000
	90% < OLTV <= 95% and MI Coverage = 25%	0.826	0.853	0.853	0.853	0.883	0.912	0.943	0.973	0.996	1.000	1.000	1.000
	95% < OLTV <= 97% and MI Coverage = 35%	0.732	0.765	0.765	0.765	0.807	0.848	0.892	0.936	0.986	0.998	1.000	1.000
	OLTV > 97% and MI Coverage = 35%	0.630	0.673	0.673	0.673	0.718	0.762	0.814	0.865	0.945	0.980	0.996	1.000
30 Year Amortizing Loan with Guide-level Coverage	80% < OLTV <= 85% and MI Coverage = 12%	0.867	0.884	0.928	0.962	0.994	0.999	1.000	1.000	1.000	1.000	1.000	1.000
	85% < OLTV <= 90% and MI Coverage = 25%	0.551	0.584	0.627	0.679	0.785	0.893	0.950	0.986	0.998	1.000	1.000	1.000
	90% < OLTV <= 95% and MI Coverage = 30%	0.412	0.440	0.456	0.484	0.547	0.654	0.743	0.845	0.932	0.969	0.992	1.000
	95% < OLTV <= 97% and MI Coverage = 35%	0.322	0.351	0.369	0.391	0.449	0.535	0.631	0.746	0.873	0.925	0.965	1.000
	OLTV > 97% and MI Coverage = 35%	0.272	0.295	0.314	0.353	0.410	0.462	0.515	0.607	0.756	0.826	0.887	1.000
15/20 Year Amortizing Loan with Charter-level Coverage	80% < OLTV <= 85% and MI Coverage = 6%	0.997	0.998	0.998	0.999	0.998	0.998	1.000	1.000	1.000	1.000	1.000	1.000
	85% < OLTV <= 90% and MI Coverage = 12%	0.963	0.971	0.971	0.971	0.980	0.988	0.994	0.999	1.000	1.000	1.000	1.000
	90% < OLTV <= 95% and MI Coverage = 16%	0.887	0.904	0.904	0.904	0.924	0.943	0.963	0.983	0.997	1.000	1.000	1.000
	95% < OLTV <= 97% and MI Coverage = 18%	0.854	0.874	0.874	0.874	0.896	0.918	0.942	0.966	0.992	0.999	1.000	1.000
	OLTV > 97% and MI Coverage = 20%	0.788	0.810	0.810	0.810	0.835	0.859	0.891	0.922	0.969	0.989	0.998	1.000
30 Year Amortizing Loan with Charter-level Coverage	80% < OLTV <= 85% and MI Coverage = 6%	0.934	0.943	0.964	0.981	0.997	0.999	1.000	1.000	1.000	1.000	1.000	1.000
	85% < OLTV <= 90% and MI Coverage = 12%	0.780	0.795	0.819	0.845	0.896	0.948	0.976	0.993	0.999	1.000	1.000	1.000
	90% < OLTV <= 95% and MI Coverage = 16%	0.679	0.690	0.703	0.719	0.755	0.813	0.861	0.916	0.963	0.983	0.995	1.000
	95% < OLTV <= 97% and MI Coverage = 18%	0.642	0.652	0.662	0.676	0.708	0.756	0.806	0.866	0.933	0.960	0.981	1.000
	OLTV > 97% and MI Coverage = 20%	0.597	0.607	0.617	0.629	0.658	0.686	0.715	0.765	0.845	0.882	0.914	1.000

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(5) Table 16 to part 1240 shows *CEMultipliers* for NPLs.

TABLE 16 TO PART 1240—*CEMultipliers* FOR NPLS

Original amortization term/coverage type	Coverage category	*CEMultiplier*
15/20 Year Amortizing Loan with Guide-level Coverage	80% < OLTV <= 85% and MI Coverage Percent = 6%	0.893
	85% < OLTV <= 90% and MI Coverage Percent = 12%	0.803
	90% < OLTV <= 95% and MI Coverage Percent = 25%	0.597
	95% < OLTV <= 97% and MI Coverage Percent = 35%	0.478
	OLTV > 97% and MI Coverage Percent = 35%	0.461
30 Year Amortizing Loan with Guide-level Coverage	80% < OLTV <= 85% and MI Coverage Percent = 12%	0.813
	85% < OLTV <= 90% and MI Coverage Percent = 25%	0.618
	90% < OLTV <= 95% and MI Coverage Percent = 30%	0.530
	95% < OLTV <= 97% and MI Coverage Percent = 35%	0.490
	OLTV > 97% and MI Coverage Percent = 35%	0.505
15/20 Year Amortizing Loan with Charter-level Coverage	80% < OLTV <= 85% and MI Coverage Percent = 6%	0.893
	85% < OLTV <= 90% and MI Coverage Percent = 12%	0.803
	90% < OLTV <= 95% and MI Coverage Percent = 16%	0.775
	95% < OLTV <= 97% and MI Coverage Percent = 18%	0.678
	OLTV > 97% and MI Coverage Percent = 20%	0.663
30 Year Amortizing Loan with Charter-level Coverage	80% < OLTV <= 85% and MI Coverage Percent = 6%	0.902
	85% < OLTV <= 90% and MI Coverage Percent = 12%	0.835
	90% < OLTV <= 95% and MI Coverage Percent = 16%	0.787
	95% < OLTV <= 97% and MI Coverage Percent = 18%	0.765
	OLTV > 97% and MI Coverage Percent = 20%	0.760

(d) *CEMultipliers* calculated from Tables 12, 13, 14, 15 and 16 to part 1240 may be subject to special provisions depending on the characteristics of the single-family whole loan and guarantee.

(1) If a loan is covered by MI and its OLTV is less than or equal to 80 percent, use the *CEMultiplier* associated with the appropriate 80 to 85 percent OLTV cell.

(2) If a loan has an interest-only feature and its MI Cancellation Feature is set to Cancellable, treat the MI as non-cancellable when selecting the appropriate *CEMultiplier.*

(3) If a loan has an MI Coverage Percent between the MI Coverage Percentages for Charter-level Coverage and Guide-level Coverage, use linear interpolation to determine the *CEMultiplier.*

(4) If a loan has an MI Coverage Percent that is less than the MI Coverage Percent for Charter-Level Coverage, use linear interpolation between a hypothetical policy with zero coverage and a *CEMultiplier* of one, and the Charter-level Coverage to determine the *CEMultiplier.*

(5) If a loan has an MI Coverage Percent that is greater than the Guide-level Coverage, set the *CEMultiplier* equal to the *CEMultiplier* for the Guide-level Coverage.

(e) *CEMultiplier* for full repurchase or replacement agreements is set to 0.0.

(f) *CEMultiplier* for full recourse and indemnification agreements is set to 0.0.

(g) *CEMultiplier* for partial repurchase or replacement agreements shall be calculated using the methodology for calculating capital relief as provided in § 1240.14.

(h) *CEMultiplier* for partial recourse and indemnification agreements shall be calculated using the methodology for calculating capital relief as provided in § 1240.14.

(i) *CEMultiplier* for participation agreements is set to 1.0.

§ 1240.12 Counterparty Haircut for single-family whole loans and guarantees.

(a) The amount by which credit enhancement lowers the *GrossCreditRiskCapReq*$_{bps}$ for single-family whole loans and guarantees must be reduced to account for the risk that the counterparty is unable to pay claims.

(b) An Enterprise shall determine the *CPHaircut* using Table 17 to part 1240.

TABLE 17 TO PART 1240—*CPHaircut* BY RATING, MORTGAGE CONCENTRATION RISK, SEGMENT, AND PRODUCT

Counterparty rating	Mortgage concentration risk: Not high			Mortgage concentration risk: High		
	New originations, performing seasoned, and RPLs (%)		NPLs (%)	New originations, performing seasoned, and RPLs (%)		NPLs (%)
	30 Year product	20/15 Year product		30 Year product	20/15 Year product	
1	1.8	1.3	0.6	2.8	2.0	0.9
2	4.5	3.5	2.0	7.3	5.6	3.2
3	5.2	4.0	2.4	8.3	6.4	3.9
4	11.4	9.5	6.9	17.2	14.3	10.4
5	14.8	12.7	9.9	20.9	18.0	14.0
6	21.2	19.1	16.4	26.8	24.2	20.8
7	40.0	38.2	35.7	43.7	41.7	39.0
8	47.6	46.6	45.3	47.6	46.6	45.3

§ 1240.13 Net credit risk capital requirement for single-family whole loans and guarantees.

(a) The net credit risk capital requirement for a single-family whole loan and guarantee is the $GrossCreditRiskCapReq_{bps}$ adjusted for the loan-level credit enhancement benefit and *CPHaircut.*

(b) For a loan with loan-level credit enhancement, an Enterprise shall determine the net credit risk capital requirement in basis points ($NetCreditRiskCapReq_{bps}$) using the following equation:

$$NetCreditRiskCapReq_{bps} = GrossCreditRiskCapReq_{bps} \times (1 - (1 - CEMultiplier) \times (1 - CPHaircut))$$

(c) For a loan without loan-level credit enhancement, an Enterprise shall determine the net credit risk capital requirement in basis points ($NetCreditRiskCapReq_{bps}$) using the following equation:

$$NetCreditRiskCapReq_{bps} = GrossCreditRiskCapReq_{bps}$$

(d) An Enterprise shall determine the net credit risk capital requirement in dollars ($NetCreditRiskCapReq_{\$}$) using the following equation:

$$NetCreditRiskCapReq_{\$} = \text{UPB} \times NetCreditRiskCapReq_{bps}/10{,}000$$

(e) The aggregate net credit risk capital requirement for all single-family whole loans and guarantees ($NetCreditRiskCapReq_{\$\_SFWL}$) is the sum of each loan's $NetCreditRiskCapReq_{\$}$.

$$NetCreditRiskCapReq_{\$\_SFWL} = \sum_{\forall SFWL} NetCreditRiskCapReq_{\$}$$

§ 1240.14 Single-family credit risk transfer capital relief for single-family whole loans and guarantees.

(a) A single-family credit risk transfer (''single-family CRT'') is a credit risk transfer where the whole loans and guarantees underlying the CRT, or referenced by the CRT, are single-family whole loans and guarantees. Single-family CRTs may reduce $NetCreditRiskCapReq_{\$\_SFWL}$. The reduction is called capital relief. The methodology for calculating capital relief combines aggregate credit risk capital requirements and expected losses on the single-family whole loans and guarantees underlying or referenced by the single-family CRT, tranche structure, ownership, loss timing, and counterparty credit risk. The methodology is provided in § 1240.15.

(b) The steps for calculating capital relief from a single-family CRT are as follows:

(1) Identify the single-family whole loans and guarantees underlying or referenced by the CRT.

(2) Calculate the aggregate net credit risk capital requirements and expected losses on the single-family whole loans and guarantees underlying or referenced by the CRT.

(3) Distribute the aggregate net credit risk capital requirements and expected losses across the tranches of the CRT so that relatively higher capital requirements are allocated to the more risky junior tranches that are the first to absorb losses, and relatively lower requirements are allocated to the more senior tranches.

(4) Identify capital relief, adjusting for an Enterprise's retained tranche interests.

(5) Adjust capital relief for loss timing and counterparty credit risk.

(6) Calculate total capital relief by adding up capital relief for each tranche in the CRT.

§ 1240.15 Calculation of capital relief from a single-family CRT.

(a) To calculate capital relief from a single-family CRT, an Enterprise must have data that enables it to assign accurately the parameters described in paragraphs (b) and (c) of this section.

(1) Data used to assign the parameters must be the most currently available data. If the contracts governing the single-family CRT require payments on a monthly or quarterly basis, the data used to assign the parameters must be no more than 91 calendar days old.

(2) If an Enterprise does not have the data to assign the parameters described in paragraphs (b) and (c) of this section, then an Enterprise must treat the single-family CRT as if no capital relief had occurred.

(b) To calculate capital relief from a single-family CRT, an Enterprise must have accurate data on the following set of inputs:

(1) *CRT tranche attachment point.* An Enterprise must have accurate information on each tranche's attachment point (*ATCH*) in the single-family CRT. For a given tranche, ATCH represents the threshold at which credit losses of principal will first be allocated. For a given tranche, *ATCH* equals 10,000 multiplied by the ratio of the current dollar amount of underlying subordinated tranches relative to the current dollar amount of all tranches. *ATCH* is expressed in basis points or as a value between zero and 10,000.

(2) *CRT tranche detachment point.* An Enterprise must have accurate information on each tranche's detachment point (*DTCH*) in the single-family CRT. For a given tranche, DTCH represents the threshold at which credit losses of principal would result in total loss of principal. For a given tranche, *DTCH* equals the sum of the tranche's *ATCH* and 10,000 multiplied by the ratio of the current dollar amount of tranches that are *pari passu* with the tranche (that is, have equal seniority with respect to credit risk) to the current dollar amount of all tranches. *DTCH* is expressed in basis points or as a value between zero and 10,000.

(3) *Capital markets risk relief percentage by tranche.* An Enterprise must have accurate information on each tranche's capital markets risk relief percentage ($CM_{\%}$) in the single-family CRT. For a given tranche, $CM_{\%}$ is the percentage of the tranche sold in the capital markets. $CM_{\%}$ is expressed as a value between 0% and 100%.

(4) *Contractual loss sharing risk relief percentage by tranche.* An Enterprise must have accurate information on each tranche's contractual loss sharing risk relief percentage ($LS_{\%}$) in the single-family CRT. For a given tranche, $LS_{\%}$ is the percentage of the tranche that is either insured, reinsured, or afforded coverage through lender reimbursement of credit losses of principal. $LS_{\%}$ is expressed as a value between 0% and 100%.

(5) *Credit risk capital on the underlying reference pool.* The Enterprises must have accurate data on each pool group's credit risk capital ($PGCRC_{bps}$) in the single-family CRT. $PGCRC_{bps}$ is expressed in basis points or as a value between zero and 10,000. For each pool group of single-family whole loans and guarantees in the single-family CRT, $PGCRC_{bps}$ is calculated in one of the following ways:

(i) For single-family CRTs where the contractual terms of the single-family CRT indicate that the single-family CRT will not convey the counterparty credit risk associated with loan-level credit enhancement on the single-family whole loans and guarantees underlying the single-family CRT, then $PGCRC_{bps}$ is calculated using the aggregate net credit risk capital requirement for all single-family whole loans and guarantees underlying the given pool group assuming a 0% *CPHaircut* as follows:

$$PGCRC_{bps} = 10{,}000 * \frac{\sum_{\forall SFWL \in PoolGroup} \left(\left(UPB_{\$} * \ GrossCreditRiskCapReq_{bps} \text{ x } CE\ Multiplier\right) \Big/ {}_{10{,}000} \right)}{\sum_{\forall SFWL \in PoolGroup} UPB_{\$}}$$

(ii) For all other single-family CRTs, *PGCRC_{bps}* is calculated using the aggregate net credit risk capital requirement for all single-family whole loans and guarantees underlying the given pool group as follows:

$$PGCRC_{bps} = 10{,}000 * \frac{\sum_{\forall SFWL \in PoolGroup} NetCreditRiskCapReq_{\$}}{\sum_{\forall SFWL \in PoolGroup} UPB_{\$}}$$

(6) *CRT expected losses.* An Enterprise must have accurate data on total lifetime net expected credit risk losses ($PGEL_{bps}$) on the whole single-family loans and guarantees underlying each pool group in the single-family CRT. $PGEL_{bps}$ shall be calculated internally by an Enterprise. $PGEL_{bps}$ does not include the operational risk capital requirement or going-concern buffer. $PGEL_{bps}$ is expressed in basis points or as a value between zero and 10,000. For each pool group, $PGEL_{bps}$ is calculated in one of the following ways:

(i) For single-family CRTs where the contractual terms of the single-family CRT indicate that the single-family CRT will not convey the counterparty credit risk associated with MI on the single-family whole loans and guarantees underlying the single-family CRT, $PGEL_{bps}$ reflects an Enterprise's internal calculation of aggregate lifetime net expected credit risk losses on all single-family whole loans and guarantees underlying the given pool group while assuming no counterparty haircuts on MI.

(ii) For all other single-family CRTs, $PGEL_{bps}$ reflects an Enterprise's internal calculation of aggregate lifetime net expected credit risk losses on all single-family whole loans and guarantees underlying the given pool group.

(7) *Counterparty collateral on loss sharing transactions.* An Enterprise must have accurate data on the dollar amounts of counterparty collateral ($CntptyCollat_{\$}$) for each counterparty by tranche and pool group from a single-family CRT involving contractual loss sharing. For a given counterparty, tranche, and pool group, $CntptyCollat_{\$}$ is the dollar amount of collateral to fulfill the counterparty's trust funding obligation for loss sharing. $CntptyCollat_{\$}$ is expressed in dollar terms as a value greater than or equal to $0.

(8) *Counterparty quota shares on loss sharing transactions.* An Enterprise must have accurate information on counterparty quota shares on contractual loss sharing transactions for each counterparty by tranche and pool group. For a given counterparty, tranche, and pool group, the counterparty share is the percentage of $LS_{\%}$ that is insured, reinsured, or afforded coverage through lender reimbursement of credit losses of principal by the given counterparty ($CntptyShare_{\%}$). $CntptyShare_{\%}$ is expressed as a value between 0% and 100%.

(9) *Counterparty ratings on loss sharing transactions.* An Enterprise must have internally generated ratings for counterparties on contractual loss sharing transactions. The internally generated ratings must be converted into counterparty financial strength ratings consistent with Table 3: Counterparty Financial Strength Ratings, of this part.

(10) *Counterparty mortgage concentration risk on loss sharing transactions.* An Enterprise must have an internally generated indicator for mortgage concentration risk for the counterparties on contractual loss sharing transactions. The internally generated indicator for mortgage concentration risk must be converted into ratings that reflect the following categories: *High* and *Not High.* An Enterprise should designate counterparties with a significant concentration of mortgage credit as *High.* An Enterprise should designate all other counterparties as *Not High.*

(11) *CRT loss timing factor.* (i) Table 18 to part 1240 sets forth loss timing factors which account for maturity differences between the CRT and the CRT's underlying single-family whole loans and guarantees. Maturity differences arise when the CRT's maturity date arises before the maturity dates on the underlying single-family whole loans and guarantees. The loss timing factors reflect estimates of the cumulative percentages of lifetime losses by the number of months between the CRT's original closing date (or effective date) and the maturity date on the CRT such that CRTs with longer maturities cover more lifetime losses. The loss timing factors also vary by original amortization term and OLTVs on the underlying single-family whole loans and guarantees.

(ii) Using Table 18 to Part 1240, the Enterprises must calculate a single-family CRT loss timing factor ($CRTLT_{\%}$) for each pool group. $CRTLT_{\%}$ is expressed as a value between 0% and 100%. To calculate the $CRTLT_{\%}$, an Enterprise must have the following information by pool group at the time of deal issuance:

(A) CRT's original closing date (or effective date) and the maturity date on the CRT;

(B) UPB share of single-family whole loans and guarantees in the pool group that have original amortization terms of less than or equal to 189 months ($CRTF15_{\%}$); and

(C) UPB share of single-family whole loans and guarantees in the pool group that have original amortization terms greater than 189 months and OLTVs of less than or equal to 80 percent ($CRT80NotF15_{\%}$).

(iii) An Enterprise must use the following method to calculate $CRTLT_{\%}$ for each pool group:

(A) Calculate CRT months to maturity (*CRTMthstoMaturity*) using one of the following methods:

(*1*) For single-family CRTs with reimbursement based upon occurrence or resolution of delinquency, *CRTMthstoMaturity* is the difference between the CRT's maturity date and original closing date, except for the following:

(*i*) If the coverage based upon delinquency is between 1 and 3 months, add 24 months to the difference between the CRT's maturity date and original closing date.

(*ii*) If the coverage based upon delinquency is between 4 and 6 months, add 18 months to the difference between the CRT's maturity date and original closing date.

(*2*) For all other single-family CRTs, *CRTMthstoMaturity* is the difference between the CRT's maturity date and original closing date.

(B) If *CRTMthstoMaturity* is a multiple of 12, then an Enterprise must use the first column of Table 18 to identify the row matching *CRTMthstoMaturity* and take a weighted average of the three loss timing factors in columns 2, 3, and 4 as follows:

$CRTLT_{\%} = (CRTLT15 * CRTF15_{\%}) + (CRTLT80Not15 * CRT80NotF15_{\%}) + (CRTLTGT80Not15 * (1 - CRT80NotF15_{\%} - CRTF15_{\%}))$

(C) If *CRTMthstoMaturity* is not a multiple of 12, an Enterprise must use the first column of Table 18 to identify the two rows that are closest to *CRTMthstoMaturity* and take a weighted average between the two rows of loss timing factors using linear interpolation, where the weights reflect *CRTMthstoMaturity.*

TABLE 18 TO PART 1240—SINGLE-FAMILY CRT LOSS TIMING FACTORS

CRTMthstoMaturity: (#1) Number of months from the single-family CRT's original closing date (or effective date) to the maturity date on the CRT	CRT loss timing factors		
	*CRTLT*15: (#2) CRTLT for pool groups backed by single-family whole loans and guarantees with original amortization terms < = 189 months (%)	*CRTLT*80*Not*15: (#3) CRTLT for pool groups backed by single-family whole loans and guarantees with original amortization terms > 189 months and OLTVs < = 80 (%)	*CRTLTGT*80*Not*15: (#4) CRTLT for pool groups backed by single-family whole loans and guarantees with original amortization terms > 189 months and OLTVs > 80 (%)
0	0	0	0
12	1	0	0
24	6	3	2
36	21	13	11
48	44	31	26
60	66	49	43
72	82	65	58
84	90	74	68
96	94	80	76
108	96	85	81
120	98	88	86
132	99	91	89
144	99	93	92
156	100	94	94
168	100	96	95
180	100	96	96
192	100	97	97
204	100	98	98
216	100	98	98
228	100	98	98
240	100	99	99
252	100	99	99
264	100	99	99
276	100	99	99
288	100	99	99
300	100	100	100
312	100	100	100
324	100	100	100
336	100	100	100
348	100	100	100
360	100	100	100

(12) *Aggregate unpaid principal balance by pool group.* An Enterprise must have accurate information on each pool group's aggregate unpaid principal balance ($PGUPB_{\$}$).

(c) An Enterprise must use the parameters described in paragraph (b) of this section to calculate CRT capital relief, by single-family CRT pool group, using the following steps:

(1) An Enterprise must distribute $PGCRC_{bps}$, by pool group, to the tranches of the CRT, while controlling for $PGEL_{bps}$. For a given pool group and tranche, tranche credit risk capital ($TCRC_{bps}$) is as follows:

$$TCRC_{bps} = (DTCH - ATCH) * \left[\max\left(0, \min\left(\left[\frac{PGCRC_{bps} + PGEL_{bps} - ATCH}{DTCH - ATCH}\right], 1\right)\right) - \max\left(0, \min\left(\left[\frac{PGEL_{bps} - ATCH}{DTCH - ATCH}\right], 1\right)\right)\right]$$

$TCRC_{bps}$ takes values between 0 and 10,000. $TCRC_{bps}$ must be calculated for each tranche in the single-family CRT.

(2) For each pool group and tranche in a single-family CRT, an Enterprise must use the following formulae to identify the capital relief from the capital markets ($CMTCRC_{bps}$) and loss sharing ($LSTCRC_{bps}$) portions of the single-family CRT:

$CMTCRC_{bps} = CM_{\%} * TCRC_{bps} * CRTLT_{\%}$

$LSTCRC_{bps} = LS_{\%} * TCRC_{bps} * CRTLT_{\%}$

$CMTCRC_{bps}$ and $LSTCRC_{bps}$ are expressed in basis points and take values between 0 and 10,000.

(3) For loss sharing transactions, an Enterprise must determine the uncollateralized counterparty exposure

($CntptyExposure_{bps}$) and counterparty credit risk ($CntptyCreditRisk_{bps}$) by pool group and tranche.

(i) For each pool group, tranche and counterparty, an Enterprise must use the following formula to calculate $CntptyExposure_{bps}$:

$$CntptyExposure_{bps} = \max\left(\left[CntptyShare_{\%} * LSTCRC_{bps} - 10{,}000 * \frac{CntptyCollat_{\$}}{PGUPB_{\$}}\right], 0\right)$$

$CntptyExposure_{bps}$ takes values between 0 and 10,000.

(ii) For each pool group, tranche and counterparty, an Enterprise must determine $CntptyCreditRisk_{bps}$. An Enterprise must use its internally generated counterparty ratings converted into the counterparty ratings provided in Table 3: Counterparty Financial Strength Ratings, and its internally generated indicator for mortgage concentration risk converted into ratings that reflect *High* and *Not High* together with the *CPHaircuts* for New Origination Loan, Performing Seasoned Loan, and RPLs from Table 17: *CPHaircut* by Rating, Mortgage Concentration Risk, Segment, and Product, and the following formula to calculate $CntptyCreditRisk_{bps}$:

$$CntptyCreditRisk_{bps} = CntptyExposure_{bps} * CPHaircut$$

$CntptyCreditRisk_{bps}$ takes values between 0 and 10,000.

(4) For each pool group in the single-family CRT, an Enterprise must calculate aggregate capital relief ($PGCapRelief_{bps}$) across all tranches and counterparties associated with the given pool group using the following formula:

$$PGCapRelief_{bps} = \sum_{\forall Tranches \in P} \left(CMTCRC_{bps} + LSTCRC_{bps}\right) - \sum_{\forall Tranches\,\&\,Cntpty \in P} \left(CntptyCreditRisk_{bps}\right)$$

(5) An Enterprise must calculate total capital relief in dollars for the entire single-family CRT ($CapRelief_{\$}$) by adding up the capital relief in dollars from each pool group as follows:

$$CapRelief_{\$} = \sum\nolimits_{\forall PoolGroups} \frac{PGCapRelief_{bps}}{10{,}000} * \left(PGUPB_{\$}\right)$$

§ 1240.16 Calculation of total capital relief for single-family whole loans and guarantees.

To calculate total capital relief across all single-family CRTs ($TotalCapRelief_{\$\_SFWL}$), an Enterprise must aggregate capital relief using the following:

$$TotalCapRelief_{\$\_SFWL} = \sum_{\forall CRT} CapRelief_{\$\_CRT}$$

§ 1240.17 Market risk capital requirement for single-family whole loans.

(a) Each single-family whole loan with market risk exposure is subject to the single-family whole loan market risk capital requirement. There is no market risk exposure for single-family guarantees. The market risk capital requirement for a single-family whole loan is limited to spread risk.

(b) The single-family whole loan market risk capital requirement in dollars ($MarketRiskCapReq_{\$}$) utilizes different calculation methodologies based on the loan product type and performance status.

(1) The dollar amount of the $MarketRiskCapReq_{\$}$ for an RPL or NPL is calculated as follows:

$$MarketRiskCapReq_{\$} = Market\ Value \times 0.0475$$

(2) The dollar amount of the $MarketRiskCapReq_{\$}$ for a performing loan is determined by an Enterprise using its internal market risk model.

(c) The aggregate market risk capital requirement for all single-family whole loans ($MarketRiskCapReq_{\$\_SFWL}$) is the sum of each loan's $MarketRiskCapReq_{\$}$.

$$MarketRiskCapReq_{\$\_SFWL} = \sum_{\forall SFWL} MarketRiskCapReq_{\$}$$

§ 1240.18 Market risk capital requirement for single-family securities.

(a) Enterprise- and Ginnie Mae-guaranteed single-family mortgage backed securities (MBSs) and collateralized mortgage obligations (CMOs) (collectively "*SFMBS*") held in an Enterprise's portfolio, have market risk exposure and are subject to a market risk capital requirement.

(b) The dollar amount of the $MarketRiskCapReq_{\$}$ for *SFMBS* is determined by an Enterprise using its internal market risk model.

(c) The aggregate market risk capital requirement for *SFMBS* ($MarketRiskCapReq_{\$\_SFMBS}$) is the sum of each security's $MarketRiskCapReq_{\$}$:

$$MarketRiskCapReq_{\$\_SFMBS} = \sum_{\forall SFMBS} MarketRiskCapReq_{\$}$$

§ 1240.19 Operational risk capital requirement for single-family whole loans and guarantees.

(a) Each single-family whole loan and guarantee is subject to an 8 basis point operational risk capital requirement (*$OperationalRiskCapReq_{\$}$*).

(b) The dollar amount of the *$OperationalRiskCapReq_{\$}$* is calculated as follows:

(1) If the Enterprise holds only credit risk or both credit and market risk, the calculation is as follows:

$OperationalRiskCapReq_{\$} = UPB \times 0.0008$

(2) Otherwise, if the Enterprise holds only market risk the calculation is as follows:

$OperationalRiskCapReq_{\$} = Market\ Value \times 0.0008$

(c) The aggregate operational risk capital requirement for all single-family whole loans and guarantees (*$OperationalRiskCapReq_{\$\_SFWL}$*) is the sum of each loan's *$OperationalRiskCapReq_{\$}$*.

$$OperationalRiskCapReq_{\$\_SFWL} = \sum_{\forall SFWL} OperationalRiskCapReq_{\$}$$

§ 1240.20 Operational risk capital requirement for single-family securities.

(a) Each *SFMBS* is subject to an 8 basis point operational risk capital requirement.

(b) The operational risk capital requirement for *SFMBS* in dollar terms (*$OperationalRiskCapReq_{\$}$*) is calculated as follows:

$OperationalRiskCapReq_{\$} = SFMBS\ Market\ Value \times 0.0008$

(c) The aggregate operational risk capital requirement for all *SFMBS* (*$OperationalRiskCapReq_{\$\_SFMBS}$*) is the sum of each security's *$OperationalRiskCapReq_{\$}$*.

$$OperationalRiskCapReq_{\$\_SFMBS} = \textstyle\sum_{\forall SFMBS} OperationalRiskCapReq_{\$}$$

§ 1240.21 Going-concern buffer requirement for single-family whole loans and guarantees.

(a) Each single-family whole loan and guarantee is subject to a 75 basis point going-concern buffer requirement (*$GCBufferReq_{\$}$*).

(b) The dollar amount of the *$GCBufferReq_{\$}$* is calculated as follows:

(1) If the Enterprise holds only credit risk or both credit and market risk, the calculation is as follows:

$GCBufferReq_{\$} = UPB \times 0.0075$

(2) Otherwise, if the Enterprise holds only market risk the calculation is as follows:

$GCBufferReq_{\$} = Market\ Value \times 0.0075$

(c) The aggregate going-concern buffer requirement for all single-family whole loans and guarantees (*$GCBufferReq_{\$\_SFWL}$*) is the sum of each loan and guarantee's *$GCBufferReq_{\$}$*.

$$GCBufferReq_{\$\_SFWL} = \sum_{\forall SFWL} GCBufferReq_{\$}$$

§ 1240.22 Going-concern buffer requirement for single-family securities.

(a) Each *SFMBS* is subject to a 75 basis point going-concern buffer requirement.

(b) The going-concern buffer requirement for an *SFMBS* in dollar terms (*$GCBufferReq_{\$}$*) is calculated as follows:

$GCBufferReq_{\$} = SFMBS\ Market\ Value \times 0.0075$

(c) The aggregate going-concern buffer requirement for all *SFMBS* (*$GCBufferReq_{\$\_SFMBS}$*) is the sum of each security's *$GCBufferReq_{\$}$*.

$$GCBufferReq_{\$\_SFMBS} = \sum_{\forall SFMBS} GCBufferReq_{\$}$$

§ 1240.23 Aggregate risk-based capital requirement for single-family whole loans, guarantees, and related securities.

(a) As provided in § 1240.5, the aggregate risk-based capital requirement for single-family whole loans, guarantees, and related securities is the cumulative total of: The aggregate net credit risk capital requirement; the aggregate market risk capital requirement for single-family whole loans and securities with market exposure; the aggregate operational risk capital requirement, and the aggregate going-concern buffer requirement, net of the total capital relief from single-family CRTs.

(b) The aggregate risk-based capital requirement for all single-family whole loans, guarantees, and related securities (*$RiskBasedCapReq_{\$\_SFWLGS}$*) is calculated as follows:

$RiskBasedCapReq_{\$\_SFWLGS} =$
$NetCreditRiskCapReq_{\$\_SFWL} +$
$MarketRiskCapReq_{\$\_SFWL} +$
$MarketRiskCapReq_{\$\_SFMBS} +$
$OperationalRiskCapReq_{\$\_SFWL} +$
$OperationalRiskCapReq_{\$\_SFMBS} +$
$GCBufferReq_{\$\_SFWL} +$

$GCBufferReq_{\$\_SFMBS} - TotalCapRelief_{\$\_SFWL}$

§ 1240.24 Private-label securities risk-based capital requirement components.

The risk-based capital requirement for a private-label security (PLS), including PLS wraps, is the cumulative total of the following capital requirements:

(a) A credit risk capital requirement as provided in § 1240.25;

(b) A market risk capital requirement as provided in § 1240.26;

(c) An operational risk capital requirement as provided in § 1240.27; and

(d) A going-concern buffer requirement as provided in § 1240.28.

§ 1240.25 Credit risk capital requirement for a PLS.

(a) Each PLS to which an Enterprise has credit risk exposure is subject to a credit risk capital requirement.

(b) An Enterprise must calculate the credit risk capital requirement for a PLS by taking the following steps:

(1) Calculate the risk weight (*RW*) of a PLS; and

(2) Multiply the *RW* of a PLS by 8 percent.

(c) To determine the *RW* for a PLS, an Enterprise must use the Simplified Supervisory Formula Approach (SSFA) as modified and provided below in this section (*FHFA SSFA*). *FHFA SSFA* provided in this section follows the SSFA provided in § 217.43(a) through (d) of this title, as of the effective date of this part, with the following exceptions:

(1) Excludes § 217.43(b)(2)(v)(A) through (B) of this title:

(2) Assigns the weighted-average total capital requirement of the underlying exposures K_G;

(3) Assigns the supervisory calibration parameter p for a PLS wrap;

(4) Removes references to the nth to default credit derivatives; and

(5) Substitutes references to a bank with references to an Enterprise.

(d) To use *FHFA SSFA* to determine the risk weight for a PLS or PLS Wrap, also known as a securitization exposure, an Enterprise must have data that enables it to assign accurately the parameters described in paragraph (e) of this section. The data must be the most currently available data. If the contracts governing the underlying exposures of the securitization require payments on a monthly or quarterly basis, the data must be no more than 91 calendar days old. An Enterprise that does not have the appropriate data to assign the parameters described in paragraph (e) of this section must assign a risk weight of 1,250 percent to the exposure.

(e) To calculate the risk weight for a securitization exposure using *FHFA SSFA,* an Enterprise must have accurate data on the following five inputs to *FHFA SSFA* calculation:

(1) K_G is the weighted-average total capital requirement of the underlying exposures. K_G is 8 percent.

(2) Parameter W is expressed as a decimal value between zero and one. Parameter W is the ratio of the sum of the dollar amounts of any underlying exposures of the securitization to include collateral backing the PLS or PLS Wrap that meet any of the criteria as set forth in paragraphs (e)(2)(i) through (vi) of this section, to the balance, measured in dollars, of underlying exposures:

(i) Ninety days or more past due;

(ii) Subject to a bankruptcy or insolvency proceeding;

(iii) In the process of foreclosure;

(iv) Held as real estate owned;

(v) Has contractually deferred payments for 90 days or more; or

(vi) Is in default.

(3) Parameter *ATCH* is the attachment point for the exposure, which represents the threshold at which credit losses will first be allocated to the exposure. Parameter *ATCH* equals the ratio of the current dollar amount of underlying exposures that are subordinated to the exposure of an Enterprise to the current dollar amount of underlying exposures. Any reserve account funded by the accumulated cash flows from the underlying exposures that is subordinated to an Enterprise's securitization exposure may be included in the calculation of parameter *ATCH* to the extent that cash is present in the account. Parameter *ATCH* is expressed as a decimal value between zero and one.

(4) Parameter *DTCH* is the detachment point for the exposure, which represents the threshold at which credit losses of principal allocated to the exposure would result in a total loss of principal. Parameter *DTCH* equals parameter *ATCH* plus the ratio of the current dollar amount of the securitization exposures that are *pari passu* with the exposure (that is, have equal seniority with respect to credit risk) to the current dollar amount of the underlying exposures. Parameter *DTCH* is expressed as a decimal value between zero and one.

(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. A PLS Wrap has a supervisory calibration parameter equal to the supervisory calibration parameter of the underlying PLS.

(f) K_G and W are used to calculate K_A, the augmented value of K_G, which reflects the observed credit quality of the underlying exposures. K_A is defined in paragraph (g) of this section. The values of parameters *ATCH* and *DTCH*, relative to K_A, determine the risk weight assigned to a securitization exposure as described in paragraph (g) of this section. The risk weight assigned to a securitization exposure, or portion of a securitization exposure, as appropriate, is the larger of the risk weight determined in accordance with paragraphs (f) or (g) of this section, and a risk weight of 20 percent.

(1) When the detachment point, parameter DTCH, for a securitization exposure is less than or equal to K_A, the exposure must be assigned a risk weight of 1,250 percent.

(2) When the attachment point, parameter ATCH, for a securitization exposure is greater than or equal to K_A, the Enterprise must calculate the risk weight in accordance with paragraph (g) of this section.

(3) When ATCH is less than K_A and DTCH is greater than K_A, the risk weight is a weighted-average of 1,250 percent and 1,250 percent times $K_{FHFA\ SSFA}$ calculated in accordance with paragraph (g) of this section. For the purpose of this weighted-average calculation:

(i) The weight assigned to 1,250 percent equals

$$\frac{K_A - ATCH}{DTCH - ATCH}$$

(ii) The weight assigned to 1,250 percent times $K_{FHFA\ SSFA}$ equals

$$\frac{DTCH - K_A}{DTCH - ATCH}$$

(iii) The risk weight will be set equal to

$$RW = \left[\left(\frac{K_A - ATCH}{DTCH - ATCH}\right) * 1{,}250\ percent\right] + \left[\left(\frac{DTCH - K_A}{DTCH - ATCH}\right) * 1{,}250\ percent * K_{FHFA\ SSFA}\right]$$

(g) *FHFA SSFA* equation involves the following steps:

(1) An Enterprise must define the following parameters:

$$K_A = (1 - W) * K_G + (0.5 * W)$$

$$a = -\frac{1}{p * K_A}$$

$$u = DTCH - K_A$$

$$l = max(ATCH - K_A\,, 0)$$

$$e = 2.71828, the\ base\ of\ the\ natural\ logarithm$$

(2) An Enterprise must calculate $K_{FHFA\ SSFA}$ according to the following equation:

$$K_{FHFA\ SSFA} = \frac{e^{a*u} - e^{a*l}}{a * (u - l)}$$

(3) The risk weight for the exposure (expressed as a percent) is equal to:

$K_{FHFA\ SSFA}$ * 1,250

(h) Determine the credit risk capital requirement for a PLS in bps ($CreditRiskCapReq_{bps}$) as follows:

$CreditRiskCapReq_{bps} = RW \times 8\% \times 10{,}000$

(i) Determine the credit risk capital requirement for a PLS in dollar terms ($CreditRiskCapReq_{\$}$) as follows:

$CreditRiskCapReq_{\$} = Market\ Value \times CreditRiskCapReq_{bps}/10{,}000$

§ 1240.26 Market risk capital requirement for a PLS.

(a) Each PLS to which an Enterprise has market risk exposure is subject to a market risk capital requirement. The market risk capital requirement of a PLS wrap is zero as an Enterprise does not have market risk exposure to a PLS wrap.

(b) The $MarketRiskCapReq_{bps}$ is equal to the product of the PLS spread duration as estimated by the Enterprise and a shock in the spread of the PLS of 265 bps as follows:

$MarketRiskCapReq_{bps} = 265_{bps} \times SpreadDuration$

(c) The $MarketRiskCapReq_{\$}$ is calculated as follows:

$MarketRiskCapReq_{\$} = Market\ Value \times MarketRiskCapReq_{bps}/10{,}000$

§ 1240.27 Operational risk capital requirement for a PLS.

(a) Each Enterprise PLS exposure is subject to an operational risk capital requirement.

(b) The operational risk capital requirement for a PLS in dollar terms ($OperationalRiskCapReq_{\$}$) is calculated as follows:

$OperationalRiskCapReq_{\$} = Market\ Value \times 0.0008$

§ 1240.28 Going-concern buffer requirement for a PLS.

(a) Each Enterprise PLS exposure is subject to a going-concern buffer requirement (*GCBufferReq*).

(b) The *GCBufferReq* for a PLS in dollar terms ($GCBufferReq_{\$}$) is calculated as follows:

$GCBufferReq_{\$} = Market\ Value \times 0.0075$

§ 1240.29 Aggregate risk-based capital requirement for PLS.

(a) The $RiskBasedCapReq_{\$}$ for a PLS is calculated as follows:

$RiskBasedCapReq_{\$} = CreditRiskCapReq_{\$} + MarketRiskCapReq_{\$} + OperationalRiskCapReq_{\$} + GCBufferReq_{\$}$

(b) The $RiskBasedCapReq_{\$}$ for all Enterprise PLS ($RiskBasedCapReq_{\$\_PLS}$) is calculated by aggregating $RiskBasedCapReq_{\$}$ for each PLS.

$$RiskBasedCapReq_{\$\_PLS} = \sum_{\forall PLS} RiskBasedCapReq_{\$}$$

§ 1240.30 Multifamily whole loans, guarantees, and related securities risk-based capital requirement components.

The risk-based capital requirement for multifamily whole loans, guarantees, and related securities is the cumulative total of the following capital requirements:

(a) A credit risk capital requirement, as provided in §§ 1240.31 through 1240.38;

(b) A market risk capital requirement for multifamily whole loans and securities with market exposure, as provided in §§ 1240.39 through 1240.40;

(c) An operational risk capital requirement, as provided in §§ 1240.41 through 1240.42; and

(d) A going-concern buffer requirement, as provided in §§ 1240.43 through 1240.44.

§ 1240.31 Multifamily whole loans and guarantees credit risk capital requirement methodology.

(a) The methodology for calculating the credit risk capital requirement for a multifamily whole loan and guarantee uses tables to determine the base credit risk capital requirement and risk factor multipliers to adjust the base credit risk capital requirement for risk factor variations not captured in the base tables. The methodology also provides for a reduction in the credit risk capital requirement for multifamily whole loans and guarantees due to credit risk transfer transactions.

(b) The steps for calculating the credit risk capital requirement for multifamily whole loans and guarantees are as follows:

(1) Identify the loan data needed for the calculation of the multifamily whole loans and guarantees credit risk capital requirement.

(2) Assign each multifamily whole loan and guarantee into a multifamily loan segment, as specified in § 1240.32.

(3) Determine $BaseCapital_{bps}$ for each whole loan and guarantee using the loan's assigned multifamily loan segment and the appropriate segment-specific table, as specified in § 1240.33.

(4) Determine *TotalCombRiskMult* for each whole loan and guarantee based on the loan's assigned loan segment and risk characteristics, as specified in § 1240.34.

(5) Calculate $GrossCreditRiskCapReq_{bps}$ for each whole loan and guarantee by multiplying $BaseCapital_{bps}$ by *TotalCombRiskMult,* as specified in § 1240.35.

(6) Calculate $NetCreditRiskCapReq_{bps}$ as equal to $GrossCreditRiskCapReq_{bps}$ and determine the aggregate net credit risk capital requirement for multifamily whole loans and guarantees both as specified in § 1240.36. For multifamily whole loans and guarantees, there is no charter required credit enhancement and $NetCreditRiskCapReq_{bps}$ is equal to $GrossCreditRiskCapReq_{bps}$.

(7) Determine the capital relief from multifamily CRTs, as specified in §§ 1240.37 and 1240.38.

(c) The credit risk capital requirement applies to any Enterprise multifamily whole loan or guarantee with exposure to credit risk.

(d) Table 19 to part 1240 lists the loan data needed for the calculation of the multifamily whole loans and guarantees credit risk capital requirement. Table 19 contains variable names, definitions, acceptable values, and treatments for missing or unacceptable values.

TABLE 19 TO PART 1240—MULTIFAMILY WHOLE LOANS AND GUARANTEES DATA INPUTS

Variable	Definition/logic	Acceptable value	Treatment of missing or unacceptable value
Acquisition Debt-Service Coverage Ratio (DSCR).	The Debt-Service-Coverage Ratio is the ratio of Net Operating Income (NOI) to the scheduled mortgage payment. If NOI is unavailable, use Net Cash Flow (NCF). Acquisition DSCR is the DSCR reported at the time the loan is acquired. For interest-only loans, use fully amortizing acquisition DSCR when determining $BaseCapital_{bps}$.	Greater than or equal to 0.	In a case where the acquisition DSCR is not available, use DSCR at the time the loan was underwritten as a substitute. For a newly acquired loan, the origination DSCR can be used as a proxy for the acquisition DSCR if the loan is acquired within six months of acquisition and an acquisition DSCR record is not available. If missing, use origination DSCR. If origination DSCR is missing, use DSCR at the time the loan was underwritten. If the DSCR at the time the loan is underwritten is missing, use 1.00.
Acquisition LTV	Acquisition LTV is the LTV at the time a loan is acquired.	Greater than or equal to 0.	Where the acquisition LTV is not available, use the LTV at the time the loan is underwritten. If acquisition LTV is missing, use origination LTV. If origination LTV is missing, use LTV at the time the loan is underwritten. If LTV at the time the loan is underwritten is missing, use 100%.
Amortization Term	The amortization term is the period that would take a borrower to pay a loan completely if the borrower only makes the scheduled payments, for a given loan balance, at a specified interest rate, and without making any balloon payment.	Non-negative integer in years.	If missing, use 31 years.
Interest-Only (IO)	A loan that requires only payment of interest without any principal amortization during all or part of the loan term.	Yes, No	Yes.
Loan Term	The loan term is the period between origination and final loan payment (which may be a balloon payment) as stated in the loan origination documents.	Non-negative integer in years.	If missing, use 11 years.

TABLE 19 TO PART 1240—MULTIFAMILY WHOLE LOANS AND GUARANTEES DATA INPUTS—Continued

Variable	Definition/logic	Acceptable value	Treatment of missing or unacceptable value
Mark-to-Market DSCR (MTMDSCR).	MTMDSCR is the DSCR stated on the most recent property operating statement. For interest-only loans, use fully amortizing MTMDSCR when determining $BaseCapital_{bps}$.	Greater than or equal to 0.	In a case where MTMDSCR is not available, the last observed DSCR can be marked to market using a property NOI index or an NOI estimate based on rent and expense indices. If the index is not sufficiently granular, either because of its frequency or geography, or with respect to a certain multifamily property type, use a more geographically broad index or a recently estimated mark-to-market value.
Mark-To-Market Loan-to-Value (MTMLTV) ratio.	MTMLTV is an estimate of the current LTV, derived by marking to market the acquisition LTV using a multifamily property value index or property value estimate based on NOI and cap rate indices.	Greater than or equal to 0.	If missing, mark to market using an index. If the index is not sufficiently granular, either because of its frequency or geography or with respect to a certain multifamily property type, use more geographically broad index or a recently estimated mark-to-market value.
Market Value	The value of the loan reported in an Enterprise's fair value disclosures.		UPB.
Net Operating Income (NOI)/Net Cash Flow (NCF).	NOI is defined as the rental income generated by the property net of vacancy and property operating expenses. NCF is defined as NOI minus any below-the-line expenses, which usually include capital improvement reserves and leasing commissions.	Greater than or equal to 0.	Infer using origination LTV or origination DSCR. Alternatively, infer using actual MTMLTV or actual MTMDSCR.
Original Loan Size	The original loan size is the dollar amount of the loan at origination.	Non-negative dollar value.	$3,000,000.
Payment Performance	The payment status or history of a multifamily loan.	Performing, Delinquent, Re-performing (without Modification), Modified.	If missing, set to Modified.
Special Product	Multifamily loans that are Government-Subsidized, Student Housing, Rehab/Value-Add/Lease-Up, Supplemental.	Not a Special Product, Government-Subsidized, Student Housing, Rehab/Value-Add/Lease-Up, Supplemental.	If missing, set to Rehab/Value-Add/Lease-Up.
Unpaid Principal Balance (UPB$).	The remaining unpaid principal balance on the loan as of the reporting date.	UPB > $0	If missing, use $100,000,000.

§ 1240.32 Loan segments for multifamily whole loans and guarantees credit risk capital requirement.

(a) An Enterprise must assign each multifamily whole loan and guarantee in its portfolio with exposure to credit risk to a loan segment. Multifamily loan segments are determined based on the type of interest rate contract used in the whole loan or guarantee. The multifamily loan segments are: Multifamily Fixed Rate Mortgage (Multifamily FRM) and Multifamily Adjustable Rate Mortgage (Multifamily ARM).

(b) A multifamily whole loan and guarantee that has both a fixed rate period and an adjustable rate period, also known as a hybrid loan, should be classified and treated as a Multifamily FRM during the fixed rate period, and classified and treated as a Multifamily ARM during the adjustable rate period.

§ 1240.33 Base credit risk capital requirement for multifamily whole loans and guarantees.

An Enterprise must determine $BaseCapital_{bps}$ for a multifamily whole loan and guarantee by using the multifamily credit risk capital grid that corresponds to a particular loan segment, presented in Tables 20 and 21 to part 1240. A new acquisition is a multifamily whole loan or guarantee that was originated within five months or less.

(a) Multifamily FRM $BaseCapital_{bps}$ is shown in Table 20. For each whole loan and guarantee classified as Multifamily FRM, $BaseCapital_{bps}$ is the value in the cell in Table 20 determined using the whole loan or guarantee's acquisition DSCR and acquisition LTV in the case of a new acquisition, or using the whole loan or guarantee's MTMDSCR and MTMLTV in the case of a seasoned loan. For a multifamily IO whole loan and guarantee, an Enterprise must use the fully amortized payment to calculate acquisition DSCR and MTMDSCR.

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Table 20 to Part 1240: Multifamily FRM *BaseCapital*$_{bps}$

		Acquisition LTV or MTMLTV								
		LTV <=35%	35% < LTV <=45%	45% < LTV <=55%	55% < LTV <=65%	65% < LTV <=70%	70% < LTV <=75%	75% < LTV <=80%	80% < LTV <=90%	90% < LTV <=100%	LTV >100%
Acquisition DSCR or MTMDSCR	DSCR<1.00	415	480	610	870	996	1119	1226	1328	1378	1453
	1.00<= DSCR <1.15	359	413	520	735	843	943	1028	1118	1160	1224
	1.15<= DSCR< 1.20	321	368	460	645	740	825	895	978	1015	1071
	1.20<= DSCR< 1.25	298	338	418	578	660	733	778	855	895	955
	1.25<= DSCR< 1.30	266	303	375	520	593	645	690	755	790	843
	1.30<= DSCR< 1.35	251	283	345	470	528	568	608	670	700	745
	1.35<= DSCR< 1.50	231	259	315	428	475	510	548	610	640	685
	1.50<= DSCR< 1.65	201	218	250	315	345	375	408	455	498	561
	1.65<= DSCR< 1.80	175	185	205	245	270	298	330	378	423	490
	1.80<= DSCR< 1.95	129	138	155	190	210	235	258	325	375	450
	1.95<= DSCR< 2.10	118	122	130	163	180	204	221	299	351	430
	2.10<= DSCR< 2.25	106	110	118	149	165	188	203	286	339	420
	DSCR>=2.25	100	104	111	142	158	180	194	279	333	415

(b) Multifamily ARM *BaseCapital*$_{bps}$ is shown in Table 21. For each whole loan or guarantee classified as a multifamily ARM loan, *BaseCapital*$_{bps}$ is the value in the cell in Table 21 determined using the whole loan and guarantee's acquisition DSCR and acquisition LTV in the case of a new acquisition, or using the whole loan or guarantee's MTMDSCR and MTMLTV in the case of a seasoned loan. For multifamily IO whole loans and guarantees, an Enterprise must use the fully amortized payment to calculate acquisition DSCR and MTMDSCR.

Table 21 to Part 1240: Multifamily ARM $\textit{BaseCapital}_{bps}$

		Acquisition LTV or MTMLTV									
		LTV <=35%	35% < LTV <=45%	45% < LTV <=55%	55% < LTV <=65%	65% < LTV <=70%	70% < LTV <=75%	75% < LTV <=80%	80% < LTV <=90%	90% < LTV <=100%	LTV >100%
Acquisition DSCR or MTMDSCR	DSCR<1.00	647	691	745	1060	1223	1375	1508	1691	1831	2041
	1.00<= DSCR <1.25	569	603	638	902	1034	1159	1264	1424	1542	1720
	1.25<= DSCR< 1.30	506	535	567	797	908	1014	1101	1245	1349	1505
	1.30<= DSCR< 1.36	454	478	503	704	810	901	956	1089	1190	1341
	1.36<= DSCR< 1.42	410	430	452	630	720	789	847	962	1050	1183
	1.42<= DSCR< 1.47	361	390	408	568	637	688	747	854	931	1046
	1.47<= DSCR< 1.53	298	332	372	511	565	619	674	773	849	962
	1.53<= DSCR< 1.70	236	265	293	376	410	451	501	577	660	784
	1.70<= DSCR< 1.87	186	208	237	288	322	358	406	478	562	686
	1.87<= DSCR< 2.03	154	164	179	223	247	283	317	412	498	628
	2.03<= DSCR< 2.21	137	143	150	191	210	245	272	379	467	599
	2.21<= DSCR< 2.38	129	132	136	175	191	226	250	362	451	585
	DSCR>=2.38	125	127	128	167	182	217	239	354	443	577

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§ 1240.34 Risk multipliers for multifamily whole loans and guarantees.

(a) Risk multipliers increase or decrease the credit risk capital requirement for multifamily whole loans and guarantees based on a multifamily loan's assigned loan segment and risk characteristics. The multifamily risk multipliers are presented in Table 22 to part 1240.

(b) The steps for calculating *TotalCombRiskMult* are as follows:

(1) Determine the appropriate multifamily risk multipliers values from Table 22 based on the loan's characteristics and assigned loan segment.

(2) Apply the appropriate formula to calculate the combined risk multiplier, *CombRiskMult*.

(3) Calculate the *TotalCombRiskMult* as the larger of *CombRiskMult* and a combined multiplier floor of 0.5.

TABLE 22 TO PART 1240—MULTIFAMILY RISK MULTIPLIERS

Risk factor	Value or range	Risk multiplier
Payment Performance	Performing	1.00.

TABLE 22 TO PART 1240—MULTIFAMILY RISK MULTIPLIERS—Continued

Risk factor	Value or range	Risk multiplier
	Delinquent	1.10.
	Re-Performing (without Modification)	1.10.
	Modified	1.20.
Interest-Only	No	1.00.
	Yes (during the interest-only period)	1.10.
Original/Remaining Loan Term in Years (Yr).	Loan Term <= 1Yr	0.70.
	1Yr < Loan Term <= 2Yr	0.75.
	2Yr < Loan Term <= 3Yr	0.80.
	3Yr < Loan Term <= 4Yr	0.85.
	4Yr < Loan Term <= 5Yr	0.90.
	5Yr < Loan Term <= 7Yr	0.95.
	7Yr < Loan Term <= 10Yr	1.00.
	Loan Term < 10Yr	1.15.
Original Amortization Term	Amort. Term <= 20Yr	0.70.
	20Yr < Amort. Term <= 25Yr	0.80.
	25Yr < Amort. Term <= 30Yr	1.00.
	Amort. Term < 30Yr	1.10.
Original Loan Size	Loan Size <= $3,000,000	1.45.
	$3,000,000 < Loan Size <= $5,000,000	1.15.
	$5,000,000 < Loan Size <= $10,000,000	1.00.
	$10,000,000 < Loan Size <= $25,000,000	0.80.
	Loan Size < $25,000,000	0.70.
Special Products	Government-Subsidized	0.60.
	Not a Special Product	1.00.
	Student Housing	1.15.
	Rehab/Value-Add/Lease-Up	1.25.
	Supplemental	Use FRM or ARM Capital Grid by adding supplemental UPB to the base loan and recalculating DSCR and LTV.

(c) The following risk multiplier calculations are to be used for each respective multifamily whole loan and guarantee with the described characteristics:

(1) For each multifamily whole loan and guarantee that is a new acquisition, determine the appropriate risk multiplier values from Table 22 and apply the following formula to calculate *TotalCombRiskMult:*

TotalCombRiskMult = Max(*CombRiskMult,* 0.5) = Max(Payment Performance Multiplier × Interest-Only Multiplier × Original Loan Term Multiplier × Original Amortization Term Multiplier × Original Loan Size Multiplier × Special Products Multiplier, 0.5)

(2) For each multifamily whole loan and guarantee classified as a seasoned loan, determine the appropriate risk multiplier values from Table 22 and apply the following formula to calculate *TotalCombRiskMult:*

TotalCombRiskMult = Max(*CombRiskMult,* 0.5) = Max(Payment Performance Multiplier × Interest-Only Multiplier × Remaining Loan Term Multiplier × Original Amortization Term Multiplier × Original Loan Size Multiplier × Special Products Multiplier, 0.5)

(3) For each multifamily whole loan and guarantee defined as a supplemental loan, an Enterprise must determine the additional capital required for that supplemental loan, or supplemental loans if there is more than one supplemental loan on a property. The steps for calculating the additional capital are as follows:

(i) An Enterprise must recalculate DSCRs and LTVs for the original and supplemental loans using combined loan balances and combined income/payment information.

(ii) Using the recalculated DSCR and LTV for each supplemental loan, use Table 20 for a multifamily FRM, or Table 21 for a multifamily ARM, to calculate the credit risk capital.

(iii) For each supplemental loan, using the combined loan balance of the original and the supplemental, apply the loan size risk multiplier specified in Table 22 for the factor Original Loan Size.

(iv) The capital for a supplemental loan must be calculated as the difference between the combined capital requirements for the original and all previous supplemental loans using the combined DSCR, LTV, and loan balance, and the capital requirement for the original loan plus other supplemental loans using the combined DSCR, LTV, and loan balance.

§ 1240.35 Gross credit risk capital requirement for multifamily whole loans and guarantees.

An Enterprise must determine $GrossCreditRiskCapReq_{bps}$ for each multifamily loan and guarantee as the product of $BaseCapital_{bps}$ and *TotalCombRiskMult* as follows:

$GrossCreditRiskCapReq_{bps} = BaseCapital_{bps} \times TotalCombRiskMult$

§ 1240.36 Net credit risk capital requirement for multifamily whole loans and guarantees.

(a) An Enterprise must determine the net credit risk capital requirement for a multifamily whole loan and guarantee ($NetCreditRiskCapReq_{bps}$). For a multifamily whole loan and guarantee, $NetCreditRiskCapReq_{bps}$ equals $GrossCreditRiskCapReq_{bps}$:

$NetCreditRiskCapReq_{bps} = GrossCreditRiskCapReq_{bps}$

(b) An Enterprise shall determine the net credit risk capital requirement in dollars ($NetCreditRiskCapReq_{\$}$) using the following equation:

$NetCreditRiskCapReq_{\$} = \text{UPB} \times NetCreditRiskCapReq_{bps}/10{,}000$

(c) The aggregate net credit risk capital requirement for all multifamily whole loans and guarantees ($NetCreditRiskCapReq_{\$\_MFWL}$) is the sum of each loan's $NetCreditRiskCapReq_{\$}$.

$$NetCreditRiskCapReq_{\$\_MFWL} = \sum_{\forall MFWL} NetCreditRiskCapReq_{\$}$$

§ 1240.37 Multifamily credit risk transfer capital relief for multifamily whole loans and guarantees.

A multifamily credit risk transfer (''multifamily CRT'') is a credit risk transfer where the underlying whole loans and guarantees backing the CRT, or referenced by the CRT, are multifamily whole loans and guarantees. A multifamily CRT may reduce required credit risk capital. The methodology for calculating the reduction, also known as capital relief, combines credit risk capital requirements and expected losses on the multifamily whole loans and guarantees underlying or referenced by the CRT, tranche structure, ownership, and counterparty credit risk. The methodology is provided in § 1240.38.

§ 1240.38 Calculation of capital relief for a multifamily CRT.

(a) To calculate capital relief for a multifamily CRT, an Enterprise must have data that enables it to assign accurately the parameters described in paragraphs (b) and (c) of this section.

(1) Data used to assign the parameters must be the most currently available data. If the contracts governing the multifamily CRT require payments on a monthly or quarterly basis, the data used to assign the relevant parameters must be no more than 91 calendar days old.

(2) If an Enterprise does not have the data to assign the parameters described in paragraphs (b) and (c) of this section, then an Enterprise must treat the multifamily CRT as if no capital relief had occurred.

(b) To calculate capital relief on a multifamily CRT, an Enterprise must have accurate data on the following parameters:

(1) *CRT tranche attachment point.* An Enterprise must have accurate information on each tranche's attachment point (*ATCH*) in the multifamily CRT. For a given tranche, ATCH represents the threshold at which credit losses of principal will first be allocated. For a given tranche, *ATCH* equals the ratio of the current dollar amount of underlying subordinated tranches relative to the current dollar amount of all tranches all multiplied by 10,000. *ATCH* is expressed in basis points or as a value between zero and 10,000.

(2) *CRT tranche detachment point.* An Enterprise must have accurate information on each tranche's detachment point (*DTCH*) in the multifamily CRT. For a given tranche, DTCH represents the threshold at which credit losses of principal would result in total loss of principal. For a given tranche, *DTCH* equals the sum of the tranche's *ATCH* and 10,000 multiplied by the ratio of the current dollar amount of tranches that are *pari passu* with the tranche (that is, have equal seniority with respect to credit risk) to the current dollar amount of all tranches. *DTCH* is expressed in basis points or as a value between zero and 10,000.

(3) *Multifamily lender loss sharing risk relief percentages.* An Enterprise must have accurate information on each tranche's multifamily lender loss sharing risk relief percentage ($MF\_LS_{\%}$) in the multifamily CRT. Lender loss sharing CRTs are multifamily CRTs where the lender and an Enterprise share all multifamily credit losses on a *pari passu* basis. For a given tranche, $MF\_LS_{\%}$ is the percentage of the tranche that is subject to lender loss sharing. $MF\_LS_{\%}$ is expressed as a value between zero and 100%.

(4) *Multiple tranche loss sharing percentage by tranche.* An Enterprise must have accurate information on each tranche's multiple tranche loss sharing risk relief percentage ($MF\_MTLS_{\%}$) for the multifamily CRT. For a given tranche, $MF\_MTLS_{\%}$ is the percentage of the tranche that is either insured, reinsured, or afforded coverage through lender reimbursement of credit losses of principal and is not part of lender loss sharing. $MF\_MTLS_{\%}$ is expressed as a value between zero and 100%.

(5) *Securitization risk relief percentage by tranche.* An Enterprise must have accurate information on each tranche's securitization risk relief percentage ($MF\_S_{\%}$) in the multifamily CRT. For a given tranche, $MF\_\mathrm{S}_{\%}$ is the percentage of the tranche sold in the capital markets. $MF\_S_{\%}$ is expressed as a value between zero and 100%.

(6) *Credit risk capital on the underlying multifamily whole loans and guarantees.* The Enterprises must have accurate data on $PGCRC_{bps}$ for the multifamily CRT. $PGCRC_{bps}$ is calculated using the aggregate $NetCreditRiskCapReq_{bps}$ for all multifamily whole loans and guarantees underlying the given multifamily CRT.

(7) *CRT expected losses.* An Enterprise must have accurate data on total lifetime net expected credit risk losses ($PGEL_{bps}$) on the whole loans and guarantees underlying the multifamily CRT. $PGEL_{bps}$ shall be calculated internally by an Enterprise. $PGEL_{bps}$ does not include the operational risk capital requirement or going-concern buffer requirement. $PGEL_{bps}$ is expressed in basis points or as a value between zero and 10,000.

(8) *Counterparty collateral on lender and multiple tranche loss sharing transactions.* An Enterprise must have accurate data on the dollar amounts of $CntptyCollat_{\$}$ for each counterparty and by tranche in a multifamily CRT involving lender and multiple tranche loss sharing. For a given counterparty and tranche, $CntptyCollat_{\$}$ is the dollar amount of collateral to fulfill the counterparty's trust funding obligation. $CntptyCollat_{\$}$ is expressed in dollar terms as a value greater than or equal to zero.

(9) *Counterparty quota shares on lender and multiple tranche loss sharing transactions.* An Enterprise must have accurate information on counterparty quota shares on lender and multiple tranche loss sharing transactions for each counterparty by tranche. For a given counterparty and tranche, $CntptyShare_{\%}$ is the percentage of $MF\_LS_{\%}$ or $MF\_MTLS_{\%}$ that the given counterparty covers. $CntptyShare_{\%}$ is expressed as a value between zero and 100%.

(10) *Counterparty ratings on lender and multiple tranche loss sharing transactions.* An Enterprise must have internally generated ratings for the counterparties on lender and multiple tranche loss sharing transactions. An Enterprise should use the data inputs consistent with Table 2 to part 1240 to identify the *CPHaircut.* The internally generated ratings must be converted into the counterparty ratings provided in Table 3 to part 1240. The *CPHaircut* percentages for each counterparty rating provided in Table 3, are shown in Table 23 to part 1240.

TABLE 23 TO PART 1240—*CPHaircut* FOR COUNTERPARTY RATING ON LENDER AND MULTIPLE TRANCHE LOSS SHARING TRANSACTIONS

Counterparty rating	*CPHaircut* for concentration risk: Not high (%)	*CPHaircut* for concentration risk: High (%)
1	2.1	3.4
2	5.3	8.5
3	6.0	9.6
4	12.7	19.2
5	16.2	22.9
6	22.5	28.5
7	41.2	45.1
8	48.2	48.2

(11) *Aggregate unpaid principal balance.* An Enterprise must have accurate information on each multifamily CRT's aggregate unpaid principal balance ($UPB_{\$}$).

(c) For each multifamily CRT, an Enterprise must use the parameters described in paragraph (b) of this section to calculate multifamily CRT capital relief using one of the three following methods:

(1) *Lender loss sharing.* The lender loss sharing capital relief formulae are as follows:

(i) An Enterprise must calculate the portion of capital associated with the lender's exposure ($LenderCapital_{\$}$) using the following formula:

$$LenderCapital_{\$} = (PGCRC_{bps}/10{,}000) * UPB_{\$} * MF\_LS_{\%}$$

(ii) An Enterprise must determine the uncollateralized counterparty exposure ($CntptyExposure_{\$}$), which is reduced by 50% if the Enterprise has the contractual right to receive future lender guarantee-fee revenue. $CntptyExposure_{\$}$ is calculated as follows:

$$CntptyExposure_{\$} = \max([LenderCapital_{\$} - CntptyCollat_{\$}],0)$$

(iii) An Enterprise must determine counterparty credit risk in dollars ($CntptyCreditRisk_{\$}$). An Enterprise must use the following formula to calculate $CntptyCreditRisk_{\$}$:

$$CntptyCreditRisk_{\$} = CntptyExposure_{\$} * (CPHaircut)$$

(iv) An Enterprise must calculate total $CapRelief_{\$}$ for the entire multifamily CRT by adding up the capital relief in dollars and subtracting counterparty credit risk.

$$CapRelief_{\$} = LenderCapital_{\$} - CntptyCreditRisk_{\$}$$

(2) *Securitization.* The securitization multifamily capital relief formulae are as follows:

(i) An Enterprise must distribute $PGCRC_{bps}$ to the tranches of the multifamily CRT, while controlling for $PGEL_{bps}$. For a given tranche, $TCRC_{bps}$ is as follows:

$$TCRC_{bps} = (DTCH - ATCH) * \left[\max\left(0, \min\left(\left[\frac{PGCRC_{bps} + PGEL_{bps} - ATCH}{DTCH - ATCH}\right], 1\right)\right) - \max\left(0, \min\left(\left[\frac{PGEL_{bps} - ATCH}{DTCH - ATCH}\right], 1\right)\right)\right]$$

$TCRC_{bps}$ takes values between 0 and 10,000. $TCRC_{bps}$ must be calculated for each tranche in the multifamily CRT.

(ii) For each tranche in a multifamily CRT, an Enterprise must use the following formula to identify the capital relief from securitization ($STCRC_{bps}$):

$$STCRC_{bps} = MF\_S_{\%} * TCRC_{bps}$$

$STCRC_{bps}$ is expressed in basis points and takes values between 0 and 10,000.

(iii) An Enterprise must calculate total $CapRelief_{\$}$ for the entire multifamily CRT by adding up the capital relief in dollars across each tranche.

$$CapRelief_{\$} = \sum_{\forall Tranches \in CRT} \frac{(STCRC_{bps})}{10{,}000} * UPB_{\$}$$

(3) *Multiple tranche loss sharing.* The multiple tranche loss sharing multifamily capital relief formulae are as follows:

(i) An Enterprise must distribute $PGCRC_{bps}$ to the tranches of the multifamily CRT, while controlling for $PGEL_{bps}$. For a given tranche, $TCRC_{bps}$ is as follows:

$$TCRC_{bps} = (DTCH - ATCH) * \left[\max\left(0, \min\left(\left[\frac{PGCRC_{bps} + PGEL_{bps} - ATCH}{DTCH - ATCH}\right], 1\right)\right) - \max\left(0, \min\left(\left[\frac{PGEL_{bps} - ATCH}{DTCH - ATCH}\right], 1\right)\right)\right]$$

$TCRC_{bps}$ takes values between 0 and 10,000. $TCRC_{bps}$ must be calculated for each tranche in the multifamily CRT.

(ii) For each tranche in a multifamily CRT, an Enterprise must use the following formulae to identify the capital relief from multiple tranche loss sharing ($MTLSTCRC_{bps}$):

$$MTLSTCRC_{bps} = MF\_MTLS_{\%} * TCRC_{bps}$$

$MTLSTCRC_{bps}$ is expressed in basis points and takes values between 0 and 10,000.

(iii) An Enterprise must determine the uncollateralized counterparty exposure ($CntptyExposure_{bps}$) as follows:

$$CntptyExposure_{bps} = \max\left(\left[CntptyShare_{\%} * MTLSTCRC_{bps} - 10{,}000 * \frac{CntptyCollat_{\$}}{UPB_{\$}}\right], 0\right)$$

$CntptyExposure_{bps}$ takes values between 0 and 10,000. *$CntptyExposure_{bps}$* is reduced by 50% if the Enterprise has the contractual right to receive future lender guarantee-fee revenue.

(iv) An Enterprise must determine counterparty credit risk (*$CntptyCreditRisk_{bps}$*), using the following formula to calculate *$CntptyCreditRisk_{bps}$*:

$CntptyCreditRisk_{bps} = CntptyExposure_{bps} * (CPHaircut)$

(v) An Enterprise must calculate total capital relief in dollars for the entire multiple tranche loss sharing multifamily CRT (*$CapRelief_{\$}$*) by adding up the capital relief in dollars across each tranche and subtracting counterparty credit risk.

$$CapRelief_{\$} = \sum_{\forall Tranches \in CRT} \frac{(MTLSTCRC_{bps})}{10{,}000} * UPB_{\$} - \sum_{\forall Tranches \in CRT} \frac{(CntptyCreditRisk_{bps})}{10{,}000} * UPB_{\$}$$

(d) *Total multifamily capital relief.* To calculate total capital relief across all multifamily CRTs (*$TotalCapRelief_{\$\_MFWL}$*), an Enterprise must aggregate capital relief using the following:

$$TotalCapRelief_{\$\_MFWL} = \sum_{\forall Multifamily\ CRTs} CapRelief_{\$\_CRT}$$

§ 1240.39 Multifamily whole loans market risk capital requirement.

(a) Each multifamily whole loan with market risk exposure is subject to the multifamily whole loan market risk capital requirement. There is no market risk exposure for multifamily guarantees. The market risk capital requirement for a multifamily whole loan is limited to spread risk.

(b) The multifamily whole loan market risk capital requirement is defined as the product of the market value, a defined spread shock of 15 bps and *SpreadDuration* derived from an Enterprise's internal models.

(c) The dollar amount of the *$MarketRiskCapReq_{\$}$* for a multifamily whole loan is calculated as follows:

$MarketRiskCapReq_{\$} = \text{Market Value} \times 0.0015 \times SpreadDuration$

(d) The aggregate market risk capital requirement for all multifamily whole loans and guarantees (*$MarketRiskCapReq_{\$\_MFWL}$*) is the sum of each loan's *$MarketRiskCapReq_{\$}$*:

$$MarketRiskCapReq_{\$\_MFWL} = \sum_{\forall MFWL} MarketRiskCapReq_{\$}$$

§ 1240.40 Multifamily securities market risk capital requirement.

(a) Each Enterprise and Ginnie Mae guaranteed multifamily MBS (*MFMBS*) in portfolio is subject to a market risk capital requirement. The market risk capital requirement for *MFMBS* is limited to spread risk.

(b) The *MFMBS* market risk capital requirement is defined as the product of the market value, a spread shock of 100 bps and the *SpreadDuration* derived from an Enterprise's internal models. The dollar amount of the *$MarketRiskCapReq_{\$}$* for an *MFMBS* is calculated as follows:

$MarketRiskCapReq_{\$} = MFMBS\ \text{Market Value} \times 0.0100 \times SpreadDuration$

(c) The aggregate market risk capital requirement for all *MFMBS* (*$MarketRiskCapReq_{\$\_MFMBS}$*) is the sum of each security's *$MarketRiskCapReq_{\$}$*:

$$MarketRiskCapReq_{\$\_MFMBS} = \sum_{\forall MFMBS} MarketRiskCapReq_{\$}$$

§ 1240.41 Operational risk capital requirement for multifamily whole loans and guarantees.

(a) Each multifamily whole loan and guarantee is subject to an 8 basis point operational risk capital requirement.

(b) The operational risk capital requirement in dollar terms (*$OperationalRiskCapReq_{\$}$*) is calculated as follows:

(1) If the Enterprise holds only credit risk or both credit and market risk, the calculation is as follows:

$OperationalRiskCapReq_{\$} = \text{UPB} \times 0.0008$

(2) Otherwise, if the Enterprise holds only market risk the calculation is as follows:

$OperationalRiskCapReq_{\$} = \text{Market Value} \times 0.0008$

(c) The aggregate operational risk capital requirement for all multifamily whole loans and guarantees (*$OperationalRiskCapReq_{\$\_MFWL}$*) is the sum of each loan's *$OperationalRiskCapReq_{\$}$*.

$$OperationalRiskCapReq_{\$\_MFWL} = \sum_{\forall MFWL} OperationalRiskCapReq_{\$}$$

§ 1240.42 Operational risk capital requirement for multifamily securities.

(a) Each MFMBS is subject to an 8 basis point operational risk capital requirement.

(b) The operational risk capital requirement for MFMBS in dollar terms ($OperationalRiskCapReq_{\$}$) is calculated as follows:

$OperationalRiskCapReq_{\$} = MFMBS\ Market\ Value \times 0.0008$

(c) The aggregate operational risk capital requirement for MFMBS ($OperationalRiskCapReq_{\$\_MFMBS}$) is the sum of each security's $OperationalRiskCapReq_{\$}$.

$$OperationalRiskCapReq_{\$\_MFMBS} = \sum\nolimits_{\forall MFMBS} OperationalRiskCapReq_{\$}$$

§ 1240.43 Going-concern buffer requirement for multifamily whole loans and guarantees.

(a) Each multifamily whole loan and guarantee is subject to a 75 basis point going-concern buffer requirement ($GCBufferReq_{\$}$).

(b) The dollar amount of the $GCBufferReq_{\$}$ is calculated as follows:

(1) If the Enterprise holds only credit risk or both credit and market risk, the calculation is as follows:

$GCBufferReq_{\$} = \text{UPB} \times 0.0075$

(2) Otherwise, if the Enterprise holds only market risk the calculation is as follows:

$GCBufferReq_{\$} = \text{Market Value} \times 0.0075$

(c) The aggregate going-concern buffer requirement for all multifamily whole loans and guarantees ($GCBufferReq_{\$\_MFWL}$) is the sum of each loan's $GCBufferReq_{\$}$.

$$GCBufferReq_{\$\_MFWL} = \sum_{\forall MFWL} GCBufferReq_{\$}$$

§ 1240.44 Going-concern buffer requirement for multifamily securities.

(a) Each MFMBS is subject to a 75 basis point going-concern buffer requirement.

(b) The going-concern buffer requirement for MFMBS in dollar terms ($GCBufferReq_{\$}$) is calculated as follows:

$GCBufferReq_{\$} = MFMBS\ Market\ Value \times 0.0075$

(c) The aggregate going-concern buffer requirement for all MFMBS ($GCBufferReq_{\$\_MFMBS}$) is the sum of each security's $GCBufferReq_{\$}$.

$$GCBufferReq_{\$\_MFMBS} = \sum_{\forall MFMBS} GCBufferReq_{\$}$$

§ 1240.45 Aggregate risk-based capital requirement for multifamily whole loans, guarantees, and related securities.

The aggregate capital requirement for multifamily whole loans, guarantees and related securities is the cumulative total of: The aggregate net credit risk capital requirement; the aggregate market risk capital requirement; the aggregate operational risk capital requirement; the aggregate going-concern buffer requirement; net of the total capital relief from multifamily CRTs. The aggregate risk-based capital requirement for multifamily whole loans and guarantees ($RiskBasedCapReq_{\$\_MFWLGS}$) is calculated as follows:

$$\begin{aligned} RiskBasedCapReq_{\$\_MFWLGS} = {} & NetCreditRiskCapReq_{\$\_MFWL} + MarketRiskCapReq_{\$\_MFWL} + MarketRiskCapReq_{\$\_MFMBS} + OperationalRiskCapReq_{\$\_MFWL} + OperationalRiskCapReq_{\$\_MFMBS} + GCBufferReq_{\$\_MFWL} + GCBufferReq_{\$\_MFMBS} \\ & - TotalCapRelief_{\$\_MFWL} \end{aligned}$$

§ 1240.46 Non-Enterprise and non-Ginnie Mae CMBS risk-based capital requirement.

(a) The risk-based capital requirement for a CMBS is the cumulative total of: A combined credit risk and market risk capital requirement, an operational risk capital requirement, and a going-concern buffer requirement.

(b) A CMBS is subject to 200 basis point combined credit and market risk capital requirement. The combined credit and market risk capital requirement for a CMBS in dollar terms ($CreditAndMarketRiskCapReq_{\$}$) is calculated as follows:

$CreditAndMarketRiskCapReq_{\$} = CMBS\ Market\ Value \times 0.0200$

(c) The aggregate combined credit and market risk capital requirement for CMBS ($CreditAndMarketRiskCapReq_{\$\_CMBS}$) is the sum of each security's $CreditAndMarketRiskCapReq_{\$}$ as follows:

$$CreditAndMarketRiskCapReq_{\$\_CMBS} = \sum\nolimits_{\forall CMBS} CreditAndMarketRiskCapReq\$$$

(d) A CMBS is subject to an 8 basis point operational risk capital requirement. The operational risk capital requirement for CMBS in dollar terms ($OperationalRiskCapReq_{\$}$) is calculated as follows:

$OperationalRiskCapReq_{\$} = CMBS\ Market\ Value \times 0.0008$

(e) The aggregate operational risk capital requirement for CMBS (*OperationalRiskCapReq$_{\$\_CMBS}$*) is the sum of each loan's *OperationalRiskCapReq$_{\$}$*.

$$OperationalRiskCapReq_{\$\_CMBS} = \sum\nolimits_{\forall CMBS} OperationalRiskCapReq_{\$}$$

(f) A CMBS is subject to a 75 basis point going-concern buffer requirement. The going-concern buffer requirement for CMBS in dollar terms (*GCBufferReq$_{\$}$*) is calculated as follows:

GCBufferReq$_{\$}$ = CMBS Market Value × 0.0075

(g) The aggregate going-concern buffer requirement for all CMBS (*GCBufferReq$_{\$\_CMBS}$*) is the sum of each security's *GCBufferReq$_{\$}$*.

$$GCBufferReq_{\$\_CMBS} = \sum_{\forall CMBS} GCBufferReq_{\$}$$

(h) The total risk-based capital requirement for CMBS in dollar terms (*RiskBasedCap$_{\$\_CMBS}$*) is calculated as follows:

RiskBasedCapReq$_{\$\_CMBS}$ = CapitalAndMarketRiskCapReq$_{\$\_CMBS}$ + OperationalRiskCapReq$_{\$\_CMBS}$ + GCBufferReq$_{\$\_CMBS}$

§ 1240.47 Other assets and exposures risk-based capital requirement.

(a) *Deferred Tax Assets (DTA).* DTA are assets on the balance sheet that may be used to reduce taxable income. For purpose of this section, adjusted core capital is core capital less DTA that arise from net operating losses and tax credit carryforwards, net of any related valuation allowances and net of deferred tax liabilities (DTL). The risk-based capital requirement for DTA is calculated as follows:

RiskBasedCapReq$_{\$\_DTA}$ =
100 percent of DTA that arise from net operating losses and tax credit carryforwards, net of any related valuation allowances and net DTL + 100 percent of DTA arising from temporary differences that could not be realized through net operating loss carrybacks, net of related valuation allowances and net of DTL, that exceed 10 percent of adjusted core capital + 20 percent of DTA arising from temporary differences that could not be realized through net operating loss carrybacks, net of related valuation allowances and net of DTL, that do not exceed 10 percent of adjusted core capital + 8 percent of DTA arising from temporary differences that could be realized through net operating loss carrybacks, net of related valuation allowances and net of DTL.

(b) *Municipal Debt.* A Municipal Debt instrument is an obligation issued by a state, a local government, or a state agency such as a housing finance agency. The risk-based capital requirement for Municipal Debt is the cumulative total of a market risk capital requirement; an operational risk capital requirement; and a going-concern buffer requirement. There is no credit risk capital requirement for Municipal Debt.

(1)(i) A Municipal Debt instrument is subject to a 760 basis point market risk capital requirement. The market risk capital requirement for a Municipal Debt instrument in dollar terms (*MarketRiskCapReq$_{\$}$*) is calculated as follows:

MarketRiskCapReq$_{\$}$ = Municipal Debt Market Value × 0.076

(ii) The aggregate market risk capital requirement for all Municipal Debt (*MarketRiskCapReq$_{\$\_MD}$*) is the sum of each instrument's *MarketRiskCapReq$_{\$}$*.

$$MarketRiskCapReq_{\$\_MD} = \sum_{\forall MD} MarketRiskCapReq_{\$}$$

(2) Municipal debt is subject to an 8 basis point operational risk capital requirement. The operational risk capital requirement for municipal debt in dollar terms (*OperationalRiskCapReq$_{\$}$*) is calculated as follows:

OperationalRiskCapReq$_{\$}$ = Municipal Debt Market Value × 0.0008

The aggregate operational risk capital requirement for municipal debt (*OperationalRiskCapReq$_{\$\_MD}$*) is the sum of each instrument's *OperationalRiskCapReq$_{\$}$*.

$$OperationalRiskCapReq_{\$\_MD} = \sum\nolimits_{\forall MD} OperationalRiskCapReq_{\$}$$

(3)(i) Municipal debt is subject to a 75 basis point going-concern buffer requirement. The going-concern buffer requirement for municipal debt in dollar terms (*GCBufferReq$_{\$\_MD}$*) is calculated as follows:

GCBufferReq$_{\$}$ = Municipal Debt Market Value × 0.0075

(ii) The aggregate going-concern buffer requirement for all municipal debt (*GCBufferReq$_{\$\_MD}$*) is the sum of each security's *GCBufferReq$_{\$}$*.

$$GCBufferReq_{\$\_MD} = \sum_{\forall MD} GCBufferReq_{\$}$$

(4) The total risk-based capital requirement for municipal debt in dollar terms (*RiskBasedCap$_{\$\_MD}$*) is calculated as follows:

$RiskBasedCapReq_{\$\_MD} = MarketRiskCapReq_{\$\_MD} + OperationalRiskCapReq_{\$\_MD} + GCBufferReq_{\$\_MD}$

(c) *Cash and cash equivalents.* Cash and cash equivalents are highly liquid investment securities that have a maturity at the date of acquisition of three months or less and are readily convertible to known amounts of cash. Cash and cash equivalents are not subject to credit risk, market risk, or operational risk capital requirements, nor is there a going-concern buffer requirement for cash and cash equivalents. The total risk-based capital requirement for cash and cash equivalent assets is zero.

(d) *Reverse Mortgage Loans and Securities.* The capital requirement for Reverse Mortgage Loans and Securities is the cumulative total of: A market risk capital requirement, an operational risk capital requirement, and a going-concern buffer requirement.

(1) The dollar amount of the *MarketRiskCapReq$_{\$}$* for a reverse mortgage loan is calculated as follows:

$MarketRiskCapReq_{\$} = \text{Market Value} \times 0.05$

(2) The dollar amount of the *MarketRiskCapReq$_{\$}$* for a reverse mortgage security is calculated as follows:

$MarketRiskCapReq_{\$} = \text{Market Value} \times 0.0410$

(3) The aggregate market risk capital requirement for all reverse mortgage loans and securities (*MarketRiskCapReq$_{\$\_SFREV}$*) is the sum of each loan's and security's *MarketRiskCapReq$_{\$}$*:

$$MarketRiskCapReq_{\$\_SFREV} = \sum_{\forall SFREV} MarketRiskCapReq_{\$}$$

(4)(i) Reverse mortgage loans and securities are subject to an 8 basis point operational risk capital requirement. The operational risk capital requirement for reverse mortgage loans and securities in dollar terms (*OperationalRiskCapReq$_{\$}$*) is calculated as follows:

$OperationalRiskCapReq_{\$} = Market\ Value \times 0.0008$

(ii) The aggregate operational risk capital requirement for reverse mortgage loans and securities (*MarketRiskCapReq$_{\$\_SFREV}$*)is the sum of each loan's and security's *OperationalRiskCapReq$_{\$}$*.

$$OperationalRiskCapReq_{\$\_SFREV} = \sum\nolimits_{\forall SFREV} OperationalRiskCapReq_{\$}$$

(5)(i) Reverse mortgage loans and securities are subject to a 75 basis point going-concern buffer requirement. The going-concern buffer requirement for reverse mortgage loans and securities in dollar terms (*GCBufferReq$_{\$}$*) is calculated as follows:

$GCBufferReq_{\$} = Market\ Value \times 0.0075$

(ii) The aggregate going-concern buffer requirement for all reverse mortgage loans and securities (*GCBuffer Req$_{\$\_SFREV}$*) is the sum of each loan's and security's *GCBufferReq$_{\$}$*.

$$GCBufferReq_{\$\_SFREV} = \sum_{\forall SFREV} GCBufferReq_{\$}$$

(6) The total risk-based capital requirement for reverse mortgage loans and securities in dollar terms (*RiskBasedCap$_{\$\_SFREV}$*) is calculated as follows:

$RiskBasedCapReq_{\$\_SFREV} = CapitalAndMarketRiskCapReq_{\$\_SFREV} + OperationalRiskCapReq_{\$\_SFREV} + GCBufferReq_{\$\_SFREV}$

(e) *Single-family rentals.* Single-family rentals are multiple income-producing single-family units owned by an investor for the purpose of renting them and deriving a profit from their operation. Single-family Rentals shall be treated as multifamily whole loans and guarantees for the purposes of assigning risk-based capital.

§ 1240.48 Unassigned Activities.

(a) For purposes of this part, an Unassigned Activity means any asset, guarantee, off-balance sheet guarantee, or activity for which this part does not have an explicit risk-based capital treatment. An Unassigned Activity must be assigned a capital requirement.

(b) The Director has the authority under 12 U.S.C. 4612(e) to treat as an Unassigned Activity any asset, guarantee, off-balance sheet guarantee or activity that exists as of the effective date of this part, or is not in existence as of the effective date of this part, which has:

(1) Characteristics or unusual features that create risks for an Enterprise that are not adequately reflected in the specified treatments in this part; or

(2) For which the specified treatment in this part no longer adequately reflects the risks to an Enterprise, either because of increased volume or because new information concerning those risks has become available.

(c) The methodology for determining the capital requirement for an Unassigned Activity includes the following steps:

(1) An Enterprise must provide a notification to FHFA of a proposal related to an Unassigned Activity as soon as possible, but in no event later than thirty days after the date on which the transaction closes or is settled. This obligation applies with respect to any activity for which this part does not otherwise specifically prescribe a risk-based capital requirement, or that FHFA has notified the Enterprise is an Unassigned Activity. The notification must include:

(i) A proposal for an appropriate capital treatment that will capture the credit and market risk of the Unassigned Activity; and

(ii) Narrative and data to explain the Unassigned Activity sufficient for FHFA to understand the risk profile of the Unassigned Activity.

(2) FHFA will review the notification and determine whether an existing treatment specified in this part captures the risks of the Unassigned Activity. If FHFA determines there is no effective existing treatment, FHFA will determine an appropriate treatment. FHFA will provide an Enterprise with an order specifying the risk-based capital treatment for the Unassigned Activity. If FHFA does not provide an Enterprise with an order specifying the risk-based capital treatment for the Unassigned Activity in time for the Enterprise to prepare its capital report, an Enterprise shall use its own proposed capital treatment, reflecting its assessment of the capital required in light of the various risks the activity presents, including an operational risk capital requirement and a going-concern buffer requirement.

(d) This part may be amended from time to time to provide for a risk-based capital requirement treatment for a specified Unassigned Activity.

§ 1240.49 Aggregate risk-based capital requirement calculation.

(a) The calculation for the aggregate risk-based capital requirements for total capital (*RiskBasedCapReq$_TOTAL*), as described in § 1240.4, is as follows:

$$\begin{aligned}&RiskBasedCapReq_{\$\_TOTAL} = RiskBasedCapReq_{\$\_SFWLGS} + \\ &RiskBasedCapReq_{\$\_PLS} + RiskBasedCapReq_{\$\_MFWLGS} + \\ &RiskBasedCapReq_{\$\_CMBS} + RiskBasedCapReq_{\$\_DTA} + \\ &RiskBasedCapReq_{\$\_MD} + RiskBasedCapReq_{\$\_SFREV}\end{aligned}$$

(b) *RiskBasedCapReq$_TOTAL* shall also include any capital requirements for Unassigned Activities.

§ 1240.50 Minimum leverage capital requirement: 2.5 percent alternative.

Each Enterprise shall maintain at all times core capital in an amount at least equal to 2.5 percent of total assets and off-balance sheet guarantees related to securitization activities, or such higher amount as the Director may require pursuant to part 1225 of this chapter.

§ 1240.51 Minimum leverage capital requirement: Bifurcated alternative.

Each Enterprise shall maintain at all times core capital in an amount at least equal to 4% of non-trust assets and 1.5% of trust assets, or such higher amount as the Director may require pursuant to part 1225 of this chapter.

CHAPTER XVII—OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER C—SAFETY AND SOUNDNESS

PART 1750—[REMOVED]

■ 4. Remove part 1750.

Dated: June 27, 2018.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2018–14255 Filed 7–16–18; 8:45 am]

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Part III

Department of the Treasury

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

Securities and Exchange Commission

Commodity Futures Trading Commission

12 CFR Parts 44, 248, and 351

17 CFR Parts 75 and 255

Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds; Proposed Rule

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Part 44

[Docket No. OCC–2018–0010]

RIN 1557–AE27

FEDERAL RESERVE SYSTEM

12 CFR Part 248

[Docket No. R–1608]

RIN 7100–AF 06

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 351

RIN 3064–AE67

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 255

[Release no. BHCA–3; File no. S7–14–18]

RIN 3235–AM10

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 75

RIN 3038–AE72

Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds

AGENCY: Office of the Comptroller of the Currency, Treasury (''OCC''); Board of Governors of the Federal Reserve System (''Board''); Federal Deposit Insurance Corporation (''FDIC''); Securities and Exchange Commission (''SEC''); and Commodity Futures Trading Commission (''CFTC'').

ACTION: Notice of proposed rulemaking.

SUMMARY: The OCC, Board, FDIC, SEC, and CFTC (individually, an ''Agency,'' and collectively, the ''Agencies'') are requesting comment on a proposal that would amend the regulations implementing section 13 of the Bank Holding Company Act (BHC Act). Section 13 contains certain restrictions on the ability of a banking entity and nonbank financial company supervised by the Board to engage in proprietary trading and have certain interests in, or relationships with, a hedge fund or private equity fund. The proposed amendments are intended to provide banking entities with clarity about what activities are prohibited and to improve supervision and implementation of section 13.

DATES: Comments must be received on or before September 17, 2018.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to all of the Agencies. Commenters are encouraged to use the title ''Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds'' to facilitate the organization and distribution of comments among the Agencies. Commenters are also encouraged to identify the number of the specific question for comment to which they are responding. Comments should be directed to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''regulations.gov'':* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2018–0010'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments.
- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov,* including instructions for submitting public comments.
- *Email: VolckerReg.Comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2018–0010'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2018–0010'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen and then ''Comments.'' Comments can be filtered by clicking on ''View All'' and then using the filtering tools on the left side of the screen.
- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov.* Supporting materials may be viewed by clicking on ''Open Docket Folder'' and then clicking on ''Supporting Documents.'' The docket may be viewed after the close of the comment period in the same manner as during the comment period.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW, Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, identified by Docket No. R–1608; RIN 7100–AF 06, by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include docket and RIN numbers in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. All public comments are available from the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical

reasons or to remove sensitive personal information at the commenter's request. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW. (between 18th and 19th Streets NW) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN 3064–AE67 by any of the following methods:

- *Agency Website: http://www.FDIC.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency website.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivered/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.
- *Email: comments@FDIC.gov.* Include the RIN 3064–AE67 on the subject line of the message.
- *Public Inspection:* All comments received must include the agency name and RIN 3064–AE67 for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/*, including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226 or by telephone at (877) 275–3342 or (703) 562–2200.

SEC: You may submit comments by the following methods:

Electronic Comments

- Use the SEC's internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or

Send an email to *rule-comments@sec.gov.* Please include File Number S7–14–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–14–18. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The SEC will post all comments on the SEC's website (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for website viewing and printing in the SEC'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. All comments received will be posted without change. Persons submitting comments are cautioned that the SEC does not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the SEC or SEC staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any materials will be made available on the SEC's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

CFTC: You may submit comments, identified by RIN 3038–AE72 and ''Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds,'' by any of the following methods:

- *Agency Website: https://comments.cftc.gov.* Follow the instructions on the website for submitting comments.
- *Mail:* Send to Christopher Kirkpatrick, Secretary, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov* and the information you submit will be publicly available. If, however, you submit information that ordinarily is exempt from disclosure under the Freedom of Information Act, you may submit a petition for confidential treatment of the exempt information according to the procedures set forth in CFTC Regulation 145.9.1. The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the 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 the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT:

OCC: Suzette Greco, Assistant Director; Tabitha Edgens, Senior Attorney; Mark O'Horo, Attorney, Securities and Corporate Practices Division (202) 649–5510; for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Kevin Tran, Supervisory Financial Analyst, (202) 452–2309, Amy Lorenc, Financial Analyst, (202) 452–5293, David Lynch, Deputy Associate Director, (202) 452–2081, David McArthur, Senior Economist, (202) 452–2985, Division of Supervision and Regulation; Flora Ahn, Senior Counsel, (202) 452–2317, Gregory Frischmann, Counsel, (202) 452–2803, or Kirin Walsh, Attorney, (202) 452–3058, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Bobby R. Bean, Associate Director, *bbean@fdic.gov*, Michael Spencer, Chief, Capital Markets Strategies Section, *michspencer@fdic.gov*, or Brian Cox, Capital Markets Policy Analyst, *brcox@fdic.gov*, Capital Markets Branch, (202) 898–6888; Michael B. Phillips, Counsel, *mphillips@fdic.gov*, Benjamin J. Klein, Counsel, *bklein@fdic.gov*, or Annmarie H. Boyd, Counsel, *aboyd@fdic.gov*, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SEC: Andrew R. Bernstein (Senior Special Counsel), Sophia Colas (Attorney-Adviser), Sam Litz (Attorney-Adviser), Office of Derivatives Policy and Trading Practices, or Aaron Washington (Special Counsel), Elizabeth Sandoe (Senior Special Counsel), Carol McGee (Assistant Director), or Josephine J. Tao (Assistant Director), at (202) 551–5777, Division of Trading and Markets, and Nicholas Cordell, Matthew Cook, Aaron Gilbride (Branch Chief), Brian McLaughlin Johnson (Assistant Director), and Sara Cortes (Assistant Director), at (202) 551–6787 or *IArules@sec.gov*, Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

CFTC: Erik Remmler, Deputy Director, (202) 418–7630, *eremmler@cftc.gov*; Cantrell Dumas, Special Counsel, (202) 418–5043, *cdumas@cftc.gov*; Jeffrey Hasterok, Data and Risk Analyst, (646) 746–9736, *jhasterok@cftc.gov*, Division of Swap Dealer and Intermediary Oversight; Mark Fajfar, Assistant General Counsel, (202) 418–6636, *mfajfar@cftc.gov*, Office of the General Counsel; Stephen Kane, Research Economist, (202) 418–5911, *skane@cftc.gov*, Office of the Chief Economist; Commodity Futures Trading Commission, Three Lafayette Centre,1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the ‘‘Dodd-Frank Act’’) was enacted on July 21, 2010.[1] Section 619 of the Dodd-Frank Act added a new section 13 to the BHC Act (codified at 12 U.S.C. 1851), also known as the Volcker Rule, that generally prohibits any banking entity from engaging in proprietary trading or from acquiring or retaining an ownership interest in, sponsoring, or having certain relationships with a hedge fund or private equity fund (‘‘covered fund’’), subject to certain exemptions.[2]

Section 13 of the BHC Act generally prohibits banking entities from engaging as principal in trading for the purpose of selling financial instruments in the near term or otherwise with the intent to resell in order to profit from short-term price movements.[3] Section 13(d)(1) expressly exempts from this prohibition, subject to conditions, certain activities, including:

- Trading in U.S. government, agency, and municipal obligations;
- Underwriting and market-making-related activities;
- Risk-mitigating hedging activities;
- Trading on behalf of customers;
- Trading for the general account of insurance companies; and
- Foreign trading by non-U.S. banking entities.[4]

Section 13 of the BHC Act also generally prohibits banking entities from acquiring or retaining an ownership interest in, or sponsoring, a hedge fund or private equity fund.[5] Section 13 contains several exemptions that permit banking entities to make limited investments in covered funds, subject to a number of restrictions designed to ensure that banking entities do not rescue investors in these funds from loss and are not themselves exposed to significant losses from investments or other relationships with these funds.[6]

Under the statute, authority for developing and adopting regulations to implement the prohibitions and restrictions of section 13 of the BHC Act is divided among the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Securities and Exchange Commission, and the Commodity Futures Trading Commission (individually, an ‘‘Agency,’’ and collectively, the ‘‘Agencies’’).[7] The Agencies issued a final rule implementing these provisions in December 2013 (the ‘‘2013 final rule’’).[8]

The Agencies have now had several years of experience implementing the 2013 final rule and believe that supervision and implementation of the 2013 final rule can be substantially improved. The Agencies acknowledge concerns that some parts of the 2013 final rule may be unclear and potentially difficult to implement in practice. Based on experience since adoption of the 2013 final rule, the Agencies have identified opportunities, consistent with the statute, for improving the rule, including further tailoring its application based on the activities and risks of banking entities. Accordingly, the Agencies are issuing this proposal (the ‘‘proposal’’ or ‘‘proposed amendments’’) to amend the 2013 final rule, in order to provide banking entities with greater clarity and certainty about what activities are prohibited and seek to improve effective allocation of compliance resources where possible. The Agencies also believe that the modifications proposed herein would improve the ability of the Agencies to examine for, and make supervisory assessments regarding, compliance relative to the statute and the implementing rules.

While section 13 of the BHC Act addresses certain risks related to proprietary trading and covered fund activities of banking entities, the Agencies note that the nature and business of banking entities involves other inherent risks, such as credit risk and general market risk. To that end, the Agencies have various tools, such as the regulatory capital rules of the Federal banking agencies and the comprehensive capital analysis and review framework of the Board, to require banking entities to manage the risks associated with their activities. The Agencies believe that the proposed changes to the 2013 final rule would be consistent with safety and soundness and enable banking entities to implement appropriate risk management policies in light of the risks associated with the activities in which banking entities are permitted to engage under section 13.

The Agencies also note that the Economic Growth, Regulatory Relief, and Consumer Protection Act,[9] which was enacted on May 24, 2018, amends section 13 of the BHC Act by narrowing the definition of banking entity and revising the statutory provisions related to the naming of covered funds. The Agencies plan to address these statutory amendments through a separate rulemaking process; no changes have been proposed herein that would implement these amendments. The amendments took effect upon enactment, however, and in the interim between enactment and the adoption of implementing regulations, the Agencies will not enforce the 2013 final rule in a manner inconsistent with the amendments to section 13 of the BHC Act with respect to institutions excluded by the statute and with respect to the naming restrictions for covered funds. Additionally, the specific regulatory amendments proposed herein would not be inconsistent with the

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] *See* 12 U.S.C. 1851. Section 13 of the BHC Act does not prohibit a nonbank financial company supervised by the Board from engaging in proprietary trading, or from having the types of ownership interests in or relationships with a covered fund that a banking entity is prohibited or restricted from having under section 13 of the BHC Act. However, section 13 of the BHC Act provides that a nonbank financial company supervised by the Board would be subject to additional capital requirements, quantitative limits, or other restrictions if the company engages in certain proprietary trading or covered fund activities. *See* 12 U.S.C. 1851(a)(2) and (f)(4).

[3] *See* 12 U.S.C. 1851(a)(1)(A); 1851(h)(4) and (6).

[4] *See* 12 U.S.C. 1851(d)(1).

[5] *See* 12 U.S.C. 1851(a)(1)(B).

[6] *See, e.g.,* 12 U.S.C. 1851(d)(1)(G).

[7] *See* 12 U.S.C. 1851(b)(2). Under section 13(b)(2)(B) of the BHC Act, rules implementing section 13's prohibitions and restrictions must be issued by: (i) The appropriate Federal banking agencies (*i.e.,* the Board, the OCC, and the FDIC), jointly, with respect to insured depository institutions; (ii) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, any nonbank financial company supervised by the Board, and any subsidiary of any of the foregoing (other than a subsidiary for which an appropriate Federal banking agency, the SEC, or the CFTC is the primary financial regulatory agency); (iii) the CFTC with respect to any entity for which it is the primary financial regulatory agency, as defined in section 2 of the Dodd-Frank Act; and (iv) the SEC with respect to any entity for which it is the primary financial regulatory agency, as defined in section 2 of the Dodd-Frank Act. *See id.*

[8] *See* Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds; Final Rule, 79 FR 5535 (Jan. 31, 2014).

[9] Public Law 115–174, 132 Stat. 1296–1368 (2018).

recent statutory amendments to section 13 of the BHC Act.

A. Rulemaking Framework

Section 13 of the BHC Act requires that implementation of its provisions occur in several stages. The first stage in implementing section 13 of the BHC Act was a study by the Financial Stability Oversight Council (''FSOC'').[10] The FSOC study was issued on January 18, 2011, and included a detailed discussion of key issues and recommendations related to implementation of section 13 of the BHC Act.[11]

Following the FSOC study, and as required by section 13(b)(2) of the BHC Act, the Board, OCC, FDIC, and SEC in October 2011 invited the public to comment on a proposal implementing the requirements of section 13 of the BHC Act.[12] In February 2012, the CFTC issued a proposal that was substantially identical to the one proposed in October 2011 by the other four Agencies.[13] The Agencies received more than 600 unique comment letters, including from members of Congress; domestic and foreign banking entities and other financial services firms; trade groups representing banking, insurance, and the broader financial services industry; U.S. state and foreign governments; consumer and public interest groups; and individuals. The comments addressed all major sections of the 2011 proposal. To improve understanding of the issues raised by commenters, the staffs of the Agencies met with a number of these commenters to discuss issues relating to the 2011 proposal, and summaries of these meetings are available on each of the Agencies' public websites.[14] The CFTC staff also hosted a public roundtable on the 2011 proposal.[15] In formulating the 2013 final rule, the Agencies carefully reviewed all comments submitted in connection with the rulemaking and considered the suggestions and issues they raised in light of the statutory requirements as well as the FSOC study. In December 2013, the Agencies issued the 2013 final rule implementing section 13 of the BHC Act.

The Agencies are committed to revisiting and revising the rule as appropriate to improve its implementation. Since the adoption of the 2013 final rule, the Agencies have gained several years of experience implementing the 2013 final rule, and banking entities have had more than four years of experience implementing the 2013 final rule.[16]

In particular, the Agencies have received various communications from the public and other sources since adoption of the 2013 final rule and over the course of its implementation. These communications include written comments from members of Congress; domestic and foreign banking entities and other financial services firms; trade groups representing banking, insurance, and other firms within the broader financial services industry; U.S. state and foreign governments; consumer and public interest groups; and individuals. The U.S. Department of the Treasury also issued reports in June 2017 and October 2017, which contained recommendations regarding section 13 of the BHC Act and the implementing regulations.[17] In addition, the OCC issued a Request for Information (''OCC Notice for Comment'') in August 2017 and received 87 unique comment letters and over 8,400 standardized letters regarding section 13 of the BHC Act and the implementing regulations.[18] Moreover, staffs of the Agencies have held numerous meetings with market participants to discuss the 2013 final rule and its implementation. Collectively, these sources of public feedback have provided the Agencies with a better understanding of the concerns and challenges surrounding implementation of the 2013 final rule.

Furthermore, the Agencies have collected nearly four years of quantitative data required under Appendix A of the 2013 final rule. The data collected in connection with the 2013 final rule, compliance efforts by banking entities, and the Agencies' experience in reviewing trading and investment activity under the 2013 final rule, have provided valuable insights into the effectiveness of the 2013 final rule. These insights highlighted areas in which the 2013 final rule may have resulted in ambiguity, overbroad application, or unduly complex compliance routines. With this proposal, and based on experience gained over the past few years, the Agencies seek to simplify and tailor the implementing regulations, where possible, in order to increase efficiency, reduce excess demands on available compliance capacities at banking entities, and allow banking entities to more efficiently provide services to clients, consistent with the requirements of the statute.[19]

[10] FSOC, Study and Recommendations on Prohibitions on Proprietary Trading and Certain Relationships with Hedge Funds and Private Equity Funds (Jan. 18, 2011), *available at http://www.treasury.gov/initiatives/Documents/Volcker%20sec%20619%20study%20final%201%2018%2011%20rg.pdf* (FSOC study); *see* 12 U.S.C. 1851(b)(1). Prior to publishing its study, the FSOC requested public comment on a number of issues to assist the FSOC in conducting its study. *See* Public Input for the Study Regarding the Implementation of the Prohibitions on Proprietary Trading and Certain Relationships With Hedge Funds and Private Equity Funds, 75 FR 61758 (Oct. 6, 2010). Approximately 8,000 comments were received from the public, including from members of Congress, trade associations, individual banking entities, consumer groups, and individuals. As noted in the issuing release for the FSOC study, these comments were considered by the FSOC when drafting the FSOC study.

[11] *See id.*

[12] *See* Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds, 76 FR 68846 (Nov. 7, 2011) (''2011 proposal'').

[13] *See* Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds, 77 FR 8331 (Feb. 14, 2012).

[14] *See http://www.regulations.gov/#!docketDetail;D=OCC-2011-0014* (OCC); *http://www.federalreserve.gov/newsevents/reform_systemic.htm* (Board); *http://www.fdic.gov/regulations/laws/federal/2011/11comAD85.html* (FDIC); *http://www.sec.gov/comments/s7-41-11/s74111.shtml* (SEC); and *http://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF_28_VolckerRule/index.htm* (CFTC).

[15] *See* Commodity Futures Trading Commission, CFTC Staff to Host a Public Roundtable to Discuss the Proposed Volcker Rule (May 24, 2012), *available at http://www.cftc.gov/PressRoom/PressReleases/pr6263-12*; transcript *available at http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/transcript053112.pdf*.

[16] The 2013 final rule was published in the **Federal Register** on January 31, 2014, and became effective on April 1, 2014. Banking entities were required to fully conform their proprietary trading activities and their new covered fund investments and activities to the requirements of the 2013 final rule by the end of the conformance period, which the Board extended to July 21, 2015. The Board extended the conformance period for certain legacy covered fund activities until July 21, 2017. Upon application, banking entities also have an additional period to conform certain illiquid funds to the requirements of section 13 and implementing regulations.

[17] *See* A Financial System That Creates Economic Opportunities, Banks and Credit Unions (June 2017), *available at https://www.treasury.gov/press-center/press-releases/Documents/A%20Financial%20System.pdf* and A Financial System that Creates Economic Opportunities, Capital Markets (October 2017), *available at https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf*.

[18] *See* Notice Seeking Public Input on the Volcker Rule (August 2017), *available at https://www.occ.gov/news-issuances/news-releases/2017/nr-occ-2017-89a.pdf*. Corresponding comment letters are available at *https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=OCC-2017-0014*. A summary of the comment letters is *available at https://occ.gov/topics/capital-markets/financial-markets/trading-volcker-rule/volcker-notice-comment-summary.pdf*.

[19] A number of Agency principals have suggested modifications to the 2013 final rule. *See* Randal K. Quarles, Mar. 5, 2018, *available at https://www.federalreserve.gov/newsevents/speech/quarles20180305a.htm*; Daniel K. Tarullo, Apr. 4, 2017, *available at https://www.federalreserve.gov/newsevents/speech/tarullo20170404a.htm*; Martin J. Gruenberg, Nov. 14, 2017, *available at https://*

Continued

B. Agency Coordination

Section 13(b)(2)(B)(ii) of the BHC Act directs the Agencies to ''consult and coordinate'' in developing and issuing the implementing regulations ''for the purpose of assuring, to the extent possible, that such regulations are comparable and provide for consistent application and implementation of the applicable provisions of section 13 of the BHC Act to avoid providing advantages or imposing disadvantages to the companies affected . . . .'' [20] The Agencies recognize that coordinating with respect to regulatory interpretations, examinations, supervision, and sharing of information is important to maintain consistent oversight, promote compliance with section 13 of the BHC Act and implementing regulations, and foster a level playing field for affected market participants. The Agencies further recognize that coordinating these activities helps to avoid unnecessary duplication of oversight, reduces costs for banking entities, and provides for more efficient regulation.

The Agencies request comment on coordination generally and the following specific questions:

Question 1. Would it be helpful for the Agencies to hold joint information gathering sessions with a banking entity that is supervised or regulated by more than one Agency? If not, why not, and, if so, what should the Agencies consider in arranging these joint sessions?

Question 2. In what ways could the Agencies improve the transparency of their implementation of section 13 of the BHC Act? What specific steps with respect to Agency coordination would banking entities find helpful to make compliance with section 13 and the implementing rules more efficient? What steps would commenters recommend with respect to coordination to better promote and protect the safety and soundness of banking entities and U.S. financial stability?

II. Overview of Proposal

A. General Approach

The proposal would adopt a revised risk-based approach that would rely on a set of clearly articulated standards for both prohibited and permitted activities and investments, consistent with the requirements of section 13 of the BHC Act. In formulating the proposal, the Agencies have attempted to simplify and tailor the 2013 final rule, as described further below, to allow banking entities to more efficiently provide services to clients.

The Agencies seek to address a number of targeted areas for potential revision in this proposal. First, the Agencies are proposing to tailor the application of the rule based on the size and scope of a banking entity's trading activities. In particular, the Agencies aim to further reduce compliance obligations for small and mid-sized firms that do not have large trading operations and therefore reduce costs and uncertainty faced by small and mid-size firms in complying with the final rule, relative to their amount of trading activity.[21] In the experience of the Agencies since adoption of the 2013 final rule, the costs and uncertainty faced by small and mid-sized firms in complying with the 2013 final rule can be disproportionately high relative to the amount of trading activity typically undertaken by these firms.

In addition to tailoring the application of the rule, the Agencies also seek to streamline and clarify for all banking entities certain definitions and requirements related to the proprietary trading prohibition and limitations on covered fund activities and investments. In particular, this proposal seeks to codify or otherwise addresses matters currently addressed by staff responses to Frequently Asked Questions (''FAQs'').[22] Additionally, the Agencies are seeking in this proposal to reduce metrics reporting, recordkeeping, and compliance program requirements for all banking entities and expand tailoring to make the scale of compliance activity required by the rule commensurate with a banking entity's size and level of trading activity.

In tailoring these proposed changes to the 2013 final rule, the Agencies note the following statutory limitations to the permitted proprietary trading and covered fund activities,[23] which are incorporated in the 2013 final rule and have not been changed in the proposed rule. These statutory limitations provide that such permitted activities must not: (1) Involve or result in a material conflict of interest between the banking entity and its clients, customers, or counterparties; (2) result, directly or indirectly, in a material exposure by the banking entity to a high-risk asset or a high-risk trading strategy; or (3) pose a threat to the safety and soundness of the banking entity or to the financial stability of the United States.[24]

As a matter of structure, the proposed amendments would maintain the 2013 final rule's division into four subparts, and would maintain a metrics appendix while removing the 2013 final rule's second appendix regarding enhanced minimum standards for compliance programs, as follows:

- Subpart A of the 2013 final rule, as amended by the proposal, would describe the authority, scope, purpose, and relationship to other authorities of the rule and define terms used commonly throughout the rule;
- Subpart B of the 2013 final rule, as amended by the proposal, would prohibit proprietary trading, define terms relevant to covered trading activity, establish exemptions from the prohibition on proprietary trading and limitations on those exemptions, and require certain banking entities to report certain information with respect to their trading activities;
- Subpart C of the 2013 final rule, as amended by the proposal, would prohibit or restrict acquisition or retention of an ownership interest in, and certain relationships with, a covered fund; define terms relevant to covered fund activities and investments; and establish exemptions from the restrictions on covered fund activities and investments and limitations on those exemptions; and
- Subpart D of the 2013 final rule, as amended by the proposal, would generally require banking entities with significant trading assets and liabilities to establish a compliance program regarding section 13 of the BHC Act and the rule, including written policies and procedures, internal controls, a management framework, independent testing of the compliance program, training, and recordkeeping; establish metrics reporting requirements for banking entities with significant trading assets and liabilities, pursuant to the Appendix; provide tailored compliance program requirements for banking entities without significant trading assets and liabilities, including a presumption of compliance for banking entities with limited trading assets and liabilities; and require certain larger

www.fdic.gov/news/news/speeches/spnov1417.html.

[20] 12 U.S.C. 1851(b)(2)(B)(ii).

[21] The Federal banking agencies issued guidance relating to compliance with the final rule for community banks in conjunction with the final rule in December of 2013. *See* The Volcker Rule: Community Bank Applicability, *https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20131210a4.pdf.*

[22] *See https://www.occ.treas.gov/topics/capital-markets/financial-markets/trading-volcker-rule/volcker-rule-implementation-faqs.html* (OCC); *https://www.federalreserve.gov/bankinforeg/volcker-rule/faq.htm* (Board); *https://www.fdic.gov/regulations/reform/volcker/faq.html* (FDIC); *https://www.sec.gov/divisions/marketreg/faq-volcker-rule-section13.htm* (SEC); *https://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF_28_VolckerRule/index.htm* (CFTC).

[23] *See* 12 U.S.C. 1851(d)(2).

[24] *See id.*

banking entities to submit a chief executive officer (''CEO'') attestation regarding the compliance program.

Given the complexities associated with the 2013 final rule, the Agencies request comment on the potential impact the proposal may have on banking entities and the activities in which they engage. The Agencies are interested in receiving comments regarding revisions described in the proposal relative to the 2013 final rule.[25] Additionally, the Agencies recognize that there are economic impacts that would potentially arise from the proposal and its implementation of section 13 of the BHC Act. The Agencies have provided an assessment of the expected impact of the proposed modifications contained in the proposal, and the Agencies request comment on all aspects of such impacts, including quantitative data, where possible. Specific requests for comment are included in the following sections.

B. Scope of Proposal

To better tailor the application of the rule, the proposal would establish three categories of banking entities based on their level of trading activity.[26] The first category would include banking entities with ''significant trading assets and liabilities,'' defined as those banking entities that, together with their affiliates and subsidiaries, have trading assets and liabilities (excluding obligations of or guaranteed by the United States or any agency of the United States) equal to or exceeding $10 billion. These banking entities, which generally have large trading operations, would be required to comply with the most extensive set of requirements under the proposal.

The second category would include banking entities with ''moderate trading assets and liabilities,'' defined as those banking entities that do not have significant trading assets and liabilities or limited trading assets and liabilities. Banking entities with moderate trading assets and liabilities are those entities that, together with their affiliates and subsidiaries, have trading assets and liabilities (excluding obligations of or guaranteed by the United States or any agency of the United States) less than $10 billion, but above the threshold described below for banking entities with limited trading assets and liabilities.[27] These banking entities would be subject to reduced compliance requirements and a more tailored approach in light of their smaller and less complex trading activities.

The third category includes banking entities with ''limited trading assets and liabilities,'' defined as those banking entities that have, together with their affiliates and subsidiaries, trading assets and liabilities (excluding trading assets and liabilities involving obligations of or guaranteed by the United States or any agency of the United States) less than $1 billion. This $1 billion threshold would be based on the worldwide trading assets and liabilities of a banking entity and all of its affiliates. With respect to a foreign banking organization (''FBO'') and its subsidiaries, the $1 billion threshold would be based on worldwide consolidated trading assets and liabilities, and would not be limited to its combined U.S. operations.

The proposal would establish a presumption of compliance for all banking entities with limited trading assets and liabilities. Banking entities operating pursuant to this proposed presumption of compliance would have no obligation to demonstrate compliance with subparts B and C of the proposal on an ongoing basis. If, however, upon examination or audit, the relevant Agency determines that the banking entity has engaged in proprietary trading or covered fund activities that are prohibited under subpart B or subpart C, such Agency may exercise its authority to rebut the presumption of compliance and require the banking entity to comply with the requirements of the rule applicable to banking entities that have moderate trading assets and liabilities. The purpose of this presumption of compliance would be to further reduce compliance costs for small and mid-size banks that either do not engage in the types of activities subject to section 13 of the BHC Act or engage in such activities only on a limited scale.

The proposal also includes a reservation of authority that would allow an Agency to require a banking entity with limited or moderate trading assets and liabilities to apply any of the more extensive requirements that would otherwise apply if the banking entity had significant or moderate trading assets and liabilities, if the Agency determines that the size or complexity of the banking entity's trading or investment activities, or the risk of evasion, warrants such treatment.

C. Proprietary Trading Restrictions

Subpart B of the 2013 final rule implements the statutory prohibition on proprietary trading and the various exemptions to this prohibition included in the statute. Section ____.3 of the 2013 final rule contains the core prohibition on proprietary trading and defines a number of related terms. The proposal would make several changes to § ____.3 of the 2013 final rule. Notably, the proposal would revise, in a manner consistent with the statute, the definition of ''trading account'' in order to increase clarity regarding the positions included in the definition.[28] The definition of ''trading account'' is a threshold definition that tells a banking entity whether the purchase or sale of a financial instrument is subject to the restrictions and requirements of section 13 of the BHC Act and the 2013 final rule in the first instance.

In the 2013 final rule, the Agencies defined the statutory term ''trading account'' to include three prongs. The first prong includes any account that is used by a banking entity to purchase or sell one or more financial instruments principally for the purpose of short-term resale, benefitting from short-term price movements, realizing short-term arbitrage profits, or hedging another trading account position (the ''short-term intent prong'').[29] For purposes of this part of the definition, the 2013 final rule also contains a rebuttable presumption that the purchase or sale of a financial instrument by a banking entity is for the trading account if the banking entity holds the financial instrument for fewer than 60 days or substantially transfers the risk of the financial instrument within 60 days of purchase (or sale).[30] The second prong covers trading positions that are both covered positions and trading positions for purposes of the Federal banking agencies' market risk capital rules, as well as hedges of covered positions (the ''market risk capital prong'').[31] The third prong covers any account used by a banking entity that is a securities dealer, swap dealer, or security-based swap dealer that is licensed or registered, or required to be licensed or registered, as a dealer, swap dealer, or

[25] This proposal contains certain proposed amendments to the 2013 final rule. The 2013 final rule would continue in effect where no change is made.

[26] The proposal would amend § ____.2 of the 2013 final rule to include a new defined term for each of these categories. The Agencies are proposing to republish § ____.2 in its entirety for clarity due to the renumbering of certain definitions. These proposed banking entity categories are discussed in further detail in Section II.G. of the **SUPPLEMENTARY INFORMATION**, below.

[27] This category would also include banking entities with trading assets and liabilities of less than $1 billion for which the presumption of compliance described below has been rebutted.

[28] Definitions used in the proposal would remain the same as in the 2013 final rule except as otherwise specified.

[29] *See* 2013 final rule § ____.3(b)(1)(i).

[30] *See* 2013 final rule § ____.3(b)(2).

[31] *See* 2013 final rule § ____.3(b)(1)(ii).

security-based swap dealer, to the extent the instrument is purchased or sold in connection with the activities that require the banking entity to be licensed or registered as such (the ''dealer prong'').[32]

In the experience of the Agencies, determining whether or not positions fall into the short-term intent prong of the trading account definition has often proved unclear and subjective, and, consequently, may result in ambiguity or added costs and delays. For this reason, the proposal would remove the short-term intent prong from the 2013 final rule's definition of trading account and eliminate the associated rebuttable presumption, and would also modify the definition of trading account as described below to include other accounts described in the statutory definition of ''trading account.'' [33]

The remaining two prongs of the trading account definition in the 2013 final rule, the market risk capital prong and the dealer prong, generally would remain unchanged because, in the experience of the Agencies, interpretation of both prongs has been relatively straightforward and clear in practice for most banking entities. The proposal would, however, modify the market risk capital prong to cover the trading positions of FBOs subject to similar requirements in the applicable foreign jurisdiction. The Agencies are proposing this modification for FBOs to take into account the different frameworks and supervisors FBOs may have in their home countries. Specifically, the proposal would modify the market risk capital prong to apply to FBOs that are subject to capital requirements under a market risk framework established by their respective home country supervisors, provided the market risk framework is consistent with the market risk framework published by the Basel Committee on Banking Supervision, as amended. The Agencies expect that this standard, similar to the current market risk capital prong referencing the U.S. market risk capital rules, would include trading account activities of FBOs consistent with the statutory trading account requirements. The Agencies believe the proposed approach would be an appropriate interpretation of the statutory trading account definition. The Agencies likewise believe that application of the market risk capital prong to FBOs as described herein would be relatively straightforward and clear in practice.

In addition, the Agencies are proposing two changes related to the trading account definition that are intended to replace the short-term intent prong. These changes include: (i) The addition of an accounting prong and (ii) a presumption of compliance with the prohibition on proprietary trading for trading desks that are not subject to the market risk capital prong or the dealer prong, based on a prescribed profit and loss threshold. Under the proposed accounting prong, a trading desk that buys or sells a financial instrument (as defined in the 2013 final rule and unchanged by the proposal) that is recorded at fair value on a recurring basis under applicable accounting standards would be doing so for the ''trading account'' of the banking entity.[34] Financial instruments that would be covered by the proposed accounting prong generally include, but are not limited to, derivatives, trading securities, and available-for-sale securities. For example, a security that is classified as ''trading'' under U.S. generally accepted accounting principles (''GAAP'') would be included in the proposal's definition of ''trading account'' under the proposed approach because it is recorded at fair value.

The proposed presumption of compliance, which would apply at the trading desk level, would provide that each trading desk that purchases or sells financial instruments for a trading account pursuant to the accounting prong may calculate the net gain or loss on the trading desk's portfolio of financial instruments each business day, reflecting realized and unrealized gains and losses since the previous business day, based on the banking entity's fair value for such financial instruments.

If the sum of the absolute values of the daily net gain and loss figures for the preceding 90-calendar-day period does not exceed $25 million, the activities of the trading desk would be presumed to be in compliance with the prohibition on proprietary trading, and the banking entity would have no obligation to demonstrate that such trading desk's activity complies with the rule on an ongoing basis. If this calculation exceeds the $25 million threshold, the banking entity would have to demonstrate compliance with section 13 of the BHC Act and the implementing regulations, as described in more detail below. The Agencies are also proposing to include a reservation of authority to address any positions that may be incorrectly scoped into or out of the definition.

Section ____.3 of the 2013 final rule also details various exclusions from the definition of proprietary trading for certain purchases and sales of financial instruments that generally do not involve the requisite short-term trading intent under the statute. The proposal would make several changes to these exclusions. First, the proposal would clarify and expand the scope of the financial instruments covered in the liquidity management exclusion. Second, it would add an exclusion from the definition of proprietary trading for transactions made to correct errors made in connection with customer-driven or other permissible transactions.

Section ____.4 of the 2013 final rule implements the statutory exemptions for underwriting and market making-related activities. The proposal would make several changes to this section intended to improve the practical application of these exemptions. In particular, the proposal would establish a presumption that trading within internally set risk limits satisfies the requirement that permitted underwriting and market making-related activities must be designed not to exceed the reasonably expected near-term demands of clients, customers, or counterparties (''RENTD''). The Agencies believe this presumption would allow for a clearer application of these exemptions, and would provide banking entities with more flexibility and certainty in conducting permissible underwriting and market making-related activities. In addition, the proposal would make the exemptions' compliance program requirements applicable only to banking entities with significant trading assets and liabilities.

The proposal would also modify the 2013 final rule's implementation of the statutory exemption for permitted risk-mitigating hedging activities in § ____.5, by reducing restrictions on the eligibility of an activity to qualify as a

[32] *See* 2013 final rule § ____.3(b)(1)(iii)(A). The dealer prong also includes positions entered into by a banking entity that is engaged in the business of a dealer, swap dealer, or security-based swap dealer outside of the United States, to the extent the instrument is purchased or sold in connection with the activities of such business. *See* 2013 final rule § ____.3(b)(1)(iii)(B).

[33] 12 U.S.C. 1851(h)(6). As in the 2013 final rule, the Agencies note that the term ''trading account'' is a statutory concept and does not necessarily refer to an actual account. ''Trading account'' is simply nomenclature for the set of transactions that are subject to the prohibitions on proprietary trading under the 2013 final rule, including as it would be amended by the proposal.

[34] ''Applicable accounting standards'' is defined in the 2013 final rule, and the proposal would not make any change to this definition. ''Applicable accounting standards'' means U.S. generally accepted accounting principles or such other accounting standards applicable to a covered banking entity that the relevant Agency determines are appropriate, that the covered banking entity uses in the ordinary course of its business in preparing its consolidated financial statements. *See* 2013 final rule § ____.10(d)(1). The proposal would move this defined term to § ____.2, to accommodate its proposed usage outside of subpart C.

permitted risk-mitigating hedging activity. For banking entities with moderate or limited trading assets and liabilities, the proposal would remove all requirements under the 2013 final rule except the requirement that hedging activity be designed to reduce or otherwise mitigate one or more specific, identifiable risks arising in connection with and related to one or more identified positions, contracts, or other holdings and that the hedging activity be recalibrated to maintain compliance with the rule. For banking entities with significant trading assets and liabilities, the proposal would maintain many of the 2013 final rule's requirements, including the requirement that the hedging activity be designed to reduce or otherwise mitigate one or more specific, identifiable risks. The proposal would, however, eliminate the current requirement that the hedging activity ''demonstrably reduces'' or otherwise ''significantly mitigates'' risk, reduce documentation requirements associated with risk-mitigating hedging transactions that are conducted by one desk to hedge positions at another desk with pre-approved types of instruments within pre-set hedging limits, and eliminate the 2013 final rule's correlation analysis requirement. These foregoing changes are intended to reduce costs and uncertainty and improve the utility of the hedging exemption.

Section ____.6(e) of the proposal would remove certain requirements of the 2013 final rule implementing the statutory exemption for trading by a foreign banking entity that occurs solely outside of the United States. In particular, the proposal would modify the requirement that any personnel of the banking entity or any of its affiliates that arrange, negotiate, or execute such purchase or sale not be located in the United States. It also would (1) remove the requirement that no financing for the banking entity's purchase or sale be provided, directly or indirectly, by any branch or affiliate that is located in the United States or organized under the laws of the United States or of any state, and (2) eliminate certain limitations on a foreign banking entity's ability to enter into transactions with a U.S. counterparty.

The proposal would retain the other requirements of § ____.6(e) of the 2013 final rule, including the requirement that the banking entity engaging as principal in the purchase or sale (including relevant personnel) not be located in the United States or organized under the laws of the United States or of any State, that the banking entity not book a transaction to a U.S. affiliate or branch, and that the banking entity (including relevant personnel) that makes the decision to purchase or sell as principal is not located in the United States or organized under the laws of the United States or of any State. Taken as a whole, the proposed amendments to this exemption seek to reduce the impact of the 2013 final rule on foreign banking entities' operations outside of the United States by focusing on where the trading of these banking entities as principal occurs, where the trading decision is made, and whether the risk of the transaction is borne outside the United States.

D. Covered Fund Activities and Investments

Subpart C of the 2013 final rule implements the statutory prohibition on directly or indirectly acquiring and retaining an ownership interest in, or having certain relationships with, a covered fund, as well as the various exemptions to this prohibition included in the statute. Section ____.10 of the 2013 final rule defines the scope of the prohibition on the acquisition and retention of ownership interests in, and certain relationships with, a covered fund, and provides the definition of ''covered fund.'' The Agencies request comment on a number of potential modifications to this section.

Section ____.11(c) of the 2013 final rule outlines the requirements that apply when a banking entity engages in underwriting or market making-related activities with respect to a covered fund. The proposal would modify these requirements with respect to covered fund ownership interests for third-party covered funds to generally allow for the same types of activities as are permitted for other financial instruments. The proposal would also make changes to § ____.13(a) of the 2013 final rule to expand a banking entity's ability to engage in hedging activities involving an ownership interest in a covered fund.

E. Compliance Program Requirements

Subpart D of the 2013 final rule requires a banking entity engaged in covered trading activities or covered fund activities to develop and implement a program reasonably designed to ensure and monitor compliance with the prohibitions and restrictions on proprietary trading activities and covered fund activities and investments set forth in section 13 of the BHC Act and the 2013 final rule.

As in the 2013 final rule, the proposal would provide that a banking entity that does not engage in proprietary trading activities (other than trading in U.S. government or agency obligations, obligations of specified government-sponsored entities, and state and municipal obligations) or covered fund activities and investments need only establish a compliance program prior to becoming engaged in such activities or making such investments. To further enhance compliance efficiencies, the proposal would reduce compliance requirements for most banking entities and expand tailoring of the requirements based on the banking entity categories previously described in this Supplementary Information section.

Under the proposal, a banking entity with significant trading assets and liabilities would be required to establish a six-pillar compliance programs commensurate with the size, scope, and complexity of its activities and business structure that meets six specific requirements already included in the 2013 final rule. These requirements include (1) written policies and procedures reasonably designed to document, describe, monitor and limit trading activities and covered fund activities and investments conducted by the banking entity; (2) a system of internal controls; (3) a management framework that, among other things, includes appropriate management review of trading limits, strategies, hedging activities, investments, incentive compensation and other matters identified in the rule or by management as requiring attention; (4) independent testing and audits; (5) training for certain personnel; and (6) recordkeeping requirements.[35] Certain additional documentation requirements for covered funds would also apply to banking entities with significant trading assets and liabilities. Because the proposal would eliminate Appendix B of the 2013 final rule, which requires large banking entities and banking entities engaged in significant trading activities to have a separate compliance program that complies with certain enhanced minimum standards, the proposed rule would essentially permit a banking entity with significant trading assets and liabilities to integrate compliance programs meeting these requirements into its existing compliance regime.

Under the proposal, a banking entity with moderate trading assets and liabilities would be required to include in its existing compliance policies and procedures appropriate references to the requirements of section 13 of the BHC Act and the implementing rules as appropriate given the activities, size,

[35] *See infra* **SUPPLEMENTARY INFORMATION**, Part III.D.

scope, and complexity of the banking entity.

The proposal would also include in subpart D the specifications for the presumption of compliance noted above that would apply for banking entities with limited trading assets and liabilities.

The proposal would eliminate Appendix B of the 2013 final rule, which specifies enhanced minimum standards for compliance programs of large banking entities and banking entities engaged in significant trading activities. The proposal would, however, maintain the 2013 final rule's CEO attestation requirement, and would apply it to all banking entities with significant trading assets and liabilities and moderate trading assets and liabilities.

F. Metrics Reporting Requirement

As part of adopting the 2013 final rule, the Agencies committed to reviewing and assessing the quantitative measurements data (''metrics'') for their effectiveness in monitoring covered trading activities for compliance with section 13 of the BHC Act and the implementing regulations. Since that time and as part of implementing the 2013 final rule, the Agencies have reviewed the metrics submitted by the banking entities and considered whether all of the quantitative measurements are useful for all asset classes and markets, as well as for all of the trading activities subject to the metrics requirement, or whether modifications are appropriate.

In the proposal, the Agencies aim to better align the effectiveness of the metrics data with its associated value in monitoring compliance. To that end, the proposal would streamline the metrics reporting and recordkeeping requirements by tailoring the requirements based on a banking entity's size and level of trading activity, completely eliminating particular metrics based on experience working with the data, and adding a limited set of new metrics. The proposal also would provide certain firms with additional time to report metrics to the Agencies, beyond the current deadlines set forth in Appendix A of the 2013 final rule. The Agencies solicit comment regarding whether a single point of collection among the Agencies for metrics would be more effective.

G. Banking Entity Categorization and Tailoring

As noted, the proposal would define three different categories of banking entities based on thresholds of trading assets and liabilities, in order to improve compliance efficiencies for all banking entities generally and further reduce compliance costs for firms that have little or no activity subject to the prohibitions and restrictions of section 13 of the BHC Act.

The first category would include any banking entity with significant trading assets and liabilities, defined under the proposal to mean a banking entity that, together with its affiliates and subsidiaries, has trading assets and liabilities (excluding trading assets and liabilities involving obligations of, or guaranteed by, the United States or any agency of the United States) the average gross sum of which (on a worldwide consolidated basis) over the previous consecutive four quarters, as measured as of the last day of each of the four previous calendar quarters, equals or exceeds $10 billion.[36] The Agencies believe that this threshold would capture a significant portion of the trading assets and liabilities in the U.S. banking system, but would reduce burdens for smaller, less complex banking entities. The Agencies estimate that approximately 95 percent of the trading assets and liabilities in the U.S. banking system are currently held by those banking entities that would have significant trading assets and liabilities under the proposal. Under the proposal, the most stringent compliance requirements would apply to these banking entities, which generally have large trading operations. For example, as described in the relevant sections of this Supplementary Information section below, the proposal would require banking entities with significant trading assets and liabilities to comply with a greater set of requirements than other banking entities to meet the conditions of the exemptions for permitted underwriting and market making-related activities and risk-mitigating hedging activities. In addition, the proposal would require these banking entities to maintain a six-pillar compliance program (*i.e.,* written policies and procedures, internal controls, management framework, independent testing, training, and records), commensurate with the size, scope, and complexity of their activities and business structure, which the banking entities could integrate into their existing compliance regime.

The second category would include any banking entity with moderate trading assets and liabilities, defined as a banking entity that does not have significant trading assets and liabilities or limited trading assets and liabilities (described below). These banking entities, together with their affiliates and subsidiaries, generally have trading assets and liabilities (excluding obligations of or guaranteed by the United States or any agency of the United States) of $1 billion or more but less than $10 billion. As with the threshold described above for firms with significant trading assets and liabilities, the Agencies believe that the proposed threshold for firms with moderate trading assets and liabilities would appropriately cover a significant percentage of trading activities in the United States. The Agencies estimate that approximately 98 percent of the trading assets and liabilities in the U.S. banking system are currently held by those firms that would have trading assets and liabilities of $1 billion or more, including firms with both significant and moderate trading assets and liabilities. Relative to banking entities with significant trading assets and liabilities, banking entities with moderate trading assets and liabilities would be subject to reduced requirements and a tailored approach in light of their smaller portfolio of trading activity. For example, the proposal would require banking entities with moderate trading assets and liabilities to comply with a more tailored set of requirements under the underwriting, market-making, and risk-mitigating hedging exemptions, as compared to the requirements applicable to banking entities with significant trading assets and liabilities. In addition, these firms would be subject to a simplified compliance program requirement, which would allow the banking entity to comply with the applicable requirements by updating existing policies and procedures. The Agencies believe these changes could substantially reduce the costs of compliance for banking entities that do not have significant trading assets and liabilities.

The third category would include any banking entity with limited trading assets and liabilities, defined under the proposal to mean a banking entity that, together with its affiliates and subsidiaries, has trading assets and liabilities (excluding trading assets and liabilities involving obligations of, or guaranteed by, the United States or any agency of the United States) the average

[36] *See* proposal § ____.2(ff). With respect to a banking entity that is an FBO or a subsidiary of an FBO, the threshold would apply based on the trading assets and liabilities of the FBO's combined U.S. operations, including all subsidiaries, affiliates, branches, and agencies. This threshold would align with the threshold currently used under the 2013 final rule to determine whether a banking entity is subject to the metrics reporting requirements of Appendix A of the 2013 final rule.

gross sum of which (on a worldwide consolidated basis) over the previous consecutive four quarters, as measured as of the last day of each of the four previous calendar quarters, is less than $1 billion.[37] While entities with less than $1 billion in trading assets and liabilities engage in some activities covered by section 13 of the BHC Act and the implementing rules, as noted above, these activities constitute a relatively small percentage of the trading assets and liabilities in the U.S. banking system. In light of the relatively small scale of activities engaged in by such firms, the Agencies are proposing to provide significant tailoring of requirements for such firms. Under the proposal, a banking entity with limited trading assets and liabilities would be presumed to be in compliance with subpart B and subpart C of the implementing regulations and would have no affirmative obligation to demonstrate compliance with subpart B and subpart C on an ongoing basis. If, upon examination or audit, the relevant Agency determines that the banking entity has engaged in covered trading activities or covered fund activities that are otherwise prohibited under subpart B or subpart C, such Agency may exercise its authority to rebut the presumption of compliance and require the banking entity to demonstrate compliance with the requirements of the rule applicable to a banking entity with moderate trading assets and liabilities. Additionally, as noted below, the relevant Agency would retain its authority to require a banking entity to apply any compliance requirements that would otherwise apply if the banking entity had moderate or significant trading assets and liabilities if such Agency determines that the size or complexity of the banking entity's trading or investment activities, or the risk of evasion, does not warrant a presumption of compliance.

The purpose of this proposed presumed compliance provision would be to significantly reduce compliance program obligations for small and mid-size banking entities that do not engage on a large scale in activities subject to the proposal. Based on data from the December 31, 2017, reporting period, all but approximately 40 top-tier banking entities would be eligible for presumed compliance.

The proposal would apply the 2013 final rule's CEO attestation requirement for all banking entities with significant or moderate trading assets and liabilities. Furthermore, all banking entities would remain subject to the covered fund provisions of the 2013 final rule, with some modifications described further below, including to the applicable compliance program requirements based on the trading assets and liabilities of the banking entity. As under the 2013 final rule, banking entities that do not engage in covered funds activities or proprietary trading would not be required to establish a compliance program unless or until prior to becoming engaged in such activities or making such investments.[38]

The proposal also includes a reservation of authority that would allow an Agency to require a banking entity with limited or moderate trading assets and liabilities to apply any of the more extensive requirements that would otherwise apply if the banking entity had moderate or significant trading assets and liabilities, if the Agency determines that the size or complexity of the banking entity's trading or investment activities, or the risk of evasion, warrants such treatment.

The proposal seeks to tailor requirements based on a relatively simple, straightforward, and objective measure connected to the activities subject to section 13 of the BHC Act. Therefore, the Agencies are proposing thresholds that are based on the trading activities of a banking entity, and are considered on a consolidated basis with its affiliates and subsidiaries. In addition, many of the requirements that the proposal would apply on a tailored basis to banking entities based on these thresholds relate to the statutory prohibition on proprietary trading and the associated exemptions, such as for permitted underwriting, market making, and risk-mitigating hedging activities. In general, this approach would seek to apply requirements commensurate with the size and complexity of a banking entity's trading activities.

Under this approach, banking entities with the largest trading activity (banking entities with significant trading assets and liabilities) would be subject to the most extensive requirements. These firms are currently subject to reporting requirements under Appendix A of the 2013 final rule due to the fact that they engage in the most trading activity subject to section 13 of the BHC Act and the implementing regulations.[39] Banking entities with moderate trading activities and liabilities would be subject to more tailored requirements, commensurate with the smaller scale of their trading activities. These firms are generally subject to the Federal banking agencies' market risk capital rules (like banking entities with significant trading assets and liabilities) and engage in some level of trading activity that is subject to the requirements of section 13 of the BHC Act, but not to the same degree as firms with significant trading assets and liabilities. Banking entities with limited trading assets and liabilities would be subject to significantly reduced requirements in recognition of the relatively small scale of covered activities in which they engage, and in order to reduce compliance costs associated with activities that are less likely to be relevant for these firms.

The Agencies request comment regarding all aspects of the proposed approach to tailoring application of the rule. In particular, the Agencies request comment on the following questions:

Question 3. Would the general approach of the proposal to establish different requirements for banking entities based on thresholds of trading assets and liabilities be appropriate? Are the proposed thresholds appropriate or are there different thresholds that would be better suited and why? If so, what thresholds should be used and why? Would the proposed approach materially reduce compliance and other costs for banking entities that do not have significant trading activity? Would the proposed approach maintain sufficient measures to ensure compliance with the requirements of section 13 of the BHC Act? If not, what approach would work better? Would an approach based on the risk profile of the

[37] The Agencies are proposing to adopt a different measure of trading assets and liabilities in determining whether a banking entity has less than $1 billion in trading assets and liabilities for purposes of tailoring the requirements of the rule described herein. Specifically, the proposed test would look at worldwide trading assets and liabilities of all banking entities, including foreign banking entities. By contrast, the test for whether a foreign banking entity has significant trading assets and liabilities provides that the banking entity need only include the trading assets and liabilities of its consolidated U.S. operations in this calculation. Banking entities with limited trading assets and liabilities under the proposal would be eligible for a presumption of compliance, but such a presumption may not be appropriate for large foreign banking entities that have substantial worldwide trading assets and liabilities. Therefore, the Agencies have proposed to adopt one test that would apply to both domestic and foreign banking entities for purposes of the limited trading assets and liabilities threshold.

[38] *See* § ____.20(f) of the 2013 final rule.

[39] As noted above, with respect to foreign banking entities, the proposal would measure whether a banking entity has significant trading assets and liabilities by reference to the aggregate assets of the foreign banking entity's U.S. operations, including its U.S. branches and agencies, rather than worldwide operations. This approach is intended to be consistent with the statute's focus on the risks posed by trading activities within the United States and also to address concerns regarding the level of burden for foreign banking entities with respect to their foreign operations.

banking entity be more appropriate? Why or why not?

Question 4. The proposal seeks to establish a streamlined and comprehensive version of the rule for banking entities with significant trading assets and liabilities. Is the proposed definition of ''significant trading assets and liabilities'' appropriate? If not, what definition would be better and why? Would it be more appropriate to define a banking entity with significant trading assets and liabilities to include all banking entities subject to the Federal banking agencies' market risk capital rules? Why or why not?

Question 5. Are the proposed requirements for a banking entity with moderate trading assets and liabilities appropriate? Why or why not? If not, what requirements would be better and why? Should any requirements be added? Should any requirements be removed or modified? If so, please explain.

Question 6. The proposal contains a presumption of compliance for banking entities with limited trading assets and liabilities. Should the Agencies presume compliance for any other levels of activity? Why or why not? Are the proposed requirements for a banking entity with limited trading assets and liabilities appropriate? Should any requirements be added? If so, please explain which requirements should be added and why. Do commenters believe this approach would work in practice? Would it reduce costs and increase certainty for small firms? If not, what approach would work better or be more appropriate and why? Is the proposed scope of banking entities that would be eligible for the presumption of compliance appropriately defined? Why or why not? Please explain. If not, what scope would be more appropriate?

Question 7. The proposal would tailor application of the regulation by categorizing a banking entity, together with its subsidiaries and affiliates, based on trading assets and liabilities. Should the Agencies consider further tailoring the application of the regulation by categorizing certain banking entities separately from their subsidiaries and affiliates? For example, should the Agencies consider further tailoring for a banking entity, including an SEC registered broker-dealer, that is an affiliate of a banking entity with significant trading assets and liabilities, but which generally operates on a basis that the banking entity believes is separate and independent from its affiliates and parent company for purposes relevant for compliance with the implementing regulations. Why or why not?

Question 8. How might a banking entity within a corporate group demonstrate that it has separate and independent operations from that of the consolidated holding company group (*e.g.,* information barriers, separate corporate formalities and management; status as a registered securities dealer, investment adviser, or futures commission merchant; written policies and procedures designed to separate the activities of the affiliate from other banking entities)? Alternatively, could such entities be identified using certain quantitative measurements, such as by creating a specific dollar threshold of trading activity or by calculating a ratio comparing the entity's individual trading assets and liabilities to the gross trading assets and liabilities of the consolidated group? Why or why not? In addition, what standards could be applied to distinguish such arrangements from corporate structures established to evade compliance requirements that would otherwise apply under section 13 of the BHC Act and the proposal? Please discuss, identify, and describe any conditions, functional barriers, or business practices that may be relevant. Commenters that suggest additional tailoring of the regulation for certain affiliates of large bank holding companies should suggest specific and detailed parameters for such a category. Commenters should also describe why they believe such parameters are appropriate and are designed to prevent substantial risk to the holding company, its affiliates, and the financial system.

Question 9. For purposes of determining the appropriate standard for compliance, the proposal would establish a threshold of $10 billion in trading assets and liabilities; banking entities with moderate trading assets and liabilities would be subject to a streamlined set of requirements under the proposal. If the Agencies were to apply additional tailoring for certain affiliates of banking entities with significant trading assets and liabilities, should such banking entities be subject to the same set of standards for compliance as those that are being proposed for banking entities with moderate trading assets and liabilities? Why or why not? Are there requirements that are not currently contemplated for banking entities with moderate trading assets and liabilities that nevertheless should apply, consistent with the statute? Please explain.

Question 10. What are the potential consequences if certain banking entities were to be subject to a more streamlined set of standards for compliance than their parent company and affiliates? What are the potential costs and benefits? Please explain. Are there ways in which a more tailored compliance regime for these types of banking entities could be crafted to mitigate any potential negative consequences associated with this approach, if any, consistent with the statute? Please explain.

Question 11. Could one or more aspects of the proposed rule incentivize banking entities to restructure their business operations to achieve a specific result relative to the rule, such as to facilitate compliance under the rule in a particular way or to avoid some or all of its requirements? If so, how? Please be as specific as possible.

III. Section by Section Summary of Proposal

A. Subpart A—Authority and Definitions

1. Section ____.2: Definitions

a. Banking Entity

The 2013 final rule, consistent with section 13 of the BHC Act, defines the term ''banking entity'' to include: (i) Any insured depository institution; (ii) any company that controls an insured depository institution; (iii) any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978; and (iv) any affiliate or subsidiary of any entity described in clauses (i), (ii), or (iii).[40]

Under the BHC Act, an entity is generally considered an affiliate of an insured depository institution, and therefore a banking entity itself, if it controls, is controlled by, or is under common control with an insured depository institution. Under the BHC Act, a company controls another company if: (i) The company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the company; (ii) the company controls in any manner the election of a majority of the directors of trustees of the other company; or (iii) the Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the company.[41]

[40] *See* 2013 final rule § ____.2(c). Consistent with the statute, for purposes of this definition, the term ''insured depository institution'' does not include certain institutions that function solely in a trust or fiduciary capacity. *See* 2013 final rule § ____.2(r).

[41] *See* 12 U.S.C. 1841(a)(2); 12 CFR 225.2(e).

The 2013 final rule excludes covered funds and other types of entities from the definition of banking entity.[42] In the 2011 proposal, the Agencies reasoned that excluding covered funds from the definition of banking entity would ''avoid application of section 13 of the BHC Act in a way that appears unintended by the statute and would create internal inconsistencies in the statutory scheme.'' [43]

Since the adoption of the 2013 final rule, the Agencies have received a number of requests for guidance regarding instances in which certain funds that are excluded from the covered fund definition are considered banking entities. This situation may occur as a result of the sponsoring banking entity having control over the fund, as defined under the BHC Act. A banking entity sponsoring a U.S. registered investment company (''RIC''), a foreign public fund (''FPF''), or foreign excluded fund could be considered to control the fund by virtue of a 25 percent or greater investment in any class of voting securities during a seeding period or, for FPFs and foreign excluded funds, by virtue of corporate governance structures abroad such as where the fund's sponsor selects the majority of the fund's directors or trustees, or otherwise controls the fund for purposes of the BHC Act by contract or through a controlled corporate director.[44] Questions regarding these funds' potential status as banking entities arise, in part, because of the interaction between the statute's and the 2013 final rule's definitions of the terms ''banking entity'' and ''covered fund.''

In particular, following the adoption of the 2013 final rule, the staffs of the Agencies received numerous inquiries about this issue in connection with RICs and FPFs, which are excluded from the covered fund definition. The Agencies similarly received numerous inquiries regarding certain foreign funds offered and sold outside of the United States that are excluded from the covered fund definition with respect to a foreign banking entity (foreign excluded funds).

Sponsors of RICs, FPFs, and foreign excluded funds asserted that the treatment of these funds as banking entities would disrupt bona fide asset management activities involving funds that are not covered funds, which these sponsors argued would be inconsistent with section 13 of the BHC Act. These disruptions would arise because many funds' investment strategies involve proprietary trading prohibited by the 2013 final rule, and may also involve investments in covered funds. Sponsors of these funds further asserted that the permitted activities in the 2013 final rule also do not appear to be designed for funds, which by design invest in financial instruments for their own account. The 2013 final rule, for example, provides exemptions from the rule's proprietary trading restrictions for underwriting and market-making-related activities—exemptions for activities in which broker-dealers engage but that are not applicable to funds.

In addition, sponsors of RICs, FPFs, and foreign excluded funds asserted that restricting banking entities' bona fide investment management businesses in order to avoid treatment of their funds as banking entities would put bank-affiliated investment advisers at a competitive disadvantage relative to non-bank affiliated advisers engaged in the same activities without advancing the statutory purposes underlying section 13 of the BHC Act. Sponsors of FPFs and foreign excluded funds also have asserted that treating a foreign banking entity's foreign funds offered outside of the United States as banking entities themselves would be an inappropriate extraterritorial application of section 13 and the 2013 final rule and also unnecessary to reduce risks posed to banking entities and U.S. financial stability by proprietary trading activities and investments in or relationships with covered funds.

In response to these inquiries, the staffs of the Agencies issued responses to FAQs addressing the treatment of RICs and FPFs. The staffs observed in response to an FAQ that the preamble to the 2013 final rule recognized that a banking entity may own a significant portion of the shares of a RIC or FPF during a brief period during which the banking entity is testing the fund's investment strategy, establishing a track record of the fund's performance for marketing purposes, and attempting to distribute the fund's shares (the so-called ''seeding period'').[45] The staffs therefore stated that they would not advise the Agencies to treat a RIC or FPF as a banking entity under the 2013 final rule solely on the basis that the RIC or FPF is established with a limited seeding period, absent other evidence that the RIC or FPF was being used to evade section 13 and the 2013 final rule. The staffs stated their understanding that the seeding period for an entity that is a RIC or FPF may take some time. Recognizing that the length of a seeding period can vary, the staffs provided an example of three years, the maximum period of time expressly permitted for seeding a covered fund under the 2013 final rule, without setting any maximum prescribed period for a RIC or FPF seeding period. Accordingly, the staffs stated that they would neither advise the Agencies to treat a RIC or FPF as a banking entity solely on the basis of the level of ownership of the RIC or FPF by a banking entity during a seeding period, nor expect that a banking entity would submit an application to the Board to determine the length of the seeding period.[46]

The staffs also provided a response to an FAQ regarding FPFs.[47] In this response, staffs of the Agencies stated their understanding that, unlike in the case of RICs, sponsors of FPFs in some foreign jurisdictions select the majority of the fund's directors or trustees, or otherwise control the fund for purposes of the BHC Act by contract or through a controlled corporate director. These and other corporate governance structures abroad therefore had raised questions regarding whether FPFs that

[42] A covered fund is not excluded from the banking entity definition if it is itself an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978. The 2013 final rule also excludes from the banking entity definition a portfolio company held under the authority contained in section 4(k)(4)(H) or (I) of the BHC Act, or any portfolio concern, as defined under 13 CFR 107.50, that is controlled by a small business investment company, as defined in section 103(3) of the Small Business Investment Act of 1958, so long as the portfolio company or portfolio concern is not itself an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978. The definition also excludes the FDIC acting in its corporate capacity or as conservator or receiver under the Federal Deposit Insurance Act or Title II of the Dodd-Frank Act.

[43] *See* 2011 proposal, 76 FR at 68885. The Agencies proposed the clarification ''because the definition of 'affiliate' and 'subsidiary' under the BHC Act is broad, and could include a covered fund that a banking entity has permissibly sponsored or made an investment in because, for example, the banking entity acts as general partner or managing member of the covered fund as part of its permitted sponsorship activities.'' *Id.* The Agencies observed that if ''such a covered fund were considered a 'banking entity' for purposes of the proposed rule, the fund itself would become subject to all of the restrictions and limitations of section 13 of the BHC Act and the proposed rule, which would be inconsistent with the purpose and intent of the statute.'' *Id.*

[44] Corporate governance structures for RICs have not raised similar questions because the Board's regulations and orders have long recognized that a bank holding company may organize, sponsor, and manage a RIC, including by serving as investment adviser to the RIC, without controlling the RIC for purposes of the BHC Act. *See* 79 FR at 5676.

[45] *See supra* note 22, FAQ 16.

[46] The staffs also made clear that this guidance was equally applicable to SEC-regulated business development companies.

[47] *See supra* note 22, FAQ 14.

are sponsored and distributed outside the United States and in accordance with foreign laws are banking entities by virtue of their relationships with a banking entity. The staffs further observed that, by referring to characteristics common to publicly distributed foreign funds rather than requiring that FPFs organize themselves identically to RICs, the 2013 final rule recognized that foreign jurisdictions have established their own frameworks governing the details for the operation and distribution of FPFs. The staffs also observed that § ___.12 of the 2013 final rule further provides that, for purposes of complying with the covered fund investment limits, a RIC, SEC-regulated business development company (''BDC''), or FPF will not be considered to be an affiliate of the banking entity so long as the banking entity meets the conditions set forth in that section.

Based on these considerations, the staffs stated that they would not advise that the activities and investments of an FPF that meet the requirements in § ___.10(c)(1) and § ___.12(b)(1) of the 2013 final rule be attributed to the banking entity for purposes of section 13 of the BHC Act or the 2013 final rule, where the banking entity, consistent with § ___.12(b)(1) of the 2013 final rule, (i) does not own, control, or hold with the power to vote 25 percent or more of any class of voting shares of the FPF (after the seeding period), and (ii) provides investment advisory, commodity trading, advisory, administrative, and other services to the fund in compliance with applicable limitations in the relevant foreign jurisdiction. The staffs further stated that they would not advise that the FPF be deemed a banking entity under the 2013 final rule solely by virtue of its relationship with the sponsoring banking entity, where these same conditions are met.

With respect to foreign excluded funds, the Federal banking agencies released a policy statement on July 21, 2017 (the ''policy statement''), in response to concerns expressed by a number of foreign banking entities, foreign government officials, and other market participants about the possible unintended consequences and extraterritorial impact of section 13 and the 2013 final rule for these funds, which are excluded from the definition of ''covered fund'' in the 2013 final rule.[48] The policy statement provided that the staffs of the Agencies are considering ways in which the 2013 final rule may be amended, or other appropriate action that may be taken, to address any unintended consequences of section 13 and the 2013 final rule for foreign excluded funds.

To provide additional time, the policy statement provides that the Federal banking agencies would not propose to take action during the one-year period ending July 21, 2018, against a foreign banking entity[49] based on attribution of the activities and investments of a qualifying foreign excluded fund (as defined below) to the foreign banking entity, or against a qualifying foreign excluded fund as a banking entity, in each case where the foreign banking entity's acquisition or retention of any ownership interest in, or sponsorship of, the qualifying foreign excluded fund would meet the requirements for permitted covered fund activities and investments solely outside the United States, as provided in section 13(d)(1)(I) of the BHC Act and § ___.13(b) of the 2013 final rule, as if the qualifying foreign excluded fund were a covered fund. For purposes of the policy statement, a ''qualifying foreign excluded fund'' means, with respect to a foreign banking entity, an entity that:

(1) Is organized or established outside the United States and the ownership interests of which are offered and sold solely outside the United States;

(2) Would be a covered fund were the entity organized or established in the United States, or is, or holds itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in financial instruments for resale or other disposition or otherwise trading in financial instruments;

(3) Would not otherwise be a banking entity except by virtue of the foreign banking entity's acquisition or retention of an ownership interest in, or sponsorship of, the entity;

(4) Is established and operated as part of a bona fide asset management business; and

(5) Is not operated in a manner that enables the foreign banking entity to evade the requirements of section 13 or implementing regulations.

The Agencies are continuing to consider the issues raised by the interaction between the 2013 final rule's definitions of the terms ''banking entity'' and ''covered fund,'' including the issues addressed by the Agencies' staffs and the Federal banking agencies discussed above. Accordingly, nothing in the proposal would modify the application of the staff FAQs discussed above, and the Agencies will not treat RICs or FPFs that meet the conditions included in the applicable staff FAQs as banking entities or attribute their activities and investments to the banking entity that sponsors the fund or otherwise may control the fund under the circumstances set forth in the FAQs. In addition, to accommodate the pendency of the proposal, for an additional period of one year until July 21, 2019, the Agencies will not treat qualifying foreign excluded funds that meet the conditions included in the policy statement discussed above as banking entities or attribute their activities and investments to the banking entity that sponsors the fund or otherwise may control the fund under the circumstances set forth in the policy statement. This additional time will allow the Agencies to benefit from public feedback in response to the requests for comment that follow. Specifically, the Agencies request comment on the following:

Question 12. Have commenters experienced disruptions to bona fide asset management activities involving RICs, FPFs, and foreign excluded funds as a result of the interaction between the statute's and the 2013 final rule's definitions of the terms ''banking entity'' and ''covered fund?'' If so, what sorts of disruptions, and how have commenters addressed them?

Question 13. Has the guidance provided by the staffs of the Agencies' and the Federal banking agencies discussed above been effective in allowing banking entities to engage in asset management activities, consistent with the restrictions and requirements of section 13?

Question 14. Do commenters believe that there is uncertainty about the length of permissible seeding periods for RICs, FPFs, and SEC-regulated business development companies due to the Agencies' description of a seeding period with reference to the activities a banking entity undertakes while seeding a fund without specifying a maximum period of time? Would an approach that specified a particular period of time beyond which a seeding period cannot extend provide additional clarity? If so, what would be an appropriate time period? Should any specified time period be based on the period of time that typically is required for a RIC or FPF to develop a performance track record, recognizing that some additional time will also be needed to market the

[48] Statement regarding Treatment of Certain Foreign Funds under the Rules Implementing Section 13 of the Bank Holding Company Act (July 21, 2017), *available at https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20170721a1.pdf.*

[49] ''Foreign banking entity'' was defined for purposes of the policy statement to mean a banking entity that is not, and is not controlled directly or indirectly by, a banking entity that is located in or organized under the laws of the United States or any State.

fund after developing the track record? How much time is necessary to develop a performance track record for a RIC or FPF to effectively market the fund to third-party investors and how does this vary based on the fund's strategy or other factors? If the Agencies did specify a fixed amount of time for seeding generally, should the Agencies also provide relief that permits a fund's seeding period to exceed this period of time, without the fund being considered a banking entity, subject to additional conditions, such as documentation of the business need for the sponsor's continued investment? Should such additional relief include the lengthening of the seeding period for such investments? Conversely, would the current approach of not prescribing a fixed period of time for a seeding period be more effective in providing flexibility for funds that may need more time to develop a track record without having to specify a particular time period that will be appropriate for all funds?

Question 15. Are there other situations not addressed by the staffs' guidance for RICs and FPFs that may result in a banking entity sponsor's investment in the fund exceeding 25 percent, and that limit banking entities' ability to engage in asset management activities? For example, could a sponsor's investment exceed 25 percent as investors redeem in anticipation of a liquidation, causing the sponsor's investment to increase as a percentage of the fund's assets? Are there instances in which one or more large investors may redeem from a fund and, as a result, the sponsor may seek to temporarily invest in the fund for the benefit of remaining shareholders?

Question 16. Have foreign excluded funds been able to effectively rely on the policy statement to continue their asset management activities? Why or why not? Have foreign banking entities experienced any difficulties in complying with the condition in the policy statement that a foreign banking entity's acquisition or retention of any ownership interest in, or sponsorship of, the qualifying foreign excluded fund would need to meet the requirements for permitted covered fund activities and investments solely outside the United States, as provided in section 13(d)(1)(I) of the BHC Act and § ____.13(b) of the 2013 final rule? Would the proposed changes in this proposal to § ____.13(b) or any other provision of the 2013 final rule help foreign banking entities comply with the policy statement? Is the policy statement's definition of ''qualifying foreign excluded fund'' appropriate, or is it too narrow or too broad? Is further guidance needed with respect to any of the requirements in the definition of ''qualifying foreign excluded fund''? For example, is it clear what constitutes a bona fide asset management business? Has the policy statement posed any issues for foreign banking entities and their compliance programs?

Question 17. As stated above, the Agencies will not treat RICs or FPFs that meet the conditions included in the staff FAQs discussed above as banking entities or attribute their activities and investments to the banking entity that sponsors the fund or otherwise may control the fund under the circumstances set forth in the FAQs. In addition, the Agencies are extending the application of the policy statement with respect to qualifying foreign excluded funds for an additional year to accommodate the pendency of the proposal. The Agencies are requesting comment on other approaches that the Agencies could take to address these issues, consistent with the requirements of section 13 of the BHC Act.

Question 18. Instead of, or in addition to, providing Agency guidance as discussed above, should the Agencies modify the 2013 final rule to address the issues raised by the interaction between the 2013 final rule's definitions of the terms ''banking entity'' and ''covered fund,'' consistent with section 13 of the BHC Act, and if so, how? For example, should the Agencies modify the 2013 final rule to provide that a banking entity may elect to treat certain entities, such as a qualifying foreign excluded fund that meets the conditions of the policy statement, as covered funds, which would result in exclusion of these entities from the term ''banking entity?'' Would allowing a banking entity to invest in, sponsor, or have certain relationships with, the fund subject to the covered fund limitations in the 2013 final rule be an effective way for banking entities to address the issues raised? For example, a banking entity could sponsor and retain a de minimis investment in such a fund, subject to §§ ____.11 and ____.12 of the 2013 final rule. A foreign bank could invest in or sponsor such a fund so long as these activities and investments occur solely outside the United States, subject to the limitations in § ____.13(b) of the 2013 final rule.

Question 19. If a banking entity is willing to subject its activities and investments with respect to a non-covered fund to the covered fund limitations in section 13 and the 2013 final rule, which are designed to prevent banking entities from being exposed to significant losses from investments in or other relationships with covered funds, is there any reason that the ability to make this election should be limited to particular types of non-covered funds? Conversely, should a banking entity only be permitted to elect to treat as a covered fund a ''qualifying foreign excluded fund,'' as defined in the policy statement issued by the Federal banking agencies? [50]

Question 20. If a banking entity elected to treat an entity as a covered fund, what potentially adverse effects could result and how should the Agencies address them? For example, if a foreign banking entity elected to treat a foreign excluded fund as a covered fund, would the application of the restrictions in § ____.14 and the compliance obligations under § ____.20 of the 2013 final rule involve the same or similar disruptions and extraterritorial application of section 13's restrictions that this approach would be designed to avoid? If so, what approach, consistent with the statute, should the Agencies take to address this issue? As discussed below in this Supplementary Information section, the Agencies are also requesting comment regarding potential changes in interpretation with respect to the 2013 final rule's implementation of section 13(f) of the BHC Act. How would any such modifications change any effects relating to an election to treat an entity as a covered fund?

Question 21. With respect to foreign excluded funds, to what extent would the proposed changes, and especially the proposed changes to §§ ____.6(e) and ____.13(b) of the 2013 final rule, adequately address the concerns raised regarding the treatment of foreign excluded funds as banking entities? If not, what additional modifications to these sections would enable such a fund to engage in proprietary trading or covered fund activity? Should the Agencies provide or modify exemptions under the 2013 final rule such that a qualifying foreign excluded fund could operate more effectively and efficiently, notwithstanding its status as a banking entity? If so, please explain how such an exemption would be consistent with the statute.

Question 22. Are there any other investment vehicles or entities that are treated as banking entities and for which commenters believe relief, consistent with the statute, would be appropriate? Which ones and why? What form of relief could be provided in a way consistent with the statute? For example, staffs of the Agencies have received inquiries regarding employees' securities companies (''ESCs''), which

[50] *See supra* note 48.

generally rely on an exemption from registration under the Investment Company Act provided by section 6(b) of that Act. These funds are controlled by their sponsors and, if those sponsors are banking entities, may themselves be treated as banking entities. Treating these ESCs as banking entities, however, may conflict with their stated investment objectives, which commonly are to invest in covered funds for the benefit of the employees of the sponsoring banking entity. Should an ESC be treated differently if its banking entity sponsor controls the ESC by virtue of corporate governance arrangements, which is a required condition of the exemptive relief under section 6(b) of the Investment Company Act that ESCs receive from the SEC, but does not acquire or retain any ownership interest in the ESC? If so, how should the Agencies consider residual or reversionary interests resulting from employees forfeiting their interests in the ESC? In pursuing their stated investment objectives on behalf of employees, do ESCs make these investment ''as principal,'' as contemplated by section 13? To what extent do banking entities invest directly in ESCs? Are there any other investment vehicles or entities, in pursuing their stated investment objectives on behalf of employees, that banking entities invest in ''as principal'' (*e.g.,* nonqualified deferred compensation plans such as trusts modeled under IRS Revenue Procedure 92–64, commonly referred to as ''rabbi trusts'')? How should the Agencies consider these investment vehicles or entities with respect to section 13? Please include an explanation of how the commenters' preferred treatment of any investment vehicle would be consistent with section 13 of the BHC Act, including the statutory definition of ''banking entity.''

b. Limited Trading Assets and Liabilities

The proposed rule would add a definition of limited trading assets and liabilities. As described in greater detail in Part II.G above, limited trading assets and liabilities would be defined under the proposal as trading assets and liabilities (excluding trading assets and liabilities involving obligations of, or guaranteed by, the United States or any agency of the United States) the average gross sum of which (on a worldwide consolidated basis) over the previous consecutive four quarters, as measured as of the last day of each of the four previous calendar quarters, does not exceed $1 billion.[51]

c. Moderate Trading Assets and Liabilities

The proposed rule would add a definition of moderate trading assets and liabilities. As described in greater detail in Part II.G above, moderate trading assets and liabilities would be defined under the proposal as trading assets and liabilities that are not significant trading assets and liabilities or limited trading assets and liabilities.

d. Significant Trading Assets and Liabilities

The proposed rule would add a definition of significant trading assets and liabilities. As described in greater detail in Part II.G above, significant trading assets and liabilities would be defined under the proposal as trading assets and liabilities (excluding trading assets and liabilities involving obligations of, or guaranteed by, the United States or any agency of the United States) the average gross sum of which (on a worldwide consolidated basis) over the previous consecutive four quarters, as measured as of the last day of each of the four previous calendar quarters, equals or exceeds $10 billion.[52]

B. Subpart B—Proprietary Trading Restrictions

1. Section ____.3 Prohibition on Proprietary Trading

Section 13 of the BHC Act generally prohibits banking entities from engaging in proprietary trading.[53] The statute defines ''proprietary trading'' as engaging as principal for the trading account of the banking entity in any transaction to purchase or sell, or otherwise acquire or dispose of, any of a number of financial instruments.[54] The statute defines ''trading account'' as any account used for acquiring or taking positions in financial instruments ''principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the Agencies may, by rule, determine.'' [55]

a. Definition of Trading Account

The 2013 final rule, like the statute, defines proprietary trading as engaging as principal for the trading account of the banking entity in any purchase or sale of one or more financial instruments.[56] The 2013 final rule implements the statutory definition of trading account with a three-pronged definition. The first prong (the ''short-term intent prong'') includes within the definition of trading account any account used by a banking entity to purchase or sell one or more financial instruments principally for the purpose of (a) short-term resale, (b) benefitting from short-term price movements, (c) realizing short-term arbitrage profits, or (d) hedging any of the foregoing.[57] Banking entities and others have informed the Agencies that this prong of the definition imposes significant compliance costs and uncertainty because it requires determining the intent of each individual who purchases and sells a financial instrument.[58] In gaining experience implementing the 2013 final rule, the Agencies recognize that banking entities lack clarity about whether particular purchases and sales of a financial instrument are included under this prong of the trading account. The 2013 final rule includes a rebuttable presumption that the purchase or sale of a financial instrument is for the trading account under the short-term intent prong if the banking entity holds the financial instrument for fewer than 60 days or substantially transfers the risk of the position within 60 days (the ''60-day rebuttable presumption'').[59] If a banking entity sells or transfers the risk of a position within 60 days, it may rebut the presumption by demonstrating that it did not purchase or sell the financial instrument principally for short-term trading purposes. In the Agencies' experience, a broad range of transactions could trigger the 60-day rebuttable presumption. For example, the purchase of a security with a maturity (or remaining maturity) of fewer than 60 days to meet the regulatory requirements of a foreign government or to manage the banking entity's risks could trigger the 60-day rebuttable presumption because the banking entity holds the security for fewer than 60 days. In both cases, however, it is unlikely that the banking entity intended to purchase or sell the instrument principally for the purpose of short-term resale.

[51] *See supra* note 37.

[52] *See supra* note 36.

[53] 12 U.S.C. 1851(a)(1)(A).

[54] 12 U.S.C. 1851(h)(4). The statutory proprietary trading definition applies to the purchase or sale, or the acquisition or disposition of, any security, derivative, contract of sale of a commodity for future delivery, option on any such security, derivative, or contract, or any other security or financial instrument that the Agencies by rule determine.

[55] 12 U.S.C. 1851(h)(6) (defining ''trading account'').

[56] § ____.3(a) of the proposed rule.

[57] § ____.3(b)(1)(i) of the proposed rule.

[58] *See supra* note 18.

[59] § ____.3(b)(2) of the proposed rule.

The other two prongs of the 2013 final rule's definition of trading account are the ''market risk capital prong'' and the ''dealer prong.'' The ''market risk capital prong'' applies to the purchase or sale of financial instruments that are both market risk capital rule covered positions and trading positions.[60] The ''dealer prong'' applies to the purchase or sale of financial instruments by a banking entity that is licensed or registered, or required to be licensed or registered, as a dealer, swap dealer, or security-based swap dealer, to the extent the instrument is purchased or sold in connection with the activities that require the banking entity to be licensed or registered as such.[61]

The Agencies are proposing to revise the regulatory trading account definition to address concerns that the 2013 final rule's short-term intent prong requires banking entities and the Agencies to make subjective determinations with respect to each trade a banking entity conducts, and that the 60-day rebuttable presumption may scope in activities that do not involve the types of risks or transactions the statutory definition of proprietary trading appears to have been intended to cover. Specifically, the Agencies propose to retain the existing dealer prong and a modified version of the market risk capital prong, and to replace the 2013 final rule's short-term intent prong with a new third prong based on the accounting treatment of a position, in each case to implement the requirements of the statutory definition. The new prong would provide that ''trading account'' means any account used by a banking entity to purchase or sell one or more financial instruments that is recorded at fair value on a recurring basis under applicable accounting standards (the ''accounting prong''). The Agencies also propose to eliminate the 60-day rebuttable presumption in the 2013 final rule.

The Agencies further propose to add a presumption of compliance with the prohibition on proprietary trading for trading desks that do not purchase or sell financial instruments subject to the market risk capital prong or the dealer prong and operate under a prescribed profit and loss threshold.[62] While still subject to the prohibition on proprietary trading under section 13 of the BHC Act and the applicable regulatory requirements, such eligible trading desks that remain under the threshold would not have to demonstrate their compliance with subpart B on an ongoing basis, as discussed below. Notwithstanding this regulatory presumption of compliance, the Agencies would reserve authority to determine on a case-by-case basis that a purchase or sale of one or more financial instruments by a banking entity either is or is not for the trading account, and, as a result, may require that a trading desk demonstrate compliance with subpart B on an ongoing basis with respect to a financial instrument.

Under the proposed approach, ''trading account'' would continue to include any account used by a banking entity to (1) purchase or sell one or more financial instruments that are both market risk capital rule covered positions and trading positions (or hedges of other market risk capital rule covered positions), if the banking entity, or any affiliate of the banking entity, is an insured depository institution, bank holding company, or savings and loan holding company, and calculates risk-based capital ratios under the market risk capital rule, or (2) purchase or sell one or more financial instruments for any purpose, if the banking entity is licensed or registered, or required to be licensed or registered, to engage in the business of a dealer, swap dealer, or security-based swap dealer, if the instrument is purchased or sold in connection with the activities that require the banking entity to be licensed or registered as such[63] (or if the banking entity is engaged in the business of a dealer, swap dealer, or security-based swap dealer outside of the United States, if the instrument is purchased or sold in connection with the activities of such business).[64] The Agencies are proposing to retain these prongs because both prongs provide clear lines and well-understood standards for purposes of determining whether or not a purchase or sale of a financial instrument is in the trading account. The Agencies also propose to adapt the market risk capital prong to apply to the activities of FBOs in order to take into account the different regulatory frameworks and supervisors that FBOs may have in their home countries. Specifically, the Agencies propose to include within the market risk capital prong, with respect to a banking entity that is not, and is not controlled directly or indirectly by a banking entity that is, located in or organized under the laws of the United States or any State, any account used by the banking entity to purchase or sell one or more financial instruments that are subject to capital requirements under a market risk framework established by the home-country supervisor that is consistent with the market risk framework published by the Basel Committee on Banking Supervision, as amended from time to time.

b. Trading Account—Accounting Prong

The proposal's definition of ''trading account'' for purposes of section 13 of the BHC Act would replace the short-term intent prong in the 2013 final rule with a new prong based on accounting treatment, by reference to whether a financial instrument (as defined in the 2013 final rule and unchanged by the proposal) is recorded at fair value on a recurring basis under applicable accounting standards. Such instruments generally include, but are not limited to, derivatives, trading securities, and available-for-sale securities. For example, for a banking entity that uses GAAP, a security that is classified as ''trading'' under GAAP would be included in the proposal's definition of ''trading account'' under this approach because it is recorded at fair value. ''Fair value'' refers to a measurement basis of accounting, and is defined under GAAP as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.[65]

The proposal's inclusion of this prong in the definition of ''trading account'' is intended to give greater certainty and clarity to banking entities about what financial instruments would be included in the trading account, because banking entities should know which instruments are recorded at fair value on

[60] § ____.3(b)(1)(ii) of the proposed rule.

[61] § ____.3(b)(1)(iii)(A) of the proposed rule. The dealer prong also includes positions entered into by a banking entity that is engaged in the business of a dealer, swap dealer, or security-based swap dealer outside of the United States, to the extent the instrument is purchased or sold in connection with the activities of such business. *See* 2013 final rule § ____.3(b)(1)(iii)(B).

[62] In addition, the Agencies are proposing to adopt a presumption of compliance for banking entities with limited trading activities. *See* § ____.20(g) of the proposed rule.

[63] An insured depository institution may be registered as, among other things, a swap dealer and a security-based swap dealer, but only the swap and security-based dealing activities that require it to be so registered are included in the trading account by virtue of the dealer prong. If an insured depository institution purchases or sells a financial instrument in connection with activities of the insured depository institution that do not trigger registration as a swap dealer, such as lending, deposit-taking, the hedging of business risks, or other end-user activity, the financial instrument would be included in the trading account only if the purchase or sale of the financial instrument falls within the market risk capital trading account prong under § ____.3(b)(1) or the accounting prong under § ____.3(b)(3) of the proposed rule. *See* 79 FR at 5549, note 135.

[64] *See* § ____.3(b)(2) of the proposed rule.

[65] *See* Accounting Standards Codification (ASC) 820–10–20 and International Financial Reporting Standard (IFRS) 13.9.

their balance sheets. This modification of the rule's definition of trading account would include other accounts that may be used by banking entities for the purpose described in the statutory definition of ''trading account.'' [66] The proposal is intended to address concerns that the statutory definition of trading account may be read to contemplate an inquiry into the subjective intent underlying a trade.[67] The proposal would therefore adopt the accounting prong as an objective means of ensuring that such positions entered into by banking entities principally for the purpose of selling in the near term, or with the intent to resell in order to profit from short-term price movements, are incorporated in the definition of trading account. For entities that are not subject to the market-risk capital prong or the dealer prong, the accounting prong would therefore be the sole avenue by which such banking entities would become subject to the requirements in subpart B of the proposed rule.

Question 23. Should the Agencies adopt the proposed new accounting prong and remove the short-term intent prong? Why or why not? Does using such a prong provide sufficient clarity regarding which financial instruments are included in the trading account for purposes of the proposal? Are there differences in the application of IFRS and GAAP that the Agencies should consider? What are they and how would they impact the scope of the proposed accounting prong?

Question 24. Is using the accounting prong appropriate considering the fact that entities may have discretion over whether certain financial instruments are recorded at fair value (and therefore subject to the restrictions in section 13 of the BHC Act)? Could the proposed accounting prong incentivize banking entities to modify their accounting treatment with respect to certain financial instruments in order to evade the prohibition on proprietary trading? Why or why not? If so, could those effects have an impact on the banking entity's accounting practices?

Question 25. Should the Agencies include all financial instruments that are recorded at fair value on a banking entity's balance sheet as part of the proposed accounting prong? Why or why not? Would such a definition be overly broad? If so, why and how should the definition be narrowed, consistent with the statute? Would such a definition be too narrow and exclude financial instruments that should be included? If so, should the Agencies apply a different approach? Why or why not?

Question 26. Is the proposal's inclusion of available-for-sale securities under the proposed accounting prong appropriate? Why or why not?

Question 27. The proposed accounting prong would include all derivatives in the proposed accounting prong since derivatives are required to be recorded at fair value. Is this appropriate? Why or why not?

Question 28. Should the scope of the proposed accounting prong be further specified? In particular, should practical expedients to fair value measurements permitted under applicable accounting standards be included in the ''trading account'' definition (*e.g.,* equity securities without readily determinable fair value under ASC 321 or investments using the net asset value (''NAV'') practical expedient under ASC 820)? Why or why not? Are there other relevant examples that cause concern?

Question 29. Is there a better approach to defining ''trading account'' for purposes of section 13 of the BHC Act, consistent with the statute? If so, please explain.

Question 30. Would the short-term intent prong in the 2013 final rule be preferable to the proposed accounting prong? Why or why not? Should the Agencies rely on a potentially objective measure, such as the accounting treatment of a financial instrument, to implement the definition of ''trading account'' in section 13(h)(6), which includes any account used for acquiring or taking positions in certain securities and instruments ''principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements''? [68]

Question 31. Would references to accounting treatment be better formulated as safe harbors or presumptions within the short-term intent prong under the 2013 final rule? Why or why not?

Question 32. What impact, if any, would the proposed accounting prong have on the liquidity of corporate bonds or other securities? Please explain.

Question 33. For purposes of determining whether certain trading activity is within the definition of proprietary trading, is the proposed accounting prong over- or under-inclusive? If over- or under-inclusive, is there another alternative that would be a more appropriate replacement for the short-term prong? Please explain. If over-inclusive, what types of transactions or positions could potentially be included in the definition of proprietary trading that should not be? Please explain, and provide specific examples of the particular transactions or positions. If under-inclusive, what types of transactions or positions could potentially be omitted from the definition of proprietary trading that should be included in light of the language and purpose of the statute? Please explain and provide specific examples of the particular transactions or positions.

Question 34. The dealer prong of the trading account definition includes accounts used for purchases or sales of one or more financial instruments for any purpose, if the banking entity is, among other things, licensed or registered, or is required to be licensed or registered, to engage in the business of a dealer, swap dealer, or security-based swap dealer, to the extent the instrument is purchased or sold in connection with the activities that require the banking entity to be licensed or registered as such. In adopting the 2013 final rule, the Agencies recognized that banking entities that are registered dealers may not have previously engaged in such an analysis, thereby resulting in a new regulatory requirement for these entities. The Agencies did, however, note that if the regulatory analysis otherwise engaged in by banking entities was substantially similar to the dealer prong analysis, then any increased compliance burden could be small or insubstantial. Have any banking entities incurred increased compliance costs resulting from the requirement to analyze whether particular activities would require dealer registration? If so, how substantial are those additional costs and have those costs changed over time, including as a result of the banking entity becoming more accustomed to engaging in the required analysis?

Question 35. In the case of banking entities that are registered dealers, how often does the analysis of whether particular activities would require dealer registration result in identifying transactions or positions that would not be included under the dealer prong? How does the volume of those transactions or positions compare to the volume of transactions or positions that are included under the dealer prong? What types of transactions or positions would not be included under the dealer prong and how often are those transactions included by a different part of the definition of ''trading account,'' namely the short-term prong?

Question 36. For transactions or positions not covered by the dealer

[66] 12 U.S.C. 1851(h)(6).

[67] *See id.*

[68] 12 U.S.C. 1851(h)(6).

prong, would those transactions or positions be covered by the proposed accounting treatment prong? Why or why not?

Question 37. As compared to the 2013 final rule's dealer and short-term intent prongs taken together, would the proposed accounting prong result in a greater or lesser amount of trading activity being included in the definition of ''trading account''? What are the resulting costs and benefits? In responding to this question, commenters are encouraged to be as specific as possible in describing the transactions or positions used to support their analysis.

Question 38. Would banking entities regulated by Agencies that are market regulators incur additional (or lesser) compliance costs or burdens in the course of complying with the proposal as compared to the costs and burdens of other banking entities? How would the costs and burdens incurred by these banking entities compare as a whole to those of other banking entities? Please explain.

c. Presumption of Compliance With the Prohibition on Proprietary Trading

The Agencies propose to include a presumption of compliance with the proposed rule's proprietary trading prohibition based on an objective, quantitative measure of a trading desk's activities. This presumption of compliance would apply to a banking entity's individual trading desks rather than to the banking entity as a whole. As described below, a trading desk operating pursuant to the proposed presumption would not be obligated to demonstrate that the activities of the trading desk comply with subpart B on an ongoing basis. The proposed presumption would only be available for a trading desk's activities that may be within the trading account under the proposed accounting prong, for a trading desk that is not subject to the market risk capital prong or the dealer prong of the trading account definition. The replacement of the short-term intent prong with the accounting prong would represent a significant change from the 2013 final rule and could potentially apply to certain activities that were previously not within the regulatory definition of trading account. However, the presumption of compliance would limit the expansion of the definition of ''trading account'' to include—unless the presumption is rebutted—only the activities of a trading desk that engages in a greater than de minimis amount of activity (unless the presumption is rebutted).

The proposed presumption would not be available for trading desks that purchase or sell positions that are within the trading account under the market risk capital prong or the dealer prong. The Agencies are not proposing to extend the presumption of compliance with the prohibition on proprietary trading to activities of banking entities that are included under the market risk capital prong or the dealer prong because, based on their experience implementing the 2013 final rule, the Agencies believe that these two prongs are reasonably designed to include the appropriate trading activities. Banking entities subject to the market risk capital prong and the dealer prong have had several years of experience complying with the requirements of the 2013 final rule and experience with identifying these activities in other contexts. The Agencies believe that banking entities with activities that are covered by these prongs are able to conduct appropriate trading activities in an efficient manner pursuant to exclusions from the definition of proprietary trading or pursuant to the exemptions for permitted activities. The Agencies further note that the proposed revisions to the exemptions (described herein) are intended to facilitate the ability of banking entities subject to the market risk capital prong and the dealer prong to better engage in otherwise permitted activities such as market-making. Additionally, the Agencies note that the presumption of compliance with the prohibition on proprietary trading is optional for a banking entity. Accordingly, if a banking entity prefers to demonstrate ongoing compliance for activity captured by the accounting prong rather than calculating the threshold for presumed compliance described below, it may do so at its discretion.

Under the proposed compliance presumption, the activities of a trading desk of a banking entity that are not covered by the market risk capital prong or the dealer prong would be presumed to comply with the proposed rule's prohibition on proprietary trading if the activities do not exceed a specified quantitative threshold. The trading desk would remain subject to the prohibition, but unless the desk engages in a material level of trading activity (or the presumption of compliance is rebutted as described below), the desk would not be required to comply with the more extensive requirements that would otherwise apply under the proposal in order to demonstrate compliance. As described further below, the Agencies propose to use the absolute value of the trading desk's profit and loss (''absolute P&L'') on a 90-calendar-day rolling basis as the relevant quantitative measure for this threshold.

The proposed rule includes a threshold for the presumption of compliance based on absolute P&L because this measure tends to correlate with the scale and nature of a trading desk's trading activities.[69] In addition, if the positions of a trading desk have recently significantly contributed to the financial position of the banking entity, such that the absolute P&L-based threshold is exceeded, the proposed trading-desk-level presumption would become unavailable and the banking entity would be required to comply with more extensive requirements of the rule to ensure compliance. Using absolute P&L as the relevant measure of trading desk risk would provide an additional advantage as an objective measure that most banking entities are already equipped to calculate.[70] This measure would also indicate the realized outcomes of the risks of a trading desk's positions, rather than modeled estimates.

In general, the proposed presumption of compliance would take the approach that a trading desk that consistently does not generate more than a threshold amount of absolute P&L does not engage in trading activities of a sufficient scale to warrant the costs associated with more extensive requirements of the rule to otherwise demonstrate compliance with the prohibition on proprietary trading. Such an approach is intended to reflect a view that the lesser activity of these trading desks does not justify the costs of an extensive ongoing compliance regime for those trading desks in order to ensure compliance with section 13 of the BHC Act and the implementing regulations.

Under the proposal, each trading desk that operates under the presumption of compliance with the prohibition on proprietary trading would be required to determine on a daily basis the absolute value of its net realized and unrealized

[69] For example, trading desks that contemporaneously and effectively offset or hedge the assets and liabilities that they acquire through trades with customers as a result of engagement in customer-driven activities could be expected under most conditions to generally experience lower amounts of daily profit or loss attributable to daily fluctuations in the value of the desk's positions than desks engaged in speculative activities.

[70] Some banking entities without meaningful trading activities may not currently calculate P&L as described in this proposal, but the Agencies believe that many, if not most, of those banking entities would be banking entities with limited trading assets and liabilities that would be presumed to comply with the proposed rule under proposed § ____.20(g).

gains or losses on its portfolio of financial instruments based on the fair value of the financial instruments. The sum of the absolute values of gains or losses for each trading date in any 90-calendar-day period is the trading desk's 90-calendar-day absolute P&L. If this value exceeds $25 million at any point, then the banking entity would be required to notify the appropriate Agency that it has exceeded the threshold in accordance with the Agency's notification policies and procedures.

The Agencies propose to use the absolute value of a trading desk's daily P&L because absolute value would ensure that losses would be counted toward the measurement to the same extent as gains. Thus, a trading desk could not avoid triggering compliance by offsetting significant net gains on one day with significant net losses on another day. Measuring absolute P&L on a rolling basis would mean that the threshold could be triggered in any 90-calendar-day period.

This proposed trading-desk-level presumption of compliance with the prohibition on proprietary trading would be intended to allow banking entities to conduct ordinary banking activities without having to assess every individual trade for compliance with subpart B of the implementing regulations and, in particular, the proposed accounting prong.[71]

As noted above, one advantage of using absolute P&L as the relevant measure of trading desk risk is that it would provide a relatively simple and objective measure that most banking entities are already equipped to calculate. For example, banking entities subject to the current metrics reporting requirements should already be equipped to calculate P&L on a daily basis. Other banking entities with significant trading activities likely currently calculate P&L on a daily basis for the purpose of monitoring their positions and risks. Moreover, a banking entity's methodology for calculating P&L is generally subject to internal and external audit requirements, managerial monitoring, and applicable public reporting requirements under the U.S. securities laws. Under the proposed approach, the Agencies would review banking entities' methodologies for calculating absolute P&L for purposes of the presumption of compliance with the prohibition on proprietary trading.

The specific threshold chosen aims to characterize trading desks not engaged in prohibited proprietary trading. Based on the metrics collected by the Agencies since issuance of the 2013 final rule, 90-calendar-day absolute P&L values below $25 million dollars are typically indicative of trading desks not engaged in prohibited proprietary trading. Under the proposal, the activities of a trading desk that exceeds the $25 million threshold would not presumptively comply with the prohibition on proprietary trading. If a trading desk operating pursuant to the proposed presumption of compliance with the prohibition on proprietary trading exceeded the $25 million threshold, the banking entity would be required to notify the appropriate Agency, demonstrate that the trading desk's purchases and sales of financial instruments comply with subpart B (*e.g.,* the desk's purchases and sales are not included in the rule's definition of trading account or meet the terms of an exclusion from the definition of proprietary trading or a permitted activity exemption), and demonstrate how the trading desk that exceeded the threshold will maintain compliance with subpart B on an ongoing basis. The proposed presumption of compliance is intended to apply to the desks of banking entities that are not engaged in prohibited proprietary trading and is not intended as a safe harbor. The Agencies therefore propose to include within the presumption of compliance a process by which an Agency may rebut this regulatory presumption of compliance. Under the proposal, the Agency would be able to rebut the presumption of compliance with the prohibition on proprietary trading for the activities of a trading desk that does not exceed the $25 million threshold by providing the banking entity written notification of the Agency's determination that one or more of the trading desk's activities violates the prohibition on proprietary trading under subpart B.

In addition, the proposed rule includes a reservation of authority (described further below) that would allow an Agency to designate any activity as a proprietary trading activity if the Agency determines on a case-by-case basis that the banking entity has engaged as principal for the trading account of the banking entity in any purchase or sale of one or more financial instruments under 12 U.S.C. 1851(h)(6).

Question 39. Should the Agencies consider any objective measures other than accounting treatment to replace the 2013 final rule's short-term intent prong? For example, should the Agencies consider including an objective quantitative threshold (such as the absolute P&L threshold described in the proposed presumption of compliance with the proprietary trading prohibition) as an element of the trading account definition? Why or why not, and how would such a measure be consistent with the requirements of section 13 of the BHC Act?

Question 40. Is the proposed desk-level threshold for presumed compliance with the prohibition on proprietary trading ($25 million absolute P&L) an appropriate measure for indicating that the scale of a trading desk's activities may not warrant the cost of more extensive compliance requirements? Why or why not? If not, what other measure would be more appropriate? If absolute P&L is an appropriate measure, is $25 million an appropriate threshold? Why or why not? Should this threshold be periodically indexed for inflation?

Question 41. What issues do commenters expect would arise if the $25 million threshold is applied to each trading desk at a banking entity? Would variations in levels and types of activity of the different trading desks raise challenges in the application of the threshold?

Question 42. What factors, if any, should the Agencies keep in mind as they consider how the $25 million threshold should be applied over time, as trading desks' activities change and banking entities may reorganize their trading desks? Would the $25 million threshold require any adjustment if a banking entity consolidated more than one trading desk into one, or split the activities of a trading desk among multiple trading desks?

Question 43. As described further below, the Agencies are requesting comment regarding a potential change to the definition of ''trading desk'' that would allow a banking entity greater discretion to define the business units that constitute trading desks for purposes of the 2013 final rule. If the Agencies were to adopt both this change to the definition of ''trading desk'' and the trading desk-level presumption of compliance described above, would such a combination create opportunities for evasion? If so, how could such concerns be mitigated?

Question 44. Recognizing that the Agencies that are market regulators operate under an examination and enforcement model that differs from a bank supervisory model, from a practical perspective would the proposal to replace the current short-

[71] Provided that a trading desk's absolute P&L does not exceed the $25 million threshold, a banking entity would not have to assess the accounting treatment of each transaction of a trading desk that operates pursuant to the presumption of compliance with the prohibition on proprietary trading.

term intent prong with an accounting prong, including the presumption of compliance, apply differently to banking entities regulated by market regulators as compared to other banking entities? Please explain.

Question 45. Is the process by which the Agencies may rebut the presumption of compliance sufficiently clear? If not, how should the process be changed?

Question 46. Under the proposed presumption of compliance, banking entities would be required to notify the appropriate Agency whenever the activities of a trading desk with the relevant activities crosses the $25 million P&L threshold. Should the Agencies consider an alternative methodology in which a banking entity regulated by the SEC or CFTC, as appropriate, makes and keeps a detailed record of each instance and provides such records to SEC or CFTC staff promptly upon request or during an examination? Why or why not?

Question 47. Would an alternative methodology to the notification requirement, applicable solely to banking entities regulated by Agencies that are market regulators, whereby these firms would be required to escalate notices of instances when the P&L threshold has been exceeded internally for further inquiry and determination as to whether notice should be given to the applicable regulator, using objective factors provided by the rule? Why or why not? If such an approach would be more appropriate, what objective factors should be used to determine when notice should be given to the applicable regulator? Please be as specific as possible.

Question 48. Should the Agencies specify notice and response procedures in connection with an Agency determination that the presumption is rebutted pursuant to § ____.3(c)(2) of the proposal? Why or why not? If not, what other approach would be appropriate?

d. Excluded Activities.

As previously discussed, § ____.3 of the 2013 final rule generally prohibits a banking entity from engaging in proprietary trading.[72] In addition to defining the scope of trading activity subject to the prohibition on proprietary trading, the 2013 final rule also provides several exclusions from the definition of proprietary trading.[73] Based on their experience implementing the 2013 final rule, the Agencies are proposing to modify the exclusion for liquidity management and to adopt new exclusions for transactions made to correct errors and for certain offsetting swap transactions. In addition, the Agencies request comment regarding whether any additional exclusions should be added, for example, to address certain derivatives entered into in connection with a customer lending transaction.

1. Liquidity Management Exclusion

The 2013 final rule excludes from the definition of proprietary trading the purchase or sale of securities for the purpose of liquidity management in accordance with a documented liquidity management plan.[74] This exclusion is subject to several requirements. First, the liquidity management exclusion is limited by its terms to securities and requires that transactions be pursuant to a liquidity management plan that specifically contemplates and authorizes the particular securities to be used for liquidity management purposes; describes the amounts, types, and risks of securities that are consistent with the entity's liquidity management; and the liquidity circumstances in which the particular securities may or must be used. Second, any purchase or sale of securities contemplated and authorized by the plan must be principally for the purpose of managing the liquidity of the banking entity, and not for the purpose of short-term resale, benefitting from actual or expected short-term price movements, realizing short-term arbitrage profits, or hedging a position taken for such short-term purposes. Third, the plan must require that any securities purchased or sold for liquidity management purposes be highly liquid and limited to instruments the market, credit, and other risks of which the banking entity does not reasonably expect to give rise to appreciable profits or losses as a result of short-term price movements. Fourth, the plan must limit any securities purchased or sold for liquidity management purposes to an amount that is consistent with the banking entity's near-term funding needs, including deviations from normal operations of the banking entity or any affiliate thereof, as estimated and documented pursuant to methods specified in the plan. Fifth, the banking entity must incorporate into its compliance program internal controls, analysis, and independent testing designed to ensure that activities undertaken for liquidity management purposes are conducted in accordance with the requirements of the final rule and the entity's liquidity management plan. Finally, the plan must be consistent with the supervisory requirements, guidance, and expectations regarding liquidity management of the Agency responsible for regulating the banking entity. These requirements are designed to ensure that the liquidity management exclusion is not misused for the purpose of impermissible proprietary trading.[75]

The Agencies propose to amend the exclusion for liquidity management activities to allow banking entities to use foreign exchange forwards and foreign exchange swaps, each as defined in the Commodity Exchange Act,[76] and physically settled cross-currency swaps (*i.e.,* cross-currency swaps that involve an actual exchange of the underlying currencies) as part of their liquidity management activities. Currently, the liquidity management exclusion is limited to the ''purchase or sale of a security . . . for the purpose of liquidity management . . .'' if several specified requirements are met.[77] As a result, banking entities may not currently rely on the liquidity management exclusion for foreign exchange derivative transactions used for liquidity management because the exclusion is limited to securities. However, the Agencies understand that banking entities often use foreign exchange forwards, foreign exchange swaps, and cross-currency swaps for liquidity management purposes. In particular, foreign exchange forwards, foreign exchange swaps, and cross-currency swaps are often used by trading desks to manage liquidity both in the United States and in foreign jurisdictions. For example, foreign branches and subsidiaries of U.S. banking entities often have liquidity requirements mandated by foreign jurisdictions, and foreign exchange products can be used to address currency risk arising from holding this liquidity in foreign currencies. As a particular example, a U.S. banking entity may have U.S. dollars to fund its operations but require Japanese yen for its branch in Japan. The banking entity could use a foreign exchange swap to convert its U.S. dollars to Japanese yen to fund the operations of its Japanese branch.

To streamline compliance for banking entities operating in foreign jurisdictions and using foreign exchange forwards, foreign exchange swaps, and cross-currency swaps for liquidity management purposes, the Agencies propose to expand the liquidity management exclusion to permit the

[72] *See* 2013 final rule § ____.3(a).

[73] *See* 2013 final rule § ____.3(d).

[74] *See* 2013 final rule § ____.3(d)(3).

[75] *See* 79 FR at 5555.

[76] *See* 7 U.S.C. 1a(24) and 1a(25).

[77] § ____.3(d)(3) of the proposed rule (emphasis added).

purchase or sale of foreign exchange forwards (as that term is defined in section 1a(24) of the Commodity Exchange Act (7 U.S.C. 1a(24)), foreign exchange swaps (as that term is defined in section 1a(25) of the Commodity Exchange Act (7 U.S.C. 1a(25)), and physically-settled cross-currency swaps[78] entered into by a banking entity for the purpose of liquidity management in accordance with a documented liquidity management plan. The proposed rule would permit a banking entity to purchase or sell foreign exchange forwards, foreign exchange swaps, and physically-settled cross-currency swaps to the same extent that a banking entity may purchase or sell securities under the existing exclusion, and the existing conditions that apply for securities transactions would also apply to transactions in foreign exchange forwards, foreign exchange swaps, and physically-settled cross-currency swaps.[79]

The inclusion of cross-currency swaps would be limited to swaps for which all payments are made in the currencies being exchanged, as opposed to cash-settled swaps, to limit the potential for these instruments to be used for proprietary trading that is not for liquidity management purposes. While foreign exchange forwards and foreign exchange swaps, as defined in the Commodity Exchange Act, are by definition limited to an exchange of the designated currencies, no similarly limited definition of the term ''cross-currency swap'' is available for this purpose. Cross-currency swaps generally are more flexible in their terms, may have longer durations, and may be used to achieve a greater variety of potential outcomes. Accordingly, out of concern that cross-currency swaps could be used for prohibited proprietary trading, the Agencies propose to limit the use of cross-currency swaps for purposes of the liquidity management exclusion to only those swaps for which the payments are made in the two currencies being exchanged.

Question 49. In addition to the example noted above, are there additional scenarios under which commenters would envision foreign exchange forwards, foreign exchange swaps, or physically-settled cross-currency swaps to be used for liquidity management? Are the existing conditions of the liquidity management exclusion appropriate for these types of derivatives activities, or should additional conditions be added to account for the particular characteristics of the financial instruments that the Agencies are proposing to be added? Should any existing restrictions be removed to account for the proposed addition of these transactions?

Question 50. Do the requirements of the existing liquidity management exclusion, as proposed to be modified by expanding the exclusion to include foreign exchange forwards, foreign exchange swaps, or physically-settled cross-currency swaps, sufficiently protect against the possibility of banking entities using the exclusion to conduct impermissible speculative trading, while also permitting bona fide liquidity management? Should the proposal be further modified to protect against the possibility of firms using the liquidity management exclusion to evade the requirements of section 13 of the BHC Act and implementing regulations?

Question 51. Should banking entities be permitted to purchase and sell physically-settled cross-currency swaps under the liquidity management exclusion? Should banking entities be permitted to purchase and sell any other financial instruments under the liquidity management exclusion?

2. Transactions to Correct Bona Fide Trade Errors

The Agencies understand that, from time to time, a banking entity may erroneously execute a purchase or sale of a financial instrument in the course of conducting a permitted or excluded activity. For example, a trading error may occur when a banking entity is acting solely in its capacity as an agent, broker, or custodian pursuant to § ____ .3(d)(7) of the 2013 final rule, such as by trading the wrong financial instrument, buying or selling an incorrect amount of a financial instrument, or purchasing rather than selling a financial instrument (or vice versa). To correct such errors, a banking entity may need to engage in a subsequent transaction as principal to fulfill its obligation to deliver the customer's desired financial instrument position and to eliminate any principal exposure that the banking entity acquired in the course of its effort to deliver on the customer's original request. Under the 2013 final rule, banking entities have expressed concern that the initial trading error and any corrective transactions could, depending on the facts and circumstances involved, fall within the proprietary trading definition if the transaction is covered by any of the prongs of the trading account definition and is not otherwise excluded pursuant to a different provision of the rule.

Accordingly, the Agencies are proposing a new exclusion from the definition of proprietary trading for trading errors and subsequent correcting transactions because such transactions do not appear to be the type of transaction the statutory definition of ''proprietary trading'' was intended to cover. In particular, these transactions generally lack the intent described in the statutory definition of ''trading account'' to profit from short-term price movements. The proposed exclusion would be available for certain purchases or sales of one or more financial instruments by a banking entity if the purchase (or sale) is made in error in the course of conducting a permitted or excluded activity or is a subsequent transaction to correct such an error. The Agencies note that the availability of the proposed exclusion will depend on the facts and circumstances of the transactions. For example, the failure of a banking entity to make reasonable efforts to prevent errors from occurring—as indicated, for example, by the magnitude or frequency of errors, taking into account the size, activities, and risk profile of the banking entity—or to identify and correct trading errors in a timely and appropriate manner may indicate trading activity that is not truly an error and therefore inconsistent with the exclusion.

As an additional condition, once the banking entity identifies purchases made in error, it would be required to transfer the financial instrument to a separately-managed trade error account for disposition, as a further indication that the transaction reflects a bona fide error. The Agencies believe that this separately-managed trade error account should be monitored and managed by personnel independent from the traders who made the error and that banking entities should monitor and manage trade error corrections and trade error accounts. Doing so would help prevent personnel from using these accounts to evade the prohibition on proprietary trading, such as by retaining positions in error accounts to benefit from short-term price movements or by intentionally and incorrectly classifying transactions as error trades or as corrections of error trades in order to realize short term profits.

[78] The Agencies propose to define a cross-currency swap as a swap in which one party exchanges with another party principal and interest rate payments in one currency for principal and interest rate payments in another currency, and the exchange of principal occurs on the date the swap is entered into, with a reversal of the exchange of principal at a later date that is agreed upon when the swap is entered into. This definition is consistent with regulations pertaining to margin and capital requirements for covered swap entities, swap dealers, and major swap participants. *See* 12 CFR 45.2; 12 CFR 237.2; 12 CFR 349.2; 17 CFR 23.151.

[79] *See* § ____.3(e)(3)(i)–(vi) of the proposed rule.

Question 52. Does the proposed exclusion align with existing policies and procedures that banking entities use to correct trading errors? Why or why not?

Question 53. Is the proposed exclusion for bona fide errors sufficiently narrow so as to prevent banking entities from evading other requirements of the rule? Conversely, would it be too narrow to be workable? Why or why not?

Question 54. Do commenters believe that the proposed exclusion for bona fide trade errors is sufficiently clear? If not, why not, and how should the Agencies clarify it?

Question 55. Does the proposed exclusion conflict with any of the requirements of a self-regulatory organization's rules for correcting trading errors? If it does, should the Agencies give banking entities the option of complying with those rules instead of the requirements of the proposed exclusion? When answering this question, commenters should explain why the rules of self-regulatory organizations are sufficient to prevent personnel from evading the prohibition on proprietary trading.

Question 56. Should the Agencies provide specific criteria or factors to help banking entities determine what constitutes a separately managed trade error account? Why or why not? How would these factors or criteria help banking entities identify activities that are covered by the proposed exclusion for trading errors?

3. Definition of Other Terms Related to Proprietary Trading

The Agencies are requesting comment on alternatives to the 2013 final rule's definition of ''trading desk.'' The trading desk definition is significant because compliance with the underwriting and market-making provisions is determined at the trading-desk level.[80] For example, the ''reasonably expected near-term customer demand,'' or RENTD, requirements for both underwriting and market-making activities must be calculated for each trading desk.[81] Additionally, under the 2013 final rule, banking entities must furnish metrics at the trading-desk level.[82] Further, the proposed presumption of compliance with the prohibition on proprietary trading would require trading desks operating pursuant to the presumption to calculate absolute P&L at the trading desk level and would apply to all the activities of the trading desk.

Under the 2013 final rule, ''trading desk'' is defined as ''the smallest discrete unit of organization of a banking entity that purchases or sells financial instruments for the trading account of the banking entity or an affiliate thereof.''[83] Some banking entities have indicated that, in practice, this definition has led to uncertainty regarding the meaning of ''smallest discrete unit.'' Some banking entities have also communicated that this definition has caused confusion and duplicative compliance and reporting efforts for banking entities that also define trading desks for purposes not related to the 2013 final rule, including for internal risk management and reporting and calculating regulatory capital requirements.

Accordingly, the Agencies are requesting comment on whether to revise the trading desk definition to align with the trading desk concept used for other purposes. The Agencies are seeking comment on a potential multi-factor trading desk definition based on the same criteria typically used to establish trading desks for other operational, management, and compliance purposes. For example, the Agencies could define a trading desk as a unit of organization of a banking entity that purchases or sells financial instruments for the trading account of the banking entity or an affiliate thereof that is:

- Structured by the banking entity to establish efficient trading for a market sector;
- Organized to ensure appropriate setting, monitoring, and management review of the desk's trading and hedging limits, current and potential future loss exposures, strategies, and compensation incentives; and
- Characterized by a clearly-defined unit of personnel that typically:
  - ○ Engages in coordinated trading activity with a unified approach to its key elements;
  - ○ Operates subject to a common and calibrated set of risk metrics, risk levels, and joint trading limits;
  - ○ Submits compliance reports and other information as a unit for monitoring by management; and
  - ○ Books its trades together.

The Agencies believe that this potential approach to the definition of trading desk could be easier to monitor and for banking entities to apply. At the same time, however, any revised definition should not be so broad as to hinder the ability of the Agencies or the banking entities to detect prohibited proprietary trading.

Under the alternative approach on which the Agencies are requesting comment, a banking entity's trading desk designations would be subject to Agency review, as appropriate, through the examination process or otherwise. Such a definition would be intended to reduce the burdens on banking entities by aligning the regulation's trading desk concept with the organizational structure that firms already have in place for purposes of carrying out their ordinary course business activities. Specifically, to the extent the trading desk definition in the 2013 final rule has been interpreted to apply at too granular a level, the Agencies request comment as to whether such a definition would reduce compliance costs by clarifying that banking entities are not required to maintain policies and procedures and to collect and report information at a level of the organization identified solely for purposes of section 13 of the BHC Act and implementing regulations.

Question 57. Should the Agencies revise the trading desk definition to align with the level of organization established by banking entities for other purposes, such as for other operational, management, and compliance purposes? Which of the proposed factors would be appropriate to include in the trading desk definition? Do these factors reflect the same principles banking entities typically use to define trading desks in the ordinary course of business? Are there any other factors that the Agencies should consider such as, for example, how a banking entity would monitor and aggregate P&L for purposes other than compliance with section 13 of the BHC Act and the implementing regulation?

Question 58. How would the adoption of a different trading desk definition affect the ability of banking entities and the Agencies to detect impermissible proprietary trading? Please explain. Would a different definition of ''trading desk'' make it easier or harder for banking entities and supervisors to monitor their trading activities for consistency with section 13 of the BHC Act and implementing regulations? Would allowing banking entities to define ''trading desk'' for purposes of compliance with section 13 of the BHC Act and the implementing regulations create opportunities for evasion, and if so, how could such concerns be mitigated?

Question 59. Please discuss any positive or negative consequences or costs and benefits that could result if a ''trading desk'' is not defined as ''the

[80] *See* 2013 final rule § ____.4(a)(2); § ____.4(b)(2).

[81] *See* 2013 final rule § ____.4(b)(2)(ii).

[82] *See* 2013 final rule Appendix A.

[83] 2013 final rule § ____.3(e)(13).

smallest discrete unit of organization of a banking entity that purchases or sells financial instruments for the trading account of the banking entity or an affiliate thereof.'' Please include in your discussion any positive or negative impact with respect to (i) the ability to record the quantitative measurements required in the Appendix and (ii) the usefulness of such quantitative measurements.

e. Reservation of Authority

The Agencies propose to include a reservation of authority allowing an Agency to determine, on a case-by-case basis, that any purchase or sale of one or more financial instruments by a banking entity for which it is the primary financial regulatory agency either is or is not for the trading account as defined in section 13(h)(6) of the BHC Act.[84] In evaluating whether the Agency should designate a purchase or sale as for the trading account, the Agency will consider consistency with the statutory definition, and, to the extent appropriate and consistent with the statute, may consider the impact of the activity on the safety and soundness of the financial institution or the financial stability of the United States, the risk characteristics of the particular activity, or any other relevant factor.

The Agencies request comment as to whether such a reservation of authority would be necessary in connection with the proposed definition of trading account, which would focus on objective factors rather than on subjective intent.[85] While the Agencies recognize that the use of objective factors to define proprietary trading is intended to simplify compliance, the Agencies also recognize that this approach may, in some circumstances, produce results that are either under-inclusive or over-inclusive with respect to the definition of proprietary trading. The Agencies further recognize that the underlying statute sets forth elements of proprietary trading that are inherently subjective, for example, ''intent to resell in order to profit from short-term price movements.'' [86] In order to provide appropriate balance and to recognize the subjective elements of the statute, the Agencies request comment as to whether a reservation of authority is appropriate.

The Agencies propose to administer this reservation of authority with appropriate notice and response procedures. In those circumstances where the primary financial regulatory agency of a banking entity determines that the purchase or sale of one or more financial instruments is for the trading account, the Agency would be required to provide written notice to the banking entity explaining why the purchase or sale is for the trading account. The Agency would also be required to provide the banking entity with a reasonable opportunity to provide a written response before the Agency reaches a final decision. Specifically, a banking entity would have 30 days to respond to the notice with any objections to the determination and any factors that the banking entity would have the Agency consider in reaching its final determination. The Agency could, in its discretion, extend the response period beyond 30 days for good cause. The Agency could also shorten the response period if the banking entity consents to a shorter response period or, if, in the opinion of the Agency, the activities or condition of the banking entity so requires, provided that the banking entity is informed promptly of the new response period. Failure to respond within the time period would amount to a waiver of any objections to the Agency's determination that a purchase or sale is for the trading account. After the close of banking entity's response period, the Agency would decide, based on a review of the banking entity's response and other information concerning the banking entity, whether to maintain the Agency's determination that the purchase or sale is for the trading account. The banking entity would be notified of the decision in writing. The notice would include an explanation of the decision.[87]

Question 60. Is the reservation of authority to allow the appropriate Agency to determine whether a particular activity is proprietary trading appropriate? Why or why not?

Question 61. Would the proposed reservation of authority further the goals of transparency and consistency in interpretation of section 13 of the BHC Act and the implementing regulations? Would it be more appropriate to have these type of determinations made jointly by the Agencies? Is the standard by which an Agency would make a determination under the proposed reservation of authority sufficiently clear? If determinations are not made jointly by the Agencies, what concerns could be presented if two banking entity affiliates receive different or conflicting determinations from different Agencies?

Question 62. Should Agencies' determinations pursuant to the reservation of authority be made public? Would publication of such determinations further the goals of consistency and transparency? Please explain. Should the Agencies follow consistent practices with respect to publishing notices of determinations pursuant to the reservation of authority?

Question 63. Are the notice and response procedures adequate? Why or why not? Recognizing that market regulators operate under a different regulatory structure as compared to the Federal banking agencies, should the proposed notice and response procedures be modified to account for such differences (including by creating separate procedures that would be applicable solely in the case of reporting to market regulators)? Why or why not?

2. Section ____.4: Permitted Underwriting and Market-Making Activities

a. Permitted Underwriting Activities

Section 13(d)(1)(B) of the BHC Act contains an exemption from the prohibition on proprietary trading for the purchase, sale, acquisition, or disposition of securities, derivatives, contracts of sale of a commodity for future delivery, and options on any of the foregoing in connection with underwriting activities, to the extent that such activities are designed not to exceed RENTD.[88] Section ____.4(a) of the 2013 final rule implements the statutory exemption for underwriting and sets forth the requirements that banking entities must meet in order to rely on the exemption. Among other things, the 2013 final rule requires that:

- The banking entity act as an ''underwriter'' for a ''distribution'' of securities and the trading desk's underwriting position be related to such distribution;
- The amount and types of securities in the trading desk's underwriting position be designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties, and reasonable efforts be made to sell or otherwise reduce the underwriting position within a reasonable period, taking into account the liquidity, maturity, and depth of the market for the relevant type of security;
- The banking entity has established and implements, maintains, and enforces an internal compliance program that is reasonably designed to

[84] 12 U.S.C. 1851(h)(6).

[85] *See* § ____.3(b) of the proposed rule.

[86] *See* 12 U.S.C. 1851(h)(6).

[87] These notice and response procedures would be consistent with procedures that apply to many banking entities in other contexts. *See* 12 CFR 3.404.

[88] 12 U.S.C. 1851(d)(1)(B).

ensure the banking entity's compliance with the requirements of the underwriting exemption, including reasonably designed written policies and procedures, internal controls, analysis, and independent testing identifying and addressing:

○ The products, instruments, or exposures each trading desk may purchase, sell, or manage as part of its underwriting activities;

○ Limits for each trading desk, based on the nature and amount of the trading desk's underwriting activities, including the reasonably expected near term demands of clients, customers, or counterparties, on the amount, types, and risk of the trading desk's underwriting position, level of exposures to relevant risk factors arising from the trading desk's underwriting position, and period of time a security may be held;

○ Internal controls and ongoing monitoring and analysis of each trading desk's compliance with its limits; and

○ Authorization procedures, including escalation procedures that require review and approval of any trade that would exceed a trading desk's limit(s), demonstrable analysis of the basis for any temporary or permanent increase to a trading desk's limit(s), and independent review of such demonstrable analysis and approval;

- The compensation arrangements of persons performing the banking entity's underwriting activities are designed not to reward or incentivize prohibited proprietary trading; and
- The banking entity is licensed or registered to engage in the activity described in the underwriting exemption in accordance with applicable law.

As the Agencies explained in the 2013 final rule, underwriters play an important role in facilitating issuers' access to funding, and thus underwriters are important to the capital formation process and economic growth.[89] Obtaining new financing can be expensive for an issuer because of the natural information advantage that less well-known issuers have over investors about the quality of their future investment opportunities.[90] An underwriter can help reduce these costs by mitigating the information asymmetry between an issuer and its potential investors.[91] The underwriter does this based in part on its familiarity with the issuer and other similar issuers as well as by collecting information about the issuer. This allows investors to look to the reputation and experience of the underwriter as well as its ability to provide information about the issuer and the underwriting.[92]

In recognition of how the underwriting market functions, the Agencies adopted a comprehensive, multi-faceted approach in the 2013 final rule. In the several years since the adoption of the 2013 final rule, however, public commenters have observed that the significant compliance requirements in the regulation may unnecessarily constrain underwriting without a corresponding reduction in the type of trading activities that the rule was designed to prohibit.[93]

As described in further detail below, the Agencies are proposing to tailor, streamline, and clarify the requirements that a banking entity must satisfy to avail itself of the underwriting exemption. In that regard, the Agencies are proposing to modify the underwriting exemption to clarify how a banking entity may measure and satisfy the statutory requirement that underwriting activity be designed not to exceed the reasonably expected near term demand of clients, customers, or counterparties. Specifically, the proposal would establish a presumption, available to banking entities both with and without significant trading assets and liabilities, that trading within internally set risk limits satisfies the statutory requirement that permitted underwriting activities must be designed not to exceed RENTD.

The Agencies also are proposing to tailor the underwriting exemption's compliance program requirements to the size, complexity, and type of activity conducted by the banking entity by making those requirements applicable only to banking entities with significant trading assets and liabilities. Based on feedback the Agencies have received, banking entities that do not have significant trading assets and liabilities can incur costs to establish, implement, maintain, and enforce the compliance program requirements in the 2013 final rule, notwithstanding the lower level of such banking entities' trading activities.[94] Accordingly, the Agencies believe that the proposed revisions to the underwriting exemption would provide banking entities that do not have significant trading assets and liabilities with more flexibility to meet client and customer demands and facilitate the capital formation process, while, consistent with the statute, continuing to safeguard against trading activity that could threaten the safety and soundness of banking entities and the financial stability of the United States, by more appropriately aligning the associated compliance obligations with the size of banking entities' trading activities.

b. RENTD Limits and Presumption of Compliance

As described above, the statutory exemption for underwriting in section 13(d)(1)(B) of the BHC Act requires that such activities be designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties.[95] Consistent with the statute, § ____.4(a)(2)(ii) of the 2013 final rule's underwriting exemption requires that the amount and type of the securities in the trading desk's underwriting position be designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties, and reasonable efforts are made to sell or otherwise reduce the underwriting position within a reasonable period, taking into account the liquidity, maturity, and depth of the market for the relevant type of security.[96]

The Agencies' experience implementing the 2013 final rule has indicated that the approach the Agencies have taken to give effect to the statutory standard of reasonably expected near term demands of clients, customers, or counterparties may be overly broad and complex, and also may inhibit otherwise permissible underwriting activity. The Agencies have received feedback as part of implementing the rule that compliance with the factors in the rule can be complex and costly.[97]

Instead of the approach for the underwriting exemption in the 2013 final rule, the Agencies are proposing to establish the articulation and use of internal risk limits as a key mechanism for conducting trading activity in accordance with the rule's underwriting exemption.[98] In particular, the proposal would provide that the purchase or sale of a financial instrument by a banking entity shall be presumed to be designed not to exceed, on an ongoing basis, the reasonably expected near term demands

[89] *See* 79 FR at 5561 (internal footnotes omitted).

[90] *See id.*

[91] *See id.*

[92] *See id.*

[93] *See supra* Part I.A of this SUPPLEMENTARY INFORMATION section.

[94] *Id.*

[95] 12 U.S.C. 1851(d)(1)(B).

[96] *See* 2013 final rule § ____.4(a)(2)(ii).

[97] *See supra* Part I.A. of this SUPPLEMENTARY INFORMATION section.

[98] As a consequence of these proposed changes to focus on risk limits, many of the requirements of the 2013 final rule relating to risk limits associated with underwriting would be incorporated into this requirement and modified or removed as appropriate in this section of the proposal.

of clients, customers, or counterparties if the banking entity establishes internal risk limits for each trading desk, subject to certain conditions, and implements, maintains, and enforces those limits, such that the risk of the financial instruments held by the trading desk does not exceed such limits. The Agencies believe that this approach would provide firms with more flexibility and certainty in conducting permissible underwriting.

Under the proposal, all banking entities, regardless of their volume of trading assets and liabilities, would be able to voluntarily avail themselves of the presumption of compliance with the statutory RENTD requirement in section 13(d)(1)(B) of the BHC Act by establishing and complying with these internal risk limits. Specifically, the proposal would provide that a banking entity would establish internal risk limits for each trading desk that are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties, based on the nature and amount of the trading desk's underwriting activities, on the:

(1) Amount, types, and risk of its underwriting position;

(2) Level of exposures to relevant risk factors arising from its underwriting position; and

(3) Period of time a security may be held.

Banking entities utilizing this presumption would be required to maintain internal policies and procedures for setting and reviewing desk-level risk limits in a manner consistent with the statute.[99] The proposed approach would not require that a banking entity's risk limits be based on any specific or mandated analysis, as required under the 2013 final rule. Rather, a banking entity would establish the risk limits according to its own internal analyses and processes around conducting its underwriting activities in accordance with section 13(d)(1)(B).[100]

The proposal would require a banking entity to promptly report to the appropriate Agency when a trading desk exceeds or increases its internal risk limits. A banking entity would also be required to report to the appropriate Agency any temporary or permanent increase in an internal risk limit. In the case of both reporting requirements (*i.e.,* notice of an internal risk limit being exceeded and notice of an increase to the limit), the notice would be submitted in the form and manner as directed by the applicable Agency.

As noted, a banking entity would not be required to adhere to any specific, pre-defined requirements for the limit-setting process beyond the banking entity's own ongoing and internal assessment of the amount of activity that is required to conduct underwriting, including to reflect the banking entity's ongoing and internal assessment of the reasonably expected near term demands of clients, customers, or counterparties. The proposal would, however, provide that internal risk limits established by a banking entity shall be subject to review and oversight by the appropriate Agency on an ongoing basis. Any review of such limits would assess whether or not those limits are established based on the statutory standard—*i.e.,* the trading desk's reasonably expected near term demands of clients, customers, or counterparties on an ongoing basis, based on the nature and amount of the trading desk's underwriting activities. So long as a banking entity has established and implements, maintains, and enforces such limits, the proposal would presume that all trading activity conducted within the limits meets the requirements that the underwriting activity be based on the reasonably expected near term demands of clients, customers, or counterparties. The Agencies would expect to closely monitor and review any instances of a banking entity exceeding a risk limit as well as any temporary or permanent increase to a trading desk limit.

Under the proposal, the presumption of compliance for permissible underwriting activities may be rebutted by the Agency if the Agency determines, based on all relevant facts and circumstances, that a trading desk is engaging in activity that is not based on the trading desk's reasonably expected near term demands of clients, customers, or counterparties on an ongoing basis. The Agency would provide notice of any such determination to the banking entity in writing.

The Agencies request comment on the proposed addition of a presumption that conducting underwriting activities within internally set risk limits satisfies the requirement that permitted underwriting activities be designed not to exceed the reasonably expected near-term demands of clients, customers, or counterparties. In particular, the Agencies request comment on the following questions:

Question 64. Is the proposed presumption of compliance for underwriting activity within internally set risk limits sufficiently clear? If not, what changes should the Agencies make to further clarify the rule?

Question 65. How would the proposed approach, as it relates to the establishment and reliance on internal trading limits, impact the capital formation process and the liquidity of particular markets?

Question 66. How would the proposed approach, as it relates to the establishment and reliance on internal trading limits, impact the underlying objectives of section 13 of the BHC Act and the 2013 final rule? For example, how should the Agencies assess internal trading limits and any changes in them?

Question 67. By proposing an approach that permits banking entities to rely on internally set limits to comply with the statutory RENTD requirement, the rule would no longer expressly require firms to, among other things, conduct a demonstrable analysis of historical customer demand, current inventory of financial instruments, and market and other factors regarding the amount, types, and risks of or associated with positions in financial instruments in which the trading desk makes a market, including through block trades. Do commenters agree with the revised approach? What are the costs and benefits of eliminating these requirements?

Question 68. Would the proposal's approach to permissible underwriting activities effectively implement the statutory exemption? Why or why not? Would this approach improve the ability of banking entities to engage in underwriting relative to the 2013 final rule? If not, what approach would be better? Please explain.

Question 69. Does the proposed reliance on using a trading desk's internal risk limits to comply with the statutory RENTD requirement in section 13(d)(1)(B) of the BHC Act present opportunities to evade the overall

[99] Under the proposal, banking entities with significant trading assets and liabilities would continue to be required to establish internal risk limits for each trading desk as part of the underwriting compliance program requirement in § ____.4(a)(2)(iii)(B), the elements of which would cross-reference directly to the requirement in proposed § ____.4(a)(8)(i). Banking entities that do not have significant trading assets and liabilities would no longer be required to establish a compliance program that is specific for the purposes of complying with the exemption for underwriting, but would need to do so if they chose to utilize the proposed presumption of compliance with respect to the statutory RENTD requirement in section 13(d)(1)(B) of the BHC Act.

[100] The Agencies expect that the risk and position limits metric that is already required for certain banking entities under the 2013 final rule (and would continue to be required under the Appendix to the proposal) would help banking entities and the Agencies to manage and monitor the underwriting activities of banking entities subject to the metrics reporting and recordkeeping requirements of the Appendix. *See infra* Part III.E.2.*i*.i.

prohibition on proprietary trading? If so, how? Please be as specific as possible. Additionally, please provide any changes to the proposal that might address such potential circumvention. Alternatively, please explain why the proposal to rely on a trading desk's internal risk limits to comply with the statutory RENTD requirement should not present opportunities to evade the prohibition on proprietary trading.

Question 70. Do banking entities need greater clarity about how to set the proposed internal risk limits for permissible underwriting activity? If so, what additional information would be useful? Please explain.

Question 71. Are the proposed changes to the exemption for underwriting appropriately tailored to the operation and structure of the underwriting market, particularly firm commitment offerings? Could the proposal be modified in order to better align with the operation and structure of the underwriting market? Recognizing that the proposal would not require banking entities to use their internal risk limits to establish a rebuttable presumption of compliance with the requirements of section 13(d)(1)(B) of the BHC Act, would the proposal be workable in the context of underwritten offerings, including firm commitment underwritings? How would an Agency rebut the presumption of compliance in the context of underwritten offerings, including firm commitment underwritings? Could the proposal, if adopted, affect a banking entity's willingness to participate in a firm commitment underwriting? Please explain, being as specific as possible.

Question 72. Should any additional guidance or information be provided to explain the process and standard by which the Agencies could rebut the presumption of permissible underwriting? If so, please explain. Please include specific subject areas that could be addressed in such guidance (*e.g.,* criteria used as the basis for a rebuttal, the rebuttal process, etc.).

Question 73. Are there other modifications to the 2013 final rule's requirements for permitted underwriting that would improve the efficiency of the rule's underwriting requirements while adhering to the statutory requirement that such activity be designed not to exceed the reasonably expected near term demands of clients, customers, and counterparties? If so, please describe these modifications as well as how they would improve the efficiency of the underwriting exemption and meet the statutory standard.

Question 74. Under the proposed presumption of compliance for permissible underwriting activities, banking entities would be required to notify the appropriate Agency when a trading limit is exceeded or increased (either on a temporary or permanent basis), in each case in the form and manner as directed by each Agency. Is this requirement sufficiently clear? Should the Agencies provide greater clarity about the form and manner for providing this notice? Should those notices be required to be provided ''promptly'' or should an alternative time frame apply? Alternatively, should each Agency establish its own deadline for when these notices should be provided? Please explain.

Question 75. Should the Agencies instead establish a uniform method of reporting when a trading desk exceeds or increases an internal risk limit (*e.g.,* a standardized form)? Why or why not? If so, please provide as much detail as possible. If not, please describe any impediments or costs to implementing a uniform notification process and explain why such a system may not be efficient or might undermine the effectiveness of the proposed notification requirement.

Question 76: Should the Agencies implement an alternative reporting methodology for notifying the appropriate Agency when a trading limit is exceeded or increased that would apply solely in the case of a banking entity's obligation to report such occurrences to a market regulator? For example, instead of an affirmative notice requirement, should such banking entities be required to make and keep a detailed record of each instance as part of its books and records, and to provide such records to SEC or CFTC staff promptly upon request or during an examination? Why or why not? As an additional alternative, should banking entities be required to escalate notices of limit exceedances or changes internally for further inquiry and determination as to whether notice should be given to the applicable market regulator, using objective factors provided by the rule, be a more appropriate process for these banking entities? Why or why not? If such an approach would be more appropriate, what objective factors should be used to determine when notice should be given to the applicable regulator? Please be as specific as possible.

Question 77. Should the Agencies specify notice and response procedures in connection with an Agency determination that the presumption pursuant to § ____.4(a)(8)(iv) is rebutted? Why or why not? If so, what type of procedures should they specify? For example, should the notice and response procedures be similar to those in § ____.3(g)(2)? If not, what other approach would be appropriate?

c. Compliance Program and Other Requirements

The underwriting exemption in the 2013 final rule requires that a banking entity establishes and implements, maintains, and enforces a compliance program, as required by subpart D, that is reasonably designed to ensure compliance with the requirements of the exemption. Such compliance program is required to include reasonably designed written policies and procedures, internal controls, analysis and independent testing identifying and addressing: (i) The products, instruments, or exposures each trading desk may purchase, sell, or manage as part of its underwriting activities; (ii) limits for each trading desk, based on the nature and amount of the trading desk's underwriting activities, including the reasonably expected near term demands of clients, customers, or counterparties, based on certain factors; (iii) internal controls and ongoing monitoring and analysis of each trading desk's compliance with its limits; and (iv) authorization procedures, including escalation procedures that require review and approval of any trade that would exceed one or more of a trading desk's limits, demonstrable analysis of the basis for any temporary or permanent increase to one or more of a trading desk's limits, and independent review (*i.e.,* by risk managers and compliance officers at the appropriate level independent of the trading desk) of such demonstrable analysis and approval.

Banking entities and others have stated that the compliance program requirements of the underwriting exemption are overly complex and burdensome. The Agencies generally believe the compliance program requirements play an important role in facilitating and monitoring a banking entity's compliance with the exemption. However, with the benefit of experience, the Agencies also believe those requirements can be appropriately tailored to the scope of the underwriting activities conducted by each banking entity.

Specifically, the Agencies are proposing a tiered approach to the underwriting exemption's compliance program requirements so as to make them commensurate with the size, scope, and complexity of the relevant banking entity's trading activities and business structure. Consistent with the

2013 final rule, a banking entity with significant trading assets and liabilities would continue to be required to establish, implement, maintain, and enforce a comprehensive internal compliance program as a condition for relying on the underwriting exemption. However, the Agencies propose to eliminate the exemption's compliance program requirements for banking entities that have moderate or limited trading assets and liabilities.[101]

The proposed removal of the exemption's compliance program requirements for banking entities that do not have significant trading assets and liabilities would not relieve those banking entities of the obligation to comply with the prohibitions on proprietary trading, and the other requirements of the exemption for underwriting activities, as set forth in section 13 of the BHC Act and the 2013 final rule, both as currently written and as proposed to be amended. However, eliminating the compliance program requirements as a condition to being able to rely on the underwriting exemption should provide these banking entities that do not have significant trading assets and liabilities an appropriate amount of flexibility to tailor the means by which they seek to ensure compliance with the underlying requirements of the exemption for underwriting activities, and to allow them to structure their internal compliance measures in a way that takes into account the risk profile and underwriting activity of the particular trading desk. This proposed change would also be consistent with the proposed modifications to the general compliance program requirements for these banking entities under § ____.20 of the 2013 final rule, discussed further below in this **SUPPLEMENTARY INFORMATION** section.

The Agencies understand that banking entities that do not have significant trading assets and liabilities can incur significant costs to establish, implement, maintain, and enforce the compliance program requirements contained in the 2013 final rule. In some instances, those costs may be disproportionate to the banking entity's trading activity and risk. Accordingly, eliminating the compliance program requirements for banking entities that do not have significant trading assets and liabilities may reduce costs that are passed on to investors and increase capital formation without materially impacting the rule's ability to ensure that the objectives set forth in section 13 of the BHC Act are satisfied.[102]

The Agencies request comment on the proposed revisions to the exemption for the underwriting activities compliance program requirement. In particular, the Agencies request comment on the following questions:

Question 78. Would the proposed tiered compliance approach based on a banking entity's trading assets and liabilities appropriately balance the costs and benefits for banking entities that do not have significant trading assets and liabilities? Why or why not? If so, how? If not, what other approach would be more appropriate?

Question 79. Should the Agencies simplify and streamline the exemption for underwriting activities compliance requirements for banking entities with significant trading assets and liabilities? If so, please explain.

Question 80. Do commenters agree with the proposal to have the underwriting exemption specific compliance program requirements apply only to banking entities with significant trading assets and liabilities? Why or why not?

Question 81. In addition to the proposed changes to the underwriting exemption, are there any technical corrections the Agencies should make to § ____.4(a), such as to eliminate redundant or duplicative language or to correct or refine certain cross-references? If so, please explain.

d. Market-Making Activities

Section 13(d)(1)(B) of the BHC Act contains an exemption from the prohibition on proprietary trading for the purchase, sale, acquisition, or disposition of securities, derivatives, contracts of sale of a commodity for future delivery, and options on any of the foregoing in connection with market making-related activities, to the extent that such activities are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties.[103] Section____.4(b) of the 2013 final rule implements the statutory exemption for market making-related activities and sets forth the requirements that all banking entities must meet in order to rely on the exemption. Among other things, the 2013 final rule requires that:

- The trading desk that establishes and manages the financial exposure routinely stands ready to purchase and sell one or more types of financial instruments related to its financial exposure and is willing and available to quote, purchase and sell, or otherwise enter into long and short positions in those types of financial instruments for its own account, in commercially reasonable amounts and throughout market cycles on a basis appropriate for the liquidity, maturity, and depth of the market for the relevant types of financial instruments;
- The amount, types, and risks of the financial instruments in the trading desk's market maker inventory are designed not to exceed, on an ongoing basis, the reasonably expected near term demands of clients, customers, or counterparties, as required by the statute and based on certain factors and analysis specified in the rule;
- The banking entity has established and implements, maintains, and enforces an internal compliance program that is reasonably designed to ensure its compliance with the market making exemption, including reasonably designed written policies and procedures, internal controls, analysis, and independent testing identifying and assessing certain specified factors;[104]
- To the extent that any required limit[105] established by the trading desk is exceeded, the trading desk takes action to bring the trading desk into compliance with the limits as promptly as possible after the limit is exceeded;
- The compensation arrangements of persons performing market making-related activities are designed not to reward or incentivize prohibited proprietary trading; and
- The banking entity is licensed or registered to engage in market making-related activities in accordance with applicable law.

When adopting the 2013 final rule, the Agencies endeavored to balance two goals of section 13 of the BHC Act: To allow market making to take place, which is important to well-functioning and liquid markets as well as the economy, and simultaneously to prohibit proprietary trading unrelated to market making or other permitted activities, consistent with the statute.[106]

[101] Under the 2013 final rule, the compliance program requirement in § ____.4(a)(2)(iii) is part of the compliance program required by subpart D, but is specifically used for purposes of complying with the exemption for underwriting activity.

[102] Under the proposal, the compliance program requirements that are specific for the purposes of complying with the exemption for underwriting activities in § ____.4(a) would remain unchanged for banking entities with significant trading assets and liabilities, although the requirements related to limits for each trading desk would be moved (but not modified) into new § ____.4(a)(8)(i) as part of the proposed presumption of compliance.

[103] 12 U.S.C. 1851(d)(1)(B).

[104] *See* 79 FR at 5612.

[105] *See id.* at 5615.

[106] *See id.* at 5576. In addition, staffs from some of the Agencies have analyzed the liquidity of the corporate bond market in the time since the 2013 final rule was adopted. For example, Federal Reserve Board staff have prepared quarterly reports

To accomplish these goals the Agencies adopted a comprehensive, multi-faceted approach. In the several years since the adoption of the 2013 final rule, however, the Agencies have observed that the significant compliance requirements and lack of clear bright lines in the regulation may unnecessarily constrain market making,[107] and the Agencies believe some of the requirements are unnecessary to prevent the type of trading activities that the rule was designed to prohibit.

As described in further detail below, the Agencies are proposing to tailor, streamline, and clarify the requirements that a banking entity must satisfy to avail itself of the market making exemption. Similar to the proposed underwriting exemption,[108] the Agencies are proposing to modify the market making exemption by providing a clearer way to measure and satisfy the statutory requirement that market making-related activity be designed not to exceed the reasonably expected near term demand of clients, customers, or counterparties. Specifically, the proposal would establish a presumption, available to banking entities both with and without significant trading assets and liabilities, that trading within internally set risk limits satisfies the statutory requirement that permitted market making-related activities must be designed not to exceed RENTD. In addition, the Agencies also are proposing to tailor the market making exemption's compliance program requirements to the size, complexity, and type of activity conducted by the banking entity by making those requirements applicable only to banking entities with significant trading assets and liabilities.

Based on feedback the Agencies have received, banking entities that do not have significant trading assets and liabilities can incur substantial costs to establish, implement, maintain, and enforce the compliance program requirements in the 2013 final rule, notwithstanding the lower level of such banking entities' trading activities.[109] Accordingly, the Agencies believe that the proposed revisions to the market making exemption would provide banking entities that do not have significant trading assets and liabilities with more flexibility to meet customer demands and facilitate robust trading markets, while continuing to safeguard against trading activity that could threaten the safety and soundness of banking entities and the financial stability of the United States by more appropriately aligning the associated compliance obligations with the size of banking entities' trading activities.

e. RENTD Limits and Presumption of Compliance

As described above, the statutory exemption for market making-related activities in section 13(d)(1)(B) of the BHC Act requires that such activities be designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties.[110] Consistent with the statute, § ____.4(b)(2)(ii) of the 2013 final rule's market making exemption requires that the amount, types, and risks of the financial instruments in the trading desk's market maker inventory be designed not to exceed, on an ongoing basis, the reasonably expected near term demands of clients, customers, or counterparties, based on certain market factors and analysis.[111]

The 2013 final rule provides two factors for assessing whether the amount, types, and risks of the financial instruments in the trading desk's market maker inventory are designed not to exceed, on an ongoing basis, the reasonably expected near term demands of clients, customers, or counterparties. Specifically, these factors are: (i) The liquidity, maturity, and depth of the market for the relevant type of financial instrument(s), and (ii) demonstrable analysis of historical customer demand, current inventory of financial instruments, and market and other factors regarding the amount, types, and risks of or associated with positions in financial instruments in which the trading desk makes a market, including through block trades. Under § ____.4(b)(2)(iii)(C) of the 2013 final rule, a banking entity must account for these considerations when establishing risk and inventory limits for each trading desk.

The Agencies' experience implementing the 2013 final rule has indicated that the approach the Agencies have taken to give effect to the statutory standard of reasonably expected near term demands of clients, customers, or counterparties may be overly broad and complex, and also may inhibit otherwise permissible market making-related activity. In particular, the Agencies have received feedback as part of implementing the rule that compliance with the factors in the rule can be complex and costly.[112] For example, banking entities have communicated that they must engage in a number of complex and intensive analyses to meet the "demonstrable analysis" requirement under § ____.4(b)(2)(ii)(B) and may still be unable to gain comfort that their bona fide market making-related activity meets these factors. Finally, the Agencies' experience implementing the rule also indicates that the requirements of the 2013 final rule do not provide bright line conditions under which trading can clearly be classified as permissible market making.

Accordingly, the Agencies are seeking comment on a proposal to implement this key statutory factor in a manner designed to provide banking entities and the Agencies with greater certainty and clarity about what activity constitutes permissible market making pursuant to the exemption. The Agencies are proposing to establish the articulation and use of internal risk limits as a key mechanism for conducting trading activity in accordance with the rule's market making exemption.[113] In particular, the proposal would provide that the purchase or sale of a financial instrument by a banking entity shall be presumed to be designed not to exceed, on an ongoing basis, the reasonably expected near term demands of clients, customers, or counterparties, based on the liquidity, maturity, and depth of the market for the relevant types of financial instrument, if the banking entity establishes internal risk limits for each trading desk, subject to certain conditions, and implements, maintains, and enforces those limits, such that the risk of the financial instruments held by the trading desk does not exceed such limits. The Agencies believe that this approach would allow for a clearer application of these exemptions, and would provide firms with more flexibility and certainty in conducting market making-related activities.

Under the proposal, all banking entities, regardless of their volume of

to monitor market-level liquidity in corporate bond markets since 2014. *See https://www.federalreserve.gov/foia/corporate-bond-liquidity-reports.htm. See also* Report to Congress: Access to Capital and Market Liquidity, SEC Division of Economic and Risk Analysis staff, *https://www.sec.gov/files/access-to-capital-and-market-liquidity-study-dera-2017.pdf* ("Access to Capital and Market Liquidity").

[107] *See supra* Part I of this **SUPPLEMENTARY INFORMATION** section.

[108] *See supra* Part III.B.2.a of this **SUPPLEMENTARY INFORMATION** section.

[109] *Id.*

[110] 12 U.S.C. 1851(d)(1)(B).

[111] *See* 2013 final rule § ____.4(b)(2)(iii).

[112] *See supra* Part I.A.

[113] As a consequence of these changes to focus on risk limits, many of the requirements of the 2013 final rule relating to risk limits associated with market making-related activity have been incorporated into this requirement and modified or deleted as appropriate in this section of the proposal.

trading assets and liabilities, would be able to voluntarily avail themselves of the presumption of compliance with the statutory RENTD requirement in section 13(d)(1)(B) of the BHC Act by establishing and complying with internal risk limits. Specifically, the proposal would provide that a banking entity would establish internal risk limits for each trading desk that are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties, based on the nature and amount of the trading desk's market making-related activities, on the:

(1) Amount, types, and risks of its market maker positions;

(2) Amount, types, and risks of the products, instruments, and exposures the trading desk may use for risk management purposes;

(3) Level of exposures to relevant risk factors arising from its financial exposure; and

(4) Period of time a financial instrument may be held.

Banking entities utilizing this presumption would be required to maintain internal policies and procedures for setting and reviewing desk-level risk limits in a manner consistent with the statute.[114] The proposed approach would not require that a banking entity's risk limits be based on any specific or mandated analysis, as required under the 2013 final rule. Rather, a banking entity would establish the risk limits according to its own internal analyses and processes around conducting its market making activities in accordance with section 13(d)(1)(B).[115]

The proposal would require a banking entity to promptly report to the appropriate Agency when a trading desk exceeds or increases its internal risk limits. A banking entity would also be required to report to the appropriate Agency any temporary or permanent increase in an internal risk limit. In the case of both reporting requirements (*i.e.,* notice of an internal risk limit being exceeded and notice of an increase to the limit), the notice would be submitted in the form and manner as directed by the applicable Agency.

As noted, a banking entity would not be required to adhere to any specific, pre-defined requirements for the limit-setting process beyond the banking entity's own ongoing and internal assessment of the amount of activity that is required to conduct market making activity, including to reflect the banking entity's ongoing and internal assessment of the reasonably expected near term demands of clients, customers, or counterparties. The proposal would, however, provide that internal risk limits established by a banking entity shall be subject to review and oversight by the appropriate Agency on an ongoing basis. Any review of such limits would assess whether or not those limits are established based on the statutory standard—*i.e.,* the trading desk's reasonably expected near term demands of clients, customers, or counterparties on an ongoing basis, based on the nature and amount of the trading desk's market making-related activities. So long as a banking entity has established and implements, maintains, and enforces such limits, the proposal would presume that all trading activity conducted within the limits meets the requirements that the market making activity be based on the reasonably expected near term demands of clients, customers, or counterparties. The Agencies would expect to closely monitor and review any instances of a banking entity exceeding a risk limit as well as any temporary or permanent increase to a trading desk limit.

Under the proposal, the presumption of compliance for permissible market making-related activities may be rebutted by the Agency if the Agency determines, based on all relevant facts and circumstances, that a trading desk is engaging in activity that is not based on the trading desk's reasonably expected near term demands of clients, customers, or counterparties on an ongoing basis. The Agency would provide notice of any such determination to the banking entity in writing.

The following is an example of the presumption of compliance for permissible market making-related activities. A transport company customer may seek to hedge its long-term exposure to price fluctuations in fuel by asking a banking entity to create a structured ten-year fuel swap with a notional amount of $1 billion because there is no liquid market for this type of swap. A trading desk at the banking entity that makes a market in energy swaps may respond to this customer's hedging needs by executing a custom fuel swap with the customer. If the risk resulting from activities related to the transaction does not exceed the internal risk limits for the trading desk that makes a market in energy swaps, the banking entity shall be presumed to be engaged in permissible market making-related activity that is designed not to exceed, on an ongoing basis, the reasonably expected near term demands of clients, customers, or counterparties. Moreover, if assuming the position would result in an exposure exceeding the trading desk's limits, the banking entity could increase the risk limit in accordance with its internal policies and procedures for reviewing and increasing risk limits so long as the increase was consistent with meeting the reasonably expected near term demands of clients, customers, and counterparties.

The Agencies request comment on the proposed addition of a presumption that trading within internally set risk limits satisfies the statutory requirement that permitted market making-related activities be designed not to exceed the reasonably expected near-term demands of clients, customers, or counterparties. In particular, the Agencies request comment on the following questions:

Question 82. Is the proposed presumption of compliance for transactions that are within internally set risk limits sufficiently clear? If not, what changes would further clarify the rule? Is there another approach that would be more appropriate?

Question 83. Would the proposed approach—namely the reliance on internally set limits based on RENTD—adequately eliminate the need for a definition for ''market maker inventory?'' Why or why not?

Question 84. How would the proposed approach, as it relates to the establishment and reliance on internal trading limits, impact the liquidity of particular markets?

Question 85. How would the proposed approach, as it relates to the establishment and reliance on internal trading limits, impact the underlying objectives of section 13 of the BHC Act and the 2013 final rule? For example, how should the Agencies assess internal trading limits and any changes in them?

Question 86. By proposing an approach that permits banking entities to rely on internally set limits to comply

[114] Under the proposal, banking entities with significant trading assets and liabilities would continue to be required to establish internal risk limits for each trading desk as part of the market making compliance program requirement in § ____.4(b)(2)(iii)(C), the elements of which would cross-reference directly to the requirement in proposed § ____.4(b)(6)(i). Banking entities without significant trading assets and liabilities would no longer be required to establish a compliance program that is specific for the purposes of complying with the exemption for market making-related activity, but would need to establish and implement, maintain, and enforce these limits if they chose to utilize the proposed presumption of compliance with respect to the statutory RENTD requirement in section 13(d)(1)(B) of the BHC Act.

[115] The Agencies expect that the risk and position limits metric that is already required for certain banking entities under the 2013 final rule (and would continue to be required under the Appendix to the proposal) would help banking entities and the Agencies to manage and monitor the market making activities of banking entities subject to the metrics reporting and recordkeeping requirements of the Appendix. *See infra* Part III.E.2.*i*.i.

with the statutory RENTD requirement, the rule would no longer expressly require firms to, among other things, conduct a demonstrable analysis of historical customer demand, current inventory of financial instruments, and market and other factors regarding the amount, types, and risks of or associated with positions in financial instruments in which the trading desk makes a market, including through block trades. Do commenters agree with the revised approach? What are the costs and benefits of eliminating these requirements?

Question 87. Would the market making exemption, as proposed, present any problems for a trading desk that makes a market in derivatives? Are there any changes the Agencies could make to the proposal to clarify how the market making exemption applies to trading desks that make a market in derivatives?

Question 88. Would the proposal's approach to permissible market making-related activities effectively implement the statutory exemption? Why or why not? Would this approach improve the ability of banking entities to engage in market making relative to the 2013 final rule? If not, what approach would be better? Please explain.

Question 89. Does the proposed reliance on using a trading desk's internal risk limits to comply with the statutory RENTD requirement in section 13(d)(1)(B) of the BHC Act present opportunities to evade the overall prohibition on proprietary trading? If so, how? Please be as specific as possible. Additionally, please provide any changes to the proposal that might address such potential circumvention. Alternatively, please explain whether the proposal to rely on a trading desk's internal risk limits to comply with the statutory RENTD requirement would present opportunities to evade the prohibition on proprietary trading.

Question 90. Do banking entities require greater clarity about how to set their internal risk limits for permissible market making-related activity? If so, what additional information would be useful? Please explain.

Question 91. Should any additional guidance or information be provided to explain the process and standard by which the Agencies could rebut the presumption of permissible market making, including specific subject areas that could be addressed in such guidance (*e.g.,* criteria used as the basis for a rebuttal, the rebuttal process, etc.)? If so, please explain.

Question 92. Are there other modifications to the 2013 final rule's requirements for permitted market making that would improve the efficiency of the rule's requirements while adhering to the statutory requirement that such activity be designed not to exceed the reasonably expected near term demands of clients, customers, and counterparties? If so, please describe these modifications as well as how they would improve the efficiency of the rule and meet the statutory standard.

Question 93. Under the proposed presumption of compliance for permissible market making-related activities, banking entities would be required to notify the appropriate Agency when a trading limit is exceeded or increased (either on a temporary or permanent basis), in each case in the form and manner as directed by each Agency. Is this requirement sufficiently clear? Should the Agencies provide greater clarity about the form and manner for providing this notice? Should those notices be required to be provided ''promptly'' or should an alternative timeframe apply? Alternatively, should each Agency establish its own deadline for when these notices should be provided? Please explain.

Question 94. Should the Agencies instead establish a uniform method of reporting when a trading desk exceeds or increases an internal risk limit (*e.g.,* a standardized form)? Why or why not? If yes, please provide as much detail as possible. If not, please describe any impediments or costs to implementing a uniform notification process and explain why such a system may not be efficient or might undermine the effectiveness of the proposed notification requirement.

Question 95: Should the Agencies implement an alternative reporting methodology for notifying the appropriate Agency when a trading limit is exceeded or increased that would apply solely in the case of a banking entity's obligation to report such occurrences to a market regulator? For example, instead of an affirmative notice requirement, should such banking entity instead be required to make and keep a detailed record of each instance as part of its books and records, and to provide such records to SEC or CFTC staff promptly upon request or during an examination? Why or why not? As an additional alternative, should banking entities be required to escalate notices of limit exceedances or changes internally for further inquiry and determination as to whether notice should be given to the applicable market regulator, using objective factors provided by the rule? Why or why not? If such an approach would be more appropriate, what objective factors should be used to determine when notice should be given to the applicable regulator? Please be as specific as possible.

Question 96. Should the Agencies specify notice and response procedures in connection with an Agency determination that the presumption pursuant to § ____.4(b)(6)(iv) is rebutted? Why or why not? If so, what type of procedures should they specify? For example, should the notice and response procedures be similar to those in § ____.3(g)(2)? If not, what other approach would be appropriate?

f. Compliance Program and Other Requirements

The market making exemption in the 2013 final rule requires that a banking entity establish and implement, maintain, and enforce a compliance program, as required by subpart D, that is reasonably designed to ensure compliance with the requirements of the exemption. Such a compliance program is required to include reasonably designed written policies and procedures, internal controls, analysis, and independent testing identifying and addressing: (i) The financial instruments each trading desk stands ready to purchase and sell in accordance with the exemption for market making-related activities; (ii) the actions the trading desk will take to demonstrably reduce or otherwise significantly mitigate the risks of its financial exposure consistent with the limits required under paragraph (b)(2)(iii)(C), the products, instruments, and exposures each trading desk may use for risk management purposes; the techniques and strategies each trading desk may use to manage the risks of its market making-related activities and inventory; and the process, strategies, and personnel responsible for ensuring that the actions taken by the trading desk to mitigate these risks are and continue to be effective; (iii) limits for each trading desk, based on the nature and amount of the trading desk's market making activities, including the reasonably expected near term demands of clients, customers, or counterparties; (iv) internal controls and ongoing monitoring and analysis of each trading desk's compliance with its limits; and (v) authorization procedures, including escalation procedures that require review and approval of any trade that would exceed one or more of a trading desk's limits, demonstrable analysis of the basis for any temporary or permanent increase to one or more of a trading desk's limits, and independent review (*i.e.,* by risk managers and compliance officers at the appropriate level independent of the trading desk) of such demonstrable analysis and approval.

Banking entities and others have stated that the compliance program requirements of the market making exemption can be overly complex and burdensome. The Agencies generally believe the compliance program requirements play an important role in facilitating and monitoring a banking entity's compliance with the exemption. However, with the benefit of time and experience, the Agencies believe it is appropriate to tailor those requirements to the scope of the market making-related activities conducted by each banking entity.

Specifically, the Agencies are proposing a tiered approach to the market making exemption's compliance program requirements so as to make them commensurate with the size, scope, and complexity of the relevant banking entity's activities and business structure. Consistent with the 2013 final rule, a banking entity with significant trading assets and liabilities would continue to be required to establish, implement, maintain, and enforce a comprehensive internal compliance program as a condition for relying on the market making exemption. However, the Agencies propose to eliminate the exemption's compliance program requirements for banking entities that have moderate or limited trading assets and liabilities.[116]

The proposed removal of the exemption's compliance program requirements for banking entities that do not have significant trading assets and liabilities would not relieve those banking entities of the obligation to comply with the prohibitions on proprietary trading, and the other requirements of the exemption for market making-related activities, as set forth in section 13 of the BHC Act and the 2013 final rule, both as currently written and as proposed to be amended. However, eliminating the compliance program requirements as a condition to being able to rely on the market making exemption should provide these banking entities that do not have significant trading assets and liabilities an appropriate amount of flexibility to tailor the means by which they seek to ensure compliance with the underlying requirements of the exemption for market making-related activities, and to allow them to structure their internal compliance measures in a way that takes into account the risk profile and market making activity of the particular trading desk.

As noted in the discussion pertaining to the underwriting exemption,[117] banking entities that do not have significant trading assets and liabilities can incur significant costs to establish, implement, maintain, and enforce the compliance program requirements contained in the 2013 final rule. In some instances, those costs may be disproportionate to the banking entity's trading activity and risk. Accordingly, eliminating the compliance program requirements for banking entities that do not have significant trading assets and liabilities may reduce costs that are passed on to investors and increase liquidity without materially impacting the rule's ability to ensure that the objectives set forth in section 13 of the BHC Act are satisfied.[118]

The Agencies request comment on the proposed revisions to the exemption for market making-related activities compliance program requirement. In particular, the Agencies request comment on the following questions:

Question 97. Would the proposed tiered compliance approach based on a banking entity's trading assets and liabilities appropriately balance the costs and benefits for banking entities that do not have significant trading assets and liabilities? Why or why not?

Question 98. Should the Agencies make specific changes to simplify and streamline the compliance requirements of the exemption for market making-related activities for banking entities with significant trading assets and liabilities? If so, how?

Question 99. Do commenters agree with the proposal to have the market making exemption specific compliance program requirements apply only to banking entities with significant trading assets and liabilities? Why or why not?

Question 100. In addition to the proposed changes to the market making exemption, are there any technical corrections the Agencies should make to § ____.4(b), such as to eliminate redundant or duplicative language or to correct or refine certain cross-references? If so, please explain.

g. Loan-Related Swaps

The Agencies have received inquiries—typically from smaller banking entities that are not subject to the market risk capital rule and are not required to register as dealers—as to the treatment of certain swaps entered into with a customer in connection with a loan (''loan-related swap'').[119] These loan-related swaps are financial instruments under the 2013 final rule and would also be financial instruments under the proposal. In addition, if the proposed accounting prong of the trading account definition is adopted, any derivative transaction would constitute proprietary trading pursuant to the definition of ''trading account'' if it were recorded at fair value on a recurring basis under applicable accounting standards. The Agencies believe it is likely that loan-related swaps would be considered proprietary trading on this basis. Accordingly, for the transaction to be permissible, a banking entity would need to rely on an applicable exclusion from the definition of proprietary trading or exemption in the implementing regulations.

In a loan-related swap transaction, a banking entity enters into a swap with a customer in connection with a customer's loan and contemporaneously offsets the swap with a third party. The swap with the loan customer is directly related to the terms of the customer's loan, such as a term loan, revolving credit facility, or other extension of credit. A common example of a loan-related swap begins with a banking entity offering a loan to a customer. The banking entity seeks to make a floating-rate loan to reduce interest rate risk, but the customer would prefer a fixed-rate loan. To achieve the desired result, the banking entity makes a floating-rate loan to the customer and contemporaneously or nearly contemporaneously enters into an interest rate swap with the same customer and an offsetting swap with another counterparty. As a result, the customer receives economics similar to a fixed-rate loan. The banking entity has offset its market risk associated with the customer-facing swap but retains counterparty risk from both swaps.

The inquiries received by the Agencies have asked whether the loan-related swap and the offsetting hedging swap would be permissible under the

[116] Under the 2013 final rule, the compliance program requirement in § ____.4(b)(2)(iii) is part of the compliance program required by subpart D, but is specifically used for purposes of complying with the exemption for market making-related activity.

[117] *See supra* Part III.B.2 of this **SUPPLEMENTARY INFORMATION** section.

[118] Under the proposal, the compliance program requirements that are specific for the purposes of complying with the exemption for market making-related activities in § ____.4(b) would remain unchanged for banking entities with significant trading assets and liabilities, although the requirements related to limits for each trading desk would be moved (but not modified) into new § ____.4(b)(6)(i) as part of the proposed presumption of compliance.

[119] In the case of national banks, a loan-related swap is considered to be a customer-driven derivatives transaction. *See* 12 U.S.C 24 (Seventh). *See also* OCC, Activities Permissible for National Banks and Federal Savings Associations, Cumulative (Oct. 2017), *available at https://www.occ.gov/publications/publications-by-type/other-publications-reports/pub-other-activities-permissible-october-2017.pdf.*

exemption for market making related activities.[120] In particular, some banking entities enter into these swaps relatively infrequently and, as a result, have asked whether such activity could satisfy the requirement of the exemption in the 2013 final rule that the trading desk using the exemption routinely stands ready to purchase and sell the relevant type of financial instrument, in commercially reasonable amounts and throughout market cycles on a basis appropriate for the liquidity, maturity, and depth of the market for the type of financial instrument.[121]

The Agencies understand that a banking entity's decision to enter into loan-related swaps tends to be situational and dependent on changes in market conditions, as well as the interaction of a number of factors specific to the banking entity, such as the nature of the customer relationship. Under certain market conditions and with certain types of customers, the frequency and use of loan-related swaps may be infrequent, or the frequency may change over time as conditions change. It also may be the case that a banking entity, particularly smaller banking entities, may enter into a limited number of loan-related swaps in one quarter and then not execute another such swap for a year or more. Accordingly, for these swaps it may be appropriate to apply the market making exemption by focusing on the characteristics of the relevant market. For purposes of the exemption, the relevant market may be a market with minimal demand, such as a market with a customer base that demands, for example, only a few loan-related swaps in a year.[122] The Agencies therefore request comment as to whether it is appropriate to permit loan-related swaps to be conducted pursuant to the exemption for market making-related activities where the frequency with which a banking entity executes such swaps is minimal, but the banking entity remains prepared to execute such swaps when a customer makes an appropriate request.[123] For example, a banking entity could meet the requirement to routinely stand ready to make a market in loan-related swaps in the context of its customer base and the relevant market if it is willing and available to engage in loan-related swap transactions with its loan customers to meet the customers' needs in respect of one or more loans entered into with such banking entity throughout market cycles and as such customers' needs change.

In addition, the Agencies note that a banking entity may also infrequently enter into loan-related swaps in both directions because of how those swaps are commonly used by market participants. For example, providing a floating to fixed swap is common in connection with a floating rate loan (as described in the example above), but the reverse (*i.e.,* seeking to convert from a fixed rate to a floating rate) is much less common. Accordingly, the Agencies request comment on whether loan-related swaps should be permitted under the market-making exemption if the banking entity stands ready to make a market in both directions whenever a customer makes an appropriate request, but in practice primarily makes a market in the swaps in one direction because of how the swaps are used.[124]

The Agencies are also considering whether it would be appropriate to exclude loan-related swaps from the definition of proprietary trading for some banking entities or to permit the activity pursuant to an exemption from the prohibition on proprietary trading other than market making. For example, possible additions or alternatives could include a new exclusion in § ____.3(d) or a new exemption in § ____.6 pursuant to the Agencies' exemptive authority under section 13(d)(1)(J) of the BHC Act. In particular, the Agencies request comment regarding a specific option that would add an exclusion in § ____.3(d), which would specify that ''proprietary trading'' under § ____3 does not include the purchase or sale of related swaps by a banking entity in a transaction in which the banking entity purchases (or sells) a swap with a customer and contemporaneously sells (or purchases) an offsetting derivative in connection with a loan or open credit facility between the banking entity and the customer, if the rate, asset, liability or other notional item underlying the swap with the customer is, or is directly related to, a financial term of the loan or open credit facility with the customer (including, without limitation, the loan or open credit facility's duration, rate of interest, currency or currencies, or principal amount) and the offsetting swap is designed to reduce or otherwise significantly mitigate one or more specific, identifiable risks of the swap(s) with the customer.

In considering any of these alternatives, the Agencies request comment on what parameters would be appropriate for the exclusion or exemption and what conditions should be considered to address any concerns about whether such an exclusion or exemption could be too broad.

Question 101. Is it appropriate to treat loan-related swaps as permissible under the market making exemption if a banking entity stands ready to enter into such swaps upon request by a customer, but enters into such swaps on an infrequent basis due to the nature of the demand for such swaps? Why or why not?

Question 102. Should a banking entity standing ready to transact in either direction on behalf of customers in such swaps be eligible for the market making exemption if, as a practical matter, it more frequently encounters demand on one side of the market and less frequently encounters demand on the other side for such products? Why or why not?

Question 103. Is the scenario described above for the treatment of loan-related swaps workable? If not, why not? Are there alternative approaches that would be more effective and consistent with the statute?

Question 104. Should the Agencies exclude loan-related swaps from the definition of proprietary trading under § ____.3? Would including loan-related swaps within the definition of the ''trading account'' or ''proprietary trading'' be consistent with the statutory definition of trading account? Why or why not?

Question 105. In the alternative, should the Agencies provide an exclusion for such loan-related swaps under § ____.6? What would be the benefits or drawbacks of each approach? How would permitting such loan-related swaps pursuant to the Agencies' authority under section 13(d)(1)(J) of the BHC Act promote and protect the safety and soundness of banking entities and

[120] The Agencies note that ''market making'' for purposes of the 2013 final rule, including for this proposal, is limited to the context of the 2013 final rule and is not applicable to any other rule, the federal securities laws, or in any other context outside of the 2013 final rule.

[121] *See* 2013 final rule § ____.4(b)(2)(i); 79 FR at 5595–5597.

[122] *See, e.g.,* 79 FR at 5596 (''. . . the Agencies continue to recognize that market makers in highly illiquid markets may trade only intermittently *or at the request of particular customers,* which is sometimes referred to as trading by appointment.'') (emphasis added).

[123] The Agencies understand that, for the reasons described in this section, loan-related swaps present a particular challenge for smaller banking entities that are neither subject to the market risk rule nor registered as dealers. On the other hand, such swaps typically do not present the same challenges for banking entities that are subject to the market risk rule or are registered as dealers because the availability of the market-making exemption is apparent.

[124] This section's focus on market making is provided solely for purpose of the proposal's implementation of section 13 of the BHC Act and does not affect a banking entity's obligation to comply with additional or different requirements under applicable securities, derivatives, banking, or other laws.

the financial stability of the United States? If an exclusion or permitted activity is adopted, should the Agencies limit which banking entities may use the exclusion or permitted activity, and what conditions, if any, should be placed on the types, volume, or other characteristics of the loan-related swaps and the related activity?

Question 106. How should loan-related swaps be defined? What parameters should be used to assess which swaps meet the definition?

Question 107. Should other types of swaps also be addressed in the same manner? For example, should the Agencies provide further guidance, or include in any exclusion or exemption other end-user customer driven swaps used by the customer to hedge commercial risk?

h. Market Making Hedging

During implementation of the 2013 final rule, the Agencies received a number of inquiries regarding the circumstances under which banking entities could elect to comply with market making risk management provisions permitted in § ____.4(b) or alternatively the risk-mitigating hedging requirements under § ____.5. These inquiries generally related to whether a trading desk could treat an affiliated trading desk as a client, customer, or counterparty for purposes of the market making exemption's RENTD requirement; and whether, and under what circumstances, one trading desk could undertake market making risk management activities for one or more other trading desks.

Each trading desk engaging in a transaction with an affiliated trading desk that meets the definition of proprietary trading must rely on one of the exemptions of section 13 of the BHC Act and the 2013 final rule in order for the transaction to be permissible. In one example presented to the Agencies, one trading desk of a banking entity may make a market in a certain financial instrument (*e.g.,* interest rate swaps), and then transfer some of the risk of that instrument (*e.g.,* foreign exchange (''FX'') risk) to a second trading desk (*e.g.,* an FX swaps desk) that may or may not separately engage in market making-related activity. The Agencies request comment as to whether, in such a scenario, the desk taking the risk (in the preceding example, the FX swaps desk) and the market making desk (in the preceding example, the interest rate desk) should be permitted to treat each other as a client, customer, or counterparty for purposes of establishing risk limits or reasonably expected near-term demand levels under the market making exemption.

The Agencies also request comment as to whether each desk should be permitted to treat swaps executed between the desks as permitted market making-related activities of one or both desks if the swap does not cause the relevant desk to exceed its applicable limits and if the swap is entered into and maintained in accordance with the compliance requirements applicable to the desk, without treating the affiliated desk as a client, customer, or counterparty for purposes of establishing or increasing its limits. This approach would be intended to maintain appropriate limits on proprietary trading by not permitting an expansion of a trading desk's market making limits based on internal transactions. At the same time, this approach would be intended to permit efficient internal risk management strategies within the limits established for each desk. The Agencies are also requesting comment on the circumstances in which an organizational unit of an affiliate (''affiliated unit'') of a trading desk engaged in market making-related activities in compliance with § ____.4(b) (''market making desk'') would be permitted to enter into a transaction with the market making desk in reliance on the market making risk management exemption available to the market making desk. In this scenario, to effect such reliance the market making desk would direct the affiliated unit to execute a risk-mitigating transaction on the market making desk's behalf. If the affiliated unit does not independently satisfy the requirements of the market making exemption with respect to the transaction, it would be permitted to rely on the market making exemption available to the market making desk for the transaction if: (i) The affiliated unit acts in accordance with the market making desk's risk management policies and procedures established in accordance with § ____.4(b)(2)(iii); and (ii) the resulting risk mitigating position is attributed to the market making desk's financial exposure (and not the affiliated unit's financial exposure) and is included in the market making desk's daily profit and loss calculation. If the affiliated unit establishes a risk-mitigating position for the market making desk on its own accord (*i.e.,* not at the direction of the market making desk) or if the risk-mitigating position is included in the affiliated unit's financial exposure or daily profit and loss calculation, then the affiliated unit may still be able to comply with the requirements of the risk-mitigating hedging exemption pursuant to § ____.5 for such activity.

The Agencies request comment on the issues identified above. In particular, the Agencies request comment on the following questions:

Question 108. Should the Agencies clarify the ability of banking entities to engage in hedging transactions directly related to market making positions, including multi-desk market making hedging, regardless of which desk undertakes the hedging trades?

Question 109. Have banking entities found that certain restrictions on market making hedging activities under the final rule impede the ability of banking entities to effectively and efficiently engage in such hedging transactions? If so, what specific requirements have proved to be the most problematic?

Question 110. How effective are the existing restrictions on market making hedging activities at reducing risks within a banking entity's investment portfolio? Please explain.

Question 111. Should the Agencies permit banking entities to include affiliate hedging transactions in determining the reasonably expected near-term demand of customers, clients, and counterparties, and in establishing internal risk limits? Why or why not?

Question 112. Would the changes separately proposed to § ____.5 of the 2013 final rule, or other changes to § ____.5, eliminate the need for the additional interpretations described above, for example, because a banking entity could more easily conduct these activities in accordance with the requirements of § ____.5?

3. Section ____.5: Permitted Risk-Mitigating Hedging Activities

a. Section ____.5 of the 2013 Final Rule

Section 13(d)(1)(C) provides an exemption for risk-mitigating hedging activities that are designed to reduce the specific risks to a banking entity in connection with and related to individual or aggregated positions, contracts, or other holdings. Section __.5 of the 2013 final rule implements section 13(d)(1)(C) of the BHC Act.

Section ____.5 of the 2013 final rule provides a multi-faceted approach to implementing the hedging exemption to ensure that hedging activity is designed to be risk-reducing and does not mask prohibited proprietary trading. Risk-mitigating hedging activities must comply with certain conditions for those activities to qualify for the exemption. Generally, a banking entity relying on the hedging exemption must have in place an appropriate internal compliance program that meets specific requirements to support its compliance with the terms of the exemption, and the compensation arrangements of persons performing risk-mitigating hedging activities must be designed not to reward or incentivize prohibited proprietary trading.[125] In addition, the hedging activity itself must meet specified conditions; for example, at inception, it must be designed to reduce or otherwise significantly mitigate and must demonstrably reduce or otherwise significantly mitigate one or more specific, identifiable risks arising in connection with and related to identified positions, contracts, or other holdings of the banking entity, and the activity must not give rise to any significant new or additional risk that is not itself contemporaneously hedged.[126] Finally, § ____.5 establishes certain documentation requirements with respect to the purchase or sale of financial instruments made in reliance of the risk-mitigating exemption under certain circumstances.[127]

b. Proposed Amendments to Section ____.5

i. Correlation Analysis for Section ____.5(b)(1)(iii)

Section ____.5(b)(1)(iii) of the 2013 final rule requires a correlation analysis as part of the broader analysis of whether a hedging position, technique, or strategy (1) may reasonably be expected to reduce or otherwise significantly mitigate the specific risks being hedged, and (2) demonstrably reduces or otherwise significantly mitigates the specific risks being hedged.

In adopting the 2013 final rule, the Agencies indicated that they expected the banking entity to undertake a correlation analysis that will provide a strong indication of whether a potential hedging position, strategy, or technique will or will not demonstrably reduce the risk it is designed to reduce. The nature and extent of the correlation analysis undertaken would be dependent on the facts and circumstances of the hedge and the underlying risks targeted. If sufficient correlation cannot be demonstrated, then the Agencies expected that such analysis would explain why not and also how the proposed hedging position, technique, or strategy was designed to reduce or significantly mitigate risk and how that reduction or mitigation can be demonstrated.

In the course of implementing § ____.5 of the 2013 final rule, the Agencies have become aware of practical difficulties with the correlation analysis requirement. In particular, banking entities have communicated that the correlation analysis requirement can add delays, costs, and uncertainty, and have questioned the extent to which the required correlation analysis helps to ensure the accuracy of hedging activity or compliance with the requirements of section 13 of the BHC Act.

During implementation, the Agencies have observed that a banking entity may sometimes develop or modify its hedging activities as the risks it seeks to hedge are occurring, and the banking entity may not have enough time to undertake a complete correlation analysis before it needs to put the hedging transaction in place to fully hedge against the risks as they arise. In other cases, the hedging activity, while designed to reduce risk as required by the statute, may not be practical if delays or compliance costs resulting from undertaking a correlation analysis outweigh the benefits of performing the analysis. In addition, the extent to which two activities are correlated and will remain correlated into the future can vary significantly from one position, strategy, or technique to another. Assessing whether a particular hedge is sufficiently correlated to satisfy the correlation requirement of § ____.5(b)(1)(iii) may be difficult, especially if that assessment must be justified after the hedge is entered into (when information that may not have been available earlier may become relevant). Given this uncertainty, banking entities may be hesitant to undertake a risk-mitigating hedge out of concern of inadvertently violating the regulation because the hedge did not satisfy one of the requirements.

Based on the implementation experience of the Agencies and public feedback, the Agencies are proposing to remove the correlation analysis requirement for risk-mitigating hedging activities. The Agencies anticipate that removing this correlation analysis requirement would avoid the uncertainties described above without significantly impacting the conditions that risk-mitigating hedging activities must meet in order to qualify for the exemption. The Agencies also note that section 13 of the BHC Act does not specifically require this correlation analysis. Instead, the statute only provides that a hedging position, technique, or strategy is permitted so long as it is ''. . . designed to reduce the specific risks to the banking entity . . .'' [128] The 2013 final rule added the correlation analysis requirement as a measure intended to ensure compliance with this exemption.

ii. Hedge Demonstrably Reduces or Otherwise Significantly Mitigates Specific Risks for Section ____.5(b)(2)(iv)(B)

Similarly, the requirement in § ____.5(b)(2)(iv)(B) that a risk-mitigating hedging activity demonstrably reduces or otherwise significantly mitigates specific risks is not directly required by section 13(d)(1)(C) of the BHC Act. As noted above, the statute instead requires that the hedge be designed to reduce or otherwise significantly mitigate specific risks. The Agencies believe that this is effective for addressing the relevant risks.

In practice, it appears that the requirement to show that hedging activity demonstrably reduces or otherwise significantly mitigates a specific, identifiable risk that develops over time can be complex and could potentially reduce bona fide risk-mitigating hedging activity. The Agencies recognize that in some circumstances, it may be difficult for banking entities to know with sufficient certainty that a potential hedging activity being considered will continuously demonstrably reduce or significantly mitigate an identifiable risk after it is implemented. For example, unforeseeable changes in market conditions, event risk, sovereign risk, and other factors that cannot be known in advance could reduce or eliminate the otherwise intended hedging benefits. In these events, it would be very difficult, if not impossible, for a banking entity to comply with the continuous requirement to demonstrably reduce or significantly mitigate the identifiable risks. In such cases, a banking entity may determine not to enter into what would otherwise be an effective hedge of foreseeable risks out of concern that the banking entity may not be able to effectively comply with the continuing hedging or mitigation requirement if unforeseen risks occur. Therefore, the proposal would remove the ''demonstrably reduces or otherwise significantly mitigates'' specific risk requirement from § ____.5(b)(1)(iv)(B).[129]

[125] *See* 2013 final rule § ____.5(b)(1) and (3).

[126] *See* 2013 final rule § ____.5(b)(2).

[127] *See* 2013 final rule § ____.5(c).

[128] 12 U.S.C. 1851(d)(1)(C).

[129] For the same reasons, the Agencies are proposing to revise § ____.13(a) of the 2013 final rule (relating to permitted risk-mitigating hedging activities involving acquisition or retention of an ownership interest in a covered fund) to remove the references to covered fund ownership interests

Continued

iii. Reduced Compliance Requirements for Banking Entities that do not have Significant Trading Assets and Liabilities for Section ____.5(b) and (c)

Consistent with the proposed changes relating to the scope of the requirements for banking entities that do not have significant trading assets and liabilities, the Agencies have reassessed the requirements in § ____.5(b) and § ____.5(c) for banking entities that do not have significant trading assets and liabilities. For these firms, the Agencies are proposing to eliminate the requirements for a separate internal compliance program for risk-mitigating hedging under § ____.5(b)(1); certain of the specific requirements of § ____.5(b)(2); the limits on compensation arrangements for persons performing risk-mitigating activities in § ____.5(b)(3); and the documentation requirements for those activities in § ____.5(c). These requirements are overly burdensome and complex for banking entities with moderate trading assets and liabilities. In general, the Agencies expect that banking entities without significant trading assets and liabilities are less likely to engage in the types of trading activities and hedging strategies that would necessitate these additional compliance requirements.

Given these considerations, it appears that removing the requirements for banking entities that do not have significant trading assets and liabilities to comply with the requirements of § ____.5(b) and § ____.5(c) is unlikely to materially increase risks to the safety and soundness of the banking entity or U.S. financial stability. Therefore, the Agencies are proposing to eliminate and modify these requirements for banking entities that do not have significant trading assets and liabilities. In place of those requirements, new § ____.5(b)(2) of the proposal would require that risk-mitigating hedging activities for those banking entities be: (i) At the inception of the hedging activity (including any adjustments), designed to reduce or otherwise significantly mitigate one or more specific, identifiable risks, including the risks specifically enumerated in the proposal; and (ii) subject to ongoing recalibration, as appropriate, to ensure that the hedge remains designed to reduce or otherwise significantly mitigate one or more specific, identifiable risks. The Agencies anticipate that these tailored requirements for banking entities without significant trading assets and liabilities would effectively implement the statutory requirement that the hedging transactions be designed to reduce specific risks the banking entity incurs. In connection with these proposed changes, the proposal also includes conforming changes to § ____.5(b)(1) and § ____.5(c) of the final 2013 rule to make the requirements of those sections applicable only to banking entities that have significant trading assets and liabilities.

iv. Reduced Documentation Requirements for Banking Entities That Have Significant Trading Assets and Liabilities for Section ____.5(c)

Section ____.5(c) of the 2013 final rule requires enhanced documentation for hedging activity conducted under the risk-mitigating hedging exemption if the hedging is not conducted by the specific trading desk establishing or responsible for the underlying positions, contracts, or other holdings, the risks of which the hedging activity is designed to reduce.[130] The 2013 final rule also requires enhanced documentation for hedges established to hedge aggregated positions across two or more desks. The 2013 final rule recognizes that a trading desk may be responsible for hedging aggregated positions of that desk and other desks, business units, or affiliates. In that case, the trading desk putting on the hedge is at least one step removed from some of the positions being hedged. Accordingly, the 2013 final rule provides that the documentation requirements in § ____.5(c) apply if a trading desk is hedging aggregated positions that include positions from more than one trading desk.[131]

The 2013 final rule also requires enhanced documentation for hedges established by the specific trading desk establishing or directly responsible for the underlying positions, contracts, or other holdings, the risks of which the hedge is designed to reduce, if the hedge is effected through a financial instrument, technique, or strategy that is not specifically identified in the trading desk's written policies and procedures as a product, instrument, exposure, technique, or strategy that the trading desk may use for hedging.[132] The Agencies note that this documentation requirement does not apply to hedging activity conducted by a trading desk in connection with the market making-related activities of that desk or by a trading desk that conducts hedging activities related to the other permissible trading activities of that desk so long as the hedging activity is conducted in accordance with the compliance program for that trading desk.

For banking entities that have significant trading assets and liabilities, the proposal would retain the enhanced documentation requirements for the hedging transactions identified in § ____.5(c)(1) to permit evaluation of the activity. While this documentation requirement results in certain more extensive compliance efforts (as acknowledged by the Agencies when the 2013 final rule was adopted),[133] the Agencies continue to believe this requirement serves an important role to prevent evasion of the requirements of section 13 of the BHC Act and the 2013 final rule.

However, based on the Agencies' experience during the first several years of implementation of the 2013 final rule, it appears that many hedges established by one trading desk for other affiliated desks are often part of common hedging strategies that are used repetitively. In those instances, the regulatory purpose for the documentation requirements of § ____.5(c) of the 2013 final rule, to permit subsequent evaluation of the hedging activity and prevent evasion, is much less relevant. In weighing the significantly reduced regulatory and supervisory relevance of additional documentation of common hedging trades against the complexity of complying with the enhanced documentation requirements, it appears that the documentation requirements are not necessary in those instances. Reducing the documentation requirement for common hedging activity undertaken in the normal course of business for the benefit of one or more other trading desks would also make beneficial risk-mitigating activity more efficient and potentially improve the timeliness of important risk-mitigating hedging activity, the effectiveness of which can be time sensitive.

Accordingly, the Agencies are proposing a new paragraph (c)(4) in § ____.5 that would eliminate the enhanced documentation requirement for hedging activities that meets certain conditions. In excluding a trading desk's common hedging instruments from the enhanced documentation requirements in § ____.5(c), the Agencies seek to distinguish those financial instruments that are commonly used for hedging activities and require the banking entity to have in place appropriate limits so that less common or unusual levels of hedging activity would still be subject to

acquired or retained by the banking entity "demonstrably" reducing or otherwise significantly mitigating the specific, identifiable risks to the banking entity described in that section.

[130] *See* 2013 final rule § ____.5(c)(1)(i).

[131] *See* 2013 final rule § ____.5(c)(1)(iii)

[132] *See* 2013 final rule § ____.5(c)(1)(ii)

[133] 79 FR at 5638–39.

the enhanced documentation requirements. Accordingly, the proposal would provide that compliance with the enhanced documentation requirement would not apply to purchases and sales of financial instruments for hedging activities that are identified on a written list of financial instruments pre-approved by the banking entity that are commonly used by the trading desk for the specific types of hedging activity for which the financial instrument is being purchased or sold. In addition, under the proposal, at the time of the purchase or sale of the financial instruments, the related hedging activity would need to comply with written, pre-approved hedging limits for the trading desk purchasing or selling the financial instrument, which would be required to be appropriate for the size, types, and risks of the hedging activities commonly undertaken by the trading desk; the financial instruments purchased and sold by the trading desk for hedging activities; and the levels and duration of the risk exposures being hedged. These conditions on the pre-approved limits are intended to provide clarity as to the types and characteristics of the limits needed to comply with the proposal. The Agencies would expect that a banking entity's pre-approved limits should be reasonable and set to correspond to the type of hedging activity commonly undertaken and at levels consistent with the hedging activity undertaken by the trading desk in the normal course.

The Agencies request comment on the proposed revisions to § ____.5 regarding permitted risk-mitigating hedging activities. In particular, the Agencies request comment on the following questions:

Question 113. What factors, if any, should the Agencies consider in determining whether to remove the requirement that a correlation analysis must be used to determine whether a hedging position, technique, or strategy reduces or otherwise significantly mitigates the specific risk being hedged?

Question 114. Is the Agencies' assessment of the complexities of the correlation analysis requirement across the spectrum of hedging activities accurate? Why or why not?

Question 115. How does the requirement to undertake a correlation analysis impact a banking entity's decision on whether to enter into different types of hedges?

Question 116. How does the correlation analysis requirement affect the timing of hedging activities?

Question 117. Does the current requirement that a hedge must demonstrably reduce or otherwise significantly mitigate specific risks lead banking entities to decline to enter into hedging transactions that would otherwise be designed to reduce or otherwise significantly mitigate specific risks arising in connection with identified positions, contracts, or other holdings of the banking entity? If so, under what circumstances?

Question 118. Would reducing the compliance requirements of § ____.5(b) and § ____.5(c) for banking entities that do not have significant trading assets and liabilities reduce compliance costs and increase certainty for these banking entities?

Question 119. Would the proposed reductions in the compliance requirements for risk-mitigating hedging activities by banking entities that do not have significant trading assets and liabilities increase materially the risks to the safety and soundness of the banking entity or U.S. financial stability? Why or why not?

Question 120. Would the proposed exclusion from the enhanced documentation requirements for trading desks that hedge risk of other desks under the circumstances described make risk-mitigating hedging activities more efficient and timely? Why or why not? Should any of the existing documentation requirements be retained for firms without significant trading assets and liabilities? Are there any hedging documentation requirements applicable in other contexts (*e.g.,* accounting) that could be leveraged for the purposes of this requirement? How would the proposed exclusion from the enhanced documentation requirements impact both internal and external compliance and oversight of a banking entity?

Question 121. With respect to the proposed exclusion from enhanced documentation for trading desks that hedge risk of other desks under certain circumstances, are the requirements for a pre-approved list of financial instruments and pre-approved hedging limits reasonable? Should those requirements be modified, expanded, or reduced? If so, how? Should the Agencies provide greater clarity for determining which financial instruments are ''commonly used by the trading desk for the specific type of hedging activity for which the financial instrument is being purchased or sold'' for inclusion on the pre-approved list? Similarly, should the Agencies provide greater clarity for determining pre-approved hedging limits?

Question 122: The Agencies have proposed using accounting principles as part of the definition of trading account. Should the Agencies similarly use accounting principles to refer to risk-mitigated hedging activity? For example, should the Agencies provide an exemption for hedging activity that is accounted for under the provisions of ASC 815 (Derivatives and Hedging)? Why or why not? Should the Agencies require entities that engage in risk-mitigating hedging activity measure hedge effectiveness? Why or why not?

4. Section ____.6(e): Permitted Trading Activities of a Foreign Banking Entity

Section 13(d)(1)(H) of the BHC Act [134] permits certain foreign banking entities to engage in proprietary trading that occurs solely outside of the United States (the foreign trading exemption).[135] The statute does not define when a foreign banking entity's trading occurs ''solely outside of the United States.''

a. Permitted Trading Activities of a Foreign Banking Entity

The 2013 final rule includes several conditions on the availability of the foreign trading exemption. Specifically, in addition to limiting the exemption to foreign banking entities where the purchase or sale is made pursuant to paragraph (9) or (13) of section 4(c) of the BHC Act,[136] the 2013 final rule provides that the foreign trading exemption is available only if:

(i) The banking entity engaging as principal in the purchase or sale (including any personnel of the banking entity or its affiliate that arrange, negotiate, or execute such purchase or sale) is not located in the United States or organized under the laws of the United States or of any State;

(ii) The banking entity (including relevant personnel) that makes the decision to purchase or sell as principal

[134] Section 13(d)(1)(H) of the BHC Act permits trading conducted by a foreign banking entity pursuant to paragraph (9) or (13) of section 4(c) of the BHC Act (12 U.S.C. 1843(c)), if the trading occurs solely outside of the United States, and the banking entity is not directly or indirectly controlled by a banking entity that is organized under the laws of the United States or of one or more States. *See* 12 U.S.C. 1851(d)(1)(H).

[135] This section's discussion of the concept of ''solely outside of the United States'' is provided solely for purposes of the proposal's implementation of section 13(d)(1)(H) of the BHC Act, and does not affect a banking entity's obligation to comply with additional or different requirements under applicable securities, banking, or other laws. Among other differences, section 13 of the BHC Act does not necessarily include the customer protection, transparency, anti-fraud, anti-manipulation, and market orderliness goals of other statutes administered by the Agencies. These other goals or other aspects of those statutory provisions may require different approaches to the concept of ''solely outside of the United States'' in other contexts.

[136] 12 U.S.C. 1843(c)(9), (13). *See* 2013 final rule § ____.6(e)(1)(i) and (ii).

is not located in the United States or organized under the laws of the United States or of any State;

(iii) The purchase or sale, including any transaction arising from risk-mitigating hedging related to the instruments purchased or sold, is not accounted for as principal directly or on a consolidated basis by any branch or affiliate that is located in the United States or organized under the laws of the United States or of any State;

(iv) No financing for the banking entity's purchase or sale is provided, directly or indirectly, by any branch or affiliate that is located in the United States or organized under the laws of the United States or of any State;

(v) The purchase or sale is not conducted with or through any U.S. entity,[137] other than:

(A) A purchase or sale with the foreign operations of a U.S. entity, if no personnel of such U.S. entity that are located in the United States are involved in the arrangement, negotiation or execution of such purchase or sale.

The Agencies also exercised their authority under section 13(d)(1)(J) [138] to allow the following types of purchases or sales to be conducted with a U.S. entity:

(B) A purchase or sale with an unaffiliated market intermediary acting as principal, provided the purchase or sale is promptly cleared and settled through a clearing agency or derivatives clearing organization acting as a central counterparty; or

(C) A purchase or sale through an unaffiliated market intermediary, provided the purchase or sale is conducted anonymously (*i.e.,* each party to the purchase or sale is unaware of the identity of the other party(ies) to the purchase or sale) on an exchange or similar trading facility and promptly cleared and settled through a clearing agency or derivatives clearing organization acting as a central counterparty.

The proposal would modify the requirements of the 2013 final rule relating to the foreign trading exemption in a number of ways. Specifically, the proposal would retain the first three requirements of the 2013 final rule, with a modification to the first requirement, and would remove the last two requirements of § ____.6(e)(3). As a result, § ____.6(e)(3), as modified by the proposal, would require that for a foreign banking entity to be eligible for this exemption:

(i) The banking entity engaging as principal in the purchase or sale (including relevant personnel) is not located in the United States or organized under the laws of the United States or of any State;

(ii) The banking entity (including relevant personnel) that makes the decision to purchase or sell as principal is not located in the United States or organized under the laws of the United States or of any State; and

(iii) The purchase or sale, including any transaction arising from risk-mitigating hedging related to the instruments purchased or sold, is not accounted for as principal directly or on a consolidated basis by any branch or affiliate that is located in the United States or organized under the laws of the United States or of any State.

The proposal would maintain these three requirements in order to ensure that the banking entity (including any relevant personnel) that engages in the purchase or sale as principal or makes the decision to purchase or sell as principal is not located in the United States or organized under the laws of the United States or any State. Furthermore, the proposal would retain the 2013 final rule's requirement that the purchase or sale, including any transaction arising from a related risk-mitigating hedging transaction, is not accounted for as principal at the U.S. operations of the foreign banking entity. The proposal would, however, modify the first requirement relative to the 2013 final rule, to replace the requirement that any personnel of the banking entity that arrange, negotiate, or execute such purchase or sale are not located in the United States with one that would restrict only the relevant personnel engaged in the banking entity's decision in the purchase or sale not located in the United States. Under the proposed approach, for purposes of section 13 of the BHC Act and the implementing regulations, the focus of the requirement would be on whether the banking entity that engages in the purchase or sale as principal (including any relevant personnel) is located in the United States. The purpose of this modification is to make clear that some limited involvement by U.S. personnel (*e.g.,* arranging or negotiating) would be consistent with this exemption so long as the principal bearing the risk of a purchase or sale is outside the United States. The proposed modifications would permit a foreign banking entity to engage in a purchase or sale under this exemption so long as the principal risk and actions of the purchase or sale do not take place in the United States for purposes of section 13 and the implementing regulations. The proposal would also eliminate the following two requirements from § ____.6(e), which are referred to as the ''financing prong'' and the ''counterparty prong,'' respectively, in the discussion that follows:

No financing for the banking entity's purchase or sale is provided, directly or indirectly, by any branch or affiliate that is located in the United States or organized under the laws of the United States or of any State;

The purchase or sale is not conducted with or through any U.S. entity, other than:

A purchase or sale with the foreign operations of a U.S. entity, if no personnel of such U.S. entity that are located in the United States are involved in the arrangement, negotiation or execution of such purchase or sale.

A purchase or sale with an unaffiliated market intermediary acting as principal, provided the purchase or sale is promptly cleared and settled through a clearing agency or derivatives clearing organization acting as a central counterparty; or

A purchase or sale through an unaffiliated market intermediary, provided the purchase or sale is conducted anonymously (*i.e.* each party to the purchase or sale is unaware of the identity of the other party(ies) to the purchase or sale) on an exchange or similar trading facility and promptly cleared and settled through a clearing agency or derivatives clearing organization acting as a central counterparty.

Since the adoption of the 2013 final rule, foreign banking entities have communicated to the Agencies that these requirements have unduly limited their ability to make use of the statutory exemption for proprietary trading and have resulted in an impact on foreign banking entities' operations outside of the United States that these banking entities believe is broader than necessary to achieve compliance with the requirements of section 13 of the BHC Act. In response to these concerns, the Agencies are proposing to remove the financing prong and the counterparty prong, which would focus the key requirements of this exemption on the principal actions and risk of the transaction. In addition, the proposal would remove the financing prong to address concerns that the fungibility of financing has made this requirement difficult to apply in practice in certain circumstances to determine whether particular financing is tied to a

[137] ''U.S. entity'' is defined for purposes of this provision as any entity that is, or is controlled by, or is acting on behalf of, or at the direction of, any other entity that is, located in the United States or organized under the laws of the United States or of any State. *See* 2013 final rule § ____.6(e)(4).

[138] 12 U.S.C. 1851(d)(1)(J).

particular trade. Market participants have raised a number of questions about the financing prong and have indicated that identifying whether financing has been provided by a U.S. affiliate or branch can be exceedingly complex, in particular with respect to demonstrating that financing has not been provided by a U.S. affiliate or branch with respect to a particular transaction. To address the concerns raised by foreign banking entities and other market participants, the proposal would amend the foreign trading exemption to focus on the principal risk of a transaction and the location of the actions as principal and trading decisions, so that a foreign banking entity would be able to make use of the exemption so long as the risk of the transaction is booked outside of the United States. While the Agencies recognize that a U.S. branch or affiliate that extends financing could bear some risks, the Agencies note that the proposed modifications to the foreign trading exemption are designed to require that the principal risks of the transaction occur and remain solely outside of the United States. For example, the exemption would continue to provide that the purchase or sale, including any transaction arising from risk-mitigating hedging related to the instruments purchased or sold, may not be accounted for as principal directly or indirectly on a consolidated basis by any U.S. branch or affiliate.

Similarly, foreign banking entities have communicated to the Agencies that the counterparty prong has been overly difficult and costly for banking entities to monitor, track, and comply with in practice. As a result, the Agencies are proposing to remove the requirement that any transaction with a U.S. counterparty be executed solely with the foreign operations of the U.S. counterparty (including the requirement that no personnel of the counterparty involved in the arrangement, negotiation, or execution may be located in the United States) or through an unaffiliated intermediary and an anonymous exchange in order to materially reduce the reported inefficiencies associated with rule compliance. In addition, market participants have indicated that this requirement has in practice led foreign banking entities to overly restrict the range of counterparties with which transactions can be conducted, as well as disproportionately burdened compliance resources associated with those transactions, including with respect to counterparties seeking to do business with the foreign banking entity in foreign jurisdictions.

As a result, the Agencies propose to remove the counterparty prong. The proposal would focus the requirements of the foreign trading exemption on the location of a foreign banking entity's decision to trade, action as principal, and principal risk of the purchase or sale. This proposed focus on the location of actions and risk as principal is intended to align with the statute's definition of ''proprietary trading'' as ''engaging as principal for the trading account of the banking entity.''[139] Consistent with that approach, the focus of the proposed approach would be on the activities of a foreign banking entity as principal in the United States. The statute exempts the trading of foreign banking entities that is conducted ''solely'' outside the United States. Under the proposal, the relevant inquiry would focus on whether the principal risk of the transaction is located or held outside of the United States and the location of the trading decision and banking entity acting as principal. The proposal would remove the requirements of § ____.6(e)(3) that are less directly relevant to these considerations.

Information provided by foreign banking entities has demonstrated that few trading desks of foreign banking entities have utilized the foreign trading exemption in practice. This information has raised concerns that the current requirements for the exemption may be overly restrictive of permitted activities. Accordingly, the proposal would modify the exemption under the 2013 final rule to make the requirements more workable, so that it may be available to foreign banking entities trading solely outside the United States.

The Agencies request comment as to whether the proposed modifications to the foreign trading exemption would result in disadvantages for U.S. banking entities competing with foreign banking entities. The statute contains an exemption to allow foreign banking entities to engage in trading activity that is solely outside the United States. The statute also contains a prohibition on proprietary trading for U.S. banking entities regardless of where their activity is conducted. The statute generally prohibits U.S. banking entities from engaging in proprietary trading because of the perceived risks of those activities to U.S. banking entities and the U.S. economy. The Agencies believe that this means that the prohibition on proprietary trading is intended make U.S. banking entities safer and stronger, and reduce risks to U.S. financial stability, and that the foreign operations of foreign banking entities should not be subject to the prohibition on proprietary trading for their activities overseas. The proposal would implement this distinction with respect to transactions that occur outside of the United States where the principal risk is booked outside of the United States and the actions and decisions as principal occur outside of the United States by foreign operations of foreign banking entities. Under the statute and the rulemaking framework, U.S. banking entities would be able to continue trading activities that are consistent with the statute and regulation, including permissible market-making, underwriting, and risk-mitigating hedging activities as well as other types of trading activities such as trading on behalf of customers. U.S. banking entities are permitted to engage in these trading activities as exemptions from the general prohibition on proprietary trading under the statute. Moreover, and consistent with the statute, the proposal seeks to streamline and reduce the requirements of several of these key exemptions to make them more workable and available in practice to all banking entities subject to section 13 of the BHC Act and the implementing regulations.[140]

Consistent with the 2013 final rule, the exemption under the proposal would not exempt the U.S. or foreign operations of U.S. banking entities from having to comply with the restrictions and limitations of section 13 of the BHC Act. Thus, the U.S. and foreign operations of a U.S. banking entity that is engaged in permissible market making-related activities or other permitted activities may engage in those transactions with a foreign banking entity that is engaged in proprietary trading in accordance with the exemption under § ____.6(e) of the 2013 final rule, so long as the U.S. banking entity complies with the requirements of § ____.4(b), in the case of market making-related activities, or other relevant exemption applicable to the U.S. banking entity. The proposal, like the 2013 final rule, would not impose a duty on the foreign banking entity or the U.S. banking entity to ensure that its counterparty is conducting its activity in conformance with section 13 and the implementing regulations. Rather, that

[139] *See* 12 U.S.C. 1851(h)(4) (emphasis added).

[140] At the same time, however, the Agencies recognize the possibility that there may also be risks to U.S. banking entities and the U.S. economy as a result of allowing foreign banking entities to conduct a broader range of activities within the United States. For example, and as discussed above, the Agencies are requesting comment on whether the proposal would give foreign banking entities a competitive advantage over U.S. banking entities with respect to identical trading activity in the United States.

obligation would be on each party subject to section 13 to ensure that it is conducting its activities in accordance with section 13 and the implementing regulations.

The proposal's exemption for trading of foreign banking entities outside the United States could potentially give foreign banking entities a competitive advantage over U.S. banking entities with respect to permitted activities of U.S. banking entities because foreign banking entities could trade directly with U.S. counterparties without being subject to the limitations associated with the market-making or other exemptions under the rule. This competitive disparity in turn could create a significant potential for regulatory arbitrage. In this respect, the Agencies seek to mitigate this concern through other changes in the proposal; for example, U.S. banking entities would continue to be able to engage in all of the activities permitted under the 2013 final rule and the proposal, including the simplified and streamlined requirements for market-making and risk-mitigating hedging and other types of trading activities. The proposal's modifications therefore in general seek to balance concerns regarding competitive impact while mitigating the concern that an overly narrow approach to the foreign trading exemption may cause market bifurcations, reduce the efficiency and liquidity of markets, make the exemption overly restrictive to foreign banking entities, and harm U.S. market participants.

The Agencies request comment on the proposal's revised approach to implementing the foreign trading exemption. In particular, the Agencies request comment on the following questions:

Question 123. Is the proposal's implementation of the foreign trading exemption appropriate and effectively delineated? If not, what alternative would be more appropriate and effective?

Question 124. Are the proposal's provisions regarding when an activity will be considered to have occurred solely outside the United States for purposes of the foreign trading exemption effective and sufficiently clear? If not, what alternative would be clearer and more effective? Should any requirements be modified or removed? If so, which requirements and why? Should additional requirements be added? If so, what requirements and why? For example, should the financing prong or the counterparty prong be retained or modified rather than eliminated? Why or why not? Do the proposed modifications effectively focus the foreign trading exemption on the principal actions and risk of the transaction and ensure that the principal risk remains solely outside the United States? Are there any other conditions the Agencies should include in the foreign trading and foreign fund exemptions to address the possibility that risks associated with foreign trading or covered fund activities could flow into the U.S. financial system through financing for those activities coming from U.S. branches of affiliates, without raising the same compliance difficulties banking entities have experienced with the current financing prong?

Question 125. What effects do commenters believe the proposed modifications to the foreign trading exemption, particularly with respect to trading with U.S. entities, would have with respect to the safety and soundness of banking entities and U.S. financial stability? Would the proposed modifications allow for risks to aggregate in the United States based on activity of foreign banking entities? For example, what effects would removal of the counterparty prong have for U.S. financial market liquidity, and what consequences could such effects have for the safety and soundness of banking entities and U.S. financial stability? Could the proposal be further modified, consistent with statutory requirements, to better promote and protect the safety and soundness of banking entities and U.S. financial stability? Please explain.

Question 126. What impact could the proposal have on a foreign banking entity's ability to trade in the United States? Should any additional requirements of the 2013 final rule be removed? Why or why not? If so, which requirements and why? Should any of the requirements of the 2013 final rule that the Agencies are proposing to eliminate be retained? Why or why not? If so, which requirements and why?

Question 127. Does the proposal's approach raise competitive equity concerns for U.S. banking entities? If so, in what ways? Would the proposed modifications allow for foreign entities to access the U.S. markets without commensurate regulation? How would this impact competition? Would this disadvantage U.S. entities? Would the proposed revisions to the 2013 final rule's exemptions for market making, underwriting, and risk-mitigating hedging and new exclusions contained in this proposal help to mitigate these concerns? How could such concerns be addressed while effectively implementing this statutory exemption?

Question 128. The proposed approach would eliminate the requirement in the 2013 final rule that trading performed pursuant to the foreign trading exemption not be conducted with or through any U.S. entity, subject to certain exceptions.[141] Would eliminating this requirement give foreign banking entities a competitive advantage over U.S. banking entities with respect to identical trading activity in the United States? For example, would eliminating this requirement give foreign banking entities a competitive advantage over U.S. banking entities with respect to permitted market-making or underwriting activities? Why or why not? Are there ways that any such competitive disparities could potentially be mitigated or eliminated in a manner consistent with the statute? If so, please explain. Would the proposed approach create opportunities for certain banking entities to avoid the operation of the rule in ways that would frustrate the purposes of the statute? If so, how?

Question 129. The proposed approach would eliminate the requirement in the 2013 final rule that personnel of the banking entity who arrange, negotiate, or execute a purchase or sale under the foreign trading exemption be located outside the United States.[142] Should this requirement be removed? Why or why not? Would eliminating this restriction, thereby allowing foreign banking entities to perform certain core market-facing activities in the United States and with U.S. customers, create competitive disparities between foreign banking entities and U.S. banking entities? Please explain. Are there ways that any such competitive disparities could potentially be mitigated or eliminated in a manner consistent with the statute? If so, please explain. Would the proposed approach create opportunities for banking entities to avoid the operation of the rule in ways that would frustrate the purposes of the statute? If so, how?

Question 130. Instead of removing the requirement that any personnel of the banking entity that arrange, negotiate, or execute a purchase or sale be located outside of the United States, should the Agencies provide definitions or guidance on these terms, for example, similar to definitions and guidance adopted or issued by the SEC and CFTC under Title VII of the Dodd-Frank Act and implementing regulations? Are there any other modifications that would be more appropriate?

[141] *See* § ____.6(e)(3).

[142] *See* §§ ____.6(e)(3)(i) and ____.6(e)(3)(v)(A).

C. Subpart C—Covered Fund Activities and Investments

1. Section ____.10: Prohibition on Acquisition or Retention of Ownership Interests in, and Certain Relationships With, a Covered Fund

a. Prohibition Regarding Covered Fund Activities and Investments

As noted above and except as otherwise permitted, section 13(a)(1)(B) of the BHC Act generally prohibits a banking entity from acquiring or retaining any ownership interest in, or sponsoring, a covered fund.[143] Section 13(d) of the BHC Act contains certain exemptions to this prohibition. Subpart C of the 2013 final rule implements these and other provisions of section 13 related to covered funds. Specifically, § ____.10(a) of the 2013 final rule establishes the scope of the covered fund prohibitions and § ____.10(b) of the 2013 final rule defines a number of key terms, including ''covered fund.'' Section ____.10(c) of the 2013 final rule tailors the definition of ''covered fund'' by providing particular exclusions. The covered fund definition, taking into account the particular exclusions, is central to the operation of subpart C of the 2013 final rule because it specifies the types of entities to which the prohibition contained in § ____.10(a) of the 2013 final rule applies, unless the relevant activity is specifically permitted under an available exemption contained elsewhere in subpart C of the final rule.

In the 2013 final rule, the Agencies adopted a tailored definition of ''covered fund'' that covers issuers of the type that would be investment companies but for section 3(c)(1) or 3(c)(7) of the Investment Company Act[144] with exclusions for certain specific types of issuers. The Agencies designed the exclusions to focus the covered fund definition on vehicles used for the investment purposes that the Agencies believed were the target of section 13 of the BHC Act.[145] The definition of ''covered fund'' under the 2013 final rule also includes certain funds organized and offered outside of the United States to address the potential for circumvention of the restrictions in section 13 through foreign fund structures and certain types of commodity pools for which a registered commodity pool operator has elected to claim the exemption provided by section 4.7 of the CFTC's regulations or investor limitations apply.[146] In the preamble to the 2013 final rule, the Agencies stated their belief that the definition was consistent with the words, structure, purpose, and legislative history of section 13 of the BHC Act.[147] In particular, the Agencies stated that the purpose of section 13 appears to be to limit the involvement of banking entities in high-risk proprietary trading, as well as their investment in, sponsorship of, and other connections with, entities that engage in investment activities for the benefit of banking entities, institutional investors, and high-net worth individuals.[148] Further, the Agencies indicated that section 13 permitted them to tailor the scope of the definition to funds that engage in the investment activities contemplated by section 13 (as opposed, for example, to vehicles that merely serve to facilitate corporate structures).[149] Tailoring the scope of the definition was intended to allow the Agencies to avoid any unintended results that might follow from a definition that was inappropriately imprecise.[150]

The Agencies request comment on whether the 2013 final rule's covered fund definition effectively implements the statute and is appropriately tailored to identify funds that engage in the investment activities contemplated by section 13. The Agencies also request comment on whether the definition has been inappropriately imprecise and, if so, whether that has led to any unintended results.

i. Covered Fund ''Base Definition''—Section ____.10(b)

In considering whether to further tailor the covered fund definition, the Agencies seek comment in this section on the 2013 final rule's general approach to defining the term ''covered fund'' and the 2013 final rule's ''base definition'' of covered fund, that is, the definition as provided in § ____.10(b) before applying the exclusions found in § ____.10(c), as well as alternatives to this base definition.[151] In the sections that follow the Agencies request comment on exclusions from the covered fund definition that relate to specific areas of concern expressed to the Agencies.

Question 131. The Agencies adopted in the 2013 final rule a unified definition of ''covered fund'' rather than having separate definitions for ''hedge fund'' and ''private equity fund'' because the statute defines ''hedge fund'' and ''private equity fund'' without differentiation. Instead of retaining a unified definition of ''covered fund,'' should the Agencies separately define ''hedge fund'' and ''private equity fund'' or define ''covered fund'' as a ''hedge fund'' or ''private equity fund''? Would such an approach more effectively implement the statute? If so, how should the Agencies define these terms and why? Alternatively, the Agencies request comment below as to whether the Agencies should provide exclusions from the covered fund base definition for an issuer that does not share certain characteristics commonly associated with a hedge fund or private equity fund. If the Agencies were to define the terms ''hedge fund'' and ''private equity fund,'' would it be more effective to do so with an exclusion from the covered fund definition for issuers that do not resemble ''hedge funds'' and ''private equity funds''?

Question 132. In the 2013 final rule, the Agencies tailored the scope of the definition to funds that engage in the investment activities contemplated by section 13. Does the 2013 final rule's definition of ''covered fund'' effectively include funds that engage in those

[143] *See* 12 U.S.C. 1851(a)(1)(B).

[144] Sections 3(c)(1) and 3(c)(7) of the Investment Company Act are exclusions commonly relied on by a wide variety of entities that would otherwise be covered by the broad definition of ''investment company'' contained in that Act. 12 U.S.C. 1851(h)(2). Sections 3(c)(1) and 3(c)(7) of the Investment Company Act, in relevant part, provide two exclusions from the definition of ''investment company'' for: (1) Any issuer whose outstanding securities are beneficially owned by not more than one hundred persons and which is not making and does not presently propose to make a public offering of its securities (other than short-term paper); or (2) any issuer, the outstanding securities of which are owned exclusively by persons who, at the time of acquisition of such securities, are ''qualified purchasers'' as defined by section 2(a)(51) of the Investment Company Act, and which is not making and does not at that time propose to make a public offering of such securities. *See* 15 U.S.C. 80a–3(c)(1) and (c)(7).

[145] *See* 79 FR at 5671.

[146] *Id.* In the preamble to the 2013 final rule, the Agencies also expressed their intent to exercise the statutory anti-evasion authority provided in section 13(e) of the BHC Act and other prudential authorities in order to address instances of evasion. The 2013 final rule permits the Agencies to jointly determine to include within the definition of ''covered fund'' any fund excluded from that definition, and this authority may be exercised to address instances of evasion. *See* 2013 final rule § ____.10(c).

[147] *See* 79 FR at 5670. Section 13(h)(2) provides that: ''the terms 'hedge fund' and 'private equity fund' mean an issuer that would be an investment company as defined in the [Investment Company Act] (15 U.S.C. 80a–1 *et seq.*), but for section 3(c)(1) or 3(c)(7) of that Act, *or* such similar funds as the [Agencies] may, by rule, as provided in subsection (b)(2), determine.'' *See* 12 U.S.C. 1851(h)(2) (emphasis added).

[148] *See* 79 FR at 5670.

[149] *See id.* at 5666.

[150] In adopting the 2013 final rule, the Agencies referred to legislative history that suggested that Congress may have foreseen that its base definition could lead to unintended results and might be overly broad, too narrow, or otherwise off the mark. *See id.* at 5670–71.

[151] *See* 2013 final rule § ____.10(b)(1)(i), (ii), and (iii).

investment activities? Are there funds that are included in the definition of ''covered fund'' that do not engage in those investment activities? If so, what types of funds, and should the Agencies modify the definition to exclude them? Are there funds that engage in those investment activities but are not included in the definition of ''covered fund''? If so, what types of funds and should the Agencies modify the definition to include them? If the Agencies should modify the definition, how should it be modified?

Question 133. In the preamble to the 2013 final rule, the Agencies stated that tailoring the scope of the definition of ''covered fund'' would allow the Agencies to avoid unintended results that might follow from a definition that is ''inappropriately imprecise.''[152] Has the final definition been ''inappropriately imprecise'' in practice? If so, how? Should the Agencies modify the base definition to be more precise? If so, how? Alternatively or in addition to modifying the base definition, could the Agencies modify or add any exclusions to make the definition more precise, as discussed below?

Question 134. The 2013 final rule's definition of ''covered fund'' includes certain funds organized and offered outside of the United States with respect to a U.S. banking entity that sponsors or invests in the fund in order to address structures that might otherwise allow circumvention of the restrictions of section 13. Does this ''foreign covered fund'' provision effectively address those circumvention concerns? If not, should the Agencies modify this provision to address those circumvention concerns more directly or in some other way? If so, how?

Question 135. The 2013 final rule's definition of ''covered fund'' includes certain commodity pools in order to address structures that might otherwise allow circumvention of the restrictions in section 13. In adopting this ''covered commodity pool'' provision, the Agencies sought to take a tailored approach that is designed to accurately identify those commodity pools that are similar to issuers that would be investment companies as defined in the Investment Company Act but for section 3(c)(1) or 3(c)(7) of that Act, consistent with section 13(h)(2) of the BHC Act. Does this ''covered commodity pool'' provision effectively address those circumvention concerns? If not, should the Agencies modify this provision to address those circumvention concerns more directly or in some other way? If so, how? Has the covered commodity pool provision been effective in including in the covered fund base definition those commodity pools that are similar to issuers that would be investment companies but for section 3(c)(1) or 3(c)(7)? Has it been under- or over-inclusive? What kinds of commodity pools have been included in or excluded from the covered fund base definition and are these inclusions or exclusions appropriate? If the covered commodity pool provision is under- or over-inclusive, what changes should the Agencies make and how would those changes be more effective?

Question 136. What kinds of compliance and other costs have banking entities incurred in analyzing whether particular issuers are covered funds and implementing compliance programs for covered fund activities? Has the breadth of the base definition raised particular compliance challenges? Have the 2013 final rule's exclusions from the covered fund definition helped to reduce compliance costs or provided greater certainty as to the scope of the covered fund definition?

Question 137. If the Agencies modify the covered fund base definition in whole or in part, would banking entities expect to incur significant costs or burdens in order to become compliant? That is, after having established compliance, trading, risk management, and other systems predicated on the 2013 final rule's covered fund definition, what are the kinds of costs and any other burdens and their magnitude that banking entities would experience if the Agencies were to modify the covered fund base definition?

Question 138. The Agencies understand that banking entities have already expended resources in reviewing a wide range of issuers to determine if they are covered funds, as defined in the 2013 final rule. What kinds of costs and burdens would banking entities and others expect to incur if the Agencies were to modify the covered fund base definition to the extent any modifications were to require banking entities to reevaluate issuers to determine if they meet any revised covered fund definition? To what extent would modifying the covered fund base definition require banking entities to reevaluate issuers that a banking entity previously had determined are not covered funds? Would any costs and burdens be justified to the extent the Agencies more effectively tailor the covered fund definition to focus on the concerns underlying section 13? Could any costs and burdens be mitigated if the Agencies further tailored or added exclusions from the covered fund definition or developed new exclusions, as opposed to changing the covered fund base definition?

Question 139. To what extent do the proposed modifications to other provisions of the 2013 final rule affect the impact of the scope of the covered fund definition? For example, as described below, the Agencies are proposing to eliminate some of the additional, covered-fund specific limitations that apply under the 2013 final rule to a banking entity's underwriting, market making, and risk-mitigating hedging activities. As another example, the Agencies are requesting comment below about whether to incorporate into § ____.14's limitations on covered transactions the exemptions provided in section 23A of the Federal Reserve Act (''FR Act'') and the Board's Regulation W. To the extent commenters have concerns regarding the breadth of the covered fund definition, would these concerns be addressed or mitigated by the changes the Agencies are proposing to the other covered fund provisions or on which the Agencies are seeking comment?

ii. Particular Exclusions From the Covered Fund Definition

As discussed above, the 2013 final rule contains exclusions from the base definition of ''covered fund'' that tailor the covered fund definition. The Agencies designed these exclusions to avoid any unintended results that might follow from a definition of ''covered fund'' that was inappropriately imprecise. In this section, the Agencies request comment on whether to modify certain existing exclusions from the covered fund definition. The Agencies also request comment on whether to provide new exclusions in order to more effectively tailor the definition. Finally, with respect to all of the potential modifications the Agencies discuss in this section, the Agencies seek comment as to the potential effect of the other changes the Agencies are proposing today to the covered fund provisions and on additional changes on which the Agencies seek comment. That is, would these proposed changes address in whole or in part any concerns about the breadth of the covered fund definition?

iii. Foreign Public Funds

The 2013 final rule generally excludes from the definition of ''covered fund'' any issuer that is organized or established outside of the United States and the ownership interests of which are (i) authorized to be offered and sold to retail investors in the issuer's home jurisdiction and (ii) sold predominantly

[152] *See* 79 FR at 5670–71.

through one or more public offerings outside of the United States.[153] The Agencies stated in the preamble to the 2013 final rule that they generally expect that an offering is made predominantly outside of the United States if 85 percent or more of the fund's interests are sold to investors that are not residents of the United States.[154]

The 2013 final rule places an additional condition on a U.S. banking entity's ability to rely on the FPF exclusion with respect to any FPF it sponsors.[155] The FPF exclusion is only available to a U.S. banking entity with respect to a foreign fund sponsored by the U.S. banking entity if, in addition to the requirements discussed above, the fund's ownership interests are sold predominantly to persons other than the sponsoring banking entity, affiliates of the issuer and the sponsoring banking entity, and employees and directors of such entities.[156] The Agencies stated in the preamble to the 2013 final rule that, consistent with the Agencies' view concerning whether an FPF has been sold predominantly outside of the United States, the Agencies generally expect that an FPF will satisfy this additional condition if 85 percent or more of the fund's interests are sold to persons other than the sponsoring U.S. banking entity and the specified persons connected to that banking entity.[157]

In adopting the FPF exclusion, the Agencies' view was that it is appropriate to exclude these funds from the ''covered fund'' definition because they are sufficiently similar to U.S. RICs.[158] The Agencies also expressed the view that the additional condition applicable to U.S. banking entities is designed to treat FPFs consistently with similar U.S. funds and to limit the extraterritorial application of section 13 of the BHC Act, including by permitting U.S. banking entities and their foreign affiliates to carry on traditional asset management businesses outside of the United States, while also seeking to limit the possibility for evasion through foreign public funds.[159]

The Agencies request comment on all aspects of the FPF exclusion, including whether the exclusion is effective in identifying foreign funds that may be sufficiently similar to RICs and permitting U.S. banking entities and their foreign affiliates to carry on traditional asset management businesses outside of the United States, as the Agencies contemplated in adopting this exclusion. As reflected in the detailed questions that follow, the Agencies seek comment on a range of possible ways to modify this exclusion, including: (i) Whether the Agencies could simplify or omit certain of the exclusion's conditions—including those not applicable to excluded RICs—while still identifying funds that should be excluded and addressing the possibility for evasion through the Agencies' broad anti-evasion authority; (ii) whether the exclusion's conditions requiring a fund to be authorized for sale to retail investors in the issuer's home jurisdiction and sold predominantly in public offerings outside of the United States should be retained and, if so, whether the Agencies should modify or clarify these conditions; and (iii) whether the additional conditions for U.S. banking entities with respect to the FPFs they sponsor are appropriate. Specifically, in considering whether to further tailor the FPF exclusion, the Agencies seek comment below on the following:

Question 140. Are foreign funds that satisfy the current conditions in the FPF exclusion sufficiently similar to RICs such that it is appropriate to exclude these foreign funds from the covered fund definition? Why or why not? Are there foreign funds that cannot satisfy the exclusion's conditions but that are nonetheless sufficiently similar to RICs such that it is appropriate to exclude these foreign funds from the covered fund definition? If so, how should the Agencies modify the exclusion's conditions to permit these funds to rely on it? Conversely, are there foreign funds that satisfy the exclusion's conditions but are not sufficiently similar to RICs such that it is not appropriate to exclude these funds from the covered fund definition? If so, how should the Agencies modify the exclusion's conditions to prohibit these funds from relying on it? Conversely, are changes to the FPF exclusion necessary given the other changes the Agencies are proposing today and on which the Agencies seek comment?

Question 141. RICs are excluded from the covered fund definition regardless of whether their ownership interests are sold in public offerings or whether their ownership interests are sold predominantly to persons other than the sponsoring banking entity, affiliates of the issuer and the sponsoring banking entity, and employees and directors of such entities. Is such an exclusion appropriate? Why or why not?

Question 142: As discussed above, the Agencies designed the FPF exclusion to identify foreign funds that are sufficiently similar to RICs such that it is appropriate to exclude these foreign funds from the covered fund definition, but included additional conditions not applicable to RICs in part to limit the possibility for evasion of the 2013 final rule. Do FPFs present a heightened risk of evasion that justifies these additional conditions, as they currently exist or with any of the modifications on which the Agencies request comment below? Why or why not?

Question 143: As an alternative, should the Agencies address concerns about evasion through other means, such as the anti-evasion provisions in § ____.21 of the 2013 final rule?[160] The

[153] *See* 2013 final rule § ____.10(c)(1); *See also* 79 FR at 5678 (''For purposes of this exclusion, the Agencies note that the reference to retail investors, while not defined, should be construed to refer to members of the general public who do not possess the level of sophistication and investment experience typically found among institutional investors, professional investors or high net worth investors who may be permitted to invest in complex investments or private placements in various jurisdictions. Retail investors would therefore be expected to be entitled to the full protection of securities laws in the home jurisdiction of the fund, and the Agencies would expect a fund authorized to sell ownership interests to such retail investors to be of a type that is more similar to a [RIC] rather than to a U.S. covered fund.''); 2013 final rule § ____.10(c)(1)(iii) (defining the term ''public offering'' for purposes of this exclusion to mean a ''distribution,'' as defined in § ____.4(a)(3) of subpart B, of securities in any jurisdiction outside the United States to investors, including retail investors, provided that, the distribution complies with all applicable requirements in the jurisdiction in which such distribution is being made; the distribution does not restrict availability to investors having a minimum level of net worth or net investment assets; and the issuer has filed or submitted, with the appropriate regulatory authority in such jurisdiction, offering disclosure documents that are publicly available).

[154] 79 FR at 5678.

[155] Although the discussion of this condition generally refers to U.S. banking entities for ease of reading, the condition also applies to foreign affiliates of a U.S. banking entity. *See* 2013 final rule § ____.10(c)(1)(ii) (applying this limitation ''[w]ith respect to a banking entity that is, or is controlled directly or indirectly by a banking entity that is, located in or organized under the laws of the United States or of any State and any issuer for which such banking entity acts as sponsor'').

[156] *See* 2013 final rule § ____.10(c)(1)(ii).

[157] 79 FR at 5678.

[158] *Id.* (''The requirements that a foreign public fund both be authorized for sale to retail investors and sold predominantly in public offerings outside of the United States are based in part on the Agencies' view that foreign funds that meet these requirements generally will be sufficiently similar to [RICs] such that it is appropriate to exclude these foreign funds from the covered fund definition.'')

[159] *Id.* (''This additional condition reflects the Agencies' view that the foreign public fund exclusion is designed to treat foreign public funds consistently with similar U.S. funds and to limit the extraterritorial application of section 13 of the BHC Act, including by permitting U.S. banking entities and their foreign affiliates to carry on traditional asset management businesses outside of the United States. The exclusion is not intended to permit a U.S. banking entity to establish a foreign fund for the purpose of investing in the fund as a means of avoiding the restrictions imposed by section 13.'').

[160] Section ____.21 of the 2013 final rule provides in part that whenever an Agency finds reasonable cause to believe any banking entity has engaged in

Continued

2013 final rule includes recordkeeping requirements designed to facilitate the Agencies' ability to monitor banking entities' investments in FPFs to ensure that banking entities do not use the exclusion for FPFs in a manner that functions as an evasion of section 13. Specifically, under the 2013 final rule, a U.S. banking entity with more than $10 billion in total consolidated assets is required to document its investments in foreign public funds, broken out by each FPF and each foreign jurisdiction in which any FPF is organized, if the U.S. banking entity and its affiliates' ownership interests in FPFs exceed $50 million at the end of two or more consecutive calendar quarters.[161] The Agencies are proposing to retain these and other covered fund recordkeeping requirements with respect to banking entities with significant trading assets and liabilities.

Alternatively, would retaining specific provisions designed to address anti-evasion concerns, whether as they currently exist or modified, provide greater clarity as to the scope of foreign funds excluded from the definition and avoid uncertainty that could result from a less prescriptive exclusion?

Question 144. One condition of the FPF exclusion is that the fund must be ''authorized to offer and sell ownership interests to retail investors in the issuer's home jurisdiction.'' The Agencies understand that banking entities generally interpret the 2013 final rule's reference to the issuer's ''home jurisdiction'' to mean the jurisdiction in which the issuer is organized. Is this condition helpful in identifying FPFs that should be excluded from the covered fund definition? Why or why not? The Agencies provided guidance regarding the 2013 final rule's current reference to ''retail investors.'' [162] Has this provided sufficient clarity? Additionally, as discussed below, the 2013 final rule contains an additional condition requiring that to meet the exclusion, a fund must sell ownership interests predominantly through one or more public offerings outside the United States. As an alternative to requiring that the fund be authorized to sell interests to retail investors, should the Agencies instead require that the fund be authorized to sell interests in a ''public offering''?

Question 145. The Agencies understand that some funds may be formed under the laws of one non-U.S. jurisdiction, but offered to retail investors in another. For example, Undertakings for Collective Investment in Transferable Securities (''UCITS'') funds and investment companies with variable capital, or SICAVs, may be domiciled in one jurisdiction in the European Union, such as Ireland or Luxembourg, but may be offered and sold in one or more other E.U. member states. In this case a foreign fund could be authorized for sale to retail investors, as contemplated by the FPF exclusion, but fail to satisfy this condition. Should the Agencies modify this condition to address this situation? If so, how?

Question 146. Should the Agencies, for example, modify the condition to omit any reference to the fund's ''home jurisdiction'' and instead provide, for example, that the fund must be authorized to offer and sell ownership interests to retail investors in ''the primary jurisdiction'' in which the issuer's ownership interests are offered and sold? Would that or a similar approach effectively identify funds that are sufficiently similar to RICs, including funds that are formed under the laws of one jurisdiction and offered and sold in another? For purposes of determining the primary jurisdiction, would the Agencies need to define the term ''primary'' or a similar term to provide sufficient clarity? If so, how should the Agencies define this or a similar term? Are there funds for which it could be difficult to identify a ''primary'' jurisdiction? Does the condition need to refer to a ''primary jurisdiction,'' or would it be sufficient to require that the fund be authorized to offer and sell ownership interests to retail investors in ''any jurisdiction'' in which the issuer's ownership interests are offered and sold? Should the exclusion focus on whether the fund is authorized to make a public offering in the primary, or any, jurisdiction in which it is offered and sold as a proxy for whether it is authorized for sale to retail investors?

If the Agencies were to make a modification like the one described immediately above, should the exclusion retain the reference to the issuer's ''home'' jurisdiction? For example, should the Agencies modify this condition to require that the fund be ''authorized to offer and sell ownership interests to retail investors in the primary jurisdiction in which the issuer's ownership interests are offered and sold,'' without any reference to the home jurisdiction? Would this modification be effective, or does the exclusion need to retain a reference to an issuer the ownership interests of which are authorized for sale to retail investors in the home jurisdiction, as well as the primary jurisdiction in which the issuer's ownership interests are offered and sold? Why? If the rule retained a reference to authorization in the fund's home jurisdiction, would this raise concerns if a fund were authorized to be sold to retail investors in the fund's home jurisdiction, but was not sold in that jurisdiction and instead was sold to institutions or other non-retail investors in a different jurisdiction in which the fund was not authorized to sell interests to retail investors or to make a public offering? Are there other formulations the Agencies should make to identify foreign funds that are authorized to offer and sell their ownership interests to retail investors? Which formulations and why?

Question 147. Under the 2013 final rule, a foreign public fund's ownership interests must be sold predominantly through one or more ''public offerings'' outside of the United States, in addition to the condition discussed above that the fund must be authorized for sale to retail investors. One result of this ''public offerings'' condition is that a fund that is authorized for sale to retail investors—including a fund authorized to make a public offering—cannot rely on the exclusion if the fund does not in fact offer and sell ownership interests in public offerings. Some foreign funds, like some RICs, may be authorized for sale to retail investors but may choose to offer ownership interests to high-net worth individuals or institutions in non-public offerings. Do commenters believe it is appropriate that these foreign funds cannot rely on the FPF exclusion? Should the Agencies further tailor the FPF exclusion to focus on whether the fund's ownership interests are authorized for sale to retail investors or the fund is authorized to conduct a public offering, as discussed above, rather than whether the fund interests were actually sold in a public offering? Would the investor protection and other regulatory requirements that would tend to make foreign funds similar to a U.S. registered fund generally be a consequence of a fund's authorization for sale to retail investors or authorization to make a public offering?

If a fund is authorized to conduct a public offering in a non-U.S. jurisdiction, would the fund be subject to all of the regulatory requirements that apply in that jurisdiction for funds

an activity or made an investment in violation of section 13 of the BHC Act or the 2013 final rule, or engaged in any activity or made any investment that functions as an evasion of the requirements of section 13 of the BHC Act or the 2013 final rule, the Agency may take any action permitted by law to enforce compliance with section 13 of the BHC Act and the 2013 final rule, including directing the banking entity to restrict, limit, or terminate any or all activities under the 2013 final rule and dispose of any investment.

[161] *See* 2013 final rule § ___.20(e).

[162] *See supra* note 153.

intended for broad distribution, including to retail investors, even if the fund is not in fact sold in a public offering to retail investors?

Question 148. The 2013 final rule defines the term ''public offering'' for purposes of this exclusion to mean a ''distribution'' (as defined in § ____.4(a)(3) of the 2013 final rule) of securities in any jurisdiction outside the United States to investors, including retail investors, provided that (i) the distribution complies with all applicable requirements in the jurisdiction in which such distribution is being made; (ii) the distribution does not restrict availability to investors having a minimum level of net worth or net investment assets; and (iii) the issuer has filed or submitted, with the appropriate regulatory authority in such jurisdiction, offering disclosure documents that are publicly available.[163] If the Agencies were to modify the FPF exclusion to focus on whether the fund's ownership interests are authorized for sale to retail investors or the fund is authorized to conduct a public offering—rather than whether the fund's interests were actually sold in a public offering—should the Agencies retain some or all of the conditions included in the 2013 final rule's definition of the term ''public offering''? For example, should the Agencies retain the requirement that a public offering is one that does not restrict availability to investors having a minimum level of net worth or net investment assets; and/or the requirement that an FPF file or submit, with the appropriate regulatory authority in such jurisdiction, offering disclosure documents that are publicly available? Would either of these two conditions, either alone or together, help to identify foreign funds that are sufficiently similar to RICs? Why or why not? Is the reference to a ''distribution'' (as defined in § ____.4(a)(3) of the 2013 final rule) effective? Should the Agencies modify the reference to a ''distribution'' to address instances in which a fund's ownership interests generally are sold to retail investors in secondary market transactions, as with exchange-traded funds, for example? Should the definition of ''public offering'' also take into account whether a fund's interests are listed on an exchange?

Question 149. The public offering definition provides in part that the distribution does not restrict availability to investors having a minimum level of net worth or net investment assets. Are there jurisdictions that permit offerings that would otherwise meet the definition of a public offering but that restrict availability to investors having a minimum level of net worth or net investment assets or that otherwise restrict the types of investors who can participate?

Conversely, should the Agencies retain the requirement that an FPF actually conduct a public offering outside of the United States? Would a foreign fund that actually sells ownership interests in public offerings outside of the United States tend to provide greater information to the public or be subject to additional regulatory requirements than a fund that is authorized to conduct a public offering but offers and sells its ownership interests in non-public offerings?

Question 150. If the Agencies retain the requirement that an FPF actually conduct a public offering outside of the United States, should the Agencies retain the requirement that the fund's ownership interests must be sold ''predominantly'' through one or more such offerings? Why or why not? As mentioned above, the Agencies stated in the preamble to the 2013 final rule that they generally expect a fund's offering would satisfy this requirement if 85 percent or more of the fund's interests are sold to investors that are not residents of the United States. Has this guidance been helpful in identifying FPFs that should be excluded, if the Agencies retain the requirement that an FPF actually conduct a public offering outside of the United States?

Question 151. The Agencies understand that some banking entities have faced compliance challenges in determining whether 85 percent or more of the fund's interests are sold to investors that are not residents of the United States. Where foreign funds are listed on a foreign exchange, for example, it may not be feasible to obtain sufficient information about a fund's owners to make these determinations. The Agencies understand that banking entities also have experienced difficulties in obtaining sufficient information about a fund's owners in some cases where the foreign fund is sold through intermediaries. What sorts of compliance and other costs have banking entities incurred in developing and maintaining compliance systems to track foreign public funds' compliance with this condition? To the extent that commenters have experienced these or other compliance challenges, how have commenters addressed them? Have funds failed to qualify for the FPF exclusion because of this condition? Which kinds of funds and why? Do commenters believe that these funds should nonetheless be treated as FPFs? Why? If the Agencies retain this condition, should they reduce the required percentage of a fund's ownership interests that must be sold to investors that are not residents of the United States? Which percentage would be appropriate? Should the percentage be more than 50 percent, for example? Would a lower percentage mitigate the compliance challenges discussed above? If the Agencies do not retain the condition that an FPF must be sold predominantly through one or more public offerings outside of the United States, should the Agencies impose any limitations on the extent to which the fund can be offered in private offerings in the United States?

Question 152. The 2013 final rule places an additional condition on a U.S. banking entity's ability to rely on the FPF exclusion with respect to any FPF it sponsors: The fund's ownership interests must be sold predominantly to persons other than the sponsoring banking entity and certain persons connected to that banking entity. Has this additional condition been effective in identifying FPFs that should be excluded from the covered fund definition? Has it been effective in permitting U.S. banking entities to continue their asset management businesses outside of the United States while also limiting the opportunity for evasion of section 13? Conversely, has this additional condition resulted in the compliance challenges discussed above in connection with the Agencies' view that a fund generally is sold ''predominantly'' in public offerings outside of the United States if 85 percent or more of the fund's interests are sold to investors that are not residents of the United States? The Agencies understand that determining whether the employees and directors of a banking entity and its affiliates have invested in a foreign fund has been particularly challenging for banking entities because the 2013 final rule defines the term ''employee'' to include a member of the immediate family of the employee.[164] Is there a more direct way to define the term ''employee'' to mitigate the compliance challenges but still be effective in limiting the opportunity for evasion of section 13? If so, how? Should a revised definition specify who is included in an employee's immediate family for this purpose? Should a revised definition exclude immediate family members? If so, why?

Question 153. What other aspects of the conditions for FPFs have resulted in

[163] *See* 2013 final rule § ____.10(c)(1)(iii).

[164] *See* 2013 final rule § ____.2(j).

compliance challenges? Has the condition that FPFs be sold predominantly through public offerings outside of the United States resulted in U.S. banking entities, including their foreign affiliates and subsidiaries, determining not to sponsor new FPFs because of concerns about compliance challenges and costs? If the Agencies retain this additional condition, should they reduce the required percentage of a fund's ownership interests sold to persons other than the sponsoring U.S. banking entity and certain persons connected to that banking entity? Which percentage would be appropriate? Would a lower percentage mitigate the compliance challenges discussed above? Are there other conditions that might better serve the same purpose but reduce the challenges presented by this condition? One effect of this condition is that a U.S. banking entity can own up to 15 percent of an FPF that it sponsors, but can own up to 25 percent of a RIC after the seeding period.[165] Is this disparate treatment appropriate? Another effect of this condition is that a U.S. banking entity can own up to 15 percent of an FPF that it sponsors, but a foreign banking entity can own up to 25 percent of an FPF that it sponsors. Is this disparate treatment appropriate?

Question 154. Following the adoption of the 2013 final rule, staffs of the Agencies provided responses to certain FAQs, including whether an entity that is formed and operated pursuant to a written plan to become an FPF would receive the same treatment as an entity formed and operated pursuant to a written plan to become a RIC or BDC.[166]

The staffs observed that the 2013 final rule explicitly excludes from the covered fund definition an issuer that is formed and operated pursuant to a written plan to become a RIC or BDC in accordance with the banking entity's compliance program as described in § ____.20(e)(3) of the 2013 final rule and that complies with the requirements of section 18 of the Investment Company Act. The staffs observed that the 2013 final rule does not include a parallel provision for an issuer that will become a foreign public fund. The staffs stated that they do not intend to advise the Agencies to treat as a covered fund under the 2013 final rule an issuer that is formed and operated pursuant to a written plan to become a qualifying foreign public fund. The staffs observed that any written plan would be expected to document the banking entity's determination that the seeding vehicle will become a foreign public fund, the period of time during which the seeding vehicle will operate as a seeding vehicle, the banking entity's plan to market the seeding vehicle to third-party investors and convert it into an FPF within the time period specified in § ____.12(a)(2)(i)(B) of the 2013 final rule, and the banking entity's plan to operate the seeding vehicle in a manner consistent with the investment strategy, including leverage, of the seeding vehicle upon becoming a foreign public fund. Has the staffs' position facilitated consistent treatment for seeding vehicles that operate pursuant to a plan to become an FPF as that provided for seeding vehicles that operate pursuant to plans to become RICs or BDCs? Why or why not? Should the Agencies amend the 2013 final rule to implement this or a different approach for seeding vehicles that will become foreign public funds? What other approaches should the Agencies take and why? Should the Agencies amend the 2013 final rule to require seeding vehicles that operate pursuant to a written plan to become an FPF to include in such written plan the same or different types of documentation as the documentation required of seeding vehicles that operate pursuant to plans to become RICs or BDCs? If different types of documentation should be required of seeding vehicles that will become foreign public funds, why would those different types of documentation be appropriate? Would requiring those different types of documentation impose costs or burdens on the issuers that are greater or less than the costs and burdens imposed on issuers that will become RICs or BDCs?

iv. Family Wealth Management Vehicles

Some families manage their wealth by establishing and acquiring ownership interests in ''family wealth management vehicles.'' Family wealth management vehicles take a variety of legal forms, including limited liability companies, limited partnerships, other pooled investment vehicles, and trusts. The structures in which these vehicles operate vary in complexity, ranging from simple standalone arrangements covering a single beneficiary to complex multi-tier structures intended to benefit multiple generations of family members. In some cases, these vehicles have been in existence for more than 100 years while in other cases, they are nascent entities with little to no operating history. The Agencies are aware of no set of consistent standards that govern the characteristics of family wealth management vehicles or the manner in which they operate.

Because family wealth management vehicles might hold assets that meet the definition of ''investment securities'' [167] in the Investment Company Act, they may be investment companies that either need to register as such or otherwise rely on an exclusion from the definition of investment company. Many family wealth management vehicles rely on the exclusions provided by sections 3(c)(1) or 3(c)(7) of the Investment Company Act. Family wealth management vehicles that would be investment companies but for sections 3(c)(1) or 3(c)(7) will therefore be covered funds unless they satisfy the conditions for one of the 2013 final rule's exclusions from the covered fund definition. Concerns regarding family wealth management vehicles were raised to the Agencies following the adoption of the 2013 final rule, which does not provide an exclusion from the covered fund definition specifically designed to address these vehicles.

Family wealth management vehicles also often maintain accounts and advisory arrangements with banking entities. These banking entities may provide a range of services to family wealth management vehicles, including investment advice, brokerage execution, financing, and clearance and settlement services. Family wealth management vehicles structured as trusts for the benefit of family members also often

[165] The limitation on a banking entity's investment in a U.S. registered fund under the 2013 final rule results from the definition of ''banking entity.'' If a banking entity owns, controls, or has power to vote 25 percent or more of any class of voting securities of another company, including a U.S. registered fund after a seeding period, that other company will itself be a banking entity under the 2013 final rule.

[166] All the Agencies have published all FAQs on each of their public websites. *See* Frequently Asked Question number 5, *available at https://www.federalreserve.gov/bankinforeg/volcker-rule/faq.htm#5*; Covered Fund Definition, *available at https://www.sec.gov/divisions/marketreg/faq-volcker-rule-section13.htm*; Foreign Public Fund Seeding Vehicles, *available at https://www.fdic.gov/regulations/reform/volcker/faq/foreign.html*; Foreign Public Fund Seeding Vehicles, *available at https://occ.gov/topics/capital-markets/financial-markets/trading-volcker-rule/volcker-rule-implementation-faqs.html#foreign*; Foreign Public Fund Seeding Vehicles, *available at https://www.cftc.gov/sites/default/files/idc/groups/public/@externalaffairs/documents/file/volckerrule_faq060914.pdf.*

[167] Section 3(a)(2) of the Investment Company Act defines ''investment securities'' to include all securities except Government securities, securities issued by employees' securities companies, and majority-owned subsidiaries of the owner which are not investment companies, and are not relying on the exception from the definition of investment company in section 3(c)(1) or 3(c)(7). Section 3(a)(1)(C) defines an investment company, in part, as any issuer that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of each such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

appoint banking entities, acting in a fiduciary capacity, as trustees for the trusts.

Section ____.14 of the 2013 final rule provides, in part, that no banking entity that serves, directly or indirectly, as the investment manager, investment adviser, commodity trading advisor, or sponsor to a covered fund, or that organizes and offers the fund under § ____.11 of the 2013 final rule, may enter into a transaction with the covered fund that would be a ''covered transaction,'' as defined in section 23A of the FR Act.[168] To the extent that a family wealth management vehicle is a covered fund, then § ____.14 would apply. Specifically, if a banking entity provides services, such as advisory services, that trigger application of § ____.14, the banking entity would be prohibited from providing the family wealth management vehicle a range of customer-facing banking services that involve ''covered transactions.'' Examples of these prohibited covered transactions include intraday or short-term extensions of credit in connection with the clearance and settlement of securities transactions executed by the banking entity for the family wealth management vehicle.

The Agencies are not proposing changes in the status of family wealth management vehicles in the proposal, but are seeking comment on their reliance on exclusions in the Investment Company Act, whether or not they should be excluded from the definition of covered fund, the role of banking entities with respect to family wealth management vehicles, and the potential implications of changes in their status under the 2013 final rule. In considering whether to address the status of family wealth management vehicles, the Agencies seek comment on the following:

Question 155. Do family wealth management vehicles typically rely on the exclusions in sections 3(c)(1) or 3(c)(7) under the Investment Company Act? Are there other exclusions from the definition of ''investment company'' in the Investment Company Act upon which family wealth management vehicles can rely? What have been the additional challenges for family wealth management vehicles and the banking entities that service them when considering whether these vehicles rely on the exclusions in sections 3(c)(1) or 3(c)(7)?

Question 156. Should the Agencies exclude family wealth management vehicles from the definition of ''covered fund''? If so, how should the Agencies define ''family wealth management vehicle,'' and is this the appropriate terminology? What factors should the Agencies consider to distinguish a family wealth management vehicle from a hedge fund or private equity fund, as contemplated by the statute, given that these vehicles may utilize identical structures and pursue comparable investment strategies? Would any of the definitions in rule 202(a)(11)(G)–1 under the Investment Advisers Act of 1940 effectively define family wealth management vehicle? Should the Agencies, for example, define a family wealth management vehicle to mean an issuer that would be a ''family client,'' as defined in rule 202(a)(11)(G)–1(d)(4)? What modifications to that definition would be appropriate for purposes of any exclusion from the covered fund definition? For example, that definition defines a ''family client,'' in part, to include any company wholly owned (directly or indirectly) exclusively by, and operated for the sole benefit of, one or more other family clients, which include any family member or former family member. That rule defines a ''family member'' to mean ''all lineal descendants (including by adoption, stepchildren, foster children, and individuals that were a minor when another family member became a legal guardian of that individual) of a common ancestor (who may be living or deceased), and such lineal descendants' spouses or spousal equivalents; provided that the common ancestor is no more than 10 generations removed from the youngest generation of family members.'' Would this approach to defining a ''family member'' be appropriate in the context of an exclusion from the covered fund definition? Why or why not and, if not, what other approaches should the Agencies take? Are there any family wealth management vehicles organized or managed outside of the United States that raise similar concerns? If so, should the Agencies define these family wealth management vehicles differently?

Question 157. Would an exclusion for family wealth management vehicles create any opportunities for evasion, for example, by allowing a banking entity to structure investment vehicles in a manner to evade the restrictions of section 13 on covered fund activities? Why or why not? If so, how could such concerns be addressed? Please explain.

Question 158. What services do banking entities provide to family wealth management vehicles? Below, the Agencies seek comment on whether section 14 of the implementing regulation should incorporate the exemptions within section 23A of the FR Act and the Board's Regulation W. Would this approach permit banking entities to provide these services to family wealth management vehicles? Are there other ways in which the Agencies should address the issue of banking entities being prohibited from providing services to family wealth vehicles that would be covered transactions?

Question 159. Are there any similar vehicles outside of the family wealth management context that pose similar issues?

v. Fund Characteristics

As the Agencies stated in the preamble to the 2013 final rule, an alternative to the 2013 final rule's approach of defining a covered fund would be to reference fund characteristics. In the preamble to the 2013 final rule, the Agencies stated that a characteristics-based definition could be less effective than the approach taken in the 2013 final rule as a means to prohibit banking entities, either directly or indirectly, from engaging in the covered fund activities limited or proscribed by section 13.[169] The Agencies also stated that a characteristics-based approach could require more analysis by banking entities to apply those characteristics to every potential covered fund on a case-by-case basis and could create greater opportunity for evasion. Finally, the Agencies stated that although a characteristics-based approach could mitigate the costs associated with an investment company analysis, depending on the characteristics, such an approach could result in additional compliance costs in some cases to the extent banking entities would be required to implement policies and procedures to prevent issuers from having characteristics that would bring them within the covered fund definition.

As the Agencies consider whether to further tailor the covered fund definition, the Agencies invite commenters' views and request comment on whether it may be appropriate to exclude from the definition of ''covered fund'' entities that lack certain characteristics commonly associated with being a hedge fund or a private equity fund:

Question 160. Should the Agencies exclude from the definition of ''covered fund'' entities that lack certain enumerated traits or factors of a hedge fund or private equity fund? If so, what traits or factors should be incorporated and why? For instance, the SEC's Form

[168] *See* 2013 final rule § ____.14(a).

[169] *See* 79 FR at 5671.

PF defines the terms “hedge fund” and “private equity fund,” as described below.[170] Would it be appropriate to exclude from the definition of “covered fund” an entity that does not meet either of the Form PF definitions of “hedge fund” and “private equity fund”? If the Agencies were to take this approach, should we, for example, modify the 2013 final rule to provide that an issuer is excluded from the covered fund definition if that issuer is neither a “hedge fund” nor a “private equity fund,” as defined in Form PF, or should the Agencies incorporate some or all of the substance of the definitions in Form PF into the 2013 final rule?

Question 161. If the Agencies were to incorporate the substance of the definitions of hedge fund and private equity fund in Form PF, should the Agencies make any modifications to these definitions for purposes of the 2013 final rule? Also, Form PF is designed for reporting by funds advised by SEC-registered advisers. Would any modifications be needed to have the characteristics-based exclusion apply to funds not advised by SEC-registered advisers, in particular foreign funds with non-U.S. advisers not registered with the SEC?

Question 162. Form PF defines “hedge fund” to mean any private fund (other than a securitized asset fund): (a) With respect to which one or more investment advisers (or related persons of investment advisers) may be paid a performance fee or allocation calculated by taking into account unrealized gains (other than a fee or allocation the calculation of which may take into account unrealized gains solely for the purpose of reducing such fee or allocation to reflect net unrealized losses); (b) that may borrow an amount in excess of one-half of its net asset value (including any committed capital) or may have gross notional exposure in excess of twice its net asset value (including any committed capital); or (c) that may sell securities or other assets short or enter into similar transactions (other than for the purpose of hedging currency exposure or managing duration). If the Agencies were to incorporate these provisions as part of a characteristics-based exclusion, should any of these provisions be modified? If so, how? Additionally, Form PF's definition of the term “hedge fund” provides that, solely for purposes of Form PF, any commodity pool is categorized as a hedge fund.[171] If the Agencies were to define the term “hedge fund” based on the definition in Form PF, should the term include only those commodity pools that come within the “hedge fund” definition without regard to this clause in the Form PF definition that treats every commodity pool as a hedge fund for purposes of Form PF? Why or why not?

Question 163. By contrast, Form PF primarily defines “private equity fund” not by affirmative characteristics, but as any private fund that is not a hedge fund, liquidity fund, real estate fund, securitized asset fund or venture capital fund, as those terms are defined in Form PF,[172] and that does not provide investors with redemption rights in the ordinary course. If the Agencies were to provide a characteristics-based exclusion, should the Agencies do so by incorporating the definitions of these other private funds? If so, should the Agencies modify such definitions, and if so, how? Alternatively, rather than referencing the definition of private equity fund in Form PF in a characteristics-based exclusion, the Agencies could design their own definition of a private equity fund based on traits and factors commonly associated with a private equity fund. For example, the Agencies understand that private equity funds commonly (i) have restricted or limited investor redemption rights; (ii) invest in public and non-public companies through privately negotiated transactions resulting in private ownership of the business; (iii) acquire the unregistered equity or equity-like securities of such companies that are illiquid as there is no public market and third party valuations are not readily available; (iv) require holding investments long-term; (v) have a limited duration of ten years or less; and (vi) realize returns on investments and distribute the proceeds to investors before the anticipated expiration of the fund's duration. Are there other traits or factors the Agencies should incorporate if the Agencies were to provide a characteristics-based exclusion? Should any of these traits or factors be omitted?

Question 164. A venture capital fund, as defined in rule 203(l)–1 under the Advisers Act, is not a “private equity fund” or “hedge fund,” as those terms are defined in Form PF. In the preamble to the 2013 final rule, the Agencies explained why they believed that the statutory language of section 13 did not support providing an exclusion for venture capital funds from the definition of “covered fund.” [173] If the Agencies were to adopt a characteristics-based exclusion based on the definition of private equity fund in Form PF, should the Agencies specify that venture capital funds are private equity funds for purposes of this rule so that venture capital funds would not be excluded from the covered fund definition? Do commenters believe that this approach would be consistent with the statutory language of section 13?

Question 165. The Agencies request that commenters advocating for a characteristics-based exclusion explain why particular characteristics are appropriate, what kinds of funds and what kinds of investment strategies or portfolio holdings might be excluded by the commenters' suggested approach, and why that would be appropriate.

Question 166. If the Agencies were to provide a characteristics-based exclusion, should it exclude only funds that have none of the enumerated

[170] *See* Form PF, Glossary of Terms. Form PF uses a characteristics-based approach to define different types of private funds. A “private fund” for purposes of Form PF is any issuer that would be an investment company, as defined in section 3 of the Investment Company Act, but for section 3(c)(1) or 3(c)(7) of that Act. Form PF defines the following types of private funds: Hedge funds, private equity funds, liquidity funds, real estate funds, securitized asset funds, venture capital funds, and other private funds. *See infra* at note 167.

[171] Form PF defines “commodity pool” by reference to the definition in section 1a(10) of the Commodity Exchange Act. *See* 7 U.S.C. 1a(10).

[172] Form PF defines “liquidity fund” to mean any private fund that seeks to generate income by investing in a portfolio of short term obligations in order to maintain a stable net asset value per unit or minimize principal volatility for investors; “real estate fund” to mean any private fund that is not a hedge fund, that does not provide investors with redemption rights in the ordinary course and that invests primarily in real estate and real estate related assets; “securitized asset fund” to mean any private fund whose primary purpose is to issue asset backed securities and whose investors are primarily debt-holders; and “venture capital fund” to mean any private fund meeting the definition of venture capital fund in rule 203(l)–1 under the Investment Advisers Act of 1940.

[173] *See* 79 FR at 5704 (“The final rule does not provide an exclusion for venture capital funds. The Agencies believe that the statutory language of section 13 does not support providing an exclusion for venture capital funds from the definition of covered fund. Congress explicitly recognized and treated venture capital funds as a subset of private equity funds in various parts of the Dodd-Frank Act and accorded distinct treatment for venture capital fund advisers by exempting them from registration requirements under the Investment Advisers Act. This indicates that Congress knew how to distinguish venture capital funds from other types of private equity funds when it desired to do so. No such distinction appears in section 13 of the BHC Act. Because Congress chose to distinguish between private equity and venture capital in one part of the Dodd-Frank Act, but chose not to do so for purposes of section 13, the Agencies believe it is appropriate to follow this Congressional determination.”) (footnotes omitted). Section 13 also provides an extended transition period for “illiquid funds,” which section 13 defines, in part, as a hedge fund or private equity fund that, as of May 1, 2010, was principally invested in, or was invested and contractually committed to principally invest in, illiquid assets, such as portfolio companies, real estate investments, and venture capital investments. Congress appears to have contemplated that covered funds would include funds principally invested in venture capital investments.

characteristics? Alternatively, are there any circumstances where a fund should be able to rely on a characteristics-based exclusion if it had some, but not most, of the characteristics?

Question 167. Would a characteristics-based exclusion present opportunities for evasion? Should the Agencies address any concerns about evasion through other means, such as the anti-evasion provisions in § ____.21 of the 2013 final rule, rather than by including a broader range of funds in the covered fund definition?

Question 168. If the Agencies were to provide a characteristics-based exclusion, would any existing exclusions from the definition of ''covered fund'' be unnecessary? If so, which ones and why?

Question 169. If the Agencies were to provide a characteristics-based exclusion, to what extent and how should the Agencies consider section 13's limitations both on proprietary trading and on covered fund activities? For example, section 13 limits a banking entity's ability to engage in proprietary trading, which section 13 defines as engaging as a principal for the trading account, and defines the term ''trading account'' generally as any account used for acquiring or taking positions in the securities and the instruments specified in the proprietary trading definition principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements).[174] This suggests that a fund engaged in selling financial instruments in the near term, or otherwise with the intent to resell in order to profit from short-term price movements, should be included in the covered fund definition in order to prevent a banking entity from evading the limitations in section 13 through investments in funds. The statute also, however, contemplates that the covered fund definition would include funds that make longer-term investments and specifically references private equity funds. For example, the statute provides for an extended conformance period for ''illiquid funds,'' which section 13 defines, in part, as hedge funds or private equity funds that, as of May 1, 2010, were principally invested in, or were invested and contractually committed to principally invest in, illiquid assets, such as portfolio companies, real estate investments, and venture capital investments.[175] Trading strategies involving these and other types of illiquid assets generally do not involve selling financial instruments in the near term, or otherwise with the intent to resell in order to profit from short-term price movements.

Question 170. Should the Agencies therefore provide an exclusion from the covered fund definition for a fund that (i) is not engaged in selling financial instruments in the near term, or otherwise with the intent to resell in order to profit from short-term price movements; and (ii) does not invest, or principally invest, in illiquid assets, such as portfolio companies, real estate investments, and venture capital investments? Would this or a similar approach help to exclude from the covered fund definition issuers that do not engage in the investment activities contemplated by section 13? Would such an approach be sufficiently clear? Would it be clear when a fund is and is not engaged in selling financial instruments in the near term, or otherwise with the intent to resell in order to profit from short-term price movements? Would this approach result in funds being excluded from the definition that commenters believe should be covered funds under the rule? The Agencies similarly request comment as to whether a reference to illiquid assets, with the examples drawn from section 13, would be sufficiently clear and, if not, how the Agencies could provide greater clarity.

Question 171. Rather than providing a characteristics-based exclusion, should the Agencies instead revise the base definition of ''covered fund'' using a characteristics-based approach? [176] That is, should the Agencies provide that none of the types of funds currently included in the base definition—investment companies but for section 3(c)(1) or 3(c)(7) and certain commodity pools and foreign funds—will be covered funds in the first instance unless they have characteristics of a hedge fund or private equity fund?

vi. Joint Ventures

The Agencies, in tailoring the covered fund definition, noted that many joint ventures rely on section 3(c)(1) or 3(c)(7). Under the 2013 final rule, a joint venture is excluded from the covered fund definition if the joint venture (i) is between the banking entity or any of its affiliates and no more than 10 unaffiliated co-venturers; (ii) is in the business of engaging in activities that are permissible for the banking entity other than investing in securities for resale or other disposition; and (iii) is not, and does not hold itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in securities for resale or other disposition or otherwise trading in securities.[177] The Agencies observed in the preamble to the 2013 final rule that, with this exclusion, banking entities ''will continue to be able to share the risk and cost of financing their banking activities through these types of entities which . . . may allow banking entities to more efficiently manage the risk of their operations.'' [178]

In 2015, the staffs of the Agencies provided a response to FAQs regarding the extent to which an excluded joint venture could invest in securities, consistent with the condition in the 2013 final rule that an excluded joint venture may not be an entity or arrangement that raises money from investors primarily for the purpose of investing in securities for resale or other disposition or otherwise trading in securities.[179] The Agencies observed in the preamble to the 2013 final rule that this condition ''prevents a banking entity from relying on this exclusion to evade section 13 of the BHC Act by owning or sponsoring what is or will become a covered fund.'' [180] The staffs expressed the view in their response to a FAQ that this condition generally could not be met by, and the exclusion would therefore not be available to, an issuer that:

○ ''[R]aise[s] money from investors primarily for the purpose of investing in securities for the benefit of one or more investors and sharing the income, gain or losses on securities acquired by that entity,'' observing that ''[t]he limitations in the joint venture exclusion are meant to ensure that the joint venture is not an investment vehicle and that the joint venture exclusion is not used as a means to evade the limitations in the BHC Act on investing in covered funds'';

○ ''[R]aises money from a small number of investors primarily for the purpose of investing in securities, whether the securities are intended to be traded frequently, held for a longer duration, held to maturity, or held until the dissolution of the entity''; or

○ ''[R]aises funds from investors primarily for the purpose of sharing in

[174] *See* 12 U.S.C. 1851(h)(4) (defining ''proprietary trading''); 12 U.S.C. 1851(h)(6) (defining ''trading account'').

[175] 12 U.S.C. 1851(c)(3).

[176] *See supra* Part III.C.1.a.i.

[177] *See* 2013 final rule § ____.10(c)(3).

[178] 79 FR at 5681.

[179] *See supra* note. 21.

[180] 79 FR at 5681. The Agencies also observed that, ''[c]onsistent with this restriction and to prevent evasion of section 13, a banking entity may not use a joint venture to engage in merchant banking activities because that involves acquiring or retaining shares, assets, or ownership interests for the purpose of ultimate resale or disposition of the investment.'' *Id.*

the benefits, income, gains or losses from ownership of securities—as opposed to conducting a business or engaging in operations or other non-investment activities,'' reasoning that such an issuer ''would be raising money from investors primarily for the purpose of 'investing in securities,' even if the vehicle may have other purposes,'' and that the exclusion ''also is not met by an entity that raises money from investors primarily for the purpose of investing in securities for resale or other disposition or otherwise trading in securities merely because one of the purposes for establishing the vehicle may be to provide financing to an entity to obtain and hold securities.''

The staffs also observed that, in addition to the conditions in the joint venture exclusion, as an initial matter, an entity seeking to rely on the exclusion must be a joint venture. The staffs observed that the basic elements of a joint venture are well recognized, including under state law, although the term is not defined in the 2013 final rule. The staffs also observed that although any determination of whether an arrangement is a joint venture will depend on the facts and circumstances, the staffs generally would not expect that a person that does not have some degree of control over the business of an entity would be considered to be participating in ''a joint venture between a banking entity or any of its affiliates and one or more unaffiliated persons,'' as specified in the 2013 final rule's joint venture exclusion.

The Agencies request comment on all aspects of the 2013 final rule's exclusion for joint ventures, including the extent to which the Agencies should modify the joint venture exclusion:

Question 172. Has the 2013 final rule's exclusion for joint ventures allowed banking entities to continue to be able to share the risk and cost of financing their banking activities through joint ventures, and therefore allowed banking entities to more efficiently manage the risk of their operations, as contemplated by the Agencies in adopting this exclusion? If not, what modifications should the Agencies make to the joint venture exclusion?

Question 173. Should the Agencies make any changes to the joint venture exclusion to clarify the condition that a joint venture may not be an entity or arrangement that raises money from investors primarily for the purpose of investing in securities for resale or other disposition or otherwise trading in securities? Should the Agencies incorporate some or all of the views expressed by the staffs in their FAQ response? If so, which views and why? Should the Agencies, for example, modify the conditions to clarify that an excluded joint venture may not be, or hold itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in securities, whether the securities are intended to be traded frequently, held for a longer duration, held to maturity, or held until the dissolution of the entity? Conversely, do the views expressed by the staffs in their FAQ response, or similar conditions the Agencies might add to the joint venture exclusion, affect the utility of the joint venture exclusion? If so, how could the Agencies increase or preserve the utility of the joint venture exclusion as a means of structuring business arrangements without allowing an excluded joint venture to be used by a banking entity to invest in or sponsor what is in effect a covered fund that merely has no more than ten unaffiliated investors?

Question 174. Are there other conditions the Agencies should include, or modifications to the exclusion's current conditions that the Agencies should make, to clarify that the joint venture exclusion is designed to allow banking entities to structure business ventures, as opposed to an entity that may be labelled a joint venture but that is in reality a hedge fund or private equity fund established for investment purposes?

Question 175. The 2013 final rule does not define the term ''joint venture.'' Should the Agencies define that term? If so, how should the Agencies define the term? Should the Agencies, for example, modify the 2013 final rule to reflect the view expressed by the staffs that a person that does not have some degree of control over the business of an entity would generally not be considered to be participating in ''a joint venture between a banking entity or any of its affiliates and one or more unaffiliated persons''? Would this modification serve to differentiate a participant in a joint venture from an investor in what would otherwise be a covered fund? Has state law been useful in determining whether a structure is a joint venture for purposes of the 2013 final rule? Are there other changes to the joint venture exclusion the Agencies should make on this point?

vii. Securitizations

The 2013 final rule contains several provisions designed to address securitizations and to implement the rule of construction in section 13(g)(2) of the BHC Act, which provides that nothing in section 13 shall be construed to limit or restrict the ability of a banking entity to sell or securitize loans in a manner that is otherwise permitted by law. These provisions include the 2013 final rule's exclusions from the covered fund definition for loan securitizations, qualifying asset-backed commercial paper conduits, and qualifying covered bonds. The Agencies request comment on all aspects of the 2013 final rule's application to securitizations, including:

Question 176. Are there any concerns about how the 2013 final rule's exclusions from the covered fund definition for loan securitizations, qualifying asset-backed commercial paper conduits, and qualifying covered bonds work in practice? If commenters believe the Agencies can make these provisions more effective, what modifications should the Agencies make and why?

Question 177. The 2013 final rule's loan securitization exclusion excludes an issuing entity for asset-backed securities that, among other things, has assets or holdings consisting solely of certain types of permissible assets enumerated in the 2013 final rule. These permissible assets generally are loans, certain servicing assets, and special units of beneficial interest and collateral certificates. Are there particular issues with complying with the terms of this exclusion for vehicles that are holding loans? Are there any modifications the Agencies should make and if so, why and what are they? How would such modifications be consistent with the statutory provisions? For example, debt securities generally are not permissible assets for an excluded loan securitization.[181] What effect does this limitation have on loan securitization vehicles? Should the Agencies consider permitting a loan securitization vehicle to hold 5 percent or 10 percent of assets that are considered debt securities rather than ''loans,'' as defined in the 2013 final rule? Are there other types of similar assets that are not ''loans,'' as defined in the 2013 final rule, but that have similar financial characteristics that an excluded loan securitization vehicle should be permitted to own as 5 percent or 10 percent of the vehicle's assets? Conversely, would this additional flexibility be necessary or appropriate now that banking entities have restructured loan securitizations as necessary to comply with the 2013 final

[181] The 2013 final rule does, however, permit an excluded loan securitization to hold cash equivalents for purposes of the rights and assets in paragraph (c)(8)(i)(B) of the final rule, and securities received in lieu of debts previously contracted with respect to the loans supporting the asset-backed securities. *See* 2013 final rule § ____.10(c)(8)(iii).

rule and structured loan securitizations formed after the 2013 final rule was adopted in order to comply with the 2013 final rule? After banking entities have undertaken these efforts, would allowing an excluded loan securitization to hold additional types of assets allow a banking entity indirectly to engage in investment activities that may implicate section 13 rather than as an alternative way for a banking entity either to securitize or own loans through a securitization, as contemplated by the rule of construction in section 13(g)(2) of the BHC Act?

Question 178. Should the Agencies modify the loan securitization exclusion to reflect the views expressed by the Agencies' staffs in response to a FAQ[182] that the servicing assets described in paragraph 10(c)(8)(i)(B) of the 2013 final rule may be any type of asset, provided that any servicing asset that is a security must be a permitted security under paragraph 10(c)(8)(iii) of the 2013 final rule? Should the Agencies, for example, modify paragraph 10(c)(8)(i)(B) of the 2013 final rule to add the underlined text: ''Rights or other assets designed to assure the servicing or timely distribution of proceeds to holders of such securities and rights or other assets that are related or incidental to purchasing or otherwise acquiring and holding the loans, provided that each asset that is a security meets the requirements of paragraph (c)(8)(iii) of this section.'' Should the 2013 final rule be amended to include this language? Are there other clarifying modifications that would better address the expressed concern?

Question 179. Are there modifications the Agencies should make to the 2013 final rule's definition of the term ''ownership interest'' in the context of securitizations? If so, what modifications should the Agencies make and how would they be consistent with the ownership interest restrictions? Banking entities have raised questions regarding the scope of the provision of the 2013 final rule that provides that an ownership interest includes an interest that has, among other characteristics, ''the right to participate in the selection or removal of a general partner, managing member, member of the board of directors or trustees, investment manager, investment adviser, or commodity trading advisor of the covered fund (excluding the rights of a creditor to exercise remedies upon the occurrence of an event of default or an acceleration event)'' in the context of creditor rights. Should the Agencies modify this parenthetical to provide greater clarity to banking entities regarding this parenthetical? For example, should the Agencies modify the parenthetical to provide that the ''rights of a creditor to exercise remedies upon the occurrence of an event of default or an acceleration event'' include the right to participate in the removal of an investment manager for cause, or to nominate or vote on a nominated replacement manager upon an investment manager's resignation or removal? Would the ability to participate in the removal or replacement of an investment manager under these limited circumstances more closely resemble a creditor's rights upon default to protect its interest, as opposed to the right to vote on matters affecting the management of an issuer that may be more typically associated with equity or partnership interests? Why or why not? What actions do holders of interests in loan securitizations today take with respect to investment managers and under what circumstances? Are such rights limited to certain classes of holders?

Question 180. The Agencies understand that in many securitization transactions, there are multiple tranches of interests that are sold. The Agencies also understand that some of these interests may have characteristics that are the same as debt securities with fixed maturities and fixed rates of interest, and with no other residual interest or payment. In the context of the definition of ownership interest for securitization vehicles, should the Agencies consider whether securitization interests that have only these types of characteristics be considered ''other similar interests'' for purposes of the ownership interest definition? If so, why or why not? If so, why should a distribution of profits from a passive investment such as a securitization be treated differently than a distribution of profits from any other type of passive investment? Please explain why securitization vehicles should be treated differently than other covered funds, some of which also could have tranched investment interests.

viii. Selected Other Issuers

In this section the Agencies request comment on the 2013 final rule's application to certain types of issuers for which banking entities and others have expressed concern to one or more of the Agencies:

Question 181. The 2013 final rule excludes from the covered fund definition an issuer that is a small business investment company, as defined in section 103(3) of the Small Business Investment Act of 1958, or that has received from the Small Business Administration notice to proceed to qualify for a license as a small business investment company, which notice or license has not been revoked. A small business investment company that relinquishes its license as the company liquidates its holdings, however, will no longer be a ''small business investment company,'' as defined in section 103(3) of the Small Business Investment Act of 1958, and will therefore no longer be excluded from the covered fund definition. Should the Agencies modify the exclusion to provide that the exclusion will remain available under these circumstances when a small business investment company relinquishes or voluntarily surrenders its license? If so, how should the Agencies specify the circumstances under which the company may operate after relinquishing or voluntarily surrendering its license while still relying on the exclusion? Does the absence of a license from the Small Business Administration under these circumstances affect whether the company is engaged in the investment activities contemplated by section 13? Why or why not? Are there other examples of an entity that is excluded from the covered fund definition and that could no longer satisfy the relevant exclusion as the entity is liquidated? Which kinds of entities, what causes them to no longer satisfy the exclusion, and what modifications to the 2013 final rule do commenters believe would be appropriate to address them? For example, have banking entities encountered any difficulties with respect to RICs that use liquidating trusts?

Question 182. The 2013 final rule does not provide a specific exclusion from the definition of ''covered fund'' for an issuer that is a municipal securities tender option bond vehicle.[183]

[182] *See supra* note 22.

[183] In the preamble to the 2013 final rule, the Agencies noted commenters' description of a ''typical tender option bond transaction'' as consisting of ''the deposit of a single issue of highly-rated, long-term municipal bonds in a trust and the issuance by the trust of two classes of securities: a floating rate, puttable security (the ''floaters''), and an inverse floating rate security (the ''residual'') with no tranching involved. According to commenters, the holders of the floaters have the right, generally on a daily or weekly basis, to put the floaters for purchase at par. The put right is supported by a liquidity facility delivered by a highly-rated provider (in many cases, the banking entity sponsoring the trust) and allows the floaters to be treated as a short-term security. The floaters are in large part purchased and held by money market mutual funds. The residual is held by a longer-term investor (in many cases the banking entity sponsoring the trust, or an insurance

Continued

The 2013 final rule ''does not prevent a banking entity from owning or otherwise participating in a tender option bond vehicle; it requires that these activities be conducted in the same manner as with other covered funds.'' [184] To the extent that a tender option bond vehicle is a covered fund, then, § ____.14 would apply. If a banking entity organizes and offers or sponsors a tender option bond vehicle, for example, § ____.14 of the 2013 final rule prohibits the banking entity from engaging in any ''covered transaction'' with the vehicle. Such a ''covered transaction'' could include the sponsoring banking entity providing a liquidity facility to support the put right that is a key feature of the ''floater'' security issued by a tender option bond vehicle. The Agencies understand that after adoption of the 2013 final rule, banking entities restructured tender option bond vehicles, or structured new tender option bond vehicles formed after adoption, in order to comply with the 2013 final rule. What role do banking entities play in creating the tender option bond trust and how have the restrictions on ''covered transactions'' affected the continuing use of this financing structure? Why should tender option bond vehicles sponsored by banking entities be viewed differently than other types of covered funds sponsored by banking entities? As discussed above, the Agencies are requesting comment about whether to incorporate into § ____.14's limitations on covered transactions the exemptions provided in section 23A of the FR Act and the Board's Regulation W. Would incorporating some or all of these exemptions address any challenges banking entities that sponsor tender option bond trusts have faced with respect to subsequent and ongoing covered transactions with such tender option bond vehicles?

2. Section ____.11: Activities Permitted in Connection With Organizing and Offering a Covered Fund

a. Underwriting and Market Making for a Covered Fund

Section 13(d)(1)(B) of the BHC Act permits a banking entity to purchase and sell securities and other instruments described in 13(h)(4) in connection with certain underwriting or market making-related activities.[185] The 2013 final rule addressed how this exemption applied in the context of underwriting or market making of ownership interests in covered funds. In particular, § ____.11(c) of the 2013 final rule provides that the prohibition in § ____.10(a) on ownership or sponsorship of a covered fund does not apply to a banking entity's underwriting and market making-related activities involving a covered fund so long as:

The banking entity conducts the activities in accordance with the requirements of the underwriting exemption in § ____.4(a) of the 2013 final rule or market-making exemption in § ____.4(b) of the 2013 final rule, respectively;

The banking entity includes the aggregate value of all ownership interests of the covered fund acquired or retained by the banking entity and its affiliates for purposes of the limitation on aggregate investments in covered funds (the ''aggregate-fund limit'') [186] and capital deduction requirement; [187] and

The banking entity includes any ownership interests that it acquires or retains for purposes of the limitation on investments in a single covered fund (the ''per-fund limit'') if the banking entity (or an affiliate): (i) Acts as a sponsor, investment adviser, or commodity trading advisor to the covered fund; (ii) otherwise acquires and retains an ownership interest in the covered fund in reliance on the exemption for organizing and offering a covered fund in § ____.11(a) of the 2013 final rule; (iii) acquires and retains an ownership interest in such covered fund and is either a securitizer, as that term is used in section 15G(a)(3) of the Exchange Act, or is acquiring and retaining an ownership interest in such covered fund in compliance with section 15G of that Act and the implementing regulations issued thereunder, each as permitted by § ____.11(b) of the 2013 final rule; or (iv) directly or indirectly, guarantees, assumes, or otherwise insures the obligations or performance of the covered fund or of any covered fund in which such fund invests.[188]

The Agencies continue to believe that providing a separate provision relating to permitted underwriting and market making-related activities for ownership interests in covered funds is supported by section 13(d)(1)(B) of the BHC Act. The exemption for underwriting and market making-related activities under section 13(d)(1)(B), by its terms, is a statutorily permitted activity and exemption from the prohibitions in section 13(a), whether on proprietary trading or on covered fund activities. Applying the statutory exemption in this manner accommodates the capital raising activities of covered funds and other issuers in accordance with the underwriting and market making provisions under the statute.

The proposed amendments to § ____.11(c) are intended to better achieve these objectives, consistent with the requirements of the statute and based on the experience of the Agencies following implementation of the 2013 final rule. Specifically, for a covered fund that the banking entity does not organize or offer pursuant to § ____.11(a) or (b) of the 2013 final rule, the proposal would remove the requirement that the banking entity include for purposes of the aggregate fund limit and capital deduction the value of any ownership interests of the covered fund acquired or retained in accordance with the underwriting or market-making exemption. Under the proposed amendments, these limits, as well as the per fund limit, would only apply to a covered fund that the banking entity organizes or offers and in which the banking entity retains an ownership interest pursuant to § ____.11(a) or (b) of the 2013 final rule. The Agencies seek with this change to more closely align the requirements for engaging in underwriting or market-making-related activities with respect to ownership interests in a covered fund with the requirements for engaging in these activities with respect to other financial instruments. The Agencies expect this change would reduce compliance costs for banking entities that engage in these activities without exposing banking entities to additional risks beyond those inherent in underwriting and market making-related activities involving otherwise similar financial instruments as permitted by the statute. This is because banking entities that engage in underwriting or market making-related activities with respect to covered funds would remain subject to the

company, mutual fund, or hedge fund). According to commenters, the residual investors take all of the market and structural risk related to the tender option bonds structure, with the investors in floaters taking only limited, well-defined insolvency and default risks associated with the underlying municipal bonds generally equivalent to the risks associated with investing in the municipal bonds directly. According to commenters, the structure of tender option bond transactions is governed by certain provisions of the Internal Revenue Code in order to preserve the tax-exempt treatment of the underlying municipal securities.'' *See* 79 FR at 5702.

[184] *See* 79 FR at 5703.

[185] 12 U.S.C. 1851(d)(1)(B).

[186] *See* 2013 final rule § ____.12(a)(iii).

[187] *See* 2013 final rule § ____.12(d).

[188] *See* 2013 final rule § ____.11(c).

requirements of those exemptions in subpart B, as modified by the proposal, including requirements relating to risk management and limitations based on the reasonably expected near term demand of clients, customers, or counterparties.

The proposal would retain the requirements of the 2013 final rule associated with the per-fund limit, aggregate fund limit, and capital deduction where the banking entity engages in activity in reliance on § ____.11(a) or (b) with respect to a covered fund, consistent with the limitations of section 13(d)(1)(G)(iii) of the BHC Act that restrict a banking entity that relies on this exemption from acquiring or retaining an ownership interest in a covered fund beyond a de minimis investment amount.

In addition, the proposal would maintain the requirement that the underwriting or market-making-related activities be conducted in accordance with the requirements of § ____.4(a) or § ____4(b) of the 2013 final rule (as modified by the proposal), respectively. These requirements are designed specifically to address a banking entity's underwriting and market making-related activities and to permit holding exposures consistent with the reasonably expected near term demand of clients, customers and counterparties.

Question 183. What effects do commenters believe the proposed changes to the requirements for engaging in underwriting or market-making-related activities with respect to ownership interests in covered funds would have on the capital raising activities of covered funds and other issuers? What other changes should the Agencies consider, if any, to more closely align the requirements for engaging in underwriting or market-making-related activities with respect to ownership interests in a covered fund with the requirements for engaging in these activities with respect to other financial instruments? For example, because the exemption for underwriting and market making-related activities under section 13(d)(1)(B), by its terms, is a statutorily permitted activity and an exemption from the prohibitions in section 13(a), is it necessary to continue to retain the per-fund limit, aggregate fund limit, and capital deduction where the banking entity engages in activity in reliance on § ____.11(a) or (b)? Should these limitations apply only with respect to covered fund interests acquired or retained by the banking entity in reliance on section 13(d)(1)(G)(iii) of the BHC Act, and not to interests held in reliance on the separate exemption provided for underwriting and market making activities, where the banking entity seeks to rely on separate exemptions for permitted activities related to the same covered fund? That is, should we remove the requirement that the banking entity include for purposes of the per fund limit, aggregate fund limit, and capital deduction the value of any ownership interests of the covered fund acquired or retained in accordance with the underwriting or market-making exemption, regardless of whether the banking entity engages in activity in reliance on § ____.11(a) or (b) with respect to the fund? Why or why not? Conversely, should the Agencies retain the requirement that all covered fund ownership interests acquired or retained in connection with underwriting or market-making-related activities be included for purposes of the aggregate fund limit and capital deduction as a means to effectuate the limitations on permitted activities in section (d)(2)(A) of the BHC Act?

Question 184. Please describe whether the restrictions on underwriting or market making of ownership interests in covered funds are appropriate. Why or why not?

Question 185. Please describe any potential restrictions that commenters believe should be included or indicate any restrictions that should be removed, along with the commenter's rationale for such changes, and how such changes would be consistent with the statute.

3. Section ____.13: Other Permitted Covered Fund Activities

a. Permitted Risk-Mitigating Hedging Activities

Section 13(d)(1)(C) of the BHC Act provides an exemption for certain risk-mitigating hedging activities.[189] In the context of covered fund activities, the 2013 final rule implemented this authority narrowly, permitting only limited risk-mitigating hedging activities involving ownership interests in covered funds for hedging employee compensation arrangements. In particular, § ____.13(a) of the 2013 final rule permits a banking entity to acquire or retain an ownership interest in a covered fund provided that the ownership interest is designed to demonstrably reduce or otherwise significantly mitigate the specific, identifiable risks to the banking entity in connection with a compensation arrangement with an employee who directly provides investment advisory or other services to the covered fund.

In the 2011 proposal, the Agencies considered permitting a banking entity to acquire or retain an ownership interest in a covered fund as a hedge in a second context, in addition to hedging employee compensation arrangements. Specifically, the 2011 proposal included a provision that would have allowed a banking entity to acquire or retain an ownership interest in a covered fund as a risk-mitigating hedge when acting as an intermediary on behalf of a customer that is not itself a banking entity to facilitate the exposure by the customer to the profits and losses of the covered fund.[190] After receiving comments on the 2011 proposal, the Agencies determined not to include this second provision in the 2013 final rule. At the time, the Agencies determined based on information available and comments received, that transactions by a banking entity to act as principal in providing exposure to the profits and losses of a covered fund for a customer, even if hedged by the entity with ownership interests of the covered fund, constituted a high-risk strategy that could threaten the safety and soundness of the banking entity. The Agencies were concerned that these transactions could expose the banking entity to the risk that the customer will fail to perform, thereby effectively exposing the banking entity to the risks of the covered fund, and that a customer's failure to perform may be concurrent with a decline in value of the covered fund, which could expose the banking entity to additional losses. The Agencies therefore concluded that these transactions could pose a significant potential to expose banking entities to the same or similar economic risks that section 13 of the BHC Act sought to eliminate.[191]

Since the Agencies' adoption of the 2013 final rule, some market participants have argued that the 2013 final rule should be modified to permit a banking entity to acquire or retain an ownership interest in a covered fund as a risk-mitigating hedge when acting as an intermediary on behalf of a customer that is not itself a banking entity to facilitate the exposure by the customer to the profits and losses of the covered fund. These market participants have urged that allowing banking entities to facilitate customer activity would be consistent with the intent of the statute. In the view of these market participants, permitting such activity would not be inconsistent with safety and soundness because it would be conducted consistent with the requirements of the 2013 final rule, as modified by the proposal, including the requirements

[189] *See* 12 U.S.C. 1851(d)(1)(C).

[190] *See* 2011 proposal.

[191] *See* 79 FR at 5737.

with respect to risk-mitigating hedging transactions. For example, such exposures would be subject to required risk limits and policies and procedures and must be appropriately monitored and risk managed. Although a banking entity could be exposed to the risk of the covered fund if the customer fails to perform, this counterparty default risk would be present whenever a banking entity facilitates the exposure by the customer to the profits and losses of a financial instrument and seeks to hedge its own exposure by investing in the financial instrument.

Accordingly, the Agencies are including this provision in the proposal and requesting comment below as to whether the 2013 final rule should be modified to permit this additional category of risk-mitigating hedging transactions.

As in the 2011 proposal, this proposal would allow a banking entity to acquire a covered fund interest as a hedge when acting as an intermediary on behalf of a customer that is not itself a banking entity to facilitate the exposure by the customer to the profits and losses of the covered fund. The hedging of employee compensation arrangements involving covered fund interests would remain unchanged from the 2013 final rule. Moreover, a banking entity that seeks to use a covered fund interest to hedge on behalf of a customer would need to comply with all of the requirements of § ____.13(a), which generally track the requirements of § ____.5, as modified by this proposal.[192] The Agencies believe that to effectively implement the statute, banking entities should have a broader ability to acquire or retain a covered fund interest as a permissible hedging activity.

In addition to those questions raised in connection with the proposed implementation of the risk-mitigating hedging exemption under § ____.5 of the proposal, the Agencies request comment on the proposed implementation of that same exemption with respect to covered fund activities. In particular, the Agencies request comment on the following questions:

Question 186. Should a banking entity be permitted to acquire or retain an ownership interest in a covered fund as a hedge when acting as an intermediary on behalf of a customer that is not itself a banking entity to facilitate the exposure by the customer to the profits and losses of the covered fund? If so, what kinds of transactions would banking entities enter into to facilitate the exposure by the customer to the profits and losses of the covered fund, what types of covered funds would be used to hedge, how would they be used to hedge, and what kinds of customers would be involved? Should the Agencies place additional limitations on these arrangements, such as a requirement for a banking entity to take prompt action to hedge or eliminate its covered fund exposure if the customer fails to perform?

Question 187. At the time the Agencies adopted the 2013 final rule, they determined that transactions by a banking entity to act as principal in providing exposure to the profits and losses of a covered fund for a customer, even if hedged by the entity with ownership interests of the covered fund, constituted a high-risk strategy that could threaten the safety and soundness of the banking entity. Do these arrangements constitute a high-risk strategy, threaten the safety and soundness of a banking entity, and pose significant potential to expose banking entities to the same or similar economic risks that section 13 of the BHC Act sought to eliminate? Why or why not? Commenters are encouraged to provide specific information that would help the Agencies' analysis of this question.

Question 188. Are there other circumstances on which a banking entity should be permitted to acquire or retain an ownership interest in a covered fund? If so, please explain. For example, should the Agencies amend the 2013 final rule to provide that, in addition to the proposed amendment, banking entities be permitted to acquire or retain ownership interests in covered funds where the acquisition or retention meets the requirements of § ____.5 of the 2013 final rule, as modified by the proposal?

b. Permitted Covered Fund Activities and Investments Outside of the United States

Section 13(d)(1)(I) of the BHC Act[193] permits foreign banking entities to acquire or retain an ownership interest in, or act as sponsor to, a covered fund, so long as those activities and investments occur solely outside the United States and certain other conditions are met (the foreign fund exemption).[194] The purpose of this statutory exemption appears to be to limit the extraterritorial application of the statutory restrictions on covered fund activities and investments, while preserving national treatment and competitive equity among U.S. and foreign banking entities within the United States.[195] The statute does not explicitly define what is meant by ''solely outside of the United States.''

i. Activities or Investments Solely Outside of the United States

The 2013 final rule establishes several conditions on the availability of the foreign fund exemption. Specifically, the 2013 final rule provides that an activity or investment occurs solely outside the United States for purposes of the foreign fund exemption only if:

- The banking entity acting as sponsor, or engaging as principal in the acquisition or retention of an ownership interest in the covered fund, is not itself, and is not controlled directly or indirectly by, a banking entity that is located in the United States or established under the laws of the United States or of any State;
- The banking entity (including relevant personnel) that makes the decision to acquire or retain the ownership interest or act as sponsor to the covered fund is not located in the

[192] The proposal would also amend § ____.13(a) to align with the proposed modifications to § ____5. In particular, the proposal would require that a risk-mitigating hedging transaction pursuant to § ____.13(a) be designed to reduce or otherwise significantly mitigate one or more specific, identifiable risks to the banking entity. It would also remove the requirement that the hedging transaction ''demonstrably reduces or otherwise significantly mitigates'' the relevant risks, consistent with the proposed modifications to § ____.5. *See supra* Part III.B.3 of this Supplementary Information section.

[193] Section 13(d)(1)(I) of the BHC Act permits a banking entity to acquire or retain an ownership interest in or have certain relationships with, a covered fund notwithstanding the restrictions on investments in, and relationships with, a covered fund, if: (i) Such activity or investment is conducted by a banking entity pursuant to paragraph (9) or (13) of section 4(c) of the BHC Act; (ii) the activity occurs solely outside of the United States; (iii) no ownership interest in such fund is offered for sale or sold to a resident of the United States; and (iv) the banking entity is not directly or indirectly controlled by a banking entity that is organized under the laws of the United States or of one or more States. *See* 12 U.S.C. 1851(d)(1)(I).

[194] This section's discussion of the concept ''solely outside of the United States'' is provided solely for purposes of the proposal's implementation of section 13(d)(1)(I) of the BHC Act, and does not affect a banking entity's obligation to comply with additional or different requirements under applicable securities, banking, or other laws.

[195] *See* 156 Cong. Rec. S5897 (daily ed. July 15, 2010) (statement of Sen. Merkley). (''Subparagraphs (H) and (I) recognize rules of international regulatory comity by permitting foreign banks, regulated and backed by foreign taxpayers, in the course of operating outside of the United States to engage in activities permitted under relevant foreign law. However, these subparagraphs are not intended to permit a U.S. banking entity to avoid the restrictions on proprietary trading simply by setting up an offshore subsidiary or reincorporating offshore, and regulators should enforce them accordingly. In addition, the subparagraphs seek to maintain a level playing field by prohibiting a foreign bank from improperly offering its hedge fund and private equity fund services to U.S. persons when such offering could not be made in the United States.'').

United States or organized under the laws of the United States or of any State;

- The investment or sponsorship, including any transaction arising from risk-mitigating hedging related to an ownership interest, is not accounted for as principal directly or indirectly on a consolidated basis by any branch or affiliate that is located in the United States or organized under the laws of the United States or of any State; and
- No financing for the banking entity's ownership or sponsorship is provided, directly or indirectly, by any branch or affiliate that is located in the United States or organized under the laws of the United States or of any State (the ''financing prong'').[196]

Much like the similar requirement under the exemption for permitted trading activities of a foreign banking entity, experience since adoption of the 2013 final rule has indicated that the financing prong has been difficult to comply with in practice. As a result, the proposal would remove the financing prong of the foreign fund exemption for the same reasons as described above for the trading outside of the United States exemption. This modification would streamline the requirements of this exemption with the intention of improving implementation of the statutory exemption. Although a U.S. branch or affiliate that extends financing for a covered fund investment solely outside of the United States could bear some risks—for example, if the U.S. branch of an affiliate provides a loan secured by a covered fund interest that then declines in value—the conditions to the foreign fund exemption, as modified by the proposal, are designed to require that the principal risks of covered fund investments and sponsorship by foreign banking entities permitted under the foreign fund exemption occur and remain solely outside of the United States. For example, the foreign fund exemption would continue to provide that the investment or sponsorship, including any transaction arising from risk-mitigating hedging related to an ownership interest, may not be accounted for as principal directly or indirectly on a consolidated basis by any U.S. branch or affiliate. One of the principal purposes of section 13 of the BHC Act appears to be to limit the risks that covered fund investments and activities may pose to the safety and soundness of U.S. banking entities and the U.S. financial system. A purpose of the foreign fund exemption appears to be to limit the extraterritorial application of section 13 as it applies to foreign banking entities subject to section 13. The modifications to these requirements under the proposal are intended to ensure that any foreign banking entity engaging in activity under the foreign fund exemption does so in a manner that ensures the risk and sponsorship of the activity or investment occurs and resides solely outside of the United States.

ii. Offered for Sale or Sold to a Resident of the United States

One of the restrictions of the exemption for covered fund activities conducted by foreign banking entities outside the United States is the restriction that no ownership interest in the covered fund may be offered for sale or sold to a resident of the United States.[197] To implement this restriction, § ____.13(b) of the 2013 final rule requires, as one condition of the foreign fund exemption, that ''no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States'' (the ''marketing restriction''). Section ____.13(b)(3) of the 2013 final rule further specifies that an ownership interest in a covered fund is not offered for sale or sold to a resident of the United States for purposes of the marketing restriction if it is sold or has been sold pursuant to an offering that does not target residents of the United States.[198]

After issuance of the 2013 final rule, foreign banking entities requested clarification from the Agencies regarding whether the marketing restriction applied only to the activities of a foreign banking entity that is seeking to rely on the foreign fund exemption or whether it applied more generally to the activities of any person offering for sale or selling ownership interests in the covered fund. Specifically, sponsors of covered funds and foreign banking entities asked how this condition would apply to a foreign banking entity that has made, or intends to make, an investment in a covered fund where the foreign banking entity (including its affiliates) does not sponsor, or serve, directly or indirectly, as the investment manager, investment adviser, commodity pool operator, or commodity trading advisor to the covered fund (a third-party covered fund).

After issuance of the 2013 final rule, the staffs of the Agencies issued guidance to address these issues, and the proposal would amend the 2013 final rule to clearly incorporate this guidance.[199] The proposal therefore provides that an ownership interest in a covered fund is not offered for sale or sold to a resident of the United States for purposes of the marketing restriction only if it is not sold and has not been sold pursuant to an offering that targets residents of the United States in which the banking entity or any affiliate of the banking entity participates. If the banking entity or an affiliate sponsors or serves, directly or indirectly, as the investment manager, investment adviser, commodity pool operator, or commodity trading advisor to a covered fund, then the banking entity or affiliate will be deemed for purposes of the marketing restriction to participate in any offer or sale by the covered fund of ownership interests in the covered fund.[200]

The purpose of this provision is to make clear that the marketing restriction applies to the activity of the foreign banking entity that is seeking to rely on the exemption (including its affiliates). The marketing restriction constrains the foreign banking entity in connection with its own activities with respect to covered funds rather than the activities of unaffiliated third parties, thereby requiring that the foreign banking entity seeking to rely on this exemption does not engage in an offering of ownership interests that targets residents of the United States. This view is consistent with limiting the extraterritorial application of section 13 to foreign banking entities while seeking to ensure that the risks of covered fund investments by foreign banking entities occur and remain solely outside of the United States. If the marketing restriction were applied to the activities of third parties, such as the sponsor of a third-party covered fund (rather than the foreign banking entity investing in a third-party covered fund), this exemption may not be available in certain circumstances where the risks and activities of a foreign banking entity with respect to its investment in the covered fund are solely outside the United States.[201] In describing the

[196] *See* final rule § ____.13(b)(4).

[197] *See* 12 U.S.C. 1851(d)(1)(I).

[198] 2013 final rule § ____.13(b)(3).

[199] *https://www.federalreserve.gov/bankinforeg/volcker-rule/faq.htm#13.*

[200] *See* proposal § ____.13(b)(3).

[201] The Agencies note that foreign funds that sell securities to residents of the United States in an offering that targets residents of the United States will be covered funds under § ____.10(b)(i) of the 2013 final rule if such funds are unable to rely on an exclusion or exemption under the Investment Company Act other than section 3(c)(1) or 3(c)(7) of that Act. If the marketing restriction were to apply more generally to the activities of any person (including the covered fund itself), the applicability of the foreign fund exemption would be significantly limited because a third-party foreign fund's offering that targets residents of the United

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marketing restriction in the preamble to the 2013 final rule, the Agencies stated that the marketing restriction serves to limit the foreign fund exemption so that it ''does not advantage foreign banking entities relative to U.S. banking entities with respect to providing *their* covered fund services in the United States by prohibiting the offer or sale of ownership interests in *related* covered funds to residents of the United States.'' [202]

A foreign banking entity (including its affiliates) that seeks to rely on the foreign fund exemption must comply with all of the conditions to that exemption, including the marketing restriction. A foreign banking entity that participates in an offer or sale of covered fund interests to a resident of the United States thus cannot rely on the foreign fund exemption with respect to that covered fund. Further, where a banking entity sponsors or serves, directly or indirectly, as the investment manager, investment adviser, commodity pool operator, or commodity trading advisor to a covered fund, that banking entity will be viewed as participating in an offer or sale by the covered fund of ownership interests in the covered fund, and therefore such foreign banking entity would not qualify for the foreign fund exemption for that covered fund if that covered fund offers or sells covered fund ownership interests to a resident of the United States. The Agencies request comment on the proposal's approach to implementing the foreign fund exemption. In particular, the Agencies request comment on the following questions:

Question 189. Is the proposal's implementation of the foreign fund exemption effective? If not, what alternative would be more effective and/or clearer?

Question 190. Are the proposal's provisions effective and sufficiently clear regarding when a transaction or activity will be considered to have occurred solely outside the United States? If not, what alternative would be more effective and/or clearer?

Question 191. Should the financing prong of the foreign fund exemption be retained? Why or why not? Should additional requirements be added to the foreign fund exemption? If so, what requirements and why? Should additional requirements be modified or removed? If so, what requirements and why and how? How would such changes be consistent with the statute?

Question 192. Is the proposed exemption consistent with limiting the extraterritorial reach of the rule with respect to FBOs? Does the proposed exemption create competitive advantages for foreign banking entities with respect to U.S. banking entities? Why or why not?

Question 193. Is the Agencies' proposal regarding the 2013 final rule's marketing restriction, which reflects the staff interpretations incorporated within previous FAQs, sufficiently clear? Should the marketing restriction apply more broadly to third-party funds that the foreign banking entity does not advise or sponsor? Why or why not?

4. Section ____.14: Limitations on Relationships With a Covered Fund

Section 13(f) of the BHC Act generally prohibits a banking entity that, directly or indirectly, serves as investment manager, investment adviser, or sponsor to a covered fund (or that organizes and offers a covered fund pursuant to section 13(d)(1)(G) of the BHC Act) from entering into a transaction with such covered fund that would be a covered transaction as defined in section 23A of the FR Act.[203] In the 2013 final rule, the Agencies noted that ''[s]ection 13(f) of the BHC Act does not incorporate or reference the exemptions contained in section 23A of the FR Act or the Board's Regulation W.'' [204] However, the Agencies also noted that notwithstanding the prohibition in section 13(f)(1) of the BHC Act, ''other specific portions of the statute permit a banking entity to engage in certain transactions or relationships'' with a related covered fund.[205] The Agencies addressed the apparent conflict between section 13(f)(1) and particular provisions in section 13(d)(1) of the BHC Act in the 2013 final rule by interpreting the statutory language to permit a banking entity ''to acquire or retain an ownership interest in a covered fund in accordance with the requirements of section 13.'' [206] In doing so, the Agencies noted that a contrary interpretation would make the ''specific transactions that permit covered transactions between a banking entity and a covered fund mere surplusage.'' [207] In light of the apparent conflict and ambiguity between particular provisions in sections 13(d)(1) and 13(f)(1) of the BHC Act, the Agencies solicit comment below on the approach adopted in the 2013 final rule and potential alternative approaches to interpreting these provisions and reconciling any apparent conflicts or redundancies between these provisions.

Section 13(f) also provides an exemption for prime brokerage transactions between a banking entity and a covered fund in which a covered fund managed, sponsored, or advised by that banking entity has taken an ownership interest. In addition, section 13(f) subjects any transaction permitted under section 13(f) of the BHC Act (including a permitted prime brokerage transaction) between a banking entity and covered fund to section 23B of the FR Act.[208]

In general, section 23B of the FR Act requires that the transaction be on market terms or on terms at least as favorable to the banking entity as a comparable transaction by the banking entity with an unaffiliated third party. Section ____.14 of the 2013 final rule implemented these provisions.[209]

a. Prime Brokerage Transactions

Section 13(f) of the BHC Act provides an exemption from the prohibition on covered transactions with a covered fund for any prime brokerage transaction with a covered fund in which a covered fund managed, sponsored, or advised by a banking entity has taken an ownership interest (a ''second-tier fund''). The statute by its terms permits a banking entity with a relationship to a covered fund described in section 13(f) of the BHC Act to engage in prime brokerage transactions (that are covered transactions) only with second-tier funds and does not extend to covered funds more generally. Neither the statute nor the proposal limits covered transactions between a banking entity and a covered fund for which the banking entity does not serve as investment manager, investment adviser, or sponsor (as defined in section 13 of the BHC Act) or have an interest in reliance on section 13(d)(1)(G) of the BHC Act. Under the statute, the exemption for prime brokerage transactions is available only so long as certain enumerated conditions are satisfied.[210] The conditions are that (i) the banking entity is in compliance with each of the limitations set forth in § ____.11 of the 2013 final rule with respect to a covered

States would make the foreign fund exemption unavailable for all foreign banking entity investors in the fund.

[202] *See,* 79 FR at 5742 (emphasis added).

[203] 12 U.S.C. 371c. The Agencies note that this does not alter the applicability of section 23A of the FR Act and the Board's Regulation W to covered transactions between insured depository institutions and their affiliates.

[204] 79 FR at 5746.

[205] *Id.*

[206] *Id.*

[207] *Id.*

[208] 12 U.S.C. 371c–1.

[209] *See* 2013 final rule § ____.14.

[210] *See* 12 U.S.C. 1851(f)(3).

fund organized and offered by the banking entity or any of its affiliates; (ii) the CEO (or equivalent officer) of the banking entity certifies in writing annually that the banking entity does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the covered fund or of any covered fund in which such covered fund invests; and (iii) the Board has not determined that such transaction is inconsistent with the safe and sound operation and condition of the banking entity. The proposal would retain each of these provisions, including that the required certification be made to the appropriate Agency for the banking entity.

The staffs of the Agencies previously issued guidance explaining when a banking entity was required to provide this certification during the conformance period.[211] To reflect this guidance, the Agencies are proposing a change to the rule that provides the timing for when a banking entity must submit such certification. In particular, the proposal provides a banking entity must provide the CEO certification annually no later than March 31 of the relevant year. As under the 2013 final rule, under the proposal, the CEO would have a duty to update the certification if the information in the certification materially changes at any time during the year when he or she becomes aware of the material change. This change is intended to provide banking entities with certainty about when the required certification must be provided to the appropriate Agency in order to comply with the prime brokerage exemption.

b. FCM Clearing Services

On March 29, 2017, the CFTC's Division of Swap Dealer and Intermediary Oversight (''DSIO'') issued a letter to a futures commission merchant (''FCM'') stating that the DSIO would not recommend that an enforcement action against the FCM be initiated in connection with § ____.14(a) of the 2013 final rule. The letter provides relief for futures, options, and swaps clearing services provided by a registered FCM to covered funds for which affiliates of the FCM are engaged in the services identified in § ____.14(a) including, for example, investment management services.[212]

The CFTC believes the relief provided to the FCM is warranted and would extend the relief from the requirements of § ____.14(a) of the 2013 final rule to all FCMs performing futures, options, and swaps clearing services. Providing such clearing services to customers of affiliates does not appear to be the type of relationship that was intended to be limited under section 13(f) of the BHCA. The provision of futures, options, and swaps clearing services by an FCM is a facilitation service that the CFTC believes would not give rise to a relationship that might evade the prohibition against acquiring or retaining an interest in or sponsoring a covered fund. An FCM earns clearing fees and is not in a position to profit from any gain or loss that the customer may have on its cleared futures, options, or swaps positions. The other Agencies do not object to the relief provided to the FCMs as described above.

Question 194. Are clearing services provided by an FCM to its customers a relationship that would give rise to the policy concerns addressed by § ____.14 of the 2013 final rule?

Question 195. Does the no-action relief provided by the CFTC staff together with the statement herein provide sufficient certainty for market participants regarding the application of § ____.14(a) of the 2013 final rule to FCM clearing services?

Question 196. If the exemptions in section 23A of the FR Act and the Board's Regulation W are made available under a modification to § ____.14 of the 2013 final rule, what would be the effect, if any, for FCM clearing services? Would incorporating those exemptions further support the relief provided by the CFTC? If so, how?

The Agencies request comment on all aspects of the proposal's approach to implementing the limitations on certain relationships with covered funds. In particular, the Agencies request comment on the following questions:

Question 197. Is the proposal's approach to implementing the limitations on certain transactions with a covered fund effective? If not, what alternative approach would be more effective and why?

Question 198. Should the Agencies adopt a different interpretation of section 13(f)(1) of the BHC Act than the interpretation adopted in the preamble to the 2013 final rule? For example, should the Agencies amend § ____.14 of the 2013 final rule to incorporate some or all of the exemptions in section 23A of the FR Act and the Board's Regulation W? Why or why not? Why should these transactions be permitted? For example, what would be the effect on banking entities' ability to meet the needs and demands of their clients and how would incorporating some or all of the exemptions that exist in section 23A of the FR Act and the Board's Regulation W facilitate a banking entity's ability to meet client needs and demands? If permitted, should these additional transactions be subject to any limitations?

Question 199. Should the Agencies amend § ____.14 of the 2013 final rule to incorporate the quantitative limits in section 23A of the Federal Reserve and the Board's Regulation W? Why or why not? Are there any other elements of section 23A and the Board's Regulation W that the Agencies should consider incorporating? Please explain.

Question 200. Are there other transactions between a banking entity and covered funds that should be prohibited or limited as part of this rulemaking?

Question 201. Is the definition of ''prime brokerage transaction'' under the proposal appropriate? If not, what definition would be appropriate? Are there any transactions that should be included in the definition of ''prime brokerage transaction'' that are not currently included?

Question 202. With respect to the CEO (or equivalent officer) certification required under section 13(f)(3)(A)(ii) and § ____.14(a)(2)(ii)(B) of this proposal, what would be the most useful, efficient method of certification (*e.g.,* a new stand-alone certification, a certification incorporated into an existing form or filing, website certification or certification filed directly with the relevant Agency?) Is it sufficiently clear by when a certification must be provided by a banking entity? If not, how could the Agencies provide additional clarity?

D. Subpart D—Compliance Program Requirements; Violations

1. Section ____.20: Program for Compliance; Reporting

Section ____.20 of the 2013 final rule contains compliance program and metrics collection and reporting requirements. These requirements are tailored based on banking entity size and complexity of activity. The 2013 final rule was intended to focus the most significant compliance obligations on the largest and most complex organizations, while minimizing the economic impact on small banking entities.[213] However, public feedback

[211] *https://www.federalreserve.gov/bankinforeg/volcker-rule/faq.htm#18.*

[212] CFTC Staff Letter 17–18 (Mar. 29, 2017).

[213] The OCC, Board and FDIC statement on the 2013 final rule's applicability to community banks recognized that ''[t]he vast majority of these community banks have little or no involvement in prohibited proprietary trading or investment activities in covered funds. Accordingly, community banks do not have any compliance obligations under the final rule if they do not engage in any covered activities other than trading

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has indicated that even determining whether a banking entity is eligible for the simplified compliance program can require significant analysis for small banking entities. In addition, certain traditional banking activities of small banks have fallen within the scope of the proprietary trading and covered fund prohibitions and exemptions, making them ineligible for the simplified program available to banking entities with no covered activities. Public feedback has indicated that the compliance program requirements are also significant for larger banking entities that must implement the rule's enhanced compliance program, metrics, and CEO attestation requirements. The Agencies propose to revise the compliance program requirements to allow greater flexibility and focus the requirements on the banking entities with the most significant and complex activities.

Specifically, the Agencies propose to apply the compliance program requirement to banking entities as follows:

- Banking entities with significant trading assets and liabilities. Banking entities with significant trading assets and liabilities would be subject to the six-pillar compliance program requirement (currently set forth in § ____.20(b) of the 2013 final rule), the metrics reporting requirements (§ ____.20(d) of the 2013 final rule), the covered fund documentation requirements (§ ____.20(e) of the 2013 final rule), and the CEO attestation requirement (currently in Appendix B of the 2013 final rule).
- Banking entities with moderate trading assets and liabilities. Banking entities with moderate trading assets and liabilities would be required to establish the simplified compliance program (currently described in § ____.20(f)(2) of the 2013 final rule), and comply with the CEO attestation requirement (currently in Appendix B of the 2013 final rule).
- Banking entities with limited trading assets and liabilities. Banking entities with limited trading assets and liabilities would be presumed to be in compliance with the proposal and would have no obligation to demonstrate compliance with subpart B and subpart C of the implementing regulations on an ongoing basis. These banking entities would not be required to demonstrate compliance with the rule unless and until the appropriate Agency, based upon a review of the banking entity's activities, determines that the banking entity must establish the simplified compliance program (currently described in §§ ____.20(b) or ____.20(f)(2) of the 2013 final rule).

a. Compliance Program Requirements for Banking Entities With Significant Trading Assets and Liabilities

i. Section 20(b)—Six-Pillar Compliance Program

Section ____.20(b) of the 2013 final rule specifies six elements that each compliance program required under that section must at a minimum contain.

The six elements specified in § ____.20(b) are:

- Written policies and procedures reasonably designed to document, describe, monitor and limit trading activities and covered fund activities and investments conducted by the banking entity to ensure that all activities and investments that are subject to section 13 of the BHC Act and the rule comply with section 13 of the BHC Act and the 2013 final rule;
- A system of internal controls reasonably designed to monitor compliance with section 13 of the BHC Act and the rule and to prevent the occurrence of activities or investments that are prohibited by section 13 of the BHC Act and the 2013 final rule;
- A management framework that clearly delineates responsibility and accountability for compliance with section 13 of the BHC Act and the 2013 final rule and includes appropriate management review of trading limits, strategies, hedging activities, investments, incentive compensation and other matters identified in the rule or by management as requiring attention;
- Independent testing and audit of the effectiveness of the compliance program conducted periodically by qualified personnel of the banking entity or by a qualified outside party;
- Training for trading personnel and managers, as well as other appropriate personnel, to effectively implement and enforce the compliance program; and
- Records sufficient to demonstrate compliance with section 13 of the BHC Act and the 2013 final rule, which a banking entity must promptly provide to the relevant Agency upon request and retain for a period of no less than 5 years.

Under the 2013 final rule, these six elements must be part of the compliance program of each banking entity with total consolidated assets greater than $10 billion that engages in covered trading activities and investments subject to section 13 of the BHC Act and the implementing regulations.

The Agencies are proposing to apply the six-pillar compliance program requirements only to banking entities with significant trading assets and liabilities. The Agencies preliminarily believe these banking entities are engaged in activities at a scale that warrants the costs of establishing the compliance program elements described in §§ ____.20(b) and ____.20(e) of the 2013 final rule. Accordingly, the Agencies believe it is appropriate to require banking entities with significant trading assets and liabilities to maintain a six-pillar compliance program to ensure that banking entities' activities are conducted in compliance with section 13 of the BHC Act and the implementing regulations.

As described further in the ''Enhanced Minimum Standards for Compliance Programs'' below, the Agencies are proposing to eliminate the current enhanced compliance program requirements found in Appendix B of the 2013 final rule. The Agencies believe that the six-pillar compliance program requirements (currently in § ____.20(b) of the 2013 final rule) can be appropriately tailored to the size and activities of each banking entity that is subject to these requirements. The proposed approach would afford banking entities flexibility to integrate the § ____.20 compliance program requirements into other compliance programs of the banking entity, which may reduce complexity for banking entities currently subject to the enhanced compliance program requirements.

Question 203. Should the six-pillar compliance program requirements apply only to banking entities with significant trading assets and liabilities? Is the scope of the six-pillar compliance program appropriate? Why or why not? Are there particular aspects of this requirement that should be modified or eliminated? If so, which ones and why?

ii. CEO Attestation Requirement

The 2013 final rule includes a requirement, currently included in Appendix B, that a banking entity CEO must review and annually attest in writing to the appropriate Agency that the banking entity has in place processes to establish, maintain, enforce, review, test and modify the compliance program established pursuant to Appendix B and § ____.20 of the 2013 final rule in a manner reasonably designed to achieve compliance with section 13 of the BHC Act and the implementing regulations.

in certain government, agency, State or municipal obligations.'' Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency, The Volcker Rule: Community Bank Applicability (Dec. 10, 2013).

The Agencies are proposing to eliminate the current Appendix B (as described further below) but to apply a modified CEO attestation requirement for banking entities other than those with limited trading assets and liabilities. While the Agencies believe the revisions to the compliance program requirements under the proposal generally simplify the compliance program requirements, this simplification should be balanced against the requirement for all banking entities to maintain compliance with section 13 of the BHC Act and the implementing regulations. Accordingly, the Agencies believe that applying the CEO attestation requirement for banking entities with meaningful trading activities would ensure that the compliance programs established by these banking entities pursuant to § ____.20(b) or § ____.20(f)(2) of the proposal are reasonably designed to achieve compliance with section 13 of the BHC Act and the implementing regulations as proposed. The Agencies propose limiting the CEO attestation requirement to banking entities with significant trading assets and liabilities or moderate trading assets and liabilities because, if the Agencies' proposal is adopted, banking entities with limited trading assets and liabilities would be subject to a rebuttable presumption of compliance, as described below. The Agencies do not believe it is necessary to require a CEO attestation for banking entities with limited trading assets and liabilities as those banking entities would not be subject to the express requirement to maintain a compliance program pursuant to § ____.20 under the proposal.

Question 204. What are the costs associated with preparing the required CEO attestation? How significant are those costs relative to the potential benefits of requiring a CEO attestation? What are some of the specific operational or other burdens or expenses associated with the CEO attestation requirement? Please explain the circumstances under which those potential burdens or expenses may arise.

Question 205. Are there existing business practices and procedures that render the CEO attestation requirement redundant and/or unnecessary? If so, please identify and describe those existing business practices. Alternatively, are there other regulatory requirements that fulfill the same purpose as the CEO attestation with respect to a compliance program? Please explain.

Question 206. Is the scope of the CEO attestation requirements appropriate? Should banking entities with limited trading assets and liabilities, but with a large amount of consolidated assets, for example consolidated assets in excess of $50 billion be required to provide a CEO attestation with respect to the banking entity's compliance program notwithstanding that such institution may be entitled to the rebuttable presumption of compliance under the proposal?

Question 207. How costly are the existing CEO attestation requirements for banking entities, broken down based on whether they are categorized as having significant, moderate, and limited trading assets and liabilities under the proposal? How would those annual costs change if the modifications described in the proposal were adopted? Can the costs described above, both as the requirement is currently drafted and as proposed to be amended, be broken down based on the type of banking entity involved, such as for broker-dealers and registered investment advisers? Please be as specific as possible.

Question 208. Under the proposal, banking entities with limited trading assets and liabilities (for which the presumption of compliance has not been rebutted) would not be subject to the CEO attestation requirement? Do commenters agree with that approach? As an alternative, should a banking entity with limited trading assets and liabilities be subject to a similar requirement? For example, should these types of banking entities be required to conduct an annual review, to be performed by objective, qualified personnel, of its compliance with the rule and submit such annual review to its Board of Directors and the Agencies? Why or why not? What are the costs and benefits of such requirement?

iii. Covered Fund Documentation Requirements

Currently, § ____.20(e) of the 2013 final rule requires banking entities with greater than $10 billion in total consolidated assets to maintain additional documentation related to covered funds as part of their compliance program. The Agencies are proposing to apply the covered fund documentation requirements only to banking entities with significant trading assets and liabilities. The Agencies do not believe that these additional documentation requirements are necessary for banking entities without significant trading assets and liabilities because the Agencies expect that their covered funds activities may generally be smaller in scale and less complex than banking entities with significant trading assets and liabilities. Accordingly, the Agencies believe these banking entities' activities are unlikely to justify the costs associated with complying with these documentation requirements. Furthermore, the Agencies expect they would be able to examine and supervise these banking entities' compliance with the covered fund prohibition without requiring such additional documentation as part of the banking entities' compliance program.

b. Compliance Program Requirements for Banking Entities With Moderate Trading Assets and Liabilities

The 2013 final rule provides that a banking entity with total consolidated assets of $10 billion or less as measured on December 31 of the previous two years that engages in covered activities or investments pursuant to subpart B or subpart C of the 2013 final rule (other than trading activities permitted under § ____.6(a) of the 2013 final rule) may satisfy the compliance program requirements by including in its existing compliance policies and procedures references to the requirements of section 13 of the BHC Act and subpart D of the implementing regulations and adjustments as appropriate given the activities, size, scope, and complexity of the banking entity.[214]

The Agencies propose to extend availability of this simplified compliance program to all banking entities with moderate trading assets and liabilities. The Agencies believe that streamlining the compliance program requirements for banking entities with moderate trading assets and liabilities is appropriate. The scale and nature of the activities and investments in which these banking entities are engaged may not justify the additional costs associated with establishing the compliance program elements under §§ ____.20(b) and (e) of the 2013 final rule and may be appropriately examined and supervised through an appropriately tailored simplified compliance program. Consistent with the compliance program requirements for banking entities with significant trading assets and liabilities, the Agencies note that banking entities with moderate trading assets and liabilities would be able to incorporate their simplified compliance program as part of any existing compliance policies and procedures and tailor their compliance program to the size and nature of their activities.

[214] 12 CFR 44.20(f)(2).

c. Compliance Program Requirements for Banking Entities With Limited Trading Assets and Liabilities

The proposal would include a presumption of compliance for certain banking entities with limited trading assets and liabilities. Under the proposal, a banking entity that, together with its affiliates and subsidiaries on a worldwide basis, has trading assets and liabilities (excluding obligations of or guaranteed by the United States or any agency of the United States) the average gross sum of which over the previous four quarters, as measured as of the last day of each of the four previous calendar quarters, is less than $1 billion, would be presumed to be in compliance with the proposal. Banking entities meeting these conditions would have no obligation to demonstrate compliance with subpart B and subpart C of the implementing regulations on an ongoing basis. The Agencies believe, based on experience implementing and supervising compliance with the 2013 final rule, that these banking entities are generally engaged in traditional banking activities. The Agencies do not believe it is necessary to require banking entities with limited trading assets and liabilities to demonstrate compliance with the prohibitions of section 13 of the BHC Act by establishing a compliance program, given the limited scale of their trading operations. Further, the Agencies believe that the limited trading assets and liabilities of the banking entities qualifying for the presumption of compliance are unlikely to warrant the costs of establishing a compliance program under § ____.20.

A banking entity that meets the proposed criteria for the presumption of compliance would be subject to the statutory prohibitions of section 13 of the BHC Act and the implementing regulations on an ongoing basis. The Agencies would not expect a banking entity that meets the proposed criteria for the presumption of compliance to demonstrate compliance with the proposal in conjunction with the Agencies' normal supervisory and examination processes. However, the appropriate Agency may exercise its authority to treat the banking entity as if it does not have limited trading assets and liabilities if, upon review of the banking entity's activities, the relevant Agency determines that the banking entity has engaged in proprietary trading or covered fund activities that are otherwise prohibited under subpart B or subpart C. A banking entity would be expected to remediate any impermissible activity upon being notified of such determination by the Agency. A banking entity would be required to remediate the impermissible activity within a period of time deemed appropriate by the relevant Agency.

The Agencies believe this presumption of compliance for certain banking entities with limited trading assets and liabilities would allow flexibility for these banking entities to operate under their existing internal policies and procedures. The Agencies generally expect these banking entities, in the ordinary course of business, to develop and adhere to internal policies and procedures that promote prudent risk management practices.

Irrespective of whether a banking entity has engaged in activities in violation of subpart B or C of this proposal, the relevant Agency retains its authority to require a banking entity to apply the compliance program requirements that would otherwise apply if the banking entity had significant or moderate trading assets and liabilities if the relevant Agency determines that the size or complexity of the banking entities trading or investment activities, or the risk of evasion, does not warrant a presumption of compliance.

Question 209. Should the Agencies specify the notice and response procedures in connection with an Agency determination that the presumption pursuant to ____.20(g)(2) is rebutted? Why or why not?

d. Enhanced Minimum Standards

i. Enhanced Minimum Standards for Compliance Programs

Section ____. 20(c) of the 2013 final rule requires certain banking entities to establish, maintain and enforce an enhanced compliance program that includes the requirements and standards. Appendix B of the 2013 final rule specifies the enhanced minimum standards applicable to the compliance programs of large banking entities and banking entities engaged in significant trading activities. Section I.a of Appendix B provides that the enhanced compliance program must:

- Be reasonably designed to identify, document, monitor, and report the covered trading and covered fund activities and investments of the banking entity; identify, monitor and promptly address the risks of these covered activities and investments and potential areas of noncompliance; and prevent activities or investments prohibited by, or that do not comply with, section 13 of the BHC Act and the 2013 final rule;
- Establish and enforce appropriate limits on the covered activities and investments of the banking entity, including limits on the size, scope, complexity, and risks of the individual activities or investments consistent with the requirements of section 13 of the BHC Act and the 2013 final rule;
- Subject the effectiveness of the compliance program to periodic independent review and testing, and ensure that the entity's internal audit, corporate compliance and internal control functions involved in review and testing are effective and independent;
- Make senior management, and others as appropriate, accountable for the effective implementation of the compliance program, and ensure that the board of directors and CEO (or equivalent) of the banking entity review the effectiveness of the compliance program; and
- Facilitate supervision and examination by the Agencies of the banking entity's covered trading and covered fund activities and investments.

The Agencies continue to believe that banking entities with significant trading assets and liabilities should have detailed and comprehensive programs for ensuring compliance with the requirements of section 13 of the BHC Act. The Agencies recognize, however, that many banking entities have found implementing certain aspects of the enhanced compliance program requirements of Appendix B to be inefficient, duplicative of, and in some instances inconsistent with, their existing compliance regimes and risk management programs.

While recognizing the need to establish and maintain an appropriate compliance program, the Agencies also believe that banking entities should be provided discretion to tailor their compliance programs to the structure and activities of their organizations. The flexibility to build on compliance regimes that already exist at banking entities, including risk limits, risk management systems, board-level governance protocols, and the level at which compliance is monitored, may reduce the costs and complexity of compliance while also enabling a robust compliance mechanism for section 13 of the BHC Act. After carefully considering the overall effects of the enhanced compliance program standards in the context of existing banking entity compliance frameworks, the Agencies are proposing certain modifications to limit the implementation, operational or other complexities associated with the compliance program requirements set forth in § ____.20.

The Agencies believe that many of the compliance requirements of the current enhanced compliance program could be implemented effectively if incorporated into a risk management framework already developed and designed to fit a banking entity's organizational and reporting structure. The prescribed six-pillar compliance requirements in § ____.20 are consistent with general standards of safety and soundness as well as diligent supervision, the implementation of which conforms with the traditional risk management processes of ensuring governance, controls, and records appropriately tailored to the risks and activities of each banking entity. Accordingly, the Agencies propose to eliminate the requirements of Appendix B (other than the CEO attestation) and permit banking entities with significant trading assets and liabilities to satisfy compliance program requirements by meeting the six elements currently specified in § ____.20(b) of the 2013 final rule, commensurate with the size, scope, and complexity of their activities and business structure, and subject to a CEO attestation requirement.

A banking entity that does not have significant trading assets and liabilities under the proposal, but which is currently subject to Appendix B under the 2013 final rule, would be permitted to satisfy its compliance requirements in the proposal by including in its existing compliance policies and procedures appropriate references to the requirements of section 13 of the BHC Act as appropriate given the activities, size, scope, and complexity of the banking entity.

ii. Proprietary Trading Activities

Section II.a of Appendix B of the 2013 final rule generally requires a banking entity subject to the Appendix, in addition to the requirements of § ____.20, to: (1) Have written policies and procedures governing each trading desk; (2) include a comprehensive description of the risk management program for the trading activity of the banking entity; (3) implement and enforce limits and internal controls for each trading desk that are reasonably designed to ensure that trading activity is conducted in conformance with section 13 of the BHC Act and subpart B and with the banking entity's policies and procedures; (4) establish, maintain and enforce policies and procedures regarding the use of risk-mitigating hedging instruments and strategies; (5) perform robust analysis and quantitative measurement of its trading activities that is reasonably designed to ensure that the trading activity of each trading desk is consistent with the banking entity's compliance program, monitor and assist in the identification of potential and actual prohibited proprietary trading activity, and prevent the occurrence of prohibited proprietary trading; (6) identify the activities of each trading desk that will be conducted in reliance on the exemptions contained in §§ ____.4 through ____.6; and (7) be reasonably designed and established to effectively monitor and identify for further analysis any proprietary trading activity that may indicate potential violations of section 13 of the BHC Act and subpart B and to prevent violations of section 13 of the BHC Act and subpart B.

These requirements of Appendix B in the 2013 final rule reflect the Agencies' expectation that banking organizations with significant trading activities adopt compliance regimes that, among other things, take into account the size and complexity of the banking entity's activities and structure of its business. However, the Agencies recognize that operationalizing the prescriptive requirements of Appendix B may limit the ability of banking entities to adapt their existing risk management frameworks for purposes of compliance with the 2013 final rule. Therefore, based on experience since the adoption of the 2013 final rule, the Agencies believe that a banking entity currently subject to Appendix B requirements under the 2013 final rule should be permitted to implement an appropriately robust compliance program by tailoring the requirements of § ____.20 to the type, size, scope, and complexity of its activities and business structure. The Agencies are therefore proposing to eliminate the requirements of section II.a of Appendix B in order to reduce the operational complexities associated with the compliance requirements of the 2013 final rule. As described above, the Agencies believe that the compliance program requirements in §§ ____.20 can be appropriately scaled (pursuant to § ____.20(a)) to the size, scope, and complexity of each banking entity and should afford banking entities flexibility to integrate their § ____.20 compliance program into their other compliance programs.

The Agencies believe that, under the proposal, compliance programs that satisfy § ____.20 and that are appropriately tailored to the size, scope, and complexity of the banking entity's activities, would be effective in meeting the objectives underlying the enhanced requirements set forth in Appendix B of the 2013 final rule with respect to proprietary trading activities. Furthermore, affording banking entities the flexibility to adapt their existing risk management frameworks to satisfy the requirements of § ____.20 would reduce the complexity of compliance with section 13 of the BHC Act and the implementing regulations.

Question 210. The Agencies are requesting comment on whether the requirements of § ____.20 of the proposal would be effective in ensuring that banking entities with significant trading assets and liabilities and banking entities with moderate trading assets and liabilities comply with the proprietary trading requirements and restrictions of section 13 of the BHC Act and the proposal. In addition to the CEO attestation requirement in proposed § ____.20(c), are there certain requirements included in Appendix B that should be incorporated into the requirements of § ____.20, particularly with respect to banking entities with significant trading assets and liabilities, in order to ensure compliance with the proprietary trading requirements and restrictions of section 13 of the BHC Act and the proposal? To what extent would the elimination of Appendix B reduce the complexity of compliance with section 13 of the BHC Act? What other options should the Agencies consider in order to reduce complexity while still ensuring robust compliance with the proprietary trading requirements and restrictions of section 13 of the BHC Act and the implementing regulations?

iii. Covered Fund Activities and Investments

The enhanced minimum standards in section II.b of Appendix B of the 2013 final rule prescribe the establishment, maintenance and enforcement of a compliance program that includes written policies and procedures that are appropriate for the type, size, complexity, and risks of the covered fund and related activities conducted and investments made, by a banking entity. In addition to the requirements of § ____.20, § II.b of Appendix B requires that compliance programs be designed to: (1) Include appropriate management review and independent testing for identifying and documenting covered funds in which the banking entity invests, or that each unit within the banking entity's organization sponsors or organizes and offers, and covered funds in which each such unit invests; (2) identify, document, and map each unit within the organization that is permitted to acquire or hold an interest in any covered fund or sponsor any covered fund; (3) explain the banking entity's strategy for monitoring, mitigating, or prohibiting conflicts of interest, transactions or covered fund activities and investments that may threaten safety and soundness, and exposure to high-risk assets and trading strategies presented by its covered fund activities and investments; (4) document the covered fund activities and investments that each organizational unit is authorized to conduct, the banking entity's plan for actively seeking unaffiliated investors to ensure that any investment by the banking entity conforms to the limits contained in section 12 or registered in compliance with the securities laws and is thereby exempt from those limits within the time periods allotted in section 12, and how it complies with the requirements of subpart C; (5) establish, maintain, and enforce internal controls that are reasonably designed to ensure that the banking entity's covered fund activities or investments are compliant and to detect potential compliance violations; and (6) identify, document, address, and remedy any compliance violations.

The 2013 final rule subjects certain banking entities to the enhanced minimum compliance standards of Appendix B to reflect the Agencies' expectation that banking entities with significant covered fund activities or investments adopt sophisticated compliance regimes. However, the Agencies recognize that operationalizing these requirements may restrict the flexibility of banking entities to adapt their existing risk management frameworks for purposes of compliance with the 2013 final rule. The Agencies believe that a banking entity with significant trading assets and liabilities or moderate trading assets and liabilities currently subject to Appendix B requirements could effectively implement an appropriately robust compliance program by tailoring the requirements of § ____.20 to the type, size, scope, and complexity of its covered fund activities and business structure. Accordingly, the Agencies propose to eliminate the requirements of § II.b of Appendix B to the 2013 final rule.

Under the proposal, a banking entity with significant trading assets and liabilities or with moderate trading assets and liabilities would satisfy the compliance program requirements by appropriately scaling the compliance program requirements in § ____.20. A banking entity with significant trading assets and liabilities would also be required to adopt the covered fund documentation requirements in § ____.20(e) of the proposal.

The Agencies believe that, under the proposal, compliance programs that satisfy the foregoing requirements and that are appropriately tailored to the size, scope, and complexity of the banking entity's activities, would be effective in meeting the objectives underlying the enhanced requirements set forth in Appendix B of the 2013 final rule with respect to covered fund investments and activities. Furthermore, affording banking entities the flexibility to adapt their existing risk management frameworks to satisfy the § ____.20 compliance program requirements would reduce the complexity of compliance with section 13 of the BHC Act.

Question 211. The Agencies are requesting comment on whether the requirements of § ____.20 of the proposal would, if appropriately tailored to the size, scope, and complexity of the banking entity's activities, be effective in ensuring that banking entities with significant trading assets and liabilities and banking entities with moderate trading assets and liabilities comply with the covered fund requirements and restrictions of section 13 of the BHC Act and the implementing regulations. In addition to CEO attestation requirement in proposed § ____.20(c), are there certain requirements included in Appendix B that should be incorporated into the requirements of § ____.20, particularly with respect to banking entities with significant trading assets and liabilities, in order to ensure compliance with the covered fund requirements and restrictions of section 13 of the BHC Act and the implementing regulations? To what extent would the elimination of Appendix B reduce the complexity of compliance with section 13 of the BHC Act? What other options should the Agencies consider in order to reduce complexity while still ensuring robust compliance with the covered fund requirements and restrictions of section 13 of the BHC Act and the implementing regulations?

Question 212. How do banking entities that are registered investment advisers currently meet their compliance program obligations? That is, to what extent are banking entities' compliance programs related to the covered fund prohibitions of the 2013 final rule implemented by the registered investment adviser as opposed to the other affiliates or subsidiaries that are part of the banking entity? How costly are the existing compliance program requirements for banking entities that are registered investment advisers, broken down based on whether they are categorized as having significant, moderate, and limited trading assets and liabilities under the proposal? How would those annual costs change if the modifications described in the proposal were adopted?

iv. Responsibility and Accountability

Appendix B of the 2013 final rule contains a CEO attestation requirement as part of the enhanced minimum standards for compliance programs as a means to ensure that a strong governance framework is implemented with respect to compliance with section 13 of the BHC Act. This provision requires a banking entity's CEO to review and annually attest in writing to the appropriate Agency that the banking entity has in place processes to establish, maintain, enforce, review, test and modify the compliance program established pursuant to Appendix B and § ____.20 of the 2013 final rule in a manner reasonably designed to achieve compliance with section 13 of the BHC Act and the 2013 final rule. Appendix B of the 2013 final rule also specifies that in the case of the U.S. operations of a foreign banking entity, including a U.S. branch or agency of a foreign banking entity, the attestation may be provided for the entire U.S. operations of the foreign banking entity by the senior management officer of the U.S. operations of the foreign banking entity who is located in the United States.

Consistent with the Agencies' proposal to remove the specific, enhanced minimum standards included in Appendix B of the 2013 final rule, the Agencies propose to incorporate the CEO attestation requirement within § ____.20(c) so that it will to apply to banking entities with significant trading assets and liabilities and banking entities with moderate trading assets and liabilities. Further, the Agencies propose that the CEO attestation requirement in § ____.20(c) specify that in the case of the U.S. operations of a foreign banking entity, including a U.S. branch or agency of a foreign banking entity, the attestation may be provided for the entire U.S. operations of the foreign banking entity by the senior management officer of the U.S. operations of the foreign banking entity who is located in the United States.

Preserving the CEO attestation requirement and incorporating it within the proposal underscores the importance of CEO engagement within the overall compliance framework for banking entities with significant trading assets and liabilities and for banking entities with moderate trading assets and liabilities. The Agencies believe that the CEO attestation requirement may reinforce the importance of creating and communicating an appropriate ''tone at the top,'' setting an appropriate culture of compliance, and establishing clear policies regarding the management of the firm's covered trading activities and its covered fund activities and investments.

The Agencies believe that incorporating the CEO attestation requirement into proposed § ____.20(c) could help to ensure that the compliance program established pursuant to that section is reasonably designed to achieve compliance with section 13 of the BHC Act and the implementing regulations, while the removal of the specific, enhanced minimum standards in Appendix B will afford a banking entity considerable flexibility to satisfy the elements of § ____.20 in a manner that it determines to be most appropriate given its existing compliance regimes, organizational structure, and activities.

Question 213. The Agencies are requesting comment on whether incorporating the CEO attestation requirement in proposed § ____.20(c) would ensure that a strong governance framework is implemented with respect to compliance with section 13 of the BHC Act and the proposal. What other options should the Agencies consider in order to encourage CEO engagement in ensuring robust compliance with section 13 of the BHC Act and the proposal?

v. Independent Testing

After careful consideration, the Agencies propose to eliminate the specific enhanced minimum standards for independent testing prescribed in Appendix B, section IV of the 2013 final rule and permit banking entities with significant trading assets and liabilities to satisfy the compliance program requirements by meeting the independent testing requirements outlined in § ____.20(b)(4) of the proposal. Section ____.20(b)(4) of the proposal specifies that the contents of the compliance program shall include independent testing and audit of the effectiveness of the compliance program conducted periodically by qualified personnel of the banking entity or by a qualified outside party. As with all elements of the required compliance program under proposed § ____.20(b), independent testing should be designed and implemented in a manner that is appropriate for the type, size, scope, and complexity of activities and business structure of the banking entity. Section ____.20(b)(4) allows for a tailored approach to ensure that the effectiveness of the compliance program is subject to an objective review with appropriate frequency and depth. Under the proposal, a banking entity with moderate trading assets and liabilities would be permitted to incorporate independent testing into its existing compliance programs as appropriate given the activities, size, scope, and complexity of the banking entity.

vi. Training

After careful consideration, the Agencies propose to eliminate the training element of the enhanced compliance program of Appendix B, section V of the 2013 final rule and permit banking entities to satisfy compliance program requirements by meeting the training requirements outlined in § ____.20(b)(5) of the proposal. Section ____.20(b)(5) specifies that the contents of the compliance program shall include training for trading personnel and managers, as well as other appropriate personnel, to effectively implement and enforce the compliance program. As with all elements of the required compliance program under § ____.20(b), the Agencies expect the training regimen to be designed and implemented in a manner that is appropriate for the type, size, scope, and complexity of activities and business structure of the banking entity. Under the proposal, a banking entity with moderate trading assets and liabilities would be permitted to incorporate training into its existing compliance programs as appropriate given the activities, size, scope and complexity of the banking entity.

vii. Recordkeeping

Appendix B, section VI of the 2013 final rule requires banking entities to create and retain records sufficient to demonstrate compliance and support the operations and effectiveness of the compliance program. After careful consideration, the Agencies believe that the enhanced minimum standards under Appendix B, section VI can be replaced by the requirements prescribed in § ____.20(b)(6) of the proposal. Section ____.20(b)(6) of the proposal specifies that the banking entity must establish records sufficient to demonstrate compliance with section 13 of the BHC Act and subpart D and promptly provide to the relevant Agency upon request and retain such records for no less than 5 years or for such longer period as required by the relevant Agency. As with all elements of the required compliance program under § ____.20(b), the Agencies expect the record keeping requirement to be designed and implemented in a manner that is appropriate for the type, size, scope, and complexity of activity and business structure of the banking entity. A banking entity with moderate trading assets and liabilities would be permitted to incorporate recordkeeping into its existing compliance programs as appropriate given the activities, size, scope, and complexity of the banking entity.

Question 214. The Agencies are requesting comment on whether the existing independent testing, training, and recordkeeping requirements of § ____.20(b) would, if appropriately tailored to the size, scope, and complexity of the banking entity's activities, be effective in ensuring that banking entities with significant trading assets and liabilities and moderate trading assets and liabilities comply with the requirements and restrictions of section 13 of the BHC Act and the implementing regulations. Are there certain requirements included in independent testing, training, and recordkeeping requirements of Appendix B that should be incorporated into the requirements of § ____.20, particularly with respect to banking entities with significant trading, in order to ensure compliance with the requirements and restrictions of section 13 of the BHC Act and the implementing regulations? To what extent would the elimination of the independent testing, training, and recordkeeping requirements of Appendix B reduce the complexity of complying with section 13 of the BHC Act? What other options should the Agencies consider with respect to independent testing, training, and recordkeeping in order to reduce complexity while still ensuring robust compliance with the requirements and restrictions of section 13 of the BHC Act and the implementing regulations?

e. Summary of Proposed Revisions to Compliance Program Requirements

The following table provides a summary of the proposed changes to the compliance program requirements:

SUMMARY OF PROPOSED CHANGES TO COMPLIANCE PROGRAM REQUIREMENTS

Requirement (citation to 2013 final rule)	Banking entities subject to requirement in 2013 final rule	Banking entities subject to requirement in proposal
6 Pillar Compliance Program (Section ____.20(b)).	Banking entities with more than $10 billion in total consolidated assets.	Banking entities with significant trading assets and liabilities.
Enhanced compliance program (Section ____.20(c), Appendix B).	Banking entities with: • $50 billion or more in total consolidated assets, or. • Trading assets and liabilities of $10 billion or greater over the previous consecutive four quarters, as measured as of the last day of each of the four prior calendar quarters, if the banking entity engages in proprietary trading activity permitted under subpart B. • Additionally, any other banking entity notified in writing by the Agency.	Not applicable. Enhanced compliance program eliminated (but see CEO Attestation Requirement below).
CEO Attestation Requirement (Section ____.20(c), Appendix B).	Banking entities with: • $50 billion or more in total consolidated assets, or. • Trading assets and liabilities of $10 billion or greater over the previous consecutive four quarters, as measured as of the last day of each of the four prior calendar quarters. • Additionally, any other banking entity notified in writing by the Agency.	• Banking entities with significant trading assets and liabilities. • Banking entities with moderate trading assets and liabilities. • Any other banking entity notified in writing by the Agencythe Agency.
Metrics Reporting Requirements (Section ____.20(d), Appendix A).	• Banking entities with trading assets and liabilities the average gross sum of which over the previous consecutive four quarters, as measured as of the last day of each of the four prior calendar quarters, is $10 billion or greater, if the banking entity engages in proprietary trading activity permitted under subpart B. • Any other banking entity notified in writing by the Agency.	• Banking entities with significant trading assets and liabilities.
Additional covered fund documentation requirements (Section ____.20(e)).	Banking entities with more than $10 billion in total consolidated assets as reported on December 31 of the previous two calendar years.	Banking entities with significant trading assets and liabilities.
Simplified program for banking entities with no covered activities (Section ____.20(f)(1)).	Banking entities that do not engage in activities or investments pursuant to subpart B or subpart C (other than trading activities permitted pursuant to § ____.6(a) of subpart B).	Banking entities that do not engage in activities or investments pursuant to subpart B or subpart C (other than trading activities permitted pursuant to § ____.6(a) of subpart B).
Simplified program for banking entities with modest activities (Section ____.20(f)(2)).	Banking entities with $10 billion or less in total consolidated assets as reported on December 31 of the previous two calendar years that engage in activities or investments pursuant to subpart B or subpart C (other than trading activities permitted pursuant to § ____.6(a) of subpart B).	Banking entities with moderate trading assets and liabilities.
No compliance program requirement unless Agency directs otherwise (N/A).	Not applicable	Banking entities with limited trading assets and liabilities subject to the presumption of compliance.

E. Appendix to Part [•]—Reporting and Recordkeeping Requirements

1. Overview of the Proposal and Significant Changes From the 2013 Final Rule

As provided in the preamble to the 2013 final rule, the Agencies have assessed the metrics data for its effectiveness in monitoring covered trading activities for compliance with section 13 of the BHC Act and for its costs.[215] The Agencies have also considered whether all of the quantitative measurements are useful for all asset classes and markets, as well as for all the trading activities subject to the metrics requirement, or whether modifications are appropriate.[216] As a result of this evaluation, and as described in detail below, the Agencies are proposing the following amendments to Appendix A of the 2013 final rule:[217]

- Limit the applicability of certain metrics only to market making and underwriting desks.
- Replace the Customer-Facing Trade Ratio with a new Transaction Volumes metric to more precisely cover types of trading desk transactions with counterparties.
- Replace Inventory Turnover with a new Positions metric, which measures the value of all securities and derivatives positions.

[215] *See* 79 FR at 5772.

[216] *Id.*

[217] In connection with the Appendix, the following documents have also been published and made available on each Agency's respective website: Instructions for Preparing and Submitting Quantitative Measurement Information (''Instructions''), Technical Specifications Guidance, and an eXtensible Markup Language Schema (''XML Schema'').

- Remove the requirement to separately report values that can be easily calculated from other quantitative measurements already reported.
- Streamline and make consistent value calculations for different product types, using both notional value and market value to facilitate better comparison of metrics across trading desks and banking entities.
- Eliminate inventory aging data for derivatives because aging, as applied to derivatives, does not appear to provide a meaningful indicator of potential impermissible trading activity or excessive risk-taking.
- Require banking entities to provide qualitative information specifying for each trading desk the types of financial instruments traded, the types of covered trading activity the desk conducts, and the legal entities into which the trading desk books trades.
- Require a Narrative Statement describing changes in calculation methods, trading desk structure, or trading desk strategies.
- Remove the paragraphs labeled ''General Calculation Guidance'' from the regulation. The Instructions generally would provide calculation guidance.[218]
- Remove the requirement that banking entities establish and report limits on Stressed Value-at-Risk at the trading desk-level because trading desks do not typically use such limits to manage and control risk-taking.
- Require banking entities to provide descriptive information about their reported metrics, including information uniquely identifying and describing certain risk measurements and information identifying the relationships of these measurements within a trading desk and across trading desks.
- Require electronic submission of the Trading Desk Information, Quantitative Measurements Identifying Information, and each applicable quantitative measurement in accordance with the XML Schema specified and published on each Agency's website.[219]

Taken together, these changes—particularly limiting the applicability of certain metrics requirements only to trading desks engaged in certain types of covered trading activity—are designed to reduce compliance-related inefficiencies relative to the 2013 final rule. The proposed amendments to Appendix A of the 2013 final rule should allow collection of data that permits the Agencies to better monitor compliance with section 13 of the BHC Act.[220]

2. Summary of the Proposal

a. Purpose

Paragraph I.c of Appendix A of the 2013 final rule provides that the quantitative measurements that are required to be reported under the rule are not intended to serve as a dispositive tool for identifying permissible or impermissible activities. The Agencies propose to expand paragraph I.c of Appendix A of the 2013 final rule to cover all information that must be furnished pursuant to the appendix, rather than only to the quantitative measurements themselves.[221]

The Agencies propose to remove paragraph I.d. in Appendix A of the 2013 final rule, which provides for an initial review by the Agencies of the metrics data and revision of the collection requirement as appropriate. The Agencies have conducted this preliminary evaluation of the effectiveness of the quantitative measurements collected to date and are proposing modifications to Appendix A of the 2013 final rule where appropriate. The Agencies are, however, requesting comment on whether the rule should provide for a subsequent Agency review within a fixed period of time after adoption to consider whether further changes are warranted. The Agencies further note that they continue to monitor and review the effectiveness of the data as part of their ongoing oversight of the banking entities and will continue to do so should the proposed changes to Appendix A be adopted.

b. Definitions

The Agencies are proposing a clarifying change to the definition of ''covered trading activity.'' The Agencies are proposing to add the phrase ''in its covered trading activity'' to clarify that the term ''covered trading activity,'' as used in the proposed appendix, may include trading conducted under §§ ____.3(e), ____.6(c), ____.6(d), or ____.6(e) of the proposal. The proposed change would simply clarify that banking entities would have the discretion (but not the obligation) to report metrics with respect to a broader range of activities.

In addition, the proposal defines two additional terms for purposes of the appendix, ''applicability'' and ''trading day,'' that were not defined in the 2013 final rule. In particular, the proposal provides:

- *Applicability* identifies the trading desks for which a banking entity is required to calculate and report a particular quantitative measurement based on the type of covered trading activity conducted by the trading desk.
- *Trading day* means a calendar day on which a trading desk is open for trading.

''Applicability'' is defined in this proposal to clarify when certain metrics are required to be reported for specific trading desks. As described further below, this proposal would make several metrics applicable only to desks engaged in market making or underwriting.

The Agencies are proposing to create a definition of ''trading day'' to clarify the meaning of a term that is used throughout Appendix A of the 2013 final rule. Appendix A provides that the calculation period for each quantitative measurement is one trading day. The proposal would make clear that a banking entity would be required to calculate each metric for each calendar day on which a trading desk is open for trading.[222] If a trading desk books positions to a banking entity on a calendar day that is not a business day (*e.g.,* a day that falls on a weekend), then the desk is considered open for trading on that day. Even if a trading desk does not conduct any trades on a business day, the banking entity would be required to report metrics on the trading desk's existing positions for that calendar day because the trading desk is open to conduct trading. Similarly, if a trading desk spans a U.S. entity and a

[218] The Instructions are available on each Agency's respective website at the addresses specified in the Paperwork Reduction Act section of this **SUPPLEMENTARY INFORMATION**. For the SEC and CFTC, this document represents the views of SEC staff and CFTC staff, and neither Commission has approved nor disapproved the Staff Instructions for Preparing and Submitting Quantitative Measurement Information.

[219] The staff-level Technical Specifications Guidance describes the XML Schema. The Technical Specifications Guidance and the XML Schema are available on each Agency's respective website at the addresses specified in the Paperwork Reduction Act section of this Supplementary Information.

[220] As previously noted in the section entitled ''Enhanced Minimum Standards for Compliance Programs,'' the Agencies are proposing to eliminate Appendix B of the 2013 final rule. If that aspect of the proposal is adopted, current Appendix A, as modified by the proposal, would be re-designated as the ''Appendix.''

[221] The proposed amendment to paragraph I.c. of Appendix A would make clear that none of the information that a banking entity would be required to report under the proposal is intended to serve as a dispositive tool for identifying permissible or impermissible activities. Currently, that qualifying language only applies to the quantitative measurements. As proposed, that information would continue to be used to monitor patterns and identify activity that may warrant further review.

[222] As a general matter, a trading desk is not considered to be open for trading on a weekend.

foreign entity and a national holiday occurs on a business day in the United States but not in the foreign jurisdiction (or vice versa), the banking entity would be required to report metrics for the trading desk on that calendar day because the trading desk is open to conduct trading in at least one jurisdiction. The Agencies believe that the proposed definition of trading day is both objective and transparent, while also providing flexibility to banking entities by tying the definition directly to the schedule in which they operate their trading desks.

The Agencies request comments on the definitions in this proposal, including comments on the following questions:

Question 215. Is the proposed definition of ''Applicability'' effective and clear? If not, what alternative definition would be more effective and/or clearer?

Question 216. Is the proposed definition of ''Trading day'' effective and clear? If not, what alternative definition would be more effective and/or clearer?

Question 217. Is the proposed modification of ''Covered trading activity'' effective and clear? If not, what alternative definition would be more effective and/or clearer?

Question 218. Should any other terms be defined? If so, are there existing definitions in other rules or regulations that could be used in this context? Why would the use of such other definitions be appropriate?

c. Reporting and Recordkeeping

i. Scope of Required Reporting

The Agencies are proposing several modifications to paragraph III.a of Appendix A of the 2013 final rule. The Agencies are proposing to remove the Inventory Turnover and Customer-Facing Trade Ratio metrics and replace them with the Positions and Transaction Volumes quantitative measurements, respectively. In addition, as discussed below, the proposal provides that the Inventory Aging metric would only apply to securities, and would not apply to derivatives or securities that also meet the 2013 final rule's definition of a derivative.[223] As a result, the Agencies are proposing to change the name of the Inventory Aging quantitative measurement to the Securities Inventory Aging metric. Moreover, as described in more detail below, the Agencies are proposing amendments to Appendix A that would limit the application of certain quantitative measurements to trading desks that engage in specific covered trading activities.[224] As a result, the Agencies are proposing to add the phrase ''as applicable'' to paragraph III.a.[225] Finally, the Agencies are proposing to add references in paragraph III.a to the proposed Trading Desk Information, Quantitative Measurements Identifying Information, and Narrative Statement requirements.[226]

d. Trading Desk Information

The Agencies are proposing to add new paragraph III.b to Appendix A to require banking entities to report certain descriptive information regarding each trading desk engaged in covered trading activity:

i. Trading Desk Name and Trading Desk Identifier

Under paragraph III.b. of the proposed Appendix, the banking entity would be required to provide the trading desk name and trading desk identifier for each desk engaged in covered trading activities. While this proposed requirement may affect the banking entity's overall reporting obligations, this identifying information should enable the Agencies to track a banking entity's trading desk structure over time, which the Agencies believe will help identify situations when a significant data change is the result of a structural change and assist the Agencies' ability to monitor patterns in the quantitative measurements. The Agencies also believe that the proposed qualitative information, including the items identified in the sections below, potentially could provide the Agencies with enough contextual basis to facilitate the examination and supervisory processes. Such context also could potentially lessen the need for Agency follow-up in when a red flag is identified.

The trading desk name must be the name of the trading desk used internally by the banking entity. The trading desk identifier is a unique identification label that should be permanently assigned to a desk by the banking entity. A trading desk at a banking entity may not have the same trading desk identifier as another desk at that banking entity. The trading desk identifier that is assigned to each desk should remain the same for each submission of quantitative measurements. In the event a banking entity restructures its operations and merges two or more trading desks, the banking entity should assign a new trading desk identifier to the merged desk (*i.e.,* the merged desk's identifier should not replicate a trading desk identifier assigned to a previously unmerged trading desk) and permanently retire the unmerged desks' identifiers. Similarly, if a banking entity eliminates a trading desk, the trading desk identifier assigned to the eliminated desk should be permanently retired (*i.e.,* the eliminated desk's identifier should not be reassigned to a current or future trading desk).

Question 219. Should the Agencies require banking entities to report changes in desk structure in the XML reporting format in addition to a description of the changes in the Narrative Statement? For example, a ''change event'' element could be added to the proposal that would link the trading desk identifiers of predecessor and successor desks before and after trading desk mergers and splits. Would the modifications improve the banking entities' and the Agencies' ability to track changes in trading desk structure and strategy across reporting periods? How significant are any potential costs relative to the potential benefits in facilitating the tracking of trading desk changes? Please quantify your answers, to the extent feasible.

ii. Type of Covered Trading Activity

Proposed paragraph III.b. would require a banking entity to identify each type of covered trading activity that the trading desk conducts. As previously discussed, the proposal defines ''covered trading activity,'' in part, as trading conducted by a trading desk under §§ ____.4, ____.5, ____.6(a), or ____.6(b).[227] To the extent a trading desk relies on one or more of these permitted activity exemptions, the banking entity would be required to identify the type(s)

[223] *See infra* Part III.E.2.*i*.v (discussing the Securities Inventory Aging quantitative measurement). The definition of ''security'' and ''derivative'' are set forth in § ____.2 of the 2013 final rule. *See* 2013 final rule §§ ____.2 (h), (y).

[224] As discussed below, the proposed Positions, Transaction Volumes, and Securities Inventory Aging quantitative measurements generally apply only to trading desks that rely on § ____.4(a) or § ____.4(b) to conduct underwriting activity or market making-related activity, respectively. *See infra* Part III.E.2.*i*.iii (discussing the Positions, Transaction Volumes, and Securities Inventory Aging quantitative measurements).

[225] *See* 79 FR at 5616.

[226] In addition, the Agencies propose to add to paragraph III.a. a requirement that banking entities include file identifying information in each submission to the relevant Agency pursuant to Appendix A of the 2013 final rule. File identifying information reflects administrative information needed to identify the reporting requirement that is being met and distinguish between files submitted pursuant to Appendix A. File identifying information must include the name of the banking entity, the RSSD ID assigned to the top-tier banking entity by the Board, the reporting period, and the creation date and time.

[227] *See supra* Part III.E.2.b (discussing the covered trading activity definition).

of covered trading activity (*e.g.,* underwriting, market making, risk-mitigating hedging, etc.) in which the trading desk is engaged.

The proposed definition of ''covered trading activity'' also provides that a banking entity may include in its covered trading activity trading conducted under §§ ____.3(e), ____.6(c), ____.6(d), or ____.6(e). If a trading desk relies on any of the exclusions discussed in § ____.3(e) or the permitted activity exemptions discussed in §§ ____.6(c) through ____.6(e) and the banking entity includes such activity as ''covered trading activity'' for the desk under the proposed Appendix, the banking entity would need to identify these activity types (*e.g.,* securities lending, liquidity management, fiduciary transactions, etc.) for the trading desk.

While this proposed requirement may impact a firm's overall reporting obligations, the Agencies believe the identification of each desk's covered trading activity will help the relevant Agency establish the appropriate scope of examination of such activity and assist with identifying the relevant exemptions or exclusions for a particular trading desk, which in turn enables an evaluation of a desk's reported data in the context of those exemptions or exclusions.

iii. Trading Desk Description

Proposed paragraph III.b. would require a banking entity to provide a description of each trading desk engaged in covered trading activities. Specifically, the banking entity would be required to provide a brief description of the trading desk's general strategy (*i.e.,* the method for conducting authorized trading activities). The Agencies believe this descriptive information would improve the Agencies ability to assess the risks associated with a given covered trading activity and would further assist the relevant Agency in determining the appropriate frequency and scope of examination of such activity.

iv. Types of Financial Instruments and Other Products

Proposed paragraph III.b. would require a banking entity to provide descriptive information regarding the financial instruments and other products traded by each desk engaged in covered trading activities. Under the proposal, a banking entity would be required to prepare a list identifying all the types of financial instruments purchased and sold by the trading desk.[228] The banking entity may include other products that are not defined as financial instruments under § ____.3(c)(1) of the 2013 final rule in this list. In addition, the proposal requires a banking entity to indicate which of these financial instruments and other products (if applicable) are the main instruments and products purchased and sold by the trading desk. If the trading desk relies on the permitted activity exemption for market making-related activities, the banking entity would be required to specify whether each type of financial instrument included in the listing of all financial instruments is or is not included in the trading desk's market-making positions.[229]

The proposal also addresses ''excluded products'' traded by desks engaged in covered trading activities. The definition of the term ''financial instrument'' in the 2013 final rule does not include loans, spot commodities, and spot foreign exchange or currency (collectively, ''excluded products'').[230] While positions in excluded products are not subject to the 2013 final rule's restrictions on proprietary trading, a banking entity may decide to include exposures in excluded products that are related to a trading desk's covered trading activities in its quantitative measurements.[231] A banking entity generally should use a consistent approach for including or excluding positions in products that are not financial instruments when calculating metrics for a trading desk.[232]

In recognition that a banking entity may include excluded products in its quantitative measurements, proposed paragraph III.b. would require a banking entity to indicate whether each trading desk engaged in covered trading activities is including excluded products in its quantitative measurements. If excluded products are included in a trading desk's metrics, the banking entity would have to identify the specific products that are included.

This information should enable the Agencies to better understand the scope of covered trading activities, and thus help in identifying the profile of particular covered trading activities of a banking entity and its individual trading desks. Such identification is necessary to establish the appropriate frequency and scope of examination by the relevant Agency of such activity, evaluate whether a banking entity's covered trading activity is consistent with the 2013 final rule, and assess the risks associated with the activity.

v. Legal Entities the Trading Desk Uses

As discussed in the preamble to the 2013 final rule, the Agencies recognize that a trading desk may book positions into a single legal entity or into multiple affiliated legal entities.[233] To assist in establishing the appropriate scope of examination by the relevant Agency of a banking entity's covered trading activities, the Agencies are proposing to require each banking entity to identify each legal entity that serves as a booking entity for each trading desk engaged in covered trading activities, and to indicate which of these legal entities are the main booking entities for covered trading activities of each desk. The banking entity would have to provide the complete name for each legal entity (*i.e.,* the banking entity could not use abbreviations or acronyms), and the banking entity would have to provide any applicable entity identifiers.[234]

vi. Legal Entity Type Identification

The Agencies are proposing to require each banking entity to specify any applicable entity type for each legal entity that serves as a booking entity for

[228] For example, a banking entity may specify that its high grade credit trading desk purchases and sells the following types of financial instruments: U.S. corporate debt, convertible bonds, credit default swaps, and credit default swap indices.

[229] The term ''market-maker positions'' means all of the positions in the financial instruments for which the trading desk stands ready to make a market in accordance with paragraph § ____.4(b)(2)(i) of the proposal, that are managed by the trading desk, including the trading desk's open positions or exposures arising from open transactions. *See* proposal § ____.4(b)(5).

[230] *See* 2013 final rule § ____.3(c)(2).

[231] The Agencies note that banking entities are not required to calculate quantitative measurements based on positions in products that are not ''financial instruments,'' as defined under § ____.3(c)(2) of the 2013 final rule, or positions that do not represent ''covered trading activity.'' However, a banking entity may decide to include exposures in products that are not financial instruments in a trading desk's calculations where doing so provides a more accurate picture of the risks associated with the trading desk. For example, a market maker in foreign exchange forwards or swaps that mitigates the risks of its market-maker inventory with spot foreign exchange may include spot foreign exchange positions in its metrics calculations.

[232] A banking entity generally should not incorporate excluded products in the quantitative measurements of a trading desk one month, and omit these products from the trading desk's measurements the following month. Excluded products generally should be reported consistently from period to period. Any change in reporting practice for excluded products must be identified in the banking entity's Narrative Statement for the relevant trading desk(s). *See infra* Part III.E.2.f (discussing the Narrative Statement).

[233] 79 FR at 5591.

[234] The Agencies are not proposing to require each legal entity that serves as a booking entity to obtain an entity identifier to comply with the proposed appendix. If a legal entity does not have an applicable entity identifier, it should report ''None'' in the appropriate field.

trading desks engaged in covered trading activities. The proposal provides a list of key entity types for this purpose. For example, if a trading desk books trades into a legal entity that is a U.S.-registered broker-dealer, the banking entity would indicate ''U.S.-registered broker-dealer'' in the entity type identification field for that particular trading desk. If more than one entity type applies to a particular legal entity that serves as a booking entity, the banking entity must specify any applicable entity type for that legal entity. For example, if a trading desk books trades into a legal entity that is a U.S.-registered broker-dealer and a registered futures commission merchant, the banking entity would indicate ''U.S.-registered broker-dealer'' and ''futures commission merchant'' in the entity type identification field for that particular trading desk.

The proposal also requires that a banking entity identify entity types that are not otherwise enumerated in the proposed Appendix, including a subsidiary of a legal entity that is listed where the subsidiary itself is not included in the list. For example, the Agencies understand that a trading desk may book some or all of its positions into a legal entity that is incorporated under foreign law. In this situation, the banking entity should provide a brief description of the entity (*e.g.,* foreign-registered securities dealer) in the entity type identification field for that trading desk. The Agencies believe that the information collected under this section would assist banking entities and the Agencies in monitoring and understanding the scope of covered trading activities. In particular, the proposed entity type information, in conjunction with the identification of legal entities used by the trading desk (discussed above), would facilitate the Agencies' ability to coordinate with each other, as appropriate.[235]

vii. Trading Day Indicator

In order to facilitate metrics reporting, paragraph III.b. of the proposed Appendix requires a banking entity to indicate whether each calendar date is a trading day or not a trading day for each trading desk engaged in covered trading activities. The Agencies believe that this information would assist banking entities and the Agencies in monitoring covered trading activities. Specifically, the identification of trading days and non-trading days will allow the Agencies to understand why metrics may not be reported on a particular day for a particular trading desk. In addition, the Agencies expect that this information would improve consistency in metrics reports by requiring banking entities to determine whether metrics are, or are not, required to be reported for each calendar day.

viii. Currency Reported and Currency Conversion Rate

In recognition that a banking entity may report quantitative measurements for a trading desk engaged in covered trading activities in a currency other than U.S. dollars, paragraph III.b. of the proposed Appendix requires a banking entity to specify the currency used by that trading desk as well as the conversion rate to U.S. dollars. Under the proposal, the banking entity would be required to provide the currency reported on a monthly basis and the currency conversion rate for each trading day. The Agencies believe this information would assist banking entities and the Agencies in monitoring covered trading activities by facilitating the identification of quantitative measurements reported in a currency other than U.S. dollars and the conversion of such measurements to U.S. dollars. The ability to convert a banking entity's reported quantitative measurements into one consistent currency enhances the ability of the Agencies to evaluate the metrics and facilitates cross-desk comparisons.

Question 220. Is the description of the proposal's Trading Desk Information requirement effective and sufficiently clear? If not, what alternative would be more effective or clearer? Is more or less specific guidance necessary? If so, what level of specificity is needed to prepare the proposed Trading Desk Information? If the proposed Trading Desk Information is not sufficiently specific, how should it be modified to reach the appropriate level of specificity? If the proposed Trading Desk Information is overly specific, why is it too specific and how should it be modified to reach the appropriate level of specificity?

Question 221. Is the proposed Trading Desk Information helpful to understanding the scope, type, and profile of a trading desk's covered trading activities and associated risks? Why or why not? Does the proposed Trading Desk Information appropriately highlight relevant changes in a banking entity's trading desk structure and covered trading activities over time? Why or why not? Do banking entities expect that the proposed Trading Desk Information would reduce, increase, or have no effect on the number of information requests from the Agencies regarding the quantitative measurements? Please explain.

Question 222. Is any of the information required by the proposed Trading Desk Information already available to banking entities? Please explain.

Question 223. Does the proposed Trading Desk Information strike the appropriate balance between the potential benefits of the reporting requirements for monitoring and assuring compliance and the potential costs of those reporting requirements? If not, how could that balance be improved?

Question 224. Are there burdens or costs associated with preparing the proposed Trading Desk Information, and if so, how burdensome or costly would it be to prepare such information? What are the additional burdens or costs associated with preparing this information for particular trading desks? How significant are those potential costs relative to the potential benefits of the information in understanding the scope, type, and profile of a trading desk's covered trading activities and associated risks? Are there potential modifications that could be made to the proposed Trading Desk Information that would reduce the burden or cost while achieving the purpose of the proposal? If so, what are those modifications? Please quantify your answers, to the extent feasible.

Question 225. In light of the size, scope, complexity, and risk of covered trading activities, do commenters anticipate the need to hire new staff with particular expertise in order to prepare the proposed Trading Desk Information (*e.g.,* collect data and map legal entities)? Do commenters anticipate the need to develop additional infrastructure to obtain and retain data necessary to prepare this schedule? Please explain and quantify your answers, to the extent feasible.

Question 226. What operational or logistical challenges might be associated with preparing the proposed Trading Desk Information and obtaining any necessary informational inputs?

Question 227. How might the proposed Trading Desk Information affect the behavior of banking entities? To what extent and in what ways might uncertainty as to how the Agencies will review and evaluate the proposed Trading Desk Information affect the behavior of banking entities?

Question 228. Is the meaning of the term ''main,'' as that term is used in the proposed Trading Desk Information (*e.g.,* main financial instruments or

[235] *See* 79 FR at 5758. The Agencies expect to continue to coordinate their efforts related to section 13 of the BHC Act and to share information as appropriate in order to effectively implement the requirements of that section and the 2013 final rule. *See id.*

products, main booking entities), effective and sufficiently clear? If not, how should the Agencies define this term such that it is more effective and/or clearer? Should the meaning of the term ''main'' be the same with respect to: (i) Main financial instruments or other products; and (ii) main booking entities? Why or why not?

Question 229. In addition to reporting ''main'' financial instruments or products and ''main'' booking entities, should banking entities be required to report the amount of profit and loss attributable to each ''main'' financial instrument or product and/or ''main'' booking entity utilized by the trading desk in the Trading Desk Information? Why or why not?

Question 230. Is the proposal's requirement that a banking entity identify all financial instruments or other products traded on a desk effective and clear? Why or why not? Should the Agencies provide a specific list of financial instruments or other product types from which to choose when identifying financial instruments or other products traded on a desk? If so, please provide examples.

Question 231. Should banking entities be required to report at least one valid unique entity identifier (*e.g.,* LEI, CRD, RSSD, or CIK) for each legal entity identified as a booking entity for covered trading activities of a desk? How burdensome and costly would it be for a banking entity to obtain an entity identifier for each legal entity serving as a booking entity that does not already have an identifier? What are the additional burdens or costs associated with obtaining an entity identifier for particular legal entities? How significant are those potential costs relative to the potential benefits in facilitating the identification of legal entities? Please quantify your answers, to the extent feasible.

Question 232. Is more guidance needed on what a banking entity should report in response to the proposed requirement to specify the applicable entity type(s) for each legal entity that serves as a booking entity for covered trading activities of a trading desk? If so, please explain.

Question 233. How burdensome and costly would it be for banking entities to report which Agencies receive reported quantitative measurements for each specific trading desk?

e. Quantitative Measurements Identifying Information

The Agencies are proposing to add new paragraph III.c. to the proposed Appendix to require banking entities to prepare and report descriptive information regarding their quantitative measurements. This information would have to be reported collectively for all relevant trading desks. For example, a banking entity would report one Risk and Position Limits Information Schedule, rather than separate Risk and Position Limits Information Schedules for each of those trading desks.

i. Risk and Position Limits Information Schedule

The proposed Risk and Position Limits Information Schedule requires banking entities to provide detailed information regarding each limit reported in the Risk and Position Limits and Usage quantitative measurement, including the unique identification label for the limit, the limit name, limit description, whether the limit is intraday or end-of-day, the unit of measurement for the limit, whether the limit measures risk on a net or gross basis, and the type of limit. The unique identification label for the limit should be a character string identifier that remains consistent across all trading desks and reporting periods. When reporting the type of limit, the banking entity would identify which of the following categories best describes the limit: Value-at-Risk, position limit, sensitivity limit, stress scenario, or other. If ''other'' is reported, the banking entity would provide a brief description of the type of limit. The Agencies believe this more detailed limit information would enable the Agencies to better understand how banking entities assess and address risks associated with their covered trading activities.

ii. Risk Factor Sensitivities Information Schedule

The proposed Risk Factor Sensitivities Information Schedule requires banking entities to provide detailed information regarding each risk factor sensitivity reported in the Risk Factor Sensitivities quantitative measurement, including the unique identification label for the risk factor sensitivity, the name of the risk factor sensitivity, a description of the risk factor sensitivity, and the risk factor sensitivity's risk factor change unit. The unique identification label for the risk factor sensitivity should be a character string identifier that remains consistent across all trading desks and reporting periods. The risk factor change unit is the measurement unit of the risk factor change that impacts the trading desk's portfolio value.[236] This proposed schedule should enable the Agencies to better understand the exposure of a banking entity's trading desks to individual risk factors.

iii. Risk Factor Attribution Information Schedule

The proposed Risk Factor Attribution Information Schedule requires banking entities to provide detailed information regarding each attribution of existing position profit and loss to risk factor reported in the Comprehensive Profit and Loss Attribution quantitative measurement, including the unique identification label for each risk factor or other factor attribution, the name of the risk factor or other factor, a description of the risk factor or other factor, and the risk factor or other factor's change unit. The unique identification label for the risk factor or other factor attribution should be a character string identifier that remains consistent across all trading desks and reporting periods. The factor change unit is the measurement unit of the risk factor or other factor change that impacts the trading desk's portfolio value.[237] This proposed schedule should improve the Agencies' understanding of the individual risk factors and other factors that contribute to the daily profit and loss of trading desks engaged in covered trading activities.

iv. Limit/Sensitivity Cross-Reference Schedule

The Agencies recognize that risk factor sensitivities that are reported in the Risk Factor Sensitivities quantitative measurement frequently relate to, or are associated with, risk and position limits that are reported in the Risk and Position Limits and Usage metric. In recognition of the relationship between risk and position limits and associated risk factor sensitivities, the Agencies propose an amendment to Appendix A of the 2013 final rule that would require banking entities to prepare a Limit/Sensitivity Cross-Reference Schedule. Specifically, banking entities would be required to cross-reference, by unique identification label, a limit reported in the Risk and Position Limits Information Schedule to any associated risk factor sensitivity reported in the Risk Factor Sensitivities Information Schedule.

Highlighting the relationship between limits and risk factor sensitivities should provide a broader picture of a

[236] For example, the risk factor change unit for the dollar value of a one-basis point change (DV01) could be reported as ''basis point.'' Similarly, the risk factor change unit for equity delta could be reported as ''dollar change in equity prices'' or ''percentage change in equity prices.''

[237] *See supra* note 236.

trading desk's covered trading activities and improve the Agencies' understanding of the quantitative measurements. For example, the proposed Limit/Sensitivity Cross-Reference Schedule should help the Agencies better evaluate a reported limit on a risk factor sensitivity by allowing the Agencies to efficiently identify additional contextual information about the risk factor sensitivity in the banking entity's metrics submission.

v. Risk Factor Sensitivity/Attribution Cross-Reference Schedule

The Agencies note that the specific risk factors and other factors that are reported in the Comprehensive Profit and Loss Attribution quantitative measurement may relate to the risk factor sensitivities reported in the Risk Factor Sensitivities metric. As a result, the Agencies are proposing an amendment to Appendix A of the 2013 final rule that would require banking entities to prepare a Risk Factor Sensitivity/Attribution Cross-Reference Schedule. Specifically, banking entities would be required to cross-reference, by unique identification label, a risk factor sensitivity reported in the Risk Factor Sensitivities Information Schedule to any associated risk factor attribution reported in the Risk Factor Attribution Information Schedule. This proposed cross-reference schedule is intended to clarify the relationship between risk factors that serve as sensitivities and the profit and loss that is attributed to those risk factors. In conjunction with the Limit/Sensitivity Cross-Reference Schedule, the Risk Factor Sensitivity/Attribution Cross-Reference Schedule should assist the Agencies in understanding the broader scope, type, and profile of a banking entity's covered trading activities and assessing associated risks, and facilitate the relevant Agency's efforts in monitoring those covered trading activities. For example, the proposed Risk Factor Sensitivity/Attribution Cross-Reference Schedule should help the Agencies compare the variables that a banking entity has identified as significant sources of its trading desks' profitability and risk for purposes of the Risk Factor Sensitivities metric to the factor(s) that account for actual changes in the banking entity's trading desk-level profit and loss, as reported in the Comprehensive Profit and Loss Attribution metric. This comparison will allow the Agencies to evaluate whether a banking entity has identified risk factors in the Risk Factor Sensitivities metric of a trading desk that help explain the trading desk's profit and loss.

Question 234. Is the information required by the proposed Quantitative Measurements Identifying Information effective and sufficiently clear? If not, what alternative would be more effective or clearer? Is more or less specific guidance necessary? If so, what level of specificity is needed to prepare the relevant schedule? If the proposed Quantitative Measurements Identifying Information is not sufficiently specific, how should it be modified to reach the appropriate level of specificity? If the proposed Quantitative Measurements Identifying Information is overly specific, why is it too specific and how should it be modified to reach the appropriate level of specificity?

Question 235. Is the information required by the proposed Quantitative Measurements Identifying Information helpful or not helpful to understanding a banking entity's covered trading activities and associated risks? Identify which specific pieces of information are helpful or not helpful and explain why. Does the information provide necessary clarity about a banking entity's risk measures and how such risk measures relate to one another over time and within and across trading desks? Do banking entities expect that the schedules will reduce, increase, or have no effect on the number of information requests from the Agencies regarding the quantitative measurements? Please explain.

Question 236. Is the information required by the proposed Quantitative Measurements Identifying Information already available to banking entities? Please explain.

Question 237. Does the proposed Quantitative Measurements Identifying Information strike the appropriate balance between the potential benefits of the reporting requirements for monitoring and assuring compliance and the potential costs of those reporting requirements? If not, how could that balance be improved?

Question 238. How burdensome and costly would it be to prepare each schedule within the proposed Quantitative Measurements Identifying Information? What are the additional burdens costs associated with preparing these schedules for particular trading desks? How significant are those potential costs relative to the potential benefits of the schedules in monitoring covered trading activities and assessing risks associated with those activities? Are there potential modifications that could be made to these schedules that would reduce the burden or cost? If so, what are those modifications? Please quantify your answers, to the extent feasible.

Question 239. In light of the size, scope, complexity, and risk of covered trading activities, do commenters anticipate the need to hire new staff with particular expertise in order to prepare the information required by the proposed Quantitative Measurements Identifying Information (*e.g.,* to program information systems and collect data)? Do commenters anticipate the need to develop additional infrastructure to obtain and retain data necessary to prepare these schedules? Please explain and quantify your answers, to the extent feasible.

Question 240. What operational or logistical challenges might be associated with preparing the information required by the proposed Quantitative Measurements Identifying Information and obtaining any necessary informational inputs?

Question 241. How might the proposed Quantitative Measurements Identifying Information affect the behavior of banking entities? To what extent and in what ways might uncertainty as to how the Agencies will review and evaluate the proposed Quantitative Measurements Identifying Information affect the behavior of banking entities?

f. Narrative Statement

The proposed paragraph III.d. requires a banking entity to submit a Narrative Statement in a separate electronic document to the relevant Agency that describes any changes in calculation methods used for its quantitative measurements and to indicate when this change occurred. In addition, a banking entity would have to prepare and submit a Narrative Statement when there are any changes in the banking entity's trading desk structure (*e.g.,* adding, terminating, or merging pre-existing desks) or trading desk strategies. Under these circumstances, the Narrative Statement would have to describe the change, document the reasons for the change, and specify when the change occurred.

Under the proposal, the banking entity would have to report in a Narrative Statement any other information the banking entity views as relevant for assessing the information schedules or quantitative measurements, such as a further description of calculation methods that the banking entity is using. In addition, a banking entity would have to explain its inability to report a particular quantitative measurement in the Narrative Statement. A banking entity also would have to provide notice in its Narrative Statement if a trading desk changes its approach to including or excluding products that are not financial instruments in its metrics.

If a banking entity does not have any information to report in a Narrative Statement, the banking entity would have to submit an electronic document stating that it does not have any information to report in a Narrative Statement.

Question 242. Should the Narrative Statement be required? If so, why? Should the proposed requirement apply to all changes in the calculation methods a banking entity uses for its quantitative measurements or should the proposed rule text be revised to apply only to changes that rise to a certain level of significance? Please explain.

Question 243. Is the proposed Narrative Statement requirement effective and sufficiently clear? If not, what alternative would be more effective or clearer? Are there other circumstances in which a Narrative Statement should be required? If so, what are those circumstances?

Question 244. How burdensome or costly is the proposed Narrative Statement to prepare? Are there potential benefits of the Narrative Statement to banking entities, particularly as it relates to the ability of banking entities and the Agencies to monitor a firm's covered trading activities?

g. Frequency and Method of Required Calculation and Reporting

The 2013 final rule established a reporting schedule in § ____.20 that required banking entities with $50 billion or more in trading assets and liabilities to report the information required by Appendix A of the 2013 final rule within 10 days of the end of each calendar month. The Agencies are proposing to adjust this reporting schedule to extend the time to be within 20 days of the end of each calendar month.[238] Experience with implementing the 2013 final rule has shown that the information submitted within ten days is often incomplete or contains errors. Banking entities must regularly provide resubmissions to correct or complete their initial information submission. This extension of the time for reporting is expected to reduce compliance costs as the additional time would allow the required workflow to be conducted under less time pressure and with greater efficiency and fewer resubmissions should be necessary. The schedule for banking entities with less than $50 billion in trading assets and liabilities would remain unchanged.

Question 245. Is the proposed frequency of reporting the Trading Desk Information, Quantitative Measurements Identifying Information, and Narrative Statement appropriate and effective? If not, what frequency would be more effective? Should the information be required to be reported quarterly, annually, or upon the request of the applicable Agency and, if so, why?

Question 246. Would providing banking entities with additional time to report quantitative measurements meaningfully reduce resubmissions? If so, would the additional time reduce burdens on banking entities? Please provide quantitative data to the extent feasible.

Question 247. Is there a calculation period other than daily that would provide more meaningful data for certain metrics? For example, would weekly inventory aging instead of daily inventory aging be more effective? Why or why not?

Appendix A of the 2013 final rule did not specify a format in which metrics should be reported. As a technical matter, banking entities may currently report quantitative measurements to the relevant Agency using various formats and conventions. After consultation with staffs of the Agencies, the reporting banking entities submitted their quantitative measurement data electronically in a pipe-delimited flat file format. However, this flat file format has proved to be unwieldy and its syntactical requirements have been unclear. There has been no easy way for banking entities to validate that their data files are in the correct format before submitting them, and so banking entities have often needed to resubmit their quantitative measurements to address formatting issues.

To make the formatting requirements for the data submissions clearer, and to help ensure the quality and consistency of data submissions across banking entities, the Agencies are proposing to require that the Trading Desk Information, the Quantitative Measurements Identifying Information, and each applicable quantitative measurement be reported in accordance with an XML Schema to be specified and published on the relevant Agency's website.[239] By requiring the XML Schema, the Agencies look to establish a structured model through which reported data can be recognized and processed by standard computer code or software (*i.e.,* made machine-readable). The proposed reporting format should promote complete and intelligible records of covered trading activities and facilitate the reporting of key identifying and descriptive information. Submissions structured according to the XML Schema should enhance the Agencies' ability to normalize, aggregate, and analyze reported metrics. In turn, the proposed reporting format should facilitate monitoring of covered trading activities and enable the relevant Agency to more efficiently interpret and evaluate reported metrics. For example, the proposed reporting format should enhance the Agencies' ability to compare data across trading desks and analyze data over different time horizons.

Question 248. How burdensome and costly would it be to develop new systems, or modify existing systems, to implement the proposed Appendix's electronic reporting requirement and XML Schema? How significant are those potential costs relative to the potential benefits of electronic reporting and the XML Schema in facilitating review and analysis of a banking entity's covered trading activities? Are there potential modifications that could be made to the proposal's electronic reporting requirement or XML Schema that would reduce the burden or cost? If so, what are those modifications? Please quantify your answers, to the extent feasible.

Question 249. Is the proposed XML reporting format for submission of the Trading Desk Information, applicable quantitative measurements, and the Quantitative Measurements Identifying Information appropriate and effective? Why or why not?

Question 250. Is there a reporting format other than the XML Schema that the Agencies should consider as acceptable? Should the Agencies allow banking entities to develop their own reporting formats? If so, are there any general reporting standards that should be included in the rule to facilitate the Agencies' ability to normalize, aggregate, and analyze data that is reported pursuant to different electronic formats or schemas? Please explain in detail.

Question 251. What would be the costs to a banking entity to provide quantitative measurements data according to the proposed XML reporting format? Please quantify your answers, to the extent feasible.

Question 252. For a banking entity currently reporting quantitative

[238] *See* § ____.20(d) of the proposal.

[239] To the extent the XML Schema is updated, the version of the XML Schema that must be used by banking entities would be specified on the relevant Agency's website. A banking entity must not use an outdated version of the XML Schema to report the Trading Desk Information, Quantitative Measurements Identifying Information, and applicable quantitative measurements to the relevant Agency.

measurements in some other electronic format, what would be the costs (such as equipment, systems, training, or ongoing staffing or maintenance) to convert current systems to use the proposed XML reporting format? Please quantify your answers, to the extent feasible.

Question 253. Is there a more effective way to distribute the XML Schema than the current proposal of having each Agency host a copy of the XML Schema on its respective website? For example, would it be more effective for all Agencies to point to only one location where the XML Schema will be hosted? If so, please identify how the alternative would improve data quality and accessibility. How long should the implementation period be?

Question 254. Currently banking entities are reporting quantitative measurements separately to each Agency using tailored data files containing only the measurements for the trading desks that book into legal entities for which an Agency is the primary supervisor. Would it be more effective for all Agencies to use a single point of collection for the quantitative measurements? If so, would there be any impact on Agencies ability to review and analyze a banking entity's covered trading activities? How significant are the costs of reporting separately to each Agency? Please quantify your answers, to the extent feasible. Are there any other ways to make the metrics requirements more efficient? For example, are any banking entities subject to any separate or related data reporting requirements that could be leveraged to make the proposal more efficient?

h. Recordkeeping

Under paragraph III.c. of Appendix A of the 2013 final rule, a banking entity's reported quantitative measurements are subject to the record retention requirements provided in the appendix. Under the proposal, this provision would be in paragraph III.f. of the appendix. The Agencies propose to expand this provision to include the Narrative Statement, the Trading Desk Information, and the Quantitative Measurements Identifying Information in the appendix's record retention requirements.

Question 255. Is the proposed application of Appendix A's record retention requirement to the Trading Desk Information, Quantitative Measurements Identifying Information, and Narrative Statement appropriate? If not, what alternatives would be more appropriate? What costs would be associated with retaining the Narrative Statements and information schedules on that basis, and how could those costs be reduced or eliminated? Please quantify your answers, to the extent feasible.

Question 256. Should the proposed Trading Desk Information, Quantitative Measurements Identifying Information, and Narrative Statement be subject to the same five-year retention requirement that applies to the quantitative measurements? Why or why not? If not, how long should the information schedules and Narrative Statements be retained, and why?

i. Quantitative Measurements

Section IV of Appendix A of the 2013 final rule sets forth the individual quantitative measurements required by the appendix. The Agencies are proposing to add an ''Applicability'' paragraph to each quantitative measurement that identifies the trading desks for which a banking entity would be required to calculate and report a particular metric based on the type of covered trading activity conducted by the desk. In addition, the Agencies are proposing to remove the ''General Calculation Guidance'' paragraphs that appear in section IV of Appendix A of the 2013 final rule for each quantitative measurement. Content of these General Calculation Guidance paragraphs would instead generally be addressed in the Instructions.

i. Risk-Management Measurements

A. Risk and Position Limits and Usage

The Agencies are proposing to remove references to Stressed Value-at-Risk (Stressed VaR) in the Risk and Position Limits and Usage metric. Eliminating the requirement to report desk-level limits for Stressed VaR should reduce reporting obligations for banking entities without reducing the Agencies' ability to monitor proprietary trading.

The proposal clarifies in new ''Applicability'' paragraph IV.a.1.iv. that, as in the 2013 final rule, the Risk and Position Limits and Usage metric applies to all trading desks engaged in covered trading activities. For each trading desk, the proposal requires that a banking entity report the unique identification label for each limit as listed in the Risk and Position Limits Information Schedule, the limit size (distinguishing between the upper bound and lower bound of the limit, where applicable), and the value of usage of the limit.[240] The unique identification label should allow the Agencies to efficiently obtain the descriptive information regarding the limit that is separately reported in the Risk and Position Limits Information Schedule.[241] The proposal requires a banking entity to report this descriptive information in the Risk and Position Limits Information Schedule for the entire banking entity's covered trading activity, rather than multiple times in the Risk and Position Limits and Usage metric for different trading desks, to help alleviate inefficiencies associated with reporting redundant information and reduce electronic file submission sizes.

Unlike the 2013 final rule, the proposal requires a banking entity to report the limit size of both the upper bound and the lower bound of a limit if a trading desk has both an upper and lower limit. The Agencies understand that, based on a review of the collected data and discussions with banking entities, trading desks may have upper and lower limits. An upper limit means the value of risk cannot go above the limit, while a lower limit means the value of risk cannot go below the limit. This proposed amendment is intended to help identify when a trading desk has both an upper limit and a lower limit and avoid incomplete or unclear reporting under these circumstances. In addition, receipt of information about upper and lower limits, where applicable, should allow the Agencies to better evaluate the constraints that a banking entity places on the risks of a trading desk. For example, if a trading desk has both upper and lower limits but only one such limit is reported, the Agencies would not have complete information about the desk's limits or the usage of such limits, including potential limit breaches that may warrant further review.

The proposal also clarifies the 2013 final rule's requirement to separately report a trading desk's usage of its limit. As noted above, usage is the value of the trading desk's risk or positions that are accounted for by the current activity of the desk. The value of the usage generally should be reported as of the end of the day for limits that are accounted for at the end of the day; conversely, banking entities generally should report the maximum value of the usage for limits accounted for intraday.

[240] If a limit is introduced or discontinued during a calendar month, the banking entity must report this information for each trading day that the trading desk used the limit during the calendar month.

[241] Such information includes the name of the limit, a description of the limit, whether the limit is intraday or end-of-day, the unit of measurement for the limit, whether the limit measures risk on a net or gross basis, and the type of limit.

Question 257. Should Stressed VaR limits be removed as a reporting requirement for desks engaged in permitted market making-related activity or risk-mitigating hedging activity? Are VaR limits without accompanying Stressed VaR limits adequate for these desks? Should another type of limit be required to replace Stressed VaR, such as expected shortfall? Should Stressed VaR limits instead be required for other types of covered trading activities besides market making-related activity or risk-mitigating hedging activity?

Question 258. Should VaR limits be removed as a reporting requirement for trading desks engaged in permitted market making-related activity or risk-mitigating hedging activity? Why or why not?

Question 259. The proposal requires a banking entity to report the limit size of both the upper bound and the lower bound of a limit if a trading desk has both an upper and lower limit. Should banking entities be required to report both the upper bound and the lower bound of a limit (if applicable) or should the requirement only apply to the upper limit? Please discuss the anticipated costs and other burdens of this new requirement and how they compare to the benefits.

B. Risk Factor Sensitivities

The proposed ''Applicability'' paragraph IV.a.2.iv. provides that, as in the 2013 final rule, the Risk Factor Sensitivities metric applies to all trading desks engaged in covered trading activities. Under the proposal, a banking entity would have to report for each trading desk the unique identification label associated with each risk factor sensitivity of the desk, the magnitude of the change in the risk factor, and the aggregate change in value across all positions of the desk given the change in risk factor.[242]

The proposed unique identification label should allow the Agencies to efficiently obtain the descriptive information for the Risk Factor Sensitivity that is separately reported in the Risk Factor Sensitivities Information Schedule.[243] The proposal requires a banking entity to report this descriptive information in the Risk Factor Sensitivities Information Schedule for the entire banking entity's covered trading activity, rather than multiple times in the Risk Factor Sensitivities metric for different trading desks, to help alleviate inefficiencies associated with reporting redundant information and reduce electronic file submission sizes.

C. Value-at-Risk and Stressed Value-at-Risk

The proposal modifies the description of Stressed VaR to align its calculation with that of Value-at-Risk and removes the General Calculation Guidance. A new ''Applicability'' paragraph IV.a.3.iv. provides that Stressed VaR is not required to be reported for trading desks whose covered trading activity is conducted exclusively to hedge products excluded from the definition of financial instrument in § ____.3(d)(2) of the proposal. The Agencies believe that limiting the applicability of the Stressed VaR metric in this manner may reduce burden without impacting the ability of the Agencies to monitor for prohibited proprietary trading. In particular, the Agencies believe that applying Stressed VaR to trading desks whose covered trading activity is conducted exclusively to hedge excluded products does not provide meaningful information about whether the trading desk is engaged in proprietary trading. For example, when Stressed VaR is applied to hedges of loans held-to-maturity on a trading desk, Stressed VaR is unlikely to provide an accurate indication of the risk taken on that desk. Thus, the Agencies are providing that Stressed VaR need not be reported under these circumstances.

Question 260. Is Stressed VaR a useful metric for monitoring covered trading activity for trading desks engaged in permitted market making-related activity or underwriting activity? Why or why not? Are there other covered trading activities for which Stressed VaR is useful or not useful?

ii. Source-of-Revenue Measurements

A. Comprehensive Profit and Loss Attribution

It is unnecessary for banking entities to calculate and report volatility of comprehensive profit and loss because the measurement can be calculated from the profit and loss amounts reported under the Comprehensive Profit and Loss Attribution metric. Thus, the proposed Appendix would remove this requirement.

With respect to the profit and loss attribution to individual risk factors and other factors, the Agencies are proposing to add to the proposed Appendix a new paragraph IV.b.1.B. Under the proposal, a banking entity would be required to provide, for one or more factors that explain the preponderance of the profit or loss changes due to risk factor changes, a unique identification label for the factor and the profit or loss due to the factor change. The proposal requires a banking entity to report a unique identification label for the factor so the Agencies can efficiently obtain the descriptive information regarding the factor that is separately reported in the Risk Factor Attribution Information Schedule.[244] The proposal requires a banking entity to report this descriptive information in the Risk Factor Attribution Information Schedule for the entire banking entity's covered trading activity, rather than multiple times in the Comprehensive Profit and Loss Attribution metric for different trading desks, to help alleviate inefficiencies associated with reporting redundant information and reduce electronic file submission sizes.

A new ''Applicability'' paragraph IV.b.1.iv provides that, as in the 2013 final rule, the Comprehensive Profit and Loss Attribution metric applies to all trading desks engaged in covered trading activities.

Question 261. Appendix A of the 2013 final rule specified under Source-of-Revenue Measurements that Comprehensive Profit and Loss be divided into three categories: (i) Profit and loss attributable to existing positions; (ii) profit and loss attributable to new positions; and (iii) residual profit and loss that cannot be specifically attributed to existing positions or new positions. The sum of (i), (ii), and (iii) must equal the trading desk's comprehensive profit and loss at each point in time. Appendix A of the 2013 final rule further required that the portion of comprehensive profit and loss that cannot be specifically attributed to known sources must be allocated to a residual category identified as an unexplained portion of the comprehensive profit and loss. The proposed Appendix does not change these specifications. However, the Agencies' experience implementing the 2013 final rule has shown that the two statements about residual profit and loss can give rise to conflicting interpretations. The Agencies see value in monitoring any profit and loss that cannot be attributed to existing or new positions. The Agencies also see value in monitoring the profit and loss

[242] If a risk factor sensitivity is introduced or discontinued during a calendar month, the banking entity must report this information for each trading day that the trading desk used the sensitivity during the calendar month.

[243] Such information includes the name of the sensitivity, a description of the sensitivity, and the sensitivity's risk factor change unit.

[244] Such information includes the name of the risk factor or other factor, a description of the risk factor or other factor, and the change unit of the risk factor or other factor.

attribution to risk factors, and the Agencies' experience is that many reporters of quantitative measurements include the remainder from profit and loss attribution in the item for Residual Profit and Loss. In practice, however, profit and loss attribution is performed on existing position profit and loss, so this interpretation breaks the additivity of (i), (ii), and (iii) above. A potential resolution of this conflict would be to clarify in the Instructions for Preparing and Submitting Quantitative Measurements Information that Residual Profit and Loss is only profit and loss that cannot be attributed to existing or new positions, and to add a separate reporting item for Unexplained Profit and Loss from Existing Positions. The Agencies are seeking comment on how beneficial for institutions and regulators this additional item would be to show and assess banking entities' profit and loss attribution analysis. How much would adding this item consume additional compliance resources of reporters?

Question 262. Appendix A of the 2013 final rule specified that profit and loss from existing positions be further attributed to (i) the specific risk factors and other factors that are monitored and managed as part of the trading desk's overall risk management policies and procedures; and (ii) any other applicable elements, such as cash flows, carry, changes in reserves, and the correction, cancellation, or exercise of a trade. The metrics reporting instructions further specified that the preponderance of profit and loss due to risk factor changes should be reported as profit and loss attributions to individual factors. The proposed Appendix and metrics instructions do not change these requirements. However, experience implementing the 2013 final rule has shown that the definition of Profit and Loss Due to Changes in Risk Factors is vague and open to multiple interpretations. The Agencies see value in monitoring the total profit and loss attribution to risk factors that banking entities use to monitor their sources of revenue, which may go beyond the preponderance of profit and loss that is reported as attributions to individual factors. Moreover, in practice profit and loss attribution is often sensitivity-based and an approximation. Banking entities also routinely calculate ''hypothetical'' or ''clean'' profit and loss, which is the full revaluation of existing positions under all risk factor changes, and is used in banking entities' risk management to compare to VaR. The Agencies are seeking comment on how best to specify the calculation for Profit and Loss Due to Risk Factor Changes. Do commenters expect that ''hypothetical'' profit and loss can be derived from other items already reported? If not, what are the costs and benefits of clarifying the definition of Profit and Loss Due to Risk Factor Changes to make it align with ''hypothetical'' or ''Clean P&L'' as prescribed by market risk capital rules? Alternatively, what are the costs and benefits of clarifying the definition to be the sum of all profit and loss attributions regardless of whether they are reported individually? What would be the additional compliance costs of requiring that both ''hypothetical'' profit and loss and the sum of all profit and loss attributions be reported as separate items in the quantitative measurements?

iii. Positions, Transaction Volumes, and Securities Inventory Aging Measurements

A. Positions and Inventory Turnover

Paragraph IV.c.1. of Appendix A of the 2013 final rule requires banking entities to calculate and report Inventory Turnover. This metric is required to be calculated on a daily basis for 30-day, 60-day, and 90-day calculation periods. The Agencies are proposing to replace the Inventory Turnover metric with the daily data underlying that metric, rather than proposing specific calculation periods, because the Agencies may choose to use different inventory turnover calculation periods depending on the particular trading desk or covered trading activity under review. The proposal replaces Inventory Turnover with the daily Positions quantitative measurement. In conjunction with the proposed Transaction Volumes metric (discussed below), the proposed Positions metric would provide the Agencies with flexibility to calculate inventory turnover ratios over any period of time, including a single trading day.

Based on an evaluation of the information collected pursuant to the Inventory Turnover quantitative measurement, the Agencies are proposing to limit the scope of applicability of the Positions metric to trading desks that rely on § ____.4(a) or § ____.4(b) to conduct underwriting activity or market making-related activity, respectively. As a result, a trading desk that does not rely on § ____.4(a) or § ____.4(b) would not be subject to the proposed Positions metric.[245] The proposed Positions metric would require a banking entity to report the value of securities and derivatives positions managed by an applicable trading desk. Thus, if a trading desk relies on § ____.4(a) or § ____.4(b) and engages in other covered trading activity, the reported Positions metric would have to reflect all of the covered trading activities conducted by the desk.[246]

The proposal provides that banking entities subject to the appendix would have to separately report the market value of all long securities positions, the market value of all short securities positions, the market value of all derivatives receivables, the market value of all derivatives payables, the notional value of all derivatives receivables, and the notional value of all derivatives payables.[247]

Finally, the proposal addresses the classification of securities and derivatives for purposes of the proposed Positions quantitative measurement. The Agencies recognize that the 2013 final rule's definition of ''security'' and ''derivative'' overlap.[248] For example, under the 2013 final rule a security-based swap is both a ''security'' and a ''derivative.''[249] The proposed Positions quantitative measurement would require banking entities to separately report the value of all securities and derivatives positions managed by a

[245] For example, a trading desk that relies solely on § ____.5 to conduct risk-mitigating hedging activity is not subject to the proposed Positions metric.

[246] For example, if a trading desk relies on § ____.4(b) and § ____.5 to conduct market making-related activity and risk-mitigating hedging activity, respectively, the reported Positions metric for the desk would be required to reflect its risk-mitigating hedging activity in addition to its market making-related activity. The Agencies note, however, that a trading desk would not be required to include trading activity conducted under §§ ____.3(e), ____6(c), ____.6(d), or ____.6(e) in the proposed Positions metric, unless the banking entity includes such activity as ''covered trading activity'' for the desk under the appendix. This is consistent with the proposed definition of ''covered trading activity,'' which provides that a banking entity may include in its covered trading activity trading conducted under §§ ____.3(e), ____.6(c), ____.6(d), or ____.6(e).

[247] The Agencies note that banking entities must report the effective notional value of derivatives receivables and derivatives payables for those derivatives whose stated notional amount is leveraged. For example, if an exchange of payments associated with a $2 million notional equity swap is based on three times the return associated with the underlying equity, the effective notional amount of the equity swap would be $6 million.

[248] *See* 2013 final rule §§ ____.2(h), (y).

[249] The term ''security'' is defined in the 2013 final rule by reference to section 3(a)(10) of the Securities Exchange Act of 1934 (the ''Exchange Act''). *See* 2013 final rule § ____.2(y). Under the Exchange Act, the term ''security'' means, in part, any security-based swap. *See* 15 U.S.C. 78c(a)(10). The term ''security-based swap'' is defined in section 3(a)(68) of the Exchange Act. *See* 15 U.S.C. 78c(a)(68). Under the 2013 final rule, the term ''derivative'' means, in part, any security-based swap as that term is defined in section 3(a)(68) of the Exchange Act. *See* 2013 final rule § ____.2(h).

trading desk. To avoid double-counting financial instruments, the proposed Positions metric would require banking entities subject to the appendix to not include in the Positions calculation for ‘‘securities’’ those securities that are also ‘‘derivatives,’’ as those terms are defined under the final rule. Instead, securities that are also derivatives under the final rule are required to be reported as ‘‘derivatives’’ for purposes of the proposed Positions metric.

Question 263. Should the Agencies eliminate the Inventory Turnover quantitative measurement? Why or why not? Should the Agencies replace Inventory Turnover with the proposed Positions metric in the proposed Appendix? Why or why not? Should the Agencies modify the Inventory Turnover metric rather than remove it from the proposed Appendix? If so, what modifications should the Agencies make to the Inventory Turnover metric, and why?

Question 264. What are the current benefits and costs associated with calculating the Inventory Turnover metric? To what extent would the removal of this metric reduce the costs of compliance with the proposed Appendix? Please quantify your answers, to the extent feasible.

Question 265. Is the use of the proposed Positions metric to help distinguish between permitted and prohibited trading activities effective? If not, what alternative would be more effective? What factors should be considered in order to further refine the proposed Positions metric to better distinguish prohibited proprietary trading from permitted trading activity? Does the proposed Positions metric provide any additional information of value relative to other quantitative measurements?

Question 266. Is the use of the proposed Positions metric to help determine whether an otherwise-permitted trading strategy is consistent with the requirement that such activity not result, directly or indirectly, in a material exposure by the banking entity to high-risk assets and high-risk trading strategies effective? If not, what alternative would be more effective?

Question 267. Is the proposed Positions metric substantially likely to frequently produce false negatives or false positives that suggest that prohibited proprietary trading is occurring when it is not, or vice versa? If so, why? If so, how should the Agencies modify this quantitative measurement, and why? If so, what alternative quantitative measurement would better help identify prohibited proprietary trading?

Question 268. How beneficial is the information that the proposed Positions metric provides for evaluating underwriting activity or market making-related activity? Does the proposed Positions metric, alone or coupled with other required metrics, provide information that is useful in evaluating the customer-facing activity of a trading desk? Do any of the other quantitative measurements provide the same level of beneficial information for underwriting activity or market making-related activity? Would the proposed Positions metric be useful to evaluate other types of covered trading activity?

Question 269. How burdensome and costly would it be to calculate the proposed Positions metric at the specified calculation frequency and calculation period? What are the additional burdens or costs associated with calculating the measurement for particular trading desks? How significant are those potential costs relative to the potential benefits of the measurement in monitoring for impermissible proprietary trading? Are there potential modifications that could be made to the measurement that would reduce the burden or cost? If so, what are those modifications? Please quantify your answers, to the extent feasible.

Question 270. How will the proposed Positions and Inventory Turnover requirements impact burdens as compared to benefits? Would the proposed changes affect a firm’s confidential business information?

iv. Transaction Volumes and the Customer-Facing Trade Ratio

Paragraph IV.c.3. of Appendix A of the 2013 final rule requires banking entities to calculate and report a Customer-Facing Trade Ratio comparing transactions involving a counterparty that is a customer of the trading desk to transactions with a counterparty that is not a customer of the desk. Appendix A of the 2013 final rule requires the Customer-Facing Trade Ratio to be computed by measuring trades on both a trade count basis and value basis. In addition, Appendix A of the 2013 final rule provides that the term ‘‘customer’’ for purposes of the Customer-Facing Trade Ratio is defined in the same manner as the terms ‘‘client, customer, and counterparty’’ used in § ____.4(b) of the 2013 final rule describing the permitted activity exemption for market making-related activities. This metric is required to be calculated on a daily basis for 30-day, 60-day, and 90-day calculation periods.

While the Customer-Facing Trade Ratio may provide directionally useful information in some circumstances regarding the extent to which trades are conducted with customers, the Agencies are proposing to replace this metric with the daily Transaction Volumes quantitative measurement, set out in paragraph IV.c.2. of the proposed Appendix, for two reasons. First, the information provided by the Customer-Facing Trade Ratio metric has not been sufficiently granular to permit the Agencies to effectively assess the extent to which a trading desk’s covered trading activities are focused on servicing customer demand. Reviewing and analyzing data representing trading activity that occurs over a single trading day should be more effective. The proposed Transaction Volumes metric will provide the Agencies with flexibility to calculate customer-facing trade ratios over any period of time, including a single trading day. This will assist banking entities and the Agencies in monitoring covered trading activities. The Agencies are proposing to replace the Customer-Facing Trade Ratio with the daily data underlying that metric rather than proposing a daily calculation period for the Customer-Facing Trade Ratio because the Agencies may choose to use different customer-facing trade ratio calculation periods depending on the particular trading desk or covered trading activity under review.

Second, based on a review of the collected data, the Agencies recognize that the current Customer-Facing Trade Ratio metric does not provide meaningful information when a trading desk only conducts customer-facing trading activity. The numerator of the ratio represents transactions with counterparties that are customers, while the denominator represents transactions with counterparties that are not customers. If a trading desk only trades with customers, it will not be able to calculate this ratio because the denominator will be zero. The proposed Transaction Volumes metric enables the analysis of customer-facing activity using more meaningful and appropriate calculations.

The proposed Transaction Volumes metric measures the number and value[250] of all securities and derivatives transactions conducted by a trading desk engaged in permitted underwriting activity or market making-related activity under the 2013 final rule with

[250] For purposes of the proposed Transaction Volumes metric, value means gross market value with respect to securities. For commodity derivatives, value means the gross notional value (*i.e.,* the current dollar market value of the quantity of the commodity underlying the derivative). For all other derivatives, value means the gross notional value.

four categories of counterparties: (i) Customers (excluding internal transactions); (ii) non-customers (excluding internal transactions); (iii) trading desks and other organizational units where the transaction is booked into the same banking entity; and (iv) trading desks and other organizational units where the transaction is booked into an affiliated banking entity. To avoid double-counting transactions, these four categories are exclusive of each other (*i.e.,* a transaction must only be reported in one category). The proposal requires this quantitative measurement to be calculated each trading day.

As described above, the Agencies have evaluated the data collected under Appendix A of the 2013 final rule to determine whether certain quantitative measurements should be tailored to specific covered trading activities. The Customer-Facing Trade Ratio metric has primarily been used to assist in the evaluation of a trading desk's customer-facing activity, which is a relevant consideration for desks engaged in underwriting or market making-related activity under § ____.4 of the 2013 final rule. Such analysis is less relevant to, for example, desks that use only the risk-mitigating hedging exemption under § ____.5 of the 2013 final rule. Based on an evaluation of the information collected under the Customer-Facing Trade Ratio, the Agencies are proposing to limit the applicability of the proposed Transaction Volumes metric.

Specifically, the proposal provides that a banking entity would be required to calculate and report the proposed Transaction Volumes metric for all trading desks that rely on § ____.4(a) or § ____.4(b) to conduct underwriting activity or market making-related activity, respectively. This means that a trading desk that does not rely on § ____.4(a) or § ____.4(b) would not be subject to the proposed Transaction Volumes metric.[251] The proposed Transaction Volumes metric measures covered trading activity conducted by an applicable trading desk with specific categories of counterparties. Thus, if a trading desk relies on § ____.4(a) or § ____.4(b) and engages in other covered trading activity, the reported Transaction Volumes metric would have to reflect all of the covered trading activities conducted by the desk.[252] Limiting the scope of the Transaction Volumes metric to only those trading desks engaged in market-making activity or underwriting activity may reduce reporting inefficiencies for banking entities.

This metric should provide meaningful information regarding the extent to which a trading desk facilitates demand for each category of counterparty. While the Agencies recognize that the requirement to provide additional granularity may require banking entities to expend additional compliance resources, the Agencies believe the information would enhance compliance efficiencies. In particular, by requiring transactions to be separated into these four categories, the information collected under this metric will facilitate better classification of internal trades, and thus, will assist banking entities and the Agencies in evaluating whether the covered trading activities of desks engaged in underwriting or market making-related activities are consistent with the final rule's requirements governing those activities. For example, the Agencies believe that this metric could be helpful in evaluating the extent to which a market making desk routinely stands ready to purchase and sell financial instruments related to its financial exposure, as well as the extent to which a trading desk engaged in underwriting or market making-related activity facilitates customer demand in accordance with the reasonably expected near term demand requirements under the relevant exemption.[253]

The definition of the term ''customer'' that is used for purposes of this quantitative measurement depends on the type of covered trading activity a desk conducts. For a trading desk engaged in market making-related activity pursuant to § ____.4(b) of the 2013 final rule, the desk must construe the term ''customer'' in the same manner as the terms ''client, customer, and counterparty'' used for purposes of the market-making exemption under the 2013 final rule. For a trading desk engaged in underwriting activity pursuant to § ____.4(a) of the 2013 final rule, the desk must construe the term ''customer'' in the same manner as the terms ''client, customer, and counterparty'' used for purposes of the underwriting exemption under the final rule.[254]

Similar to the proposed Positions metric, the proposed Transaction Volumes metric addresses the classification of securities and derivatives for purposes of the proposed Transaction Volumes quantitative measurement. The proposed Transaction Volumes metric requires banking entities to separately report the value and number of securities and derivatives transactions conducted by a trading desk with the four categories of counterparties described above. To avoid double-counting financial instruments, the proposed Transaction Volumes metric would require banking entities subject to the appendix to not include in the Transaction Volumes calculation for ''securities'' those securities that are also ''derivatives,'' as those terms are defined under the 2013 final rule.[255] Instead, securities that are also derivatives under the final rule would be required to be reported as ''derivatives'' for purposes of the proposed Transaction Volumes metric.

Question 271. Should the Agencies eliminate the Customer-Facing Trade Ratio? Why or why not? Should the Agencies replace the Customer-Facing Trade Ratio with the proposed Transaction Volumes metric in the proposed Appendix? Why or why not? Should the Agencies modify the Customer-Facing Trade Ratio rather than remove it from the proposed Appendix? If so, what modifications should the Agencies make to the Customer-Facing Trade Ratio, and why?

Question 272. What are the current benefits and costs associated with

[251] For example, a trading desk that relies solely on § ____.5 to conduct risk-mitigating hedging activity would not be subject to the proposed Transaction Volumes metric.

[252] For example, if a trading desk relies on § ____.4(b) and § ____.5 to conduct market making-related activity and risk-mitigating hedging activity, respectively, the reported Transaction Volumes metric for the desk would have to reflect its risk-mitigating hedging activity in addition to its market making-related activity. The Agencies note, however, that a trading desk would not be required to include trading activity conducted under §§ ____.3(e), ____.6(c), ____.6(d), or ____.6(e) in the proposed Transaction Volumes metric, unless the banking entity includes such activity as ''covered trading activity'' for the desk under the proposed Appendix. The Agencies note that this is consistent with the definition of ''covered trading activity,'' which provides that a banking entity may include in its covered trading activity trading conducted under §§ ____.3(e), ____.6(c), ____.6(d), or ____.6(e).

[253] *See* 2013 final rule §§ ____.4(a)(2)(ii) and ____.4(b)(2)(ii).

[254] Under the proposal, the calculation guidance regarding reporting of transactions with another banking entity with trading assets and liabilities of $50 billion or more would be moved from Appendix A of the 2013 final rule into the reporting instructions. The proposed instructions for the Transaction Volumes quantitative measurement would clarify that any transaction with another banking entity with trading assets and liabilities of $50 billion or more would be included in one of the four categories noted above, including: (i) Customers (excluding internal transactions); (ii) non-customers (excluding internal transactions); (iii) trading desks and other organizational units where the transaction is booked into the same banking entity; and (iv) trading desks and other organizational units where the transaction is booked into an affiliated banking entity.

[255] *See* 2013 final rule §§ ____.2(h), (y). *See also supra* Part III.E.2.i (discussing the classification of securities and derivatives for purposes of the proposed Positions quantitative measurement).

calculating the Customer-Facing Trade Ratio? To what extent would the removal of this metric reduce the costs of compliance with the proposed Appendix? Please quantify your answers, to the extent feasible.

Question 273. Would the use of the proposed Transaction Volumes metric to help distinguish between permitted and prohibited trading activities be effective? If not, what alternative would be more effective? What factors should be considered in order to further refine the proposed Transaction Volumes metric to better distinguish prohibited proprietary trading from permitted trading activity? Does the proposed Transaction Volumes metric provide any additional information of value relative to other quantitative measurements?

Question 274. Is the scope of the four categories of counterparties set forth in the proposed Transaction Volumes metric appropriate and effective? Why or why not?

Question 275. Is the proposed Transaction Volumes metric substantially likely to frequently produce false negatives or false positives that suggest that prohibited proprietary trading is occurring when it is not, or vice versa? If so, why? If so, how should the Agencies modify this quantitative measurement, and why? If so, what alternative quantitative measurement would better help identify prohibited proprietary trading?

Question 276. How beneficial is the information that the proposed Transaction Volumes metric provides for evaluating underwriting activity or market making-related activity? Could these changes affect legitimate underwriting activity or market making-related activity? If so, how? Do any of the other quantitative measurements provide the same level of beneficial information for underwriting activity or market making-related activity? Would this metric be useful to evaluate other types of covered trading activity?

Question 277. What operational or logistical challenges might be associated with performing the calculation of the proposed Transaction Volumes metric and obtaining any necessary informational inputs? Please explain.

Question 278. How burdensome and costly would it be to calculate the proposed Transaction Volumes metric at the specified calculation frequency and calculation period? What are the additional burdens or costs associated with calculating the measurement for particular trading desks? How significant are those potential costs relative to the potential benefits of the measurement in monitoring for impermissible proprietary trading? Are there potential modifications that could be made to the measurement that would reduce the burden or cost? If so, what are those modifications? Please quantify your answers, to the extent feasible.

Question 279. Should the Agencies develop and publish more detailed instructions for how different transaction life cycle events such as amendments, novations, compressions, maturations, allocations, unwinds, terminations, option exercises, option expirations, and partial amendments affect the calculation of Transaction Volumes and the Comprehensive Profit and Loss Attribution? Please explain.

v. Securities Inventory Aging

The Agencies have evaluated whether the Inventory Aging metric is useful for all financial instruments, as well as for all covered trading activities. Based on this evaluation and a review of the data collected under this quantitative measurement, the Agencies understand that, with respect to derivatives, Inventory Aging is not easily calculated and does not provide useful risk or customer-facing activity information. Thus, the Agencies are proposing several modifications to the Inventory Aging metric.

First, the scope of the proposed Securities Inventory Aging metric, set forth in proposed paragraph IV.c.3., would be limited to a trading desk's securities positions. Under the proposal, banking entities subject to the Appendix would be required to measure and report the age profile of a trading desk's securities positions through a security-asset aging schedule and a security liability-aging schedule. The proposed Securities Inventory Aging metric would not require banking entities to prepare an aging schedule for derivatives or include in its securities aging schedules those ''securities'' that are also ''derivatives,'' as those terms are defined under the 2013 final rule.[256]

Second, the Agencies are proposing to limit the applicability of the Securities Inventory Aging metric to trading desks that engage in specific covered trading activities. Consistent with the proposed Positions and Transaction Volumes metrics, the proposal provides that a banking entity would be required to calculate and report the Securities Inventory Aging metric for all trading desks that rely on § ____.4(a) or § ____.4(b) to conduct underwriting activity or market making-related activity, respectively. This means that a trading desk that does not rely on § ____.4(a) or § ____.4(b) would not be subject to the proposed Securities Inventory Aging metric.[257] The proposal would require that the Securities Inventory Aging metric measure the age profile of an applicable trading desk's securities positions. Thus, if a trading desk relies on § ____.4(a) or § ____.4(b) and engages in other covered trading activity, the reported Securities Inventory Aging metric would have to reflect all of the covered trading activities in securities [258] conducted by the desk.[259] Narrowing the scope of the Inventory Aging metric to securities inventory and to desks that engage in market-making and underwriting activities should reduce reporting inefficiencies for banking entities without reducing the usefulness of the metric, as it has proved to be of limited utility for derivative positions or trading desks that engage in other types of covered trading activity.

Finally, the proposal would require a banking entity to calculate and report the Securities Inventory Aging metric according to a specific set of age ranges. Specifically, banking entities would have to calculate and report the market value of security assets and security liabilities over the following holding periods: 0–30 calendar days; 31–60 calendar days; 61–90 calendar days; 91–180 calendar days; 181–360 calendar days; and greater than 360 calendar days.

Question 280. How beneficial is the information that the proposed Securities Inventory Aging metric provides for evaluating underwriting activity or

[256] *See* 2013 final rule §§ ____.2(h), (y). *See also supra* Part III.E.2.i (discussing the classification of securities and derivatives for purposes of the proposed Positions quantitative measurement).

[257] For example, a trading desk that relies solely on § ____.5 to conduct risk-mitigating hedging activity would not be subject to the proposed Securities Inventory Aging metric.

[258] The Agencies note that a banking entity would not be required to prepare an Inventory Aging schedule for any derivatives traded by a trading desk, including ''securities'' that are also ''derivatives'' as those terms are defined under the 2013 final rule, in the event the trading desk relies on § ____.4(a) or § ____.4(b) and another permitted activity exemption.

[259] For example, if a trading desk relies on § ____.4(b) and § ____.5 to conduct market making-related activity and risk-mitigating hedging activity, respectively, the reported Securities Inventory Aging metric for the desk would have to reflect the risk-mitigating hedging activity and market making-related activity associated with the desk's securities positions. The Agencies note, however, that a trading desk would not be required to include trading activity conducted under §§ ____.3(e), ____.6(c), ____.6(d), or ____.6(e) in the proposed Securities Inventory Aging metric, unless the banking entity includes such activity as ''covered trading activity'' for the desk under the proposed Appendix. The Agencies note that this is consistent with the definition of ''covered trading activity,'' which provides that a banking entity may include in its covered trading activity trading conducted under §§ ____.3(e), ____.6(c), ____.6(d), or ____.6(e).

market making-related activity? Do any of the other quantitative measurements provide the same level of beneficial information for underwriting activity or market making-related activity?

Question 281. Is inventory aging of derivatives a useful metric for monitoring covered trading activity at trading desks? Why or why not?

Question 282. Is inventory aging of futures a useful metric for monitoring covered trading activity at trading desks? Why or why not?

Question 283. Would it reduce the calculation burden on banking entities to limit the scope of the Inventory Aging metric to securities inventory and to trading desks engaged in market-making and underwriting activities? Why or why not?

Question 284. Should the Agencies require banking entities to report the Securities Inventory Aging metric according to a specific set of age ranges? Why or why not? If so, taken together, are the proposed age ranges appropriate and effective, or should the proposed Securities Inventory Aging metric require different age ranges? Do banking entities already routinely measure their securities positions using the same, or similar, age ranges?

j. Request for Comment

The Agencies request comment on the costs and benefits of the proposal's revised approach under revisions to Appendix A of the 2013 final rule. In particular, the Agencies request comment on the following questions:

Question 285. Are the quantitative measurements, both as currently existing and as proposed to be modified, appropriate in general? If not, is there an alternative(s) approach that the banking entities and the Agencies could use to more effectively and efficiently identify potentially prohibited proprietary trading? If so, being as specific as possible, please describe that alternative. Should certain proposed quantitative measurements be eliminated? If so, which requirements, and why? Should additional quantitative measurements be added? If so, which measurements, and why? How would those additional measurements be described and calculated?

Question 286. What are the current annual compliance costs for banking entities to comply with the requirements in Appendix A of the 2013 final rule to calculate and report certain quantitative measurements to the Agencies? Please discuss the benefits of the proposal, including but not limited to the benefits derived from qualitative information, such as narratives and trading desk information, as compared to the costs and burdens of preparing such information. How would those annual compliance costs change if the modifications described in the proposal were adopted? Please be as specific as possible and, where feasible, provide quantitative data broken out by requirement. Would this proposal affect certain types of banking entities, such as broker-dealers and registered investment advisers, differently as compared to other banking entities in terms of annual compliance costs?

Question 287. In addition to the proposed changes to the requirement to calculate and report quantitative measurements to the Agencies, the proposed Appendix contains new qualitative requirements that are not currently required in Appendix A of the 2013 final rule, including, but not limited to, trading desk information, quantitative measurements identifying information, and a narrative statement. Please discuss the benefits and costs associated with such proposed requirements. How would the overall burden change, in terms of both costs and benefits, as a result of the proposal, taken as a whole, as compared to the existing requirements under Appendix A? Please provide quantitative data to the extent feasible.

Question 288. Which of the proposed quantitative measurements do banking entities currently use? What are the current benefits, and would the proposed revisions result in increased compliance costs associated with calculating such quantitative measurements? Would the reporting and recordkeeping requirements in the proposed Appendix for such quantitative measurements generate any significant, additional benefits or costs? Please quantify your answers, to the extent feasible.

Question 289. How are the ongoing costs of compliance associated with the requirements of Appendix A of the 2013 final rule allocated among the different steps in the process (*e.g.,* calculating quantitative measurements, preparing reports, delivering reports to the relevant Agencies, etc.)?

Question 290. Which requirements of Appendix A of the 2013 final rule are costliest to comply with, and what are those burdens? Please be as specific as possible. Does the proposal meaningfully reduce these aspects? Why or why not? Please quantify your answers, to the extent feasible.

Question 291. Which of the proposed quantitative measurements do banking entities currently not use? What are the potential benefits and costs of calculating these quantitative measurements and complying with the proposed reporting and recordkeeping requirements? Please quantify your answers, to the extent feasible.

Question 292. For each individual quantitative measurement that is proposed, is the description sufficiently clear? Is there an alternative that would be more appropriate or clearer? Is the description of the quantitative measurement appropriate, or is it overly broad or narrow? If it is overly broad, what additional clarification is needed? If the description is overly narrow, how should it be modified to appropriately describe the quantitative measurement, and why? Should the Agencies provide any additional clarification to the Appendix's description of the quantitative measurement, and why?

Question 293. For each individual quantitative measurement that is proposed, is the calculation guidance provided in the proposal effective and sufficiently clear? If not, what alternative would be more effective or clearer? Is more or less specific calculation guidance necessary? If so, what level of specificity is needed to calculate the quantitative measurement? If the proposed calculation guidance is not sufficiently specific, how should the calculation guidance be modified to reach the appropriate level of specificity? If the proposed calculation guidance is overly specific, why is it too specific and how should it be modified to reach the appropriate level of specificity?

Question 294. Does the use of the proposed Appendix as part of the multi-faceted approach to implementing the prohibition on proprietary trading continue to be appropriate? Why or why not?

Question 295. Should a trading desk be permitted not to furnish a quantitative measurement otherwise required under the proposed Appendix if it can demonstrate that the measurement is not, as applied to that desk, calculable or useful in achieving the purposes of the Appendix with respect to the trading desk's covered trading activities? How might a banking entity make such a demonstration?

Question 296. Where a trading desk engages in more than one type of covered trading activity, such as activity conducted under the underwriting and risk-mitigating hedging exemptions, should the quantitative measurements be calculated, reported, and recorded separately for trading activity conducted under each exemption relied on by the trading desk? What are the costs and benefits of such an approach? Please explain.

Question 297. How much time do banking entities need to develop new systems and processes, or modify existing systems and processes, to implement for banking entities that are subject to the proposed Appendix's reporting and recordkeeping requirements, and why? Does the amount of time needed to develop or modify information systems to comply with proposed Appendix, including the electronic reporting and XML Schema requirements, vary based on the size of a banking entity's trading assets and liabilities? Why or why not? What are the costs associated with such requirements?

Question 298. Under both the 2013 final rule and the proposal, banking entities that, together with their affiliates and subsidiaries, have significant trading assets and liabilities are required to calculate, maintain, and report a number of quantitative measurements. Should the Agencies eliminate this metrics reporting requirement and instead require banking entities to: (1) Calculate the required quantitative measurements data, in the same form, manner, and timeframes as they would otherwise be required to under the rule; (2) maintain the required quantitative measurements data; and (3) provide the relevant Agency or Agencies with the data upon request for examination and review?

Question 299. Should the requirement to calculate and report quantitative metrics be eliminated and replaced by a different method for assisting banking entities and the Agencies in monitoring covered trading activities for compliance with section 13 of the BHC Act and the 2013 final rule? If so, what alternative approaches should the Agencies consider?

Question 300. Should some or all reported quantitative measurements be made publicly available? Why or why not? If so, which quantitative measurements should be made publicly available, and what are the benefits and costs of making such measurements publicly available? If so, how should quantitative measurements be made publicly available? Should quantitative measurements be made publicly available in the same form they are furnished to the Agencies, or should information be aggregated before it is made publicly available? If information should be aggregated, how should it be aggregated, and what are the benefits and costs associated with aggregate data being available to the public? Should quantitative measurements be made publicly available at-or-near the same time such measurements are reported to the Agencies, or should information be made publicly available on a delayed basis? If information should be made public on a delayed basis, how much time should pass before information is publicly available, and what are the benefits and costs associated with non-current metrics information being available to the public? Are there other approaches the Agencies should consider to make the quantitative measurements publicly available, and if so, what are the benefits and costs associated with each approach? What are the costs and benefits of such an approach? Please discuss and provide detailed examples of any costs or benefits identified.

Question 301. Do commenters have concerns about the potential for the inadvertent exposure of confidential business information, either as part of the reporting process or to the extent that any of the quantitative measurements (or related information) are made publicly available? If so, what are the risks involved and how might they be mitigated? Are certain quantitative measurements more likely to contain confidential information? If so, which ones and why?

IV. The Economic Impact of the Proposal Under Section 13 of the BHC Act—Request for Comment

The Agencies are proposing a number of changes to the 2013 final rule that are intended to reduce the costs of compliance while continuing the rule's effectiveness in limiting prohibited activities. In what follows, the key proposed changes to the regulation that are expected to have a material impact on the costs of implementing the regulation are discussed as is the rationale for expecting a material reduction in the costs associated with compliance. The Agencies seek broad comment from the public on any and all aspects of the proposed changes to the regulation and the extent to which these changes will reduce compliance costs and improve the effectiveness of the implementing regulations. The Agencies also seek comment on whether there are any additional ways to reduce compliance costs while effectively implementing the statute. Finally, commenters are encouraged to provide the Agencies with any specific data or information that could be useful for quantifying the reductions or increases in costs associated with the proposed changes.

A key proposed change to the rule relates to the treatment of banking entities with limited trading activities, which under the 2013 final rule can face compliance costs that are disproportionately high relative to the amount of trading activity typically undertaken and the amount of risk the activities of these firms that are subject to section 13 pose to financial stability. More specifically, the Agencies are proposing to identify those banking entities with total consolidated trading assets and liabilities (excluding trading assets and liabilities involving obligations of, or guaranteed by, the United States or any agency of the United States) the average gross sum of which (on a worldwide consolidated basis) over the previous consecutive four quarters, as measured as of the last day of each of the four previous calendar quarters, is less than $1 billion. These banking entities with limited trading assets and liabilities would be subject to a presumption of compliance under the proposal, while remaining subject to the rule's prohibitions in subparts B and C. The relevant Agency may rebut the presumption of compliance by providing written notice to the banking entity that it has determined that one or more of the banking entity's activities violates the prohibitions under subparts B or C.

The Agencies expect that this presumption would materially reduce the costs associated with complying with the rule for two reasons. First, as a result of presumed compliance, these banking entities would not be required to demonstrate compliance with many of the rule's specific requirements on an ongoing basis. As a specific example, entities with limited trading assets and liabilities would not be required to comply with the documentation requirements associated with the hedging exemption. Additionally, these entities would not be required to specify and maintain trading risk limits to comply with the rule's market making exemption. As a result, this proposed change is expected to meaningfully reduce the costs associated with rule compliance for smaller banking entities that do not engage in the types of trading the rule seeks to address.

Second, these banking entities would not be subject to the express requirement to maintain a compliance program pursuant to § ___.20 under the proposal to demonstrate compliance with the rule. The presumption would be rebuttable, so firms may need to maintain a certain level of resources to respond to supervisory requests for information in the event that the Agencies exercise their authority to rebut the presumption of compliance for any activity that they determine to violate prohibitions under subparts B and C. The amount of resources required for such purposes is expected to be significantly smaller than the amount of resources that would be required to maintain and execute an ongoing compliance program.

Question 302. Do commenters agree that the proposed establishment of a presumption of compliance for certain banking entities would meaningfully reduce the compliance costs associated with the rule relative to the requirements of the 2013 final rule?

Question 303. Have commenters quantified the extent to which such costs are reduced? If so, could this information be provided to the Agencies during the notice and comment period?

Question 304. Do commenters believe that any aspect of the proposed establishment of a presumption of compliance would increase the costs associated with rule compliance? If so, which aspects of the presumption would raise costs, why, and to what extent? How could these compliance costs be addressed or reduced?

Question 305. What costs do commenters anticipate a banking entity subject to presumed compliance would bear to respond to possible questions from the Agencies about the banking entity's compliance with the statute and the sections of the regulation that remain applicable to it? In general, how and to what extent does a shifting of the burden from banking entity to Agencies affect compliance costs? What steps could the Agencies take to appropriately reduce compliance burdens in this regard—especially for banking entities that engage in less trading activity?

The Agencies are also proposing two changes related to the 2013 final rule's definition of ''trading account'' that are expected to simplify the analysis associated with determining whether or not a banking entity's purchase or sale of a financial instrument is for the trading account, and thereby are expected to reduce the costs associated with complying with the rule. Specifically, the Agencies are proposing to add an accounting prong to the definition of ''trading account'' and to remove the short-term intent prong and the 60-day rebuttable presumption. The Agencies expect that the removal of the short-term intent prong will substantially reduce the costs of complying with the rule.

In the case of the short-term intent prong and the 60-day rebuttable presumption, the Agencies' experience with implementing the 2013 final rule strongly suggests that application of the short-term intent prong resulted in a variety of analyses to determine if a financial position was taken with the ''intent'' of generating short-term profits, or benefitting from short-term price movements. Assessing intent is qualitative and can be subject to significant interpretation. Accordingly, experience suggests that banking entities engage in a number of lengthy analyses to determine whether or not a financial position needs to be included in the trading account, and that these analyses may not always result in a clear indication.

In the case of the 60-day rebuttable presumption, the Agencies' experience suggests that the 60-day rebuttable presumption may be an overly inclusive instrument to determine whether a financial instrument is in the trading account. Many financial positions are scoped into the trading account automatically due to the 60-day presumption, and banking entities routinely conduct detailed and lengthy assessments of transactions to document that these positions should not be included in the trading account. However, experience indicates that there is no clear set of analyses that may be conducted to rebut the presumption and a clear standard for successfully rebutting the presumption has been difficult to establish in practice. Accordingly, the Agencies expect that removing the 60-day rebuttable presumption would materially reduce the costs associated with complying with the rule and determining whether a financial instrument is in the trading account.

The Agencies expect that this proposal would reduce the costs of rule compliance since banking entities are already familiar with accounting standards and use these standards to classify financial instruments on a regular basis to satisfy reporting and related requirements. The Agencies would expect that no new compliance costs would result from using accounting concepts that are already familiar to banking entities for purposes of identifying activity in the trading account.

The Agencies are also proposing to include a presumption of compliance for trading desks, the positions of which are included in the trading account due to the accounting prong, so long as the profit and loss of the desk does not exceed a certain threshold. Specifically, the trading activity conducted by a trading desk is presumed to be in compliance with the prohibition on proprietary trading if (i) none of the financial instruments of the desk are included in the trading account pursuant to the market risk capital prong, (ii) none of the financial instruments of the desk are booked in a dealer, swap dealer, or security-based swap dealer, and (iii) the sum over the preceding 90-calendar-day period of the absolute values of the daily net realized and unrealized gains and losses of the desk's portfolio of financial instruments does not exceed $25 million. Banking entities and supervisors will only need to consider cases in which the size of trading activity exceeds the $25 million threshold for these desks. Moreover, this analysis draws on profit and loss metrics that banking entities already regularly maintain and consequently would not be expected to contribute to any increased regulatory costs.

The Agencies recognize that implementing the new definition of ''trading account'' and the presumption of compliance would result in some amount of compliance costs. However, the Agencies expect that the compliance costs associated with this new definition and presumption of compliance would be significantly less than the compliance costs of either the short-term intent prong or the 60-day rebuttable presumption. As noted above, the new trading account definition ties to accounting concepts that are already familiar to banking entities. Similarly, the new presumption of compliance ties to profit and loss metrics that banking entities already maintain. As such, the Agencies expect that the new trading account definition and the presumption of compliance would materially reduce the costs of rule compliance relative to the 2013 final rule's existing requirements.

Question 306. Do commenters believe that the proposed changes to the trading account definition would materially reduce costs associated with rule compliance relative to the final rule? Why or why not?

Question 307. Do commenters have any specific data or information that could be used to quantify the extent to which such costs would be reduced under the proposal?

Question 308. Do commenters believe that any aspect of the proposed changes to the trading account definition increase the costs associated with rule compliance? If so, which aspects of the proposed changes raise costs, why, and to what extent?

As described in section 1(d)(3) of this Supplementary Information, the Agencies are proposing a specific alternative to allow banking entities to define trading desks in a manner consistent with their own internal business unit organization. The Agencies request comment regarding the relative costs and benefits of this possible alternative.

Question 309. Do commenters believe that the relative benefits of the definition of ''trading desk'' in the current 2013 final rule outweigh any potential cost reductions for banking entities under the alternative?

Question 310. Do commenters have any specific data or information that could be used to quantify the extent to which such costs would be reduced?

Question 311. Do commenters think that any aspect of the proposed changes to the trading desk definition increases the regulatory burden associated with rule compliance? If so which aspects of the proposed changes raise the regulatory burden, why, and to what extent?

A key statutory exemption from the prohibition on proprietary trading is the exemption for underwriting. The 2013 final rule contains a number of complex requirements that are intended to ensure that banking entities comply with the underwriting exemption and that proprietary trading activity is not conducted under the guise of underwriting. Since adoption of the 2013 final rule, banking entities have communicated to the Agencies that complying with all of the 2013 final rule's underwriting requirements can be difficult and costly relative to the underlying activities. In particular, banking entities have communicated that they believe they must engage in a number of complex and intensive analyses to gain comfort that their underwriting activities meets all of the 2013 final rule's requirements. Moreover, banking entities have communicated that they find the requirements of the 2013 final rule ambiguous to apply in practice and do not provide sufficiently bright-line conditions under which trading activity can clearly be classified as permissible underwriting.

The Agencies are proposing to establish the articulation and use of internal risk limits as a key mechanism for conducting trading activity in accordance with the underwriting exemption. These risk limits would be established by the banking entity at the trading desk level and designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties. The proposed risk limits would not be required to be based on any specific or mandated analysis. Rather, a banking entity would be permitted to establish the risk limits according to its own internal analyses and processes around conducting its underwriting activities. Banking entities would be expected to maintain internal policies and procedures for setting and reviewing desk-level risk limits in a manner consistent with the applicable statutory factor. A banking entity's risk limits would be subject to general supervisory review and oversight, but the limit-setting process would not be required to adhere to specific, pre-defined requirements beyond adherence to the banking entity's own ongoing and internal assessment of the reasonably expected near-term demands of clients, customers, or counterparties. So long as a banking entity maintains an ongoing and consistent process for setting such limits in accordance with the proposal, then the Agencies anticipate that trading activity conducted within the limits would generally be presumed to be underwriting.

The Agencies expect that the proposed reliance on risk limits to satisfy the underwriting exemption will materially reduce the costs of complying with the final rule's underwriting exemption. In particular, the limit-setting process is intended to leverage a banking entity's existing internal risk management and capital allocation processes, and would not be required to conform to any specific or pre-defined requirements other than being set in accordance with RENTD. The Agencies expect that reliance on risk limits would therefore align with the firm's internal policies and procedures for conducting underwriting in a manner consistent with the requirements of section 13 of the BHC Act. Accordingly, the Agencies expect that this proposed approach would generally be more efficient and less costly than the practices required by the 2013 final rule as they rely to a greater extent on the banking entity's own internal policies, procedures, and processes.

Question 312. The Agencies are also proposing to further tailor the requirements for banking entities with moderate trading activities and liabilities. In particular, the compliance program requirements that are part of the underwriting exemption would not apply to these firms. Do commenters believe that the proposed changes related to the use of risk limits in satisfying the underwriting exemption would materially reduce the costs associated with rule compliance relative to the 2013 final rule?

Question 313. Do commenters believe there are any benefits of the approach in the 2013 final rule that would be forgone with the proposed changes related to the use of risk limits in satisfying the underwriting exemption?

Question 314. Do commenters have any specific data or information that could be used to quantify the extent to which such costs are reduced?

Question 315. Do commenters believe that any aspect of the proposed changes related to the use of risk limits in satisfying the underwriting exemption increases the costs associated with rule compliance? If so which aspects of the proposed changes raise compliance costs, why, and to what extent?

Question 316. Do commenters believe that the proposed changes related to the reduced compliance program requirements for banking entities with moderate trading assets and liabilities to satisfy the underwriting exemption would materially reduce the costs associated with rule compliance relative to the 2013 final rule?

Question 317. Do commenters believe there are any benefits to the approach in the 2013 final rule that would be forgone with the proposed changes related to the compliance requirements in satisfying the underwriting exemption?

Question 318. Do commenters have any specific data or information that could be used to quantify the extent to which such costs are reduced?

Question 319. Do commenters think that any aspect of the proposed changes related to the use of compliance program requirements in satisfying the underwriting exemption would increase the costs associated with rule compliance? If so, which aspects of the proposed changes would increase compliance costs, why, and to what extent?

Another key statutory exemption from the prohibition on proprietary trading is the exemption for market making. The 2013 final rule contains a number of complex requirements that are intended to ensure that proprietary trading activity is not conducted under the guise of market making. Since adoption of the 2013 final rule, banking entities have communicated that complying with all of the 2013 final rule's market making requirements can be difficult and costly. In particular, banking entities have communicated that they believe they must engage in a number of complex and intensive analyses to gain comfort that their bona fide market making activity meets all of the 2013 final rule's requirements. Moreover, banking entities have communicated that they view the requirements of the 2013 final rule as ambiguous and not providing sufficiently bright-line conditions under which trading activity can clearly be classified as permissible market making.

The Agencies are proposing to establish the articulation and use of internal risk limits as the key mechanism for conducting trading activity in accordance with the rule's exemption for market making-related activities. These risk limits would be established by the banking entity at the trading desk level and be designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties. Banking entities would be expected to maintain internal policies and procedures for setting and reviewing desk-level risk limits in a manner consistent with the applicable statutory factor. Moreover, the proposed risk limits would not be required to be based on any specific or mandated analysis. Rather, a banking entity would be permitted to establish the risk limits according to its own internal analyses and processes around conducting its market making activities as market making is defined by the applicable statutory factor. A banking entity's risk limits would be subject to supervisory review and oversight, but the limit-setting process would not be required to adhere to any specific, pre-defined requirements beyond adherence to the banking entity's own ongoing and internal assessment of the reasonably expected near-term demand of clients, customers, or counterparties. So long as a banking entity maintains an ongoing and consistent process for setting such limits in accordance with the proposal, then the Agencies anticipate that trading activity conducted within the limits would generally be presumed to be market making.

The Agencies expect that the proposed reliance on internal risk limits to satisfy the statutory requirement that market making-related activities be designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties would materially reduce the costs of complying with the 2013 final rule's market making exemption. In particular, the limit-setting process would be intended to leverage a banking entity's existing internal risk management and capital allocation processes and would not be required to conform to specific or pre-defined requirements. The Agencies expect that reliance on risk limits would therefore align with the firm's internal policies and procedures for conducting market making in a manner consistent with the requirements of section 13 of the BHC Act. Accordingly, the agencies expect that this proposed approach would generally be more efficient and less costly than the practices required by the 2013 final rule as they rely to a greater extent on the banking entity's own internal policies, procedures, and processes.

The Agencies are also proposing to further tailor the requirements for banking entities with moderate trading activities and liabilities. In particular, the compliance program requirements that are part of the market making exemption would not apply to these firms.

Question 320. Do commenters believe that the proposed changes related to the use of risk limits in satisfying the market making exemption would materially reduce the costs associated with rule compliance relative to the 2013 final rule?

Question 321. Do commenters believe there are any benefits of the approach in the 2013 final rule that would be forgone with the proposed changes related to the use of risk limits in satisfying the market making exemption?

Question 322. Do commenters have any specific data or information that could be used to quantify the extent to which such costs are reduced?

Question 323. Do commenters believe that any aspect of the proposed changes related to the use of risk limits in satisfying the market making exemption increases the costs associated with rule compliance? If so, which aspects of the proposed changes raise compliance costs, why, and to what extent?

Question 324. Do commenters agree that the proposed changes related to the reduced compliance program requirements for banking entities with moderate trading assets and liabilities to satisfy the market making exemption materially reduce the costs associated with rule compliance relative to the 2013 final rule?

Question 325. Do commenters believe there are any benefits of the approach in the 2013 final rule that would be forgone with the proposed changes related to the compliance requirements in satisfying the market making exemption?

Question 326. Do commenters have any specific data or information that could be used to quantify the extent to which such costs are reduced?

Question 327. Do commenters believe that any aspect of the proposed changes related to the use of risk limits in satisfying the market making exemption increases the costs associated with rule compliance? If so, which aspects of the proposed changes raise compliance costs, why, and to what extent?

The agencies are proposing a number of changes to the requirements of the 2013 final rule's exemption for risk-mitigating hedging activities that are expected to reduce the costs associated with complying with the final rule's requirements.

First, for banking entities with significant trading assets and liabilities, the 2013 final rule's requirement in the risk mitigating hedging exemption to conduct a correlation analysis would be removed. Since adoption of the 2013 final rule, banking entities have communicated that this requirement has in practice been unclear and often not useful in determining whether or not a given transaction provides meaningful hedging benefits. The Agencies expect that the proposed removal of this requirement from the final rule would materially reduce the costs of rule compliance since larger banking entities would not be required to conduct a specific analysis that is currently required under the 2013 final rule.

Second, for these banking entities with significant trading assets and liabilities, the Agencies are proposing that the requirement that the hedging transaction ''demonstrably reduce (or otherwise significantly mitigate)'' risk be removed. Banking entities have communicated that these requirements can be unclear and these banking entities must often engage in a number of complex and time-intensive analyses to assess whether these standards have been met. Moreover, the above hedging standards have not aligned well with banking entities' internal processes for assessing the economic value of a hedging transaction. Accordingly, the Agencies expect that eliminating these requirements would materially reduce the costs associated with complying with the requirements of the rule's hedging exemption.

Third, for banking entities with moderate trading assets and liabilities, the Agencies are proposing to remove all of the hedging requirements under the 2013 final rule except for the requirement that the transaction be designed to reduce or otherwise significantly mitigate one or more specific, identifiable risks in connection with and related to one or more identified positions and that the hedging activity be recalibrated to maintain compliance with the rule. The Agencies expect this proposed change to materially reduce the costs of rule compliance since no additional documentation or prescribed analyses would be required beyond a banking entity's already existing practices and whatever analyses are required to ascertain that the remaining factors are satisfied, consistent with the statute. In light of Agency experience with the hedging requirements of the 2013 final rule, the Agencies expect that this proposed change would result in a material reduction in the costs associated with complying with the rule's hedging requirements.

Question 328. Do commenters believe that the proposed changes that streamline the hedging requirements of the rule materially reduce the costs associated with rule compliance relative to the 2013 final rule?

Question 329. Do commenters have any specific data or information that could be used to quantify the extent to which such costs are reduced?

Question 330. Do commenters believe that any aspect of the proposed changes to streamline the hedging requirements of the rule increases the costs associated with rule compliance? If so, which aspects of the proposed changes raise costs, why, and to what extent?

The Agencies are proposing to eliminate a number of requirements related to the foreign trading exemption. These proposed changes are intended to respond to concerns raised by FBOs subject to the 2013 final rule that they find its foreign trading exemption to be difficult to comply with in practice.

The Agencies are proposing to modify the requirement of this exemption that personnel of the banking entity who arrange, negotiate, or execute a purchase or sale must be outside the United States and to eliminate the requirements that: (1) No financing be provided by a U.S. affiliate or branch, and (2) a transaction with a U.S. counterparty must be executed through an unaffiliated intermediary and an anonymous exchange.

The Agencies expect that the modification and removal of these requirements would materially reduce the compliance costs associated with the foreign trading exemption.

In addition, banking entities have communicated that the requirement that any transaction with a U.S. counterparty be executed without involvement of U.S. personnel of the counterparty or through an unaffiliated intermediary and an anonymous exchange may in some cases significantly reduce the range of counterparties with which transactions can be conducted as well as increase the cost of those transactions, including with respect to counterparties seeking to do business with a foreign banking entity in foreign jurisdictions. Therefore, the Agencies also expect that removing this requirement would materially reduce the costs associated with rule compliance.

Question 331. Do commenters believe that the proposed changes to modify and eliminate certain requirements from the foreign trading exemption would materially reduce the regulatory burden associated with rule compliance relative to the 2013 final rule?

Question 332. Do commenters have any specific data or information that could be used to quantify the extent to which such costs are reduced?

Question 333. Do commenters believe that any aspect of the proposed changes to eliminate certain requirements from the foreign trading exemption increases the costs associated with rule compliance? If so which aspects of the proposed changes raise costs, why, and to what extent?

The Agencies are proposing to make a number of changes to the metrics reporting requirements that are intended to improve the effectiveness of the metrics. On the whole, these changes are also expected to reduce the compliance costs associated with the metrics reporting requirements. In particular, the Agencies are proposing to add qualitative information schedules that would improve the Agencies' ability to understand and analyze the quantitative measurements. The Agencies are also proposing to remove certain metrics, such as inventory aging for derivatives and stressed value-at-risk for risk mitigating hedging desks, that based on experience with implementing the 2013 final rule, are not effective for identifying whether a banking entity's trading activity is consistent with the requirements of the 2013 final rule. In addition, the Agencies are proposing to switch to a standard XML format for the metrics data file. The Agencies expect this to improve consistency and data quality by both clarifying the format specification and making it possible to check the validity of data files against a published template using generally available software. Finally, the Agencies are proposing to make a number of changes to the technical calculation guidance for a number of metrics that should make the required calculations clearer and less complicated.

The Agencies are also proposing to provide certain banking entities that must report metrics with additional time to report metrics. Specifically, the firms with $50 billion in trading assets and liabilities would have 20 days instead of 10 days to report metrics to the Agencies. This change is expected to reduce compliance costs as the additional time would allow the required workflow to be conducted under less time pressure and with greater efficiency and accuracy.

Question 334. Do commenters believe that the proposed changes to the metrics reporting requirements would materially reduce the costs associated with rule compliance relative to the 2013 final rule?

Question 335. Do commenters have any specific data or information that could be used to quantify the extent to which such costs are reduced?

Question 336. Do commenters believe that any aspect of the proposed changes to the metrics reporting requirements would increase the costs associated with rule compliance? If so, which aspects of the proposed changes increase costs, why, and to what extent?

The Agencies are proposing to modify certain requirements regarding the ability of banking entities to engage in underwriting and market-making of third-party covered funds that would remove some of the restrictions on activities with respect to covered fund interests. The Agencies expect that this proposed change would reduce the costs of compliance with the 2013 final rule's requirements. In particular, the 2013 final rule places a number of restrictions on underwriting and market-making of covered fund interests that banking entities have indicated are costly to comply with and view as unduly limiting activity that is otherwise consistent with bona fide underwriting and market-making activity that would be allowed with respect to any other type of financial instrument, consistent with the statutory factors defining these activities.

Question 337. Do commenters believe that the proposed changes to certain restrictions on covered fund related activities would materially reduce the costs associated with rule compliance relative to the 2013 final rule?

Question 338. Do commenters have any specific data or information that could be used to quantify the extent to which such costs are reduced?

Question 339. Do commenters believe that any aspect of the proposed changes to certain restrictions on covered fund related activities would increase the costs associated with rule compliance? If so, which aspects of the proposed changes would raise costs, why, and to what extent?

The Agencies are proposing several changes to the required compliance program requirements that are expected to materially reduce the costs associated with complying with the rule's requirements. Specifically, banking entities with significant trading assets and liabilities would only need to maintain a standard six-pillar compliance program (*i.e.,* written policies and procedures, internal controls, management framework, independent testing, training, and records) and would not be required to maintain most aspects of the enhanced compliance program that is required by the 2013 final rule for such large banking entities. Agency experience with implementing the 2013 final rule indicates that the operation of the 2013 final rule's enhanced compliance program can be costly and unrelated to other compliance efforts that these banking entities routinely conduct. Accordingly, eliminating this requirement would be expected to materially reduce the costs of complying with the rule.

In the case of banking entities with moderate trading assets and liabilities, these banking entities would only be required to maintain the simplified compliance program that is described in the 2013 final rule. Namely, these entities would only be required to update their existing compliance policies and procedures and would not be required to maintain a standard six-pillar compliance program as is required under the 2013 final rule. Since the simplified compliance program is much less intensive and costly to implement than the standard six-pillar compliance program, the Agencies expect that this proposed change would materially reduce the costs associated with complying with the 2013 final rule's compliance program requirements for these smaller banking entities.

Question 340. Do commenters agree that the proposed changes to the compliance program requirements would materially reduce the costs associated with rule compliance relative to the 2013 final rule?

Question 341. Do commenters have any specific data or information that could be used to quantify the extent to which such costs are reduced?

Question 342. Do commenters believe that any aspect of the proposed changes to the compliance program requirements increases the costs associated with rule compliance? If so which aspects of the proposed changes would raise costs, why, and to what extent?

The above discussion outlines the Agencies' views on the most significant sources of cost reduction that arise from this proposal. At the same time, the Agencies are aware that there may be other aspects of the proposal that commenters view as either decreasing or increasing costs associated with the 2013 final rule. Accordingly, the Agencies seek broad comment on any other aspects of the proposal that would either increase or decrease the costs associated with the rule. Commenters are encouraged to be specific and to provide any data or information that would help demonstrate their views as well as potential ways to mitigate costs.

V. Administrative Law Matters

A. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Federal banking agencies have sought to present the proposal in a simple and straightforward manner, and invite your comments on how to make this proposal easier to understand.

For example:

- *Have the agencies organized the material to suit your needs? If not, how could this material be better organized?*
- *Are the requirements in the proposal clearly stated? If not, how could the proposal be more clearly stated?*
- *Does the proposal contain language or jargon that is not clear? If so, which language requires clarification?*
- *Would a different format (e.g., grouping and order of sections, use of headings, paragraphing) make the proposal easier to understand? If so, what changes to the format would make the proposal easier to understand?*
- *Would more, but shorter, sections be better? If so, which sections should be changed?*
- *What else could the agencies do to make the regulation easier to understand?*

B. Paperwork Reduction Act Analysis Request for Comment on Proposed Information Collection

Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies reviewed the proposed rule and determined that the proposed rule revises certain reporting and recordkeeping requirements that have been previously cleared under various OMB control numbers. The agencies are proposing to extend for three years, with revision, these information collections. The information collection requirements contained in this joint notice of proposed rulemaking have been submitted by the OCC and FDIC to OMB for review and approval under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR 1320). The Board reviewed the proposed rule under the authority delegated to the Board by OMB. The Board will submit information collection burden estimates to OMB and the submission will include burden for Federal Reserve-supervised institutions, as well as burden for OCC-, FDIC-, SEC-, and CFTC-supervised institutions under a holding company. The OCC and the FDIC will take burden for banking entities that are not under a holding company.

Comments are invited on:

a. Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section. A copy of the comments may also be submitted to the OMB desk officer for the Agencies by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503, by facsimile to 202–395–5806, or by email to *oira_submission@omb.eop.gov*, Attention, Commission and Federal Banking Agency Desk Officer.

Abstract

Section 619 of the Dodd-Frank Act added section 13 to the BHC Act, which generally prohibits any banking entity from engaging in proprietary trading or from acquiring or retaining an ownership interest in, sponsoring, or having certain relationships with a covered fund, subject to certain exemptions. The exemptions allow certain types of permissible trading activities such as underwriting, market making, and risk-mitigating hedging, among others. Each agency issued a common final rule implementing section 619 that became effective on April 1, 2014. Section ____.20(d) and Appendix A of the final rule require certain of the largest banking entities to report to the appropriate agency certain quantitative measurements.

Current Actions

The proposed rule contains requirements subject to the PRA and the changes relative to the current final rule are discussed herein. The new and modified reporting requirements are found in sections ____.3(c), ____.3(g), ____.4(a)(8)(iii), ____.4(a)(8)(iv), ____.4(b)(6)(iii), ____.4(b)(6)(iv), ____.20(d), and ____.20(g)(3). The modified recordkeeping requirements are found in sections ____.5(c), ____.20(b), ____.20(c), ____.20 (d), ____.20(e), and ____.20(f)(2). The modified information collection requirements[260] would implement section 619 of the Dodd-Frank Act. The respondents are for-profit financial institutions, including small businesses. A covered entity must retain these records for a period that is no less than 5 years in a form that allows it to promptly produce such records to the relevant Agency on request.

Reporting Requirements

Section ____.3(c) would require that under the revised short-term prong, certain banking entities to report to the appropriate agency when a trading desk exceeds $25 million in absolute values of the daily net realized and unrealized gain and loss over the preceding 90 day period if the banking entity chooses to perform this calculation for a trading desk in order to meet the presumption of compliance. The agencies estimate that the new reporting requirement would be collected twice a year with an average hour per response of 1 hour.

Section ____.3(g) would require that notice and response procedures be followed under the reservation of authority provision. The agencies estimate that the new reporting requirement would be collected once a year with an average hours per response of 2 hours.

Sections ____.4(a)(8)(iii) and ____.4(b)(6)(iii) would require that banking entities report to the appropriate agency when their internal risk limits under the RENTD framework for market-making and underwriting have been exceeded. These reporting requirements would be included in the section ____.20(d) reporting requirements.

Section ____.20(d) would be modified by extending the reporting period for banking entities with $50 billion or more in trading assets and liabilities from within 10 days of the end of each calendar month to 20 days of the end of each calendar month. The agencies estimate that the current average hours per response would decrease by 14 hours (decrease 40 hours for initial set-up).

Sections ____.3(c)(2), ____.3(g)(2), ____.4(a)(8)(iv), ____.4(b)(6)(iv), and ____.20(g)(3) would set forth proposed notice and response procedures that an agency would follow when exercising its reservation of authority to modify what is in or out of the trading account. These reporting requirements would be included in the section ____.3(c) reporting requirements for section ____.3(c)(2); the section ____.3(g) reporting requirements for section ____.3(g)(2); and the section ____.20(d) reporting requirements for section ____.4(a)(8)(iv), ____.4(b)(6)(iv), and ____.20(g)(3).

Recordkeeping Requirements

Section ____.5(c) would be modified by reducing the requirements for banking entities that do not have significant trading assets and liabilities and eliminating documentation requirements for certain hedging activities. The agencies estimate that the current average hours per response would decrease by 20 hours (decrease 10 hours for initial set-up).

Section ____.20(b) would be modified by limiting the requirement only to banking entities with significant trading assets and liabilities. The agencies estimate that the current average hour per response would not change.

Section ____.20(c) would be modified by limiting the CEO attestation requirement to a banking entity that has significant trading assets and liabilities or moderate trading assets and liabilities. The agencies estimate that the current average hours per response would decrease by 1,100 hours (decrease 3,300 hours for initial set-up).

Section ____.20(d) would be modified by extending the time period for reporting for banking entities with $50 billion or more in trading assets and liabilities from within 10 days of the end of each calendar month to 20 days of the end of each calendar month. The agencies estimate that the current average hours per response would decrease by 3 hours.

Section ____.20(e) would be modified by limiting the requirement to banking entities with significant trading assets and liabilities. The agencies estimate that the current average hours per response would not change.

Section ____.20(f)(2) would be modified by limiting the requirement to banking entities with moderate trading assets and liabilities. The agencies estimate that the current average hours per response would not change.

The Instructions for Preparing and Submitting Quantitative Measurement Information, Technical Specifications Guidance, and XML Schema are available for review on each agency's public website:

- *OCC: http://www.occ.treas.gov/topics/capital-markets/financial-markets/trading/volcker-rule-implementation/index-volcker-rule-implementation.html*;
- *Board: https://www.federalreserve.gov/apps/reportforms/review.aspx*;
- *FDIC: https://www.fdic.gov/regulations/reform/volcker/index.html*;
- *CFTC: https://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF_28_VolckerRule/index.htm*;
- *SEC: https://www.sec.gov/structureddata/dera_taxonomies*.

Proposed Revision, With Extension, of the Following Information Collections

Estimated average hours per response:

Reporting

Section ____.3(c)—1 hour for an average of 2 times per year.

Section ____.3(g)—2 hours.

Section ____.12(e)—20 hours (Initial set-up 50 hours) for an average of 10 times per year.

Section ____.20(d)—41 hours (Initial set-up 125 hours) for quarterly and monthly filers.

Recordkeeping

Section ____.3(e)(3)—1 hour (Initial set-up 3 hours).

Section ____.4(b)(3)(i)(A)—2 hours for quarterly filers.

Section ____.5(c)—80 hours (Initial setup 40 hours).

Section ____.11(a)(2)—10 hours.

Section ____.20(b)—265 hours (Initial set-up 795 hours).

Section ____.20(c)—100 hours (Initial set-up 300 hours).

Section ____.20(d) (entities with $50 billion or more in trading assets and liabilities)—13 hours.

Section ____.20(d) (entities with at least $10 billion and less than $50 billion in trading assets and liabilities)—10 hours.

Section ____.20(e)—200 hours.

Section ____.20(f)(1)—8 hours.

Section ____.20(f)(2)—40 hours (Initial set-up 100 hours).

Disclosure

Section ____.11(a)(8)(i)—0.1 hours for an average of 26 times per year.

OCC

Title of Information Collection: Reporting, Recordkeeping, and Disclosure Requirements Associated with Restrictions on Proprietary Trading and Certain Relationships with Hedge Funds and Private Equity Funds.

Frequency: Annual, monthly, quarterly, and on occasion.

[260] In an effort to provide transparency, the total cumulative burden for each agency is shown. In addition to the changes resulting from the proposed rule, the agencies are also applying a conforming methodology for calculating the burden estimates in order to be consistent across the agencies.

Affected Public: Businesses or other for-profit.

Respondents: National banks, state member banks, state nonmember banks, and state and federal savings associations.

OMB control number: 1557–0309.

Estimated number of respondents: 38.

Proposed revisions estimated annual burden: −469 hours.

Estimated annual burden hours: 20,712 hours (1,784 hour for initial set-up and 18,928 hours for ongoing).

Board

Title of Information Collection: Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation VV.

Frequency: Annual, monthly, quarterly, and on occasion.

Affected Public: Businesses or other for-profit.

Respondents: State member banks, bank holding companies, savings and loan holding companies, foreign banking organizations, U.S. State branches or agencies of foreign banks, and other holding companies that control an insured depository institution and any subsidiary of the foregoing other than a subsidiary for which the OCC, FDIC, CFTC, or SEC is the primary financial regulatory agency. The Board will take burden for all institutions under a holding company including:

- OCC-supervised institutions,
- FDIC-supervised institutions,
- Banking entities for which the CFTC is the primary financial regulatory agency, as defined in section 2(12)(C) of the Dodd-Frank Act, and
- Banking entities for which the SEC is the primary financial regulatory agency, as defined in section 2(12)(B) of the Dodd-Frank Act.

Legal authorization and confidentiality: This information collection is authorized by section 13 of the Bank Holding Company Act (BHC Act) (12 U.S.C. 1851(b)(2) and 12 U.S.C. 1851(e)(1)). The information collection is required in order for covered entities to obtain the benefit of engaging in certain types of proprietary trading or investing in, sponsoring, or having certain relationships with a hedge fund or private equity fund, under the restrictions set forth in section 13 and the final rule. If a respondent considers the information to be trade secrets and/or privileged such information could be withheld from the public under the authority of the Freedom of Information Act (5 U.S.C. 552(b)(4)). Additionally, to the extent that such information may be contained in an examination report such information could also be withheld from the public (5 U.S.C. 552 (b)(8)).

Agency form number: FR VV.

OMB control number: 7100–0360.

Estimated number of respondents: 41.

Proposed revisions estimated annual burden: −51,219 hours.

Estimated annual burden hours: 45,558 hours (1,784 hour for initial set-up and 43,774 hours for ongoing).

FDIC

Title of Information Collection: Volcker Rule Restrictions on Proprietary Trading and Relationships with Hedge Funds and Private Equity Funds.

Frequency: Annual, monthly, quarterly, and on occasion.

Affected Public: Businesses or other for-profit.

Respondents: State nonmember banks, state savings associations, and certain subsidiaries of those entities.

OMB control number: 3064–0184.

Estimated number of respondents: 53.

Proposed revisions estimated annual burden: −10,305 hours.

Estimated annual burden hours: 10,632 hours (1,784 hours for initial set-up and 8,848 hours for ongoing).

C. Initial Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (''RFA'') [261] requires an agency to either provide an initial regulatory flexibility analysis with a proposal or certify that the proposal will not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (''SBA'') establishes size standards that define which entities are small businesses for purposes of the RFA.[262] Except as otherwise specified below, the size standard to be considered a small business for banking entities subject to the proposal is $550 million or less in consolidated assets.[263] The Agencies are separately publishing initial regulatory flexibility analyses for the proposals as set forth in this NPR.

Board

The Board has considered the potential impact of the proposed rule on small entities in accordance with the RFA. Based on the Board's analysis, and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial of number of small entities. Nevertheless, the Board is publishing and inviting comment on this initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after comments received during the public comment period have been considered.

The Board welcomes comment on all aspects of its analysis. In particular, the Board requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate and support the extent of the impact.

1. Reasons for the Proposal

As discussed in the **SUPPLEMENTARY INFORMATION**, the Agencies are proposing to revise the 2013 final rule in order to provide clarity to banking entities about what activities are prohibited, reduce compliance costs, and improve the ability of the Agencies to make supervisory assessments regarding compliance relative to the 2013 final rule. To minimize the costs associated with the 2013 final rule in a manner consistent with section 13 of the BHC Act, the Agencies are proposing to simplify and tailor the rule in a manner that would substantially reduce compliance costs for all banking entities and, in particular, small banking entities and banking entities without significant trading operations.

2. Statement of Objectives and Legal Basis

As discussed above, the Agencies' objective in proposing this rule is to reduce the compliance costs for all banking entities and, in particular, to tailor the rule based on the size of the banking entity and the complexity of its trading operations. The Agencies are explicitly authorized under section 13(b)(2) of the BHC Act to adopt rules implementing section 13.[264]

3. Description of Small Entities to Which the Regulation Applies

The Board's proposal would apply to state-chartered banks that are members of the Federal Reserve System (state member banks), bank holding companies, foreign banking organizations, and nonbank financial companies supervised by the Board (collectively, ''Board-regulated banking entities''). However, the Board notes that the Economic Growth, Regulatory Relief, and Consumer Protection Act,[265] which was enacted on May 24, 2018,

[261] 5 U.S.C. 601 *et seq.*

[262] U.S. SBA, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, *available at https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

[263] *See id.* Pursuant to SBA regulations, the asset size of a concern includes the assets of the concern whose size is at issue and all of its domestic and foreign affiliates. 13 CFR 121.103(6).

[264] 12 U.S.C. 1851(b)(2).

[265] Public Law 115–174, 132 Stat. 1296–1368 (2018).

amends section 13 of the BHC Act by narrowing the definition of banking entity. Accordingly, no small top-tier bank holding company would meet the threshold criteria for application of the provisions provided in this proposal and, therefore, the proposed amendments to the 2013 final rule would not have a significant economic impact on a substantial number of small entities.

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The proposal would reduce reporting, recordkeeping, and other compliance requirements for small entities. First, banking entities with consolidated gross trading assets and liabilities below $10 billion would be subject to reduced requirements and a tailored approach in light of their significantly smaller and less complex trading activities. Second, in order to further reduce compliance requirements for small and mid-sized banking entities, the Agencies have proposed a rebuttable presumption of compliance for firms that do not have consolidated gross trading assets and liabilities in excess of $1 billion. All Board-regulated banking entities that meet the SBA definition of small entities (*i.e.,* those with consolidated assets of $550 million or less) have consolidated gross trading assets and liabilities below $1 billion and thus would be subject to the presumption of compliance.

As discussed in the **SUPPLEMENTARY INFORMATION**, the Agencies expect that this rebuttable presumption of compliance would materially reduce the costs associated with complying with the rule. As a result of this presumed compliance, these banking entities would not be required to comply with many of the rule's specific requirements to demonstrate compliance, such as the documentation requirements associated with the hedging exemption. Additionally, these entities would not be required to specify and maintain trading risk limits to comply with the rule's market making exemption. Accordingly, these smaller entities would generally not be required to devote resources to demonstrate compliance with any of the rule's requirements.

Without this presumption of compliance, these banking entities would generally be required to comply with the rule's applicable substantive requirements to demonstrate compliance with the rule. As a result, this proposed change is expected to meaningfully reduce the costs associated with rule compliance for small banking entities. The presumption would be rebuttable, so a banking entity would need to maintain a certain level of resources to respond to supervisory requests for information in the event that the presumption of compliance is rebutted; however, the Agencies would not expect these banking entities to maintain anything other than what they would normally maintain in the ordinary course. The amount of resources required for such purposes is expected to be significantly smaller than the amount of resources that would be required to maintain and execute ongoing compliance with the 2013 final rule's requirements.

5. Identification of Duplicative, Overlapping, or Conflicting Federal Regulations

The Board has not identified any federal statutes or regulations that would duplicate, overlap, or conflict with the proposed revisions.

6. Discussion of Significant Alternatives

The Board believes the proposed amendments to the 2013 final rule will not have a significant economic impact on small banking entities supervised by the Board and therefore believes that there are no significant alternatives to the proposal that would reduce the economic impact on small banking entities supervised by the Board.

OCC

The RFA, requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the proposed rule on small entities, or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, the SBA defines small entities as those with $550 million or less in assets for commercial banks and savings institutions, and $38.5 million or less in assets for trust companies.

The OCC currently supervises approximately 886 small entities.[266] Pursuant to section 203 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (May 24, 2018), OCC-supervised institutions with total consolidated assets of $10 billion or less are not ''banking entities'' within the scope of Section 13 of the BHCA, if their trading assets and trading liabilities do not exceed 5 percent of their total consolidated assets, and they are not controlled by a company that has total consolidated assets over $10 billion or total trading assets and trading liabilities that exceed 5 percent of total consolidated assets. The proposal may impact two OCC-supervised small entities, which is not a substantial number. Therefore, the OCC certifies that the proposal would not have a significant economic impact on a substantial number of small entities.

FDIC

a. Regulatory Flexibility Act

The RFA, generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[267] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBA has defined ''small entities'' to include banking organizations with total assets of less than or equal to $550 million.[268] As discussed further below, the FDIC certifies that this proposed rule would not have a significant economic impact on a substantial number of FDIC-supervised small entities.

b. Reasons for and Policy Objectives of the Proposed Rule

The Agencies are issuing this proposal to amend the 2013 final rule in order to provide banking entities with additional certainty and reduce compliance obligations and costs where possible. The Agencies acknowledge that many small banking entities have found certain aspects of the 2013 final rule to be complex or difficult to apply in practice.[269] The proposed rule amends existing requirements in order the make them more efficient. However, the proposed amendments do not alter the Volcker Rule's existing restrictions on the ability of banking entities to engage in proprietary trading and have

[266] The number of small entities supervised by the OCC is determined using the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $550 million and $38.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if we should classify an OCC-supervised institution as a small entity. The OCC used December 31, 2017, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

[267] 5 U.S.C. 601 *et seq.*

[268] 13 CFR 121.201 (as amended, effective December 2, 2014).

[269] The FDIC has issued twenty-one FAQs since inception of the 2013 rule.

certain interests in, and relationships with, covered funds.

c. Description of the Rule

The Agencies are proposing to tailor the application of the 2013 final rule based on a banking entity's risk profile and the size and scope of its trading activities. Second, the Agencies aim to further streamline compliance obligations, particularly for entities without large trading operations. Third, the agencies seek to streamline and refine certain definitions and requirements related to the proprietary trading prohibition and limitations on covered fund activities and investments. Please refer to Section II: Overview of Proposal, for further information.

d. Other Statutes and Federal Rules

The FDIC has not identified any likely duplication, overlap, and/or potential conflict between the proposed rule and any other federal rule.

On May 24, 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act was enacted, which, among other things, amends section 13 of the BHC Act. As a result, section 13 excludes from the definition of banking entity any institution that, together with their affiliates and subsidiaries, has: (1) Total assets of $10 billion or less, and (2) trading assets and liabilities that comprise 5 percent or less of total assets. This excludes every FDIC-supervised small entity from the statutory definition of banking entity, except those that are controlled by a company that is not excluded. The SBA has defined ''small entities'' to include banking organizations with total assets less than or equal to $550 million.[270]

e. Small Entities Affected

The FDIC supervises 3,597 depository institutions,[271] of which, 2,885 are defined as small entity.[272] There are no FDIC-supervised small entities that engage in significant or moderate trading of assets and liabilities at the depository institution level.[273] There are only five FDIC-supervised small entities, which are controlled by companies not excluded by section 13, as amended, that would be required to implement compliance elements prescribed by the proposed rule and would have compliance obligations under the proposed rule, of which one is categorized as having ''significant'' trading, one is categorized as having ''moderate'' trading and three are categorized as having ''limited'' trading activity.[274]

f. Expected Effects of the Proposed Rule

The potential benefits of this proposed rule consist of any reduction in the regulatory costs borne by covered entities. The potential costs of this rule consist of any reduction in the efficacy of the objectives in the existing regulatory framework. As explained in the following sections, certain of these potential costs and benefits are difficult to quantify.

1. Expected Costs

By reducing the reporting requirements of the 2013 final rule, there is a chance that the Agencies would fail to recognize prohibited proprietary trading, resulting in additional risk of loss to an institution, the Deposit Insurance Fund (DIF), the financial sector, and the economy. The FDIC believes the potential costs associated with these risks are minimal. First, the reporting metrics that would be removed or replaced by the proposed rule have contributed little as indicators of risk, and there would be no cost associated with replacing them. Second, the banking entities that would be relieved from compliance requirements under section ____.20 of the proposed rule are primarily small entities that conduct limited to no trading activity, and which are therefore excluded from Section 13 by the Economic Growth, Regulatory Relief, and Consumer Protection Act. The FDIC would maintain its ability to recognize and respond to potential risks of prohibited activity by these small entities through off-site monitoring of Call Reports as well as periodic on-site examinations. The proposed rule has no additional or transition costs because the new reporting metrics in the proposed rule consist of data that covered entities already collect in the course of business and for regulatory compliance.

2. Expected Benefits

The potential benefits of the proposed rule can be expressed in terms of the potential reduction in the costs of compliance incurred by small, FDIC-supervised affected banking entities under the proposed rule. These benefits cannot be quantified because covered institutions do not collect data and report to the FDIC the precise burden relating to parts of the 2013 final rule. Nevertheless, supervisory experience and feedback received from FDIC-supervised banking entities have demonstrated that these burdens exist. The proposed rule clarifies many requirements and definitions that are expected to enable banking entities to more efficiently and effectively comply with the rule, thus providing benefits to those entities.

g. Alternatives Considered

The primary alternative to the proposed rule is to maintain the status quo under the 2013 final rule. As discussed above, however, the proposed rule implements the statutory requirements, but is expected to provide more certainty and result in lower costs.

The proposed rule also seeks public comment on alternative regulatory approaches that would reduce the compliance burden of the 2013 final rule without reducing its effectiveness in eliminating the moral hazard of proprietary trading.

h. Certification Statement

Section 13, as amended, exempts almost all of the FDIC-supervised small institutions from compliance with the Volcker Rule. The proposed rule provides benefits to the remaining five FDIC-supervised small institutions with parent companies subject to the rule. Therefore, the FDIC certifies that this proposed rule will not have a significant economic impact on a substantial number of FDIC-supervised small entities.[275]

i. Request for Comments

The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this rule have any significant effect on small entities that the FDIC has not identified? If the proposed rule is implemented, how many hours of burden would small institutions save?

SEC

Pursuant to 5 U.S.C. 605(b), the SEC hereby certifies that the proposed amendments to the 2013 final rule would not, if adopted, have a significant economic impact on a substantial number of small entities.

As discussed in the **SUPPLEMENTARY INFORMATION**, the Agencies are proposing

[270] 13 CFR 121.201.

[271] FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

[272] FDIC Call Report, March 31, 2018.

[273] Based on data from the December 31, 2017 Call Reports and Y9C reports. Top tier institutions that have a four-quarter average trading assets and liabilities, excluding U.S. treasuries and obligations or guarantees of government agencies, exceeding $10 billion have ''significant'' trading activity while those between $1 billion and $10 billion have ''moderate'' trading activity and those below $1 billion have ''limited'' trading activity.

[274] *Id.*

[275] Notwithstanding S.2155, the rule does provide benefits to a substantial number of moderate sized banks above $550 million in total assets and below $1 billion in trading assets and liabilities as well as to large banks with very little trading activity.

to revise the 2013 final rule in order to provide clarity to banking entities about what activities are prohibited, reduce compliance costs, and improve the ability of the Agencies to make assessments regarding compliance relative to the 2013 final rule. To minimize the costs associated with the 2013 final rule in a manner consistent with section 13 of the BHC Act, the Agencies are proposing to simplify and tailor the rule in a manner that would substantially reduce compliance costs for all banking entities and, in particular, small banking entities and banking entities without significant trading operations.

The proposed revisions would generally apply to banking entities, including certain SEC-registered entities. These entities include bank-affiliated SEC-registered broker-dealers, investment advisers, and security-based swap dealers. Based on information in filings submitted by these entities, the SEC preliminarily believes that there are no banking entity registered investment advisers [276] or broker-dealers [277] that are small entities for purposes of the RFA.[278] For this reason, the SEC believes that the proposed amendments to the 2013 final rule would not, if adopted, have a significant economic impact on a substantial number of small entities.

The SEC encourages written comments regarding this certification. Specifically, the SEC solicits comment as to whether the proposed amendments could have an impact on small entities that has not been considered. Commenters should describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

CFTC

Pursuant to 5 U.S.C. 605(b), the CFTC hereby certifies that the proposed amendments to the 2013 final rule would not, if adopted, have a significant economic impact on a substantial number of small entities for which the CFTC is the primary financial regulatory agency.

As discussed in this **SUPPLEMENTARY INFORMATION**, the Agencies are proposing to revise the 2013 final rule in order to provide clarity to banking entities about what activities are prohibited, reduce compliance costs, and improve the ability of the Agencies to make assessments regarding compliance relative to the 2013 final rule. To minimize the costs associated with the 2013 final rule in a manner consistent with section 13 of the BHC Act, the Agencies are proposing to simplify and tailor the rule in a manner that would substantially reduce compliance costs for all banking entities and, in particular, small banking entities and banking entities without significant trading operations.

The proposed revisions would generally apply to banking entities, including certain CFTC-registered entities. These entities include bank-affiliated CFTC-registered swap dealers, FCMs, commodity trading advisors and commodity pool operators.[279] The CFTC has previously determined that swap dealers, futures commission merchants and commodity pool operators are not small entities for purposes of the RFA and, therefore, the requirements of the RFA do not apply to those entities.[280] As for commodity trading advisors, the CFTC has found it appropriate to consider whether such registrants should be deemed small entities for purposes of the RFA on a case-by-case basis, in the context of the particular regulation at issue.[281]

In the context of the proposed revisions to the 2013 final rule, the CFTC believes it is unlikely that a substantial number of the commodity trading advisors that are potentially affected are small entities for purposes of the RFA. In this regard, the CFTC notes that only commodity trading advisors that are registered with the CFTC are covered by the 2013 final rule, and generally those that are registered have larger businesses. Similarly, the 2013 final rule applies to only those commodity trading advisors that are affiliated with banks, which the CFTC expects are larger businesses. The CFTC requests that commenters address in particular whether any of these commodity trading advisors, or other CFTC registrants covered by the proposed revisions to the 2013 final rule, are small entities for purposes of the RFA.

Because the CFTC believes that there are not a substantial number of registered, banking entity-affiliated commodity trading advisors that are small entities for purposes of the RFA, and the other CFTC registrants that may be affected by the proposed revisions have been determined not to be small entities, the CFTC believes that the proposed revisions to the 2013 final rule would not, if adopted, have a significant economic impact on a substantial number of small entities for which the CFTC is the primary financial regulatory agency.

The CFTC encourages written comments regarding this certification. Specifically, the CFTC solicits comment as to whether the proposed amendments could have a direct impact on small entities that were not considered. Commenters should describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

A. OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC analyzed the proposed rule under the factors set forth in the

[276] For the purposes of an SEC rulemaking in connection with the RFA, an investment adviser generally is a small entity if it: (1) Has assets under management having a total value of less than $25 million; (2) did not have total assets of $5 million or more on the last day of the most recent fiscal year; and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year. *See* 17 CFR 275.0–7.

[277] For the purposes of an SEC rulemaking in connection with the RFA, a broker-dealer will be deemed a small entity if it: (1) Had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to 17 CFR 240.17a–5(d), or, if not required to file such statements, had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization. *See* 17 CFR 240.0–10(c). Under the standards adopted by the SBA, small entities also include entities engaged in financial investments and related activities with $38.5 million or less in annual receipts. *See* 13 CFR 121.201 (Subsector 523).

[278] Based on SEC analysis of Form ADV data, the SEC preliminarily believes that there are not a substantial number of registered investment advisers affected by the proposed amendments that would qualify as small entities under RFA. Based on SEC analysis of broker-dealer FOCUS filings and NIC relationship data, the SEC preliminarily believes that there are no SEC-registered broker-dealers affected by the proposed amendments that would qualify as small entities under RFA. With respect to security-based swap dealers, based on feedback from market participants and our information about the security-based swap markets, the Commission believes that the types of entities that would engage in more than a de minims amount of dealing activity involving security-based swaps—which generally would be large financial institutions—would not be ''small entities'' for purposes of the RFA.

[279] The proposed revisions may also apply to other types of CFTC registrants that are banking entities, such as introducing brokers, but the CFTC believes it is unlikely that such other registrants will have significant activities that would implicate the proposed revisions. *See* 79 FR 5808, 5813 (Jan. 31, 2014) (CFTC version of 2013 final rule).

[280] *See* Policy Statement and Establishment of Definitions of ''Small Entities'' for Purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982) (futures commission merchants and commodity pool operators); Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, 2620 (Jan. 19, 2012) (swap dealers and major swap participants).

[281] *See* Policy Statement and Establishment of Definitions of ''Small Entities'' for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18620 (Apr. 30, 1982).

Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a federal mandate that may result in the expenditure by state, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation).

The OCC has determined this proposed rule is likely to result in the expenditure by the private sector of approximately $11.6 million in the first year. Therefore, the OCC concludes that implementation of the proposed rule would not result in an expenditure of $100 million or more annually by state, local, and tribal governments, or by the private sector.

B. SEC: Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [282] the SEC requests comment on the potential effect of the proposed amendments on the U.S. economy on an annual basis; any potential increase in costs or prices for consumers or individual industries; and any potential effect on competition, investment or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

D. SEC Economic Analysis

1. Broad Economic Considerations

Section 13 of the BHC Act generally prohibits banking entities from engaging in proprietary trading and from acquiring or retaining an ownership interest in, sponsoring, or having certain relationships with covered funds, subject to certain exemptions. Under the BHC Act, ''banking entities'' include insured depository institutions, any company that controls an insured depository institution or that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978, and their affiliates and subsidiaries.[283] Accordingly, certain SEC-regulated entities, such as broker-dealers, security-based swap dealers (''SBSDs''), and registered investment advisers (''RIAs'') affiliated with a banking entity, fall under the definition of ''banking entity'' and are subject to the prohibitions of section 13 of the BHC Act.[284] In addition, the Economic Growth, Regulatory Relief, and Consumer Protection Act, enacted on May 24, 2018, amends section 13 of the BHC Act to exclude from the scope of ''insured depository institution'' in the banking entity definition any entity that does not have and is not controlled by a company that has (1) more than $10 billion in total consolidated assets; and (2) total trading assets and trading liabilities, as reported on the most recent applicable regulatory filing filed by the institution, that are more than 5% of total consolidated assets.[285]

The Agencies issued final regulations implementing section 13 of the BHC Act in December 2013, with an initial effective date of April 1, 2014.[286] The 2013 final rule prohibits banking entities (*e.g.,* bank-affiliated broker-dealers, SBSDs, and investment advisers) from engaging, as principal, in short-term trading of securities, derivatives, futures contracts, and options on these instruments, subject to certain exemptions. In addition, the 2013 final rule generally prohibits the same entities from acquiring or retaining an ownership interest in, sponsoring, or having certain relationships with a ''covered fund,'' subject to certain exemptions. The 2013 final rule defines the term ''covered fund'' to include any issuer that would be an investment company under the Investment Company Act of 1940 if it were not otherwise excluded by sections 3(c)(1) or 3(c)(7) of that act, as well as certain foreign funds and commodity pools.[287] However, the definition contains a number of exclusions for entities that would otherwise meet the covered fund definition but that the Agencies did not believe are engaged in investment activities contemplated by section 13 of the BHC Act.[288]

In implementing section 13 of the BHC Act, the Agencies sought to increase the safety and soundness of banking entities, promote financial stability, and reduce conflicts of interest between banking entities and their customers.[289] The regulatory regime created by the 2013 final rule may enhance regulatory oversight and compliance with the substantive prohibitions but could also impact capital formation and liquidity. The Agencies also recognized that client-oriented financial services, such as underwriting and market making, are critical to capital formation and can facilitate the provision of market liquidity, and that the ability to hedge is fundamental to prudent risk management as well as capital formation.[290]

[282] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[283] *See* 12 U.S.C. 1851(h)(1).

[284] Throughout this economic analysis, the term ''banking entity'' generally refers only to banking entities for which the SEC is the primary financial regulatory agency unless otherwise noted. While section 13 of the BHC Act and its associated rules apply to a broader set of banking entities, this economic analysis is limited to those banking entities for which the SEC is the primary financial regulatory agency as defined in section 2(12)(B) of the Dodd-Frank Act. *See* 12 U.S.C. 1851(b)(2); 12 U.S.C. 5301(12)(B).

We recognize that compliance with SBSD registration requirements is not yet required and that there are currently no registered SBSDs. However, the SEC has previously estimated that as many as 50 entities may potentially register as security-based swap dealers and that as many as 16 of these entities may already be SEC-registered broker-dealers. *See* Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 75611 (Aug. 5, 2015), 80 FR 48963 (Aug. 14, 2015) (''SBSD and MSP Registration Release'').

For the purposes of this economic analysis, the term ''dealer'' generally refers to SEC-registered broker-dealers and SBSDs.

Throughout this economic analysis, ''we'' refers only to the SEC and not the other Agencies, except where otherwise indicated.

[285] The legislation also alters the name sharing provisions in section 13(d)(1)(G)(vi). This economic analysis assumes that the legislation's changes to section 13 of the BHC Act are in effect.

[286] *See* 79 FR at 5536. The 2013 final rule was published in the **Federal Register** on January 31, 2014, and became effective on April 1, 2014. Banking entities were required to fully conform their proprietary trading activities and their new covered fund investments and activities to the requirements of the final rule by the end of the conformance period, which the Board extended to July 21, 2015. The Board extended the conformance period for legacy-covered fund activities until July 21, 2017. Upon application, banking entities also have an additional period to conform certain illiquid funds to the requirements of section 13 and implementing regulations.

[287] *See* 2013 final rule § ____.10(b).

[288] *See* 2013 final rule § ____.10(c).

[289] *See, e.g.,* 79 FR at 5666, 5574, 5541, 5659. An extensive body of research has examined moral hazard arising out of federal deposit insurance, implicit bailout guarantees, and systemic risk issues. See, *e.g.,* Atkeson, d'Avernas, Eisfeldt, and Weill, 2018, ''Government Guarantees and the Valuation of American Banks,'' working paper. *See also* Bianchi, 2016, ''Efficient Bailouts?'' American Economic Review 106 (12), 3607–3659; Kelly, Lustig, and Van Nieuwerburgh, 2016, ''Too-Systematic-to-Fail: What Option Markets Imply about Sector-Wide Government Guarantees,'' American Economic Review 106(6), 1278–1319; Anginer, Demirguc-Kunt, and Zhu, 2014, ''How Does Deposit Insurance Affect Bank Risk? Evidence from the Recent Crisis,'' Journal of Banking and Finance 48, 312–321; Beltratti and Stulz, 2012, ''The Credit Crisis Around the Globe: Why Did Some Banks Perform Better?'' Journal of Financial Economics 105, 1–17; Veronesi and Zingales, 2010, ''Paulson's Gift,'' Journal of Financial Economics 97(3), 339–368. For a literature review, see, *e.g.,* Benoit, Colliard, Hurlin, and Perignon, 2017, ''Where the Risks Lie: A Survey on Systemic Risk,'' Review of Finance 21(1), 109–152.

See also, e.g., Avci, Schipani, and Seyhun, 2017, ''Eliminating Conflicts of Interests in Banks: The Significance of the Volcker Rule,'' Yale Journal on Regulation 35 (2).

[290] *See, e.g.,* 79 FR at 5541, 5546, 5561. In addition, a significant amount of research has focused on changes in liquidity provision following the financial crisis and regulatory reforms. *See, e.g.,* Bessembinder, Jacobsen, Maxwell, and Venkataraman 2017, ''Capital Commitment and Illiquidity in Corporate Bonds,'' Journal of Finance, forthcoming. *See also* Bao, O'Hara and Zhou, 2017, ''The Volcker Rule and Corporate Bond Market

Section 13 of the BHC Act also provides a number of statutory exemptions to the general prohibitions on proprietary trading and covered funds activities. For example, the statute exempts from the proprietary trading restrictions certain underwriting, market making, and risk-mitigating hedging activities, as well as certain trading activities outside of the United States.[291] Similarly, section 13 provides exemptions for certain covered funds activities, such as exemptions for organizing and offering covered funds.[292] The 2013 final rule implemented these exemptions.[293] In addition, some banking entities engaged in proprietary trading are required to furnish periodic reports that include a variety of quantitative measurements of their covered trading activities, and banking entities engaged in activities covered by section 13 of the BHC Act and the 2013 final rule are required to establish a compliance program reasonably designed to ensure and monitor compliance with the 2013 final rule.[294]

Certain aspects of the rule may have resulted in a complex and costly compliance regime that is unduly restrictive and burdensome on some affected banking entities, particularly smaller firms that do not qualify for the simplified compliance and reporting regime. The Agencies also recognize that distinguishing between permissible and prohibited activities may be complex and costly for some firms. Moreover, the 2013 final rule may have included in its scope some groups of market participants that do not necessarily engage in the activities or pose the risks that section 13 of the BHC Act intended to address. For example, the 2013 final rule's definition of the term ''covered fund'' is broad and, as a result, may include funds that do not engage in the investment activities contemplated by section 13 of the BHC Act. As another example, foreign banking entities' ability to trade financial instruments in the United States may have been significantly limited despite the foreign trading exemption in the 2013 final rule.

The amendments to the 2013 final rule proposed in this release include those that influence the scope of permitted activities for all or a subset of banking entities and covered funds, and those that simplify, tailor, or eliminate the application of certain aspects of the rule to reduce compliance and reporting burdens.

Some of the proposed amendments affect the scope of permitted activities (*e.g.,* foreign trading, underwriting, market making, and risk-mitigating hedging). These changes would expand the scope of permitted activities, which may benefit the parties to those transactions and broader capital markets, for example, if reduced compliance costs translate into increased willingness of banking entities to underwrite securities or make markets. These changes also, however, could facilitate risk-taking or create conflicts of interest among certain groups of market participants. Moreover, amendments that redefine the scope of entities subject to certain provisions of the rule may impact competition, allocative efficiency, and capital formation. Broadly, to the extent that the proposed amendments and changes on which the Agencies are requesting comment increase or decrease the scope of permissible activities, they may magnify or attenuate the economic tradeoffs above. As we discuss below, to the extent that the proposed amendments or changes on which the Agencies are requesting comments reduce burdens on some groups of market participants (*e.g.,* on entities without significant trading assets and liabilities, foreign banking entities, certain types of covered funds), the proposed amendments may increase competition and trading activity in various market segments.

Other proposed amendments reduce compliance program, reporting, and documentation requirements for some entities. While these amendments are designed to reduce the compliance burdens of regulated entities, they may also reduce the efficacy of regulatory oversight, internal compliance, and supervision. Amendments and changes on which the Agencies are requesting comment that decrease (or increase) compliance program and reporting requirements tip the balance of economic tradeoffs toward (or away from) competition, trading activity, and capital formation on the one hand, and against (or in favor of) regulatory and internal oversight on the other. However, as discussed below, some of the changes need not reduce the efficacy of the Agencies' regulatory oversight. Further, under the proposal, banking entities (other than banking entities with limited trading assets and liabilities for which the proposed presumption of compliance has not been rebutted) would still be required to develop and provide for the continued administration of a compliance program reasonably designed to ensure and monitor compliance with the prohibitions and restrictions set forth in section 13 of the BHC Act and the 2013 final rule, as it is proposed to be amended.

Where possible, we have attempted to quantify the costs and benefits expected to result from the proposed amendments. In many cases, however, the SEC is unable to quantify these potential economic effects. Some of the primary economic effects, such as the effect on incentives that may give rise to conflicts of interest in various regulated entities and the efficacy of regulatory oversight under various compliance regimes, are inherently difficult to quantify. Moreover, some of the benefits of the 2013 final rule's definitions and prohibitions that are being amended here, for example potential benefits for resilience during a crisis, are less readily observable under strong economic conditions. Lastly, because of overlapping implementation periods of various post-crisis regulations affecting the same group of SEC registrants, the long implementation timeline of the 2013 final rule, and the fact that many market participants changed their behavior in anticipation of future changes in regulation, it is difficult to quantify the net economic effects of the individual amendments to rule provisions proposed here.

In some instances, we lack the information or data necessary to provide reasonable estimates for the economic effects of the proposed amendments. For example, we lack information and data on the volume of trading activity that does not occur because of uncertainty about how to demonstrate that underwriting or market-making activities satisfy the RENTD requirement; the extent to which internally-set risk limits capture expected customer demand; how accurately correlation analysis reflects underlying exposures of banking entities with, and without, significant trading assets and liabilities in normal times and in times of market stress; the feasibility and costs of reorganization that may enable some U.S. banking entities to become foreign banking entities for the purposes of relying on the foreign trading exemption; how market participants may choose to

Making in Times of Stress,'' Journal of Financial Economics, forthcoming. Bao et al. (2017) shows that dealers not subject to the Volcker rule increased their market-making activities, partially offsetting the reduction market making by dealers affected by the Volcker Rule. *See also,* Anderson and Stulz, 2017, ''Is Post-Crisis Bond Liquidity Lower?'' working paper; Goldstein and Hotchkiss, 2017, ''Providing Liquidity in an Illiquid Market: Dealer Behavior in U.S. Corporate Bonds,'' working paper.

[291] *See* 12 U.S.C. 1851(d).

[292] *See* section 13(d)(1)(G) of the BHC Act.

[293] *See* 2013 final rule §§ ____.4, ____.5, ____.6, ____.11, ____.13.

[294] *See* 2013 final rule § ____.20.

restructure their interests in various types of private funds in response to the proposed amendments or other changes on which the Agencies seek comment; the amount of capital formation in covered funds that does not occur because of current covered fund provisions, including those concerning underwriting, market making, or hedging with covered funds; or the volume of loans, guarantees, securities lending, and derivatives activity dealers may wish to engage in with the covered funds they advise; the extent of risk reduction associated with the 2013 final rule. Where we cannot quantify the relevant economic effects, we discuss them in qualitative terms.

In addition, the broader economic effects of the proposed amendments, such as those related to efficiency, competition, and capital formation, are difficult to quantify with any degree of certainty. The proposed amendments tailor, remove, or alter the scope of requirements in the 2013 final rule. Thus, some of the methodological challenges in analyzing market effects of these amendments are somewhat similar to those that arise when analyzing the effects of the 2013 final rule. As we have noted elsewhere, analysis of the effects of the implementation of the 2013 final rule is confounded by, among others, macroeconomic factors, other policy interventions, post-crisis changes to market participants' risk aversion and return expectations, and technological advancements unrelated to regulations. Because of the extended timeline of implementation of section 13 of the BHC Act and the overlap of the 2013 final rule period with other post-crisis changes affecting the same group of SEC registrants, typical quantitative methods that might otherwise enable causal attribution and quantification of the effects of section 13 of the BHC Act and the 2013 final rule on measures of capital formation, liquidity, and informational or allocative efficiency are not available. Where existing research has sought to test causal effects and to measure them quantitatively, the presence, direction, and magnitude of the effects are sensitive to econometric methodology, measurement, choice of market, and the time period studied.[295] Moreover, empirical measures of capital formation or liquidity do not reflect issuance and transaction activity that does not occur as a result of the implementing rules. Accordingly, it is difficult to quantify the primary issuance and market liquidity that would have been observed following the financial crisis absent the ensuing reforms. Finally, since section 13 of the BHC Act and the 2013 final rule combined a number of different requirements, it is difficult to attribute the observed effects to a specific provision or set of requirements.

In addition, the existing securities markets—including market participants, their business models, market structure, etc.—differ in significant ways from the securities markets that existed prior to the 2013 final rule's implementation. For example, the role of dealers in intermediating trading activity has changed in important ways, including: Bank-dealer capital commitment declined while non-bank dealer capital commitment increased; electronic trading in some securities markets became more prominent; the profitability of trading after the financial crisis may have decreased significantly; and the introduction of alternative credit markets may have contributed to liquidity fragmentation across markets.[296]

The SEC continues to recognize that post-crisis financial reforms in general, and the 2013 final rule in particular, impose costs on certain groups of market participants. Since the rule became effective, new estimates regarding compliance burdens and new information about the various effects of the final rule have become available. The passage of time has also enabled an assessment of the value of individual requirements that enable SEC oversight, such as the requirement to report certain quantitative metrics, relative to compliance burdens. This and other information and considerations inform the SEC's economic analysis.

From the outset, we note that this analysis is limited to areas within the scope of the SEC's function as the primary securities markets regulator in the United States. In particular, the SEC's economic analysis is focused on the potential effects of the proposed amendments on SEC registrants, the functioning and efficiency of the securities markets, and capital formation. Specifically, this economic analysis generally concerns entities subject to the 2013 final rule for which the SEC is the primary financial regulatory agency, including SEC-registered broker-dealers, SBSDs, and RIAs.[297] In addition, the analysis of the covered funds provisions discusses their economic effects on covered funds as well as the economic effects of the Agencies modifying the definition of covered funds. Thus, the below analysis does not consider broker-dealers, SBSDs, and investment advisers that are not banking entities, and banking entities that are not SEC registrants, beyond the potential spillover effects on these entities and effects on efficiency, competition, and capital formation in securities markets.

2. Overview of the Baseline

In the context of this economic analysis, the economic costs and benefits, and the impact of the proposed amendments on efficiency, competition, and capital formation, are considered relative to a baseline that includes the 2013 final rule and recent legislative amendments as applicable and current practices aimed at compliance with these regulations.

a. Regulation

To assess the economic impact of the proposed rule, we are using as our baseline the legal and regulatory framework as it exists at the time of this release. Thus, the regulatory baseline for our economic analysis includes section 13 of the BHC Act as amended by the Economic Growth, Regulatory Relief, and Consumer Protection Act and the 2013 final rule. Further, our baseline accounts for the fact that since the adoption of the 2013 final rule, the staffs of the Agencies have provided FAQ responses related to the regulatory obligations of banking entities, including SEC-regulated entities that are also banking entities under the 2013 final rule, which likely influenced these entities' means of compliance with the 2013 final rule.[298] In addition, the Federal banking agencies released a 2017 policy statement with respect to foreign excluded funds.[299]

Three major areas of the 2013 final rule—proprietary trading restrictions, covered fund restrictions, and compliance requirements—are relevant to establishing an economic baseline. First, with respect to proprietary trading restrictions, the features of the existing regulatory framework relevant to the baseline of this economic analysis

[295] *See, e.g.,* Access to Capital and Market Liquidity *supra* note 106.

[296] *See, e.g.,* Bessembinder et al. (2017), Bao et al. (2017), Anderson and Stulz (2017). *See also,* Trebbi and Xiao, 2018, ''Regulation and Market Liquidity,'' Management Science, forthcoming; Oehmke and Zawadowski, 2017, ''The Anatomy of the CDS Market,'' Review of Financial Studies 30(1), 80–119.

[297] *See* Responses to Frequently Asked Questions Regarding the Commission's Rule under Section 13 of the Bank Holding Company Act (the ''Volcker Rule''), June 10, 2014; Updated March 4, 2016, *available at https://www.sec.gov/divisions/marketreg/faq-volcker-rule-section13.htm* (providing background on the application of the Commission's rule).

[298] *See id.*

[299] *See* Statement regarding Treatment of Certain Foreign Funds under the Rules Implementing Section 13 of the Bank Holding Company Act *supra* note 48.

include definitions of ''trading account'' and ''trading desk;'' requirements for permissible underwriting, market making, and risk-mitigating hedging activities; the liquidity management exclusion; treatment of error-related trades; restrictions on transactions between foreign banking entities and their U.S.-dealer affiliates; and the compliance and metrics-reporting requirements for dealers affiliated with banking entities. The potential that a RIC or a BDC would be treated as a banking entity where the fund's sponsor is a banking entity and holds 25% of more of the RIC or BDC's voting securities after a seeding period also forms part of our baseline.

Second, with respect to the restrictions on covered funds, the features of the existing regulatory framework under the 2013 final rule relevant to the baseline include the definition of the term ''covered fund;'' restrictions on a banking entity's relationships with covered funds; and restrictions on underwriting, market making, and hedging with covered funds.

Third, with respect to compliance, relevant requirements include the 2013 final rule's compliance program requirements, including those under § ____.20 and Appendix B, as well as recordkeeping and reporting of metrics under Appendix A.

The 2013 final rule differentiates banking entities on the basis of certain monetary thresholds, including the size of consolidated trading assets and liabilities of their parent company. More specifically, U.S. banking entities that have, together with affiliates and subsidiaries, trading assets and liabilities (excluding trading assets and liabilities involving obligations of or guaranteed by the United States or any agency of the United States) the average gross sum of which (on a worldwide consolidated basis) over the previous consecutive four quarters, as measured as of the last day of each of the four prior calendar quarters, equals $10 billion or more are currently subject to reporting requirements of Appendix A of the 2013 final rule. Entities below this threshold do not need to comply with Appendix A. Additionally, banking entities with total consolidated assets of $10 billion or less as reported on December 31 of the previous 2 calendar years that engage in covered activities qualify for the simplified compliance regime, and banking entities that have $50 billion or more in total consolidated assets and banking entities with over $10 billion in consolidated trading assets and liabilities are currently subject to the requirement to adopt an enhanced compliance program pursuant to Appendix B.

In the sections that follow we discuss rule provisions currently in effect, how each proposed amendment changes regulatory requirements, and the anticipated costs and benefits of the proposed amendments.

b. Affected Participants

The SEC-regulated entities directly affected by the proposed amendments include broker-dealers, security-based swap dealers, and investment advisers.

i. Broker-Dealers [300]

Under the 2013 final rule, some of the largest SEC-regulated broker-dealers are banking entities. Table 1 reports the number, total assets, and holdings of broker-dealers by the broker-dealer's bank affiliation.

While the 3,658 domestic broker-dealers that are not affiliated with holding companies greatly outnumber the 138 banking entity broker-dealers subject to the 2013 final rule, these banking entity broker-dealers dominate non-banking entity broker-dealers in terms of total assets (74% of total broker-dealer assets) and aggregate holdings (72% of total broker-dealer holdings).

TABLE 1—BROKER-DEALER COUNT, ASSETS, AND HOLDINGS BY AFFILIATION

Broker-dealer affiliation	Number	Total assets, $mln [301]	Holdings, $mln [302]	Holdings (alternative), $mln [303]
Affected bank broker-dealers [304]	138	3,039,337	724,706	536,555
Other bank broker-dealers [305]	124	125,595	12,312	5,582
Non-bank broker-dealers	3,658	929,240	270,876	151,516
Total	3,920	4,094,172	1,007,894	693,653

Some of the changes being proposed to the 2013 final rule differentiate banking entities on the basis of their consolidated trading assets and liabilities.[306] Table 2 reports the distribution of broker-dealer banking entities' counts, assets, and holdings by consolidated trading assets and liabilities of the (top-level) parent firm. We estimate that 89 broker-dealer affiliates of firms with less than $10 billion in consolidated trading assets and liabilities account for 7% of bank-affiliated broker-dealer assets and 5% of holdings (or 3% using the alternative measure of holdings). These figures may overestimate or underestimate the number of affected broker-dealers as they may include broker-dealers that do not engage in various types of covered trading activity.

[300] Data sources included Reporting Form FR Y–9C data for domestic holding companies on a consolidated basis and Report of Condition and Income data for banks regulated by the Board, FDIC, and OCC as of Q3 2017. Broker-dealer bank affiliations were obtained from the Federal Financial Institutions Examination Council's (FFIEC) National Information Center (NIC). Broker-dealer assets and holdings were obtained from FOCUS Report data for Q3 2017.

[301] Broker-dealer total assets are based on FOCUS report data for ''Total Assets.''

[302] Broker-dealer holdings are based on FOCUS report data for securities and spot commodities owned at market value, including bankers' acceptances, certificates of deposit and commercial paper, state and municipal government obligations, corporate obligations, stocks and warrants, options, arbitrage, other securities, U.S. and Canadian government obligations, and spot commodities.

[303] This alternative measure excludes U.S. and Canadian government obligations and spot commodities.

[304] This category includes all banking entity broker-dealers except those affiliated with banks that have consolidated total assets less than or equal to $10 billion and trading assets and liabilities less than or equal to 5% of total assets, and those for which bank trading asset and liability data was not available.

[305] This category includes all banking entity broker-dealers affiliated with firms that have consolidated total assets less than or equal to $10 billion and trading assets and liabilities less than or equal to 5% of total assets, as well as banking entity broker-dealers for which bank trading asset and liability data was not available.

[306] *See, e.g.,* 2013 final rule § ____.20(d)(1).

TABLE 2—BROKER-DEALER COUNTS, ASSETS, AND HOLDINGS BY CONSOLIDATED TRADING ASSETS AND LIABILITIES OF THE BANKING ENTITY [307]

Consolidated trading assets and liabilities [308]	Number	Percentage	Total assets, $mln	Percentage	Holdings, $mln	Percentage	Holdings (altern.), $mln	Percentage
≥50bln	29	21	2,215,295	73	554,125	76	492,017	92
25bln–50bln	8	6	417,099	14	76,865	11	21,083	4
10bln–25bln	12	9	184,591	6	58,232	8	7,494	1
5bln–10bln	24	17	145,151	5	23,321	3	10,527	2
1bln–5bln	23	17	9,756	0	3,628	1	1,795	0
≤1bln	42	30	67,446	2	8,534	1	3,638	1
Total	138	100	3,039,338	100	724,705	100	536,554	100

ii. Security-Based Swap Dealers

The proposed amendments may also affect bank-affiliated SBSDs. As compliance with SBSD registration requirements is not yet required, there are currently no registered SBSDs. However, the SEC has previously estimated that as many as 50 entities may potentially register as security-based swap dealers and that as many as 16 of these entities may already be SEC-registered broker-dealers.[309] Given our analysis of DTCC Derivatives Repository Limited Trade Information Warehouse (''TIW'') transaction and positions data on single-name credit-default swaps, we preliminarily believe that all entities that may register with the SEC as SBSDs are bank-affiliated firms, including those that are SEC-registered broker-dealers. Therefore, we preliminarily estimate that, in addition to the bank-affiliated SBSDs that are already registered as broker-dealers and included in the discussion above, as many as 34 other bank-affiliated SBSDs may be affected by the proposed amendments.

Importantly, capital and other substantive requirements for SBSDs under Title VII of the Dodd-Frank Act have not yet been adopted. We recognize that firms may choose to move security-based swap trading activity into (or out of) an affiliated bank or an affiliated broker-dealer instead of registering as a standalone SBSD, if bank or broker-dealer capital and other regulatory requirements are less (or more) costly than those that may be imposed on SBSDs under Title VII. As a result, the above figures may overestimate or underestimate the number of SBSDs that are not broker-dealers and that may become SEC-registered entities that would be affected by the proposed amendments. Quantitative cost estimates are provided separately for affected broker-dealers and potential SBSDs.

iii. Private Funds and Private Fund Advisers [310]

In this section, we focus on RIAs advising private funds. Using Form ADV data, Table 3 reports the number of RIAs advising private funds by fund type, as those types are defined in Form ADV. Table 4 reports the number and gross assets of private funds advised by RIAs and separately reports these statistics for banking entity RIAs. As can be seen from Table 3, the two largest categories of private funds advised by RIAs are hedge funds and private equity funds.

Banking entity RIAs advise a total of 4,250 private funds with approximately $2 trillion in gross assets. Using Form ADV data, we observe that banking entity RIAs' gross private fund assets under management is concentrated in hedge funds and private equity funds. We estimate on the basis of this data that banking entity RIAs advise 947 hedge funds with approximately $616 billion in gross assets and 1,282 private equity funds with approximately $350 billion in assets. While banking entity RIAs are subject to all of section 13's restrictions, because RIAs do not typically engage in proprietary trading, we preliminarily believe that they will not be impacted by the proposed amendments related to proprietary trading.

TABLE 3—SEC-REGISTERED INVESTMENT ADVISERS ADVISING PRIVATE FUNDS BY FUND TYPE [311]

Fund type	All RIA	Banking entity RIA
Hedge Funds	2,691	173
Private Equity Funds	1,538	90

[307] This analysis excludes SEC-registered broker-dealers affiliated with firms that have consolidated total assets less than or equal to $10 billion and trading assets and liabilities less than or equal to 5% of total assets, as well as firms for which bank trading asset and liability data was not available.

[308] Consolidated trading assets and liabilities are estimated using information reported in form Y–9C data. These estimates exclude from the definition of consolidated trading assets and liabilities Treasury securities—we subtract from the sum of total trading assets and liabilities reported in items BHCK3545 and BHCK3547 trading assets that are U.S. Treasury securities as reported in item BHCK3531 and calculate average trading assets and liabilities using 2016Q4 through 2017Q3 data. However, our estimates do not exclude agency securities as such information is not otherwise available. Thus, these figures may overestimate or underestimate the number of affected bank affiliated broker-dealers. We also note that we do not have data on worldwide consolidated trading assets and liabilities of foreign banking entities with which some SEC registrants are affiliated, and consolidated trading assets and liabilities for such foreign banking entities are calculated based on their U.S. operations. Thus, the figures may overestimate or underestimate the number of affected bank affiliated broker-dealers.

[309] *See* SBSD and MSP Registration Release, *supra* note 284.

[310] These estimates are calculated from Form ADV data as of March 31, 2018. We define an investment adviser as a ''private fund adviser'' if it indicates that it is an adviser to any private fund on Form ADV Item 7.B. We define an investment adviser as a ''banking entity RIA'' if it indicates on Form ADV Item 6.A.(7) that it is actively engaged in business as a bank, or it indicates on Form ADV Item 7.A.(8) that it has a ''related person'' that is a banking or thrift institution. For purposes of Form ADV, a ''related person'' is any advisory affiliate and any person that is under common control with the adviser. We recognize that the definition of ''control'' for purposes of Form ADV, which is used in identifying related persons on the form, differs from the definition of ''control'' under the BHC Act. In addition, this analysis does not exclude SEC-registered investment advisers affiliated with banks that have consolidated total assets less than or equal to $10 billion and trading assets and liabilities less than or equal to 5% of total assets. Thus, these figures may overestimate or underestimate the number of banking entity RIAs.

TABLE 3—SEC-REGISTERED INVESTMENT ADVISERS ADVISING PRIVATE FUNDS BY FUND TYPE[311]—Continued

Fund type	All RIA	Banking entity RIA
Real Estate Funds	486	56
Securitized Asset Funds	222	43
Venture Capital Funds	173	16
Liquidity Funds	46	7
Other Private Funds	1,043	148
Total Private Fund Advisers	4,660	308

TABLE 4—THE NUMBER AND GROSS ASSETS OF PRIVATE FUNDS ADVISED BY SEC-REGISTERED INVESTMENT ADVISERS[312]

Fund type	Number of private funds		Gross assets, $bln	
	All RIA	Banking entity RIA	All RIA	Banking entity RIA
Hedge Funds	10,329	947	7,081	616
Private Equity Funds	13,588	1,282	2,919	350
Real Estate Funds	3,252	323	564	84
Securitized Asset Funds	1,707	360	562	120
Liquidity Funds	1,073	29	109	190
Venture Capital Funds	76	42	291	2
Other Private Funds	4,337	1,268	1,568	689
Total Private Funds	34,359	4,250	13,093	2,052

Banking entity RIAs advise a total of 4,250 private funds with approximately $2 trillion in gross assets. Using Form ADV data, we observe that banking entity RIAs' gross private fund assets under management is concentrated in hedge funds and private equity funds. We estimate on the basis of this data that banking entity RIAs advise 947 hedge funds with approximately $616 billion in gross assets and 1,282 private equity funds with approximately $350 billion in assets. While banking entity RIAs are subject to all of section 13's restrictions, because RIAs do not typically engage in proprietary trading, we preliminarily believe that they will not be impacted by the proposed amendments related to proprietary trading.

iv. Registered Investment Companies

Based on SEC filings and public data, we estimate that, as of January 2018, there were approximately 15,500 RICs[313] and 100 BDCs. Although RICs and BDCs are generally not banking entities themselves subject to the 2013 final rule, they may be indirectly affected by the 2013 final rule and the proposed amendments to the extent that their advisers are banking entities. For instance, banking entity RIAs or their affiliates may reduce their level of investment in the funds they advise, or potentially close these funds, to avoid these funds becoming banking entities themselves. As discussed in more detail in section III.A, however, the Agencies have made clear that nothing in the proposal would modify the application of the staff FAQs discussed above, and the Agencies will not treat RICs (or FPFs) that meet the conditions included in the applicable staff FAQs as banking entities or attribute their activities and investments to the banking entity that sponsors the fund or otherwise may control the fund under the circumstances set forth in the FAQs. In addition, and also as discussed in more detail in section III.A, to accommodate the pendency of the proposal, for an additional period of one year until July 21, 2019, the Agencies will not treat qualifying foreign excluded funds that meet the conditions included in the policy statement discussed above as banking entities or attribute their activities and investments to the banking entity that sponsors the fund or otherwise may control the fund under the circumstances set forth in the policy statement.

3. Economic Effects

a. Treatment of Entities Based on the Size of Trading Assets and Liabilities

i. Costs and Benefits

The proposal categorizes banking entities into three groups on the basis of the size of their trading activity: (1) Banking entities with significant trading assets and liabilities, (2) banking entities with moderate trading assets and liabilities, and (3) banking entities with limited trading assets and liabilities. Banking entities with significant trading assets and liabilities are defined as those that have, together with affiliates and subsidiaries, trading assets and liabilities (excluding trading assets and liabilities involving obligations of or guaranteed by the United States or any agency of the United States) the average gross sum of which over the previous consecutive four quarters, as measured as of the last day of each of the four previous calendar quarters, equaling or exceeding $10 billion.[314] Banking entities with limited trading assets and liabilities are defined as those that have, together with affiliates and subsidiaries on a worldwide consolidated basis, trading assets and liabilities (excluding

[311] This table includes only the advisers that list private funds on Section 7.B.(1) of Form ADV. The number of advisers in the ''Any Private Fund'' row is not the sum of the rows that follow since an adviser may advise multiple types of private funds. Each listed private fund type (*e.g.,* real estate fund, liquidity fund) is defined in Form ADV, and those definitions are the same for purposes of the SEC's Form PF.

[312] Gross assets include uncalled capital commitments on Form ADV.

[313] For the purposes of this analysis, the term RIC refers to the fund or series, not the legal entity.

[314] With respect to a banking entity that is a foreign banking organization or a subsidiary of a foreign banking organization, this threshold for having significant trading assets and liabilities would apply based on the trading assets and liabilities of the combined U.S. operations, including all subsidiaries, affiliates, branches and agencies.

trading assets and liabilities involving obligations of or guaranteed by the United States or any agency of the United States) the average gross sum of which over the previous consecutive four quarters, as measured as of the last day of each of the four previous calendar quarters, is less than $1 billion. Finally, banking entities with moderate trading assets and liabilities are defined as those that are neither banking entities with significant trading assets and liabilities nor banking entities with limited trading assets and liabilities.

We further refer to SEC-registered broker-dealer, investment adviser, and SBSD affiliates of banking entities with significant trading assets and liabilities as ''Group A'' entities, to affiliates of banking entities with moderate trading assets and liabilities as ''Group B'' entities, and to affiliates of banking entities with limited trading assets and liabilities as ''Group C'' entities.

Under the proposed amendments, Group A entities would be required to comply with a streamlined but comprehensive version of the 2013 final rule's compliance program requirements, as discussed below. Group B entities would be subject to reduced requirements and an even more tailored approach in light of their smaller and less complex trading activities. The burdens are further reduced for Group C entities, for which the proposed rule establishes presumed compliance, which can be rebutted by the Agencies. We discuss the economic effects of each of the substantive amendments on these groups of entities in the sections that follow.

This economic analysis is focused on the expected economic effects of the proposed amendments on SEC registrants. Table 2 in the economic baseline quantifies broker-dealer activity by gross trading assets and liabilities of banking entities they are affiliated with. We estimate that there are approximately 89 broker-dealers affiliated with firms that have less than $10 billion in consolidated trading assets and liabilities (Group B and Group C broker-dealers). Group B and Group C broker-dealers account for approximately 7% of assets and 5% (or 3% on the basis on the alternative measure of holdings) of total bank broker-dealer holdings.

The primary effects of the proposed amendments for SEC registrants are reduced compliance burdens for Group B and Group C entities, as discussed in more detail in later sections. To the extent that the compliance costs of Group B and Group C entities are currently passed along to customers and counterparties, some of the cost reductions for these entities associated with the proposed amendments may flow through to counterparties and clients in the form of reduced transaction costs or a greater willingness to engage in activity, including intermediation that facilitates risk-sharing.

The proposed $10 billion threshold would leave firms with moderate trading assets and liabilities with reduced compliance program requirements and more tailored supervision. The proposed $1 billion threshold would leave firms with limited trading assets and liabilities presumed compliant with all proprietary trading and covered fund activity prohibitions. We note that, from above, Group B and Group C broker-dealers currently account for only 3% to 5% of total bank broker-dealer holdings. To the extent that holdings reflect risk exposure resulting from trading activity, current trading activity by Group B and Group C entities may represent lower risks than the risks posed by covered trading of Group A entities.

We recognize that some Group B and Group C entities that currently exhibit low levels of trading activity because of the costs of compliance may respond to the proposed amendments by increasing their trading assets and liabilities while still remaining under the $10 billion and $1 billion thresholds at the holding company level. Increases in aggregate risk-taking by Group B and Group C entities may be magnified if trading activity becomes more highly correlated among such entities, or dampened if trading activity becomes less correlated among such entities. Since it is difficult to estimate the number of Group B and Group C entities that may increase their risk-taking and the degree to which their trading activity would be correlated, the implications of this effect for aggregate risk-taking and capital market activity are unclear.

Such shifts in risk-taking may have two competing effects. On the one hand, if Group B and Group C entities are able to bear risk at a lower cost than their customers, increased risk-taking could promote secondary market trading activity and capital formation in primary markets, and increase access to capital for issuers. On the other hand, depending on the risk-taking incentives of Group B and Group C firms, increased risk-taking may result in increased moral hazard and market fragility, could exacerbate conflicts of interest between banking entities and their customers, and could ultimately negatively impact issuers and investors. However, we note that the proposed amendments are focused on tailoring the compliance regime based on the amount of covered activity engaged in by each banking entity, and all banking entities would still be subject to the prohibitions related to such covered activities. Thus, the magnitude of increased moral hazard, market fragility, and the severity of conflicts of interest effects may be attenuated.

In response to the proposed amendments, trading activity that was once consolidated within a small number of unaffiliated banking entities may become fragmented among a larger number of unaffiliated banking entities that each ''manage down'' their trading books under the $10 billion and $1 billion trading asset and liability thresholds to enjoy reduced hedging compliance and documentation requirements and a less costly compliance and reporting regime described in sections V.D.3.c, V.D.3.d, and V.D.3.i. The extent to which banking entities may seek to manage down their trading books will likely depend on the size and complexity of each banking entity's trading activities and organizational structure, along with those of its affiliated entities, as well as forms of potential restructuring and the magnitude of expected compliance savings from such restructuring relative to the cost of restructuring. We anticipate that the incentives to manage the trading book under the $10 billion and $1 billion thresholds may be strongest for those holding companies that are just above the thresholds. Such management of the trading book may reduce the size of trading activity of some banking entities and reduce the number of banking entities subject to more stringent hedging, compliance, and reporting requirements. At the same time, to the degree that the proposed amendments incentivize banking entities to have smaller trading books, they may mitigate moral hazard and reduce market impacts from the failure of a given banking entity.

ii. Efficiency, Competition, and Capital Formation

The 2013 final rule currently imposes compliance burdens that may be particularly significant for smaller market participants. Moreover, such compliance burdens may be passed along to counterparties and customers in the form of higher costs, reduced capital formation, or a reduced willingness to transact. For example, one commenter estimated that the funding cost for an average non-financial firm may have increased by as much as $30 million after the 2013 final rule's implementation.[315] At the same time, and as discussed above in section V.D.1, the SEC continues to recognize that the 2013 final rule may have yielded important qualitative benefits, such as reducing moral hazard and potential incentive conflicts that could be posed by certain types of proprietary trading by dealers, and enhancing oversight and supervision.

On one hand, as a result of the proposed amendments, Group B and Group C entities might enjoy a competitive advantage relative to similarly situated Group A and Group B entities respectively. As noted, firms that are close to the $10 billion threshold may actively manage their trading book to avoid triggering stricter requirements, and some firms above the threshold may seek to manage down the trading activity to qualify for streamlined treatment under the proposed amendments. As a result, the proposed amendments may result in greater competition between Group B and Group A entities around the $10 billion threshold, and similarly, between Group B and Group C entities around the $1 billion threshold. On the other hand, to the extent that Group B and Group C entities increase risk-taking as they compete with Group A and Group B entities, respectively, investors may demand additional compensation for bearing financial risk. A higher required rate of return and higher cost of capital could therefore offset potential competitive advantages for Group B and Group C entities.

We recognize that cost savings to Group B and Group C entities related to the reduced hedging documentation requirements and compliance requirements described in sections V.D.3.d and V.D.3.i may be partially or fully passed along to clients and counterparties. To the extent that hedging documentation and compliance requirements for Group B and Group C entities are currently resulting in a reduced willingness to make markets or underwrite placements, the proposed amendments may facilitate trading activity and risk-sharing, as well as capital formation and reduced costs of access to capital. Crucially, the proposed amendments do not eliminate substantive prohibitions under the 2013 final rule but create a simplified compliance regime for entities affiliated with firms without significant trading assets and liabilities. Thus, the 2013 final rule's restrictions on proprietary trading and covered funds activities will continue to apply to all affected entities, including Group B and Group C entities.

iii. Alternatives

The Agencies could have taken alternative approaches. For example, the proposed rule could have used other values for thresholds for total consolidated trading assets and liabilities in the definition of entities with significant trading assets and liabilities. As noted in the discussion of the economic baseline, using different thresholds would affect the scope of application of the hedging documentation, compliance program and metrics-reporting requirements by changing the number and size of affected dealers. For instance, using a $1 billion or a $5 billion threshold in a definition of significant trading assets and liabilities would scope a larger number of entities into Group A, as compared to the proposed $10 billion threshold, thereby subjecting a larger share of the dealer and investment adviser industries to six-pillar compliance obligations. However, we continue to recognize that trading activity is heavily concentrated in the right tail of the distribution, and using a lower threshold would not significantly increase the volume of trading assets and liabilities scoped into the Group A regime. For example, Table 2 shows that 65 broker-dealers affiliated with banking entities that have less than $5 billion in consolidated trading assets and liabilities and are subject to section 13 of the BHC Act as amended by the Economic Growth, Regulatory Relief, and Consumer Protection Act account for only 2.5% of bank-affiliated broker-dealer assets and between 1.7% and 1% of holdings. Alternatively, 42 broker-dealer affiliates of firms that have less than $1 billion in consolidated trading assets and liabilities and are subject to section 13 of the BHC Act account for only 2% of bank-affiliated broker-dealer assets and 1% of holdings. At the same time, with a lower threshold, more banking entities would face higher compliance burdens and related costs.

The Agencies also could have proposed a percentage-based threshold for determining whether a banking entity has significant trading assets and liabilities. For example, the proposed amendment could have relied exclusively on threshold where banking entities are considered to be entities with significant trading assets and liabilities if the firm's total consolidated trading assets and liabilities are above a certain percentage (for example, 10% or 25%) of the firm's total consolidated assets. Under this alternative, a greater number of entities may benefit from lower compliance costs and a streamlined regime for Group B entities. However, under this approach, even firms in the extreme right tail of the trading asset distribution could be considered without significant trading assets and liabilities if they are also in the extreme right tail of the total assets distribution. Thus, without placing an additional limit on total assets within such regime, entities with the largest trading books may be scoped into the Group B regime if they also have a sufficiently large amount of total consolidated assets, while entities with significantly smaller trading books could be categorized as Group A entities if they have fewer assets overall.

Alternatively, the Agencies could have relied on a threshold based on total assets. However, a threshold based on total assets may not be as meaningful as a threshold based on trading assets and liabilities being proposed here when considered in the context of section 13 of the BHC Act. A threshold based on total assets would scope in entities based merely on their balance sheet size, even though they may have little or no trading activity, notwithstanding the fact that the moral hazard and conflicts of interest that section 13 of the BHC Act are intended to address are more likely to arise out of such trading activity (and not necessarily from the banking entity size, as measured by total consolidated assets). However, it is possible that losses on small trading portfolios can be amplified through their effect on non-trading assets held by a firm. To that extent, a threshold based on total assets may be useful in potentially capturing both direct and indirect losses that originate from trading activity of a holding company.

The Agencies also could have based the thresholds on the level of total revenues from permitted trading activities. To the extent that revenues could be a proxy for the structure of a banking entity's business and the focus of its operations, this alternative may apply more stringent compliance requirements to those entities profiting the most from covered activities. However, revenues from trading activity fluctuate over time, rising during economic booms and deteriorating during crises and liquidity freezes. As a result, under the alternative, a banking entity that is scoped in the regulatory regime during normal times may be scoped out during the time of market stress due to a decrease in the revenues from permitted activities. That is, under such alternative, the weakest compliance regime may be applied to banking entities with the largest trading books in times of acute market stress, when the performance of trading desks is deteriorating and the underlying

[315] *See supra* note 18.

requirements of the 2013 final rule may be the most valuable.

Finally, the Agencies could have excluded from the definition of entities with significant trading assets and liabilities those entities that may be affiliated with a firm with over $10 billion in consolidated trading assets and liabilities but that are operated separately and independently from its affiliates and that have total trading assets and liabilities (excluding trading assets and liabilities involving obligations of or guaranteed by the United States or any agency of the United States) under $10 billion. We do not have data on the number of dealers that are operated ''separately and independently'' from affiliated entities with significant trading assets and liabilities. However, as shown in Table 5, this alternative could decrease the scope of application of the Group A regime.

TABLE 5—BROKER-DEALER ASSETS AND HOLDINGS BY GROSS TRADING ASSET AND LIABILITY THRESHOLD OF AFFILIATED BANKING ENTITIES

Type of broker-dealer	Number	Total assets ($mln)	Holdings ($mln)	Holdings (altern.) ($mln)
Holdings ≥$10bln and affiliated with firms with gross trading assets and liabilities ≥$10bln	14	2,538,656	668,283	515,443
Holdings <$10bln and affiliated with firms with gross trading assets and liabilities ≥$10bln	35	278,329	20,940	5,152
Affiliated with firms with gross trading assets and liabilities <$10bln [316]	89	222,352	35,483	15,960
Total	138	3,039,337	724,706	536,555

This alternative would increase the number of entities able to avail themselves of the reduced compliance, documentation and metrics-reporting requirements, potentially resulting in cost reductions flowing through to customers and counterparties. At the same time, this alternative would permit greater risk-taking by entities affiliated with firms that have gross trading assets and liabilities in excess of $10 billion. In addition, it could encourage such firms to fragment their trading activity, for instance, across multiple dealers, and operate them ''separately and independently,'' thereby relieving such firms of the requirement to comply with the hedging, compliance, and reporting regime of the 2013 final rule. This alternative may, therefore, reduce the regulatory oversight and compliance benefits of the full hedging, documentation, reporting, and compliance requirements for Group A banking entities. The feasibility and costs of such fragmentation would depend, in part, on organizational complexity of a firm's trading activity, the architecture of trading systems, the location and skillsets of personnel across various dealers affiliated with such entities, and current inter-affiliate hedging and risk mitigation practices.

b. Proprietary Trading

i. Trading Account

A. Costs and Benefits

Under the 2013 final rule, proprietary trading is defined as engaging as principal for the ''trading account'' of a banking entity.[317] Thus, the definition of the trading account effectively determines the trading activity that falls within the scope of the 2013 final rule prohibitions and the compliance regime associated with such activity. The current definition of trading account has three prongs, including the registered dealer prong. As discussed elsewhere in this SUPPLEMENTARY INFORMATION, the proposed amendments introduce certain changes to the trading account test. However, the proposal does not remove or modify the registered dealer prong. As a result, the proposed definition of ''trading account'' would continue to automatically include transactions in financial instruments by a registered dealer, swap dealer, or security-based swap dealer, if the purchase or sale is made in connection with the activity that requires the entity to be registered as such.[318] Thus, most (if not substantially all) trading activity by SEC-registered dealers should continue to be captured by the ''trading account'' of a banking entity, notwithstanding any of the changes made to the definition.

We recognize the possibility that some market participants may engage in transaction activity that does not trigger a dealer registration requirement. Under the baseline, such activity would be scoped into the ''trading account'' definition by the short-term prong and the rebuttable presumption by virtue of the fact that most transactions by a dealer are likely to be indicative of short-term intent as noted in the 2013 final rule.[319] We preliminarily believe that, under the proposal, such trading would likely be included in the trading account definition under the new prong on the basis of accounting treatment in reference to whether a financial instrument (as defined in the 2013 final rule and unchanged by the proposal) is recorded at fair value on a recurring basis under applicable accounting standards. In addition, persons engaging in the type and volume of activity that would be scoped in under the proposed accounting prong are likely engaged in the business of buying and selling securities for their own account as part of regular business, which would trigger broker-dealer (depending on the volume of activity) or SBSD registration requirements.

To the extent that the proposed amendments increase (or decrease) the scope of trading activity that falls under the proprietary trading prohibitions of the 2013 final rule, the amendments would increase (or decrease) the economic costs, benefits, and tradeoffs outlined in section V.D.1. However, we preliminarily believe that the largest share of dealing activity subject to SEC oversight is already captured by the registered dealer prong and that the

[316] This category excludes SEC-registered broker-dealers affiliated with banks that have consolidated total assets less than or equal to $10 billion and trading assets and liabilities less than or equal to 5% of total assets, as well as firms for which bank trading asset and liability data was not available.

[317] *See* 2013 final rule § ___.3(b).

[318] *See* 2013 final rule § ___.3(b)(1)(iii).

[319] *See* 79 FR at 5549 (''The Agencies believe the scope of the dealer prong is appropriate because, as noted in the proposal, positions held by a registered dealer in connection with its dealing activity are generally held for sale to customers upon request or otherwise support the firm's trading activities (*e.g.,* by hedging its dealing positions), which is indicative of short term intent.'').

economic effects of the proposed amendments to the definition of the trading account on SEC-registered entities may be de minimis. Therefore, we do not estimate any additional reporting costs for SEC registrants.

The Agencies also propose to include a reservation of authority allowing for determination, on a case-by-case basis, with appropriate notice and response procedures, that any purchase or sale of one or more financial instruments by a banking entity for which it is the primary financial regulatory agency either ''is'' or ''is not'' for the trading account. While the Agencies recognize that the use of objective factors to define proprietary trading is intended to provide bright lines that simplify compliance, the Agencies also recognize that this approach may, in some circumstances, produce results that are either underinclusive or overinclusive with respect to the definition of proprietary trading. The proposed reservation of authority may add uncertainty for banking entities about whether a particular transaction could be deemed as a proprietary trade by the regulating agency, which may affect the banking entity's decision to engage in transactions that are currently not included in the definition of the trading account. As discussed in section V.B,[320] notice and response procedures related to the reservation of authority provision may cost as much as $20,319 for SEC-registered broker-dealers, and $5,006 for entities that may choose to register with the SEC as SBSDs.[321]

B. Alternatives

Specific Activities

The Agencies could have taken the approach of excluding specific trading activities from the scope of the proprietary trading prohibitions. For example, the Agencies could exclude transactions in derivatives on government securities, transactions in foreign sovereign debt and derivatives on foreign sovereign debt, and transactions executed by SEC-registered dealers on behalf of their asset management customers.

The 2013 final rule exempts all trading in domestic government obligations and trading in foreign government obligations under certain conditions; however, derivatives referencing such obligations–including derivatives portfolios that can replicate the payoffs and risks of such government obligations–are not exempted. Therefore, existing requirements reduce the flexibility of banking entities to engage in asset-liability management and treat two groups of financial instruments that have similar risks and payoffs differently. Excluding derivatives transactions on government obligations from the trading account definition could reduce costs to market participants and provide greater flexibility in their asset-liability management. This alternative could also result in increased volume of trading in markets for derivatives on government obligations, such as Treasury futures. We recognize, nonetheless, that derivatives portfolios that reference an obligation, including Treasuries, can be structured to magnify the economic exposure to fluctuations in the price of the reference obligation. Moreover, derivatives transactions involve counterparty credit risk not present in transactions in reference obligations themselves. Since the alternative would exclude all derivatives transactions on government obligations, and not just those that are intended to mitigate risk, this alternative could permit banking entities to increase their exposure to counterparty, interest rate, and liquidity risk.

Length of the Holding Period

In addition, the current registered dealer prong does not condition the trading account definition for registered dealers on the length of the holding period. This is because, as noted in the 2013 final rule, positions held by a registered dealer in connection with its dealing activity are generally held for sale to customers upon request or otherwise support the firm's trading activities (*e.g.,* by hedging its dealing positions), which is indicative of short term intent.[322] As an alternative, the Agencies could have modified the registered dealer prong of the trading account definition to include only ''near-term trading,'' *e.g.,* positions held for less than 60, 90, or 120 days. This alternative would likely narrow the scope of application of the substantive proprietary trading prohibitions to a smaller portion of a banking entity's activities.

Under this alternative, dealers affiliated with banking entities would be able to amass large trading positions at the ''near-term definition'' boundary (*e.g.,* for 61, 91, or 121 days) to take advantage of a directional market view, to profit from mispricing in an instrument, or to collect a liquidity premium in a particular instrument. This may significantly increase risk-taking and moral hazard in the activities of dealers affiliated with banking entities. However, as this alternative could stimulate an increase in potentially impermissible proprietary trading by these dealers, the volume of trading activity in certain instruments and liquidity in certain markets may increase.

We also note that the temporal thresholds necessary to implement such a ''short-term'' trading alternative would be difficult to quantify and may have to vary by product, asset class, and aggregate market conditions, among other factors. For instance, the markets for large cap equities and investment grade corporate bonds have different structures, types of participants, latency of trading, and liquidity levels. Therefore, an appropriate horizon for ''short-term'' positions will likely vary across these markets. Similarly, the ability to transact quickly differs under strong macroeconomic conditions and in times of stress. A meaningful implementation of this alternative would likely require calibrating and recalibrating complex thresholds to exempt non-near-term proprietary trading and so could introduce additional uncertainty and increase the compliance burdens on SEC-regulated banking entities.

''Trading Desk'' Definition

The definition of ''trading desk'' is an important component of the implementation of the 2013 final rule in that certain requirements, such as those applicable to the underwriting and market-making exemptions, and the metrics-reporting requirements apply at the level of the trading desk. Under the current requirements, a trading desk is defined as the smallest discrete unit of organization of a banking entity that purchases or sells financial instruments for the trading account of the banking

[320] For the purposes of the burden estimates in this release, we are assuming the cost of $409 per hour for an attorney, from SIFMA's ''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 bonuses, firm size, employee benefits, and overhead, and adjusted for inflation.

[321] We preliminarily believe that the burden reduction for SEC-regulated entities will be a fraction of the burden reduction for the holding company as a whole. We estimate the ratio on the basis of the fraction of total assets of broker-dealer affiliates of banking entities relative to the total consolidated assets of parent holding companies at approximately 0.18. To the extent that compliance burdens represent a fixed cost that does not scale with assets, or if the role and compliance burdens of entities that may register with the SEC as SBSDs may differ from those of broker-dealers, these figures may overestimate or underestimate compliance cost reductions for SEC-registered entities. Reporting burden for broker-dealers: 2 Hours per firm per year × 0.18 weight × (Attorney at $409 per hour) × 138 firms = $20,319. Reporting burden for entities that may register as SBSDs: 2 hours per firm per year × 0.18 weight × (Attorney at $409 per hour) × 34 firms = $5,006.

[322] 79 FR at 5549.

entity or an affiliate thereof. The 2013 final rule recognizes that underwriting and market-making activities are essential financial services that facilitate capital formation and promote liquidity, and that metrics reporting may facilitate the SEC oversight of banking entities. The application of these rules at the trading desk level may facilitate monitoring and review of compliance with the underwriting and market-making exemptions and allow for better identification of the aggregate trading volume that must be reviewed for consistency with the underwriting, market making, and metrics-reporting requirements.

At the same time, some market participants have noted that the trading desk designation under the 2013 final rule may be unduly burdensome and costly and may have engendered inefficient fragmentation of trading activity. For example, some market participants report an average of 95 trading desks engaged in permitted activities.[323] Since under the 2013 final rule metrics reporting is required at the trading desk level, such fragmentation may result in operational inefficiencies and decentralized compliance programs, with some participants currently reporting as many as 5,000,000 data points per entity per filing.[324]

The Agencies are requesting comment on whether the trading desk definition should be amended to refer to a less granular ''business unit'' or a ''unit designed to establish efficient trading for a market sector.'' This approach would allow a trading desk to be defined on the basis of the same criteria that are used to establish trading desks for other operational, management, and compliance purposes, which typically depend on the type of trading activity, asset class, product line offered, and individual banking entity structure and internal compliance policies and procedures. For example, the Agencies could define the trading desk as a unit of organization of a banking entity that engages in purchasing or selling of financial instruments for the trading account of the banking entity or an affiliate thereof that is structured by a banking entity to establish efficient trading for a market sector, organized to ensure appropriate setting, monitoring, and review of trading and hedging limits, and characterized by a clearly defined unit of personnel. This would provide banking entities greater flexibility in determining their own optimal organizational structure and allow banking entities organized with various degrees of complexity to reflect their organizational structure in the trading desk definition. This alternative could reduce operational costs from fragmentation of trading activity and compliance program requirements, as well as enable more streamlined metrics reporting.

On the other hand, under this alternative, a banking entity may be able to aggregate impermissible proprietary trading with permissible activity (*e.g.,* underwriting, market making, or hedging) into the same trading desk and consequently take speculative positions under the guise of permitted activities. To the extent that this alternative would allow banking entities to use a highly aggregated definition of a trading desk, it may increase moral hazard and the risks that the prohibitions of section 13 of the BHC Act aim to address. The SEC does not have data on operating and compliance costs because of the fragmentation incurred by SEC-regulated banking entities, or data on the organizational complexity of such dealers, and the extent of variation therein.

ii. Liquidity Management Exclusion

Liquidity management serves an important purpose in ensuring banking entities have sufficient resources to meet their short-term operational needs. Under the 2013 final rule, certain activities related to liquidity management are excluded from the scope of the proprietary trading prohibition under some conditions.[325] The current exclusion covers any purchase or sale of a security by a banking entity for the purpose of liquidity management in accordance with a documented liquidity management plan that meets a number of requirements. Moreover, current rules require that the financial instruments purchased and sold as part of a liquidity management plan be highly liquid and not reasonably expected to give rise to appreciable profits or losses as a result of short-term price movements.

The Agencies recognize that the liquidity management exclusion may be narrow and that the trading account definition may scope in routine asset-liability management and commercial-banking related activities that trigger the rebuttable presumption or the market-risk capital prong. Accordingly, the Agencies are proposing to expand the liquidity management exclusion. Specifically, the proposed amendments would broaden the liquidity management exclusion such that it would apply not only to securities, but also to foreign exchange forwards and foreign exchange swaps (as defined in the Commodity Exchange Act), and to physically settled cross-currency swaps.

Under the proposed amendment, SEC-regulated banking entities would face lower burdens and enjoy greater flexibility in currency-risk management as part of their overall liquidity management plans. To the degree that the 2013 final rule may be restricting liquidity-risk management by banking entities, and to the extent that these effects impact their trading activity, the proposed amendment could facilitate more efficient risk management, greater secondary market activity, and more capital formation in primary markets. However, in the absence of other conditions governing reliance on the liquidity management exclusion, this flexibility may also lead to currency derivatives exposures, including potentially very large exposures, being scoped out of the trading account definition and the ensuing substantive prohibitions of the 2013 final rule. In addition, some entities may seek to rely on this exclusion while engaging in speculative currency trading, which may increase their risk-taking and moral hazard and reduce the effectiveness of regulatory oversight. While the proposed amendment broadens the set of instruments that banking entities may use to manage liquidity, the proposed reservation of authority would provide the Agencies with the ability to determine whether a particular purchase or sale of a financial instrument by a banking entity either is or is not for the trading account.

iii. Error Trades

The 2013 final rule excludes from the proprietary trading prohibition certain ''clearing activities'' by banking entities that are members of clearing agencies, derivatives clearing organizations, or designated financial market utilities. Specifically, such clearing activities are defined to include, among others, any purchase or sale necessary to correct error trades made by, or on behalf of, customers with respect to customer transactions that are cleared, provided the purchase or sale is conducted in accordance with certain regulations, rules, or procedures. However, the current exclusion for error trades is applicable only to clearing members with respect to cleared customer transactions.[326]

The proposed amendments would exclude trading errors and subsequent correcting transactions from the definition of proprietary trading. The

[323] *See supra* note 18.

[324] *See id.*

[325] *See* 2013 final rule § ____.3(d)(3).

[326] *See* 2013 final rule § ____.3(e)(7).

proposed amendments primarily impact SEC-registered dealers that are not clearing members with respect to all customer trades and dealers that are clearing members with respect to customer trades that are not cleared. Table 6 reports information about broker-dealer count, assets, and holdings, by affiliation and clearing type.

TABLE 6—BROKER-DEALER ASSETS AND HOLDINGS BY CLEARING STATUS [327]

Broker-dealers subject to section 13 of the BHC Act	Number	Total assets ($mln)	Holdings ($mln)	Holdings (altern.) ($mln)
Clear/carry	56	3,002,341	720,863	533,100
Other	82	36,996	3,843	3,455
Total	138	3,039,337	724,706	536,555

Since correcting error trades by or on behalf of customers is not conducted for the purpose of profiting from short-term price movements, this amendment is likely to facilitate valuable customer-facing activities. As discussed elsewhere in this Supplementary Information, the Agencies believe that banking entities should monitor and manage their error trade account because doing so would help prevent personnel from using these accounts for the purpose of evading the 2013 final rule. We preliminarily believe that existing requirements and SEC oversight would be sufficient to deter participants from using the error trade exclusion to obfuscate impermissible proprietary trades.

c. Permitted Underwriting and Market Making

i. Regulatory Baseline

Underwriting and market making are customer-oriented financial services that are essential to capital formation and market liquidity, and the risks and profit sources related to these activities are distinct from those related to impermissible proprietary trading. Therefore, the 2013 final rule contains exemptions for underwriting and market making-related activities.

Under the 2013 final rule, all banking entities with covered activities must satisfy five requirements with respect to their underwriting activities to qualify for the underwriting exemption.[328] First, the banking entity must act as an underwriter for a distribution of securities, and the trading desk's underwriting position must be related to such distribution.[329] Second, the amount and type of the securities in the trading desk's underwriting position must be designed not to exceed RENTD, and reasonable efforts must be made to sell or otherwise reduce the underwriting position within a reasonable period, taking into account the liquidity, maturity, and depth of the market for the relevant type of security.[330] Third, the banking entity must establish and implement, maintain, and enforce an internal compliance system that is reasonably designed to ensure the banking entity's compliance with the requirements. The compliance program must include the list of the products, instruments, or exposures each trading desk may purchase, sell, or manage as part of its underwriting activities, as well as the limits for each trading desk, based on the nature and amount of the trading desk's underwriting activities, including RENTD limits.[331] Fourth, the compensation arrangements of persons engaged in underwriting must be designed to not reward or incentivize prohibited proprietary trading.[332] Fifth, the banking entity must be appropriately licensed or registered to perform underwriting activities.[333]

Under the current baseline, all banking entities with covered activities must satisfy six requirements with respect to their market-making activities to qualify for the market-making exemption.[334] First, the trading desk responsible for the market-making activities must routinely stand ready to purchase and sell the financial instruments in which it is making markets and must be willing and available to quote, purchase, and sell, or otherwise enter into long and short positions in these types of financial instruments for its own account in commercially reasonable amounts and throughout market cycles.[335] Second, the trading desks' market-maker inventory must be designed not to exceed, on an ongoing basis, RENTD.[336] Third, the banking entity must establish, implement, and enforce an internal compliance program, reasonably designed to ensure compliance with the requirements. This compliance program must include, among other things, limits for each trading desk that address RENTD.[337] Fourth, the banking entity must ensure that any violations of risk limits are promptly corrected. Fifth, the compensation arrangements of persons engaged in market making must be designed so as to not reward or incentivize prohibited proprietary trading. Finally, the banking entity must be appropriately licensed or registered.

We also note that, under the baseline, an organizational unit or a trading desk of another banking entity that has consolidated trading assets and liabilities of $50 billion or more is generally not considered a client, customer, or counterparty for the purposes of the RENTD requirement.[338] Thus, such demand does not contribute to RENTD unless such demand is affected through an anonymous trading facility or unless the trading desk documents how and why the organizational unit of said large banking entity should be treated as a client, customer, or counterparty. To the extent that such documentation requirements increase the cost of intermediating interdealer transactions, this current requirement may impact the volume and cost of interdealer trading.

The Agencies understand that current compliance with the RENTD

[327] Broker-dealers clearing and/or carrying customer accounts are identified using FOCUS filings. Broadly, broker-dealers that are clearing or carrying firms directly carry customer accounts, maintain custody of the assets, and clear trades. Other broker-dealers may accept customer orders but do not maintain custody of assets. *See, e.g.,* Clearing Firms FAQ, FINRA, *https://www.finra.org/arbitration-and-mediation/faq-clearing-firms-faq.* This analysis excludes SEC-registered broker-dealers affiliated with banks that have consolidated total assets less than or equal to $10 billion and trading assets and liabilities less than or equal to 5% of total assets, as well as firms for which bank trading asset and liability data was not available.

[328] *See* 2013 final rule § ____.4 (a).

[329] *See* 2013 final rule § ____.4 (a)(2)(i).

[330] *See* 2013 final rule § ____.4 (a)(2)(ii).

[331] *See* 2013 final rule § ____.4 (a)(2)(iii).

[332] *See* 2013 final rule § ____.4 (a)(2)(iv).

[333] *See* 2013 final rule § ____.4 (a)(2)(v).

[334] *See* 2013 final rule § ____.4 (b).

[335] *See* 2013 final rule § ____.4 (b)(2)(i).

[336] *See* 2013 final rule § ____.4 (b)(2)(ii).

[337] *See* 2013 final rule § ____.4 (b)(2)(iii).

[338] *See* 2013 final rule § ____.4 (b)(3)(i).

requirements under both the underwriting and market-making exemptions creates ambiguity for some market participants, is over-reliant on historical demand, and necessitates an accurate calibration of RENTD for different asset classes, time periods, and market conditions.[339] Since forecasting future customer demand involves uncertainty, particularly in less liquid and more volatile instruments and products, banking entity affiliated dealers may face uncertainty about the ability to rely on the underwriting and market-making exemptions. This uncertainty can reduce a banking entity's willingness to engage in principal transactions with customers,[340] which, along with reducing profits, can adversely impact the volume of transactions intermediated by banking entities. To the extent that non-banking entities do not step in to intermediate trades that do not occur as a result of the RENTD requirement,[341] and to the extent that technological advances do not allow customers to trade against other customers,[342] thereby shortening dealer intermediation chains, counterparties of affected banking entities may have difficulty transacting in some market segments.[343]

ii. Costs and Benefits

Under the proposal, Group A and Group B entities with covered activities would be presumed compliant with the RENTD requirements of the underwriting and market-making exemptions if the banking entity establishes and implements, maintains, and enforces internally set risk limits. These risk limits would be subject to regulatory review and oversight on an ongoing basis, which would include an assessment of whether the limits are designed not to exceed RENTD. For Group A entities, these limits are required to be established within the entity's compliance program. Under the proposed amendment, Group B entities would not be required to establish a separate compliance program for underwriting and market-making requirements, including the risk limits for RENTD. However, in order to be presumed compliant with the underwriting and market-making exemptions, Group B entities must establish and comply with the RENTD limits. We note that Group B entities seeking to rely on the presumption of compliance would still be required to comply with the RENTD requirements, even though they would not be required to design a specific underwriting or market-making compliance program. Under the proposed amendments, Group C banking entities would be presumed compliant with requirements of subpart B and subpart C of the rule, including with respect to the reliance on the underwriting and market-making exemptions, without reference to their internal RENTD limits. In addition, under the proposal, Group A entities relying on internal risk limits for market-making RENTD requirements must promptly reduce the risk exposure when the risk limit is exceeded.

The proposed amendments may provide SEC-registered banking entities with more flexibility and certainty in conducting permissible underwriting and market making-related activities. The proposed presumption allows the reliance on internally-set risk limits in accordance with a banking entity's risk management function that may already be used to meet other regulatory requirements, such as obligations under the SEC and FINRA capital and liquidity rules,[344] so long as these limits meet the requirements under the proposed amendment. Therefore, the proposed amendment may prevent unnecessary duplication of risk-management compliance procedures for the purposes of complying with multiple regulations and may reduce compliance costs for SEC-regulated banking entities. To the extent that the uncertainty and compliance burdens related to the RENTD requirements are currently impeding otherwise profitable permissible underwriting and market making by dealers, the proposed amendments may increase banking entities' profits and the volume of dealer intermediation.

The proposed regulatory oversight of the internally-set risk limits may result in new compliance burdens for SEC registrants, potentially offsetting the cost-reducing effects of other proposed amendments to the compliance with the underwriting and market-making exemptions. However, if banking entities are permitted to rely on internal risk limits to meet the RENTD requirement, Agency oversight of internal risk limits for the purposes of compliance with the proposed rule may help support the benefits and costs of the substantive prohibitions of section 13 of the BHC Act. Additionally, the costs of the prompt notice requirement for exceeding the risk limits will depend on a given entity's trading activity and on its design of internal risk limits, which are likely to reflect, among other factors, the entity's respective business model, organizational structure, profitability and volume of trading activity. As a result, we cannot estimate these costs with any degree of certainty.

The overall economic effect of these amendments will depend on the amount and profitability of economic activity that currently does not occur because of the uncertainty surrounding the RENTD requirement compared to the potential costs of establishing and maintaining internal risk limits, and uncertainty related to validation that these limits would meet the requirements under the proposed amendments. We do not have data on the volume of trading activity that does not occur because of uncertainty and costs surrounding the RENTD requirement, or data on the profitability of such trading activity for banking entities. To the best of our knowledge, no such data is publicly available.

To the extent that internal risk limits may be designed to exceed the actual RENTD, introducing the proposed presumption may also increase risk-taking by banking entity dealers. As a result, under the proposed amendments, some entities may be able to maintain positions that are larger than RENTD and, thus, increase their risk-taking. This type of activity could increase moral hazard and reduce the economic effects of section 13 of the BHC Act and the implementing rules. However, to

[339] *See supra* note 18.

[340] For instance, Bessembinder et al. (2017) shows that dealers have shrunk their intraday capital commitment, measured as the absolute difference between their daily accumulated buy volume and sell volume. Similarly, the FRB's ''Staff Q2 2017 Report on Corporate Bond Market Liquidity'' (available at *https://www.federalreserve.gov/foia/files/bond-market-liquidity-report-2017Q2.pdf*) shows a steep decline in broker-dealer holdings of corporate and foreign bonds between 2007 and 2009 and a gradual decline in 2012 onwards.

While some research suggests the decline in dealer inventories is attributable to the 2013 final rule (*e.g.,* Bessembinder et al. (2017)), other studies show that inventory declines in fixed income markets occurred in the immediate aftermath of the financial crisis and coincided with a drastic decline in profitability of trading desks during the crisis (*e.g.,* Access to Capital and Market Liquidity, *supra* note 106, Figure 34). It is difficult to clearly distinguish the causal effects of the various provisions of section 13 of the BHC Act from the influence of other confounding factors, such as crisis-related changes in dealer risk aversion and declines in profitability of trading, macroeconomic conditions, the evolution of market structure and new technology, and other factors.

[341] *See supra* note 290.

[342] *See, e.g.,* Access to Capital and Market Liquidity *supra* note 106, Part IV.C.4 (describing corporate bond activity on electronic venues).

[343] We are not aware of any data that allows us to quantify the impacts of individual provisions of section 13 of the BHC Act on dealer inventories or market liquidity. The evidence on the impacts of section 13 on various measures of corporate bond, credit default swap (CDS), and bond fund liquidity is sensitive to the choice of market, measure, time period, and empirical methodology. For a literature review, *see, e.g.,* Access to Capital and Market Liquidity *supra* note 106.

[344] *See, e.g.,* 17 CFR 240.15c3–1.

mitigate this effect, the Agencies are proposing that the internally set risk limits that would be used to establish the presumption of compliance would be subject to ongoing regulatory assessments as to whether they are designed not to exceed RENTD.

We note that the proposed amendments tailor regulatory relief for smaller banking entities for both the underwriting and market-making exemptions. More specifically, the threshold for the reduced requirements is based on trading assets and liabilities for both exemptions. We also recognize that the nature, profit sources, and risks of underwriting and market-making activities differ. For example, underwriting may involve pricing, book building, and placement of securities with investors, whereas market making centers on intermediation of trading activity.

In that regard, the Agencies could have proposed an approach, under which underwriting and market-making requirements are tailored to banking entities on the basis of different thresholds. For example, the Agencies could have instead relied on the trading assets and liabilities threshold for market-making compliance (as proposed), but applied a different threshold for underwriting compliance, on the basis of the volume or profitability of past underwriting activity. This alternative would have tailored the compliance requirements for SEC-regulated banking entities with respect to underwriting activities. However, the volume and profitability of underwriting activity is highly cyclical and is likely to decline in weak macroeconomic conditions. As a result, under the alternative, SEC-regulated banking entities would face lower compliance obligations with respect to underwriting activity during times of economic stress when covered trading activity related to underwriting may pose the highest risk of loss.

iii. Efficiency, Competition, and Capital Formation

As discussed above, these proposed amendments may reduce the costs of relying on the underwriting and market-making exemptions, which may facilitate the activities related to these exemptions. The evolution in market structure in some asset classes (*e.g.,* equities) has transformed the role of traditional dealers vis-à-vis other participants, particularly as it relates to high-frequency trading and electronic platforms. However, dealers continue to play a central role in less liquid markets, such as corporate bond and over-the-counter derivatives markets. While it is difficult to establish causality, corporate bond dealers, particularly bank-affiliated dealers, have, on aggregate, significantly reduced their capital commitment post-crisis—a finding that is consistent with a reduction in liquidity provision in corporate bonds due to the 2013 final rule.[345] In addition, corporate bond dealers may have shifted from trading in a principal capacity to agency trading.[346] To the extent that this change cannot be explained by enhanced ability of dealers to manage corporate bond inventory, electronic trading, post-crisis changes in dealer risk tolerance and macro factors (effects which themselves need not be fully independent of the effect of section 13 of the BHC Act and the 2013 final rule), such effects may point to a reduced supply of liquidity by dealers. Moreover, corporate bond dealers decrease liquidity provision in times of stress in general (*e.g.,* during a financial crisis) [347] and after the 2013 final rule in particular (under a few isolated stressed selling conditions, some evidence shows greater price impact from trading activity).[348] In dealer-centric single-name CDS markets, interdealer trade activity, trade sizes, quoting activity, and quoted spreads for illiquid underliers have deteriorated since 2010, but dealer-customer activity and various trading activity metrics have remained stable.[349]

Because of the methodological challenges described earlier in this analysis, we cannot quantify potential effects of the 2013 final rule in general, and the RENTD, underwriting, and market-making provisions of the 2013 final rule in particular, on capital formation and market liquidity. We also recognize that these provisions may not be currently affecting all securities markets, asset classes, and products uniformly. If, because of uncertainty and the costs of relying on market-making and hedging exemptions, dealers are limiting their market-making and hedging activity in certain products, the proposed amendments may facilitate market making. Because secondary market liquidity can influence the willingness to invest in primary markets, and access to these markets can enable market participants to mitigate undesirable risk exposures, the amendments may increase trading activity and capital formation in some segments of the market.

While the statute and the 2013 final rule, including as proposed to be amended, prohibit banking entities from engaging in proprietary trading, some trading desks may attempt to use certain elements of the proposed RENTD amendments to circumvent those restrictions. This may reduce the economic benefits and costs of the 2013 final rule outlined in section V.D.1. We continue to recognize that proprietary trading by banking entities may give rise to moral hazard, economic inefficiency because of implicitly subsidized risk-taking, and market fragility, and may increase conflicts of interest between banking entities and their customers. An analysis of the effects of the 2013 final rule in general, and the specific amendments being proposed here in particular, on moral hazard, risk-taking, systemic risk, and conflicts of interest described above, faces the same methodological challenges discussed in section V.D.1. and in this section. In addition, existing qualitative analysis and quantitative estimates of moral hazard, risk-taking incentives resulting from deposit insurance and implicit bailout guarantees, and systemic risk implications of proprietary trading, centers on banking entities that are not SEC registrants.[350] However, we

[345] *See, e.g.,* Staff Q2 2017 Report on Corporate Bond Market Liquidity *supra* note 340; *see also* Bessembinder et al. (2017).

[346] Dealers can trade as agents, matching customer buys to customer sells, or as principals, absorbing customer buys and customer sells into inventory and committing the necessary capital.

[347] Dealers provide less liquidity to clients and peripheral dealers during stress times; during the peak of the crisis core dealers charged higher spreads to peripheral dealers and clients but lower spreads to dealers with whom they had strong ties. *See* Di Maggio, Kermani, and Song, 2017, ''The Value of Trading Relationships in Turbulent Times.'' Journal of Financial Economics 124(2), 266–284; *see also* Choi and Shachar, 2013, ''Did Liquidity Providers Become Liquidity Seekers?'' New York Fed Staff Report No. 650, *available at https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr650.pdf.*

[348] *See* Bao et al. (2017); Anderson and Stulz (2017).

[349] For a literature review and data, see Access to Capital and Market Liquidity *supra* note 106.

[350] For a literature review, *see, e.g.,* Benoit et al. (2017). Some examples include:

- A large proportion of the variation in bank market-to-book ratios over time may be due to changes in the value of government guarantees. *See* Atkeson et al. (2018).
- Moral hazard resulting from idiosyncratic and targeted bailouts may make the economy significantly more exposed to financial crises, while moral hazard effects may be limited if bailouts are systemic and broad based. *See* Bianchi (2016); *see also* Kelly et al. (2016).
- Deposit insurance and financial safety nets increased bank risk-taking and measures of systemic fragility in the run-up to the global financial crisis. However, during the crisis itself, deposit insurance reduced bank risk and systemic stability. *See* Anginer et al. (2014).
- Short-term capital market funding may increase bank fragility. *See* Beltratti and Stulz (2012).
- Implicit bailout guarantees for the financial sector as a whole are priced in spreads on index put

Continued

continue to recognize that the effects of the proposed amendments on bank entity risk-taking and conflicts of interest may flow through to SEC-registered dealers and investment advisers affiliated with banks and bank holding companies and may impact securities markets. As suggested by academic evidence, the presence and magnitude of spillovers across different types of financial institutions vary over time and may be more significant in times of stress.[351]

Where the proposed amendments increase the scope of permissible activities or decrease the risk of detection of proprietary trading, their impact on informational efficiency stems from a balance of two effects. On the one hand, where banking entities' proprietary trading strategies are based on superior analysis and prediction models, their reduced ability to trade on such information may make securities markets less informationally efficient. While such proprietary trading strategies can be executed by broker-dealers unaffiliated with banking entities and unaffected by the prohibitions on proprietary trading, their ability to do so may be constrained by their limited access to capital and a lack of scale needed to profit from such strategies. On the other hand, if superior information is obtained by an entity from its customer-facing activities and as a result of conflicts of interest, proprietary trading may make customers less willing to transact with banks or participate in securities markets.

iv. Loan-Related Swaps

The Agencies are requesting comment on the treatment of swaps entered into with a customer in connection with a loan provided to the customer. Specifically, loan-related swaps are transactions between a banking entity and a loan customer that are directly related to the terms of the customer's loan. The Agencies understand that such swaps may be considered financial instruments triggering proprietary trading prohibitions of the 2013 final rule. As a result, a banking entity would need to rely on an applicable exclusion from the definition of proprietary trading or an exemption in the implementing regulations in order for this activity to be permissible.

Accordingly, the Agencies are requesting comment on whether loan-related swaps should be permitted under the market-making exemption if the banking entity stands ready to make a market in both directions whenever a customer makes an appropriate request, but in practice primarily makes a market in the swaps only in one direction. The Agencies are also requesting comment on whether it would be appropriate to exclude loan-related swaps from the definition of proprietary trading for some banking entities or to permit the activity pursuant to an exemption from the prohibition on proprietary trading other than market making.

Addressing the treatment of loan-related swaps may benefit banking entities that are currently unsure as to their ability to engage in loan-related swaps pursuant to the existing market-making exemption. Legal certainty in this space may increase the willingness of banking entities to accommodate customer demand for such loans and increase certainty that such activity would not trigger the proprietary trading prohibition. To the degree that the back-to-back offsetting purchases and sales of derivatives are not immediate, and to the extent that such transactions are not cleared and involve counterparty risk, this may also increase risk-taking by banking entities. To the extent that the proposed guidance was to increase the scope of permissible proprietary trading activity, such activity would implicate the economic tradeoffs of the proprietary trading prohibitions of the 2013 final rule discussed in section V.D.1.

d. Permitted Risk-Mitigating Hedging

i. Regulatory Baseline

Under the baseline, certain risk-mitigating hedging activities may be exempt from the restriction on proprietary trading under the risk-mitigating hedging exemption. To make use of this exemption, the 2013 final rule requires all banking entities to comply with a comprehensive and multi-faceted set of requirements, including: (1) The establishment and implementation, and maintenance of an internal compliance program; (2) satisfaction of various criteria for hedging activities; and (3) the existence of compensation arrangements for persons performing risk-mitigating hedging activities that are designed not to reward or incentivize prohibited proprietary trading. In addition, certain activities under the hedging exemption are subject to documentation requirements.[352]

Specifically, 2013 final rule requires that a banking entity seeking to rely on the risk-mitigating hedging exemption must establish, implement, maintain, and enforce an internal compliance program that is reasonably designed to ensure compliance with the requirements of the rule. Such a compliance program must include reasonably designed written policies and procedures regarding the positions, techniques, and strategies that may be used for hedging, including documentation indicating what positions, contracts, or other holdings a particular trading desk may use in its risk-mitigating hedging activities, as well as position and aging limits with respect to such positions, contracts, or other holdings. The compliance program also must provide for internal controls and ongoing monitoring, management, and authorization procedures, including relevant escalation procedures. In addition, the 2013 final rule requires that all banking entities, as part of their compliance program, must conduct analysis, including correlation analysis, and independent testing designed to ensure that the positions, techniques, and strategies that may be used for hedging are designed to reduce or otherwise significantly mitigate and demonstrably reduce or otherwise significantly mitigate the specific, identifiable risk(s) being hedged.

The 2013 final rule does not require a banking entity to prove correlation mathematically—rather, the nature and extent of the correlation analysis should be dependent on the facts and circumstances of the hedge and the underlying risks targeted. Moreover, if correlation cannot be demonstrated, the analysis needs to state the reason and explain how the proposed hedging position, technique, or strategy is designed to reduce or significantly mitigate risk and how that reduction or mitigation can be demonstrated without correlation.[353] Some market participants have argued that the inability to perform correlation analysis, for instance, for non-trading assets such as mortgage servicing assets, can add as much as 2% of the asset value to the cost of hedging.[354]

options far more than those on put options of individual banks. *See, e.g.,* Kelly et al. (2016).

- Other research used CDS data to measure the value of government bailouts to bondholders and stockholders of large financial firms during the global financial crisis. *See* Veronesi and Zingales (2010).

[351] *See, e.g.,* Billio, Getmansky, Lo, and Pelizzon, 2012, Econometric Measures of Connectedness and Systemic Risk in the Finance and Insurance Sectors, Journal of Financial Economics 104(3), 535–559; *see also* Alam, Fuss, and Gropp, 2014, Spillover Effects Among Financial Institutions: A State-Dependent Sensitivity Value at Risk Approach (SDSVar). Journal of Financial and Quantitative Analysis 49(3), 575–598; Adrian and Brunnermeier, 2016, CoVar, American Economic Review 106(7), 1705–1741.

[352] *See* 2013 final rule § ____.5.

[353] *See* 79 FR at 5631.

[354] *See supra* note 18.

To qualify for the risk-mitigating hedging exemption, the hedging activity, both at inception and at the time of any adjustment to the hedging activity, must be designed to reduce or otherwise significantly mitigate and demonstrably reduce or significantly mitigate one or more specific identifiable risks.[355] Hedging activities also must not give rise, at the inception of the hedge, to any significant new or additional risk that is not itself hedged contemporaneously. Additionally, the hedging activity must be subject to continuing review, monitoring, and management by the banking entity, including ongoing recalibration of the hedging activity to ensure that the hedging activity satisfies the requirements for the exemption and does not constitute prohibited proprietary trading. Lastly, the compensation arrangements of persons performing risk-mitigating hedging activities must be designed so as to not reward or incentivize prohibited proprietary trading.

Finally, the 2013 final rule requires banking entities to document and retain information related to the purchase or sale of hedging instruments that are either (1) established by a trading desk that is different from the trading desk establishing or responsible for the risks being hedged; (2) established by the specific trading desk establishing or responsible for the risks being hedged but that are effected through means not specifically identified in the trading desks written policies and procedures; or (3) established to hedge aggregate positions across two or more trading desks. [356] The documentation must include the specific identifiable risks being hedged, the specific risk-mitigating strategy that is being implemented, and the trading desk that is establishing and responsible for the hedge. These records must be retained for a period of not less than 5 years in a form that allows them to be promptly produced if requested.[357]

As discussed elsewhere in this Supplementary Information, the Agencies recognize that, in some circumstances, it may be difficult to know with sufficient certainty whether a potential hedging activity will continue to demonstrably reduce or significantly mitigate an identifiable risk after it is implemented. Unforeseeable changes in market conditions and other factors could reduce or eliminate the intended risk-mitigating impact of the hedging activity, making it difficult for a banking entity to comply with the continuous requirement that the hedging activity demonstrably reduce or significantly mitigate specific, identifiable risks. In such cases, a banking entity may choose not to enter into a hedge out of concern that it may not be able to effectively comply with the continuing requirement to demonstrate risk mitigation.

We also recognize that SEC-regulated entities may engage in both static and dynamic hedging at the portfolio (and not at the transaction) level and monitor and reevaluate aggregate portfolio risk exposures on an ongoing basis, rather than the risk exposure of individual transactions. Dynamic hedging may be particularly common among dealers with large derivative portfolios, especially when the values of these portfolios are nonlinear functions of the prices of the underlying assets (*e.g.,* gamma hedging of options). The rules currently in effect permit dynamic hedging, but require the banking entity to document and support its decisions regarding individual hedging transactions, strategies, and techniques for ongoing activity in the same manner as for its initial activities, rather than the hedging decisions regarding a portfolio as a whole.

ii. Costs and Benefits

As discussed elsewhere in this Supplementary Information, the Agencies recognize that hedging is an essential tool for risk mitigation and can enhance a banking entity's provision of client-facing services, such as market making and underwriting, as well as facilitate financial stability. In recognition of the role that this activity plays as part of a banking entity's overall operations, the Agencies have proposed a number of changes that are intended to streamline and clarify the current exemption for risk-mitigating hedging activities.

The first proposed amendment concerns the ''demonstrability'' requirement of the risk-mitigating hedging exemption. Specifically, the Agencies propose to eliminate the requirement that the risk-mitigating hedging activity must demonstrably reduce or otherwise significantly mitigate one or more specific identifiable risks at the inception of the hedge. Additionally, the demonstrability requirement would also be removed from the requirement to continually review, monitor, and manage the banking entity's existing hedging activity. We also note that banking entities would continue to be subject to the requirement that the risk-mitigating hedging activity be designed to reduce or otherwise significantly mitigate one or more specific, identifiable risks, as well as to the requirement that the hedging activity be subject to continuing review, monitoring and management by the banking entity to confirm that such activity is designed to reduce or otherwise significantly mitigate the specific, identifiable risks that develop over time from the risk-mitigating hedging.

The removal of the demonstrability requirement is expected to benefit banking entity dealers, as it would decrease uncertainty about the ability to rely on the risk-mitigating hedging exemption and may reduce the compliance costs of engaging in permitted hedging activities. While this aspect of the proposal may alleviate compliance burdens related to risk management and potentially facilitate greater trading activity and liquidity provision by bank-affiliated dealers, it could also enable dealers to accumulate large proprietary positions through adjustments (or lack thereof) to otherwise permissible hedging portfolios. Therefore, we recognize that the proposed amendment could increase moral hazard risks related to proprietary trading by allowing dealers to take positions that are economically equivalent to positions they could have taken in the absence of the 2013 final rule.

The second proposed amendment to the risk-mitigating hedging exemption is the removal of the requirement to perform the correlation analysis. The Agencies recognize that a correlation analysis based on returns may be prohibitively complex for some asset classes, and that a correlation coefficient may not always serve as a meaningful or predictive risk metric. While we recognize that, in some instances, correlation analysis of past returns may be helpful in evaluating whether a hedging transaction was effective in offsetting the risks intended to be mitigated, correlation analysis may not be an effective tool for such evaluation in other instances. For example, correlation across assets and asset classes evolves over time and may exhibit jumps at times of idiosyncratic or systematic stress. Additionally, the hedging activity, even if properly designed to reduce risk, may not be practicable if costly delays or compliance complexities result from a requirement to undertake a correlation analysis. Thus, the removal of the correlation analysis requirement may provide dealers with greater flexibility in selecting and executing risk-

[355] *See* 2013 final rule § ____.5(b)(2)(ii).

[356] *See* 2013 final rule § ____.5(c)(1).

[357] *See* 2013 final rule § ____.5(c)(3); *see also* 2013 final rule § ____.20(b)(6).

mitigating hedging activities. However, we also recognize that the removal of the correlation analysis requirement may result in tradeoffs discussed above. To the extent that some banking entities may be able to engage in speculative proprietary trading activities while relying on the risk-mitigating hedging exemption, the proposed amendment may potentially increase moral hazard and conflicts of interest between banking entities and their customers, notwithstanding the fact that a potential increase in permitted risk-mitigating hedging may increase capital formation and trading activity by banking entities.

The third proposed amendment simplifies the requirements of the risk-mitigating hedging exemption for Group B banking entities (*i.e.,* those with moderate trading assets and liabilities). The proposed amendment would remove the requirement to have a specific risk-mitigating hedging compliance program, as well as the documentation requirements and certain hedging activity requirements for Group B entities.[358] As a result, these dealers would be subject to two key hedging activity requirements: (1) That a hedging transaction must be designed to reduce or otherwise significantly mitigate one or more specific, identifiable risks; and (2) that a hedging transaction is subject, as appropriate, to ongoing review, monitoring, and management by the banking entity that requires recalibration of the hedging activity to ensure that the hedging activity satisfies the requirements on an ongoing basis and is not prohibited proprietary trading. Under the proposed amendments, Group C banking entities are presumed compliant with subpart B and subpart C of the proposed rule, including with respect to the reliance on the hedging exemption.

As discussed elsewhere in this Supplementary Information, the Agencies recognize that banking entities without significant trading assets and liabilities are less likely to engage in large and/or complicated trading activities and hedging strategies. We continue to recognize that compliance with the 2013 final rule may impose disproportionate costs on banking entities without significant trading assets and liabilities. Therefore, the proposed amendment would benefit Group B and Group C entities, as it would reduce the costs of relying on the hedging exemption and, thus, engaging in hedging activities. To the extent that the removal of these requirements may reduce the costs of risk-mitigating hedging activity, Group B and Group C entities may increase their intermediation activity while also growing their trading assets and liabilities.

The fourth proposed amendment reduces documentation requirements for Group A entities. In particular, the proposal removes the documentation requirements for some financial instruments used for hedging. More specifically, the instrument would not be subject to the documentation requirement if: (1) It is identified on a written list of pre-approved financial instruments commonly used by the trading desk for the specific type of hedging activity; and (2) at the time the financial instrument is purchased or sold the hedging activity (including the purchase or sale of the financial instrument) complies with written, pre-approved hedging limits for the trading desk purchasing or selling the financial instrument for hedging activities undertaken for one or more other trading desks. The SEC lacks information or data that would allow us to quantify the magnitude of the expected cost reductions, as the prevalence of hedging activities depends on each registrant's organizational structure, business model, and complexity of risk exposures. However, the SEC preliminarily believes that the flexibility to choose between providing documentation regarding risk-mitigating hedging transactions and establishing hedging limits for pre-approved instruments may be beneficial for Group A entities, as it will allow these entities to tailor their compliance regime to their specific organizational structure and existing policies and procedures. Finally, in section V.B, the Agencies estimate burden reductions per firm from the proposed amendments. The proposed amendments to § ____.5(c) will result in ongoing cost savings estimated at $203,191 for SEC-registered broker-dealers.[359] Additionally, the proposed amendments will result in lower ongoing costs for potential SBSD registrants relative to the costs that they would incur under the current regime if they were to choose to register with the SEC—this cost reduction is estimated to reach up to $50,062.[360] However, we recognize that compliance with SBSD registration requirements is not yet required and that there are currently no registered SBSDs. Similarly, the proposed amendments may also reduce initial set-up costs related to § ____.5(c) by $101,596 for SEC-registered broker-dealers and up to $25,031 for entities that may choose to register with the SEC as SBSDs.[361]

The proposed hedging amendment eliminates all hedging-specific compliance program requirements including correlation analysis, documentation requirements, and some hedging activity requirements for Group B entities. The proposed amendments eliminate only some of the compliance program requirements for Group A entities and provide a documentation requirement exemption for some hedging activity of these entities. Since the fixed costs of relying on such exemptions may be more significant for entities with smaller trading books, the proposed hedging amendment may permit Group B entities just below the $10 billion threshold to more effectively compete with Group A entities just above the threshold.

The proposed hedging amendments may also impact the volume of hedging activity and capital formation. To the extent that some registrants currently experience significant compliance costs related to the hedging exemption, these costs may constrain the amount of risk-mitigating hedging they currently engage in. The ability to hedge underlying risks at a low cost can facilitate the willingness of SEC-regulated entities to commit capital and take on underlying risk exposures. Because the proposed amendments would reduce costs of relying on the hedging exemption, these entities may become more incentivized to engage in risk-mitigating hedging activity, which may in turn contribute to greater capital formation.

e. Trading Outside the United States

i. Baseline

Under the 2013 final rule, a foreign banking entity that has a branch, agency, or subsidiary located in the United States (and is not itself located in the United States) is subject to the

[358] Group C banking entities (*i.e.,* those with limited trading assets and liabilities) also would not be subject to these express requirements.

[359] Recordkeeping burden reduction for broker-dealers: 20 hours per firm × 0.18 weight × (Attorney at $409 per hour) × 138 firms = $203,191. Recordkeeping burden reduction for entities that may register as SBSDs: 20 hours per firm × 0.18 weight × (Attorney at $409 per hour) × 34 firms = $50,062.

[360] Recordkeeping burden reduction for entities that may register as SBSDs: 20 hours per firm × 0.18 weight × (Attorney at $409 per hour) × 34 firms = $50,062.

[361] Initial set-up burden reduction for broker-dealers: 10 hours per firm × 0.18 weight × (Attorney at $409 per hour) × 138 firms = $101,596. Initial set-up burden reduction for entities that may register as SBSDs: 10 hours per firm × 0.18 weight × (Attorney at $409 per hour) × 34 firms = $25,031.

proprietary trading prohibitions and related compliance requirements unless it meets five criteria.[362] First, a branch, agency, or subsidiary of a foreign banking organization that is located in the United States or organized under the laws of the United States or of any state may not engage as principal in the purchase or sale of financial instruments (including any personnel that arrange, negotiate, or execute a purchase or sale). Second, the banking entity (including relevant personnel) that makes the decision to engage in the transaction must not be located in the United States or organized under the laws of the United States or of any state. Third, the transaction, including any transaction arising from risk-mitigating hedging related to the transaction, must not be accounted for as principal directly or on a consolidated basis by any branch or affiliate that is located in the United States or organized under the laws of the United States or of any state. Fourth, no financing for the transaction can be provided by any branch or affiliate of a foreign banking entity that is located in the United States or organized under the laws of the United States or of any state (the ''financing prong''). Fifth, the transaction must generally not be conducted with or through any U.S. entity (the ''counterparty prong''), unless: (1) No personnel of a U.S. entity that are located in the United States are involved in the arrangement, negotiation, or execution of such transaction; (2) the transaction is with an unaffiliated U.S. market intermediary acting as principal and is promptly cleared and settled through a central counterparty; or (3) the transaction is executed through an unaffiliated U.S. market intermediary acting as agent, conducted anonymously through an exchange or similar trading facility, and is promptly cleared and settled through a central counterparty.[363]

As discussed elsewhere in this Supplementary Information, the Agencies recognize that foreign banking entities seeking to rely on the exemption for trading outside the United States face a complex set of compliance requirements that may result in implementation inefficiencies. In particular, the application of the financing prong may be challenging because of the fungibility of some forms of financing. In addition, the Agencies recognize that satisfying the counterparty prong is burdensome for foreign banking entities and may have led some foreign banking entities to reduce the range of counterparties with which they engage in trading activity.

ii. Costs and Benefits

The proposed amendments remove the financing and counterparty prongs.

Under the proposed rule, financing for the transaction relying on the foreign trading exemption can be provided by U.S. branches or affiliates of foreign banking entities, including SEC-registered dealers. Foreign banking entities may benefit from the proposed amendments and enjoy greater flexibility in financing their transaction activity. However, some of the economic exposure and risks of proprietary trading by foreign banking entities would flow not just to the foreign banking entities, but to U.S.-located entities financing the transactions, *e.g.,* through margin loans. While SEC-registered banking entity dealers financing the transactions of foreign entities are themselves subject to the substantive requirements of the 2013 final rule, SEC-registered dealers that are not banking entities under the BHC Act are not. The proposal retains the requirement that the transactions of a foreign banking entity, including any hedging trades, are not to be accounted for as principal directly or on a consolidated basis by any U.S. branch or affiliate.

In addition, the proposed amendment removes the counterparty prong and its corresponding clearing and anonymous exchange requirements. Currently, a foreign banking entity may transact with or through U.S. counterparties if the trades are conducted anonymously on an exchange (for trades executed by a counterparty acting as an agent) and cleared and settled through a clearing agency or derivatives clearing organization acting as a central counterparty (for trades executed by a counterparty acting as either an agent or principal). As a result, the proposed amendments would make it easier for foreign banking entities to transact with or through U.S. counterparties. To the extent that foreign banking entities are currently passing along compliance burdens to their U.S. counterparties, or are unwilling to intermediate or engage in certain transactions with or through U.S. counterparties, the proposed amendments may reduce transaction costs for U.S. counterparties and may increase the volume of trading activity between U.S. counterparties and foreign banking entities.

We note that, even when a foreign banking entity engages in proprietary trading through a U.S. dealer, the principal risk of the foreign banking entities' position is consolidated to the foreign banking entity. While such trades expose the counterparty to risks related to the transaction, such risks born by U.S. counterparties likely depend on both the identity of the counterparty and the nature of the instrument and terms of trading position. Moreover, concerns about moral hazard and the volume of risk-taking by U.S. banking entities may be less relevant for foreign banking entities. The current requirement that foreign banking entities transact with U.S. counterparties through unaffiliated dealers steers trading business to unaffiliated U.S. dealers but does not necessarily reduce moral hazard in the U.S. financial system.

iii. Efficiency, Competition, and Capital Formation

The proposed amendments would likely narrow the scope of transaction activity and banking entities to which the substantive prohibitions of the 2013 final rule apply. As a result, the amendments may reduce the effects on efficiency, competition, and capital formation of the implementing rules currently in place. The proposed amendments reflect consideration of the potentially inefficient restructuring undergone by foreign banking entities after the 2013 final rule came into effect and enhanced access to securities markets by U.S. market participants on the one hand,[364] and, advancing the objectives of the 2013 final rule as discussed above on the other.

Allowing foreign banking entities to be financed by U.S.-dealer affiliates and to transact with U.S. counterparties off exchange and without clearing the trades, may reduce costs of non-U.S. banking entities' activity in the United States and with U.S. counterparties. These costs may currently represent barriers to entry for foreign banking entities that contemplate engaging in trading and other transaction activity using a U.S. affiliate's financing and trading with U.S. counterparties off exchange. To that extent, the proposed amendments may provide incentives for foreign banking entities that currently receive financing from non-U.S. affiliates to move financing to U.S. dealer affiliates, and incentives for foreign banking entities that currently transact through or with U.S. counterparties via anonymous exchanges and clearing agencies to

[362] *See* 2013 final rule § ____.6(e).

[363] *See* 2013 final rule § ____.6(e)(3).

[364] For instance, a commenter has stated that at least seven international banks have terminated or transferred existing transactions with U.S. counterparties in order to comply with the foreign trading exemption and to avoid compliance costs of relying on alternative exemptions or exclusions. *See supra* note 18.

transact through or with U.S. counterparties outside of anonymous exchanges and clearing. As a result, the number of banking entities engaging in securities trading in U.S. markets may increase, which may enhance the incorporation of new information into prices. However, the amendments may result in a shift in securities trading activity away from U.S. banking entities to foreign banking entities that are not comparably regulated. Thus, the amendments may reduce the benefits and costs of the 2013 final rule discussed in section V.D.1.

The proposed amendments may increase market entry as they will decrease the need for foreign banking entities to rely only on a narrow set of unaffiliated market intermediaries for the purposes of avoiding the compliance costs associated with the 2013 final rule. Additionally, the proposed amendments may increase operational efficiency of trading activity by foreign banking entities in the United States, which may decrease costs to market participants and may increase the level of market participation by U.S-dealer affiliates of foreign banking entities.

The proposed amendments would also affect competition among banking entities. These amendments may introduce competitive disparities between U.S. and foreign banking entities. Under the proposed amendments, foreign banking entities would enjoy a greater degree of flexibility in financing proprietary trading and transacting through or with U.S. counterparties. At the same time, U.S. banking entities would not be able to engage in proprietary trading and would be subject to the substantive prohibitions of section 13 of the BHC Act. To the extent that banking entities at the holding company level may be able to reorganize and move their business to a foreign jurisdiction, some U.S. banking entity holding companies may exit from the U.S. regulatory regime. However, under sections 4(c)(9) and 4(c)(13) of the Banking Act, domestic entities would have to conduct the majority of their business outside the United States to become eligible for the exemption. In addition, certain changes in control of banks and bank holding companies require supervisory approval. Hence, the feasibility and magnitude of such regulatory arbitrage remain unclear.

To the extent that foreign banking entities currently engage in cleared and anonymous transactions through or with U.S. counterparties because of the existing counterparty prong but would have chosen not to do so otherwise, the proposed approach may reduce the amount of cleared transactions and the trading volume in anonymous markets. This may reduce opportunities for risk-sharing among market participants and increase idiosyncratic counterparty risk born by U.S. and foreign counterparties.

At the same time, the proposed amendments may increase the availability of liquidity and reduce transaction costs for market participants seeking to trade in U.S. securities markets. To the extent that non-U.S. banking entities will face lower costs of transacting with U.S. counterparties, it may become easier for U.S. banking entities or customers to find a transaction counterparty that would be willing to engage in, for instance, hedging transactions. To that extent, U.S. market participants accessing securities markets to hedge financial and commercial risks may increase their hedging activity and assume a more efficient amount of risk. The potential consequences of relocation of non-U.S. banking entity activity to the United States on liquidity and risk sharing would be most concentrated in those asset classes and market segments where activity is most constrained by current requirements.

f. Metrics Reporting

i. Regulatory Baseline

The regulatory baseline against which we are assessing proposed amendments includes requirements for banking entities with consolidated trading assets and liabilities above $10 billion to record and report certain quantitative measurements for each trading desk engaged in covered trading.[365] The metrics-reporting requirements currently in place were intended to facilitate monitoring of patterns in covered trading activities and to identify activities that may warrant further review for compliance with the restrictions on proprietary trading of section 13 of the BHC Act and the implementing rules.

Specifically, the quantitative measurements reported under the baseline were intended to assist banking entities and the SEC in achieving the following: A better understanding of the scope, type, and profile of covered trading activities; identification of covered trading activities that warrant further review or examination by the banking entity to verify compliance with the rule's proprietary trading restrictions; evaluation of whether the covered trading activities of trading desks engaged in permitted activities are consistent with the provisions of the permitted activity exemptions; evaluation of whether the covered trading activities of trading desks that are engaged in permitted trading activities (*i.e.,* underwriting and market making-related activity, risk-mitigating hedging, or trading in certain government obligations) are consistent with the requirement that such activity not result, directly or indirectly, in a material exposure to high-risk assets or high-risk trading strategies; identification of the profile of particular covered trading activities of the banking entity, and its individual trading desks, to help establish the appropriate frequency and scope of the SEC's examinations of such activity; and the assessment and addressing of the risks associated with the banking entity's covered trading activities.[366]

Under the regulatory baseline, dealers affiliated with banking entities that have less than $10 billion in consolidated trading assets and liabilities are not subject to the 2013 final rule's metrics reporting and recordkeeping requirements. Group A entities (*i.e.,* SEC registrants affiliated with banking entities that have more than $10 billion in consolidated trading assets and liabilities) are required to record and report the following quantitative measurements for each trading day and for each trading desk engaged in covered trading activities: (i) Risk and Position Limits and Usage; (ii) Risk Factor Sensitivities; (iii) Value-at-Risk and Stress Value-at-Risk; (iv) Comprehensive Profit and Loss Attribution; (v) Inventory Turnover; (vi) Inventory Aging; and (vii) Customer-Facing Trade Ratio.

Currently, Group A entities affiliated with banking entities that have less than $50 billion in consolidated trading assets and liabilities are required to report metrics for each quarter within 30 days of the end of that quarter. In contrast, Group A entities affiliated with banking entities with total trading assets and liabilities equal to or above $50 billion are required to report metrics more frequently—each month within 10 days of the end of that month.[367] Table 2 quantifies the number and trading book of SEC-registered broker-dealers affiliated with firms above and below the $10 billion and $50 billion thresholds.

ii. Costs and Benefits

We understand that the current metrics reporting and recordkeeping requirements may involve large compliance costs. For instance, the

[365] *See* 2013 final rule § ____.20(d) and Appendix A.

[366] *See* 2013 final rule § ____.20 and Appendix A.

[367] *See* 2013 final rule § ____.20(d)(3).

average cost of collecting and filing metrics subject to the reporting requirements may be as high as $2 million per year per participant, and market participants may submit an average of over 5 million data points in each filing.[368] One firm reported incurring approximately $3 million in costs associated with the build out of new IT infrastructure and system enhancements, and estimated that this IT infrastructure will require at least $250,000 in maintenance and operating costs year-to-year. [369] In addition, the same firm estimated costs related to compliance consultants assisting with the construction of a 2013 final rule compliance regime at $3 million.[370]

The proposed amendments streamline the metrics reporting and recordkeeping requirements, eliminating or adding particular metrics on the basis of regulatory experience with the data and providing some entities with additional reporting time. Broadly, metrics reporting provides information for regulatory oversight and supervision but presents compliance burdens for registrants. The balance of these effects turns on the value of different metrics in evaluating covered trading activity for compliance with the rule, as well as their usefulness for risk assessment and general supervision. We discuss these effects with respect to each proposed amendment in the sections that follow.

A. Reporting and Recordkeeping Burden for SEC-Regulated Banking Entities

In section V.B, the Agencies estimate that extending the reporting period for banking entities with $50 billion or more in trading assets and liabilities from10 days to 20 days after the end of each calendar month may decrease the initial setup cost by $85,399 and ongoing annual reporting cost by $358,677 for broker-dealers, as well as initial setup cost decrease of up to $100,123 and ongoing reporting costs decrease of up to $420,517 for SBSDs that choose to register with the SEC.[371] In addition, the change to the reporting period for banking entities with $50 billion or more in trading assets and liabilities may result in ongoing annual recordkeeping cost savings of $76,859 for broker-dealers and up to $90,111 for SBSDs.[372] These figures reflect the estimated burden reductions net of any new systems costs imposed by the proposed amendments and discussed in greater detail in the section that follows.

The proposed amendments generate both costs (from new reporting requirements) and savings (from limitations to the scope of certain metrics and reduced analytical burden). To the extent that the costs of compliance with the existing metrics requirements have a significant fixed cost component and may be sunk, the potential cost savings of the proposed amendments may be reduced. The SEC recognizes that while these amendments will reduce the aggregate metrics reporting and recordkeeping burden across all types of banking entities, the allocation of these costs and benefits may differ across banking entity types. For example, one of the proposed amendments replaces the Inventory Turnover and Customer-Facing Trade Ratio metrics with Positions and Transaction Volumes metrics, and limits the scope of these metrics to trading desks engaged in market-making and underwriting activities. Because SEC-registered dealers are routinely engaged in market-making and underwriting activities, we preliminarily expect that a greater share of the costs associated with the Positions and Transaction Volumes metrics, such as the costs associated with tagging intra-company and inter-affiliate transactions for purposes of the Transaction Volumes metric, may fall on SEC-regulated entities, while a greater share of the savings, such as the savings associated with the elimination of this reporting requirement for desks engaged solely in risk-mitigating hedging activities, may be allocated to non-SEC-regulated banking entities.

The SEC preliminarily believes reporters will need to modify existing systems to comply with the proposed amendments.[373] On the basis of its experience in similar rulemakings, the SEC believes that the costs necessary to modify existing systems used to comply with the proposed metrics reporting and recordkeeping amendments[374] would depend on the particular structure and activities of each SEC-regulated banking entity's trading desks.[375] In order to allocate the estimated aggregate costs across the various proposed amendments, we make several assumptions about the relative costs of the proposed amendments, as described below. These assumptions are based on the SEC's experience with reporters, as well as the SEC's preliminary belief that the most significant component of the estimated costs will be the initial implementation cost for the new reporting requirements.

The primary systems-related costs of approximately $120,000 to $130,000, estimated at the level of the reporter, will come from: (i) Personnel costs associated with preparing the written Narrative Statement for a single reporter that is not already providing this information ($11,000); (ii) costs related to providing data in relation to the Positions and Transaction Volumes metrics that is more granular than is

[368] *See supra* note 18.

[369] *Id.*

[370] To the extent that costs related to compliance consulting include both costs of metrics reporting and related systems, as well as costs related to other compliance requirements under the 2013 final rule, we cannot estimate the firm's all-in metrics reporting costs.

[371] Initial setup cost reduction for broker-dealers: 40 hours per firm × 0.18 weight × (Attorney at $409 per hour) × 29 firms = $85,399. Initial setup cost reduction for entities that may register as SBSDs: 40 hours per firm × 0.18 weight × (Attorney at $409 per hour) × 34 firms= $100,123. Ongoing reporting cost reduction for broker-dealers: 14 hours per response × 12 responses per year × 0.18 weight × (Attorney at $409 per hour) × 29 firms= $358,677. Ongoing reporting cost reduction for SBSDs: 14 hours per response × 12 responses per year × 0.18 weight × (Attorney at $409 per hour) × 34 firms = $420,517. The estimate for SBSDs assumes that all 34 SBSDs have more than $50 billion in trading assets and liabilities.

[372] Ongoing recordkeeping cost reduction for broker-dealers: 3 hours per response × 12 responses per year × 0.18 weight × (Attorney at $409 per hour) × 29 firms = $76,859. Ongoing recordkeeping cost reduction for SBSDs: 3 hours per response × 12 responses per year × 0.18 weight × (Attorney at $409 per hour) × 34 firms = $90,111. The estimate for SBSDs assumes that all 34 have more than $50 billion in trading assets and liabilities.

[373] In addition, SEC-regulated banking entities may incur costs associated with reporting metrics in accordance with the XML Schema published on each Agency's website. We discuss these costs below.

[374] We believe that affiliated SEC-regulated banking entities will collaborate with one another to take advantage of efficiencies that may exist and have factored that assumption into our analysis.

[375] This estimate also includes personnel costs associated with preparing the proposed narrative statement. These cost estimates are based, in part, on staff experience, as well as consideration of recent estimates of the one-time and ongoing systems costs associated with other SEC rulemakings. *See, e.g.,* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, Exchange Act Release No. 78321 (July 14, 2016), 81 FR 53546, 53629 (Aug. 12, 2016) (estimating the one-time costs for trade execution platforms and registered clearing agencies to develop transaction processing systems and report transaction-level information to swap data repositories); *see also* Trade Acknowledgment and Verification of Security-Based Swap Transactions, Exchange Act Release No. 78011 (June 8, 2016), 81 FR 39807, 39839 (June 17, 2016) (estimating the one-time costs for registered security-based swap dealers and major participants to develop internal order and trade management systems to electronically process transactions and send trade acknowledgments).

Although the substance and content of systems associated with reporting transaction-level information to swap data repositories and derivatives counterparties would be different from the substance and content of systems associated with reporting quantitative measurements of covered trading activity, the costs associated with the proposed amendments, like the costs associated with the referenced security-based swap rules, would entail gathering and maintaining transaction-level information, and planning, coding, testing, and installing relevant system modifications.

currently required for the Inventory Turnover and Customer Facing Trade Ratio metrics ($8,000); (iii) systems costs related to reporting intra-company and inter-affiliate transactions under the Positions and Transaction Volumes metrics ($7,000); (iv) initial implementation costs for the Quantitative Measurements Identifying Information metric ($26,000); (v) ongoing costs related to the Quantitative Measurements Identifying Information metric ($3,000); (vi) one-time costs of establishing and implementing systems in accordance with the XML Schema ($75,000). As discussed above, we preliminarily believe that the net burden savings estimated in section V.B and monetized in the previous section reflect these new systems costs, as well as gross cost savings from the proposed amendments. We discuss these costs, as well as potential benefits of the proposed amendments, in greater detail below.

The SEC further considered how to assess the costs of the proposed rule for SEC-regulated banking entities. The metrics costs are generally estimated at the holding company level for 17 reporters.[376] We then allocate these costs to the affiliated SEC-regulated banking entity.[377] We preliminarily believe that estimating the cost savings of the proposal at the individual registrant level would be inconsistent with our understanding of how these entities are complying with the current metrics reporting requirement. Specifically, we anticipate that SEC-regulated banking entities within the same corporate group will collaborate with one another to comply with the proposed amendments, to take advantage of efficiencies of scale. Further, we note that individual SEC-regulated banking entities may vary in the scope and type of activity they conduct and that not all entities within an organization subject to Appendix A engage in the types of covered trading activity for which metrics must be reported. Thus, to the extent that metrics compliance occurs at the holding company level, estimating costs at the registrant level may overstate the magnitude of the costs and cost savings for SEC-regulated entities from the proposed amendments.

We considered an alternative approach to estimating costs of the proposed metrics amendments—specifically, doing so at the trading desk level. We anticipate that individual trading desks and their personnel may not be directly involved in complying with the full scope of the proposed amendments. For example, the Quantitative Measurements Identifying Information and the Narrative Statement must be prepared and reported collectively for all relevant trading desks. We also expect that trading desks within the same holding company could share systems to implement many of the proposed amendments to the quantitative measurements. Thus, a cost estimate at the trading desk level may not be an accurate proxy of the costs of the proposed amendments to SEC-regulated banking entities. Hence, such an analytical approach is likely to overestimate the total cost savings of the proposed amendments to SEC-regulated entities.

B. Elimination, Replacement, and Streamlining of Certain Metrics

The proposed amendments replace the Inventory Aging metric with a Securities Inventory Aging metric and eliminate the Inventory Aging metric for derivatives. In addition, the proposed amendments remove the requirement to establish and report limits on Stressed Value-at-Risk (VaR) at the trading desk level, replace the Customer-Facing Trade Ratio metric with a new Transaction Volumes metric, replace Inventory Turnover with a new Positions metric (reflecting both securities and derivatives positions), streamline valuation of metrics calculations for comparability, limit certain metrics to market-making and underwriting desks, modify instructions for metrics reporting, including with respect to profit and loss attribution, and remove metrics that can be calculated from other reported measurements.

In general, the key economic tradeoff from metrics reporting is between compliance burdens, which may be particularly significant for smaller Group A entities, and the amount and usefulness of information provided for regulatory oversight of the 2013 final rule, as well as for general supervision and oversight. The proposed limitation of certain metrics to market-making and underwriting desks, elimination of the inventory aging metric, and removal of the Stressed VaR risk limit requirements may reduce burdens related to reporting and recordkeeping for Group A entities. As proprietary trading activity is inherently difficult to distinguish from permitted market making, risk-mitigating hedging, or underwriting activity, certain metrics may provide additional information that is useful for regulatory oversight. However, eliminating inventory turnover and Stressed VaR metrics should not reduce the benefits of metrics reporting, as, these metrics do not enable a clear identification of prohibited proprietary trading or exempt market-making, risk-mitigating hedging, or underwriting activities.

The proposed amendments replace the Inventory Turnover metric with the Positions quantitative measurement and replace the Customer-Facing Trade Ratio metric with the Transaction Volumes quantitative measurement. The Inventory Turnover and Customer-Facing Trade Ratio metrics are ratios that measure the turnover of a trading desk's inventory and compare the transactions involving customers and non-customers of the trading desk, respectively. The proposed Positions and Transaction Volumes metrics would provide information about risk exposure and trading activity at a more granular level. Specifically, the proposed rule requires that banking entities provide the relevant Agency with the underlying data used to calculate the ratios for each trading day, rather than providing more aggregated data over 30-, 60-, and 90-day calculation periods. By providing more granular data, the proposed Positions metric, in conjunction with the proposed Transaction Volumes metric, is expected to provide the SEC with the flexibility to calculate inventory turnover ratios and customer-facing trade ratios over any period of time, including a single trading day, allowing the use of the calculation method we find most effective for monitoring and understanding trading activity.

In addition, the new Positions and Transaction Volumes metrics will distinguish between securities and derivatives positions, unlike the Inventory Turnover and Customer-Facing Trade Ratio metrics. The proposed Positions and Transaction Volumes metrics would require a banking entity to separately report the value of securities positions and the value of derivatives positions. While the current Inventory Turnover and Customer-Facing Trade Ratio metrics require banking entities to use different methodologies for valuing securities positions and derivatives positions because of differences between these asset classes, these metrics currently require banking entities to aggregate

[376] The SEC currently receives metrics from 19 entities, including two reporters that are below $10 billion in trading assets and liabilities, and two reporters that belong to the same holding company. Since voluntary reporters are not constrained by the requirements of the proposed amendment, they are not reflected in our cost estimates. In addition, we believe that the additional systems costs estimated here will be incurred at the holding company level and scope in the trading activity of all SEC-registered banking entity affiliates.

[377] *See supra* note 321.

such values for reporting purposes. By combining separate and distinct valuation types (*e.g.,* market value and notional value), the Inventory Turnover and Customer-Facing Trade Ratio metrics are currently providing less meaningful information than was intended. Therefore, requiring banking entities to disaggregate the value of securities positions and the value of derivatives positions for reporting purposes may enhance the usability of this information.

In addition to requiring separate reporting of the value of securities positions and the value of derivatives positions, the proposed rule would also streamline valuation method requirements for different product types. We understand that certain valuation methodologies currently required by the Inventory Turnover and the Customer-Facing Trade Ratio metrics may not be otherwise used by banking entities (*e.g.,* for internal monitoring or external reporting purposes). Furthermore, current requirements result in information being aggregated and furnished to the SEC in non-comparable units. Therefore, the proposed requirement to report notional and market value for all derivatives positions may further enhance the usability of the information provided in the Positions and Transaction Volumes metrics.

Moreover, the valuation methods required under the proposed rule are intended to be more consistent with our understanding of how banking entities value securities and derivatives positions in other contexts, such as internal monitoring or external reporting purposes, which may allow them to leverage existing systems and reduce ongoing costs relatively to the costs of current reporting requirements. While a banking entity may incur one-time costs in modifying how it values certain positions for purposes of metrics reporting, we do not expect such systems costs to be significant, particularly if the banking entity is able to use the systems it currently has in place for purposes of metrics reporting to value positions consistent with the proposed rule.

Notably, the SEC does not anticipate that requiring banking entities to provide more granular data in the Positions and Transaction Volumes metrics will significantly alter the costs associated with the current Inventory Turnover and Customer-Facing Trade Ratio metrics. The Positions and Transaction Volumes metrics are based on the same underlying data regarding the trading activity of a trading desk as the Inventory Turnover and Customer-Facing Trade Ratio metrics, so we expect that banking entities already keep records of these data and have systems in place that collect these data. However, the SEC anticipates that reporting more granular information in the Positions and Transaction Volumes metrics may result in costs of $24,480.[378]

Similar to the Customer-Facing Trade Ratio, the proposed Transaction Volumes metric would require banking entities to identify the value and the number of transactions a trading desk conducts with customers and non-customers. However, the proposed Transaction Volumes metric would add two additional categories of counterparties to capture the value and number of internal transactions a trading desk conducts. These include transactions booked within the same banking entity (intra-company) and those booked with an affiliated banking entity (inter-affiliate). These additional categories of information should facilitate better classification of internal transactions, which may assist the SEC in evaluating whether the trading desk's activities are consistent with the requirements of the exemptions for underwriting or market making-related activity. The SEC estimates that modifying the current requirements of the Customer-Facing Trade Ratio to require SEC-regulated banking entities to further categorize trading desk transactions may impose additional systems costs related to tagging internal transactions and maintaining associated records valued at $21,420.[379]

In addition, we anticipate that the proposed Positions and Transaction Volumes metrics may reduce costs compared to the current reporting requirements by limiting the scope of trading desks that must provide the position- and trade-based data that is currently required by the Inventory Turnover and Customer-Facing Trade Ratio metrics. Under the 2013 final rule, banking entities are required to calculate and report the Inventory Turnover and the Customer-Facing Trade Ratio metrics for all trading desks engaged in covered trading activity. The proposal would limit the scope of trading desks for which a banking entity would be required to calculate and report the Positions and Transaction Volumes metrics to only those trading desks engaged in market making-related activity or underwriting activity. As noted above, we do not expect SEC-regulated banking entities to realize the same amount of cost savings as other banking entities would with respect to this aspect of the proposed rule, since SEC-regulated banking entities are the entities that typically engage in market making-related and underwriting activities.

C. New Qualitative Information: Trading Desk, Narrative Statement, and Descriptive Information

The proposed amendments require banking entities to provide additional information. Specifically, the proposal requires entities to provide: (1) Desk level qualitative information about the types of financial instruments the desk uses and covered trading activity the desk conducts, and about the legal entities into which the trading desk books trades; (2) a narrative describing changes in calculation methods, trading desk structure, or trading desk strategies; (3) descriptive information about reported metrics, including information uniquely identifying and describing risk measurements and identifying the relationships of these measurements within a trading desk and across trading desks.

D. Trading Desk Information and Narrative Statement

As recognized in Appendix A of the 2013 final rule, the effectiveness of particular quantitative measurements may differ depending on the profile of a particular trading desk, including the types of instruments traded and trading activities and strategies.[380] Thus, the additional qualitative information the Agencies propose to collect in the Trading Desk Information provision may facilitate SEC review and analysis of covered trading activities and reported metrics. For instance, the proposed trading desk description may help the SEC assess the risks associated with a given activity and establish the appropriate frequency and scope of examination of such activity.

The Agencies are also proposing to require banking entities to provide a Narrative Statement that describes any changes in calculation methods used, a description of and reasons for changes in the trading desk structure or trading desk strategies, and when any such change occurred. The Narrative Statement must also include any information the banking entity views as

[378] The SEC anticipates that costs associated with the more granular reporting in the Positions and Transaction Volumes metrics will be $8,000 per affiliated group of SEC-regulated banking entities. ($8,000 × 17 reporters × 0.18 SEC-registered banking entity weight) = $24,480.

[379] The SEC estimates that the additional costs associated with categorizing transactions under the Transaction Volumes metric will be $7,000 per reporter. ($7,000 × 17 reporters × 0.18 SEC-registered banking entity weight) = $21,420.

[380] *See* 79 FR at 5798.

relevant for assessing the information reported, such as further description of calculation methods used. If a banking entity does not have any information to report in the Narrative Statement, it must submit an electronic document stating that it does not have any information to report. The Narrative Statement will provide banking entities with an opportunity to describe and explain unusual aspects of the data or modifications that may have occurred since the last submission, which may facilitate better evaluation of the reported data.

The SEC anticipates that the proposed Trading Desk Information and Narrative Statement may enhance the efficiency of data review by regulators. Having access to both quantitative data and qualitative information for trading desks in each submission may allow the SEC to consider the specifics of each trading desk's activities during the reporting period, which may facilitate our ability to monitor patterns in the quantitative measurements.

We note that all the SEC-regulated entities that currently report Appendix A metrics are also currently providing certain elements of the proposed Trading Desk Information to the SEC. Therefore, we preliminarily believe that the costs of gathering the relevant Trading Desk Information as well as the benefits of this requirement may be de minimis.

The costs associated with preparing the Narrative Statement will depend on the extent to which a banking entity modifies its calculation methods, makes changes to a trading desk's structure or trading strategies, or otherwise has additional information that it views as relevant for assessing the information reported. Preparation of a Narrative Statement is expected to be a more manual process involving a written description of pertinent issues. However, all but one SEC reporter already provides a narrative with every submission. Thus, the proposed Narrative Statement requirement is expected to result in ongoing personnel and monitoring costs of only $1,980.[381] Since only one SEC reporter is likely to be affected by this amendment, we believe the benefits of the requirement will be de minimis.

E. Quantitative Measurements Identifying Information

The Agencies are proposing to require banking entities to report a Risk and Position Limits Information Schedule, a Risk Factor Sensitivities Information Schedule, a Risk Factor Attribution Schedule, a Limit/Sensitivity Cross-Reference Schedule, and a Risk Factor Sensitivity/Attribution Cross-Reference Schedule. This additional information may improve our understanding of how reported limits and risk factors relate to each other for one or more trading desks, both within the same reporting period and across reporting periods. The SEC preliminarily believes that, while these new reporting elements may increase compliance costs for banking entities, the information contained in the reports may allow for more meaningful interpretation of quantitative metrics data.

Banking entities will incur certain initial implementation costs to develop these schedules of information, including costs associated with developing unique identifiers for all limits, risk factor sensitivities, and risk factor or other factor attributions used by the banking entity and brief descriptions of all such limits, sensitivities, and factors. This will include personnel costs to prepare the descriptions and systems costs to collect and maintain the relevant information for each schedule. The SEC estimates initial implementation costs associated with the proposed Quantitative Measurements Identifying Information at $79,560.[382] There will also likely be ongoing maintenance costs associated with updating and storing the information schedules and ongoing monitoring costs to ensure that the information schedules continue to accurately describe the banking entity's reported limits, sensitivities, and factors over time. However, since this information is not expected to change significantly from reporting period to reporting period, banking entities should be able to routinize the preparation of these information schedules to minimize or mitigate ongoing costs. We estimate the proposed Quantitative Measurements Identifying Information will result in $9,180 of ongoing costs.[383] To limit burdens associated with reporting the identifying and descriptive information covered by the Quantitative Measurements Identifying Information, the proposed rule requires a banking entity to report this information in the relevant information schedule for the entire banking entity rather than for each trading desk.

F. XML Format

The Agencies are proposing to require banking entities to submit the Trading Desk Information, the Quantitative Measurements Identifying Information, and each applicable quantitative measurement in accordance with the XML Schema specified and published on the relevant Agency's website.[384] The metrics are not currently required to be reported in a structured format, and banking entities are currently reporting quantitative measurement data electronically. On the basis of discussions with metrics reporters, most of these entities indicated a familiarity with XML, and further, several indicated that they use XML internally for other reporting purposes. In addition, we note that banks currently submit quarterly Reports of Condition and Income (''Call Reports'') to the Federal Financial Institutions Examination Council (''FFIEC'') Central Data Repository in eXtensible Business Reporting Language (''XBRL'') format, an XML-based reporting language, so they are generally familiar with the processes and technology for submitting regulatory reports in a structured data format. We believe that familiarity with these practices at the bank level will facilitate the implementation of these practices for affiliated SEC registrants. Furthermore, FINRA requires its member broker-dealers to file their FOCUS Reports in a structured format through its eFOCUS system.[385] The eFOCUS system permits broker-dealers to import the FOCUS Report data into a filing using an Excel, XML, or text file. Therefore, the SEC preliminarily believes that all SEC-registered dealers covered by the metrics reporting and recordkeeping requirements have experience applying the XML format to their data.

Reporting metrics and other information in XML allows data to be

[381] The SEC estimates that costs associated with the proposed Narrative Statement will be $11,000 per affiliated group of SEC-regulated banking entities. ($11,000 × 1 reporter × 0.18 entity) = $1,980.

[382] The SEC estimates that the costs associated with the initial implementation of the Quantitative Measurements Identifying Information will be $26,000 per affiliated group of SEC-regulated banking entities. ($26,000 × 17 reporters × 0.18 entity weight) = $79,560.

[383] The SEC estimates that the ongoing costs associated with the Quantitative Measurements Identifying Information will be $3,000 per affiliated group of SEC-regulated banking entities per year. ($3,000 × 17 reporters × 0.18 entity weight) = $9,180.

[384] XML is an open standard, meaning that it is a technological standard that is widely available to the public at no cost. XML is also widely used across the industry.

[385] For example, FINRA members commonly use FINRA's Web EFT system, which requires that all data be submitted in XML. *See* Web EFT Schema Documentation and Schema Files, FINRA, *http://www.finra.org/industry/web-crd/web-eft-schema-documentation-and-schema-files*; *see also* Disclosure of Order Handling Information, Exchange Act Release No. 78309 (July 13, 2016), 81 FR 49431, 49499 (July 27, 2016). Information about FINRA's eFOCUS system is available at *http://www.finra.org/industry/focus.*

tagged, which in turn identifies the content of the underlying information. The data then becomes instantly machine-readable through the use of standard software. Requiring banking entities to submit the metrics in accordance with the XML Schema would enhance the ability to process and analyze the data. Once the data is in a structured format, it can easily be organized for viewing, manipulation, and analysis through the use of commonly used software tools and applications. Structured data allows users to discern patterns from large quantities of information much more easily than unstructured data. Structured data also facilitates users' abilities to dynamically search, aggregate, and compare information across submissions, whether within a banking entity, across multiple banking entities, or across multiple date ranges. The data supplied in a structured format could help the SEC identify outliers or trends that could warrant further investigation.

The XML Schema would also incorporate certain validations to help ensure consistent formatting among all reports—in other words, it would help ensure data quality. The validations are restrictions placed on the formatting for each data element so that data is presented comparably. Requiring banking entities to report using the XML Schema may help ensure timely access to the data in a format that is already consistent and comparable for automated machine-processing and analysis. However, these validations are not designed to ensure the underlying accuracy of the data. Any reports provided by banking entities under the proposed requirement would have to comply with these validations that are incorporated within the XML Schema; otherwise the reports would not be considered to have been provided using the XML Schema specified and published on the SEC's website.

Specifying the format in which banking entities must report information may help the Agencies ensure that we receive consistently comparable information in an efficient manner across banking entities. The costs associated with providing XML data lie in the specialized software or services required to make the submission and the time required to map the required data elements to the requisite taxonomy. In addition to enhanced viewing, manipulation, and analysis, the benefits associated with providing XML data lie in the enhanced validation tools that minimize the likelihood that data are reported with errors. Therefore, subsequent reporting periods may require fewer resources, relative to both initial reporting periods and the current reporting process.

We expect that the requirement to submit the Narrative Statement electronically will result in minimal information systems costs, as banking entities already have systems in place to submit information to the SEC electronically. However, the SEC recognizes that, as a result of the proposed amendments, banking entities will be required to establish and implement systems in accordance with the XML Schema that will result in one-time costs [386] of approximately $75,000 per holding company banking entity, on average, for an expected aggregate one-time cost of approximately $229,500.[387] Because we expect that XML reporting will result in a more efficient submission process, including validation of submissions, we anticipate that some of the implementation costs may be partially offset, over time, by these greater efficiencies.

G. Extended Time To Report

The proposed changes also extend the time to report metrics for different groups of filers. Because processes enabling reporting under tight deadlines may generally be costlier, we anticipate that the amended reporting requirements may marginally reduce compliance costs, particularly for filers with less sophisticated data and trading infrastructure. In addition, the amendments may result in fewer resubmissions by filers. To a limited extent, the proposed amendment may reduce the timeliness of data received from dealers, making supervision less agile. However, the SEC will continue to have access to quantitative metrics and related information through the standard examination and review process and existing recordkeeping requirements.

iii. Competition, Efficiency, and Capital Formation

Under the proposed amendments, Group A entities would incur lower costs of compliance with metrics-reporting requirements. To the extent that these compliance burdens may be significant for some Group A entities, and since Group B entities are not subject to any metrics requirements, smaller Group A entities around the threshold may become more competitive with Group B entities. Since metrics are reported only to the Agencies and are not publicly disseminated, this amendment does not change the scope of information available to investors. As such, we do not anticipate effects on informational efficiency to be significant. To the extent that some Group A entities are currently experiencing significant metrics-reporting costs and partially or fully passing them along to customers in the form of reduced access to capital or higher cost of capital, the proposed amendments may reduce costs of and increase access to capital. However, as estimated cost savings from the proposed amendments are small, we do not anticipate a substantial increase in access to capital as a result of the proposed amendments to metrics reporting requirements.

iv. Alternatives

The Agencies could have taken alternative approaches. First, the Agencies could keep the metrics being reported unchanged but increase or decrease the trading activity thresholds used to determine metrics recordkeeping and reporting by filers and the frequency of such reporting. For instance, the $10 billion trading activity threshold for quarterly reporting could be replaced by the $25 billion threshold. As shown in Table 2, we estimate that this alternative would affect 12 bank-

[386] These cost estimates are based in part on the SEC's recent estimates of the one-time systems costs associated with the proposed requirement that security-based swap data repositories (''SDRs'') make transaction-level security-based swap data available to the SEC in Financial products Markup Language (''FpML'') and Financial Information eXchange Markup Language (''FIXML''). *See* Establishing the Form and Manner with which Security-Based Swap Data Repositories Must Make Security-Based Swap Data Available to the Commission, Exchange Act Release No. 76624 (Dec. 11, 2015), 80 FR 79757 (Dec. 23, 2015) (''SBS Taxonomy rule proposing release''). The SBS Taxonomy rule proposing release estimates a one-time cost per SDR of $127,000. Although the substance of reporting associated with the metrics is different from the information collected and made available by SDRs, the SEC expects similar costs to apply to the implementation of XML for the reporting metrics. In particular, on the basis of its experience with similar structured data reporting requirements in other contexts (*e.g.,* the SBS Taxonomy rule), the SEC expects that systems engineering fixed costs will represent the bulk of the costs related to the XML requirement. Among other things, the proposed SBS Taxonomy rule would require SDRs to make available to the SEC in a specific format (in this case, FpML or FIXML) transaction-level data that they are already required to provide. Similarly, the proposed metrics amendments would require banking entities to produce in XML metrics reports that they are already required (or will be required) to provide. However, our estimate is reduced to account for the fact that registered broker-dealers already provide eFOCUS reports to FINRA in XML and, therefore, must have the requisite systems in place. Our cost estimates include responsibilities for modifications of information technology systems to an attorney, a compliance Manager, a programmer analyst, and a senior business analyst and responsibilities for policies and procedures to an attorney, a compliance Manager, a senior systems analyst, and an operations specialist.

[387] The SEC computes total costs as follows: $75,000 × 17 reporters × 0.18 entity weight = $229,500.

affiliated SEC-registered broker-dealers. Under the alternative, these dealers would no longer be required to keep or report metrics, enjoying lower compliance burdens. However, the alternative reduces the amount and frequency of quantitative data available for regulatory oversight of banking entities. Similarly, lowering the recordkeeping and reporting thresholds would increase the scope of application of the metrics reporting requirement, increasing accompanying recordkeeping and reporting obligations as well as potential oversight and supervision benefits. However, we continue to recognize that while metrics being reported under the 2013 final rule do not allow a clear delineation of proprietary trading and market-making or hedging activities, they may be used to flag risks and enhance general supervision, as well as demonstrate prudent risk management.

In addition, the Agencies could have proposed eliminating the VaR requirement. Both VaR and Stressed VaR are based on firm-wide activity, and VaR limits may not be routinely used by banking entities to manage and control risk-taking activities at the desk level. The alternative would remove from Appendix A the requirement for VaR limits because such limits may not be meaningful at the trading desk level. This alternative may reduce the burden of reporting and compliance costs without necessarily reducing the effectiveness of regulatory oversight by the SEC.

The Agencies have also considered eliminating all quantitative metrics recordkeeping and reporting requirements under Appendix A of the 2013 final rule. This alternative would reduce the amount of data produced and transmitted to the Agencies. Appendix A metrics enable regulators to have a more complete picture of risk-taking and profit and loss attribution for supervised entities. However, the metric reporting regime is costly, and banking entities currently subject to the 2013 final rule and SEC oversight are also subject to other compliance and reporting requirements unrelated to the 2013 final rule, as well as the standard examination and review process. It is not clear that the Appendix A metrics are superior to internal quantitative risk measurements or other data (such as metrics in the FOCUS reports) reported by SEC registered broker-dealers in describing risk exposures and profitability of various activities by SEC registrants. Crucially, Appendix A metrics, such as VaR, dealer inventory, transaction volume, and profit and loss attribution, do not delineate a prohibited proprietary trade and a permitted market making, underwriting or hedging trade, particularly when executed in highly illiquid products and times of stress. Moreover, reporters' flexibility in defining the metrics may reduce their comparability. We recognize that while Appendix A metrics do not allow a clear identification of proprietary trading by SEC registrants, they may be used to flag risks and enhance general supervision, as well as demonstrate prudent risk management.

g. Covered Funds

Section 13 of the BHC Act generally prohibits banking entities from acquiring or retaining an ownership interest in, sponsoring, or having certain relationships with covered funds, subject to certain exemptions.[388] The SEC's economic analysis concerns the potential costs, benefits, and effects on efficiency, competition, and capital formation of the proposed covered fund amendments for four groups of market participants. First, the proposed amendments may impact SEC-registered investment advisers that are banking entities, including those that sponsor or advise covered funds and those that do not, as well as SEC-registered investment advisers that are not banking entities that sponsor or advise covered funds and compete with banking entity RIAs. Second, the proposed amendments affect the ability of bank-affiliated dealers to underwrite, make markets, or engage in risk-mitigating hedging transactions involving covered funds. Third, the proposed amendments impact private funds, including those funds scoped in or out of the covered fund provisions of the 2013 final rule, as well as private funds competing with such funds. Fourth, to the extent that the proposed amendments impact efficiency, competition, and capital formation in covered funds or underlying securities, investors in and sponsors of covered funds and underlying securities may be affected as well.

As discussed in greater detail below, the primary economic tradeoff posed by the proposed amendments to the covered fund provisions and other potential changes to these provisions on which the Agencies seek comment is the tradeoff between enhanced competition and capital formation in covered funds and the potential moral hazard and related financial risks posed by fund investments. To the extent that the current covered fund provisions limit fund formation, the proposed amendments and other amendments on which the Agencies seek comment could reduce long-term compliance costs and increase revenues for banking entities, and, as a result, increase capital formation. We are currently not aware of any information or data about the extent to which the covered fund provisions of the 2013 final rule are inhibiting capital formation in funds. Therefore, the bulk of the analysis below is necessarily qualitative.

i. Definition of ''Covered Fund''

Regulatory Baseline

The definition of ''covered fund'' impacts the scope of the substantive prohibitions on banking entities' acquiring or retaining an ownership interest in, sponsoring, and having certain relationships with covered funds. The covered fund provisions of the 2013 final rule may reduce the ability and incentives of banking entities to bail out affiliated funds to mitigate reputational risk; limit conflicts of interest with clients, customers, and counterparties; and reduce the ability of banking entities to engage in proprietary trading indirectly through funds. The 2013 final rule defines covered funds as issuers that would be investment companies but for section 3(c)(1) or 3(c)(7) of the Investment Company Act and then excludes specific types of entities from the definition. The definition also includes certain commodity pools as well as certain foreign funds, but only with respect to a U.S. banking entity that sponsors or invests in the foreign fund. Funds that rely on the exclusions in sections 3(c)(1) or 3(c)(7) of the Investment Company Act are covered funds unless an exemption from the covered fund definition is available; generally, funds that rely on other exclusions in the Investment Company Act, such as real estate and mortgage funds that rely on the exclusion in section 3(c)(5)(C), are not covered funds under the 2013 final rule.

The broad definition of covered funds above encompasses many different types of vehicles, and the 2013 final rule excludes some of them from the definition of a covered fund.[389] The excluded fund types relevant to the baseline are funds regulated under the Investment Company Act, that is, RICs and BDCs. Seeding vehicles for these funds are also excluded from the covered fund definition during their seeding period.[390]

[388] *See* 12 U.S.C. 1851.

[389] The exclusions from the covered fund definition are set forth in § ____.10(c) of the 2013 final rule.

[390] *See* 2013 final rule § ____.10(c)(12).

Scope of the Covered Fund Definition: Costs and Benefits

The Agencies are requesting comment on potential modifications to the covered fund definition. For instance, with respect to the foreign public funds exclusion, the Agencies are requesting comment as to whether to remove the condition that, for a foreign public fund sponsored by a U.S. banking entity, the fund's ownership interests are sold predominantly to persons other than the sponsoring banking entity, affiliates of the issuer and the sponsoring banking entity, and employees and directors of such entities. As another example, the Agencies are requesting comment as to whether to revise the exclusion to focus on the qualification of the fund in foreign jurisdictions and markets as eligible for retail sales, without including requirements related to the manner in which the fund's interests are sold, or to tailor the exclusion's use of the defined term ''distribution'' to address instances in which a fund's ownership interests generally are sold to retail investors in secondary market transactions, as with foreign exchange-traded funds. The Agencies are also requesting comment on excluding other funds, such as family wealth vehicles, from the scope of the covered fund definition. The Agencies are requesting comment on modifying the loan securitization exclusion to permit limited holdings of debt securities and synthetic instruments in addition to loans. As a final example, the Agencies are requesting comment on revising the covered fund definition to provide an exclusion focused on the characteristics of an entity rather than only whether it would be an investment company but for section 3(c)(1) or 3(c)(7) of the Investment Company Act or would otherwise come within the covered fund base definition.

Broadly, such modifications to the existing covered fund definition and additional exclusions would reduce the number and types of funds that are impacted by the 2013 final rule. Hence, these alternatives may decrease both the economic benefits and the economic costs of the 2013 final rule's covered fund provisions, as discussed further below.

Form ADV data is not always sufficiently granular to allow us to estimate the number of funds and fund advisers affected by the different modifications to the covered fund definition on which the Agencies are seeking comment. However, Table 3 and Table 4 in the economic baseline quantify the number and asset size of private funds advised by banking entity RIAs by the type of private fund they advise, as those fund types are defined in Form ADV. These fund types include hedge funds, private equity funds, real estate funds, securitized asset funds, venture capital funds, liquidity, and other private funds.

The Agencies are requesting comment on whether to tailor the covered funds definition by using a characteristics-based exclusion. For instance, the Agencies are requesting comment on whether the covered fund definition should exclude funds that are not hedge funds or private equity funds, as defined in Form PF. This would exclude other types of funds from the covered fund definition (such as venture capital, real estate, securitized asset, liquidity, and all other private funds, as those terms are defined in Form PF).

Using Form ADV data, we preliminarily estimate that approximately 173 banking entity RIAs advise hedge funds and 90 banking entity RIAs advise private equity funds.[391] As can be seen from Table 3 in the economic baseline, 43 banking entity RIAs advise securitized asset funds. Table 4 shows that banking entity RIAs advise 360 securitized asset funds with $120 billion in gross assets. Another 56 banking entity RIAs advise real estate funds, and banking entity RIAs advise 323 real estate funds with $84 billion in gross assets. Venture capital funds are advised by only 16 banking entity RIAs, and all 42 venture capital funds advised by RIAs have on aggregate approximately $2 billion in gross assets.

As noted elsewhere in this Supplementary Information, the covered fund provisions of the 2013 final rule may limit the ability of banking entities to engage in trading through covered funds in circumvention of the proprietary trading prohibition, reduce bank incentives to bailout their covered funds, and mitigate conflicts of interest between banking entities and its clients, customers, or counterparties. However, the covered fund definition in the implementing rules is broad, and some have argued that the rules currently in place may limit the ability of banking entities to conduct traditional asset management activities and to promote capital formation. The Agencies recognize that the covered fund provisions of the implementing rules, as currently in effect, may impose significant costs on some entities. The Agencies also understand that the breadth of the covered fund definition requires market participants to review hundreds of thousands of issuers, and potentially more, to determine if the issuers are covered funds as defined in the 2013 final rule. We understand that this has included a review of hundreds of thousands of CUSIPs issued by common types of securitizations for covered fund status.[392] The need to perform an in-depth analysis and make covered funds determinations across such a large scope of entities involves costs and may adversely affect the willingness of banking entities to own, sponsor, and have relationships with covered funds and financial instruments that may be covered funds. Moreover, the 2013 final rule's limitations on banking entities' investment in covered funds may be more significant for covered funds that are typically small in size, with potentially more negative spillover effects on capital formation in underlying securities.[393]

The potential modifications to the covered fund definition on which the Agencies are seeking comment would reduce further the scope of funds that need to be analyzed for covered fund status or would simplify this analysis and would enable banking entities to own, sponsor, and have relationships with certain groups of funds that are currently defined as a covered fund. Accordingly, these potential modifications may reduce costs of banking entity ownership, sponsorship, and transactions with certain private funds, may promote greater capital formation in, and competition among such funds, and may improve access to capital for issuers of underlying debt or equity. They may also benefit banking entity dealers through higher profits or more underwriting business. Reducing the covered fund restrictions by further tailoring the covered fund definition may encourage more launches of funds that are excluded from the definition, increasing capital formation and, possibly, competition in those types of funds. If competition increases the quality of funds available to investors or reduces the fees they are charged, investors in funds may benefit.

We do not observe the amount of capital formation in different types of covered funds or underlying equity and debt securities that does not occur because of the 2013 final rule. Because of the prolonged and overlapping implementation timeline of various

[391] As noted in the economic baseline, a single RIA may advise multiple types of funds.

[392] *See supra* note 18.

[393] We understand that, for instance, the median venture capital fund size in some locations is approximately $15 million. One fund may have lost as much as $50 million dollars in investment because of the prohibitions of section 13 of the BHC Act and implementing regulations. *See supra* note 18.

post-crisis reforms and because market participants restructured their trading and covered funds activities in anticipation of the implementing rules being effective, we cannot measure the counterfactual levels of capital formation and liquidity that would have been observed after the financial crisis, absent the covered fund provisions currently in place. Similarly, we cannot establish whether competition in covered funds is adversely affected by the covered fund definition currently in effect. We solicit any information, particularly quantitative data, that would allow us to estimate the magnitudes of the potential costs and benefits of the covered fund provisions on banking entity-affiliated broker-dealers and investment advisers advising the different types of funds discussed above and any effects on efficiency, competition, and capital formation in different types of funds and their underlying securities.

ii. Covered Funds: Underwriting, Market Making, and Risk-Mitigating Hedging Regulatory Baseline

Under the baseline, as described above, the 2013 final rule provides for market-making and hedging exemptions to the prohibition on proprietary trading. However, the 2013 final rule places tighter restrictions on the amount of underwriting, market making, and hedging a banking entity can engage in when those transactions involve covered funds. For underwriting and market-making transactions in covered funds, if the banking entity sponsors or advises a covered fund, or acts in any of the other capacities specified in § ____.11(c)(2) of the 2013 final rule, then any ownership interests acquired or retained by the banking entity and its affiliates in connection with underwriting and market making-related activities for that particular covered fund must be included in the per-fund and aggregate covered fund investment limits in § ____.12 of the 2013 final rule and subject to the capital deduction provided in § ____.12(d) of the 2013 final rule.[394] Additionally, a banking entity's aggregate investment in all covered funds is limited to 3 percent of a banking entity's tier 1 capital, and all banking entities must include ownership interests acquired or retained in connection with underwriting and market making-related activities for purposes of this calculation.[395] Moreover, hedging transactions in a covered fund are only permitted if the transaction mitigates risks associated with the compensation of a banking entity employee or an affiliate that provides advisory or other services to the covered fund.[396]

Costs and Benefits

The increased requirements imposed on SEC-registered dealers' transactions in covered funds relative to other securities mean that a dealer may not be able to make markets in a covered fund or may be limited in its ability to do so, even if the dealer may be able to make markets in the underlying securities owned by the covered fund or securities that are otherwise similar to the covered fund. The Agencies' proposed changes would provide banking entities greater flexibility in underwriting and market making in covered fund interests. Specifically, as discussed elsewhere in this Supplementary Information, for a covered fund that the banking entity does not organize or offer pursuant to § ____.11(a) or (b) of the 2013 final rule, the proposal would remove the requirement that the banking entity include, for purposes of the aggregate fund limits and capital deduction, the value of any ownership interests of the covered fund acquired or retained in connection with underwriting or market making-related activities. Under the proposed amendments, these limits, as well as the per fund limit, would only apply to a covered fund that the banking entity organizes or offers and in which the banking entity retains an ownership interest pursuant to § ____.11(a) or (b) of the 2013 final rule.

The proposed amendment aligns the requirements for underwriting and market making with respect to ownership interests in covered funds that the banking entity does not organize or offer, with requirements for engaging in these activities with respect to other financial instruments. We understand that the 2013 final rule's restrictions on underwriting and making-related activities involving covered funds impose costs on banking entities and may constrain their underwriting and market making in covered funds. Under the proposed amendments, banking entities would be able to engage in potentially profitable market making and underwriting in covered funds they do not organize or offer without the per-fund and aggregate limits and capital deductions. SEC-registered banking entities are expected to benefit from this amendment to the extent they profit from underwriting and market-making activities in such covered funds. In addition, these benefits may, at least partially, flow through to funds and fund investors. Specifically, banking entities may become more willing and able to underwrite and make markets in covered funds, and provide investors with more readily available economic exposure to the returns and risks of certain covered funds.

We recognize that ownership interests in covered funds expose owners to the risks related to covered funds. It is possible that covered fund ownership interests acquired or retained by a banking entity acting as an underwriter or engaged in market making-related activities may lead to losses for banking entities. However, we recognize that the risks of market making or underwriting of covered funds are substantively similar to the risks of market making or underwriting of otherwise comparable securities. Therefore, the same general tradeoffs discussed in section V.D.3.c of this Supplementary Information between potential benefits for capital formation and liquidity and potential costs related to moral hazard and market fragility apply to banking entities' underwriting and market-making activities involving covered funds and other types of securities.

Banking entities are also currently unable to retain ownership interests in covered funds as part of routine risk-mitigating hedging. These restrictions may currently be limiting banking entities' ability to hedge the risks of fund-linked derivatives through shares of covered funds referenced by fund-linked products. The Agencies recognized that, as a result of this approach, banking entities may no longer be able to participate in offering certain customer facilitating products relating to covered funds. The Agencies recognized that increased use of ownership interests in covered funds could result in exposure to greater risk.[397] Moreover, banking entities' transactions in fund-linked products that reference covered funds with customers can expose a banking entity to risk in cases where a customer fails to perform, transforming the banking entity's covered fund hedge of the customer trade into an unhedged, and potentially illiquid, position in the covered fund (unless and until the banking entity takes action to hedge this exposure and bears the corresponding costs).

The proposal expands the scope of permissible risk-mitigating hedging with covered funds. Specifically, under the proposal, in addition to being able to

[394] *See* 2013 final rule § ____.12(a)(2)(ii); *see also* § ____.11(c)(2).

[395] 2013 final rule § ____.12(a)(2)(iii); *see also* § ____.11(c)(3).

[396] 2013 final rule § ____.13(a).

[397] 79 FR at 5737.

acquire or retain an ownership interest in a covered fund as a risk-mitigating hedge with respect to certain compensation agreements as permitted under the 2013 final rule, the banking entity would also be able to acquire or retain an ownership interest in a covered fund when acting as an intermediary on behalf of a non-banking entity customer to facilitate exposure by the customer to the profits and losses of the covered fund.

The proposal is likely to benefit banking entities and their customers, as well as advisers of covered funds. The proposed amendments increase the ability of banking entities to facilitate customer-facing transactions while hedging their own risk exposure. As a result, this amendment may increase banking entity intermediation and provide customers with easier access to the risks and returns of covered funds. To the degree that banking entities' investments in covered funds to hedge customer-facing transactions may facilitate their engagement in customer-facing trades, customers of banking entities may benefit from greater availability of financial instruments providing exposure to covered funds and related intermediation. Access to covered funds may be particularly valuable when private capital plays an increasingly important role in U.S. capital markets and firm financing.

We also recognize that the proposed amendments may increase risks to banking entities. For instance, when a banking entity enters into a transaction with a customer that provides exposure to the profits and losses of a covered fund to a customer, even when such exposure is hedged, the banking entity may suffer losses if a customer fails to perform and fund investments are illiquid and decline in value. However, such counterparty default risk is present in any principal transaction in illiquid financial instruments, including when facilitating customer trades in the securities in which covered funds invest, as well as in market-making and underwriting activities. We note that, under the proposal, risk-mitigating hedging transactions involving covered funds would be conducted consistent with the requirements of the 2013 final rule, as modified by the proposal, including the requirements with respect to risk-mitigating hedging transactions. For example, such exposures would be subject to required risk limits and policies and procedures and would have to be appropriately monitored and risk managed. Therefore, it is not clear that hedging or customer facilitation in covered funds would pose a greater risk to banking entities than hedging or customer facilitation in similar securities that is permissible under the 2013 final rule.

Alternatives

An alternative would be to provide greater flexibility for underwriting, market making, and risk-mitigating hedging transactions involving covered fund interests. Specifically, the Agencies could consider eliminating the per-fund limit, aggregate fund limit, and capital deduction for a banking entity acting as an underwriter or engaged in market making-related activities with respect to a covered fund that the banking entity organizes and offers. The Agencies also could have proposed amending the 2013 final rule to provide that, in addition to the proposed amendment, banking entities should be permitted to acquire or retain ownership interests in covered funds as risk-mitigating hedging transactions where the acquisition or retention meets the requirements of § ____.5 of the 2013 final rule, as modified by the proposal. If the Agencies made all of these changes, this would provide dealers the same level of flexibility in underwriting, making markets in, or hedging with, covered funds as applied to these activities with respect to all other types of financial instruments, including the underlying financial instruments owned by the same covered funds.

Compliance with current rules for covered funds imposes costs on banking entities. To the extent that, under the baseline, such costs prevent dealer subsidiaries of banking entities from making markets in or underwriting certain financial instruments, the alternative would enable them to engage in potentially profitable market making in, underwriting, and hedging with, covered funds. Banking entity dealers could benefit from this alternative, to the extent they profit from underwriting and market-making activities in covered funds and to the extent that investing in covered funds to hedge a banking entity's exposure in transactions such as total return swaps reduce their risk profile.

The benefits of this alternative may also flow through to funds, investors, and customers. Under the alternative, banking entities would enjoy greater flexibility in transacting in covered funds with customers and in hedging banking entities' exposure with covered funds. As a result, banking entities may become more willing and able to underwrite and market products linked to covered funds and to provide customers with an economic interest in the profits and losses of covered funds. This may increase investor access to the returns and risks of private funds, which may be particularly valuable when issuers are increasingly relying on private capital and delaying public offerings. Finally, the increased ability of banking entities to transact in covered funds under the alternative may increase market quality for covered funds that are traded.

We continue to recognize that transactions in covered funds—including transactions with customers, and holdings of ownership interests in covered funds related to underwriting, market making, or hedging activities—necessarily involve the risk of losses. However, the risks of market making, underwriting, or hedging by banking entities of financial instruments underlying the covered fund, or financial instruments or securities that are otherwise similar to covered funds, are substantively similar. Therefore, the same tradeoffs discussed in section V.D.3.c in this **SUPPLEMENTARY INFORMATION** between potential benefits to capital formation and liquidity and potential costs related to moral hazard and market fragility apply to both banking entity interests from underwriting and market making in financial instruments and underwriting and market making in covered funds. It is not clear that the existence of a legal and management structure of a covered fund per se changes the economic risk exposure of banking entities, and, thus, the capital formation and other tradeoffs discussed above. We note that the alternative would simply involve a consistent treatment of financial instruments and funds as it pertains to underwriting, market making, and hedging activities. However, as discussed above in section V.D.1 of this **SUPPLEMENTARY INFORMATION**, some of the effects of the 2013 final rule's provisions are difficult to evaluate outside of economic downturns, and we are unable to measure the amount of capital formation or liquidity in covered funds or underlying products that does not occur because of the existing treatment of underwriting, market making, and hedging using covered funds.

iii. Restrictions on Relationships Between Banking Entities and Covered Funds Regulatory Baseline

Under the baseline, banking entities are limited in the types of transactions they are able to engage in with covered funds with which they have certain relationships. Banking entities that serve in certain capacities with respect to a covered fund, such as the fund's investment manager, adviser, or sponsor, are prohibited from engaging in a ''covered transaction,'' as defined in section 23A of the FR Act, with the covered fund.[398] This prohibits transactions such as loans, guarantees, securities lending, and derivatives transactions that cause the banking entity to have credit exposure to the affiliate. However, the 2013 final rule exempts from the prohibition any prime brokerage transaction with a covered fund in which a covered fund managed, sponsored, or advised by a banking entity has taken an ownership interest (a ''second-tier fund''). Therefore, banking entities with a relationship to a covered fund can engage in prime brokerage transactions (that are covered transactions) only with second-tier funds and not with all covered funds.[399]

Costs and Benefits

The Agencies request comments on whether the Agencies should amend § ____.14 of the 2013 final rule to incorporate the exemptions under section 23A of the FR Act and the Board's Regulation W, such as intraday extensions of credit that facilitate settlement.[400] As a result of the restrictions on covered transactions in the 2013 final rule, some banking entities may be outsourcing the provision of routine services to sponsored funds, such as custody and clearing services, to outside providers. We recognize that outsourcing such activities may adversely affect customer relationships, increase costs, and decrease operational efficiency for banking entities and covered funds. The changes on which the Agencies seek comment would provide banking entities greater flexibility to provide these and other services directly to covered funds. If being able to provide custody, clearing, and other services to sponsored funds reduces the costs of these services, fund advisers and, indirectly, fund investors, may benefit from incorporating the exemptions. We note that most direct benefits are likely to accrue to banking entity advisers to covered funds that are currently relying on third-party service providers as a result of the requirements of the 2013 final rule.

These changes would increase banking entities' ability to engage in custody, clearing, and other transactions with their covered funds and benefit banking entities that are currently unable to engage in otherwise profitable or efficient activities with covered funds they own or advise. Moreover, this could enhance operational efficiency and reduce costs incurred by covered funds, which are currently unable to rely on their affiliated banking entity for custody, clearing, and other transactions. Conversely, to the extent that this approach increases transactions between a banking entity and related covered funds, banking entities could incur any risks associated with these transactions, recognizing that the transactions would be subject to the limitations in section 23A of the FR Act and the Board's Regulation W, as well as § ____.14(b) of the 2013 final rule and other applicable laws.

iv. Covered Fund Activities and Investments Outside of the United States Regulatory Baseline

Under the 2013 final rule, foreign banking entities can acquire or retain an ownership interest in, or act as sponsor to, a covered fund, so long as those activities and investments occur solely outside the United States, no ownership interest in such fund is offered for sale or sold to a resident of the United States (the ''marketing restriction''), and certain other conditions are met. An activity or investment occurs solely outside of the United States if (1) the banking entity is not itself, and is not controlled directly or indirectly by, a banking entity that is located in the United States or established under the laws of the United States or of any state; (2) the banking entity (and relevant personnel) that makes the decision to acquire or retain the ownership interest or act as sponsor to the covered fund is not located in the United States or organized under the laws of the United States or of any state; (3) the investment or sponsorship, including any risk-mitigating hedging transaction related to an ownership interest, is not accounted for as principal by any U.S. branch or affiliate; and (4) no financing is provided, directly or indirectly, by any U.S. branch or affiliate. In addition, the staffs of the Agencies issued FAQs concerning the requirement that no ownership interest in such fund is offered for sale or sold to a resident of the United States.

Costs and Benefits

The proposed amendments remove the financing prong of the foreign funds exemption and codify the FAQs regarding marketing of foreign funds to U.S. residents.[401] Thus, under the proposed amendments, foreign banking entities would be able to acquire or retain ownership interests in and sponsor covered funds with financing provided directly or indirectly by U.S. branches and affiliates, including SEC-registered dealers. The costs, benefits, and effects on efficiency, competition, and capital formation of this amendment generally parallel those of the removal of the financing prong with respect to trading activity outside the United States in section V.D.3.e of this Supplementary Information.

Foreign banking entities may benefit from the proposed amendments and enjoy greater flexibility in financing their covered fund activity. Allowing foreign banking entities to obtain financing of covered fund transactions from U.S.-dealer affiliates may reduce costs of foreign banking entity activity in covered funds. The amendment may decrease the need for foreign banking entities to rely on foreign dealer affiliates solely for the purposes of avoiding the compliance costs and prohibitions of the 2013 final rule. This may increase operational efficiency of covered fund activity by foreign banking entities. To the extent that costs of compliance with the foreign fund exemption may currently represent barriers to entry for foreign banking entities' covered fund activities, the proposed amendment may increase foreign banking entities' sponsorship and financing of covered funds.

The economic exposure and risks of foreign banking entities' covered funds activities may be incurred not just by the foreign banking entities, but by U.S. entities financing the covered fund ownership interests, *e.g.,* through margin loans covering particular transactions. However, the proposal retains the requirement that the investment or sponsorship, including any related hedging, is not accounted for as principal by any U.S. branch or affiliate. We continue to note that moral hazard risks and concerns about the volume of U.S. banking entity risk-taking are less relevant when the covered fund activity is conducted by,

[398] *See* 2013 final rule § ____.14(a).

[399] *See* 2013 final rule § ____.14(c).

[400] The Agencies also are requesting comment as to whether the definition of ''prime brokerage transaction'' under the proposal is appropriate and, if not, what definition would be appropriate and which transactions should be included in the definition. The costs, benefits, and other implications of expansions to the definition of ''prime brokerage transaction'' would generally be similar to those associated with the potential changes to § ____.14 discussed in this section, except that they likely would be less significant because the statute permits prime brokerage transactions only with second-tier funds and does not extend to covered funds more generally.

[401] We understand that market participants have adjusted their activity in reliance on the FAQs regarding the marketing restriction. Hence, we preliminarily believe that the economic effects of the proposed amendment to reflect the position expressed in the staffs' FAQs are likely to be de minimis and we focus this discussion on the proposed removal of the financing prong.

and the risk consolidates to, foreign banking entities.

Competitive effects of this amendment may differ from the proposed amendment regarding trading activity outside of the United States. Under the proposed amendment to the foreign fund exemption, foreign banking entities will enjoy a greater degree of flexibility and potentially lower costs of financing covered fund transactions outside of the United States. Because the 2013 final rule's exemption for covered funds activities solely outside of the United States is available only to foreign banking entities, the proposed amendments may reduce costs for some foreign banking entities but need not affect the competitive standing of U.S. banking entities relative to foreign banking entities with respect to covered funds activities in the United States.

h. Definition of Banking Entity

As discussed elsewhere in this Supplementary Information, staffs of the Agencies have responded to questions raised regarding the potential treatment of RICs as banking entities as a result of a sponsor's seed investment, as well as issues related to FPFs and foreign excluded funds. The Agencies are continuing to consider the issues raised by the interaction between the 2013 final rule's definitions of the terms ''banking entity'' and ''covered fund,'' including the issues addressed by the Agencies' staffs and the Federal banking agencies discussed above. Accordingly, the Agencies have made clear that nothing in the proposal would modify the application of the staffs' FAQs discussed above, and the Agencies will not treat RICs or FPFs that meet the conditions included in the applicable staff FAQs as banking entities or attribute their activities and investments to the banking entity that sponsors the fund or otherwise may control the fund under the circumstances set forth in the FAQs. In addition, to accommodate the pendency of the proposal, for an additional period of one year until July 21, 2019, the Agencies will not treat qualifying foreign excluded funds that meet the conditions included in the policy statement discussed above as banking entities or attribute their activities and investments to the banking entity that sponsors the fund or otherwise may control the fund under the circumstances set forth in the policy statement. This section focuses on the seeding of RICs, because they are registered with the SEC (and applies to BDCs as well, which are regulated by the SEC). To the extent that the same considerations generally apply to the seeding of FPFs, the analysis below may be relevant for the seeding of these funds as well.[402]

The FAQ issued by the staffs related to seeding RICs and FPFs observed that the preamble to the 2013 final rule recognized that a banking entity may own a significant portion of the shares of a RIC or FPF during a brief period during which the banking entity is testing the fund's investment strategy, establishing a track record of the fund's performance for marketing purposes, and attempting to distribute the fund's shares. The FAQ recognizes that the length of a seeding period can vary and therefore provides an example of 3 years, the maximum period of time that could be permitted under certain conditions for seeding a covered fund under the 2013 final rule, without setting any maximum prescribed period for a RIC or FPF seeding period. The Agencies are seeking comment on whether this guidance has been effective, including questions as to whether the Agencies should specify a maximum period of time for a seeding period or, conversely, whether the current approach of not prescribing a fixed period of time for a seeding period is more effective in providing flexibility for funds that may need more time to develop a track record without having to specify a particular time period that will be appropriate for all funds.

The SEC understands that RICs (and FPFs) commonly require some time to establish a performance track necessary to market the fund effectively to third-party investors. Some funds will need a 3-year performance track record, and sometimes longer, to be distributed through certain intermediaries or to attract sufficient investor interest. For example, the SEC understands that some funds might need a 5-year track record to be distributed effectively.

On the one hand, providing a fixed period of time beyond which a seeding period for a RIC cannot extend would provide banking entities with greater certainty, which may incentivize banking entities to form new funds. On the other hand, the current approach of not prescribing a fixed period of time for a seeding period for a RIC may provide flexibility for funds that need more time to develop a track record. This approach would recognize that banking entities may be able to quickly reduce a seed investment in some RICs but not in others. However, the lack of certainty about the length of permissible seeding period could disincentivize a banking entity from sponsoring a RIC.

Another potential approach, on which the Agencies seek comment, would be to specify a fixed period of time for a seeding period while also permitting a banking entity to hold an investment beyond this fixed period if the banking entity complies with additional conditions, such as documentation of the business need for the sponsor's continued investment. This may provide benefits by providing more certainty to banking entities, while providing for the ability to exceed a fixed seeding period in appropriate circumstances.

In addition, longer seeding periods for RICs and FPFs extend the period of time during which a banking entity may be subject to the risks associated with the seed investment. We note, however, that RICs are subject to all of the requirements under the Investment Company Act, and the exclusion for FPFs is designed to identify foreign funds that are sufficiently similar to RICs such that it is appropriate to exclude these foreign funds from the covered fund definition. Therefore, although section 13 and the 2013 final rule under certain conditions permit a seeding period of up to 3 years for covered funds (which are not subject to substantive SEC regulation and are the target of section 13's restrictions), longer seeding periods for RICs and FPFs may not raise the same concerns.

i. Compliance Program

i. Regulatory Baseline

The 2013 final rule emphasized the importance of a strong compliance program and sought to tailor the compliance program to the size of banking entities and the size of their trading activity. The Agencies believed it was necessary to balance compliance burdens posed on smaller banking entities with specificity and rigor necessary for large and complex banking organizations facing high compliance risks. As a result, the current compliance regime is progressively

[402] This section does not focus on foreign excluded funds. The information the SEC collects on Form ADV does not allow the SEC to estimate the number of SEC-registered investment advisers that advise foreign excluded funds. For example, Form ADV does not require advisers with a principal office and place of business outside the United States to provide information on Schedule D of Part 1A with respect to any private fund that, during the last fiscal year, was not a U.S. person, was not offered in the United States, and was not beneficially owned by any U.S. person. Because foreign excluded funds are organized and offered outside of the United States by foreign banking entities, however, many foreign excluded funds may be advised by foreign banks or other foreign affiliates or subsidiaries that are not SEC-registered investment advisers. Therefore, we preliminarily believe that the proposal and any further modifications to the 2013 final rule on which the Agencies seek comment would likely primarily impact foreign activities of foreign banking entities and funds outside of the SEC's regulatory oversight.

more stringent with the size of covered activities and/or balance sheet of banking entities.

Under the 2013 final rule, all banking entities with covered activities must develop and maintain a compliance program that is reasonably designed to ensure and monitor compliance with section 13 of the BHC Act and the implementing regulations. The terms, scope, and detail of the compliance program depend on the types, size, scope, and complexity of activities and business structure of the banking entity.[403] Under the 2013 final rule, banking entities with total consolidated assets of less than $10 billion as reported on December 31 of the 2 previous calendar years face a simplified compliance program: Such entities are able to incorporate compliance with the 2013 final rule into their regular compliance policies and procedures by reference, adjusting as appropriate given the entities' activities, size, scope, and complexity.[404]

All other banking entities with covered activities are, at a minimum, required to implement a six-pillar compliance program. The six pillars include: (1) Written policies and procedures reasonably designed to document, describe, monitor and limit proprietary trading and covered fund activities and investments for compliance; (2) a system of internal controls reasonably designed to monitor compliance; (3) a management framework that clearly delineates responsibility and accountability for compliance, including management review of trading limits, strategies, hedging activities, investments, and incentive compensation; (4) independent testing and audit of the effectiveness of the compliance program; (5) training for personnel to effectively implement and enforce the compliance program; and (6) recordkeeping sufficient to demonstrate compliance.[405]

In addition, under the 2013 final rule, banking entities with covered activities that do not qualify as those with modest activity (total consolidated assets in excess of $10 billion) and that either are subject to the reporting requirements of Appendix A or have more than $50 billion in gross consolidated total assets are required to comply with the enhanced minimum standards for compliance programs that are specified in Appendix B of the 2013 final rule.[406] That is, Appendix B scopes in (1) all banking entities with significant trading assets and liabilities; and (2) banking entities with covered activity that have more than $50 billion in gross consolidated total assets, regardless of whether or not these banking entities have significant trading assets and liabilities.

As described in greater detail elsewhere in the Supplementary Information, Appendix B requires the compliance program to (1) be reasonably designed to supervise the permitted trading and covered fund activities and investments, identify and monitor the risks of those activities and potential areas of noncompliance, and prevent prohibited activities and investments; (2) establish and enforce appropriate limits on the covered activities and investments, including limits on the size, scope, complexity, and risks of the individual activities or investments consistent with the requirements of section 13 of the BHC Act and the 2013 final rule; (3) subject the compliance program to periodic independent review and testing and ensure the entity's internal audit, compliance, and internal control functions are effective and independent; (4) make senior management and others accountable for the effective implementation of the compliance program, and ensure that the chief executive officer and board of directors review the program; and (5) facilitate supervision and examination by the Agencies.

Additionally, under the 2013 final rule, any banking entity that has more than $10 billion in total consolidated assets as reported in the previous 2 calendar years shall maintain additional records in relation to covered funds. In particular, a banking entity must document the exclusions or exemptions relied on by each fund sponsored by the banking entity (including all subsidiaries and affiliates) in determining that such fund is not a covered fund, including documentation that supports such determination; for each seeding vehicle that will become a registered investment company or SEC-regulated business development company, a written plan documenting the banking entity's determination that the seeding vehicle will become a registered investment company or SEC-regulated business development company, the period of time during which the vehicle will operate as a seeding vehicle, and the banking entity's plan to market the vehicle to third-party investors and convert it into a registered investment company or SEC-regulated business development company within the time period specified.[407]

The Agencies recognize that the scope and breadth of the compliance obligations impose significant costs on banking entities, which may be particularly impactful for smaller entities. For example, some commenters estimate that banking entities may have added as many as 2,500 pages of policies, procedures, mandates, and controls per institution for the purposes of compliance with the 2013 final rule, which need to be monitored and updated on an ongoing basis.[408] Moreover, some banking entities may spend, on average, more than 10,000 hours on training each year.[409] In terms of ongoing costs, some banking entities may have 15 regularly meeting committees and forums, with as many as 50 participants per institution dedicated to compliance with the 2013 final rule.

The current compliance regime and related burdens may reduce the profitability of covered activities by dealers and investment advisers affiliated with banking entities and may be passed along to customers or clients in the form of reduced provision of services or higher service costs. Moreover, the Agencies recognize that the extensive compliance program under the 2013 final rule may detract resources of banking entities and their compliance departments and supervisors from other routine compliance matters, risk management, and supervision. Finally, prescriptive compliance requirements may not optimally reflect the organizational structures, governance mechanisms, or risk management practices of complex, innovative, and global banking entities.

ii. Costs and Benefits

The proposed amendments are expected to lower compliance burdens in two ways. First, the proposed amendments increase flexibility in complying with the 2013 final rule for banking entities without significant trading assets and liabilities, which may reduce compliance costs for these entities. Second, the proposed amendments streamline the compliance program for large banking entities. To the extent that current requirements are duplicative and maintaining both an enhanced compliance program and regular compliance systems is

[403] *See* 2013 final rule § ____.20(a).

[404] *See* 2013 final rule § ____.20(f). Note that if an entity does not have any covered activities, it is not required to establish a compliance program until it begins to engage in covered activity.

[405] *See* 2013 final rule § ____.20(b).

[406] *See* 2013 final rule § ____.20(c) and Appendix B.

[407] *See* 2013 final rule § ____.20(e).

[408] *See supra* note 18.

[409] *Id.*

inefficient, large entities may benefit from the proposed amendments. Specifically, the proposed amendments introduce four main changes to the compliance program requirements of the 2013 final rule.

First, Group C entities would be subject to presumed compliance with proprietary trading and covered fund prohibitions. Specifically, the rebuttable presumption of compliance would apply to all holding companies with less than $1 billion in combined total of consolidated trading assets and trading liabilities (excluding trading assets and liabilities involving obligations of or guaranteed by the United States or any agency of the United States). We preliminarily estimate that approximately 42 broker-dealers would be able to avail themselves of the rebuttable presumption and would not have to apply the 2013 final rule's compliance program requirements. The presumed compliance standard proposed for Group C entities may benefit entities with very low levels of trading activity by providing additional compliance flexibility. While this may increase the risks of non-compliance, the proposed amendments do not waive the proprietary trading and covered fund prohibitions of the 2013 final rule for such entities.

Second, the threshold for a simplified compliance program would be based on a banking entity's consolidated trading assets and liabilities instead of its total assets. The Agencies recognize that existing compliance program requirements may burden entities that engage in little covered trading activity but have larger total assets. The proposed amendment may reduce costs for banking entities that have more than $10 billion in total assets but do not have significant trading activity. Since the volume of consolidated trading assets and liabilities is likely less than the size of the firm's balance sheet, this amendment would scope in more holding companies—and consequently SEC-registered dealers and investment advisers affiliated with them—into the simplified compliance program regime.

Third, under the proposed amendments covered fund recordkeeping requirements apply to banking entities with significant trading assets and liabilities, rather than to banking entities with over $10 billion in total assets. As discussed above, the Agencies expect that the covered funds activities of banking entities without significant trading assets and liabilities may generally be smaller in scale and less complex than those of banking entities with significant trading assets and liabilities. Thus, the value of additional documentation requirements for banking entities without significant trading assets and liabilities may be lower. The proposal reflects these considerations and may reduce the costs associated with these covered funds recordkeeping requirements by reducing the number of banking entities subject to these requirements.[410] We note that entities with moderate trading assets and liabilities would still be required to comply with all the covered fund provisions, and the proposal simply eliminates recordkeeping for the purposes of demonstrating compliance. While, in general, the removal of such recordkeeping requirements may reduce the effectiveness of regulatory oversight, we preliminarily believe that SEC oversight of registered dealers and investment advisers of covered funds may not be adversely affected.

Fourth, with an exception for the CEO attestation, the requirements in Appendix B of the 2013 final rule would be removed. The Agencies understand that compliance with Appendix B required entities to develop and administer an enhanced compliance program that may not be tailored to the business model or risks of specific institutions. Further, some banking entities have established as many as 500 controls related to Appendix B obligations, some of which may be duplicating existing policies and procedures designed as part of prudential safety and soundness.[411] The removal of Appendix B requirements will affect all Group A banking entities and Group B and Group C banking entities that have total consolidated assets of $50 billion or more. We estimate that there are 100 broker-dealers that may experience reduced compliance costs as a result of this amendment. The removal of the Appendix B requirements may significantly reduce the number and complexity of the compliance requirements such entities are subject to. Given the size of affected holding companies, a stringent compliance regime may reduce compliance risks related to the substantive prohibition of the 2013 final rule. However, Group A and Group B entities will continue to be required to establish and maintain a compliance program under § ____.20.

Finally, the proposed amendment would require all Group A and Group B entities to comply with the CEO attestation requirement. Under the 2013 final rule, banking entities with $50 billion or more in total consolidated assets, banking entities with over $10 billion in consolidated trading assets and liabilities, and those banking entities that an Agency has notified in writing are subject to the CEO attestation requirement.[412] We estimate that currently as many as 100 banking entity broker-dealers are required to comply with the CEO attestation requirement. Based on the counts in Table 2, we estimate that the proposed amendment will reduce this number to approximately 96 entities. However, we recognize that entities have flexibility to comply with the attestation requirement, including providing it at the SEC-registrant or at the holding-company level. For example, in 2017 the SEC received a total of 57 attestations, including those from registrants and holding companies. While the proposed amendment may slightly decrease the number of affected broker-dealers because of this flexibility in compliance, the effects on compliance burdens for SEC registrants, if any, are unclear.

As an alternative, the Agencies could have proposed amending the 2013 final rule by requiring CEO attestations for all Group A entities only if they have over $50 billion in total assets; removing the CEO attestation requirement; or allowing other senior officers, such as the chief compliance officer (CCO), to provide the requisite attestation for some or all affected banking entities. The Agencies recognize that the CEO attestation process is costly and that some banking entities may spend more than 1,700 hours on the CEO attestation process and that the elimination of this requirement may reduce time dedicated towards the compliance program by as much as 10%.[413] The Agencies also recognize that allowing other senior officers to provide the attestation would provide beneficial flexibility to banking entities with different business models, organizational structures, delegation of duties, and internal reporting and oversight lines. In addition, as the

[410] We do not have the information necessary to quantify the current costs of compliance programs specific to banking entity RIAs. Thus, we do not allocate cost savings from monetized PRA burdens to banking entity RIAs from the proposed Appendix B amendments. To the degree that some banking entity RIAs may be complying using compliance resources and systems independent of the affiliated holding company or affiliates and subsidiaries, we may be underestimating the cost savings from the proposed amendments.

[411] *See supra* note 18.

[412] As a baseline matter, the CEO is currently required to annually attest that the banking entity has in place processes to establish, maintain, enforce, review, test, and modify the compliance program established pursuant to Appendix B in a manner reasonably designed to achieve compliance with section 13 of the BHC Act and the 2013 final rule.

[413] *See supra* note 18.

Agencies have discussed in other contexts,[414] certification and attestation requirements may increase CEO liability when the CEO executes the required attestation. If CEOs of banking entities are risk averse, they may require additional liability insurance, higher compensation or lower incentive pay as a fraction of overall compensation. However, liability related to the attestation may also serve as a disciplining mechanism by incentivizing compliance and may reduce risk-taking by banking entities. We also note that the covered activities of larger and more complex banking entities with higher volumes of trading activity may involve more significant moral hazard and conflicts of interest.

The Agencies also recognize that CEO attestation may be costly for foreign banking entities. For example, one foreign firm reported that it organizes and manages a global controls sub-certification process that takes 6 months to complete and involves over 400 staff (including over 260 outside the United States) in order for the CEO to sign and deliver the annual attestation.[415] As an alternative, the Agencies could have proposed exempting foreign banking entities from the CEO attestation requirement. Currently, the requirement covers only the U.S. operations of a foreign banking entity and not its foreign operations. Similar to the analysis of the proposed amendment to trading outside the United States, this alternative may decrease compliance costs and increase trading activity by foreign banking entities in the United States, but result in losses in market share and profitability for U.S. banking entities that would remain subject to the attestation requirement and would be placed at a competitive disadvantage as a result.

As can be seen from section V.B, the Agencies do not estimate any recordkeeping or reporting burden reductions related to compliance requirements in § ____.20(b) of the final rule. The proposed removal of Appendix B requirements will result in ongoing annual cost savings estimated as $8,098,200 for registered broker-dealers and as up to $2,753,388 for entities that may choose to register as SBSDs.[416] In addition, the removal of Appendix B requirements may result in initial cost savings estimated as $24,294,600 for registered broker-dealers, and up to $8,260,164 for entities that may choose to register as SBSDs.[417] As can be seen from section V.B, the Agencies do not estimate any recordkeeping or reporting burden reductions related to proposed presumed compliance amendment in § ____.20(f)(2) of the final rule.

iii. Competition, Efficiency, and Capital Formation

Under the proposed amendments, both Group A and Group B entities will enjoy reduced compliance program requirements and Group C will be presumed compliant with prohibitions of sections B and C of the proposed rule. To the extent that compliance program requirements for Group B entities are less costly, Group A entities close to the threshold may choose to manage down their trading book such that they would qualify for the simplified compliance program, resulting in more competition among entities that are close to the threshold. Similarly, the proposed amendment may incentivize Group B entities close to the threshold to rebalance their trading book and qualify for the presumed compliance treatment of Group C entities. Such management of the trading book may reduce the risk of each individual banking entity and may decrease moral hazard addressed by the 2013 final rule. We note that entities are likely to weigh potential cost savings related to lighter compliance requirements for Group B and Group C entities against the costs of reducing trading activity below the $10 billion and $1 billion thresholds. Therefore, this competition effect may be particularly significant for Group A entities that are close to the $10 billion threshold and for Group B entities that are close to the $1 billion threshold.

Since the compliance requirements do not impact the scope of information available to investors, we do not anticipate effects on informational efficiency to be significant. To the extent that some dealers are experiencing large compliance costs and partially or fully passing them along to customers in the form of reduced access to capital or higher cost of capital, the amendment may reduce costs of and increase access to capital.

4. Request for Comment

The SEC is requesting comment regarding the economic analysis set forth here. To the extent possible, the SEC requests that market participants and other commenters provide supporting data and analysis with respect to the benefits, costs, and effects on competition, efficiency, and capital formation of adopting the proposed amendments or any reasonable alternatives. In addition, the SEC asks commenters to consider the following questions:

Question SEC–1. What additional qualitative or quantitative information should the SEC consider as part of the baseline for its economic analysis of the proposed amendments?

Question SEC–2. What additional considerations can the SEC use to estimate the costs and benefits of implementing the proposed amendments for SEC-regulated banking entities?

Question SEC–3. Is it likely that certain cost savings associated with the proposed rule will not be recognized by SEC-regulated banking entities because of the nature of their activities or because of new costs the proposal would impose on these activities? Why or why not? Are there other benefits or costs associated with the proposed rule that will impact SEC-regulated banking entities differently than other types of banking entities?

Question SEC–4. Has the SEC considered all relevant aspects of the proposed amendments? Are the estimated costs of the proposed rule for SEC-regulated banking entities reasonable? If not, please explain in detail why the cost estimates should be higher or lower than those provided. Have we accurately described the benefits of the proposed rule? Why or why not? Please identify any other benefits associated with the proposed rule in detail. Please identify any costs associated with the proposed rule that we have not identified.

List of Subjects

12 CFR Part 44

Banks, Banking, Compensation, Credit, Derivatives, Government securities, Insurance, Investments, National banks, Penalties, Reporting and recordkeeping requirements, Risk, Risk retention, Securities, Trusts and trustees.

[414] *See, e.g.,* Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 77617 (Apr. 13, 2016), 81 FR 29960, 30128 (May 24, 2016).

[415] *See supra* note 18.

[416] Cost reduction for broker-dealers: 1,100 hours per firm × 0.18 dealer weight × 100 broker-dealers × (Attorney at $409 per hour) = $8,098,200. Cost reductions for entities that may register as SBSDs may be as high as: 1,100 hours per firm × 0.18 dealer weight × 34 firms × (Attorney at $409 per hour) = $2,753,388. The estimate for SBSDs assumes that all 34 SBSDs would be subject to Appendix B requirements, and may over-estimate the cost savings.

[417] Initial set-up cost reduction for broker-dealers: 3,300 hours per firm × 0.18 dealer weight × 100 broker-dealers × (Attorney at $409 per hour) = $24,294,600. Cost reductions for entities that may register as SBSDs may be as high as: 3,300 hours per firm × 0.18 dealer weight × 34 firms × (Attorney at $409 per hour) = $8,260,164. The estimate for SBSDs assumes that all 34 SBSDs would be subject to Appendix B requirements, and may over-estimate the cost savings.

12 CFR Part 248

Administrative practice and procedure, Banks, Banking, Conflict of interests, Credit, Foreign banking, Government securities, Holding companies, Insurance, Insurance companies, Investments, Penalties, Reporting and recordkeeping requirements, Securities, State nonmember banks, State savings associations, Trusts and trustees

12 CFR Part 351

Banks, Banking, Capital, Compensation, Conflicts of interest, Credit, Derivatives, Government securities, Insurance, Insurance companies, Investments, Penalties, Reporting and recordkeeping requirements, Risk, Risk retention, Securities, Trusts and trustees

17 CFR Part 75

Banks, Banking, Compensation, Credit, Derivatives, Federal branches and agencies, Federal savings associations, Government securities, Hedge funds, Insurance, Investments, National banks, Penalties, Proprietary trading, Reporting and recordkeeping requirements, Risk, Risk retention, Securities, Swap dealers, Trusts and trustees, Volcker rule.

17 CFR Part 255

Banks, Brokers, Dealers, Investment advisers, Recordkeeping, Reporting, Securities.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons stated in the Common Preamble, the Office of the Comptroller of the Currency proposes to amend chapter I of Title 12, Code of Federal Regulations as follows:

PART 44—PROPRIETARY TRADING AND CERTAIN INTERESTS IN AND RELATIONSHIPS WITH COVERED FUNDS

■ 1. The authority citation for part 44 continues to read as follows:

Authority: 7 U.S.C. 27 *et seq.,* 12 U.S.C. 1, 24, 92a, 93a, 161, 1461, 1462a, 1463, 1464, 1467a, 1813(q), 1818, 1851, 3101, 3102, 3108, 5412.

■ 2. Section 44.2 is revised to read as follows:

§ 44.2 Definitions.

Unless otherwise specified, for purposes of this part:

(a) *Affiliate* has the same meaning as in section 2(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(k)).

(b) *Applicable accounting standards* means U.S. generally accepted accounting principles, or such other accounting standards applicable to a banking entity that the OCC determines are appropriate and that the banking entity uses in the ordinary course of its business in preparing its consolidated financial statements.

(c) *Bank holding company* has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

(d) *Banking entity.* (1) Except as provided in paragraph (d)(2) of this section, *banking entity* means:

(i) Any insured depository institution;

(ii) Any company that controls an insured depository institution;

(iii) Any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(iv) Any affiliate or subsidiary of any entity described in paragraphs (d)(1)(i), (ii), or (iii) of this section.

(2) Banking entity does not include:

(i) A covered fund that is not itself a banking entity under paragraphs (d)(1)(i), (ii), or (iii) of this section;

(ii) A portfolio company held under the authority contained in section 4(k)(4)(H) or (I) of the BHC Act (12 U.S.C. 1843(k)(4)(H), (I)), or any portfolio concern, as defined under 13 CFR 107.50, that is controlled by a small business investment company, as defined in section 103(3) of the Small Business Investment Act of 1958 (15 U.S.C. 662), so long as the portfolio company or portfolio concern is not itself a banking entity under paragraphs (d)(1)(i), (ii), or (iii) of this section; or

(iii) The FDIC acting in its corporate capacity or as conservator or receiver under the Federal Deposit Insurance Act or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

(e) *Board* means the Board of Governors of the Federal Reserve System.

(f) *CFTC* means the Commodity Futures Trading Commission.

(g) *Dealer* has the same meaning as in section 3(a)(5) of the Exchange Act (15 U.S.C. 78c(a)(5)).

(h) *Depository institution* has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

(i) *Derivative.* (1) Except as provided in paragraph (i)(2) of this section, *derivative* means:

(i) Any swap, as that term is defined in section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)), or security-based swap, as that term is defined in section 3(a)(68) of the Exchange Act (15 U.S.C. 78c(a)(68));

(ii) Any purchase or sale of a commodity, that is not an excluded commodity, for deferred shipment or delivery that is intended to be physically settled;

(iii) Any foreign exchange forward (as that term is defined in section 1a(24) of the Commodity Exchange Act (7 U.S.C. 1a(24)) or foreign exchange swap (as that term is defined in section 1a(25) of the Commodity Exchange Act (7 U.S.C. 1a(25));

(iv) Any agreement, contract, or transaction in foreign currency described in section 2(c)(2)(C)(i) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(C)(i));

(v) Any agreement, contract, or transaction in a commodity other than foreign currency described in section 2(c)(2)(D)(i) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(D)(i)); and

(vi) Any transaction authorized under section 19 of the Commodity Exchange Act (7 U.S.C. 23(a) or (b));

(2) A derivative does not include:

(i) Any consumer, commercial, or other agreement, contract, or transaction that the CFTC and SEC have further defined by joint regulation, interpretation, guidance, or other action as not within the definition of swap, as that term is defined in section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)), or security-based swap, as that term is defined in section 3(a)(68) of the Exchange Act (15 U.S.C. 78c(a)(68)); or

(ii) Any identified banking product, as defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)), that is subject to section 403(a) of that Act (7 U.S.C. 27a(a)).

(j) *Employee* includes a member of the immediate family of the employee.

(k) *Exchange Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

(l) *Excluded commodity* has the same meaning as in section 1a(19) of the Commodity Exchange Act (7 U.S.C. 1a(19)).

(m) *FDIC* means the Federal Deposit Insurance Corporation.

(n) *Federal banking agencies* means the Board, the Office of the Comptroller of the Currency, and the FDIC.

(o) *Foreign banking organization* has the same meaning as in section 211.21(o) of the Board's Regulation K (12 CFR 211.21(o)), but does not include a foreign bank, as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)), that is organized under the laws of the Commonwealth of Puerto Rico, Guam, American Samoa, the United States

Virgin Islands, or the Commonwealth of the Northern Mariana Islands.

(p) *Foreign insurance regulator* means the insurance commissioner, or a similar official or agency, of any country other than the United States that is engaged in the supervision of insurance companies under foreign insurance law.

(q) *General account* means all of the assets of an insurance company except those allocated to one or more separate accounts.

(r) *Insurance company* means a company that is organized as an insurance company, primarily and predominantly engaged in writing insurance or reinsuring risks underwritten by insurance companies, subject to supervision as such by a state insurance regulator or a foreign insurance regulator, and not operated for the purpose of evading the provisions of section 13 of the BHC Act (12 U.S.C. 1851).

(s) *Insured depository institution* has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), but does not include an insured depository institution that is described in section 2(c)(2)(D) of the BHC Act (12 U.S.C. 1841(c)(2)(D)).

(t) *Limited trading assets and liabilities* means, with respect to a banking entity, that:

(1) The banking entity has, together with its affiliates and subsidiaries on a worldwide consolidated basis, trading assets and liabilities (excluding trading assets and liabilities involving obligations of or guaranteed by the United States or any agency of the United States) the average gross sum of which over the previous consecutive four quarters, as measured as of the last day of each of the four previous calendar quarters, is less than $1,000,000,000; and

(2) The OCC has not determined pursuant to § 44.20(g) or (h) of this part that the banking entity should not be treated as having limited trading assets and liabilities.

(u) *Loan* means any loan, lease, extension of credit, or secured or unsecured receivable that is not a security or derivative.

(v) *Moderate trading assets and liabilities* means, with respect to a banking entity, that the banking entity does not have significant trading assets and liabilities or limited trading assets and liabilities.

(w) *Primary financial regulatory agency* has the same meaning as in section 2(12) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301(12)).

(x) *Purchase* includes any contract to buy, purchase, or otherwise acquire. For security futures products, purchase includes any contract, agreement, or transaction for future delivery. With respect to a commodity future, purchase includes any contract, agreement, or transaction for future delivery. With respect to a derivative, purchase includes the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a derivative, as the context may require.

(y) *Qualifying foreign banking organization* means a foreign banking organization that qualifies as such under section 211.23(a), (c) or (e) of the Board's Regulation K (12 CFR 211.23(a), (c), or (e)).

(z) *SEC* means the Securities and Exchange Commission.

(aa) *Sale* and *sell* each include any contract to sell or otherwise dispose of. For security futures products, such terms include any contract, agreement, or transaction for future delivery. With respect to a commodity future, such terms include any contract, agreement, or transaction for future delivery. With respect to a derivative, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a derivative, as the context may require.

(bb) *Security* has the meaning specified in section 3(a)(10) of the Exchange Act (15 U.S.C. 78c(a)(10)).

(cc) *Security-based swap dealer* has the same meaning as in section 3(a)(71) of the Exchange Act (15 U.S.C. 78c(a)(71)).

(dd) *Security future* has the meaning specified in section 3(a)(55) of the Exchange Act (15 U.S.C. 78c(a)(55)).

(ee) *Separate account* means an account established and maintained by an insurance company in connection with one or more insurance contracts to hold assets that are legally segregated from the insurance company's other assets, under which income, gains, and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(ff) *Significant trading assets and liabilities.*—(1) *Significant trading assets and liabilities* means, with respect to a banking entity, that:

(i) The banking entity has, together with its affiliates and subsidiaries, trading assets and liabilities the average gross sum of which over the previous consecutive four quarters, as measured as of the last day of each of the four previous calendar quarters, equals or exceeds $10,000,000,000; or

(ii) The OCC has determined pursuant to § 44.20(h) of this part that the banking entity should be treated as having significant trading assets and liabilities.

(2) With respect to a banking entity other than a banking entity described in paragraph (3), trading assets and liabilities for purposes of this paragraph (ff) means trading assets and liabilities (excluding trading assets and liabilities involving obligations of or guaranteed by the United States or any agency of the United States) on a worldwide consolidated basis.

(3)(i) With respect to a banking entity that is a foreign banking organization or a subsidiary of a foreign banking organization, trading assets and liabilities for purposes of this paragraph (ff) means the trading assets and liabilities (excluding trading assets and liabilities involving obligations of or guaranteed by the United States or any agency of the United States) of the combined U.S. operations of the top-tier foreign banking organization (including all subsidiaries, affiliates, branches, and agencies of the foreign banking organization operating, located, or organized in the United States).

(ii) For purposes of paragraph (ff)(3)(i) of this section, a U.S. branch, agency, or subsidiary of a banking entity is located in the United States; however, the foreign bank that operates or controls that branch, agency, or subsidiary is not considered to be located in the United States solely by virtue of operating or controlling the U.S. branch, agency, or subsidiary.

(gg) *State* means any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(hh) *Subsidiary* has the same meaning as in section 2(d) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(d)).

(ii) *State insurance regulator* means the insurance commissioner, or a similar official or agency, of a State that is engaged in the supervision of insurance companies under State insurance law.

(jj) *Swap dealer* has the same meaning as in section 1(a)(49) of the Commodity Exchange Act (7 U.S.C. 1a(49)).

■ 3. Section 44.3 is amended by:

■ a. Revising paragraph (b);

■ b. Redesignating paragraphs (c) through (e) as paragraphs (d) through (f);

■ c. Adding a new paragraph (c);

■ d. Revising paragraph (e)(3) and adding paragraph (e)(10);
■ e. Redesignating paragraphs (f)(5) through (f)(13) as paragraphs (f)(6) through (f)(14) and adding new paragraph (f)(5); and
■ f. Adding paragraph (g).

The revisions and additions read as follows:

§ 44.3 Prohibition on proprietary trading.

* * * * *

(b) *Definition of trading account. Trading account* means any account that is used by a banking entity to:

(1)(i) Purchase or sell one or more financial instruments that are both market risk capital rule covered positions and trading positions (or hedges of other market risk capital rule covered positions), if the banking entity, or any affiliate of the banking entity, is an insured depository institution, bank holding company, or savings and loan holding company, and calculates risk-based capital ratios under the market risk capital rule; or

(ii) With respect to a banking entity that is not, and is not controlled directly or indirectly by a banking entity that is, located in or organized under the laws of the United States or any State, purchase or sell one or more financial instruments that are subject to capital requirements under a market risk framework established by the home-country supervisor that is consistent with the market risk framework published by the Basel Committee on Banking Supervision, as amended from time to time.

(2) Purchase or sell one or more financial instruments for any purpose, if the banking entity:

(i) Is licensed or registered, or is required to be licensed or registered, to engage in the business of a dealer, swap dealer, or security-based swap dealer, to the extent the instrument is purchased or sold in connection with the activities that require the banking entity to be licensed or registered as such; or

(ii) Is engaged in the business of a dealer, swap dealer, or security-based swap dealer outside of the United States, to the extent the instrument is purchased or sold in connection with the activities of such business; or

(3) Purchase or sell one or more financial instruments, with respect to a financial instrument that is recorded at fair value on a recurring basis under applicable accounting standards.

(c) *Presumption of compliance.* (1)(i) Each trading desk that does not purchase or sell financial instruments for a trading account defined in paragraphs (b)(1) or (b)(2) of this section may calculate the net gain or net loss on the trading desk's portfolio of financial instruments each business day, reflecting realized and unrealized gains and losses since the previous business day, based on the banking entity's fair value for such financial instruments.

(ii) If the sum of the absolute values of the daily net gain and loss figures determined in accordance with paragraph (c)(1)(i) of this section for the preceding 90-calendar-day period does not exceed $25 million, the activities of the trading desk shall be presumed to be in compliance with the prohibition in paragraph (a) of this section.

(2) The OCC may rebut the presumption of compliance in paragraph (c)(1)(ii) of this section by providing written notice to the banking entity that the OCC has determined that one or more of the banking entity's activities violates the prohibitions under subpart B.

(3) If a trading desk operating pursuant to paragraph (c)(1)(ii) of this section exceeds the $25 million threshold in that paragraph at any point, the banking entity shall, in accordance with any policies and procedures adopted by the OCC:

(i) Promptly notify the OCC;

(ii) Demonstrate that the trading desk's purchases and sales of financial instruments comply with subpart B; and

(iii) Demonstrate, with respect to the trading desk, how the banking entity will maintain compliance with subpart B on an ongoing basis.

* * * * *

(e) * * *

(3) Any purchase or sale of a security, foreign exchange forward (as that term is defined in section 1a(24) of the Commodity Exchange Act (7 U.S.C. 1a(24)), foreign exchange swap (as that term is defined in section 1a(25) of the Commodity Exchange Act (7 U.S.C. 1a(25)), or physically-settled cross-currency swap, by a banking entity for the purpose of liquidity management in accordance with a documented liquidity management plan of the banking entity that, with respect to such financial instruments:

(i) Specifically contemplates and authorizes the particular financial instruments to be used for liquidity management purposes, the amount, types, and risks of these financial instruments that are consistent with liquidity management, and the liquidity circumstances in which the particular financial instruments may or must be used;

(ii) Requires that any purchase or sale of financial instruments contemplated and authorized by the plan be principally for the purpose of managing the liquidity of the banking entity, and not for the purpose of short-term resale, benefitting from actual or expected short-term price movements, realizing short-term arbitrage profits, or hedging a position taken for such short-term purposes;

(iii) Requires that any financial instruments purchased or sold for liquidity management purposes be highly liquid and limited to financial instruments the market, credit, and other risks of which the banking entity does not reasonably expect to give rise to appreciable profits or losses as a result of short-term price movements;

(iv) Limits any financial instruments purchased or sold for liquidity management purposes, together with any other instruments purchased or sold for such purposes, to an amount that is consistent with the banking entity's near-term funding needs, including deviations from normal operations of the banking entity or any affiliate thereof, as estimated and documented pursuant to methods specified in the plan;

(v) Includes written policies and procedures, internal controls, analysis, and independent testing to ensure that the purchase and sale of financial instruments that are not permitted under §§ 44.6(a) or (b) of this subpart are for the purpose of liquidity management and in accordance with the liquidity management plan described in paragraph (e)(3) of this section; and

(vi) Is consistent with the OCC's supervisory requirements, guidance, and expectations regarding liquidity management;

* * * * *

(10) Any purchase (or sale) of one or more financial instruments that was made in error by a banking entity in the course of conducting a permitted or excluded activity or is a subsequent transaction to correct such an error, and the erroneously purchased (or sold) financial instrument is promptly transferred to a separately-managed trade error account for disposition.

(f) * * *

(5) *Cross-currency swap* means a swap in which one party exchanges with another party principal and interest rate payments in one currency for principal and interest rate payments in another currency, and the exchange of principal occurs on the date the swap is entered into, with a reversal of the exchange of principal at a later date that is agreed upon when the swap is entered into.

* * * * *

(g) *Reservation of Authority:* (1) The OCC may determine, on a case-by-case basis, that a purchase or sale of one or more financial instruments by a banking entity either is or is not for the trading account as defined at 12 U.S.C. 1851(h)(6).

(2) *Notice and Response Procedures.*—(i) *Notice.* When the OCC determines that the purchase or sale of one or more financial instruments is for the trading account under paragraph (g)(1) of this section, the OCC will notify the banking entity in writing of the determination and provide an explanation of the determination.

(ii) *Response.* (A) The banking entity may respond to any or all items in the notice. The response should include any matters that the banking entity would have the OCC consider in deciding whether the purchase or sale is for the trading account. The response must be in writing and delivered to the designated OCC official within 30 days after the date on which the banking entity received the notice. The OCC may shorten the time period when, in the opinion of the OCC, the activities or condition of the banking entity so requires, provided that the banking entity is informed promptly of the new time period, or with the consent of the banking entity. In its discretion, the OCC may extend the time period for good cause.

(B) Failure to respond within 30 days or such other time period as may be specified by the OCC shall constitute a waiver of any objections to the OCC's determination.

(iii) After the close of banking entity's response period, the OCC will decide, based on a review of the banking entity's response and other information concerning the banking entity, whether to maintain the OCC's determination that the purchase or sale of one or more financial instruments is for the trading account. The banking entity will be notified of the decision in writing. The notice will include an explanation of the decision.

■ 4. Section 44.4 is amended by:
■ a. Revising paragraph (a)(2);
■ b. Adding paragraph (a)(8);
■ c. Revising paragraph (b)(2);
■ d. Revising the introductory text of paragraph (b)(3)(i);
■ e. In paragraph (b)(5) removing "*inventory*" wherever it appears and adding "*positions*" in its place; and
■ f. Adding a new paragraph (b)(6).

The revisions and additions read as follows:

§ 44.4 Permitted underwriting and market making-related activities.

(a) * * *

(2) *Requirements.* The underwriting activities of a banking entity are permitted under paragraph (a)(1) of this section only if:

(i) The banking entity is acting as an underwriter for a distribution of securities and the trading desk's underwriting position is related to such distribution;

(ii) (A) The amount and type of the securities in the trading desk's underwriting position are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties, taking into account the liquidity, maturity, and depth of the market for the relevant type of security, and

(B) Reasonable efforts are made to sell or otherwise reduce the underwriting position within a reasonable period, taking into account the liquidity, maturity, and depth of the market for the relevant type of security;

(iii) In the case of a banking entity with significant trading assets and liabilities, the banking entity has established and implements, maintains, and enforces an internal compliance program required by subpart D of this part that is reasonably designed to ensure the banking entity's compliance with the requirements of paragraph (a) of this section, including reasonably designed written policies and procedures, internal controls, analysis, and independent testing identifying and addressing:

(A) The products, instruments or exposures each trading desk may purchase, sell, or manage as part of its underwriting activities;

(B) Limits for each trading desk, in accordance with paragraph (a)(8)(i) of this section;

(C) Internal controls and ongoing monitoring and analysis of each trading desk's compliance with its limits; and

(D) Authorization procedures, including escalation procedures that require review and approval of any trade that would exceed a trading desk's limit(s), demonstrable analysis of the basis for any temporary or permanent increase to a trading desk's limit(s), and independent review of such demonstrable analysis and approval;

(iv) The compensation arrangements of persons performing the activities described in this paragraph (a) are designed not to reward or incentivize prohibited proprietary trading; and

(v) The banking entity is licensed or registered to engage in the activity described in this paragraph (a) in accordance with applicable law.

* * * * *

(8) *Rebuttable presumption of compliance.*—(i) *Risk limits.* (A) A banking entity shall be presumed to meet the requirements of paragraph (a)(2)(ii)(A) of this section with respect to the purchase or sale of a financial instrument if the banking entity has established and implements, maintains, and enforces the limits described in paragraph (a)(8)(i)(B) and does not exceed such limits.

(B) The presumption described in paragraph (8)(i)(A) of this section shall be available with respect to limits for each trading desk that are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties, based on the nature and amount of the trading desk's underwriting activities, on the:

(*1*) Amount, types, and risk of its underwriting position;

(*2*) Level of exposures to relevant risk factors arising from its underwriting position; and

(*3*) Period of time a security may be held.

(ii) *Supervisory review and oversight.* The limits described in paragraph (a)(8)(i) of this section shall be subject to supervisory review and oversight by the OCC on an ongoing basis. Any review of such limits will include assessment of whether the limits are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties.

(iii) *Reporting.* With respect to any limit identified pursuant to paragraph (a)(8)(i) of this section, a banking entity shall promptly report to the OCC (A) to the extent that any limit is exceeded and (B) any temporary or permanent increase to any limit(s), in each case in the form and manner as directed by the OCC.

(iv) *Rebutting the presumption.* The presumption in paragraph (a)(8)(i) of this section may be rebutted by the OCC if the OCC determines, based on all relevant facts and circumstances, that a trading desk is engaging in activity that is not based on the reasonably expected near term demands of clients, customers, or counterparties. The OCC will provide notice of any such determination to the banking entity in writing.

(b) * * *

(2) *Requirements.* The market making-related activities of a banking entity are permitted under paragraph (b)(1) of this section only if:

(i) The trading desk that establishes and manages the financial exposure routinely stands ready to purchase and sell one or more types of financial instruments related to its financial exposure and is willing and available to quote, purchase and sell, or otherwise enter into long and short positions in those types of financial instruments for its own account, in commercially reasonable amounts and throughout market cycles on a basis appropriate for the liquidity, maturity, and depth of the market for the relevant types of financial instruments;

(ii) The trading desk's market-making related activities are designed not to exceed, on an ongoing basis, the reasonably expected near term demands of clients, customers, or counterparties, based on the liquidity, maturity, and depth of the market for the relevant types of financial instrument(s).

(iii) In the case of a banking entity with significant trading assets and liabilities, the banking entity has established and implements, maintains, and enforces an internal compliance program required by subpart D of this part that is reasonably designed to ensure the banking entity's compliance with the requirements of paragraph (b) of this section, including reasonably designed written policies and procedures, internal controls, analysis and independent testing identifying and addressing:

(A) The financial instruments each trading desk stands ready to purchase and sell in accordance with paragraph (b)(2)(i) of this section;

(B) The actions the trading desk will take to demonstrably reduce or otherwise significantly mitigate promptly the risks of its financial exposure consistent with the limits required under paragraph (b)(2)(iii)(C) of this section; the products, instruments, and exposures each trading desk may use for risk management purposes; the techniques and strategies each trading desk may use to manage the risks of its market making-related activities and positions; and the process, strategies, and personnel responsible for ensuring that the actions taken by the trading desk to mitigate these risks are and continue to be effective;

(C) Limits for each trading desk, in accordance with paragraph (b)(6)(i) of this section;

(D) Internal controls and ongoing monitoring and analysis of each trading desk's compliance with its limits; and

(E) Authorization procedures, including escalation procedures that require review and approval of any trade that would exceed a trading desk's limit(s), demonstrable analysis that the basis for any temporary or permanent increase to a trading desk's limit(s) is consistent with the requirements of this paragraph (b), and independent review of such demonstrable analysis and approval;

(iv) In the case of a banking entity with significant trading assets and liabilities, to the extent that any limit identified pursuant to paragraph (b)(2)(iii)(C) of this section is exceeded, the trading desk takes action to bring the trading desk into compliance with the limits as promptly as possible after the limit is exceeded;

(v) The compensation arrangements of persons performing the activities described in this paragraph (b) are designed not to reward or incentivize prohibited proprietary trading; and

(vi) The banking entity is licensed or registered to engage in activity described in this paragraph (b) in accordance with applicable law.

(3) * * *

(i) A trading desk or other organizational unit of another banking entity is not a client, customer, or counterparty of the trading desk if that other entity has trading assets and liabilities of $50 billion or more as measured in accordance with the methodology described in definition of ''significant trading assets and liabilities'' contained in § 44.2 of this part, unless:

* * * * *

(6) *Rebuttable presumption of compliance.*

(i) *Risk limits.*

(A) A banking entity shall be presumed to meet the requirements of paragraph (b)(2)(ii) of this section with respect to the purchase or sale of a financial instrument if the banking entity has established and implements, maintains, and enforces the limits described in paragraph (b)(6)(i)(B) and does not exceed such limits.

(B) The presumption described in paragraph (6)(i)(A) of this section shall be available with respect to limits for each trading desk that are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties, based on the nature and amount of the trading desk's market making-related activities, on the:

(*1*) Amount, types, and risks of its market-maker positions;

(*2*) Amount, types, and risks of the products, instruments, and exposures the trading desk may use for risk management purposes;

(*3*) Level of exposures to relevant risk factors arising from its financial exposure; and

(*4*) Period of time a financial instrument may be held.

(ii) *Supervisory review and oversight.* The limits described in paragraph (b)(6)(i) of this section shall be subject to supervisory review and oversight by the OCC on an ongoing basis. Any review of such limits will include assessment of whether the limits are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties.

(iii) *Reporting.* With respect to any limit identified pursuant to paragraph (b)(6)(i) of this section, a banking entity shall promptly report to the OCC (A) to the extent that any limit is exceeded and (B) any temporary or permanent increase to any limit(s), in each case in the form and manner as directed by the OCC.

(iv) *Rebutting the presumption.* The presumption in paragraph (b)(6)(i) of this section may be rebutted by the OCC if the OCC determines, based on all relevant facts and circumstances, that a trading desk is engaging in activity that is not based on the reasonably expected near term demands of clients, customers, or counterparties. The OCC will provide notice of any such determination to the banking entity in writing.

■ 5. Section 44.5 is amended by revising paragraphs (b) and (c)(1) introductory text and adding paragraph (c)(4) to read as follows:

§ 44.5 Permitted risk-mitigating hedging activities.

* * * * *

(b) *Requirements.*

(1) The risk-mitigating hedging activities of a banking entity that has significant trading assets and liabilities are permitted under paragraph (a) of this section only if:

(i) The banking entity has established and implements, maintains and enforces an internal compliance program required by subpart D of this part that is reasonably designed to ensure the banking entity's compliance with the requirements of this section, including:

(A) Reasonably designed written policies and procedures regarding the positions, techniques and strategies that may be used for hedging, including documentation indicating what positions, contracts or other holdings a particular trading desk may use in its risk-mitigating hedging activities, as well as position and aging limits with respect to such positions, contracts or other holdings;

(B) Internal controls and ongoing monitoring, management, and authorization procedures, including relevant escalation procedures; and

(C) The conduct of analysis and independent testing designed to ensure that the positions, techniques and strategies that may be used for hedging may reasonably be expected to reduce or otherwise significantly mitigate the specific, identifiable risk(s) being hedged;

(ii) The risk-mitigating hedging activity:

(A) Is conducted in accordance with the written policies, procedures, and internal controls required under this section;

(B) At the inception of the hedging activity, including, without limitation, any adjustments to the hedging activity, is designed to reduce or otherwise significantly mitigate one or more specific, identifiable risks, including market risk, counterparty or other credit risk, currency or foreign exchange risk, interest rate risk, commodity price risk, basis risk, or similar risks, arising in connection with and related to identified positions, contracts, or other holdings of the banking entity, based upon the facts and circumstances of the identified underlying and hedging positions, contracts or other holdings and the risks and liquidity thereof;

(C) Does not give rise, at the inception of the hedge, to any significant new or additional risk that is not itself hedged contemporaneously in accordance with this section;

(D) Is subject to continuing review, monitoring and management by the banking entity that:

(*1*) Is consistent with the written hedging policies and procedures required under paragraph (b)(1)(i) of this section;

(*2*) Is designed to reduce or otherwise significantly mitigate the specific, identifiable risks that develop over time from the risk-mitigating hedging activities undertaken under this section and the underlying positions, contracts, and other holdings of the banking entity, based upon the facts and circumstances of the underlying and hedging positions, contracts and other holdings of the banking entity and the risks and liquidity thereof; and

(*3*) Requires ongoing recalibration of the hedging activity by the banking entity to ensure that the hedging activity satisfies the requirements set out in paragraph (b)(1)(ii) of this section and is not prohibited proprietary trading; and

(iii) The compensation arrangements of persons performing risk-mitigating hedging activities are designed not to reward or incentivize prohibited proprietary trading.

(2) The risk-mitigating hedging activities of a banking entity that does not have significant trading assets and liabilities are permitted under paragraph (a) of this section only if the risk-mitigating hedging activity:

(i) At the inception of the hedging activity, including, without limitation, any adjustments to the hedging activity, is designed to reduce or otherwise significantly mitigate one or more specific, identifiable risks, including market risk, counterparty or other credit risk, currency or foreign exchange risk, interest rate risk, commodity price risk, basis risk, or similar risks, arising in connection with and related to identified positions, contracts, or other holdings of the banking entity, based upon the facts and circumstances of the identified underlying and hedging positions, contracts or other holdings and the risks and liquidity thereof; and

(ii) Is subject, as appropriate, to ongoing recalibration by the banking entity to ensure that the hedging activity satisfies the requirements set out in paragraph (b)(2) of this section and is not prohibited proprietary trading.

(c) * * * (1) A banking entity that has significant trading assets and liabilities must comply with the requirements of paragraphs (c)(2) and (3) of this section, unless the requirements of paragraph (c)(4) of this section are met, with respect to any purchase or sale of financial instruments made in reliance on this section for risk-mitigating hedging purposes that is:

* * * * *

(4) The requirements of paragraphs (c)(2) and (3) of this section do not apply to the purchase or sale of a financial instrument described in paragraph (c)(1) of this section if:

(i) The financial instrument purchased or sold is identified on a written list of pre-approved financial instruments that are commonly used by the trading desk for the specific type of hedging activity for which the financial instrument is being purchased or sold; and

(ii) At the time the financial instrument is purchased or sold, the hedging activity (including the purchase or sale of the financial instrument) complies with written, pre-approved hedging limits for the trading desk purchasing or selling the financial instrument for hedging activities undertaken for one or more other trading desks. The hedging limits shall be appropriate for the:

(A) Size, types, and risks of the hedging activities commonly undertaken by the trading desk;

(B) Financial instruments purchased and sold for hedging activities by the trading desk; and

(C) Levels and duration of the risk exposures being hedged.

■ 6. Section 44.6 is amended by revising paragraph (e)(3) and removing paragraph (e)(6) to read as follows:

§ 44.6 Other permitted proprietary trading activities.

* * * * *

(e) * * *

(3) A purchase or sale by a banking entity is permitted for purposes of this paragraph (e) if:

(i) The banking entity engaging as principal in the purchase or sale (including relevant personnel) is not located in the United States or organized under the laws of the United States or of any State;

(ii) The banking entity (including relevant personnel) that makes the decision to purchase or sell as principal is not located in the United States or organized under the laws of the United States or of any State; and

(iii) The purchase or sale, including any transaction arising from risk-mitigating hedging related to the instruments purchased or sold, is not accounted for as principal directly or on a consolidated basis by any branch or affiliate that is located in the United States or organized under the laws of the United States or of any State.

* * * * *

§ 44.10 [Amended]

■ 7. Section 44.10 is amended by:

■ a. In paragraph (c)(8)(i)(A) removing ''§ 44.2(s)'' and adding ''§ 44.2(u)'' in its place;

■ b. Removing paragraph (d)(1);

■ c. Redesignating paragraphs (d)(2) through (d)(10) as paragraphs (d)(1) through (d)(9);

■ d. In paragraph (d)(5)(i)(G) revising the reference to ''(d)(6)(i)(A)'' to read ''(d)(5)(i)(A)''; and

■ e. In paragraph (d)(9) revising the reference to ''(d)(9)'' to read ''(d)(8)'' and the reference to ''(d)(10)(i)(A)'' to read ''(d)(9)(i)(A)'' and the reference to ''(d)(10)(i)'' to read ''(d)(9)(i)''.

■ 8. Section 44.11 is amended by revising paragraph (c) as follows:

§ 44.11 Permitted organizing and offering, underwriting, and market making with respect to a covered fund.

* * * * *

(c) *Underwriting and market making in ownership interests of a covered fund.* The prohibition contained in § 44.10(a) of this subpart does not apply to a banking entity's underwriting activities or market making-related activities involving a covered fund so long as:

(1) Those activities are conducted in accordance with the requirements of § 44.4(a) or § 44.4(b) of subpart B, respectively; and

(2) With respect to any banking entity (or any affiliate thereof) that: Acts as a sponsor, investment adviser or commodity trading advisor to a particular covered fund or otherwise acquires and retains an ownership interest in such covered fund in reliance on paragraph (a) of this section; or acquires and retains an ownership interest in such covered fund and is

either a securitizer, as that term is used in section 15G(a)(3) of the Exchange Act (15 U.S.C. 78*o*–11(a)(3)), or is acquiring and retaining an ownership interest in such covered fund in compliance with section 15G of that Act (15 U.S.C.78*o*–11) and the implementing regulations issued thereunder each as permitted by paragraph (b) of this section, then in each such case any ownership interests acquired or retained by the banking entity and its affiliates in connection with underwriting and market making related activities for that particular covered fund are included in the calculation of ownership interests permitted to be held by the banking entity and its affiliates under the limitations of § 44.12(a)(2)(ii); § 44.12(a)(2)(iii), and § 44.12(d) of this subpart.

§ 44.12 [Amended]

■ 9. Section 44.12 is amended by:

■ a. In paragraphs (c)(1) and (d) removing ''§ 44.10(d)(6)(ii)'' and adding ''§ 44.10(d)(5)(ii)'' in its place;

■ b. Removing paragraph (e)(2)(vii); and

■ c. Redesignating the second instance of paragraph (e)(2)(vi) as paragraph (e)(2)(vii).

■ 10. Section 44.13 is amended by revising paragraphs (a) and (b)(3) and removing paragraph (b)(4)(iv) to read as follows:

§ 44.13 Other permitted covered fund activities and investments.

(a) *Permitted risk-mitigating hedging activities.* (1) The prohibition contained in § 44.10(a) of this subpart does not apply with respect to an ownership interest in a covered fund acquired or retained by a banking entity that is designed to reduce or otherwise significantly mitigate the specific, identifiable risks to the banking entity in connection with:

(i) A compensation arrangement with an employee of the banking entity or an affiliate thereof that directly provides investment advisory, commodity trading advisory or other services to the covered fund; or

(ii) A position taken by the banking entity when acting as intermediary on behalf of a customer that is not itself a banking entity to facilitate the exposure by the customer to the profits and losses of the covered fund.

(2) *Requirements.* The risk-mitigating hedging activities of a banking entity are permitted under this paragraph (a) only if:

(i) The banking entity has established and implements, maintains and enforces an internal compliance program in accordance with subpart D of this part that is reasonably designed to ensure the banking entity's compliance with the requirements of this section, including:

(A) Reasonably designed written policies and procedures; and

(B) Internal controls and ongoing monitoring, management, and authorization procedures, including relevant escalation procedures; and

(ii) The acquisition or retention of the ownership interest:

(A) Is made in accordance with the written policies, procedures, and internal controls required under this section;

(B) At the inception of the hedge, is designed to reduce or otherwise significantly mitigate one or more specific, identifiable risks arising:

(*1*) Out of a transaction conducted solely to accommodate a specific customer request with respect to the covered fund; or

(*2*) In connection with the compensation arrangement with the employee that directly provides investment advisory, commodity trading advisory, or other services to the covered fund;

(C) Does not give rise, at the inception of the hedge, to any significant new or additional risk that is not itself hedged contemporaneously in accordance with this section; and

(D) Is subject to continuing review, monitoring and management by the banking entity.

(iii) With respect to risk-mitigating hedging activity conducted pursuant to paragraph (a)(1)(i), the compensation arrangement relates solely to the covered fund in which the banking entity or any affiliate has acquired an ownership interest pursuant to paragraph (a)(1)(i) and such compensation arrangement provides that any losses incurred by the banking entity on such ownership interest will be offset by corresponding decreases in amounts payable under such compensation arrangement.

(b) * * *

(3) An ownership interest in a covered fund is not offered for sale or sold to a resident of the United States for purposes of paragraph (b)(1)(iii) of this section only if it is not sold and has not been sold pursuant to an offering that targets residents of the United States in which the banking entity or any affiliate of the banking entity participates. If the banking entity or an affiliate sponsors or serves, directly or indirectly, as the investment manager, investment adviser, commodity pool operator or commodity trading advisor to a covered fund, then the banking entity or affiliate will be deemed for purposes of this paragraph (b)(3) to participate in any offer or sale by the covered fund of ownership interests in the covered fund.

* * * * *

■ 11. Section 44.14 is amended by revising paragraph (a)(2)(ii)(B) as follows:

§ 44.14 Limitations on relationships with a covered fund.

(a) * * *

(2) * * *

(ii) * * *

(B) The chief executive officer (or equivalent officer) of the banking entity certifies in writing annually no later than March 31 to the OCC (with a duty to update the certification if the information in the certification materially changes) that the banking entity does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the covered fund or of any covered fund in which such covered fund invests; and

* * * * *

■ 12. Section 44.20 is amended by:

■ a. Revising paragraph (a);

■ b. Revising the introductory text of paragraph (b);

■ c. Revising paragraph (c);

■ d. Revising paragraph (d);

■ e. Revising the introductory text of paragraph (e);

■ f. Revising paragraph (f)(2); and

■ g. Adding new paragraphs (g) and (h).

The revisions read as follows:

§ 44.20 Program for compliance; reporting.

(a) *Program requirement.* Each banking entity (other than a banking entity with limited trading assets and liabilities) shall develop and provide for the continued administration of a compliance program reasonably designed to ensure and monitor compliance with the prohibitions and restrictions on proprietary trading and covered fund activities and investments set forth in section 13 of the BHC Act and this part. The terms, scope, and detail of the compliance program shall be appropriate for the types, size, scope, and complexity of activities and business structure of the banking entity.

(b) *Banking entities with significant trading assets and liabilities.* With respect to a banking entity with significant trading assets and liabilities, the compliance program required by paragraph (a) of this section, at a minimum, shall include:

* * * * *

(c) *CEO attestation.*

(1) The CEO of a banking entity described in paragraph (2) must, based on a review by the CEO of the banking entity, attest in writing to the OCC, each year no later than March 31, that the banking entity has in place processes

reasonably designed to achieve compliance with section 13 of the BHC Act and this part. In the case of a U.S. branch or agency of a foreign banking entity, the attestation may be provided for the entire U.S. operations of the foreign banking entity by the senior management officer of the U.S. operations of the foreign banking entity who is located in the United States.

(2) The requirements of paragraph (c)(1) apply to a banking entity if:

(i) The banking entity does not have limited trading assets and liabilities; or

(ii) The OCC notifies the banking entity in writing that it must satisfy the requirements contained in paragraph (c)(1).

(d) *Reporting requirements under the Appendix to this part.* (1) A banking entity engaged in proprietary trading activity permitted under subpart B shall comply with the reporting requirements described in the Appendix, if:

(i) The banking entity has significant trading assets and liabilities; or

(ii) The OCC notifies the banking entity in writing that it must satisfy the reporting requirements contained in the Appendix.

(2) Frequency of reporting: Unless the OCC notifies the banking entity in writing that it must report on a different basis, a banking entity with $50 billion or more in trading assets and liabilities (as calculated in accordance with the methodology described in the definition of ‘‘significant trading assets and liabilities’’ contained in § 44.2 of this part of this part) shall report the information required by the Appendix for each calendar month within 20 days of the end of each calendar month. Any other banking entity subject to the Appendix shall report the information required by the Appendix for each calendar quarter within 30 days of the end of that calendar quarter unless the OCC notifies the banking entity in writing that it must report on a different basis.

(e) *Additional documentation for covered funds.* A banking entity with significant trading assets and liabilities shall maintain records that include:

* * * * *

(f) * * *

(2) *Banking entities with moderate trading assets and liabilities.* A banking entity with moderate trading assets and liabilities may satisfy the requirements of this section by including in its existing compliance policies and procedures appropriate references to the requirements of section 13 of the BHC Act and this part and adjustments as appropriate given the activities, size, scope, and complexity of the banking entity.

(g) *Rebuttable presumption of compliance for banking entities with limited trading assets and liabilities.*

(1) *Rebuttable presumption.* Except as otherwise provided in this paragraph, a banking entity with limited trading assets and liabilities shall be presumed to be compliant with subpart B and subpart C and shall have no obligation to demonstrate compliance with this part on an ongoing basis.

(2) *Rebuttal of presumption.* (i) If upon examination or audit, the OCC determines that the banking entity has engaged in proprietary trading or covered fund activities that are otherwise prohibited under subpart B or subpart C, the OCC may require the banking entity to be treated under this part as if it did not have limited trading assets and liabilities.

(ii) Notice and Response Procedures. (A) Notice. The OCC will notify the banking entity in writing of any determination pursuant to paragraph (g)(2)(i) of this section to rebut the presumption described in this paragraph (g) and will provide an explanation of the determination.

(B) Response. (*1*) The banking entity may respond to any or all items in the notice described in paragraph (g)(2)(ii)(A) of this section. The response should include any matters that the banking entity would have the OCC consider in deciding whether the banking entity has engaged in proprietary trading or covered fund activities prohibited under subpart B or subpart C. The response must be in writing and delivered to the designated OCC official within 30 days after the date on which the banking entity received the notice. The OCC may shorten the time period when, in the opinion of the OCC, the activities or condition of the banking entity so requires, provided that the banking entity is informed promptly of the new time period, or with the consent of the banking entity. In its discretion, the OCC may extend the time period for good cause.

(*2*) Failure to respond within 30 days or such other time period as may be specified by the OCC shall constitute a waiver of any objections to the OCC's determination.

(C) After the close of banking entity's response period, the OCC will decide, based on a review of the banking entity's response and other information concerning the banking entity, whether to maintain the OCC's determination that banking entity has engaged in proprietary trading or covered fund activities prohibited under subpart B or subpart C. The banking entity will be notified of the decision in writing. The notice will include an explanation of the decision.

(h) *Reservation of authority.* Notwithstanding any other provision of this part, the OCC retains its authority to require a banking entity without significant trading assets and liabilities to apply any requirements of this part that would otherwise apply if the banking entity had significant or moderate trading assets and liabilities if the OCC determines that the size or complexity of the banking entity's trading or investment activities, or the risk of evasion of subpart B or subpart C, does not warrant a presumption of compliance under paragraph (g) of this section or treatment as a banking entity with moderate trading assets and liabilities, as applicable.

■ 13. Remove Appendix A and Appendix B to Part 44 and add Appendix to Part 44—Reporting and Recordkeeping Requirements for Covered Trading Activities

Appendix to Part 44—Reporting and Recordkeeping Requirements for Covered Trading Activities

I. Purpose

a. This appendix sets forth reporting and recordkeeping requirements that certain banking entities must satisfy in connection with the restrictions on proprietary trading set forth in subpart B (‘‘proprietary trading restrictions’’). Pursuant to § 44.20(d), this appendix applies to a banking entity that, together with its affiliates and subsidiaries, has significant trading assets and liabilities. These entities are required to (i) furnish periodic reports to the OCC regarding a variety of quantitative measurements of their covered trading activities, which vary depending on the scope and size of covered trading activities, and (ii) create and maintain records documenting the preparation and content of these reports. The requirements of this appendix must be incorporated into the banking entity's internal compliance program under § 44.20.

b. The purpose of this appendix is to assist banking entities and the OCC in:

(i) Better understanding and evaluating the scope, type, and profile of the banking entity's covered trading activities;

(ii) Monitoring the banking entity's covered trading activities;

(iii) Identifying covered trading activities that warrant further review or examination by the banking entity to verify compliance with the proprietary trading restrictions;

(iv) Evaluating whether the covered trading activities of trading desks engaged in market making-related activities subject to § 44.4(b) are consistent with the requirements governing permitted market making-related activities;

(v) Evaluating whether the covered trading activities of trading desks that are engaged in permitted trading activity subject to §§ 44.4, 44.5, or 44.6(a)–(b) (*i.e.,* underwriting and market making-related related activity, risk-mitigating hedging, or trading in certain government obligations) are consistent with the requirement that such activity not result, directly or indirectly, in a material exposure to high-risk assets or high-risk trading strategies;

(vi) Identifying the profile of particular covered trading activities of the banking entity, and the individual trading desks of the banking entity, to help establish the appropriate frequency and scope of examination by the OCC of such activities; and

(vii) Assessing and addressing the risks associated with the banking entity's covered trading activities.

c. Information that must be furnished pursuant to this appendix is *not* intended to serve as a dispositive tool for the identification of permissible or impermissible activities.

d. In addition to the quantitative measurements required in this appendix, a banking entity may need to develop and implement other quantitative measurements in order to effectively monitor its covered trading activities for compliance with section 13 of the BHC Act and this part and to have an effective compliance program, as required by § 44.20. The effectiveness of particular quantitative measurements may differ based on the profile of the banking entity's businesses in general and, more specifically, of the particular trading desk, including types of instruments traded, trading activities and strategies, and history and experience (*e.g.,* whether the trading desk is an established, successful market maker or a new entrant to a competitive market). In all cases, banking entities must ensure that they have robust measures in place to identify and monitor the risks taken in their trading activities, to ensure that the activities are within risk tolerances established by the banking entity, and to monitor and examine for compliance with the proprietary trading restrictions in this part.

e. On an ongoing basis, banking entities must carefully monitor, review, and evaluate all furnished quantitative measurements, as well as any others that they choose to utilize in order to maintain compliance with section 13 of the BHC Act and this part. All measurement results that indicate a heightened risk of impermissible proprietary trading, including with respect to otherwise-permitted activities under §§ 44.4 through 44.6(a)–(b), or that result in a material exposure to high-risk assets or high-risk trading strategies, must be escalated within the banking entity for review, further analysis, explanation to the OCC, and remediation, where appropriate. The quantitative measurements discussed in this appendix should be helpful to banking entities in identifying and managing the risks related to their covered trading activities.

II. Definitions

The terms used in this appendix have the same meanings as set forth in §§ 44.2 and 44.3. In addition, for purposes of this appendix, the following definitions apply:

Applicability identifies the trading desks for which a banking entity is required to calculate and report a particular quantitative measurement based on the type of covered trading activity conducted by the trading desk.

Calculation period means the period of time for which a particular quantitative measurement must be calculated.

Comprehensive profit and loss means the net profit or loss of a trading desk's material sources of trading revenue over a specific period of time, including, for example, any increase or decrease in the market value of a trading desk's holdings, dividend income, and interest income and expense.

Covered trading activity means trading conducted by a trading desk under §§ 44.4, 44.5, 44.6(a), or 44.6(b). A banking entity may include in its covered trading activity trading conducted under §§ 44.3(e), 44.6(c), 44.6(d), or 44.6(e).

Measurement frequency means the frequency with which a particular quantitative metric must be calculated and recorded.

Trading day means a calendar day on which a trading desk is open for trading.

III. Reporting and Recordkeeping

a. Scope of Required Reporting

1. *Quantitative measurements.* Each banking entity made subject to this appendix by § 44.20 must furnish the following quantitative measurements, as applicable, for each trading desk of the banking entity engaged in covered trading activities and calculate these quantitative measurements in accordance with this appendix:

i. Risk and Position Limits and Usage;

ii. Risk Factor Sensitivities;

iii. Value-at-Risk and Stressed Value-at-Risk;

iv Comprehensive Profit and Loss Attribution;

v. Positions;

vi. Transaction Volumes; and

vii. Securities Inventory Aging.

2. *Trading desk information.* Each banking entity made subject to this appendix by § 44.20 must provide certain descriptive information, as further described in this appendix, regarding each trading desk engaged in covered trading activities.

3. *Quantitative measurements identifying information.* Each banking entity made subject to this appendix by § 44.20 must provide certain identifying and descriptive information, as further described in this appendix, regarding its quantitative measurements.

4. *Narrative statement.* Each banking entity made subject to this appendix by § 44.20 must provide a separate narrative statement, as further described in this appendix.

5. *File identifying information.* Each banking entity made subject to this appendix by § 44.20 must provide file identifying information in each submission to the OCC pursuant to this appendix, including the name of the banking entity, the RSSD ID assigned to the top-tier banking entity by the Board, and identification of the reporting period and creation date and time.

b. Trading Desk Information

1. Each banking entity must provide descriptive information regarding each trading desk engaged in covered trading activities, including:

i. Name of the trading desk used internally by the banking entity and a unique identification label for the trading desk;

ii. Identification of each type of covered trading activity in which the trading desk is engaged;

iii. Brief description of the general strategy of the trading desk;

iv. A list of the types of financial instruments and other products purchased and sold by the trading desk; an indication of which of these are the main financial instruments or products purchased and sold by the trading desk; and, for trading desks engaged in market making-related activities under § 44.4(b), specification of whether each type of financial instrument is included in market-maker positions or not included in market-maker positions. In addition, indicate whether the trading desk is including in its quantitative measurements products excluded from the definition of ‘‘financial instrument’’ under § 44.3(d)(2) and, if so, identify such products;

v. Identification by complete name of each legal entity that serves as a booking entity for covered trading activities conducted by the trading desk; and indication of which of the identified legal entities are the main booking entities for covered trading activities of the trading desk;

vi. For each legal entity that serves as a booking entity for covered trading activities, specification of any of the following applicable entity types for that legal entity:

A. National bank, Federal branch or Federal agency of a foreign bank, Federal savings association, Federal savings bank;

B. State nonmember bank, foreign bank having an insured branch, State savings association;

C. U.S.-registered broker-dealer, U.S.-registered security-based swap dealer, U.S.-registered major security-based swap participant;

D. Swap dealer, major swap participant, derivatives clearing organization, futures commission merchant, commodity pool operator, commodity trading advisor, introducing broker, floor trader, retail foreign exchange dealer;

E. State member bank;

F. Bank holding company, savings and loan holding company;

G. Foreign banking organization as defined in 12 CFR 211.21(o);

H. Uninsured State-licensed branch or agency of a foreign bank; or

I. Other entity type not listed above, including a subsidiary of a legal entity described above where the subsidiary itself is not an entity type listed above;

vii. Indication of whether each calendar date is a trading day or not a trading day for the trading desk; and

viii. Currency reported and daily currency conversion rate.

c. Quantitative Measurements Identifying Information

1. Each banking entity must provide the following information regarding the quantitative measurements:

i. A Risk and Position Limits Information Schedule that provides identifying and descriptive information for each limit reported pursuant to the Risk and Position Limits and Usage quantitative measurement, including the name of the limit, a unique identification label for the limit, a description of the limit, whether the limit is intraday or end-of-day, the unit of measurement for the limit, whether the limit measures risk on a net or gross basis, and the type of limit;

ii. A Risk Factor Sensitivities Information Schedule that provides identifying and descriptive information for each risk factor sensitivity reported pursuant to the Risk Factor Sensitivities quantitative measurement, including the name of the sensitivity, a unique identification label for the sensitivity, a description of the sensitivity, and the sensitivity's risk factor change unit;

iii. A Risk Factor Attribution Information Schedule that provides identifying and descriptive information for each risk factor attribution reported pursuant to the Comprehensive Profit and Loss Attribution quantitative measurement, including the name of the risk factor or other factor, a unique identification label for the risk factor or other factor, a description of the risk factor or other factor, and the risk factor or other factor's change unit;

iv. A Limit/Sensitivity Cross-Reference Schedule that cross-references, by unique identification label, limits identified in the Risk and Position Limits Information Schedule to associated risk factor sensitivities identified in the Risk Factor Sensitivities Information Schedule; and

v. A Risk Factor Sensitivity/Attribution Cross-Reference Schedule that cross-references, by unique identification label, risk factor sensitivities identified in the Risk Factor Sensitivities Information Schedule to associated risk factor attributions identified in the Risk Factor Attribution Information Schedule.

d. Narrative Statement

1. Each banking entity made subject to this appendix by § 44.20 must submit in a separate electronic document a Narrative Statement to the OCC describing any changes in calculation methods used, a description of and reasons for changes in the banking entity's trading desk structure or trading desk strategies, and when any such change occurred. The Narrative Statement must include any information the banking entity views as relevant for assessing the information reported, such as further description of calculation methods used.

2. If a banking entity does not have any information to report in a Narrative Statement, the banking entity must submit an electronic document stating that it does not have any information to report in a Narrative Statement.

e. Frequency and Method of Required Calculation and Reporting

A banking entity must calculate any applicable quantitative measurement for each trading day. A banking entity must report the Narrative Statement, the Trading Desk Information, the Quantitative Measurements Identifying Information, and each applicable quantitative measurement electronically to the OCC on the reporting schedule established in § 44.20 unless otherwise requested by the OCC. A banking entity must report the Trading Desk Information, the Quantitative Measurements Identifying Information, and each applicable quantitative measurement to the OCC in accordance with the XML Schema specified and published on the OCC's website.

f. Recordkeeping

A banking entity must, for any quantitative measurement furnished to the OCC pursuant to this appendix and § 44.20(d), create and maintain records documenting the preparation and content of these reports, as well as such information as is necessary to permit the OCC to verify the accuracy of such reports, for a period of five years from the end of the calendar year for which the measurement was taken. A banking entity must retain the Narrative Statement, the Trading Desk Information, and the Quantitative Measurements Identifying Information for a period of five years from the end of the calendar year for which the information was reported to the OCC.

IV. Quantitative Measurements

a. Risk-Management Measurements

1. Risk and Position Limits and Usage

i. *Description:* For purposes of this appendix, Risk and Position Limits are the constraints that define the amount of risk that a trading desk is permitted to take at a point in time, as defined by the banking entity for a specific trading desk. Usage represents the value of the trading desk's risk or positions that are accounted for by the current activity of the desk. Risk and position limits and their usage are key risk management tools used to control and monitor risk taking and include, but are not limited to, the limits set out in § 44.4 and § 44.5. A number of the metrics that are described below, including ''Risk Factor Sensitivities'' and ''Value-at-Risk,'' relate to a trading desk's risk and position limits and are useful in evaluating and setting these limits in the broader context of the trading desk's overall activities, particularly for the market making activities under § 44.4(b) and hedging activity under § 44.5. Accordingly, the limits required under § 44.4(b)(2)(iii) and § 44.5(b)(1)(i)(A) must meet the applicable requirements under § 44.4(b)(2)(iii) and § 44.5(b)(1)(i)(A) and also must include appropriate metrics for the trading desk limits including, at a minimum, the ''Risk Factor Sensitivities'' and ''Value-at-Risk'' metrics except to the extent any of the ''Risk Factor Sensitivities'' or ''Value-at-Risk'' metrics are demonstrably ineffective for measuring and monitoring the risks of a trading desk based on the types of positions traded by, and risk exposures of, that desk.

A. A banking entity must provide the following information for each limit reported pursuant to this quantitative measurement: The unique identification label for the limit reported in the Risk and Position Limits Information Schedule, the limit size (distinguishing between an upper and a lower limit), and the value of usage of the limit.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks engaged in covered trading activities.

2. Risk Factor Sensitivities

i. *Description:* For purposes of this appendix, Risk Factor Sensitivities are changes in a trading desk's Comprehensive Profit and Loss that are expected to occur in the event of a change in one or more underlying variables that are significant sources of the trading desk's profitability and risk. A banking entity must report the risk factor sensitivities that are monitored and managed as part of the trading desk's overall risk management policy. Reported risk factor sensitivities must be sufficiently granular to account for a preponderance of the expected price variation in the trading desk's holdings. A banking entity must provide the following information for each sensitivity that is reported pursuant to this quantitative measurement: The unique identification label for the risk factor sensitivity listed in the Risk Factor Sensitivities Information Schedule, the change in risk factor used to determine the risk factor sensitivity, and the aggregate change in value across all positions of the desk given the change in risk factor.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks engaged in covered trading activities.

3. Value-at-Risk and Stressed Value-at-Risk

i. *Description:* For purposes of this appendix, Value-at-Risk (''VaR'') is the measurement of the risk of future financial loss in the value of a trading desk's aggregated positions at the ninety-nine percent confidence level over a one-day period, based on current market conditions. For purposes of this appendix, Stressed Value-at-Risk (''Stressed VaR'') is the measurement of the risk of future financial loss in the value of a trading desk's aggregated positions at the ninety-nine percent confidence level over a one-day period, based on market conditions during a period of significant financial stress.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* For VaR, all trading desks engaged in covered trading activities. For Stressed VaR, all trading desks engaged in covered trading activities, except trading desks whose covered trading activity is conducted exclusively to hedge products excluded from the definition of ''financial instrument'' under § 44.3(d)(2).

b. Source-of-Revenue Measurements

1. Comprehensive Profit and Loss Attribution

i. *Description:* For purposes of this appendix, Comprehensive Profit and Loss Attribution is an analysis that attributes the daily fluctuation in the value of a trading desk's positions to various sources. First, the daily profit and loss of the aggregated positions is divided into three categories: (i) Profit and loss attributable to a trading desk's existing positions that were also positions held by the trading desk as of the end of the prior day (''existing positions''); (ii) profit and loss attributable to new positions resulting from the current day's trading activity (''new positions''); and (iii) residual profit and loss that cannot be specifically attributed to existing positions or new positions. The sum of (i), (ii), and (iii) must equal the trading desk's comprehensive profit and loss at each point in time.

A. The comprehensive profit and loss associated with existing positions must reflect changes in the value of these positions on the applicable day.

The comprehensive profit and loss from existing positions must be further attributed, as applicable, to changes in (i) the specific risk factors and other factors that are monitored and managed as part of the trading desk's overall risk management policies and procedures; and (ii) any other applicable elements, such as cash flows, carry, changes in reserves, and the correction, cancellation, or exercise of a trade.

B. For the attribution of comprehensive profit and loss from existing positions to specific risk factors and other factors, a banking entity must provide the following information for the factors that explain the preponderance of the profit or loss changes due to risk factor changes: The unique identification label for the risk factor or other factor listed in the Risk Factor Attribution Information Schedule, and the profit or loss due to the risk factor or other factor change.

C. The comprehensive profit and loss attributed to new positions must reflect commissions and fee income or expense and market gains or losses associated with transactions executed on the applicable day. New positions include purchases and sales of financial instruments and other assets/liabilities and negotiated amendments to existing positions. The comprehensive profit and loss from new positions may be reported in the aggregate and does not need to be further attributed to specific sources.

D. The portion of comprehensive profit and loss that cannot be specifically attributed to known sources must be allocated to a residual category identified as an unexplained portion of the comprehensive profit and loss. Significant unexplained profit and loss must be escalated for further investigation and analysis.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks engaged in covered trading activities.

c. Positions, Transaction Volumes, and Securities Inventory Aging Measurements

1. Positions

i. *Description:* For purposes of this appendix, Positions is the value of securities and derivatives positions managed by the trading desk. For purposes of the Positions quantitative measurement, do not include in the Positions calculation for ''securities'' those securities that are also ''derivatives,'' as those terms are defined under subpart A; instead, report those securities that are also derivatives as ''derivatives.''[418] A banking entity must separately report the trading desk's market value of long securities positions, market value of short securities positions, market value of derivatives receivables, market value of derivatives payables, notional value of derivatives receivables, and notional value of derivatives payables.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks that rely on § 44.4(a) or § 44.4(b) to conduct underwriting activity or market-making-related activity, respectively.

2. Transaction Volumes

i. *Description:* For purposes of this appendix, Transaction Volumes measures four exclusive categories of covered trading activity conducted by a trading desk. A banking entity is required to report the value and number of security and derivative transactions conducted by the trading desk with: (i) Customers, excluding internal transactions; (ii) non-customers, excluding internal transactions; (iii) trading desks and other organizational units where the transaction is booked in the same banking entity; and (iv) trading desks and other organizational units where the transaction is booked into an affiliated banking entity. For securities, value means gross market value. For derivatives, value means gross notional value. For purposes of calculating the Transaction Volumes quantitative measurement, do not include in the Transaction Volumes calculation for ''securities'' those securities that are also ''derivatives,'' as those terms are defined under subpart A; instead, report those securities that are also derivatives as ''derivatives.''[419] Further, for purposes of the Transaction Volumes quantitative measurement, a customer of a trading desk that relies on § 44.4(a) to conduct underwriting activity is a market participant identified in § 44.4(a)(7), and a customer of a trading desk that relies on § 44.4(b) to conduct market making-related activity is a market participant identified in § 44.4(b)(3).

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks that rely on § 44.4(a) or § 44.4(b) to conduct underwriting activity or market-making-related activity, respectively.

3. Securities Inventory Aging

i. *Description:* For purposes of this appendix, Securities Inventory Aging generally describes a schedule of the market value of the trading desk's securities positions and the amount of time that those securities positions have been held. Securities Inventory Aging must measure the age profile of a trading desk's securities positions for the following periods: 0–30 calendar days; 31–60 calendar days; 61–90 calendar days; 91–180 calendar days; 181–360 calendar days; and greater than 360 calendar days. Securities Inventory Aging includes two schedules, a security asset-aging schedule, and a security liability-aging schedule. For purposes of the Securities Inventory Aging quantitative measurement, do not include securities that are also ''derivatives,'' as those terms are defined under subpart A.[420]

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks that rely on § 44.4(a) or § 44.4(b) to conduct underwriting activity or market-making related activity, respectively.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the Common Preamble the Board proposes to amend chapter II of title 12 of the Code of Federal Regulations as follows:

PART 248—PROPRIETARY TRADING AND CERTAIN INTERESTS IN AND RELATIONSHIPS WITH COVERED FUNDS (REGULATION VV)

■ 14. The authority citation for part 248 continues to read as follows:

Authority: 12 U.S.C. 1851, 12 U.S.C. 221 *et seq.,* 12 U.S.C. 1818, 12 U.S.C. 1841 *et seq.,* and 12 U.S.C. 3103 *et seq.*

Subpart A—Authority and Definitions

■ 15. Section 248.2 is revised as follows:

§ 248.2 Definitions.

Unless otherwise specified, for purposes of this part:

(a) *Affiliate* has the same meaning as in section 2(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(k)).

(b) *Applicable accounting standards* means U.S. generally accepted accounting principles, or such other accounting standards applicable to a banking entity that the [Agency] determines are appropriate and that the banking entity uses in the ordinary course of its business in preparing its consolidated financial statements.

(c) *Bank holding company* has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

(d) *Banking entity.* (1) Except as provided in paragraph (d)(2) of this section, *banking entity* means:

(i) Any insured depository institution;

(ii) Any company that controls an insured depository institution;

(iii) Any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(iv) Any affiliate or subsidiary of any entity described in paragraphs (d)(1)(i), (ii), or (iii) of this section.

(2) Banking entity does not include:

(i) A covered fund that is not itself a banking entity under paragraphs (d)(1)(i), (ii), or (iii) of this section;

(ii) A portfolio company held under the authority contained in section

[418] *See* §§ 44.2(i), (bb). For example, under this part, a security-based swap is both a ''security'' and a ''derivative.'' For purposes of the Positions quantitative measurement, security-based swaps are reported as derivatives rather than securities.

[419] *See* §§ 44.2(i), (bb).

[420] *See* §§ 44.2(i), (bb).

4(k)(4)(H) or (I) of the BHC Act (12 U.S.C. 1843(k)(4)(H), (I)), or any portfolio concern, as defined under 13 CFR 107.50, that is controlled by a small business investment company, as defined in section 103(3) of the Small Business Investment Act of 1958 (15 U.S.C. 662), so long as the portfolio company or portfolio concern is not itself a banking entity under paragraphs (d)(1)(i), (ii), or (iii) of this section; or

(iii) The FDIC acting in its corporate capacity or as conservator or receiver under the Federal Deposit Insurance Act or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

(e) *Board* means the Board of Governors of the Federal Reserve System.

(f) *CFTC* means the Commodity Futures Trading Commission.

(g) *Dealer* has the same meaning as in section 3(a)(5) of the Exchange Act (15 U.S.C. 78c(a)(5)).

(h) *Depository institution* has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

(i) *Derivative.* (1) Except as provided in paragraph (i)(2) of this section, *derivative* means:

(i) Any swap, as that term is defined in section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)), or security-based swap, as that term is defined in section 3(a)(68) of the Exchange Act (15 U.S.C. 78c(a)(68));

(ii) Any purchase or sale of a commodity, that is not an excluded commodity, for deferred shipment or delivery that is intended to be physically settled;

(iii) Any foreign exchange forward (as that term is defined in section 1a(24) of the Commodity Exchange Act (7 U.S.C. 1a(24)) or foreign exchange swap (as that term is defined in section 1a(25) of the Commodity Exchange Act (7 U.S.C. 1a(25));

(iv) Any agreement, contract, or transaction in foreign currency described in section 2(c)(2)(C)(i) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(C)(i));

(v) Any agreement, contract, or transaction in a commodity other than foreign currency described in section 2(c)(2)(D)(i) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(D)(i)); and

(vi) Any transaction authorized under section 19 of the Commodity Exchange Act (7 U.S.C. 23(a) or (b));

(2) A derivative does not include:

(i) Any consumer, commercial, or other agreement, contract, or transaction that the CFTC and SEC have further defined by joint regulation, interpretation, guidance, or other action as not within the definition of swap, as that term is defined in section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)), or security-based swap, as that term is defined in section 3(a)(68) of the Exchange Act (15 U.S.C. 78c(a)(68)); or

(ii) Any identified banking product, as defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)), that is subject to section 403(a) of that Act (7 U.S.C. 27a(a)).

(j) *Employee* includes a member of the immediate family of the employee.

(k) *Exchange Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

(l) *Excluded commodity* has the same meaning as in section 1a(19) of the Commodity Exchange Act (7 U.S.C. 1a(19)).

(m) *FDIC* means the Federal Deposit Insurance Corporation.

(n) *Federal banking agencies* means the Board, the Office of the Comptroller of the Currency, and the FDIC.

(o) *Foreign banking organization* has the same meaning as in section 211.21(o) of the Board's Regulation K (12 CFR 211.21(o)), but does not include a foreign bank, as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)), that is organized under the laws of the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, or the Commonwealth of the Northern Mariana Islands.

(p) *Foreign insurance regulator* means the insurance commissioner, or a similar official or agency, of any country other than the United States that is engaged in the supervision of insurance companies under foreign insurance law.

(q) *General account* means all of the assets of an insurance company except those allocated to one or more separate accounts.

(r) *Insurance company* means a company that is organized as an insurance company, primarily and predominantly engaged in writing insurance or reinsuring risks underwritten by insurance companies, subject to supervision as such by a state insurance regulator or a foreign insurance regulator, and not operated for the purpose of evading the provisions of section 13 of the BHC Act (12 U.S.C. 1851).

(s) *Insured depository institution* has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), but does not include an insured depository institution that is described in section 2(c)(2)(D) of the BHC Act (12 U.S.C. 1841(c)(2)(D)).

(t) *Limited trading assets and liabilities* means, with respect to a banking entity, that:

(1) The banking entity has, together with its affiliates and subsidiaries on a worldwide consolidated basis, trading assets and liabilities (excluding trading assets and liabilities involving obligations of or guaranteed by the United States or any agency of the United States) the average gross sum of which over the previous consecutive four quarters, as measured as of the last day of each of the four previous calendar quarters, is less than $1,000,000,000; and

(2) The Board has not determined pursuant to § 248.20(g) or (h) of this part that the banking entity should not be treated as having limited trading assets and liabilities.

(u) *Loan* means any loan, lease, extension of credit, or secured or unsecured receivable that is not a security or derivative.

(v) *Moderate trading assets and liabilities* means, with respect to a banking entity, that the banking entity does not have significant trading assets and liabilities or limited trading assets and liabilities.

(w) *Primary financial regulatory agency* has the same meaning as in section 2(12) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301(12)).

(x) *Purchase* includes any contract to buy, purchase, or otherwise acquire. For security futures products, purchase includes any contract, agreement, or transaction for future delivery. With respect to a commodity future, purchase includes any contract, agreement, or transaction for future delivery. With respect to a derivative, purchase includes the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a derivative, as the context may require.

(y) *Qualifying foreign banking organization* means a foreign banking organization that qualifies as such under section 211.23(a), (c) or (e) of the Board's Regulation K (12 CFR 211.23(a), (c), or (e)).

(z) *SEC* means the Securities and Exchange Commission.

(aa) *Sale* and *sell* each include any contract to sell or otherwise dispose of. For security futures products, such terms include any contract, agreement, or transaction for future delivery. With respect to a commodity future, such terms include any contract, agreement, or transaction for future delivery. With respect to a derivative, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a derivative, as the context may require.

(bb) *Security* has the meaning specified in section 3(a)(10) of the Exchange Act (15 U.S.C. 78c(a)(10)).

(cc) *Security-based swap dealer* has the same meaning as in section 3(a)(71) of the Exchange Act (15 U.S.C. 78c(a)(71)).

(dd) *Security future* has the meaning specified in section 3(a)(55) of the Exchange Act (15 U.S.C. 78c(a)(55)).

(ee) *Separate account* means an account established and maintained by an insurance company in connection with one or more insurance contracts to hold assets that are legally segregated from the insurance company's other assets, under which income, gains, and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(ff) *Significant trading assets and liabilities.*

(1) *Significant trading assets and liabilities* means, with respect to a banking entity, that:

(i) The banking entity has, together with its affiliates and subsidiaries, trading assets and liabilities the average gross sum of which over the previous consecutive four quarters, as measured as of the last day of each of the four previous calendar quarters, equals or exceeds $10,000,000,000; or

(ii) The Board has determined pursuant to § 248.20(h) of this part that the banking entity should be treated as having significant trading assets and liabilities.

(2) With respect to a banking entity other than a banking entity described in paragraph (3), trading assets and liabilities for purposes of this paragraph (ff) means trading assets and liabilities (excluding trading assets and liabilities involving obligations of or guaranteed by the United States or any agency of the United States) on a worldwide consolidated basis.

(3)(i) With respect to a banking entity that is a foreign banking organization or a subsidiary of a foreign banking organization, trading assets and liabilities for purposes of this paragraph (ff) means the trading assets and liabilities (excluding trading assets and liabilities involving obligations of or guaranteed by the United States or any agency of the United States) of the combined U.S. operations of the top-tier foreign banking organization (including all subsidiaries, affiliates, branches, and agencies of the foreign banking organization operating, located, or organized in the United States).

(ii) For purposes of paragraph (ff)(3)(i) of this section, a U.S. branch, agency, or subsidiary of a banking entity is located in the United States; however, the foreign bank that operates or controls that branch, agency, or subsidiary is not considered to be located in the United States solely by virtue of operating or controlling the U.S. branch, agency, or subsidiary.

(gg) *State* means any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(hh) *Subsidiary* has the same meaning as in section 2(d) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(d)).

(ii) *State insurance regulator* means the insurance commissioner, or a similar official or agency, of a State that is engaged in the supervision of insurance companies under State insurance law.

(jj) *Swap dealer* has the same meaning as in section 1(a)(49) of the Commodity Exchange Act (7 U.S.C. 1a(49)).

Subpart B—Proprietary Trading

■ 16. Amend § 248.3 by:

■ a. Revising paragraph (b);

■ b. Redesignating paragraphs (c) through (e) as paragraphs (d) through (f);

■ c. Adding a new paragraph (c);

■ d. Revising paragraph (e)(3);

■ e. Adding paragraph (e)(10);

■ f. Redesignating paragraphs (f)(5) through (f)(13) as paragraphs (f)(6) through (f)(14);

■ g. Adding a new paragraph (f)(5); and

■ h. Adding a new paragraph (g).

The revisions and additions read as follows:

§ 248.3 Prohibition on proprietary trading.

* * * * *

(b) *Definition of trading account. Trading account* means any account that is used by a banking entity to:

(1)(i) Purchase or sell one or more financial instruments that are both market risk capital rule covered positions and trading positions (or hedges of other market risk capital rule covered positions), if the banking entity, or any affiliate of the banking entity, is an insured depository institution, bank holding company, or savings and loan holding company, and calculates risk-based capital ratios under the market risk capital rule; or

(ii) With respect to a banking entity that is not, and is not controlled directly or indirectly by a banking entity that is, located in or organized under the laws of the United States or any State, purchase or sell one or more financial instruments that are subject to capital requirements under a market risk framework established by the home-country supervisor that is consistent with the market risk framework published by the Basel Committee on Banking Supervision, as amended from time to time.

(2) Purchase or sell one or more financial instruments for any purpose, if the banking entity:

(i) Is licensed or registered, or is required to be licensed or registered, to engage in the business of a dealer, swap dealer, or security-based swap dealer, to the extent the instrument is purchased or sold in connection with the activities that require the banking entity to be licensed or registered as such; or

(ii) Is engaged in the business of a dealer, swap dealer, or security-based swap dealer outside of the United States, to the extent the instrument is purchased or sold in connection with the activities of such business; or

(3) Purchase or sell one or more financial instruments, with respect to a financial instrument that is recorded at fair value on a recurring basis under applicable accounting standards.

(c) *Presumption of compliance.* (1)(i) Each trading desk that does not purchase or sell financial instruments for a trading account defined in paragraphs (b)(1) or (b)(2) of this section may calculate the net gain or net loss on the trading desk's portfolio of financial instruments each business day, reflecting realized and unrealized gains and losses since the previous business day, based on the banking entity's fair value for such financial instruments.

(ii) If the sum of the absolute values of the daily net gain and loss figures determined in accordance with paragraph (c)(1)(i) of this section for the preceding 90-calendar-day period does not exceed $25 million, the activities of the trading desk shall be presumed to be in compliance with the prohibition in paragraph (a) of this section.

(2) The Board may rebut the presumption of compliance in paragraph (c)(1)(ii) of this section by providing written notice to the banking entity that the Board has determined that one or more of the banking entity's activities violates the prohibitions under subpart B.

(3) If a trading desk operating pursuant to paragraph (c)(1)(ii) of this section exceeds the $25 million threshold in that paragraph at any point, the banking entity shall, in accordance

with any policies and procedures adopted by the Board:

(i) Promptly notify the Board;

(ii) Demonstrate that the trading desk's purchases and sales of financial instruments comply with subpart B; and

(iii) Demonstrate, with respect to the trading desk, how the banking entity will maintain compliance with subpart B on an ongoing basis.

* * * * *

(e) * * *

(3) Any purchase or sale of a security, foreign exchange forward (as that term is defined in section 1a(24) of the Commodity Exchange Act (7 U.S.C. 1a(24)), foreign exchange swap (as that term is defined in section 1a(25) of the Commodity Exchange Act (7 U.S.C. 1a(25)), or physically-settled cross-currency swap, by a banking entity for the purpose of liquidity management in accordance with a documented liquidity management plan of the banking entity that, with respect to such financial instruments:

(i) Specifically contemplates and authorizes the particular financial instruments to be used for liquidity management purposes, the amount, types, and risks of these financial instruments that are consistent with liquidity management, and the liquidity circumstances in which the particular financial instruments may or must be used;

(ii) Requires that any purchase or sale of financial instruments contemplated and authorized by the plan be principally for the purpose of managing the liquidity of the banking entity, and not for the purpose of short-term resale, benefitting from actual or expected short-term price movements, realizing short-term arbitrage profits, or hedging a position taken for such short-term purposes;

(iii) Requires that any financial instruments purchased or sold for liquidity management purposes be highly liquid and limited to financial instruments the market, credit, and other risks of which the banking entity does not reasonably expect to give rise to appreciable profits or losses as a result of short-term price movements;

(iv) Limits any financial instruments purchased or sold for liquidity management purposes, together with any other instruments purchased or sold for such purposes, to an amount that is consistent with the banking entity's near-term funding needs, including deviations from normal operations of the banking entity or any affiliate thereof, as estimated and documented pursuant to methods specified in the plan;

(v) Includes written policies and procedures, internal controls, analysis, and independent testing to ensure that the purchase and sale of financial instruments that are not permitted under §§ 248.6(a) or (b) of this subpart are for the purpose of liquidity management and in accordance with the liquidity management plan described in paragraph (e)(3) of this section; and

(vi) Is consistent with the Board's supervisory requirements, guidance, and expectations regarding liquidity management;

* * * * *

(10) Any purchase (or sale) of one or more financial instruments that was made in error by a banking entity in the course of conducting a permitted or excluded activity or is a subsequent transaction to correct such an error, and the erroneously purchased (or sold) financial instrument is promptly transferred to a separately-managed trade error account for disposition.

(f) * * *

(5) *Cross-currency swap* means a swap in which one party exchanges with another party principal and interest rate payments in one currency for principal and interest rate payments in another currency, and the exchange of principal occurs on the date the swap is entered into, with a reversal of the exchange of principal at a later date that is agreed upon when the swap is entered into.

* * * * *

(g) *Reservation of Authority:* (1) The Board may determine, on a case-by-case basis, that a purchase or sale of one or more financial instruments by a banking entity either is or is not for the trading account as defined at 12 U.S.C. 1851(h)(6).

(2) Notice and Response Procedures.

(i) Notice. When the Board determines that the purchase or sale of one or more financial instruments is for the trading account under paragraph (g)(1) of this section, the Board will notify the banking entity in writing of the determination and provide an explanation of the determination.

(ii) Response.

(A) The banking entity may respond to any or all items in the notice. The response should include any matters that the banking entity would have the Boardconsider in deciding whether the purchase or sale is for the trading account. The response must be in writing and delivered to the designated Board official within 30 days after the date on which the banking entity received the notice. The Board may shorten the time period when, in the opinion of the Board, the activities or condition of the banking entity so requires, provided that the banking entity is informed promptly of the new time period, or with the consent of the banking entity. In its discretion, the Board may extend the time period for good cause.

(B) Failure to respond within 30 days or such other time period as may be specified by the Board shall constitute a waiver of any objections to the Board's determination.

(iii) After the close of banking entity's response period, the Board will decide, based on a review of the banking entity's response and other information concerning the banking entity, whether to maintain the Board's determination that the purchase or sale of one or more financial instruments is for the trading account. The banking entity will be notified of the decision in writing. The notice will include an explanation of the decision.

■ 17. Section 248.4 is amended by:

■ a. Revising paragraph (a)(2);

■ b. Adding paragraph (a)(8);

■ c. Revising paragraph (b)(2);

■ d. Revising the introductory language of paragraph (b)(3)(i);

■ e. In paragraph (b)(5) revising the references to ''*inventory*'' to read ''*positions*''*;* and

■ f. Adding a new paragraph (b)(6).

The revisions and additions read as follows:

§ 248.4 Permitted underwriting and market making-related activities.

(a) * * *

(2) *Requirements.* The underwriting activities of a banking entity are permitted under paragraph (a)(1) of this section only if:

(i) The banking entity is acting as an underwriter for a distribution of securities and the trading desk's underwriting position is related to such distribution;

(ii)(A) The amount and type of the securities in the trading desk's underwriting position are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties, taking into account the liquidity, maturity, and depth of the market for the relevant type of security, and (B) reasonable efforts are made to sell or otherwise reduce the underwriting position within a reasonable period, taking into account the liquidity, maturity, and depth of the market for the relevant type of security;

(iii) In the case of a banking entity with significant trading assets and liabilities, the banking entity has established and implements, maintains, and enforces an internal compliance program required by subpart D of this part that is reasonably designed to ensure the banking entity's compliance with the requirements of paragraph (a) of this section, including reasonably designed written policies and procedures, internal controls, analysis, and independent testing identifying and addressing:

(A) The products, instruments or exposures each trading desk may purchase, sell, or manage as part of its underwriting activities;

(B) Limits for each trading desk, in accordance with paragraph (a)(8)(i) of this section;

(C) Internal controls and ongoing monitoring and analysis of each trading desk's compliance with its limits; and

(D) Authorization procedures, including escalation procedures that require review and approval of any trade that would exceed a trading desk's limit(s), demonstrable analysis of the basis for any temporary or permanent increase to a trading desk's limit(s), and independent review of such demonstrable analysis and approval;

(iv) The compensation arrangements of persons performing the activities described in this paragraph (a) are designed not to reward or incentivize prohibited proprietary trading; and

(v) The banking entity is licensed or registered to engage in the activity described in this paragraph (a) in accordance with applicable law.

* * * * *

(8) *Rebuttable presumption of compliance.*—(i) *Risk limits.* (A) A banking entity shall be presumed to meet the requirements of paragraph (a)(2)(ii)(A) of this section with respect to the purchase or sale of a financial instrument if the banking entity has established and implements, maintains, and enforces the limits described in paragraph (a)(8)(i)(B) and does not exceed such limits.

(B) The presumption described in paragraph (8)(i)(A) of this section shall be available with respect to limits for each trading desk that are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties, based on the nature and amount of the trading desk's underwriting activities, on the:

(*1*) Amount, types, and risk of its underwriting position;

(*2*) Level of exposures to relevant risk factors arising from its underwriting position; and

(*3*) Period of time a security may be held.

(ii) *Supervisory review and oversight.* The limits described in paragraph (a)(8)(i) of this section shall be subject to supervisory review and oversight by the Board on an ongoing basis. Any review of such limits will include assessment of whether the limits are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties.

(iii) *Reporting.* With respect to any limit identified pursuant to paragraph (a)(8)(i) of this section, a banking entity shall promptly report to the Board (A) to the extent that any limit is exceeded and (B) any temporary or permanent increase to any limit(s), in each case in the form and manner as directed by the Board.

(iv) *Rebutting the presumption.* The presumption in paragraph (a)(8)(i) of this section may be rebutted by the Board if the Board determines, based on all relevant facts and circumstances, that a trading desk is engaging in activity that is not based on the reasonably expected near term demands of clients, customers, or counterparties. The Board will provide notice of any such determination to the banking entity in writing.

(b) * * *

(2) *Requirements.* The market making-related activities of a banking entity are permitted under paragraph (b)(1) of this section only if:

(i) The trading desk that establishes and manages the financial exposure routinely stands ready to purchase and sell one or more types of financial instruments related to its financial exposure and is willing and available to quote, purchase and sell, or otherwise enter into long and short positions in those types of financial instruments for its own account, in commercially reasonable amounts and throughout market cycles on a basis appropriate for the liquidity, maturity, and depth of the market for the relevant types of financial instruments;

(ii) The trading desk's market-making related activities are designed not to exceed, on an ongoing basis, the reasonably expected near term demands of clients, customers, or counterparties, based on the liquidity, maturity, and depth of the market for the relevant types of financial instrument(s).

(iii) In the case of a banking entity with significant trading assets and liabilities, the banking entity has established and implements, maintains, and enforces an internal compliance program required by subpart D of this part that is reasonably designed to ensure the banking entity's compliance with the requirements of paragraph (b) of this section, including reasonably designed written policies and procedures, internal controls, analysis and independent testing identifying and addressing:

(A) The financial instruments each trading desk stands ready to purchase and sell in accordance with paragraph (b)(2)(i) of this section;

(B) The actions the trading desk will take to demonstrably reduce or otherwise significantly mitigate promptly the risks of its financial exposure consistent with the limits required under paragraph (b)(2)(iii)(C) of this section; the products, instruments, and exposures each trading desk may use for risk management purposes; the techniques and strategies each trading desk may use to manage the risks of its market making-related activities and positions; and the process, strategies, and personnel responsible for ensuring that the actions taken by the trading desk to mitigate these risks are and continue to be effective;

(C) Limits for each trading desk, in accordance with paragraph (b)(6)(i) of this section;

(D) Internal controls and ongoing monitoring and analysis of each trading desk's compliance with its limits; and

(E) Authorization procedures, including escalation procedures that require review and approval of any trade that would exceed a trading desk's limit(s), demonstrable analysis that the basis for any temporary or permanent increase to a trading desk's limit(s) is consistent with the requirements of this paragraph (b), and independent review of such demonstrable analysis and approval;

(iv) In the case of a banking entity with significant trading assets and liabilities, to the extent that any limit identified pursuant to paragraph (b)(2)(iii)(C) of this section is exceeded, the trading desk takes action to bring the trading desk into compliance with the limits as promptly as possible after the limit is exceeded;

(v) The compensation arrangements of persons performing the activities described in this paragraph (b) are designed not to reward or incentivize prohibited proprietary trading; and

(vi) The banking entity is licensed or registered to engage in activity described in this paragraph (b) in accordance with applicable law.

(3) * * *

(i) A trading desk or other organizational unit of another banking entity is not a client, customer, or counterparty of the trading desk if that other entity has trading assets and liabilities of $50 billion or more as measured in accordance with the methodology described in definition of ''significant trading assets and liabilities'' contained in § 248.2 of this part, unless:

* * * * *

(6) *Rebuttable presumption of compliance.*

(i) *Risk limits.*

(A) A banking entity shall be presumed to meet the requirements of paragraph (b)(2)(ii) of this section with respect to the purchase or sale of a financial instrument if the banking entity has established and implements, maintains, and enforces the limits described in paragraph (b)(6)(i)(B) and does not exceed such limits.

(B) The presumption described in paragraph (6)(i)(A) of this section shall be available with respect to limits for each trading desk that are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties, based on the nature and amount of the trading desk's market making-related activities, on the:

(*1*) Amount, types, and risks of its market-maker positions;

(*2*) Amount, types, and risks of the products, instruments, and exposures the trading desk may use for risk management purposes;

(*3*) Level of exposures to relevant risk factors arising from its financial exposure; and

(*4*) Period of time a financial instrument may be held.

(ii) *Supervisory review and oversight.* The limits described in paragraph (b)(6)(i) of this section shall be subject to supervisory review and oversight by the Board on an ongoing basis. Any review of such limits will include assessment of whether the limits are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties.

(iii) *Reporting.* With respect to any limit identified pursuant to paragraph (b)(6)(i) of this section, a banking entity shall promptly report to the Board (A) to the extent that any limit is exceeded and (B) any temporary or permanent increase to any limit(s), in each case in the form and manner as directed by the Board.

(iv) *Rebutting the presumption.* The presumption in paragraph (b)(6)(i) of this section may be rebutted by the Board if the Board determines, based on all relevant facts and circumstances, that a trading desk is engaging in activity that is not based on the reasonably expected near term demands of clients, customers, or counterparties. The Board will provide notice of any such determination to the banking entity in writing.

■ 18. Amend § 248.5 by revising paragraph (b), the introductory text of paragraph (c)(1); and adding paragraph (c)(4) to read as follows:

§ 248.5 Permitted risk-mitigating hedging activities.

* * * * *

(b) *Requirements.*

(1) The risk-mitigating hedging activities of a banking entity that has significant trading assets and liabilities are permitted under paragraph (a) of this section only if:

(i) The banking entity has established and implements, maintains and enforces an internal compliance program required by subpart D of this part that is reasonably designed to ensure the banking entity's compliance with the requirements of this section, including:

(A) Reasonably designed written policies and procedures regarding the positions, techniques and strategies that may be used for hedging, including documentation indicating what positions, contracts or other holdings a particular trading desk may use in its risk-mitigating hedging activities, as well as position and aging limits with respect to such positions, contracts or other holdings;

(B) Internal controls and ongoing monitoring, management, and authorization procedures, including relevant escalation procedures; and

(C) The conduct of analysis and independent testing designed to ensure that the positions, techniques and strategies that may be used for hedging may reasonably be expected to reduce or otherwise significantly mitigate the specific, identifiable risk(s) being hedged;

(ii) The risk-mitigating hedging activity:

(A) Is conducted in accordance with the written policies, procedures, and internal controls required under this section;

(B) At the inception of the hedging activity, including, without limitation, any adjustments to the hedging activity, is designed to reduce or otherwise significantly mitigate one or more specific, identifiable risks, including market risk, counterparty or other credit risk, currency or foreign exchange risk, interest rate risk, commodity price risk, basis risk, or similar risks, arising in connection with and related to identified positions, contracts, or other holdings of the banking entity, based upon the facts and circumstances of the identified underlying and hedging positions, contracts or other holdings and the risks and liquidity thereof;

(C) Does not give rise, at the inception of the hedge, to any significant new or additional risk that is not itself hedged contemporaneously in accordance with this section;

(D) Is subject to continuing review, monitoring and management by the banking entity that:

(*1*) Is consistent with the written hedging policies and procedures required under paragraph (b)(1)(i) of this section;

(*2*) Is designed to reduce or otherwise significantly mitigate the specific, identifiable risks that develop over time from the risk-mitigating hedging activities undertaken under this section and the underlying positions, contracts, and other holdings of the banking entity, based upon the facts and circumstances of the underlying and hedging positions, contracts and other holdings of the banking entity and the risks and liquidity thereof; and

(*3*) Requires ongoing recalibration of the hedging activity by the banking entity to ensure that the hedging activity satisfies the requirements set out in paragraph (b)(1)(ii) of this section and is not prohibited proprietary trading; and

(iii) The compensation arrangements of persons performing risk-mitigating hedging activities are designed not to reward or incentivize prohibited proprietary trading.

(2) The risk-mitigating hedging activities of a banking entity that does not have significant trading assets and liabilities are permitted under paragraph (a) of this section only if the risk-mitigating hedging activity:

(i) At the inception of the hedging activity, including, without limitation, any adjustments to the hedging activity, is designed to reduce or otherwise significantly mitigate one or more specific, identifiable risks, including market risk, counterparty or other credit risk, currency or foreign exchange risk, interest rate risk, commodity price risk, basis risk, or similar risks, arising in connection with and related to identified positions, contracts, or other holdings of the banking entity, based upon the facts and circumstances of the identified underlying and hedging positions, contracts or other holdings and the risks and liquidity thereof; and

(ii) Is subject, as appropriate, to ongoing recalibration by the banking entity to ensure that the hedging activity satisfies the requirements set out in paragraph (b)(2) of this section and is not prohibited proprietary trading.

(c) * * * (1) A banking entity that has significant trading assets and liabilities must comply with the requirements of paragraphs (c)(2) and (3) of this section, unless the requirements of paragraph (c)(4) of this section are met, with respect to any purchase or sale of financial instruments made in reliance on this section for risk-mitigating hedging purposes that is:

* * * * *

(4) The requirements of paragraphs (c)(2) and (3) of this section do not apply to the purchase or sale of a financial instrument described in paragraph (c)(1) of this section if:

(i) The financial instrument purchased or sold is identified on a written list of pre-approved financial instruments that are commonly used by the trading desk for the specific type of hedging activity for which the financial instrument is being purchased or sold; and

(ii) At the time the financial instrument is purchased or sold, the hedging activity (including the purchase or sale of the financial instrument) complies with written, pre-approved hedging limits for the trading desk purchasing or selling the financial instrument for hedging activities undertaken for one or more other trading desks. The hedging limits shall be appropriate for the:

(A) Size, types, and risks of the hedging activities commonly undertaken by the trading desk;

(B) Financial instruments purchased and sold for hedging activities by the trading desk; and

(C) Levels and duration of the risk exposures being hedged.

■ 19. Amend § 248.6 by revising paragraph (e)(3) and removing paragraph (e)(6) to read as follows:

§ 248.6 Other permitted proprietary trading activities.

* * * * *

(e) * * *

(3) A purchase or sale by a banking entity is permitted for purposes of this paragraph (e) if:

(i) The banking entity engaging as principal in the purchase or sale (including relevant personnel) is not located in the United States or organized under the laws of the United States or of any State;

(ii) The banking entity (including relevant personnel) that makes the decision to purchase or sell as principal is not located in the United States or organized under the laws of the United States or of any State; and

(iii) The purchase or sale, including any transaction arising from risk-mitigating hedging related to the instruments purchased or sold, is not accounted for as principal directly or on a consolidated basis by any branch or affiliate that is located in the United States or organized under the laws of the United States or of any State.

* * * * *

Subpart C—Covered Funds Activities and Investments

§ 248.10 [Amended]

■ 20. Section 248.10 is amended by:

■ a. In paragraph (c)(8)(i)(A) revising the reference to ''§ 248.2(s)'' to read ''§ 248.2(u)'';

■ b. Removing paragraph (d)(1);

■ c. Redesignating paragraphs (d)(2) through (d)(10) as paragraphs (d)(1) through (d)(9);

■ d. In paragraph (d)(5)(i)(G) revising the reference to ''(d)(6)(i)(A)'' to read ''(d)(5)(i)(A)''; and

■ e. In paragraph (d)(9) revising the reference to ''(d)(9)'' to read ''(d)(8)'' and the reference to ''(d)(10)(i)(A)'' to read ''(d)(9)(i)(A)'' and the reference to ''(d)(10)(i)'' to read ''(d)(9)(i)''

■ 21. Section 248.11 is amended by revising paragraph (c) as follows:

§ 248.11 Permitted organizing and offering, underwriting, and market making with respect to a covered fund.

* * * * *

(c) Underwriting and market making in ownership interests of a covered fund. The prohibition contained in § 248.10(a) of this subpart does not apply to a banking entity's underwriting activities or market making-related activities involving a covered fund so long as:

(1) Those activities are conducted in accordance with the requirements of § 248.4(a) or § 248.4(b) of subpart B, respectively; and

(2) With respect to any banking entity (or any affiliate thereof) that: Acts as a sponsor, investment adviser or commodity trading advisor to a particular covered fund or otherwise acquires and retains an ownership interest in such covered fund in reliance on paragraph (a) of this section; or acquires and retains an ownership interest in such covered fund and is either a securitizer, as that term is used in section 15G(a)(3) of the Exchange Act (15 U.S.C. 78o–11(a)(3)), or is acquiring and retaining an ownership interest in such covered fund in compliance with section 15G of that Act (15 U.S.C. 78o–11) and the implementing regulations issued thereunder each as permitted by paragraph (b) of this section, then in each such case any ownership interests acquired or retained by the banking entity and its affiliates in connection with underwriting and market making related activities for that particular covered fund are included in the calculation of ownership interests permitted to be held by the banking entity and its affiliates under the limitations of § 248.12(a)(2)(ii); § 248.12(a)(2)(iii), and § 248.12(d) of this subpart.

§ 248.12 (Amended)

■ 22. Section 248.12 is amended by

■ a. In paragraphs (c)(1) and (d) removing the references to ''§ 248.10(d)(6)(ii)'' and replacing with ''§ 248.10(d)(5)(ii)'';

■ b. Removing paragraph (e)(2)(vii); and

■ c. Redesignating the second instance of paragraph (e)(2)(vi) as paragraph (e)(2)(vii).

■ 23. Section 248.13 is amended by revising paragraphs (a) and (b)(3) and removing paragraph (b)(4)(iv) to read as follows:

§ 248.13 Other permitted covered fund activities and investments.

(a) Permitted risk-mitigating hedging activities. (1) The prohibition contained in § 248.10(a) of this subpart does not apply with respect to an ownership interest in a covered fund acquired or retained by a banking entity that is designed to reduce or otherwise significantly mitigate the specific, identifiable risks to the banking entity in connection with:

(i) A compensation arrangement with an employee of the banking entity or an affiliate thereof that directly provides investment advisory, commodity trading advisory or other services to the covered fund; or

(ii) A position taken by the banking entity when acting as intermediary on behalf of a customer that is not itself a banking entity to facilitate the exposure by the customer to the profits and losses of the covered fund.

(2) Requirements. The risk-mitigating hedging activities of a banking entity are permitted under this paragraph (a) only if:

(i) The banking entity has established and implements, maintains and enforces an internal compliance program in accordance with subpart D of this part that is reasonably designed to ensure the banking entity's compliance with the requirements of this section, including:

(A) Reasonably designed written policies and procedures; and

(B) Internal controls and ongoing monitoring, management, and authorization procedures, including relevant escalation procedures; and

(ii) The acquisition or retention of the ownership interest:

(A) Is made in accordance with the written policies, procedures, and internal controls required under this section;

(B) At the inception of the hedge, is designed to reduce or otherwise significantly mitigate one or more specific, identifiable risks arising (1) out of a transaction conducted solely to accommodate a specific customer request with respect to the covered fund or (2) in connection with the compensation arrangement with the employee that directly provides investment advisory, commodity trading advisory, or other services to the covered fund;

(C) Does not give rise, at the inception of the hedge, to any significant new or additional risk that is not itself hedged contemporaneously in accordance with this section; and

(D) Is subject to continuing review, monitoring and management by the banking entity.

(iii) With respect to risk-mitigating hedging activity conducted pursuant to paragraph (a)(1)(i), the compensation arrangement relates solely to the covered fund in which the banking entity or any affiliate has acquired an ownership interest pursuant to paragraph (a)(1)(i) and such compensation arrangement provides that any losses incurred by the banking entity on such ownership interest will be offset by corresponding decreases in amounts payable under such compensation arrangement.

* * * * *

(b) * * *

(3) An ownership interest in a covered fund is not offered for sale or sold to a resident of the United States for purposes of paragraph (b)(1)(iii) of this section only if it is not sold and has not been sold pursuant to an offering that targets residents of the United States in which the banking entity or any affiliate of the banking entity participates. If the banking entity or an affiliate sponsors or serves, directly or indirectly, as the investment manager, investment adviser, commodity pool operator or commodity trading advisor to a covered fund, then the banking entity or affiliate will be deemed for purposes of this paragraph (b)(3) to participate in any offer or sale by the covered fund of ownership interests in the covered fund.

* * * * *

■ 24. Section 248.14 is amended by revising paragraph (a)(2)(ii)(B) as follows:

§ 248.14 Limitations on relationships with a covered fund.

* * * * *

(a) * * *

(2) * * *

(ii) * * *

(B) The chief executive officer (or equivalent officer) of the banking entity certifies in writing annually no later than March 31 to the Board (with a duty to update the certification if the information in the certification materially changes) that the banking entity does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the covered fund or of any covered fund in which such covered fund invests; and

* * * * *

Subpart D—Compliance Program Requirement; Violations

■ 25. Section 248.20 is amended by:

■ a. Revising paragraph (a);

■ b. Revising the introductory language of paragraph (b);

■ c. Revising paragraph (c);

■ d. Revising paragraph (d);

■ e. Revising the introductory language of paragraph (e);

■ f. Revising paragraph (f)(2); and

■ g. Adding new paragraphs (g) and (h).

The revisions are as follows:

§ 248.20 Program for compliance; reporting.

(a) Program requirement. Each banking entity (other than a banking entity with limited trading assets and liabilities) shall develop and provide for the continued administration of a compliance program reasonably designed to ensure and monitor compliance with the prohibitions and restrictions on proprietary trading and covered fund activities and investments set forth in section 13 of the BHC Act and this part. The terms, scope, and detail of the compliance program shall be appropriate for the types, size, scope, and complexity of activities and business structure of the banking entity.

(b) Banking entities with significant trading assets and liabilities. With respect to a banking entity with significant trading assets and liabilities, the compliance program required by paragraph (a) of this section, at a minimum, shall include:

* * * * *

(c) *CEO attestation.* (1) The CEO of a banking entity described in paragraph (2) must, based on a review by the CEO of the banking entity, attest in writing to the Board, each year no later than March 31, that the banking entity has in place processes reasonably designed to achieve compliance with section 13 of the BHC Act and this part. In the case of a U.S. branch or agency of a foreign banking entity, the attestation may be provided for the entire U.S. operations of the foreign banking entity by the senior management officer of the U.S. operations of the foreign banking entity who is located in the United States.

(2) The requirements of paragraph (c)(1) of this section apply to a banking entity if:

(i) The banking entity does not have limited trading assets and liabilities; or

(ii) The Board notifies the banking entity in writing that it must satisfy the requirements contained in paragraph (c)(1) of this section.

(d) *Reporting requirements under the Appendix to this part.* (1) A banking entity engaged in proprietary trading activity permitted under subpart B shall comply with the reporting requirements described in the Appendix, if:

(i) The banking entity has significant trading assets and liabilities; or

(ii) The Board notifies the banking entity in writing that it must satisfy the reporting requirements contained in the Appendix.

(2) *Frequency of reporting.* Unless the Board notifies the banking entity in writing that it must report on a different basis, a banking entity with $50 billion or more in trading assets and liabilities (as calculated in accordance with the methodology described in the definition of ''significant trading assets and liabilities'' contained in § 248.2 of this part of this part) shall report the information required by the Appendix for each calendar month within 20 days of the end of each calendar month. Any other banking entity subject to the Appendix shall report the information required by the Appendix for each calendar quarter within 30 days of the end of that calendar quarter unless the Board notifies the banking entity in writing that it must report on a different basis.

(e) Additional documentation for covered funds. A banking entity with significant trading assets and liabilities shall maintain records that include:

* * * * *

(f) * * *

(2) Banking entities with moderate trading assets and liabilities. A banking entity with moderate trading assets and liabilities may satisfy the requirements of this section by including in its existing compliance policies and procedures appropriate references to the requirements of section 13 of the BHC Act and this part and adjustments as appropriate given the activities, size, scope, and complexity of the banking entity.

(g) Rebuttable presumption of compliance for banking entities with limited trading assets and liabilities.

(1) Rebuttable presumption. Except as otherwise provided in this paragraph, a banking entity with limited trading assets and liabilities shall be presumed to be compliant with subpart B and subpart C and shall have no obligation to demonstrate compliance with this part on an ongoing basis.

(2) *Rebuttal of presumption.* (i) If upon examination or audit, the Board determines that the banking entity has engaged in proprietary trading or

covered fund activities that are otherwise prohibited under subpart B or subpart C, the Board may require the banking entity to be treated under this part as if it did not have limited trading assets and liabilities.

(ii) Notice and Response Procedures.

(A) *Notice.* The Board will notify the banking entity in writing of any determination pursuant to paragraph (g)(2)(i) of this section to rebut the presumption described in this paragraph (g) and will provide an explanation of the determination.

(B) *Response.* (*1*) The banking entity may respond to any or all items in the notice described in paragraph (g)(2)(ii)(A) of this section. The response should include any matters that the banking entity would have the Board consider in deciding whether the banking entity has engaged in proprietary trading or covered fund activities prohibited under subpart B or subpart C. The response must be in writing and delivered to the designated Board official within 30 days after the date on which the banking entity received the notice. The Board may shorten the time period when, in the opinion of the Board, the activities or condition of the banking entity so requires, provided that the banking entity is informed promptly of the new time period, or with the consent of the banking entity. In its discretion, the Board may extend the time period for good cause.

(*2*) Failure to respond within 30 days or such other time period as may be specified by the Board shall constitute a waiver of any objections to the Board's determination.

(C) After the close of banking entity's response period, the Board will decide, based on a review of the banking entity's response and other information concerning the banking entity, whether to maintain the Board's determination that banking entity has engaged in proprietary trading or covered fund activities prohibited under subpart B or subpart C. The banking entity will be notified of the decision in writing. The notice will include an explanation of the decision.

(h) Reservation of authority. Notwithstanding any other provision of this part, the Board retains its authority to require a banking entity without significant trading assets and liabilities to apply any requirements of this part that would otherwise apply if the banking entity had significant or moderate trading assets and liabilities if the Board determines that the size or complexity of the banking entity's trading or investment activities, or the risk of evasion of subpart B or subpart C, does not warrant a presumption of compliance under paragraph (g) of this section or treatment as a banking entity with moderate trading assets and liabilities, as applicable.

■ 26. Remove Appendix A and Appendix B to Part 248 and add Appendix to Part 248—Reporting and Recordkeeping Requirements for Covered Trading Activities to read as follows:

Appendix to Part 248—Reporting and Recordkeeping Requirements for Covered Trading Activities

I. Purpose

a. This appendix sets forth reporting and recordkeeping requirements that certain banking entities must satisfy in connection with the restrictions on proprietary trading set forth in subpart B (''proprietary trading restrictions''). Pursuant to § 248.20(d), this appendix applies to a banking entity that, together with its affiliates and subsidiaries, has significant trading assets and liabilities. These entities are required to (i) furnish periodic reports to the Board regarding a variety of quantitative measurements of their covered trading activities, which vary depending on the scope and size of covered trading activities, and (ii) create and maintain records documenting the preparation and content of these reports. The requirements of this appendix must be incorporated into the banking entity's internal compliance program under § 248.20.

b. The purpose of this appendix is to assist banking entities and the Board in:

(i) Better understanding and evaluating the scope, type, and profile of the banking entity's covered trading activities;

(ii) Monitoring the banking entity's covered trading activities;

(iii) Identifying covered trading activities that warrant further review or examination by the banking entity to verify compliance with the proprietary trading restrictions;

(iv) Evaluating whether the covered trading activities of trading desks engaged in market making-related activities subject to § 248.4(b) are consistent with the requirements governing permitted market making-related activities;

(v) Evaluating whether the covered trading activities of trading desks that are engaged in permitted trading activity subject to §§ 248.4; 248.5, or 248.6(a)–(b) (*i.e.,* underwriting and market making-related related activity, risk-mitigating hedging, or trading in certain government obligations) are consistent with the requirement that such activity not result, directly or indirectly, in a material exposure to high-risk assets or high-risk trading strategies;

(vi) Identifying the profile of particular covered trading activities of the banking entity, and the individual trading desks of the banking entity, to help establish the appropriate frequency and scope of examination by the Board of such activities; and

(vii) Assessing and addressing the risks associated with the banking entity's covered trading activities.

c. Information that must be furnished pursuant to this appendix is *not* intended to serve as a dispositive tool for the identification of permissible or impermissible activities.

d. In addition to the quantitative measurements required in this appendix, a banking entity may need to develop and implement other quantitative measurements in order to effectively monitor its covered trading activities for compliance with section 13 of the BHC Act and this part and to have an effective compliance program, as required by § 248.20. The effectiveness of particular quantitative measurements may differ based on the profile of the banking entity's businesses in general and, more specifically, of the particular trading desk, including types of instruments traded, trading activities and strategies, and history and experience (*e.g.,* whether the trading desk is an established, successful market maker or a new entrant to a competitive market). In all cases, banking entities must ensure that they have robust measures in place to identify and monitor the risks taken in their trading activities, to ensure that the activities are within risk tolerances established by the banking entity, and to monitor and examine for compliance with the proprietary trading restrictions in this part.

e. On an ongoing basis, banking entities must carefully monitor, review, and evaluate all furnished quantitative measurements, as well as any others that they choose to utilize in order to maintain compliance with section 13 of the BHC Act and this part. All measurement results that indicate a heightened risk of impermissible proprietary trading, including with respect to otherwise-permitted activities under §§ 248.4 through 248.6(a)–(b), or that result in a material exposure to high-risk assets or high-risk trading strategies, must be escalated within the banking entity for review, further analysis, explanation to the Board, and remediation, where appropriate. The quantitative measurements discussed in this appendix should be helpful to banking entities in identifying and managing the risks related to their covered trading activities.

II. Definitions

The terms used in this appendix have the same meanings as set forth in §§ 248.2 and 248.3. In addition, for purposes of this appendix, the following definitions apply:

Applicability identifies the trading desks for which a banking entity is required to calculate and report a particular quantitative measurement based on the type of covered trading activity conducted by the trading desk.

Calculation period means the period of time for which a particular quantitative measurement must be calculated.

Comprehensive profit and loss means the net profit or loss of a trading desk's material sources of trading revenue over a specific period of time, including, for example, any increase or decrease in the market value of a trading desk's holdings, dividend income, and interest income and expense.

Covered trading activity means trading conducted by a trading desk under §§ 248.4, 248.5, 248.6(a), or 248.6(b). A banking entity may include in its covered trading activity trading conducted under §§ 248.3(e), 248.6(c), 248.6(d), or 248.6(e).

Measurement frequency means the frequency with which a particular quantitative metric must be calculated and recorded.

Trading day means a calendar day on which a trading desk is open for trading.

III. Reporting and Recordkeeping

a. Scope of Required Reporting

1. *Quantitative measurements.* Each banking entity made subject to this appendix by § 248.20 must furnish the following quantitative measurements, as applicable, for each trading desk of the banking entity engaged in covered trading activities and calculate these quantitative measurements in accordance with this appendix:

i. Risk and Position Limits and Usage;

ii. Risk Factor Sensitivities;

iii. Value-at-Risk and Stressed Value-at-Risk;

iv. Comprehensive Profit and Loss Attribution;

v. Positions;

vi. Transaction Volumes; and

vii. Securities Inventory Aging.

2. *Trading desk information.* Each banking entity made subject to this appendix by § ____.20 must provide certain descriptive information, as further described in this appendix, regarding each trading desk engaged in covered trading activities. *Quantitative measurements identifying information.* Each banking entity made subject to this appendix by § 248.20 must provide certain identifying and descriptive information, as further described in this appendix, regarding its quantitative measurements.

4. *Narrative statement.* Each banking entity made subject to this appendix by § 248.20 must provide a separate narrative statement, as further described in this appendix.

5. *File identifying information.* Each banking entity made subject to this appendix by § 248.20 must provide file identifying information in each submission to the Board pursuant to this appendix, including the name of the banking entity, the RSSD ID assigned to the top-tier banking entity by the Board, and identification of the reporting period and creation date and time.

b. Trading Desk Information

1. Each banking entity must provide descriptive information regarding each trading desk engaged in covered trading activities, including:

i. Name of the trading desk used internally by the banking entity and a unique identification label for the trading desk;

ii. Identification of each type of covered trading activity in which the trading desk is engaged;

iii. Brief description of the general strategy of the trading desk;

iv. A list of the types of financial instruments and other products purchased and sold by the trading desk; an indication of which of these are the main financial instruments or products purchased and sold by the trading desk; and, for trading desks engaged in market making-related activities under § 248.4(b), specification of whether each type of financial instrument is included in market-maker positions or not included in market-maker positions. In addition, indicate whether the trading desk is including in its quantitative measurements products excluded from the definition of ''financial instrument'' under § 248.3(d)(2) and, if so, identify such products;

v. Identification by complete name of each legal entity that serves as a booking entity for covered trading activities conducted by the trading desk; and indication of which of the identified legal entities are the main booking entities for covered trading activities of the trading desk;

vi. For each legal entity that serves as a booking entity for covered trading activities, specification of any of the following applicable entity types for that legal entity:

A. National bank, Federal branch or Federal agency of a foreign bank, Federal savings association, Federal savings bank;

B. State nonmember bank, foreign bank having an insured branch, State savings association;

C. U.S.-registered broker-dealer, U.S.-registered security-based swap dealer, U.S.-registered major security-based swap participant;

D. Swap dealer, major swap participant, derivatives clearing organization, futures commission merchant, commodity pool operator, commodity trading advisor, introducing broker, floor trader, retail foreign exchange dealer;

E. State member bank;

F. Bank holding company, savings and loan holding company;

G. Foreign banking organization as defined in 12 CFR 211.21(o);

H. Uninsured State-licensed branch or agency of a foreign bank; or

I. Other entity type not listed above, including a subsidiary of a legal entity described above where the subsidiary itself is not an entity type listed above;

2. Indication of whether each calendar date is a trading day or not a trading day for the trading desk; and

3. Currency reported and daily currency conversion rate.

c. Quantitative Measurements Identifying Information

1. Each banking entity must provide the following information regarding the quantitative measurements:

i. A Risk and Position Limits Information Schedule that provides identifying and descriptive information for each limit reported pursuant to the Risk and Position Limits and Usage quantitative measurement, including the name of the limit, a unique identification label for the limit, a description of the limit, whether the limit is intraday or end-of-day, the unit of measurement for the limit, whether the limit measures risk on a net or gross basis, and the type of limit;

ii. A Risk Factor Sensitivities Information Schedule that provides identifying and descriptive information for each risk factor sensitivity reported pursuant to the Risk Factor Sensitivities quantitative measurement, including the name of the sensitivity, a unique identification label for the sensitivity, a description of the sensitivity, and the sensitivity's risk factor change unit;

iii. A Risk Factor Attribution Information Schedule that provides identifying and descriptive information for each risk factor attribution reported pursuant to the Comprehensive Profit and Loss Attribution quantitative measurement, including the name of the risk factor or other factor, a unique identification label for the risk factor or other factor, a description of the risk factor or other factor, and the risk factor or other factor's change unit;

iv. A Limit/Sensitivity Cross-Reference Schedule that cross-references, by unique identification label, limits identified in the Risk and Position Limits Information Schedule to associated risk factor sensitivities identified in the Risk Factor Sensitivities Information Schedule; and

v. A Risk Factor Sensitivity/Attribution Cross-Reference Schedule that cross-references, by unique identification label, risk factor sensitivities identified in the Risk Factor Sensitivities Information Schedule to associated risk factor attributions identified in the Risk Factor Attribution Information Schedule.

d. Narrative Statement

Each banking entity made subject to this appendix by § 248.20 must submit in a separate electronic document a Narrative Statement to the Board describing any changes in calculation methods used, a description of and reasons for changes in the banking entity's trading desk structure or trading desk strategies, and when any such change occurred. The Narrative Statement must include any information the banking entity views as relevant for assessing the information reported, such as further description of calculation methods used.

If a banking entity does not have any information to report in a Narrative Statement, the banking entity must submit an electronic document stating that it does not have any information to report in a Narrative Statement.

e. Frequency and Method of Required Calculation and Reporting

A banking entity must calculate any applicable quantitative measurement for each trading day. A banking entity must report the Narrative Statement, the Trading Desk Information, the Quantitative Measurements Identifying Information, and each applicable quantitative measurement electronically to the Board on the reporting schedule established in § ____.20 unless otherwise requested by the Board. A banking entity must report the Trading Desk Information, the Quantitative Measurements Identifying Information, and each applicable quantitative measurement to the Board in accordance with the XML Schema specified and published on the Board's website.

f. Recordkeeping

A banking entity must, for any quantitative measurement furnished to the Board pursuant to this appendix and § 248.20(d), create and maintain records documenting the preparation and content of these reports, as well as such information as is necessary to permit the Board to verify the accuracy of such reports, for a period of five years from the end of the calendar year for which the measurement was taken. A banking entity must retain the Narrative Statement, the Trading Desk Information, and the Quantitative Measurements Identifying Information for a period of five years from the end of the calendar year for which the information was reported to the Board.

IV. Quantitative Measurements

a. Risk-Management Measurements

1. Risk and Position Limits and Usage

i. *Description:* For purposes of this appendix, Risk and Position Limits are the constraints that define the amount of risk that a trading desk is permitted to take at a point in time, as defined by the banking entity for a specific trading desk. Usage represents the value of the trading desk's risk or positions that are accounted for by the current activity of the desk. Risk and position limits and their usage are key risk management tools used to control and monitor risk taking and include, but are not limited to, the limits set out in § 248.4 and § 248.5. A number of the metrics that are described below, including ''Risk Factor Sensitivities'' and ''Value-at-Risk,'' relate to a trading desk's risk and position limits and are useful in evaluating and setting these limits in the broader context of the trading desk's overall activities, particularly for the market making activities under § 248.4(b) and hedging activity under § 248.5. Accordingly, the limits required under § 248.4(b)(2)(iii) and § 248.5(b)(1)(i)(A) must meet the applicable requirements under § 248.4(b)(2)(iii) and § 248.5(b)(1)(i)(A) and also must include appropriate metrics for the trading desk limits including, at a minimum, the ''Risk Factor Sensitivities'' and ''Value-at-Risk'' metrics except to the extent any of the ''Risk Factor Sensitivities'' or ''Value-at-Risk'' metrics are demonstrably ineffective for measuring and monitoring the risks of a trading desk based on the types of positions traded by, and risk exposures of, that desk.

A. A banking entity must provide the following information for each limit reported pursuant to this quantitative measurement: The unique identification label for the limit reported in the Risk and Position Limits Information Schedule, the limit size (distinguishing between an upper and a lower limit), and the value of usage of the limit.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks engaged in covered trading activities.

2. Risk Factor Sensitivities

i. *Description:* For purposes of this appendix, Risk Factor Sensitivities are changes in a trading desk's Comprehensive Profit and Loss that are expected to occur in the event of a change in one or more underlying variables that are significant sources of the trading desk's profitability and risk. A banking entity must report the risk factor sensitivities that are monitored and managed as part of the trading desk's overall risk management policy. Reported risk factor sensitivities must be sufficiently granular to account for a preponderance of the expected price variation in the trading desk's holdings. A banking entity must provide the following information for each sensitivity that is reported pursuant to this quantitative measurement: The unique identification label for the risk factor sensitivity listed in the Risk Factor Sensitivities Information Schedule, the change in risk factor used to determine the risk factor sensitivity, and the aggregate change in value across all positions of the desk given the change in risk factor.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks engaged in covered trading activities.

3. Value-at-Risk and Stressed Value-at-Risk

i. *Description:* For purposes of this appendix, Value-at-Risk (''VaR'') is the measurement of the risk of future financial loss in the value of a trading desk's aggregated positions at the ninety-nine percent confidence level over a one-day period, based on current market conditions. For purposes of this appendix, Stressed Value-at-Risk (''Stressed VaR'') is the measurement of the risk of future financial loss in the value of a trading desk's aggregated positions at the ninety-nine percent confidence level over a one-day period, based on market conditions during a period of significant financial stress.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* For VaR, all trading desks engaged in covered trading activities. For Stressed VaR, all trading desks engaged in covered trading activities, except trading desks whose covered trading activity is conducted exclusively to hedge products excluded from the definition of ''financial instrument'' under § 248.3(d)(2).

b. Source-of-Revenue Measurements

1. Comprehensive Profit and Loss Attribution

i. *Description:* For purposes of this appendix, Comprehensive Profit and Loss Attribution is an analysis that attributes the daily fluctuation in the value of a trading desk's positions to various sources. First, the daily profit and loss of the aggregated positions is divided into three categories: (i) Profit and loss attributable to a trading desk's existing positions that were also positions held by the trading desk as of the end of the prior day (''existing positions''); (ii) profit and loss attributable to new positions resulting from the current day's trading activity (''new positions''); and (iii) residual profit and loss that cannot be specifically attributed to existing positions or new positions. The sum of (i), (ii), and (iii) must equal the trading desk's comprehensive profit and loss at each point in time.

A. The comprehensive profit and loss associated with existing positions must reflect changes in the value of these positions on the applicable day.

The comprehensive profit and loss from existing positions must be further attributed, as applicable, to changes in (i) the specific risk factors and other factors that are monitored and managed as part of the trading desk's overall risk management policies and procedures; and (ii) any other applicable elements, such as cash flows, carry, changes in reserves, and the correction, cancellation, or exercise of a trade.

B. For the attribution of comprehensive profit and loss from existing positions to specific risk factors and other factors, a banking entity must provide the following information for the factors that explain the preponderance of the profit or loss changes due to risk factor changes: The unique identification label for the risk factor or other factor listed in the Risk Factor Attribution Information Schedule, and the profit or loss due to the risk factor or other factor change.

C. The comprehensive profit and loss attributed to new positions must reflect commissions and fee income or expense and market gains or losses associated with transactions executed on the applicable day. New positions include purchases and sales of financial instruments and other assets/liabilities and negotiated amendments to existing positions. The comprehensive profit and loss from new positions may be reported in the aggregate and does not need to be further attributed to specific sources.

D. The portion of comprehensive profit and loss that cannot be specifically attributed to known sources must be allocated to a residual category identified as an unexplained portion of the comprehensive profit and loss. Significant unexplained profit and loss must be escalated for further investigation and analysis.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks engaged in covered trading activities.

c. Positions, Transaction Volumes, and Securities Inventory Aging Measurements

1. Positions

i. *Description:* For purposes of this appendix, Positions is the value of securities and derivatives positions managed by the trading desk. For purposes of the Positions quantitative measurement, do not include in the Positions calculation for ''securities'' those securities that are also ''derivatives,'' as those terms are defined under subpart A; instead, report those securities that are also derivatives as ''derivatives.''[421] A banking entity must separately report the trading desk's market value of long securities positions, market value of short securities positions, market value of derivatives receivables, market value of derivatives payables, notional value of derivatives receivables, and notional value of derivatives payables.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks that rely on § 248.4(a) or § 248.4(b) to conduct underwriting activity or market-making-related activity, respectively.

2. Transaction Volumes

i. *Description:* For purposes of this appendix, Transaction Volumes measures four exclusive categories of covered trading

[421] *See* §§ 248.2(i), (bb). For example, under this part, a security-based swap is both a ''security'' and a ''derivative.'' For purposes of the Positions quantitative measurement, security-based swaps are reported as derivatives rather than securities.

activity conducted by a trading desk. A banking entity is required to report the value and number of security and derivative transactions conducted by the trading desk with: (i) Customers, excluding internal transactions; (ii) non-customers, excluding internal transactions; (iii) trading desks and other organizational units where the transaction is booked in the same banking entity; and (iv) trading desks and other organizational units where the transaction is booked into an affiliated banking entity. For securities, value means gross market value. For derivatives, value means gross notional value. For purposes of calculating the Transaction Volumes quantitative measurement, do not include in the Transaction Volumes calculation for ''securities'' those securities that are also ''derivatives,'' as those terms are defined under subpart A; instead, report those securities that are also derivatives as ''derivatives.''[422] Further, for purposes of the Transaction Volumes quantitative measurement, a customer of a trading desk that relies on § 248.4(a) to conduct underwriting activity is a market participant identified in § 248.4(a)(7), and a customer of a trading desk that relies on § 248.4(b) to conduct market making-related activity is a market participant identified in § 248.4(b)(3).

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks that rely on § 248.4(a) or § 248.4(b) to conduct underwriting activity or market-making-related activity, respectively.

3. Securities Inventory Aging

i. *Description:* For purposes of this appendix, Securities Inventory Aging generally describes a schedule of the market value of the trading desk's securities positions and the amount of time that those securities positions have been held. Securities Inventory Aging must measure the age profile of a trading desk's securities positions for the following periods: 0–30 Calendar days; 31–60 calendar days; 61–90 calendar days; 91–180 calendar days; 181–360 calendar days; and greater than 360 calendar days. Securities Inventory Aging includes two schedules, a security asset-aging schedule, and a security liability-aging schedule. For purposes of the Securities Inventory Aging quantitative measurement, do not include securities that are also ''derivatives,'' as those terms are defined under subpart A.[423]

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks that rely on § 248.4(a) or § 248.4(b) to conduct underwriting activity or market-making related activity, respectively.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the Common Preamble, the Federal Deposit Insurance Corporation proposes to amend chapter III of Title 12, Code of Federal Regulations as follows:

PART 351—PROPRIETARY TRADING AND CERTAIN INTERESTS IN AND RELATIONSHIPS WITH COVERED FUNDS

■ 27. The authority citation for Part 351 continues to read as follows:

Authority: 12 U.S.C. 1851; 1811 *et seq.;* 3101 *et seq.;* and 5412.

■ 28. Revise § 351.2 to read as follows:

§ 351.2 Definitions.

Unless otherwise specified, for purposes of this part:

(a) *Affiliate* has the same meaning as in section 2(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(k)).

(b) *Applicable accounting standards* means U.S. generally accepted accounting principles, or such other accounting standards applicable to a banking entity that the [Agency] determines are appropriate and that the banking entity uses in the ordinary course of its business in preparing its consolidated financial statements.

(c) *Bank holding company* has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

(d) *Banking entity.* (1) Except as provided in paragraph (d)(2) of this section, *banking entity* means:

(i) Any insured depository institution;

(ii) Any company that controls an insured depository institution;

(iii) Any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(iv) Any affiliate or subsidiary of any entity described in paragraphs (d)(1)(i), (ii), or (iii) of this section.

(2) Banking entity does not include:

(i) A covered fund that is not itself a banking entity under paragraphs (d)(1)(i), (ii), or (iii) of this section;

(ii) A portfolio company held under the authority contained in section 4(k)(4)(H) or (I) of the BHC Act (12 U.S.C. 1843(k)(4)(H), (I)), or any portfolio concern, as defined under 13 CFR 107.50, that is controlled by a small business investment company, as defined in section 103(3) of the Small Business Investment Act of 1958 (15 U.S.C. 662), so long as the portfolio company or portfolio concern is not itself a banking entity under paragraphs (d)(1)(i), (ii), or (iii) of this section; or

(iii) The FDIC acting in its corporate capacity or as conservator or receiver under the Federal Deposit Insurance Act or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

(e) *Board* means the Board of Governors of the Federal Reserve System.

(f) *CFTC* means the Commodity Futures Trading Commission.

(g) *Dealer* has the same meaning as in section 3(a)(5) of the Exchange Act (15 U.S.C. 78c(a)(5)).

(h) *Depository institution* has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

(i) *Derivative.* (1) Except as provided in paragraph (i)(2) of this section, *derivative* means:

(i) Any swap, as that term is defined in section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)), or security-based swap, as that term is defined in section 3(a)(68) of the Exchange Act (15 U.S.C. 78c(a)(68));

(ii) Any purchase or sale of a commodity, that is not an excluded commodity, for deferred shipment or delivery that is intended to be physically settled;

(iii) Any foreign exchange forward (as that term is defined in section 1a(24) of the Commodity Exchange Act (7 U.S.C. 1a(24)) or foreign exchange swap (as that term is defined in section 1a(25) of the Commodity Exchange Act (7 U.S.C. 1a(25));

(iv) Any agreement, contract, or transaction in foreign currency described in section 2(c)(2)(C)(i) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(C)(i));

(v) Any agreement, contract, or transaction in a commodity other than foreign currency described in section 2(c)(2)(D)(i) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(D)(i)); and

(vi) Any transaction authorized under section 19 of the Commodity Exchange Act (7 U.S.C. 23(a) or (b));

(2) A derivative does not include:

(i) Any consumer, commercial, or other agreement, contract, or transaction that the CFTC and SEC have further defined by joint regulation, interpretation, guidance, or other action as not within the definition of swap, as that term is defined in section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)), or security-based swap, as that term is defined in section 3(a)(68) of the Exchange Act (15 U.S.C. 78c(a)(68)); or

(ii) Any identified banking product, as defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)), that is subject to section 403(a) of that Act (7 U.S.C. 27a(a)).

(j) *Employee* includes a member of the immediate family of the employee.

(k) *Exchange Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

(l) *Excluded commodity* has the same meaning as in section 1a(19) of the

[422] *See* §§ 248.2(i), (bb).

[423] *See* §§ 248.2(i), (bb).

Commodity Exchange Act (7 U.S.C. 1a(19)).

(m) *FDIC* means the Federal Deposit Insurance Corporation.

(n) *Federal banking agencies* means the Board, the Office of the Comptroller of the Currency, and the FDIC.

(o) *Foreign banking organization* has the same meaning as in section 211.21(o) of the Board's Regulation K (12 CFR 211.21(o)), but does not include a foreign bank, as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)), that is organized under the laws of the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, or the Commonwealth of the Northern Mariana Islands.

(p) *Foreign insurance regulator* means the insurance commissioner, or a similar official or agency, of any country other than the United States that is engaged in the supervision of insurance companies under foreign insurance law.

(q) *General account* means all of the assets of an insurance company except those allocated to one or more separate accounts.

(r) *Insurance company* means a company that is organized as an insurance company, primarily and predominantly engaged in writing insurance or reinsuring risks underwritten by insurance companies, subject to supervision as such by a state insurance regulator or a foreign insurance regulator, and not operated for the purpose of evading the provisions of section 13 of the BHC Act (12 U.S.C. 1851).

(s) *Insured depository institution* has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), but does not include an insured depository institution that is described in section 2(c)(2)(D) of the BHC Act (12 U.S.C. 1841(c)(2)(D)).

(t) *Limited trading assets and liabilities* means, with respect to a banking entity, that:

(1) The banking entity has, together with its affiliates and subsidiaries on a worldwide consolidated basis, trading assets and liabilities (excluding trading assets and liabilities involving obligations of or guaranteed by the United States or any agency of the United States) the average gross sum of which over the previous consecutive four quarters, as measured as of the last day of each of the four previous calendar quarters, is less than $1,000,000,000; and

(2) The FDIC has not determined pursuant to § 351.20(g) or (h) of this part that the banking entity should not be treated as having limited trading assets and liabilities.

(u) *Loan* means any loan, lease, extension of credit, or secured or unsecured receivable that is not a security or derivative.

(v) *Moderate trading assets and liabilities* means, with respect to a banking entity, that the banking entity does not have significant trading assets and liabilities or limited trading assets and liabilities.

(w) *Primary financial regulatory agency* has the same meaning as in section 2(12) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301(12)).

(x) *Purchase* includes any contract to buy, purchase, or otherwise acquire. For security futures products, purchase includes any contract, agreement, or transaction for future delivery. With respect to a commodity future, purchase includes any contract, agreement, or transaction for future delivery. With respect to a derivative, purchase includes the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a derivative, as the context may require.

(y) *Qualifying foreign banking organization* means a foreign banking organization that qualifies as such under section 211.23(a), (c) or (e) of the Board's Regulation K (12 CFR 211.23(a), (c), or (e)).

(z) *SEC* means the Securities and Exchange Commission.

(aa) *Sale* and *sell* each include any contract to sell or otherwise dispose of. For security futures products, such terms include any contract, agreement, or transaction for future delivery. With respect to a commodity future, such terms include any contract, agreement, or transaction for future delivery. With respect to a derivative, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a derivative, as the context may require.

(bb) *Security* has the meaning specified in section 3(a)(10) of the Exchange Act (15 U.S.C. 78c(a)(10)).

(cc) *Security-based swap dealer* has the same meaning as in section 3(a)(71) of the Exchange Act (15 U.S.C. 78c(a)(71)).

(dd) *Security future* has the meaning specified in section 3(a)(55) of the Exchange Act (15 U.S.C. 78c(a)(55)).

(ee) *Separate account* means an account established and maintained by an insurance company in connection with one or more insurance contracts to hold assets that are legally segregated from the insurance company's other assets, under which income, gains, and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(ff) *Significant trading assets and liabilities.*

(1) *Significant trading assets and liabilities* means, with respect to a banking entity, that:

(i) The banking entity has, together with its affiliates and subsidiaries, trading assets and liabilities the average gross sum of which over the previous consecutive four quarters, as measured as of the last day of each of the four previous calendar quarters, equals or exceeds $10,000,000,000; or

(ii) The FDIC has determined pursuant to § 351.20(h) of this part that the banking entity should be treated as having significant trading assets and liabilities.

(2) With respect to a banking entity other than a banking entity described in paragraph (3), trading assets and liabilities for purposes of this paragraph (ff) means trading assets and liabilities (excluding trading assets and liabilities involving obligations of or guaranteed by the United States or any agency of the United States) on a worldwide consolidated basis.

(3)(i) With respect to a banking entity that is a foreign banking organization or a subsidiary of a foreign banking organization, trading assets and liabilities for purposes of this paragraph (ff) means the trading assets and liabilities (excluding trading assets and liabilities involving obligations of or guaranteed by the United States or any agency of the United States) of the combined U.S. operations of the top-tier foreign banking organization (including all subsidiaries, affiliates, branches, and agencies of the foreign banking organization operating, located, or organized in the United States).

(ii) For purposes of paragraph (ff)(3)(i) of this section, a U.S. branch, agency, or subsidiary of a banking entity is located in the United States; however, the foreign bank that operates or controls that branch, agency, or subsidiary is not considered to be located in the United States solely by virtue of operating or controlling the U.S. branch, agency, or subsidiary.

(gg) *State* means any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the

Commonwealth of the Northern Mariana Islands.

(hh) *Subsidiary* has the same meaning as in section 2(d) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(d)).

(ii) *State insurance regulator* means the insurance commissioner, or a similar official or agency, of a State that is engaged in the supervision of insurance companies under State insurance law.

(jj) *Swap dealer* has the same meaning as in section 1(a)(49) of the Commodity Exchange Act (7 U.S.C. 1a(49)).

■ 29. Amend § 351.3 by:

■ a. Revising paragraph (b);

■ b. Redesignating paragraphs (c) through (e) as paragraphs (d) through (f);

■ c. Adding a new paragraph (c);

■ d. Revising paragraph (e)(3);

■ e. Adding paragraph (e)(10);

■ f. Redesignating paragraphs (f)(5) through (f)(13) as paragraphs (f)(6) through (f)(14);

■ g. Adding a new paragraph (f)(5); and

■ h. Adding paragraph (g).

The revisions and additions read as follows:

§ 351.3 Prohibition on proprietary trading.

* * * * *

(b) *Definition of trading account. Trading account* means any account that is used by a banking entity to:

(1)(i) Purchase or sell one or more financial instruments that are both market risk capital rule covered positions and trading positions (or hedges of other market risk capital rule covered positions), if the banking entity, or any affiliate of the banking entity, is an insured depository institution, bank holding company, or savings and loan holding company, and calculates risk-based capital ratios under the market risk capital rule; or

(ii) With respect to a banking entity that is not, and is not controlled directly or indirectly by a banking entity that is, located in or organized under the laws of the United States or any State, purchase or sell one or more financial instruments that are subject to capital requirements under a market risk framework established by the home-country supervisor that is consistent with the market risk framework published by the Basel Committee on Banking Supervision, as amended from time to time.

(2) Purchase or sell one or more financial instruments for any purpose, if the banking entity:

(i) Is licensed or registered, or is required to be licensed or registered, to engage in the business of a dealer, swap dealer, or security-based swap dealer, to the extent the instrument is purchased or sold in connection with the activities that require the banking entity to be licensed or registered as such; or

(ii) Is engaged in the business of a dealer, swap dealer, or security-based swap dealer outside of the United States, to the extent the instrument is purchased or sold in connection with the activities of such business; or

(3) Purchase or sell one or more financial instruments, with respect to a financial instrument that is recorded at fair value on a recurring basis under applicable accounting standards.

(c) *Presumption of compliance.* (1)(i) Each trading desk that does not purchase or sell financial instruments for a trading account defined in paragraphs (b)(1) or (b)(2) of this section may calculate the net gain or net loss on the trading desk's portfolio of financial instruments each business day, reflecting realized and unrealized gains and losses since the previous business day, based on the banking entity's fair value for such financial instruments.

(ii) If the sum of the absolute values of the daily net gain and loss figures determined in accordance with paragraph (c)(1)(i) of this section for the preceding 90-calendar-day period does not exceed $25 million, the activities of the trading desk shall be presumed to be in compliance with the prohibition in paragraph (a) of this section.

(2) The FDIC may rebut the presumption of compliance in paragraph (c)(1)(ii) of this section by providing written notice to the banking entity that the FDIC has determined that one or more of the banking entity's activities violates the prohibitions under subpart B.

(3) If a trading desk operating pursuant to paragraph (c)(1)(ii) of this section exceeds the $25 million threshold in that paragraph at any point, the banking entity shall, in accordance with any policies and procedures adopted by the FDIC:

(i) Promptly notify the FDIC;

(ii) Demonstrate that the trading desk's purchases and sales of financial instruments comply with subpart B; and

(iii) Demonstrate, with respect to the trading desk, how the banking entity will maintain compliance with subpart B on an ongoing basis.

* * * * *

(e) * * *

(3) Any purchase or sale of a security, foreign exchange forward (as that term is defined in section 1a(24) of the Commodity Exchange Act (7 U.S.C. 1a(24)), foreign exchange swap (as that term is defined in section 1a(25) of the Commodity Exchange Act (7 U.S.C. 1a(25)), or physically-settled cross-currency swap, by a banking entity for the purpose of liquidity management in accordance with a documented liquidity management plan of the banking entity that, with respect to such financial instruments:

(i) Specifically contemplates and authorizes the particular financial instruments to be used for liquidity management purposes, the amount, types, and risks of these financial instruments that are consistent with liquidity management, and the liquidity circumstances in which the particular financial instruments may or must be used;

(ii) Requires that any purchase or sale of financial instruments contemplated and authorized by the plan be principally for the purpose of managing the liquidity of the banking entity, and not for the purpose of short-term resale, benefitting from actual or expected short-term price movements, realizing short-term arbitrage profits, or hedging a position taken for such short-term purposes;

(iii) Requires that any financial instruments purchased or sold for liquidity management purposes be highly liquid and limited to financial instruments the market, credit, and other risks of which the banking entity does not reasonably expect to give rise to appreciable profits or losses as a result of short-term price movements;

(iv) Limits any financial instruments purchased or sold for liquidity management purposes, together with any other instruments purchased or sold for such purposes, to an amount that is consistent with the banking entity's near-term funding needs, including deviations from normal operations of the banking entity or any affiliate thereof, as estimated and documented pursuant to methods specified in the plan;

(v) Includes written policies and procedures, internal controls, analysis, and independent testing to ensure that the purchase and sale of financial instruments that are not permitted under §§ 351.6(a) or (b) of this subpart are for the purpose of liquidity management and in accordance with the liquidity management plan described in paragraph (e)(3) of this section; and

(vi) Is consistent with the FDIC's supervisory requirements, guidance, and expectations regarding liquidity management;

* * * * *

(10) Any purchase (or sale) of one or more financial instruments that was made in error by a banking entity in the course of conducting a permitted or excluded activity or is a subsequent

transaction to correct such an error, and the erroneously purchased (or sold) financial instrument is promptly transferred to a separately-managed trade error account for disposition.

(f) * * *

(5) Cross-currency swap means a swap in which one party exchanges with another party principal and interest rate payments in one currency for principal and interest rate payments in another currency, and the exchange of principal occurs on the date the swap is entered into, with a reversal of the exchange of principal at a later date that is agreed upon when the swap is entered into.

* * * * *

(g) *Reservation of Authority:* (1) The FDIC may determine, on a case-by-case basis, that a purchase or sale of one or more financial instruments by a banking entity either is or is not for the trading account as defined at 12 U.S.C. 1851(h)(6).

(2) Notice and Response Procedures.

(i) Notice. When the FDIC determines that the purchase or sale of one or more financial instruments is for the trading account under paragraph (g)(1) of this section, the [Agency] will notify the banking entity in writing of the determination and provide an explanation of the determination.

(ii) Response.

(A) The banking entity may respond to any or all items in the notice. The response should include any matters that the banking entity would have the FDIC consider in deciding whether the purchase or sale is for the trading account. The response must be in writing and delivered to the designated FDIC official within 30 days after the date on which the banking entity received the notice. The FDIC may shorten the time period when, in the opinion of the FDIC, the activities or condition of the banking entity so requires, provided that the banking entity is informed promptly of the new time period, or with the consent of the banking entity. In its discretion, the FDIC may extend the time period for good cause.

(B) Failure to respond within 30 days or such other time period as may be specified by the FDIC shall constitute a waiver of any objections to the FDIC's determination.

(iii) After the close of banking entity's response period, the FDIC will decide, based on a review of the banking entity's response and other information concerning the banking entity, whether to maintain the FDIC's determination that the purchase or sale of one or more financial instruments is for the trading account. The banking entity will be notified of the decision in writing. The notice will include an explanation of the decision.

■ 30. Amend § 351.4 is amended by:
■ a. Revising paragraph (a)(2);
■ b. Adding paragraph (a)(8);
■ c. Revising paragraph (b)(2);
■ d. Revising the introductory text of paragraph (b)(3)(i);
■ e. In paragraph (b)(5) removing ''*inventory*'' wherever it appears and adding ''*positions*'' in its place; and
■ f. Adding paragraph (b)(6).

The revisions and additions read as follows:

§ 351.4 Permitted underwriting and market making-related activities.

(a) * * *

(2) *Requirements.* The underwriting activities of a banking entity are permitted under paragraph (a)(1) of this section only if:

(i) The banking entity is acting as an underwriter for a distribution of securities and the trading desk's underwriting position is related to such distribution;

(ii)(A) The amount and type of the securities in the trading desk's underwriting position are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties, taking into account the liquidity, maturity, and depth of the market for the relevant type of security, and

(B) reasonable efforts are made to sell or otherwise reduce the underwriting position within a reasonable period, taking into account the liquidity, maturity, and depth of the market for the relevant type of security;

(iii) In the case of a banking entity with significant trading assets and liabilities, the banking entity has established and implements, maintains, and enforces an internal compliance program required by subpart D of this part that is reasonably designed to ensure the banking entity's compliance with the requirements of paragraph (a) of this section, including reasonably designed written policies and procedures, internal controls, analysis, and independent testing identifying and addressing:

(A) The products, instruments or exposures each trading desk may purchase, sell, or manage as part of its underwriting activities;

(B) Limits for each trading desk, in accordance with paragraph (a)(8)(i) of this section;

(C) Internal controls and ongoing monitoring and analysis of each trading desk's compliance with its limits; and

(D) Authorization procedures, including escalation procedures that require review and approval of any trade that would exceed a trading desk's limit(s), demonstrable analysis of the basis for any temporary or permanent increase to a trading desk's limit(s), and independent review of such demonstrable analysis and approval;

(iv) The compensation arrangements of persons performing the activities described in this paragraph (a) are designed not to reward or incentivize prohibited proprietary trading; and

(v) The banking entity is licensed or registered to engage in the activity described in this paragraph (a) in accordance with applicable law.

* * * * *

(8) *Rebuttable presumption of compliance.*

(i) *Risk limits.*

(A) A banking entity shall be presumed to meet the requirements of paragraph (a)(2)(ii)(A) of this section with respect to the purchase or sale of a financial instrument if the banking entity has established and implements, maintains, and enforces the limits described in paragraph (a)(8)(i)(B) and does not exceed such limits.

(B) The presumption described in paragraph (8)(i)(A) of this section shall be available with respect to limits for each trading desk that are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties, based on the nature and amount of the trading desk's underwriting activities, on the:

(*1*) Amount, types, and risk of its underwriting position;

(*2*) Level of exposures to relevant risk factors arising from its underwriting position; and

(*3*) Period of time a security may be held.

(ii) *Supervisory review and oversight.* The limits described in paragraph (a)(8)(i) of this section shall be subject to supervisory review and oversight by the FDIC on an ongoing basis. Any review of such limits will include assessment of whether the limits are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties.

(iii) *Reporting.* With respect to any limit identified pursuant to paragraph (a)(8)(i) of this section, a banking entity shall promptly report to the FDIC (A) to the extent that any limit is exceeded and (B) any temporary or permanent increase to any limit(s), in each case in the form and manner as directed by the FDIC.

(iv) *Rebutting the presumption.* The presumption in paragraph (a)(8)(i) of this section may be rebutted by the FDIC if the FDIC determines, based on all relevant facts and circumstances, that a trading desk is engaging in activity that is not based on the reasonably expected near term demands of clients, customers, or counterparties. The FDIC will provide notice of any such determination to the banking entity in writing.

(b) * * *

(2) *Requirements.* The market making-related activities of a banking entity are permitted under paragraph (b)(1) of this section only if:

(i) The trading desk that establishes and manages the financial exposure routinely stands ready to purchase and sell one or more types of financial instruments related to its financial exposure and is willing and available to quote, purchase and sell, or otherwise enter into long and short positions in those types of financial instruments for its own account, in commercially reasonable amounts and throughout market cycles on a basis appropriate for the liquidity, maturity, and depth of the market for the relevant types of financial instruments;

(ii) The trading desk's market-making related activities are designed not to exceed, on an ongoing basis, the reasonably expected near term demands of clients, customers, or counterparties, based on the liquidity, maturity, and depth of the market for the relevant types of financial instrument(s).

(iii) In the case of a banking entity with significant trading assets and liabilities, the banking entity has established and implements, maintains, and enforces an internal compliance program required by subpart D of this part that is reasonably designed to ensure the banking entity's compliance with the requirements of paragraph (b) of this section, including reasonably designed written policies and procedures, internal controls, analysis and independent testing identifying and addressing:

(A) The financial instruments each trading desk stands ready to purchase and sell in accordance with paragraph (b)(2)(i) of this section;

(B) The actions the trading desk will take to demonstrably reduce or otherwise significantly mitigate promptly the risks of its financial exposure consistent with the limits required under paragraph (b)(2)(iii)(C) of this section; the products, instruments, and exposures each trading desk may use for risk management purposes; the techniques and strategies each trading desk may use to manage the risks of its market making-related activities and positions; and the process, strategies, and personnel responsible for ensuring that the actions taken by the trading desk to mitigate these risks are and continue to be effective;

(C) Limits for each trading desk, in accordance with paragraph (b)(6)(i) of this section;

(D) Internal controls and ongoing monitoring and analysis of each trading desk's compliance with its limits; and

(E) Authorization procedures, including escalation procedures that require review and approval of any trade that would exceed a trading desk's limit(s), demonstrable analysis that the basis for any temporary or permanent increase to a trading desk's limit(s) is consistent with the requirements of this paragraph (b), and independent review of such demonstrable analysis and approval;

(iv) In the case of a banking entity with significant trading assets and liabilities, to the extent that any limit identified pursuant to paragraph (b)(2)(iii)(C) of this section is exceeded, the trading desk takes action to bring the trading desk into compliance with the limits as promptly as possible after the limit is exceeded;

(v) The compensation arrangements of persons performing the activities described in this paragraph (b) are designed not to reward or incentivize prohibited proprietary trading; and

(vi) The banking entity is licensed or registered to engage in activity described in paragraph (b) of this section in accordance with applicable law.

(3) * * *

(i) A trading desk or other organizational unit of another banking entity is not a client, customer, or counterparty of the trading desk if that other entity has trading assets and liabilities of $50 billion or more as measured in accordance with the methodology described in definition of ''*significant trading assets and liabilities*'' contained in § 351.2 of this part, unless:

* * * * *

(6) *Rebuttable presumption of compliance.*—(i) *Risk limits.* (A) A banking entity shall be presumed to meet the requirements of paragraph (b)(2)(ii) of this section with respect to the purchase or sale of a financial instrument if the banking entity has established and implements, maintains, and enforces the limits described in paragraph (b)(6)(i)(B) and does not exceed such limits.

(B) The presumption described in paragraph (6)(i)(A) of this section shall be available with respect to limits for each trading desk that are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties, based on the nature and amount of the trading desk's market making-related activities, on the:

(*1*) Amount, types, and risks of its market-maker positions;

(*2*) Amount, types, and risks of the products, instruments, and exposures the trading desk may use for risk management purposes;

(*3*) Level of exposures to relevant risk factors arising from its financial exposure; and

(*4*) Period of time a financial instrument may be held.

(ii) *Supervisory review and oversight.* The limits described in paragraph (b)(6)(i) of this section shall be subject to supervisory review and oversight by the FDIC on an ongoing basis. Any review of such limits will include assessment of whether the limits are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties.

(iii) *Reporting.* With respect to any limit identified pursuant to paragraph (b)(6)(i) of this section, a banking entity shall promptly report to the FDIC (A) to the extent that any limit is exceeded and (B) any temporary or permanent increase to any limit(s), in each case in the form and manner as directed by the FDIC.

(iv) *Rebutting the presumption.* The presumption in paragraph (b)(6)(i) of this section may be rebutted by the FDIC if the FDIC determines, based on all relevant facts and circumstances, that a trading desk is engaging in activity that is not based on the reasonably expected near term demands of clients, customers, or counterparties. The FDIC will provide notice of any such determination to the banking entity in writing.

■ 31. Amend § 351.5 by revising paragraph (b), the introductory text of paragraph (c)(1), and adding paragraph (c)(4) to read as follows:

§ 351.5 Permitted risk-mitigating hedging activities.

* * * * *

(b) *Requirements.* (1) The risk-mitigating hedging activities of a banking entity that has significant trading assets and liabilities are permitted under paragraph (a) of this section only if:

(i) The banking entity has established and implements, maintains and enforces an internal compliance program required by subpart D of this part that is reasonably designed to ensure the banking entity's compliance with the requirements of this section, including:

(A) Reasonably designed written policies and procedures regarding the positions, techniques and strategies that may be used for hedging, including documentation indicating what positions, contracts or other holdings a particular trading desk may use in its risk-mitigating hedging activities, as well as position and aging limits with respect to such positions, contracts or other holdings;

(B) Internal controls and ongoing monitoring, management, and authorization procedures, including relevant escalation procedures; and

(C) The conduct of analysis and independent testing designed to ensure that the positions, techniques and strategies that may be used for hedging may reasonably be expected to reduce or otherwise significantly mitigate the specific, identifiable risk(s) being hedged;

(ii) The risk-mitigating hedging activity:

(A) Is conducted in accordance with the written policies, procedures, and internal controls required under this section;

(B) At the inception of the hedging activity, including, without limitation, any adjustments to the hedging activity, is designed to reduce or otherwise significantly mitigate one or more specific, identifiable risks, including market risk, counterparty or other credit risk, currency or foreign exchange risk, interest rate risk, commodity price risk, basis risk, or similar risks, arising in connection with and related to identified positions, contracts, or other holdings of the banking entity, based upon the facts and circumstances of the identified underlying and hedging positions, contracts or other holdings and the risks and liquidity thereof;

(C) Does not give rise, at the inception of the hedge, to any significant new or additional risk that is not itself hedged contemporaneously in accordance with this section;

(D) Is subject to continuing review, monitoring and management by the banking entity that:

(*1*) Is consistent with the written hedging policies and procedures required under paragraph (b)(1)(i) of this section;

(*2*) Is designed to reduce or otherwise significantly mitigate the specific, identifiable risks that develop over time from the risk-mitigating hedging activities undertaken under this section and the underlying positions, contracts, and other holdings of the banking entity, based upon the facts and circumstances of the underlying and hedging positions, contracts and other holdings of the banking entity and the risks and liquidity thereof; and

(*3*) Requires ongoing recalibration of the hedging activity by the banking entity to ensure that the hedging activity satisfies the requirements set out in paragraph (b)(1)(ii) of this section and is not prohibited proprietary trading; and

(iii) The compensation arrangements of persons performing risk-mitigating hedging activities are designed not to reward or incentivize prohibited proprietary trading.

(2) The risk-mitigating hedging activities of a banking entity that does not have significant trading assets and liabilities are permitted under paragraph (a) of this section only if the risk-mitigating hedging activity:

(i) At the inception of the hedging activity, including, without limitation, any adjustments to the hedging activity, is designed to reduce or otherwise significantly mitigate one or more specific, identifiable risks, including market risk, counterparty or other credit risk, currency or foreign exchange risk, interest rate risk, commodity price risk, basis risk, or similar risks, arising in connection with and related to identified positions, contracts, or other holdings of the banking entity, based upon the facts and circumstances of the identified underlying and hedging positions, contracts or other holdings and the risks and liquidity thereof; and

(ii) Is subject, as appropriate, to ongoing recalibration by the banking entity to ensure that the hedging activity satisfies the requirements set out in paragraph (b)(2) of this section and is not prohibited proprietary trading.

(c) * * * (1) A banking entity that has significant trading assets and liabilities must comply with the requirements of paragraphs (c)(2) and (3) of this section, unless the requirements of paragraph (c)(4) of this section are met, with respect to any purchase or sale of financial instruments made in reliance on this section for risk-mitigating hedging purposes that is:

* * * * *

(4) The requirements of paragraphs (c)(2) and (3) of this section do not apply to the purchase or sale of a financial instrument described in paragraph (c)(1) of this section if:

(i) The financial instrument purchased or sold is identified on a written list of pre-approved financial instruments that are commonly used by the trading desk for the specific type of hedging activity for which the financial instrument is being purchased or sold; and

(ii) At the time the financial instrument is purchased or sold, the hedging activity (including the purchase or sale of the financial instrument) complies with written, pre-approved hedging limits for the trading desk purchasing or selling the financial instrument for hedging activities undertaken for one or more other trading desks. The hedging limits shall be appropriate for the:

(A) Size, types, and risks of the hedging activities commonly undertaken by the trading desk;

(B) Financial instruments purchased and sold for hedging activities by the trading desk; and

(C) Levels and duration of the risk exposures being hedged.

■ 32. Amend § 351.6 by revising paragraph (e)(3), and removing paragraph (e)(6) to read as follows:

§ 351.6 Other permitted proprietary trading activities.

* * * * *

(e) * * *

(3) A purchase or sale by a banking entity is permitted for purposes of this paragraph (e) if:

(i) The banking entity engaging as principal in the purchase or sale (including relevant personnel) is not located in the United States or organized under the laws of the United States or of any State;

(ii) The banking entity (including relevant personnel) that makes the decision to purchase or sell as principal is not located in the United States or organized under the laws of the United States or of any State; and

(iii) The purchase or sale, including any transaction arising from risk-mitigating hedging related to the instruments purchased or sold, is not accounted for as principal directly or on a consolidated basis by any branch or affiliate that is located in the United States or organized under the laws of the United States or of any State.

* * * * *

§ 351.10 [Amended]

■ 33. Amend § 351.10 by:

■ a. In paragraph (c)(8)(i)(A) removing § 351.2(s)'' and adding § 351.2(u)'' in its place;

■ b. Removing paragraph (d)(1);

■ c. Redesignating paragraphs (d)(2) through (d)(10) as paragraphs (d)(1) through (d)(9);

■ d. In paragraph (d)(5)(i)(G) revising the reference to ''(d)(6)(i)(A)'' to read ''(d)(5)(i)(A)''; and

■ e. In paragraph (d)(9) revising the reference to ''(d)(9)'' to read ''(d)(8)'' and the reference to ''(d)(10)(i)(A)'' to read ''(d)(9)(i)(A)'' and the reference to ''(d)(10)(i)'' to read ''(d)(9)(i)''.

■ 34. Amend § 351. by revising paragraph (c) to read as follows:

§ 351.11 Permitted organizing and offering, underwriting, and market making with respect to a covered fund.

* * * * *

(c) *Underwriting and market making in ownership interests of a covered fund.* The prohibition contained in § 351.10(a) of this subpart does not apply to a banking entity's underwriting activities or market making-related activities involving a covered fund so long as:

(1) Those activities are conducted in accordance with the requirements of § 351.4(a) or § 351.4(b) of subpart B, respectively; and

(2) With respect to any banking entity (or any affiliate thereof) that: Acts as a sponsor, investment adviser or commodity trading advisor to a particular covered fund or otherwise acquires and retains an ownership interest in such covered fund in reliance on paragraph (a) of this section; or acquires and retains an ownership interest in such covered fund and is either a securitizer, as that term is used in section 15G(a)(3) of the Exchange Act (15 U.S.C. 78o–11(a)(3)), or is acquiring and retaining an ownership interest in such covered fund in compliance with section 15G of that Act (15 U.S.C. 78o–11) and the implementing regulations issued thereunder each as permitted by paragraph (b) of this section, then in each such case any ownership interests acquired or retained by the banking entity and its affiliates in connection with underwriting and market making related activities for that particular covered fund are included in the calculation of ownership interests permitted to be held by the banking entity and its affiliates under the limitations of § 351.12(a)(2)(ii); § 351.12(a)(2)(iii), and § 351.12(d) of this subpart.

§ 351.12 [Amended]

■ 35. Amend § 351.12 by:

■ a. In paragraphs (c)(1) and (d) removing ''§ 351.10(d)(6)(ii)'' to adding ''§ 351.10(d)(5)(ii)'' in its place;

■ b. Removing paragraph (e)(2)(vii); and

■ c. Redesignating the second instance of paragraph (e)(2)(vi) as paragraph (e)(2)(vii).

§ 351.13 [Amended]

■ 36. Amend § 351.13 by revising paragraphs (a) and (b)(3) and removing paragraph (b)(4)(iv) to read as follows:

§ 351.13 Other permitted covered fund activities and investments.

(a) *Permitted risk-mitigating hedging activities.* (1) The prohibition contained in § 351.10(a) of this subpart does not apply with respect to an ownership interest in a covered fund acquired or retained by a banking entity that is designed to reduce or otherwise significantly mitigate the specific, identifiable risks to the banking entity in connection with:

(i) A compensation arrangement with an employee of the banking entity or an affiliate thereof that directly provides investment advisory, commodity trading advisory or other services to the covered fund; or

(ii) A position taken by the banking entity when acting as intermediary on behalf of a customer that is not itself a banking entity to facilitate the exposure by the customer to the profits and losses of the covered fund.

(2) *Requirements.* The risk-mitigating hedging activities of a banking entity are permitted under this paragraph (a) only if:

(i) The banking entity has established and implements, maintains and enforces an internal compliance program in accordance with subpart D of this part that is reasonably designed to ensure the banking entity's compliance with the requirements of this section, including:

(A) Reasonably designed written policies and procedures; and

(B) Internal controls and ongoing monitoring, management, and authorization procedures, including relevant escalation procedures; and

(ii) The acquisition or retention of the ownership interest:

(A) Is made in accordance with the written policies, procedures, and internal controls required under this section;

(B) At the inception of the hedge, is designed to reduce or otherwise significantly mitigate one or more specific, identifiable risks arising:

(*1*) out of a transaction conducted solely to accommodate a specific customer request with respect to the covered fund; or

(*2*) in connection with the compensation arrangement with the employee that directly provides investment advisory, commodity trading advisory, or other services to the covered fund;

(C) Does not give rise, at the inception of the hedge, to any significant new or additional risk that is not itself hedged contemporaneously in accordance with this section; and

(D) Is subject to continuing review, monitoring and management by the banking entity.

(iii) With respect to risk-mitigating hedging activity conducted pursuant to paragraph (a)(1)(i), the compensation arrangement relates solely to the covered fund in which the banking entity or any affiliate has acquired an ownership interest pursuant to paragraph (a)(1)(i) and such compensation arrangement provides that any losses incurred by the banking entity on such ownership interest will be offset by corresponding decreases in amounts payable under such compensation arrangement.

* * * * *

(b) * * *

(3) An ownership interest in a covered fund is not offered for sale or sold to a resident of the United States for purposes of paragraph (b)(1)(iii) of this section only if it is not sold and has not been sold pursuant to an offering that targets residents of the United States in which the banking entity or any affiliate of the banking entity participates. If the banking entity or an affiliate sponsors or serves, directly or indirectly, as the investment manager, investment adviser, commodity pool operator or commodity trading advisor to a covered fund, then the banking entity or affiliate will be deemed for purposes of this paragraph (b)(3) to participate in any offer or sale by the covered fund of ownership interests in the covered fund.

* * * * *

■ 37. Section 351.14 is amended by revising paragraph (a)(2)(ii)(B) as follows:

§ 351.14 Limitations on relationships with a covered fund.

(a) * * *

(2) * * *

(ii) * * *

(B) The chief executive officer (or equivalent officer) of the banking entity certifies in writing annually no later than March 31 to the FDIC (with a duty to update the certification if the information in the certification materially changes) that the banking entity does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the covered fund or of any covered fund in which such covered fund invests; and

* * * * *

■ 38. Section 351.20 is amended by:

■ a. Revising paragraph (a);

■ b. Revising the introductory language of paragraph (b);

■ c. Revising paragraph (c);

■ d. Revising paragraph (d);

■ e. Revising the introductory language of paragraph (e);

■ f. Revising paragraph (f)(2); and

■ g. Adding new paragraphs (g) and (h).

The revisions read as follows:

§ 351.20 Program for compliance; reporting.

(a) *Program requirement.* Each banking entity (other than a banking entity with limited trading assets and liabilities) shall develop and provide for the continued administration of a compliance program reasonably designed to ensure and monitor compliance with the prohibitions and restrictions on proprietary trading and covered fund activities and investments set forth in section 13 of the BHC Act and this part. The terms, scope, and detail of the compliance program shall be appropriate for the types, size, scope, and complexity of activities and business structure of the banking entity.

(b) *Banking entities with significant trading assets and liabilities.* With respect to a banking entity with significant trading assets and liabilities, the compliance program required by paragraph (a) of this section, at a minimum, shall include:

* * * * *

(c) *CEO attestation.*

(1) The CEO of a banking entity described in paragraph (2) must, based on a review by the CEO of the banking entity, attest in writing to the FDIC, each year no later than March 31, that the banking entity has in place processes reasonably designed to achieve compliance with section 13 of the BHC Act and this part. In the case of a U.S. branch or agency of a foreign banking entity, the attestation may be provided for the entire U.S. operations of the foreign banking entity by the senior management officer of the U.S. operations of the foreign banking entity who is located in the United States.

(2) The requirements of paragraph (c)(1) apply to a banking entity if:

(i) The banking entity does not have limited trading assets and liabilities; or

(ii) The FDIC notifies the banking entity in writing that it must satisfy the requirements contained in paragraph (c)(1).

(d) *Reporting requirements under the Appendix to this part.* (1) A banking entity engaged in proprietary trading activity permitted under subpart B shall comply with the reporting requirements described in the Appendix, if:

(i) The banking entity has significant trading assets and liabilities; or

(ii) The FDIC notifies the banking entity in writing that it must satisfy the reporting requirements contained in the Appendix.

(2) Frequency of reporting: Unless the FDIC notifies the banking entity in writing that it must report on a different basis, a banking entity with $50 billion or more in trading assets and liabilities (as calculated in accordance with the methodology described in the definition of ‘‘significant trading assets and liabilities’’ contained in § 351.2 of this part of this part) shall report the information required by the Appendix for each calendar month within 20 days of the end of each calendar month. Any other banking entity subject to the Appendix shall report the information required by the Appendix for each calendar quarter within 30 days of the end of that calendar quarter unless the FDIC notifies the banking entity in writing that it must report on a different basis.

(e) *Additional documentation for covered funds.* A banking entity with significant trading assets and liabilities shall maintain records that include:

* * * * *

(f) * * *

(2) *Banking entities with moderate trading assets and liabilities.* A banking entity with moderate trading assets and liabilities may satisfy the requirements of this section by including in its existing compliance policies and procedures appropriate references to the requirements of section 13 of the BHC Act and this part and adjustments as appropriate given the activities, size, scope, and complexity of the banking entity.

(g) *Rebuttable presumption of compliance for banking entities with limited trading assets and liabilities.*

(1) *Rebuttable presumption.* Except as otherwise provided in this paragraph, a banking entity with limited trading assets and liabilities shall be presumed to be compliant with subpart B and subpart C and shall have no obligation to demonstrate compliance with this part on an ongoing basis.

(2) *Rebuttal of presumption.*

(i) If upon examination or audit, the FDIC determines that the banking entity has engaged in proprietary trading or covered fund activities that are otherwise prohibited under subpart B or subpart C, the FDIC may require the banking entity to be treated under this part as if it did not have limited trading assets and liabilities.

(ii) Notice and Response Procedures.

(A) Notice. The FDIC will notify the banking entity in writing of any determination pursuant to paragraph (g)(2)(i) of this section to rebut the presumption described in this paragraph (g) and will provide an explanation of the determination.

(B) Response.

(*1*) The banking entity may respond to any or all items in the notice described in paragraph (g)(2)(ii)(A) of this section. The response should include any matters that the banking entity would have the FDIC consider in deciding whether the banking entity has engaged in proprietary trading or covered fund activities prohibited under subpart B or subpart C. The response must be in writing and delivered to the designated FDIC official within 30 days after the date on which the banking entity received the notice. The FDIC may shorten the time period when, in the opinion of the FDIC, the activities or condition of the banking entity so requires, provided that the banking entity is informed promptly of the new time period, or with the consent of the banking entity. In its discretion, the FDIC may extend the time period for good cause.

(*2*) Failure to respond within 30 days or such other time period as may be specified by the FDIC shall constitute a waiver of any objections to the FDIC’s determination.

(C) After the close of banking entity’s response period, the FDIC will decide, based on a review of the banking entity’s response and other information concerning the banking entity, whether to maintain the FDIC’s determination that banking entity has engaged in proprietary trading or covered fund activities prohibited under subpart B or subpart C. The banking entity will be notified of the decision in writing. The notice will include an explanation of the decision.

(h) *Reservation of authority.* Notwithstanding any other provision of this part, the FDIC retains its authority to require a banking entity without significant trading assets and liabilities to apply any requirements of this part that would otherwise apply if the banking entity had significant or moderate trading assets and liabilities if the FDIC determines that the size or complexity of the banking entity’s trading or investment activities, or the risk of evasion of subpart B or subpart C, does not warrant a presumption of compliance under paragraph (g) of this section or treatment as a banking entity with moderate trading assets and liabilities, as applicable.

■ 39. Remove Appendix A and Appendix B to Part 351 and add Appendix to Part 351—Reporting and Recordkeeping Requirements for Covered Trading Activities to read as follows:

Appendix to Part 351—Reporting and Recordkeeping Requirements for Covered Trading Activities

I. Purpose

a. This appendix sets forth reporting and recordkeeping requirements that certain banking entities must satisfy in connection with the restrictions on proprietary trading set forth in subpart B (‘‘proprietary trading restrictions’’). Pursuant to § 351.20(d), this appendix applies to a banking entity that, together with its affiliates and subsidiaries, has significant trading assets and liabilities. These entities are required to (i) furnish periodic reports to the FDIC regarding a variety of quantitative measurements of their covered trading activities, which vary depending on the scope and size of covered trading activities, and (ii) create and maintain records documenting the preparation and content of these reports. The requirements of this appendix must be incorporated into the banking entity's internal compliance program under § 351.20.

b. The purpose of this appendix is to assist banking entities and the FDIC in:

(i) Better understanding and evaluating the scope, type, and profile of the banking entity's covered trading activities;

(ii) Monitoring the banking entity's covered trading activities;

(iii) Identifying covered trading activities that warrant further review or examination by the banking entity to verify compliance with the proprietary trading restrictions;

(iv) Evaluating whether the covered trading activities of trading desks engaged in market making-related activities subject to § 351.4(b) are consistent with the requirements governing permitted market making-related activities;

(v) Evaluating whether the covered trading activities of trading desks that are engaged in permitted trading activity subject to §§ 351.4, 351.5, or 351.6(a)–(b) (*i.e.,* underwriting and market making-related related activity, risk-mitigating hedging, or trading in certain government obligations) are consistent with the requirement that such activity not result, directly or indirectly, in a material exposure to high-risk assets or high-risk trading strategies;

(vi) Identifying the profile of particular covered trading activities of the banking entity, and the individual trading desks of the banking entity, to help establish the appropriate frequency and scope of examination by the FDIC of such activities; and

(vii) Assessing and addressing the risks associated with the banking entity's covered trading activities.

c. Information that must be furnished pursuant to this appendix is not intended to serve as a dispositive tool for the identification of permissible or impermissible activities.

d. In addition to the quantitative measurements required in this appendix, a banking entity may need to develop and implement other quantitative measurements in order to effectively monitor its covered trading activities for compliance with section 13 of the BHC Act and this part and to have an effective compliance program, as required by § 351.20. The effectiveness of particular quantitative measurements may differ based on the profile of the banking entity's businesses in general and, more specifically, of the particular trading desk, including types of instruments traded, trading activities and strategies, and history and experience (*e.g.,* whether the trading desk is an established, successful market maker or a new entrant to a competitive market). In all cases, banking entities must ensure that they have robust measures in place to identify and monitor the risks taken in their trading activities, to ensure that the activities are within risk tolerances established by the banking entity, and to monitor and examine for compliance with the proprietary trading restrictions in this part.

e. On an ongoing basis, banking entities must carefully monitor, review, and evaluate all furnished quantitative measurements, as well as any others that they choose to utilize in order to maintain compliance with section 13 of the BHC Act and this part. All measurement results that indicate a heightened risk of impermissible proprietary trading, including with respect to otherwise-permitted activities under §§ 351.4 through 351.6(a)–(b), or that result in a material exposure to high-risk assets or high-risk trading strategies, must be escalated within the banking entity for review, further analysis, explanation to the FDIC, and remediation, where appropriate. The quantitative measurements discussed in this appendix should be helpful to banking entities in identifying and managing the risks related to their covered trading activities.

II. Definitions

The terms used in this appendix have the same meanings as set forth in §§ 351.2 and 351.3. In addition, for purposes of this appendix, the following definitions apply:

Applicability identifies the trading desks for which a banking entity is required to calculate and report a particular quantitative measurement based on the type of covered trading activity conducted by the trading desk.

Calculation period means the period of time for which a particular quantitative measurement must be calculated.

Comprehensive profit and loss means the net profit or loss of a trading desk's material sources of trading revenue over a specific period of time, including, for example, any increase or decrease in the market value of a trading desk's holdings, dividend income, and interest income and expense.

Covered trading activity means trading conducted by a trading desk under §§ 351.4, 351.5, 351.6(a), or 351.6(b). A banking entity may include in its covered trading activity trading conducted under §§ 351.3(e), 351.6(c), 351.6(d), or 351.6(e).

Measurement frequency means the frequency with which a particular quantitative metric must be calculated and recorded.

Trading day means a calendar day on which a trading desk is open for trading.

III. Reporting and Recordkeeping

a. Scope of Required Reporting

1. *Quantitative measurements.* Each banking entity made subject to this appendix by § 351.20 must furnish the following quantitative measurements, as applicable, for each trading desk of the banking entity engaged in covered trading activities and calculate these quantitative measurements in accordance with this appendix:

i. Risk and Position Limits and Usage;

ii. Risk Factor Sensitivities;

iii. Value-at-Risk and Stressed Value-at-Risk;

iv. Comprehensive Profit and Loss Attribution;

v. Positions;

vi. Transaction Volumes; and

vii. Securities Inventory Aging.

2. *Trading desk information.* Each banking entity made subject to this appendix by § 351.20 must provide certain descriptive information, as further described in this appendix, regarding each trading desk engaged in covered trading activities.

3. *Quantitative measurements identifying information.* Each banking entity made subject to this appendix by § 351.20 must provide certain identifying and descriptive information, as further described in this appendix, regarding its quantitative measurements.

4. *Narrative statement.* Each banking entity made subject to this appendix by § 351.20 must provide a separate narrative statement, as further described in this appendix.

5. *File identifying information.* Each banking entity made subject to this appendix by § 351.20 must provide file identifying information in each submission to the FDIC pursuant to this appendix, including the name of the banking entity, the RSSD ID assigned to the top-tier banking entity by the Board, and identification of the reporting period and creation date and time.

b. Trading Desk Information

Each banking entity must provide descriptive information regarding each trading desk engaged in covered trading activities, including:

1. Name of the trading desk used internally by the banking entity and a unique identification label for the trading desk;

2. Identification of each type of covered trading activity in which the trading desk is engaged;

3. Brief description of the general strategy of the trading desk;

4. A list of the types of financial instruments and other products purchased and sold by the trading desk; an indication of which of these are the main financial instruments or products purchased and sold by the trading desk; and, for trading desks engaged in market making-related activities under § 351.4(b), specification of whether each type of financial instrument is included in market-maker positions or not included in market-maker positions. In addition, indicate whether the trading desk is including in its quantitative measurements products excluded from the definition of ''financial instrument'' under § 351.3(d)(2) and, if so, identify such products;

5. Identification by complete name of each legal entity that serves as a booking entity for covered trading activities conducted by the trading desk; and indication of which of the identified legal entities are the main booking entities for covered trading activities of the trading desk;

6. For each legal entity that serves as a booking entity for covered trading activities, specification of any of the following applicable entity types for that legal entity:

i. National bank, Federal branch or Federal agency of a foreign bank, Federal savings association, Federal savings bank;

ii. State nonmember bank, foreign bank having an insured branch, State savings association;

iii. U.S.-registered broker-dealer, U.S.-registered security-based swap dealer, U.S.-registered major security-based swap participant;

iv. Swap dealer, major swap participant, derivatives clearing organization, futures commission merchant, commodity pool operator, commodity trading advisor, introducing broker, floor trader, retail foreign exchange dealer;

v. State member bank;

vi. Bank holding company, savings and loan holding company;

vii. Foreign banking organization as defined in 12 CFR 211.21(o);

viii. Uninsured State-licensed branch or agency of a foreign bank; or

ix. Other entity type not listed above, including a subsidiary of a legal entity described above where the subsidiary itself is not an entity type listed above;

7. Indication of whether each calendar date is a trading day or not a trading day for the trading desk; and

8. Currency reported and daily currency conversion rate.

c. Quantitative Measurements Identifying Information

Each banking entity must provide the following information regarding the quantitative measurements:

1. A Risk and Position Limits Information Schedule that provides identifying and descriptive information for each limit reported pursuant to the Risk and Position Limits and Usage quantitative measurement, including the name of the limit, a unique identification label for the limit, a description of the limit, whether the limit is intraday or end-of-day, the unit of measurement for the limit, whether the limit measures risk on a net or gross basis, and the type of limit;

2. A Risk Factor Sensitivities Information Schedule that provides identifying and descriptive information for each risk factor sensitivity reported pursuant to the Risk Factor Sensitivities quantitative measurement, including the name of the sensitivity, a unique identification label for the sensitivity, a description of the sensitivity, and the sensitivity's risk factor change unit;

3. A Risk Factor Attribution Information Schedule that provides identifying and descriptive information for each risk factor attribution reported pursuant to the Comprehensive Profit and Loss Attribution quantitative measurement, including the name of the risk factor or other factor, a unique identification label for the risk factor or other factor, a description of the risk factor or other factor, and the risk factor or other factor's change unit;

4. A Limit/Sensitivity Cross-Reference Schedule that cross-references, by unique identification label, limits identified in the Risk and Position Limits Information Schedule to associated risk factor sensitivities identified in the Risk Factor Sensitivities Information Schedule; and

5. A Risk Factor Sensitivity/Attribution Cross-Reference Schedule that cross-references, by unique identification label, risk factor sensitivities identified in the Risk Factor Sensitivities Information Schedule to associated risk factor attributions identified in the Risk Factor Attribution Information Schedule.

d. Narrative Statement

Each banking entity made subject to this appendix by § 351.20 must submit in a separate electronic document a Narrative Statement to the FDIC describing any changes in calculation methods used, a description of and reasons for changes in the banking entity's trading desk structure or trading desk strategies, and when any such change occurred. The Narrative Statement must include any information the banking entity views as relevant for assessing the information reported, such as further description of calculation methods used.

If a banking entity does not have any information to report in a Narrative Statement, the banking entity must submit an electronic document stating that it does not have any information to report in a Narrative Statement.

e. Frequency and Method of Required Calculation and Reporting

A banking entity must calculate any applicable quantitative measurement for each trading day. A banking entity must report the Narrative Statement, the Trading Desk Information, the Quantitative Measurements Identifying Information, and each applicable quantitative measurement electronically to the FDIC on the reporting schedule established in § 351.20 unless otherwise requested by the FDIC. A banking entity must report the Trading Desk Information, the Quantitative Measurements Identifying Information, and each applicable quantitative measurement to the FDIC in accordance with the XML Schema specified and published on the FDIC's website.

f. Recordkeeping

A banking entity must, for any quantitative measurement furnished to the FDIC pursuant to this appendix and § 351.20(d), create and maintain records documenting the preparation and content of these reports, as well as such information as is necessary to permit the FDIC to verify the accuracy of such reports, for a period of five years from the end of the calendar year for which the measurement was taken. A banking entity must retain the Narrative Statement, the Trading Desk Information, and the Quantitative Measurements Identifying Information for a period of five years from the end of the calendar year for which the information was reported to the FDIC.

IV. Quantitative Measurements

a. Risk-Management Measurements

1. Risk and Position Limits and Usage

i. *Description:* For purposes of this appendix, Risk and Position Limits are the constraints that define the amount of risk that a trading desk is permitted to take at a point in time, as defined by the banking entity for a specific trading desk. Usage represents the value of the trading desk's risk or positions that are accounted for by the current activity of the desk. Risk and position limits and their usage are key risk management tools used to control and monitor risk taking and include, but are not limited to, the limits set out in § 351.4 and § 351.5. A number of the metrics that are described below, including ''Risk Factor Sensitivities'' and ''Value-at-Risk,'' relate to a trading desk's risk and position limits and are useful in evaluating and setting these limits in the broader context of the trading desk's overall activities, particularly for the market making activities under § 351.4(b) and hedging activity under § 351.5. Accordingly, the limits required under § 351.4(b)(2)(iii) and § 351.5(b)(1)(i)(A) must meet the applicable requirements under § 351.4(b)(2)(iii) and § 351.5(b)(1)(i)(A) and also must include appropriate metrics for the trading desk limits including, at a minimum, the ''Risk Factor Sensitivities'' and ''Value-at-Risk'' metrics except to the extent any of the ''Risk Factor Sensitivities'' or ''Value-at-Risk'' metrics are demonstrably ineffective for measuring and monitoring the risks of a trading desk based on the types of positions traded by, and risk exposures of, that desk.

A. A banking entity must provide the following information for each limit reported pursuant to this quantitative measurement: The unique identification label for the limit reported in the Risk and Position Limits Information Schedule, the limit size (distinguishing between an upper and a lower limit), and the value of usage of the limit.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks engaged in covered trading activities.

2. Risk Factor Sensitivities

i. *Description:* For purposes of this appendix, Risk Factor Sensitivities are changes in a trading desk's Comprehensive Profit and Loss that are expected to occur in the event of a change in one or more underlying variables that are significant sources of the trading desk's profitability and risk. A banking entity must report the risk factor sensitivities that are monitored and managed as part of the trading desk's overall risk management policy. Reported risk factor sensitivities must be sufficiently granular to account for a preponderance of the expected price variation in the trading desk's holdings. A banking entity must provide the following information for each sensitivity that is reported pursuant to this quantitative measurement: The unique identification label for the risk factor sensitivity listed in the Risk Factor Sensitivities Information Schedule, the change in risk factor used to determine the risk factor sensitivity, and the aggregate change in value across all positions of the desk given the change in risk factor.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks engaged in covered trading activities.

3. Value-at-Risk and Stressed Value-at-Risk

i. *Description:* For purposes of this appendix, Value-at-Risk (''VaR'') is the measurement of the risk of future financial loss in the value of a trading desk's aggregated positions at the ninety-nine percent confidence level over a one-day period, based on current market conditions. For purposes of this appendix, Stressed

Value-at-Risk (''Stressed VaR'') is the measurement of the risk of future financial loss in the value of a trading desk's aggregated positions at the ninety-nine percent confidence level over a one-day period, based on market conditions during a period of significant financial stress.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* For VaR, all trading desks engaged in covered trading activities. For Stressed VaR, all trading desks engaged in covered trading activities, except trading desks whose covered trading activity is conducted exclusively to hedge products excluded from the definition of ''financial instrument'' under § ____.3(d)(2).

b. Source-of-Revenue Measurements

1. Comprehensive Profit and Loss Attribution

i. *Description:* For purposes of this appendix, Comprehensive Profit and Loss Attribution is an analysis that attributes the daily fluctuation in the value of a trading desk's positions to various sources. First, the daily profit and loss of the aggregated positions is divided into three categories: (i) Profit and loss attributable to a trading desk's existing positions that were also positions held by the trading desk as of the end of the prior day (''existing positions''); (ii) profit and loss attributable to new positions resulting from the current day's trading activity (''new positions''); and (iii) residual profit and loss that cannot be specifically attributed to existing positions or new positions. The sum of (i), (ii), and (iii) must equal the trading desk's comprehensive profit and loss at each point in time.

A. The comprehensive profit and loss associated with existing positions must reflect changes in the value of these positions on the applicable day.

The comprehensive profit and loss from existing positions must be further attributed, as applicable, to changes in (i) the specific risk factors and other factors that are monitored and managed as part of the trading desk's overall risk management policies and procedures; and (ii) any other applicable elements, such as cash flows, carry, changes in reserves, and the correction, cancellation, or exercise of a trade.

B. For the attribution of comprehensive profit and loss from existing positions to specific risk factors and other factors, a banking entity must provide the following information for the factors that explain the preponderance of the profit or loss changes due to risk factor changes: The unique identification label for the risk factor or other factor listed in the Risk Factor Attribution Information Schedule, and the profit or loss due to the risk factor or other factor change.

C. The comprehensive profit and loss attributed to new positions must reflect commissions and fee income or expense and market gains or losses associated with transactions executed on the applicable day. New positions include purchases and sales of financial instruments and other assets/liabilities and negotiated amendments to existing positions. The comprehensive profit and loss from new positions may be reported in the aggregate and does not need to be further attributed to specific sources.

D. The portion of comprehensive profit and loss that cannot be specifically attributed to known sources must be allocated to a residual category identified as an unexplained portion of the comprehensive profit and loss. Significant unexplained profit and loss must be escalated for further investigation and analysis.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks engaged in covered trading activities.

c. Positions, Transaction Volumes, and Securities Inventory Aging Measurements

1. Positions

i. *Description:* For purposes of this appendix, Positions is the value of securities and derivatives positions managed by the trading desk. For purposes of the Positions quantitative measurement, do not include in the Positions calculation for ''securities'' those securities that are also ''derivatives,'' as those terms are defined under subpart A; instead, report those securities that are also derivatives as ''derivatives.'' [1] A banking entity must separately report the trading desk's market value of long securities positions, market value of short securities positions, market value of derivatives receivables, market value of derivatives payables, notional value of derivatives receivables, and notional value of derivatives payables.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks that rely on § 351.4(a) or § 351.4(b) to conduct underwriting activity or market-making-related activity, respectively.

2. Transaction Volumes

i. *Description:* For purposes of this appendix, Transaction Volumes measures four exclusive categories of covered trading activity conducted by a trading desk. A banking entity is required to report the value and number of security and derivative transactions conducted by the trading desk with: (i) Customers, excluding internal transactions; (ii) non-customers, excluding internal transactions; (iii) trading desks and other organizational units where the transaction is booked in the same banking entity; and (iv) trading desks and other organizational units where the transaction is booked into an affiliated banking entity. For securities, value means gross market value. For derivatives, value means gross notional value. For purposes of calculating the Transaction Volumes quantitative measurement, do not include in the Transaction Volumes calculation for ''securities'' those securities that are also ''derivatives,'' as those terms are defined under subpart A; instead, report those securities that are also derivatives as ''derivatives.'' [2] Further, for purposes of the Transaction Volumes quantitative measurement, a customer of a trading desk that relies on § 351.4(a) to conduct underwriting activity is a market participant identified in § 351.4(a)(7), and a customer of a trading desk that relies on § 351.4(b) to conduct market making-related activity is a market participant identified in § 351.4(b)(3).

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks that rely on § 351.4(a) or § 351.4(b) to conduct underwriting activity or market-making-related activity, respectively.

3. Securities Inventory Aging

i. *Description:* For purposes of this appendix, Securities Inventory Aging generally describes a schedule of the market value of the trading desk's securities positions and the amount of time that those securities positions have been held. Securities Inventory Aging must measure the age profile of a trading desk's securities positions for the following periods: 0–30 calendar days; 31–60 calendar days; 61–90 calendar days; 91–180 calendar days; 181–360 calendar days; and greater than 360 calendar days. Securities Inventory Aging includes two schedules, a security asset-aging schedule, and a security liability-aging schedule. For purposes of the Securities Inventory Aging quantitative measurement, do not include securities that are also ''derivatives,'' as those terms are defined under subpart A.[3]

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks that rely on § 351.4(a) or § 351.4(b) to conduct underwriting activity or market-making related activity, respectively.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

Authority and Issuance

For the reasons set forth in the Common Preamble, the Securities and Exchange Commission proposes to amend Part 255 to chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 255—PROPRIETARY TRADING AND CERTAIN INTERESTS IN AND RELATIONSHIPS WITH COVERED FUNDS

■ 40. The authority for part 255 continues to read as follows:

Authority: 12 U.S.C. 1851

■ 41. Revise § 255.2 to read as follows:

§ 255.2 Definitions.

Unless otherwise specified, for purposes of this part:

(a) *Affiliate* has the same meaning as in section 2(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(k)).

(b) *Applicable accounting standards* means U.S. generally accepted

[1] *See* §§ 351.2(i), (bb). For example, under this part, a security-based swap is both a ''security'' and a ''derivative.'' For purposes of the Positions quantitative measurement, security-based swaps are reported as derivatives rather than securities.

[2] *See* §§ 351.2(i), (bb).

[3] *See* §§ 351.2(i), (bb).

accounting principles, or such other accounting standards applicable to a banking entity that the SEC determines are appropriate and that the banking entity uses in the ordinary course of its business in preparing its consolidated financial statements.

(c) *Bank holding company* has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

(d) *Banking entity.* (1) Except as provided in paragraph (d)(2) of this section, *banking entity* means:

(i) Any insured depository institution;

(ii) Any company that controls an insured depository institution;

(iii) Any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(iv) Any affiliate or subsidiary of any entity described in paragraphs (d)(1)(i), (ii), or (iii) of this section.

(2) Banking entity does not include:

(i) A covered fund that is not itself a banking entity under paragraphs (d)(1)(i), (ii), or (iii) of this section;

(ii) A portfolio company held under the authority contained in section 4(k)(4)(H) or (I) of the BHC Act (12 U.S.C. 1843(k)(4)(H), (I)), or any portfolio concern, as defined under 13 CFR 107.50, that is controlled by a small business investment company, as defined in section 103(3) of the Small Business Investment Act of 1958 (15 U.S.C. 662), so long as the portfolio company or portfolio concern is not itself a banking entity under paragraphs (d)(1)(i), (ii), or (iii) of this section; or

(iii) The FDIC acting in its corporate capacity or as conservator or receiver under the Federal Deposit Insurance Act or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

(e) *Board* means the Board of Governors of the Federal Reserve System.

(f) *CFTC* means the Commodity Futures Trading Commission.

(g) *Dealer* has the same meaning as in section 3(a)(5) of the Exchange Act (15 U.S.C. 78c(a)(5)).

(h) *Depository institution* has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

(i) *Derivative.* (1) Except as provided in paragraph (i)(2) of this section, *derivative* means:

(i) Any swap, as that term is defined in section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)), or security-based swap, as that term is defined in section 3(a)(68) of the Exchange Act (15 U.S.C. 78c(a)(68));

(ii) Any purchase or sale of a commodity, that is not an excluded commodity, for deferred shipment or delivery that is intended to be physically settled;

(iii) Any foreign exchange forward (as that term is defined in section 1a(24) of the Commodity Exchange Act (7 U.S.C. 1a(24)) or foreign exchange swap (as that term is defined in section 1a(25) of the Commodity Exchange Act (7 U.S.C. 1a(25));

(iv) Any agreement, contract, or transaction in foreign currency described in section 2(c)(2)(C)(i) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(C)(i));

(v) Any agreement, contract, or transaction in a commodity other than foreign currency described in section 2(c)(2)(D)(i) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(D)(i)); and

(vi) Any transaction authorized under section 19 of the Commodity Exchange Act (7 U.S.C. 23(a) or (b));

(2) A derivative does not include:

(i) Any consumer, commercial, or other agreement, contract, or transaction that the CFTC and SEC have further defined by joint regulation, interpretation, guidance, or other action as not within the definition of swap, as that term is defined in section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)), or security-based swap, as that term is defined in section 3(a)(68) of the Exchange Act (15 U.S.C. 78c(a)(68)); or

(ii) Any identified banking product, as defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)), that is subject to section 403(a) of that Act (7 U.S.C. 27a(a)).

(j) *Employee* includes a member of the immediate family of the employee.

(k) *Exchange Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

(l) *Excluded commodity* has the same meaning as in section 1a(19) of the Commodity Exchange Act (7 U.S.C. 1a(19)).

(m) *FDIC* means the Federal Deposit Insurance Corporation.

(n) *Federal banking agencies* means the Board, the Office of the Comptroller of the Currency, and the FDIC.

(o) *Foreign banking organization* has the same meaning as in section 211.21(o) of the Board's Regulation K (12 CFR 211.21(o)), but does not include a foreign bank, as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)), that is organized under the laws of the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, or the Commonwealth of the Northern Mariana Islands.

(p) *Foreign insurance regulator* means the insurance commissioner, or a similar official or agency, of any country other than the United States that is engaged in the supervision of insurance companies under foreign insurance law.

(q) *General account* means all of the assets of an insurance company except those allocated to one or more separate accounts.

(r) *Insurance company* means a company that is organized as an insurance company, primarily and predominantly engaged in writing insurance or reinsuring risks underwritten by insurance companies, subject to supervision as such by a state insurance regulator or a foreign insurance regulator, and not operated for the purpose of evading the provisions of section 13 of the BHC Act (12 U.S.C. 1851).

(s) *Insured depository institution* has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), but does not include an insured depository institution that is described in section 2(c)(2)(D) of the BHC Act (12 U.S.C. 1841(c)(2)(D)).

(t) *Limited trading assets and liabilities* means, with respect to a banking entity, that:

(1) The banking entity has, together with its affiliates and subsidiaries on a worldwide consolidated basis, trading assets and liabilities (excluding trading assets and liabilities involving obligations of or guaranteed by the United States or any agency of the United States) the average gross sum of which over the previous consecutive four quarters, as measured as of the last day of each of the four previous calendar quarters, is less than $1,000,000,000; and

(2) The SEC has not determined pursuant to § 255.20(g) or (h) of this part that the banking entity should not be treated as having limited trading assets and liabilities.

(u) *Loan* means any loan, lease, extension of credit, or secured or unsecured receivable that is not a security or derivative.

(v) *Moderate trading assets and liabilities* means, with respect to a banking entity, that the banking entity does not have significant trading assets and liabilities or limited trading assets and liabilities.

(w) *Primary financial regulatory agency* has the same meaning as in section 2(12) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301(12)).

(x) *Purchase* includes any contract to buy, purchase, or otherwise acquire. For security futures products, purchase includes any contract, agreement, or transaction for future delivery. With respect to a commodity future, purchase includes any contract, agreement, or transaction for future delivery. With respect to a derivative, purchase includes the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a derivative, as the context may require.

(y) *Qualifying foreign banking organization* means a foreign banking organization that qualifies as such under section 211.23(a), (c) or (e) of the Board's Regulation K (12 CFR 211.23(a), (c), or (e)).

(z) *SEC* means the Securities and Exchange Commission.

(aa) *Sale* and *sell* each include any contract to sell or otherwise dispose of. For security futures products, such terms include any contract, agreement, or transaction for future delivery. With respect to a commodity future, such terms include any contract, agreement, or transaction for future delivery. With respect to a derivative, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a derivative, as the context may require.

(bb) *Security* has the meaning specified in section 3(a)(10) of the Exchange Act (15 U.S.C. 78c(a)(10)).

(cc) *Security-based swap dealer* has the same meaning as in section 3(a)(71) of the Exchange Act (15 U.S.C. 78c(a)(71)).

(dd) *Security future* has the meaning specified in section 3(a)(55) of the Exchange Act (15 U.S.C. 78c(a)(55)).

(ee) *Separate account* means an account established and maintained by an insurance company in connection with one or more insurance contracts to hold assets that are legally segregated from the insurance company's other assets, under which income, gains, and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(ff) *Significant trading assets and liabilities.*

(1) *Significant trading assets and liabilities* means, with respect to a banking entity, that:

(i) The banking entity has, together with its affiliates and subsidiaries, trading assets and liabilities the average gross sum of which over the previous consecutive four quarters, as measured as of the last day of each of the four previous calendar quarters, equals or exceeds $10,000,000,000; or

(ii) The SEC has determined pursuant to § 255.20(h) of this part that the banking entity should be treated as having significant trading assets and liabilities.

(2) With respect to a banking entity other than a banking entity described in paragraph (3), trading assets and liabilities for purposes of this paragraph (ff) means trading assets and liabilities (excluding trading assets and liabilities involving obligations of or guaranteed by the United States or any agency of the United States) on a worldwide consolidated basis.

(3)(i) With respect to a banking entity that is a foreign banking organization or a subsidiary of a foreign banking organization, trading assets and liabilities for purposes of this paragraph (ff) means the trading assets and liabilities (excluding trading assets and liabilities involving obligations of or guaranteed by the United States or any agency of the United States) of the combined U.S. operations of the top-tier foreign banking organization (including all subsidiaries, affiliates, branches, and agencies of the foreign banking organization operating, located, or organized in the United States).

(ii) For purposes of paragraph (ff)(3)(i) of this section, a U.S. branch, agency, or subsidiary of a banking entity is located in the United States; however, the foreign bank that operates or controls that branch, agency, or subsidiary is not considered to be located in the United States solely by virtue of operating or controlling the U.S. branch, agency, or subsidiary.

(gg) *State* means any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(hh) *Subsidiary* has the same meaning as in section 2(d) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(d)).

(ii) *State insurance regulator* means the insurance commissioner, or a similar official or agency, of a State that is engaged in the supervision of insurance companies under State insurance law.

(jj) *Swap dealer* has the same meaning as in section 1(a)(49) of the Commodity Exchange Act (7 U.S.C. 1a(49)).

■ 42. Amend § 255.3 is amended by:
■ a. Revising paragraph (b);
■ b. Redesignating paragraphs (c) through (e) as paragraphs (d) through (f);
■ c. Adding a new paragraph (c);
■ d. Revising paragraph (e)(3);
■ e. Adding paragraph (e)(10);
■ f. Redesignating paragraphs (f)(5) through (f)(13) as paragraphs (f)(6) through (f)(14);
■ g. Adding a new paragraph (f)(5); and
■ h. Adding paragraph (g).

The revisions and additions read as follows:

§ 255.3 Prohibition on proprietary trading.

* * * * *

(b) *Definition of trading account. Trading account* means any account that is used by a banking entity to:

(1)(i) Purchase or sell one or more financial instruments that are both market risk capital rule covered positions and trading positions (or hedges of other market risk capital rule covered positions), if the banking entity, or any affiliate of the banking entity, is an insured depository institution, bank holding company, or savings and loan holding company, and calculates risk-based capital ratios under the market risk capital rule; or

(ii) With respect to a banking entity that is not, and is not controlled directly or indirectly by a banking entity that is, located in or organized under the laws of the United States or any State, purchase or sell one or more financial instruments that are subject to capital requirements under a market risk framework established by the home-country supervisor that is consistent with the market risk framework published by the Basel Committee on Banking Supervision, as amended from time to time.

(2) Purchase or sell one or more financial instruments for any purpose, if the banking entity:

(i) Is licensed or registered, or is required to be licensed or registered, to engage in the business of a dealer, swap dealer, or security-based swap dealer, to the extent the instrument is purchased or sold in connection with the activities that require the banking entity to be licensed or registered as such; or

(ii) Is engaged in the business of a dealer, swap dealer, or security-based swap dealer outside of the United States, to the extent the instrument is purchased or sold in connection with the activities of such business; or

(3) Purchase or sell one or more financial instruments, with respect to a financial instrument that is recorded at fair value on a recurring basis under applicable accounting standards.

(c) *Presumption of compliance.* (1)(i) Each trading desk that does not purchase or sell financial instruments for a trading account defined in paragraphs (b)(1) or (b)(2) of this section may calculate the net gain or net loss on the trading desk's portfolio of financial instruments each business day, reflecting realized and unrealized gains and losses since the previous business day, based on the banking entity's fair value for such financial instruments.

(ii) If the sum of the absolute values of the daily net gain and loss figures determined in accordance with paragraph (c)(1)(i) of this section for the preceding 90-calendar-day period does not exceed $25 million, the activities of the trading desk shall be presumed to be in compliance with the prohibition in paragraph (a) of this section.

(2) The SEC may rebut the presumption of compliance in paragraph (c)(1)(ii) of this section by providing written notice to the banking entity that the SEC has determined that one or more of the banking entity's activities violates the prohibitions under subpart B.

(3) If a trading desk operating pursuant to paragraph (c)(1)(ii) of this section exceeds the $25 million threshold in that paragraph at any point, the banking entity shall, in accordance with any policies and procedures adopted by the SEC:

(i) Promptly notify the SEC;

(ii) Demonstrate that the trading desk's purchases and sales of financial instruments comply with subpart B; and

(iii) Demonstrate, with respect to the trading desk, how the banking entity will maintain compliance with subpart B on an ongoing basis.

* * * * *

(e) * * *

(3) Any purchase or sale of a security, foreign exchange forward (as that term is defined in section 1a(24) of the Commodity Exchange Act (7 U.S.C. 1a(24)), foreign exchange swap (as that term is defined in section 1a(25) of the Commodity Exchange Act (7 U.S.C. 1a(25)), or physically-settled cross-currency swap, by a banking entity for the purpose of liquidity management in accordance with a documented liquidity management plan of the banking entity that, with respect to such financial instruments:

(i) Specifically contemplates and authorizes the particular financial instruments to be used for liquidity management purposes, the amount, types, and risks of these financial instruments that are consistent with liquidity management, and the liquidity circumstances in which the particular financial instruments may or must be used;

(ii) Requires that any purchase or sale of financial instruments contemplated and authorized by the plan be principally for the purpose of managing the liquidity of the banking entity, and not for the purpose of short-term resale, benefitting from actual or expected short-term price movements, realizing short-term arbitrage profits, or hedging a position taken for such short-term purposes;

(iii) Requires that any financial instruments purchased or sold for liquidity management purposes be highly liquid and limited to financial instruments the market, credit, and other risks of which the banking entity does not reasonably expect to give rise to appreciable profits or losses as a result of short-term price movements;

(iv) Limits any financial instruments purchased or sold for liquidity management purposes, together with any other instruments purchased or sold for such purposes, to an amount that is consistent with the banking entity's near-term funding needs, including deviations from normal operations of the banking entity or any affiliate thereof, as estimated and documented pursuant to methods specified in the plan;

(v) Includes written policies and procedures, internal controls, analysis, and independent testing to ensure that the purchase and sale of financial instruments that are not permitted under §§ 255.6(a) or (b) of this subpart are for the purpose of liquidity management and in accordance with the liquidity management plan described in paragraph (e)(3) of this section; and

(vi) Is consistent with the SEC's supervisory requirements, guidance, and expectations regarding liquidity management;

* * * * *

(10) Any purchase (or sale) of one or more financial instruments that was made in error by a banking entity in the course of conducting a permitted or excluded activity or is a subsequent transaction to correct such an error, and the erroneously purchased (or sold) financial instrument is promptly transferred to a separately-managed trade error account for disposition.

(f) * * *

(5) *Cross-currency swa*p means a swap in which one party exchanges with another party principal and interest rate payments in one currency for principal and interest rate payments in another currency, and the exchange of principal occurs on the date the swap is entered into, with a reversal of the exchange of principal at a later date that is agreed upon when the swap is entered into.

* * * * *

(g) *Reservation of Authority:* (1) The SEC may determine, on a case-by-case basis, that a purchase or sale of one or more financial instruments by a banking entity either is or is not for the trading account as defined at 12 U.S.C. 1851(h)(6).

(2) *Notice and Response Procedures.* (i) Notice. When the SEC determines that the purchase or sale of one or more financial instruments is for the trading account under paragraph (g)(1) of this section, the SEC will notify the banking entity in writing of the determination and provide an explanation of the determination.

(ii) *Response.* (A) The banking entity may respond to any or all items in the notice. The response should include any matters that the banking entity would have the SEC consider in deciding whether the purchase or sale is for the trading account. The response must be in writing and delivered to the designated SEC official within 30 days after the date on which the banking entity received the notice. The SEC may shorten the time period when, in the opinion of the SEC, the activities or condition of the banking entity so requires, provided that the banking entity is informed promptly of the new time period, or with the consent of the banking entity. In its discretion, the SEC may extend the time period for good cause.

(B) Failure to respond within 30 days or such other time period as may be specified by the SEC shall constitute a waiver of any objections to the SEC's determination.

(iii) After the close of banking entity's response period, the SEC will decide, based on a review of the banking entity's response and other information concerning the banking entity, whether to maintain the SEC's determination that the purchase or sale of one or more financial instruments is for the trading account. The banking entity will be notified of the decision in writing. The notice will include an explanation of the decision.

■ 43. Amend § 255.4 by:

■ a. Revising paragraph (a)(2);

■ b. Adding paragraph (a)(8);

■ c. Revising paragraph (b)(2);

■ d. Revising the introductory text of paragraph (b)(3)(i);

■ e. In paragraph (b)(5) removing the references to ''*inventory*'' and replacing them with ''*positions*''*;* and

■ f. Adding paragraph (b)(6).

The revisions and additions read as follows:

§ 255.4 Permitted underwriting and market making-related activities.

(a) * * *

(2) *Requirements.* The underwriting activities of a banking entity are permitted under paragraph (a)(1) of this section only if:

(i) The banking entity is acting as an underwriter for a distribution of securities and the trading desk's underwriting position is related to such distribution;

(ii) (A) The amount and type of the securities in the trading desk's underwriting position are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties, taking into account the liquidity, maturity, and depth of the market for the relevant type of security, and (B) reasonable efforts are made to sell or otherwise reduce the underwriting position within a reasonable period, taking into account the liquidity, maturity, and depth of the market for the relevant type of security;

(iii) In the case of a banking entity with significant trading assets and liabilities, the banking entity has established and implements, maintains, and enforces an internal compliance program required by subpart D of this part that is reasonably designed to ensure the banking entity's compliance with the requirements of paragraph (a) of this section, including reasonably designed written policies and procedures, internal controls, analysis, and independent testing identifying and addressing:

(A) The products, instruments or exposures each trading desk may purchase, sell, or manage as part of its underwriting activities;

(B) Limits for each trading desk, in accordance with paragraph (a)(8)(i) of this section;

(C) Internal controls and ongoing monitoring and analysis of each trading desk's compliance with its limits; and

(D) Authorization procedures, including escalation procedures that require review and approval of any trade that would exceed a trading desk's limit(s), demonstrable analysis of the basis for any temporary or permanent increase to a trading desk's limit(s), and independent review of such demonstrable analysis and approval;

(iv) The compensation arrangements of persons performing the activities described in this paragraph (a) are designed not to reward or incentivize prohibited proprietary trading; and

(v) The banking entity is licensed or registered to engage in the activity described in this paragraph (a) in accordance with applicable law.

* * * * *

(8) *Rebuttable presumption of compliance.*

(i) *Risk limits.*

(A) A banking entity shall be presumed to meet the requirements of paragraph (a)(2)(ii)(A) of this section with respect to the purchase or sale of a financial instrument if the banking entity has established and implements, maintains, and enforces the limits described in paragraph (a)(8)(i)(B) and does not exceed such limits.

(B) The presumption described in paragraph (8)(i)(A) of this section shall be available with respect to limits for each trading desk that are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties, based on the nature and amount of the trading desk's underwriting activities, on the:

(*1*) Amount, types, and risk of its underwriting position;

(*2*) Level of exposures to relevant risk factors arising from its underwriting position; and

(*3*) Period of time a security may be held.

(ii) *Supervisory review and oversight.* The limits described in paragraph (a)(8)(i) of this section shall be subject to supervisory review and oversight by the SEC on an ongoing basis. Any review of such limits will include assessment of whether the limits are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties.

(iii) *Reporting.* With respect to any limit identified pursuant to paragraph (a)(8)(i) of this section, a banking entity shall promptly report to the SEC (A) to the extent that any limit is exceeded and (B) any temporary or permanent increase to any limit(s), in each case in the form and manner as directed by the SEC.

(iv) *Rebutting the presumption.* The presumption in paragraph (a)(8)(i) of this section may be rebutted by the SEC if the SEC determines, based on all relevant facts and circumstances, that a trading desk is engaging in activity that is not based on the reasonably expected near term demands of clients, customers, or counterparties. The SEC will provide notice of any such determination to the banking entity in writing.

(b) * * *

(2) *Requirements.* The market making-related activities of a banking entity are permitted under paragraph (b)(1) of this section only if:

(i) The trading desk that establishes and manages the financial exposure routinely stands ready to purchase and sell one or more types of financial instruments related to its financial exposure and is willing and available to quote, purchase and sell, or otherwise enter into long and short positions in those types of financial instruments for its own account, in commercially reasonable amounts and throughout market cycles on a basis appropriate for the liquidity, maturity, and depth of the market for the relevant types of financial instruments;

(ii) The trading desk's market-making related activities are designed not to exceed, on an ongoing basis, the reasonably expected near term demands of clients, customers, or counterparties, based on the liquidity, maturity, and depth of the market for the relevant types of financial instrument(s).

(iii) In the case of a banking entity with significant trading assets and liabilities, the banking entity has established and implements, maintains, and enforces an internal compliance program required by subpart D of this part that is reasonably designed to ensure the banking entity's compliance with the requirements of paragraph (b) of this section, including reasonably designed written policies and procedures, internal controls, analysis and independent testing identifying and addressing:

(A) The financial instruments each trading desk stands ready to purchase and sell in accordance with paragraph (b)(2)(i) of this section;

(B) The actions the trading desk will take to demonstrably reduce or otherwise significantly mitigate promptly the risks of its financial exposure consistent with the limits required under paragraph (b)(2)(iii)(C) of this section; the products, instruments, and exposures each trading desk may use for risk management purposes; the techniques and strategies each trading desk may use to manage the risks of its market making-related activities and positions; and the process, strategies, and personnel responsible for ensuring that the actions taken by the trading desk to mitigate these risks are and continue to be effective;

(C) Limits for each trading desk, in accordance with paragraph (b)(6)(i) of this section;

(D) Internal controls and ongoing monitoring and analysis of each trading desk's compliance with its limits; and

(E) Authorization procedures, including escalation procedures that require review and approval of any trade that would exceed a trading desk's limit(s), demonstrable analysis that the basis for any temporary or permanent increase to a trading desk's limit(s) is consistent with the requirements of this paragraph (b), and independent review of such demonstrable analysis and approval;

(iv) In the case of a banking entity with significant trading assets and liabilities, to the extent that any limit identified pursuant to paragraph (b)(2)(iii)(C) of this section is exceeded, the trading desk takes action to bring the trading desk into compliance with the limits as promptly as possible after the limit is exceeded;

(v) The compensation arrangements of persons performing the activities described in this paragraph (b) are designed not to reward or incentivize prohibited proprietary trading; and

(vi) The banking entity is licensed or registered to engage in activity described in this paragraph (b) in accordance with applicable law.

(3) * * *

(i) A trading desk or other organizational unit of another banking entity is not a client, customer, or counterparty of the trading desk if that other entity has trading assets and liabilities of $50 billion or more as measured in accordance with the methodology described in definition of ''significant trading assets and liabilities'' contained in § 255.2 of this part, unless:

* * * * *

(6) *Rebuttable presumption of compliance.*

(i) *Risk limits.*

(A) A banking entity shall be presumed to meet the requirements of paragraph (b)(2)(ii) of this section with respect to the purchase or sale of a financial instrument if the banking entity has established and implements, maintains, and enforces the limits described in paragraph (b)(6)(i)(B) and does not exceed such limits.

(B) The presumption described in paragraph (6)(i)(A) of this section shall be available with respect to limits for each trading desk that are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties, based on the nature and amount of the trading desk's market making-related activities, on the:

(*1*) Amount, types, and risks of its market-maker positions;

(*2*) Amount, types, and risks of the products, instruments, and exposures the trading desk may use for risk management purposes;

(*3*) Level of exposures to relevant risk factors arising from its financial exposure; and

(*4*) Period of time a financial instrument may be held.

(ii) *Supervisory review and oversight.* The limits described in paragraph (b)(6)(i) of this section shall be subject to supervisory review and oversight by the SEC on an ongoing basis. Any review of such limits will include assessment of whether the limits are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties.

(iii) *Reporting.* With respect to any limit identified pursuant to paragraph (b)(6)(i) of this section, a banking entity shall promptly report to the SEC (A) to the extent that any limit is exceeded and (B) any temporary or permanent increase to any limit(s), in each case in the form and manner as directed by the SEC.

(iv) *Rebutting the presumption.* The presumption in paragraph (b)(6)(i) of this section may be rebutted by the SEC if the SEC determines, based on all relevant facts and circumstances, that a trading desk is engaging in activity that is not based on the reasonably expected near term demands of clients, customers, or counterparties. The SEC will provide notice of any such determination to the banking entity in writing.

■ 45. Amend § 255.5 by revising paragraph (b), the introductory text of paragraph (c)(1), and adding paragraph (c)(4) to read as follows:

§ 255.5 Permitted risk-mitigating hedging activities.

* * * * *

(b) *Requirements.*

(1) The risk-mitigating hedging activities of a banking entity that has significant trading assets and liabilities are permitted under paragraph (a) of this section only if:

(i) The banking entity has established and implements, maintains and enforces an internal compliance program required by subpart D of this part that is reasonably designed to ensure the banking entity's compliance with the requirements of this section, including:

(A) Reasonably designed written policies and procedures regarding the positions, techniques and strategies that may be used for hedging, including documentation indicating what positions, contracts or other holdings a particular trading desk may use in its risk-mitigating hedging activities, as well as position and aging limits with respect to such positions, contracts or other holdings;

(B) Internal controls and ongoing monitoring, management, and authorization procedures, including relevant escalation procedures; and

(C) The conduct of analysis and independent testing designed to ensure that the positions, techniques and strategies that may be used for hedging may reasonably be expected to reduce or otherwise significantly mitigate the specific, identifiable risk(s) being hedged;

(ii) The risk-mitigating hedging activity:

(A) Is conducted in accordance with the written policies, procedures, and internal controls required under this section;

(B) At the inception of the hedging activity, including, without limitation, any adjustments to the hedging activity, is designed to reduce or otherwise significantly mitigate one or more specific, identifiable risks, including market risk, counterparty or other credit risk, currency or foreign exchange risk, interest rate risk, commodity price risk, basis risk, or similar risks, arising in connection with and related to identified positions, contracts, or other holdings of the banking entity, based upon the facts and circumstances of the identified underlying and hedging positions, contracts or other holdings and the risks and liquidity thereof;

(C) Does not give rise, at the inception of the hedge, to any significant new or additional risk that is not itself hedged contemporaneously in accordance with this section;

(D) Is subject to continuing review, monitoring and management by the banking entity that:

(*1*) Is consistent with the written hedging policies and procedures required under paragraph (b)(1)(i) of this section;

(*2*) Is designed to reduce or otherwise significantly mitigate the specific, identifiable risks that develop over time from the risk-mitigating hedging activities undertaken under this section and the underlying positions, contracts, and other holdings of the banking entity, based upon the facts and circumstances of the underlying and hedging positions, contracts and other holdings of the banking entity and the risks and liquidity thereof; and

(*3*) Requires ongoing recalibration of the hedging activity by the banking entity to ensure that the hedging activity satisfies the requirements set out in paragraph (b)(1)(ii) of this section and is not prohibited proprietary trading; and

(iii) The compensation arrangements of persons performing risk-mitigating hedging activities are designed not to reward or incentivize prohibited proprietary trading.

(2) The risk-mitigating hedging activities of a banking entity that does not have significant trading assets and liabilities are permitted under paragraph (a) of this section only if the risk-mitigating hedging activity:

(i) At the inception of the hedging activity, including, without limitation, any adjustments to the hedging activity, is designed to reduce or otherwise significantly mitigate one or more specific, identifiable risks, including market risk, counterparty or other credit risk, currency or foreign exchange risk, interest rate risk, commodity price risk, basis risk, or similar risks, arising in connection with and related to identified positions, contracts, or other holdings of the banking entity, based upon the facts and circumstances of the identified underlying and hedging positions, contracts or other holdings and the risks and liquidity thereof; and

(ii) Is subject, as appropriate, to ongoing recalibration by the banking entity to ensure that the hedging activity satisfies the requirements set out in paragraph (b)(2) of this section and is not prohibited proprietary trading.

(c) * * * (1) A banking entity that has significant trading assets and liabilities must comply with the requirements of paragraphs (c)(2) and (3) of this section, unless the requirements of paragraph (c)(4) of this section are met, with respect to any purchase or sale of financial instruments made in reliance on this section for risk-mitigating hedging purposes that is:

* * * * *

(4) The requirements of paragraphs (c)(2) and (3) of this section do not apply to the purchase or sale of a financial instrument described in paragraph (c)(1) of this section if:

(i) The financial instrument purchased or sold is identified on a written list of pre-approved financial instruments that are commonly used by the trading desk for the specific type of hedging activity for which the financial instrument is being purchased or sold; and

(ii) At the time the financial instrument is purchased or sold, the hedging activity (including the purchase or sale of the financial instrument) complies with written, pre-approved hedging limits for the trading desk purchasing or selling the financial instrument for hedging activities undertaken for one or more other trading desks. The hedging limits shall be appropriate for the:

(A) Size, types, and risks of the hedging activities commonly undertaken by the trading desk;

(B) Financial instruments purchased and sold for hedging activities by the trading desk; and

(C) Levels and duration of the risk exposures being hedged.

■ 46. Amend § 255.6 by revising paragraph (e)(3), and removing paragraph (e)(6) to read as follows:

§ 255.6 Other permitted proprietary trading activities.

* * * * *

(e) * * *

(3) A purchase or sale by a banking entity is permitted for purposes of this paragraph (e) if:

(i) The banking entity engaging as principal in the purchase or sale (including relevant personnel) is not located in the United States or organized under the laws of the United States or of any State;

(ii) The banking entity (including relevant personnel) that makes the decision to purchase or sell as principal is not located in the United States or organized under the laws of the United States or of any State; and

(iii) The purchase or sale, including any transaction arising from risk-mitigating hedging related to the instruments purchased or sold, is not accounted for as principal directly or on a consolidated basis by any branch or affiliate that is located in the United States or organized under the laws of the United States or of any State.

* * * * *

§ 255.10 [Amended]

■ 47. Amend § 255.10 by:

■ a. In paragraph (c)(8)(i)(A) revising the reference to ''§ 255.2(s)'' to read ''§ 255.2(u)'';

■ b. Removing paragraph (d)(1);

■ c. Redesignating paragraphs (d)(2) through (d)(10) as paragraphs (d)(1) through (d)(9);

■ d. In paragraph (d)(5)(i)(G) revising the reference to ''(d)(6)(i)(A)'' to read ''(d)(5)(i)(A)''; and

■ e. In paragraph (d)(9) revising the reference to ''(d)(9)'' to read ''(d)(8)'' and the reference to ''(d)(10)(i)(A)'' to read ''(d)(9)(i)(A)'' and the reference to ''(d)(10)(i)'' to read ''(d)(9)(i)''.

■ 48. Amend § 255.11 by revising paragraph (c) to read as follows:

§ 255.11 Permitted organizing and offering, underwriting, and market making with respect to a covered fund.

* * * * *

(c) *Underwriting and market making in ownership interests of a covered fund.* The prohibition contained in § 255.10(a) of this subpart does not apply to a banking entity's underwriting activities or market making-related activities involving a covered fund so long as:

(1) Those activities are conducted in accordance with the requirements of § 255.4(a) or § 255.4(b) of subpart B, respectively; and

(2) With respect to any banking entity (or any affiliate thereof) that: Acts as a sponsor, investment adviser or commodity trading advisor to a particular covered fund or otherwise acquires and retains an ownership interest in such covered fund in reliance on paragraph (a) of this section; or acquires and retains an ownership interest in such covered fund and is either a securitizer, as that term is used in section 15G(a)(3) of the Exchange Act (15 U.S.C. 78*o*–11(a)(3)), or is acquiring and retaining an ownership interest in such covered fund in compliance with section 15G of that Act (15 U.S.C.78*o*–11) and the implementing regulations issued thereunder each as permitted by paragraph (b) of this section, then in each such case any ownership interests acquired or retained by the banking entity and its affiliates in connection with underwriting and market making related activities for that particular covered fund are included in the calculation of ownership interests permitted to be held by the banking entity and its affiliates under the limitations of § 255.12(a)(2)(ii); § 255.12(a)(2)(iii), and § 255.12(d) of this subpart.4

§ 255.12 [Amended]

■ 49. Amend § 255.12 by:

■ a. In paragraphs (c)(1) and (d) revising the references to ''§ 255.10(d)(6)(ii)'' to read ''§ 255.10(d)(5)(ii)'';

■ b. Removing paragraph (e)(2)(vii); and

■ c. Redesignating the second instance of paragraph (e)(2)(vi) as paragraph (e)(2)(vii).

■ 50. Amend § 255.13 by revising paragraphs (a) and (b)(3), and removing paragraph (b)(4)(iv) to read as follows:

§ 255.13 Other permitted covered fund activities and investments.

(a) *Permitted risk-mitigating hedging activities.* (1) The prohibition contained in § 255.10(a) of this subpart does not apply with respect to an ownership interest in a covered fund acquired or retained by a banking entity that is designed to reduce or otherwise significantly mitigate the specific, identifiable risks to the banking entity in connection with:

(i) A compensation arrangement with an employee of the banking entity or an affiliate thereof that directly provides investment advisory, commodity trading advisory or other services to the covered fund; or

(ii) A position taken by the banking entity when acting as intermediary on behalf of a customer that is not itself a banking entity to facilitate the exposure by the customer to the profits and losses of the covered fund.

(2) *Requirements.* The risk-mitigating hedging activities of a banking entity are permitted under this paragraph (a) only if:

(i) The banking entity has established and implements, maintains and enforces an internal compliance program in accordance with subpart D of this part that is reasonably designed to ensure the banking entity's compliance with the requirements of this section, including:

(A) Reasonably designed written policies and procedures; and

(B) Internal controls and ongoing monitoring, management, and authorization procedures, including relevant escalation procedures; and

(ii) The acquisition or retention of the ownership interest:

(A) Is made in accordance with the written policies, procedures, and internal controls required under this section;

(B) At the inception of the hedge, is designed to reduce or otherwise significantly mitigate one or more specific, identifiable risks arising (1) out of a transaction conducted solely to accommodate a specific customer request with respect to the covered fund or (2) in connection with the compensation arrangement with the employee that directly provides investment advisory, commodity trading advisory, or other services to the covered fund;

(C) Does not give rise, at the inception of the hedge, to any significant new or additional risk that is not itself hedged contemporaneously in accordance with this section; and

(D) Is subject to continuing review, monitoring and management by the banking entity.

(iii) With respect to risk-mitigating hedging activity conducted pursuant to paragraph (a)(1)(i), the compensation arrangement relates solely to the covered fund in which the banking entity or any affiliate has acquired an ownership interest pursuant to paragraph (a)(1)(i) and such compensation arrangement provides that any losses incurred by the banking entity on such ownership interest will be offset by corresponding decreases in amounts payable under such compensation arrangement.

* * * * *

(b) * * *

(3) An ownership interest in a covered fund is not offered for sale or sold to a resident of the United States for purposes of paragraph (b)(1)(iii) of this section only if it is not sold and has not been sold pursuant to an offering that targets residents of the United States in which the banking entity or any affiliate of the banking entity participates. If the banking entity or an affiliate sponsors or serves, directly or indirectly, as the investment manager, investment adviser, commodity pool operator or commodity trading advisor to a covered fund, then the banking entity or affiliate will be deemed for purposes of this paragraph (b)(3) to participate in any offer or sale by the covered fund of ownership interests in the covered fund.

* * * * *

■ 51. Amend § 255.14 by revising paragraph (a)(2)(ii)(B) as follows:

§ 255.14 Limitations on relationships with a covered fund.

(a) * * *

(2) * * *

(ii) * * *

(B) The chief executive officer (or equivalent officer) of the banking entity certifies in writing annually no later than March 31 to the SEC (with a duty to update the certification if the information in the certification materially changes) that the banking entity does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the covered fund or of any covered fund in which such covered fund invests; and

* * * * *

■ 52. Amend § 255.20 by:

■ a. Revising paragraphs (a), (c), (d), and (f)(2);

■ b. Revising the introductory text of paragraphs (b) and (e);

■ c. Adding new paragraphs (g) and (h).

The revisions read as follows:

§ 255.20 Program for compliance; reporting.

* * * * *

(a) *Program requirement.* Each banking entity (other than a banking entity with limited trading assets and liabilities) shall develop and provide for the continued administration of a compliance program reasonably designed to ensure and monitor compliance with the prohibitions and restrictions on proprietary trading and covered fund activities and investments set forth in section 13 of the BHC Act and this part. The terms, scope, and detail of the compliance program shall be appropriate for the types, size, scope, and complexity of activities and business structure of the banking entity.

(b) *Banking entities with significant trading assets and liabilities.* With respect to a banking entity with significant trading assets and liabilities, the compliance program required by paragraph (a) of this section, at a minimum, shall include:

* * * * *

(c) *CEO attestation.*

(1) The CEO of a banking entity described in paragraph (2) must, based on a review by the CEO of the banking entity, attest in writing to the SEC, each year no later than March 31, that the banking entity has in place processes reasonably designed to achieve compliance with section 13 of the BHC Act and this part. In the case of a U.S. branch or agency of a foreign banking entity, the attestation may be provided for the entire U.S. operations of the foreign banking entity by the senior management officer of the U.S. operations of the foreign banking entity who is located in the United States.

(2) The requirements of paragraph (c)(1) apply to a banking entity if:

(i) The banking entity does not have limited trading assets and liabilities; or

(ii) The SEC notifies the banking entity in writing that it must satisfy the requirements contained in paragraph (c)(1).

(d) *Reporting requirements under the Appendix to this part.* (1) A banking entity engaged in proprietary trading activity permitted under subpart B shall comply with the reporting requirements described in the Appendix, if:

(i) The banking entity has significant trading assets and liabilities; or

(ii) The SEC notifies the banking entity in writing that it must satisfy the reporting requirements contained in the Appendix.

(2) Frequency of reporting: Unless the SEC notifies the banking entity in writing that it must report on a different basis, a banking entity with $50 billion or more in trading assets and liabilities (as calculated in accordance with the methodology described in the definition of ‘‘significant trading assets and liabilities’’ contained in § 255.2 of this part) shall report the information required by the Appendix for each calendar month within 20 days of the end of each calendar month. Any other banking entity subject to the Appendix shall report the information required by the Appendix for each calendar quarter within 30 days of the end of that calendar quarter unless the SEC notifies the banking entity in writing that it must report on a different basis.

(e) *Additional documentation for covered funds.* A banking entity with significant trading assets and liabilities shall maintain records that include:

* * * * *

(f) * * *

(2) *Banking entities with moderate trading assets and liabilities.* A banking entity with moderate trading assets and liabilities may satisfy the requirements of this section by including in its existing compliance policies and procedures appropriate references to the requirements of section 13 of the BHC Act and this part and adjustments as appropriate given the activities, size, scope, and complexity of the banking entity.

(g) *Rebuttable presumption of compliance for banking entities with limited trading assets and liabilities.*

(1) *Rebuttable presumption.* Except as otherwise provided in this paragraph, a banking entity with limited trading assets and liabilities shall be presumed to be compliant with subpart B and

subpart C and shall have no obligation to demonstrate compliance with this part on an ongoing basis.

(2) *Rebuttal of presumption.*

(i) If upon examination or audit, the SEC determines that the banking entity has engaged in proprietary trading or covered fund activities that are otherwise prohibited under subpart B or subpart C, the SEC may require the banking entity to be treated under this part as if it did not have limited trading assets and liabilities.

(ii) Notice and Response Procedures.

(A) Notice. The SEC will notify the banking entity in writing of any determination pursuant to paragraph (g)(2)(i) of this section to rebut the presumption described in this paragraph (g) and will provide an explanation of the determination.

(B) Response.

(I) The banking entity may respond to any or all items in the notice described in paragraph (g)(2)(ii)(A) of this section. The response should include any matters that the banking entity would have the SEC consider in deciding whether the banking entity has engaged in proprietary trading or covered fund activities prohibited under subpart B or subpart C. The response must be in writing and delivered to the designated SEC official within 30 days after the date on which the banking entity received the notice. The SEC may shorten the time period when, in the opinion of the SEC, the activities or condition of the banking entity so requires, provided that the banking entity is informed promptly of the new time period, or with the consent of the banking entity. In its discretion, the SEC may extend the time period for good cause.

(II) Failure to respond within 30 days or such other time period as may be specified by the SEC shall constitute a waiver of any objections to the SEC's determination.

(C) After the close of banking entity's response period, the SEC will decide, based on a review of the banking entity's response and other information concerning the banking entity, whether to maintain the SEC's determination that banking entity has engaged in proprietary trading or covered fund activities prohibited under subpart B or subpart C. The banking entity will be notified of the decision in writing. The notice will include an explanation of the decision.

(h) *Reservation of authority.* Notwithstanding any other provision of this part, the SEC retains its authority to require a banking entity without significant trading assets and liabilities to apply any requirements of this part that would otherwise apply if the banking entity had significant or moderate trading assets and liabilities if the SEC determines that the size or complexity of the banking entity's trading or investment activities, or the risk of evasion of subpart B or subpart C, does not warrant a presumption of compliance under paragraph (g) of this section or treatment as a banking entity with moderate trading assets and liabilities, as applicable.

■ 53. Remove Appendix A and Appendix B to part 255 and add Appendix to Part 255—Reporting and Recordkeeping Requirements for Covered Trading Activities to read as follows:

Appendix to Part 255—Reporting and Recordkeeping Requirements for Covered Trading Activities

I. Purpose

a. This appendix sets forth reporting and recordkeeping requirements that certain banking entities must satisfy in connection with the restrictions on proprietary trading set forth in subpart B (''proprietary trading restrictions''). Pursuant to § 255.20(d), this appendix applies to a banking entity that, together with its affiliates and subsidiaries, has significant trading assets and liabilities. These entities are required to (i) furnish periodic reports to the SEC regarding a variety of quantitative measurements of their covered trading activities, which vary depending on the scope and size of covered trading activities, and (ii) create and maintain records documenting the preparation and content of these reports. The requirements of this appendix must be incorporated into the banking entity's internal compliance program under § 255.20.

b. The purpose of this appendix is to assist banking entities and the SEC in:

(i) Better understanding and evaluating the scope, type, and profile of the banking entity's covered trading activities;

(ii) Monitoring the banking entity's covered trading activities;

(iii) Identifying covered trading activities that warrant further review or examination by the banking entity to verify compliance with the proprietary trading restrictions;

(iv) Evaluating whether the covered trading activities of trading desks engaged in market making-related activities subject to § 255.4(b) are consistent with the requirements governing permitted market making-related activities;

(v) Evaluating whether the covered trading activities of trading desks that are engaged in permitted trading activity subject to §§ 255.4, 255.5, or 255.6(a)–(b) (*i.e.,* underwriting and market making-related related activity, risk-mitigating hedging, or trading in certain government obligations) are consistent with the requirement that such activity not result, directly or indirectly, in a material exposure to high-risk assets or high-risk trading strategies;

(vi) Identifying the profile of particular covered trading activities of the banking entity, and the individual trading desks of the banking entity, to help establish the appropriate frequency and scope of examination by the SEC of such activities; and

(vii) Assessing and addressing the risks associated with the banking entity's covered trading activities.

c. Information that must be furnished pursuant to this appendix is *not* intended to serve as a dispositive tool for the identification of permissible or impermissible activities.

d. In addition to the quantitative measurements required in this appendix, a banking entity may need to develop and implement other quantitative measurements in order to effectively monitor its covered trading activities for compliance with section 13 of the BHC Act and this part and to have an effective compliance program, as required by § 255.20. The effectiveness of particular quantitative measurements may differ based on the profile of the banking entity's businesses in general and, more specifically, of the particular trading desk, including types of instruments traded, trading activities and strategies, and history and experience (*e.g.,* whether the trading desk is an established, successful market maker or a new entrant to a competitive market). In all cases, banking entities must ensure that they have robust measures in place to identify and monitor the risks taken in their trading activities, to ensure that the activities are within risk tolerances established by the banking entity, and to monitor and examine for compliance with the proprietary trading restrictions in this part.

e. On an ongoing basis, banking entities must carefully monitor, review, and evaluate all furnished quantitative measurements, as well as any others that they choose to utilize in order to maintain compliance with section 13 of the BHC Act and this part. All measurement results that indicate a heightened risk of impermissible proprietary trading, including with respect to otherwise-permitted activities under §§ 255.4 through 255.6(a)–(b), or that result in a material exposure to high-risk assets or high-risk trading strategies, must be escalated within the banking entity for review, further analysis, explanation to the SEC, and remediation, where appropriate. The quantitative measurements discussed in this appendix should be helpful to banking entities in identifying and managing the risks related to their covered trading activities.

II. Definitions

The terms used in this appendix have the same meanings as set forth in §§ 255.2 and 255.3. In addition, for purposes of this appendix, the following definitions apply:

Applicability identifies the trading desks for which a banking entity is required to calculate and report a particular quantitative measurement based on the type of covered trading activity conducted by the trading desk.

Calculation period means the period of time for which a particular quantitative measurement must be calculated.

Comprehensive profit and loss means the net profit or loss of a trading desk's material sources of trading revenue over a specific period of time, including, for example, any increase or decrease in the market value of a trading desk's holdings, dividend income, and interest income and expense.

Covered trading activity means trading conducted by a trading desk under §§ 255.4, 255.5, 255.6(a), or 255.6(b). A banking entity may include in its covered trading activity trading conducted under §§ 255.3(e), 255.6(c), 255.6(d), or 255.6(e).

Measurement frequency means the frequency with which a particular quantitative metric must be calculated and recorded.

Trading day means a calendar day on which a trading desk is open for trading.

III. Reporting and Recordkeeping

a. Scope of Required Reporting

1. *Quantitative measurements.* Each banking entity made subject to this appendix by § 255.20 must furnish the following quantitative measurements, as applicable, for each trading desk of the banking entity engaged in covered trading activities and calculate these quantitative measurements in accordance with this appendix:

i. Risk and Position Limits and Usage;

ii. Risk Factor Sensitivities;

iii. Value-at-Risk and Stressed Value-at-Risk;

iv. Comprehensive Profit and Loss Attribution;

v. Positions;

vi. Transaction Volumes; and

vii. Securities Inventory Aging.

2. *Trading desk information.* Each banking entity made subject to this appendix by § 255.20 must provide certain descriptive information, as further described in this appendix, regarding each trading desk engaged in covered trading activities.

3. *Quantitative measurements identifying information.* Each banking entity made subject to this appendix by § 255.20 must provide certain identifying and descriptive information, as further described in this appendix, regarding its quantitative measurements.

4. *Narrative statement.* Each banking entity made subject to this appendix by § 255.20 must provide a separate narrative statement, as further described in this appendix.

5. *File identifying information.* Each banking entity made subject to this appendix by § 255.20 must provide file identifying information in each submission to the SEC pursuant to this appendix, including the name of the banking entity, the RSSD ID assigned to the top-tier banking entity by the Board, and identification of the reporting period and creation date and time.

b. Trading Desk Information

Each banking entity must provide descriptive information regarding each trading desk engaged in covered trading activities, including:

1. Name of the trading desk used internally by the banking entity and a unique identification label for the trading desk;

2. Identification of each type of covered trading activity in which the trading desk is engaged;

3. Brief description of the general strategy of the trading desk;

4. A list of the types of financial instruments and other products purchased and sold by the trading desk; an indication of which of these are the main financial instruments or products purchased and sold by the trading desk; and, for trading desks engaged in market making-related activities under § 255.4(b), specification of whether each type of financial instrument is included in market-maker positions or not included in market-maker positions. In addition, indicate whether the trading desk is including in its quantitative measurements products excluded from the definition of ''financial instrument'' under § 255.3(d)(2) and, if so, identify such products;

5. Identification by complete name of each legal entity that serves as a booking entity for covered trading activities conducted by the trading desk; and indication of which of the identified legal entities are the main booking entities for covered trading activities of the trading desk;

6. For each legal entity that serves as a booking entity for covered trading activities, specification of any of the following applicable entity types for that legal entity:

i. National bank, Federal branch or Federal agency of a foreign bank, Federal savings association, Federal savings bank;

ii. State nonmember bank, foreign bank having an insured branch, State savings association;

iii. U.S.-registered broker-dealer, U.S.-registered security-based swap dealer, U.S.-registered major security-based swap participant;

iv. Swap dealer, major swap participant, derivatives clearing organization, futures commission merchant, commodity pool operator, commodity trading advisor, introducing broker, floor trader, retail foreign exchange dealer;

v. State member bank;

vi. Bank holding company, savings and loan holding company;

vii. Foreign banking organization as defined in 12 CFR 211.21(o);

viii. Uninsured State-licensed branch or agency of a foreign bank; or

ix. Other entity type not listed above, including a subsidiary of a legal entity described above where the subsidiary itself is not an entity type listed above;

7. Indication of whether each calendar date is a trading day or not a trading day for the trading desk; and

8. Currency reported and daily currency conversion rate.

c. Quantitative Measurements Identifying Information

Each banking entity must provide the following information regarding the quantitative measurements:

1. A Risk and Position Limits Information Schedule that provides identifying and descriptive information for each limit reported pursuant to the Risk and Position Limits and Usage quantitative measurement, including the name of the limit, a unique identification label for the limit, a description of the limit, whether the limit is intraday or end-of-day, the unit of measurement for the limit, whether the limit measures risk on a net or gross basis, and the type of limit;

2. A Risk Factor Sensitivities Information Schedule that provides identifying and descriptive information for each risk factor sensitivity reported pursuant to the Risk Factor Sensitivities quantitative measurement, including the name of the sensitivity, a unique identification label for the sensitivity, a description of the sensitivity, and the sensitivity's risk factor change unit;

3. A Risk Factor Attribution Information Schedule that provides identifying and descriptive information for each risk factor attribution reported pursuant to the Comprehensive Profit and Loss Attribution quantitative measurement, including the name of the risk factor or other factor, a unique identification label for the risk factor or other factor, a description of the risk factor or other factor, and the risk factor or other factor's change unit;

4. A Limit/Sensitivity Cross-Reference Schedule that cross-references, by unique identification label, limits identified in the Risk and Position Limits Information Schedule to associated risk factor sensitivities identified in the Risk Factor Sensitivities Information Schedule; and

5. A Risk Factor Sensitivity/Attribution Cross-Reference Schedule that cross-references, by unique identification label, risk factor sensitivities identified in the Risk Factor Sensitivities Information Schedule to associated risk factor attributions identified in the Risk Factor Attribution Information Schedule.

d. Narrative Statement

Each banking entity made subject to this appendix by § 255.20 must submit in a separate electronic document a Narrative Statement to the SEC describing any changes in calculation methods used, a description of and reasons for changes in the banking entity's trading desk structure or trading desk strategies, and when any such change occurred. The Narrative Statement must include any information the banking entity views as relevant for assessing the information reported, such as further description of calculation methods used.

If a banking entity does not have any information to report in a Narrative Statement, the banking entity must submit an electronic document stating that it does not have any information to report in a Narrative Statement.

e. Frequency and Method of Required Calculation and Reporting

A banking entity must calculate any applicable quantitative measurement for each trading day. A banking entity must report the Narrative Statement, the Trading Desk Information, the Quantitative Measurements Identifying Information, and each applicable quantitative measurement electronically to the SEC on the reporting schedule established in § 255.20 unless otherwise requested by the SEC. A banking entity must report the Trading Desk Information, the Quantitative Measurements Identifying Information, and each applicable quantitative measurement to the SEC in accordance with the XML Schema specified and published on the SEC's website.

f. Recordkeeping

A banking entity must, for any quantitative measurement furnished to the SEC pursuant to this appendix and § 255.20(d), create and maintain records documenting the preparation and content of these reports, as well as such information as is necessary to permit the SEC to verify the accuracy of such reports, for a period of five years from the end of the calendar year for which the measurement was taken. A banking entity must retain the Narrative Statement, the Trading Desk Information, and the Quantitative Measurements Identifying Information for a period of five years from the end of the calendar year for which the information was reported to the SEC.

IV. Quantitative Measurements

a. Risk-Management Measurements

1. Risk and Position Limits and Usage

i. *Description:* For purposes of this appendix, Risk and Position Limits are the constraints that define the amount of risk that a trading desk is permitted to take at a point in time, as defined by the banking entity for a specific trading desk. Usage represents the value of the trading desk's risk or positions that are accounted for by the current activity of the desk. Risk and position limits and their usage are key risk management tools used to control and monitor risk taking and include, but are not limited to, the limits set out in § 255.4 and § 255.5. A number of the metrics that are described below, including ''Risk Factor Sensitivities'' and ''Value-at-Risk,'' relate to a trading desk's risk and position limits and are useful in evaluating and setting these limits in the broader context of the trading desk's overall activities, particularly for the market making activities under § 255.4(b) and hedging activity under § 255.5. Accordingly, the limits required under § 255.4(b)(2)(iii) and § 255.5(b)(1)(i)(A) must meet the applicable requirements under § 255.4(b)(2)(iii) and § 255.5(b)(1)(i)(A) and also must include appropriate metrics for the trading desk limits including, at a minimum, the ''Risk Factor Sensitivities'' and ''Value-at-Risk'' metrics except to the extent any of the ''Risk Factor Sensitivities'' or ''Value-at-Risk'' metrics are demonstrably ineffective for measuring and monitoring the risks of a trading desk based on the types of positions traded by, and risk exposures of, that desk.

A. A banking entity must provide the following information for each limit reported pursuant to this quantitative measurement: The unique identification label for the limit reported in the Risk and Position Limits Information Schedule, the limit size (distinguishing between an upper and a lower limit), and the value of usage of the limit.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks engaged in covered trading activities.

2. Risk Factor Sensitivities

i. *Description:* For purposes of this appendix, Risk Factor Sensitivities are changes in a trading desk's Comprehensive Profit and Loss that are expected to occur in the event of a change in one or more underlying variables that are significant sources of the trading desk's profitability and risk. A banking entity must report the risk factor sensitivities that are monitored and managed as part of the trading desk's overall risk management policy. Reported risk factor sensitivities must be sufficiently granular to account for a preponderance of the expected price variation in the trading desk's holdings. A banking entity must provide the following information for each sensitivity that is reported pursuant to this quantitative measurement: The unique identification label for the risk factor sensitivity listed in the Risk Factor Sensitivities Information Schedule, the change in risk factor used to determine the risk factor sensitivity, and the aggregate change in value across all positions of the desk given the change in risk factor.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks engaged in covered trading activities.

3. Value-at-Risk and Stressed Value-at-Risk

i. *Description:* For purposes of this appendix, Value-at-Risk (''VaR'') is the measurement of the risk of future financial loss in the value of a trading desk's aggregated positions at the ninety-nine percent confidence level over a one-day period, based on current market conditions. For purposes of this appendix, Stressed Value-at-Risk (''Stressed VaR'') is the measurement of the risk of future financial loss in the value of a trading desk's aggregated positions at the ninety-nine percent confidence level over a one-day period, based on market conditions during a period of significant financial stress.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* For VaR, all trading desks engaged in covered trading activities. For Stressed VaR, all trading desks engaged in covered trading activities, except trading desks whose covered trading activity is conducted exclusively to hedge products excluded from the definition of ''financial instrument'' under § 255.3(d)(2).

b. Source-of-Revenue Measurements

1. Comprehensive Profit and Loss Attribution

i. *Description:* For purposes of this appendix, Comprehensive Profit and Loss Attribution is an analysis that attributes the daily fluctuation in the value of a trading desk's positions to various sources. First, the daily profit and loss of the aggregated positions is divided into three categories: (i) Profit and loss attributable to a trading desk's existing positions that were also positions held by the trading desk as of the end of the prior day (''existing positions''); (ii) profit and loss attributable to new positions resulting from the current day's trading activity (''new positions''); and (iii) residual profit and loss that cannot be specifically attributed to existing positions or new positions. The sum of (i), (ii), and (iii) must equal the trading desk's comprehensive profit and loss at each point in time.

A. The comprehensive profit and loss associated with existing positions must reflect changes in the value of these positions on the applicable day.

The comprehensive profit and loss from existing positions must be further attributed, as applicable, to changes in (i) the specific risk factors and other factors that are monitored and managed as part of the trading desk's overall risk management policies and procedures; and (ii) any other applicable elements, such as cash flows, carry, changes in reserves, and the correction, cancellation, or exercise of a trade.

B. For the attribution of comprehensive profit and loss from existing positions to specific risk factors and other factors, a banking entity must provide the following information for the factors that explain the preponderance of the profit or loss changes due to risk factor changes: The unique identification label for the risk factor or other factor listed in the Risk Factor Attribution Information Schedule, and the profit or loss due to the risk factor or other factor change.

C. The comprehensive profit and loss attributed to new positions must reflect commissions and fee income or expense and market gains or losses associated with transactions executed on the applicable day. New positions include purchases and sales of financial instruments and other assets/liabilities and negotiated amendments to existing positions. The comprehensive profit and loss from new positions may be reported in the aggregate and does not need to be further attributed to specific sources.

D. The portion of comprehensive profit and loss that cannot be specifically attributed to known sources must be allocated to a residual category identified as an unexplained portion of the comprehensive profit and loss. Significant unexplained profit and loss must be escalated for further investigation and analysis.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks engaged in covered trading activities.

c. Positions, Transaction Volumes, and Securities Inventory Aging Measurements

1. Positions

i. *Description:* For purposes of this appendix, Positions is the value of securities and derivatives positions managed by the trading desk. For purposes of the Positions quantitative measurement, do not include in the Positions calculation for ''securities'' those securities that are also ''derivatives,'' as those terms are defined under subpart A; instead, report those securities that are also derivatives as ''derivatives.'' [1] A banking entity must separately report the trading desk's market value of long securities positions, market value of short securities positions, market value of derivatives receivables, market value of derivatives payables, notional value of derivatives receivables, and notional value of derivatives payables.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks that rely on § 255.4(a) or § 255.4(b) to conduct

[1] *See* §§ 255.2(i), (bb). For example, under this part, a security-based swap is both a ''security'' and a ''derivative.'' For purposes of the Positions quantitative measurement, security-based swaps are reported as derivatives rather than securities.

underwriting activity or market-making-related activity, respectively.

2. Transaction Volumes

i. *Description:* For purposes of this appendix, Transaction Volumes measures four exclusive categories of covered trading activity conducted by a trading desk. A banking entity is required to report the value and number of security and derivative transactions conducted by the trading desk with: (i) Customers, excluding internal transactions; (ii) non-customers, excluding internal transactions; (iii) trading desks and other organizational units where the transaction is booked in the same banking entity; and (iv) trading desks and other organizational units where the transaction is booked into an affiliated banking entity. For securities, value means gross market value. For derivatives, value means gross notional value. For purposes of calculating the Transaction Volumes quantitative measurement, do not include in the Transaction Volumes calculation for ''securities'' those securities that are also ''derivatives,'' as those terms are defined under subpart A; instead, report those securities that are also derivatives as ''derivatives.''[2] Further, for purposes of the Transaction Volumes quantitative measurement, a customer of a trading desk that relies on § 255.4(a) to conduct underwriting activity is a market participant identified in § 255.4(a)(7), and a customer of a trading desk that relies on § 255.4(b) to conduct market making-related activity is a market participant identified in § 255.4(b)(3).

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks that rely on § 255.4(a) or § 255.4(b) to conduct underwriting activity or market-making-related activity, respectively.

3. Securities Inventory Aging

i. *Description:* For purposes of this appendix, Securities Inventory Aging generally describes a schedule of the market value of the trading desk's securities positions and the amount of time that those securities positions have been held. Securities Inventory Aging must measure the age profile of a trading desk's securities positions for the following periods: 0–30 Calendar days; 31–60 calendar days; 61–90 calendar days; 91–180 calendar days; 181–360 calendar days; and greater than 360 calendar days. Securities Inventory Aging includes two schedules, a security asset-aging schedule, and a security liability-aging schedule. For purposes of the Securities Inventory Aging quantitative measurement, do not include securities that are also ''derivatives,'' as those terms are defined under subpart A.[3]

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks that rely on § 255.4(a) or § 255.4(b) to conduct underwriting activity or market-making related activity, respectively.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

Authority and Issuance

For the reasons set forth in the Common Preamble, the Commodity Futures Trading Commission proposes to amend Part 75 to chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 75—PROPRIETARY TRADING AND CERTAIN INTERESTS IN AND RELATIONSHIPS WITH COVERED FUNDS

■ 54. The authority for part 75 continues to read as follows:

Authority: 12 U.S.C. 1851.

■ 55. Revise § 75.2 to read as follows:

§ 75.2 Definitions.

Unless otherwise specified, for purposes of this part:

(a) *Affiliate* has the same meaning as in section 2(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(k)).

(b) *Applicable accounting standards* means U.S. generally accepted accounting principles, or such other accounting standards applicable to a banking entity that the Commission determines are appropriate and that the banking entity uses in the ordinary course of its business in preparing its consolidated financial statements.

(c) *Bank holding company* has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

(d) *Banking entity.* (1) Except as provided in paragraph (d)(2) of this section, *banking entity* means:

(i) Any insured depository institution;

(ii) Any company that controls an insured depository institution;

(iii) Any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(iv) Any affiliate or subsidiary of any entity described in paragraphs (d)(1)(i), (ii), or (iii) of this section.

(2) Banking entity does not include:

(i) A covered fund that is not itself a banking entity under paragraphs (d)(1)(i), (ii), or (iii) of this section;

(ii) A portfolio company held under the authority contained in section 4(k)(4)(H) or (I) of the BHC Act (12 U.S.C. 1843(k)(4)(H), (I)), or any portfolio concern, as defined under 13 CFR 107.50, that is controlled by a small business investment company, as defined in section 103(3) of the Small Business Investment Act of 1958 (15 U.S.C. 662), so long as the portfolio company or portfolio concern is not itself a banking entity under paragraphs (d)(1)(i), (ii), or (iii) of this section; or

(iii) The FDIC acting in its corporate capacity or as conservator or receiver under the Federal Deposit Insurance Act or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

(e) *Board* means the Board of Governors of the Federal Reserve System.

(f) *CFTC* means the Commodity Futures Trading Commission.

(g) *Dealer* has the same meaning as in section 3(a)(5) of the Exchange Act (15 U.S.C. 78c(a)(5)).

(h) *Depository institution* has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

(i) *Derivative.* (1) Except as provided in paragraph (i)(2) of this section, *derivative* means:

(i) Any swap, as that term is defined in section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)), or security-based swap, as that term is defined in section 3(a)(68) of the Exchange Act (15 U.S.C. 78c(a)(68));

(ii) Any purchase or sale of a commodity, that is not an excluded commodity, for deferred shipment or delivery that is intended to be physically settled;

(iii) Any foreign exchange forward (as that term is defined in section 1a(24) of the Commodity Exchange Act (7 U.S.C. 1a(24)) or foreign exchange swap (as that term is defined in section 1a(25) of the Commodity Exchange Act (7 U.S.C. 1a(25));

(iv) Any agreement, contract, or transaction in foreign currency described in section 2(c)(2)(C)(i) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(C)(i));

(v) Any agreement, contract, or transaction in a commodity other than foreign currency described in section 2(c)(2)(D)(i) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(D)(i)); and

(vi) Any transaction authorized under section 19 of the Commodity Exchange Act (7 U.S.C. 23(a) or (b));

(2) A derivative does not include:

(i) Any consumer, commercial, or other agreement, contract, or transaction that the CFTC and SEC have further defined by joint regulation, interpretation, guidance, or other action as not within the definition of swap, as that term is defined in section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)), or security-based swap, as that term is defined in section 3(a)(68) of the Exchange Act (15 U.S.C. 78c(a)(68)); or

(ii) Any identified banking product, as defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000

[2] *See* §§ 255.2(i), (bb).

[3] *See* §§ 255.2(i), (bb).

(7 U.S.C. 27(b)), that is subject to section 403(a) of that Act (7 U.S.C. 27a(a)).

(j) *Employee* includes a member of the immediate family of the employee.

(k) *Exchange Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

(l) *Excluded commodity* has the same meaning as in section 1a(19) of the Commodity Exchange Act (7 U.S.C. 1a(19)).

(m) *FDIC* means the Federal Deposit Insurance Corporation.

(n) *Federal banking agencies* means the Board, the Office of the Comptroller of the Currency, and the FDIC.

(o) *Foreign banking organization* has the same meaning as in section 211.21(o) of the Board's Regulation K (12 CFR 211.21(o)), but does not include a foreign bank, as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)), that is organized under the laws of the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, or the Commonwealth of the Northern Mariana Islands.

(p) *Foreign insurance regulator* means the insurance commissioner, or a similar official or agency, of any country other than the United States that is engaged in the supervision of insurance companies under foreign insurance law.

(q) *General account* means all of the assets of an insurance company except those allocated to one or more separate accounts.

(r) *Insurance company* means a company that is organized as an insurance company, primarily and predominantly engaged in writing insurance or reinsuring risks underwritten by insurance companies, subject to supervision as such by a state insurance regulator or a foreign insurance regulator, and not operated for the purpose of evading the provisions of section 13 of the BHC Act (12 U.S.C. 1851).

(s) *Insured depository institution* has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), but does not include an insured depository institution that is described in section 2(c)(2)(D) of the BHC Act (12 U.S.C. 1841(c)(2)(D)).

(t) *Limited trading assets and liabilities* means, with respect to a banking entity, that:

(1) The banking entity has, together with its affiliates and subsidiaries on a worldwide consolidated basis, trading assets and liabilities (excluding trading assets and liabilities involving obligations of or guaranteed by the United States or any agency of the United States) the average gross sum of which over the previous consecutive four quarters, as measured as of the last day of each of the four previous calendar quarters, is less than $1,000,000,000; and

(2) The Commission has not determined pursuant to § 75.20(g) or (h) of this part that the banking entity should not be treated as having limited trading assets and liabilities.

(u) *Loan* means any loan, lease, extension of credit, or secured or unsecured receivable that is not a security or derivative.

(v) *Moderate trading assets and liabilities* means, with respect to a banking entity, that the banking entity does not have significant trading assets and liabilities or limited trading assets and liabilities.

(w) *Primary financial regulatory agency* has the same meaning as in section 2(12) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301(12)).

(x) *Purchase* includes any contract to buy, purchase, or otherwise acquire. For security futures products, purchase includes any contract, agreement, or transaction for future delivery. With respect to a commodity future, purchase includes any contract, agreement, or transaction for future delivery. With respect to a derivative, purchase includes the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a derivative, as the context may require.

(y) *Qualifying foreign banking organization* means a foreign banking organization that qualifies as such under section 211.23(a), (c) or (e) of the Board's Regulation K (12 CFR 211.23(a), (c), or (e)).

(z) *SEC* means the Securities and Exchange Commission.

(aa) *Sale* and *sell* each include any contract to sell or otherwise dispose of. For security futures products, such terms include any contract, agreement, or transaction for future delivery. With respect to a commodity future, such terms include any contract, agreement, or transaction for future delivery. With respect to a derivative, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a derivative, as the context may require.

(bb) *Security* has the meaning specified in section 3(a)(10) of the Exchange Act (15 U.S.C. 78c(a)(10)).

(cc) *Security-based swap dealer* has the same meaning as in section 3(a)(71) of the Exchange Act (15 U.S.C. 78c(a)(71)).

(dd) *Security future* has the meaning specified in section 3(a)(55) of the Exchange Act (15 U.S.C. 78c(a)(55)).

(ee) *Separate account* means an account established and maintained by an insurance company in connection with one or more insurance contracts to hold assets that are legally segregated from the insurance company's other assets, under which income, gains, and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(ff) *Significant trading assets and liabilities.*

(1) *Significant trading assets and liabilities* means, with respect to a banking entity, that:

(i) The banking entity has, together with its affiliates and subsidiaries, trading assets and liabilities the average gross sum of which over the previous consecutive four quarters, as measured as of the last day of each of the four previous calendar quarters, equals or exceeds $10,000,000,000; or

(ii) The Commission has determined pursuant to § 75.20(h) of this part that the banking entity should be treated as having significant trading assets and liabilities.

(2) With respect to a banking entity other than a banking entity described in paragraph (3), trading assets and liabilities for purposes of this paragraph (ff) means trading assets and liabilities (excluding trading assets and liabilities involving obligations of or guaranteed by the United States or any agency of the United States) on a worldwide consolidated basis.

(3)(i) With respect to a banking entity that is a foreign banking organization or a subsidiary of a foreign banking organization, trading assets and liabilities for purposes of this paragraph (ff) means the trading assets and liabilities (excluding trading assets and liabilities involving obligations of or guaranteed by the United States or any agency of the United States) of the combined U.S. operations of the top-tier foreign banking organization (including all subsidiaries, affiliates, branches, and agencies of the foreign banking organization operating, located, or organized in the United States).

(ii) For purposes of paragraph (ff)(3)(i) of this section, a U.S. branch, agency, or subsidiary of a banking entity is located in the United States; however, the foreign bank that operates or controls that branch, agency, or subsidiary is not considered to be located in the United States solely by virtue of operating or controlling the U.S. branch, agency, or subsidiary.

(gg) *State* means any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(hh) *Subsidiary* has the same meaning as in section 2(d) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(d)).

(ii) *State insurance regulator* means the insurance commissioner, or a similar official or agency, of a State that is engaged in the supervision of insurance companies under State insurance law.

(jj) *Swap dealer* has the same meaning as in section 1(a)(49) of the Commodity Exchange Act (7 U.S.C. 1a(49)).

■ 56. Amend § 75.3 by:

■ a. Revising paragraph (b);

■ b. Redesignating paragraphs (c) through (e) as paragraphs (d) through (f);

■ c. Adding a new paragraph (c);

■ d. Revising paragraph (e)(3);

■ e. Adding paragraph (e)(10);

■ f. Redesignating paragraphs (f)(5) through (f)(13) as paragraphs (f)(6) through (f)(14);

■ g. Adding a new paragraph (f)(5); and

■ h. Adding paragraph (g).

The revisions and additions read as follows:

§ 75.3 Prohibition on proprietary trading.

* * * * *

(b) *Definition of trading account. Trading account* means any account that is used by a banking entity to:

(1)(i) Purchase or sell one or more financial instruments that are both market risk capital rule covered positions and trading positions (or hedges of other market risk capital rule covered positions), if the banking entity, or any affiliate of the banking entity, is an insured depository institution, bank holding company, or savings and loan holding company, and calculates risk-based capital ratios under the market risk capital rule; or

(ii) With respect to a banking entity that is not, and is not controlled directly or indirectly by a banking entity that is, located in or organized under the laws of the United States or any State, purchase or sell one or more financial instruments that are subject to capital requirements under a market risk framework established by the home-country supervisor that is consistent with the market risk framework published by the Basel Committee on Banking Supervision, as amended from time to time.

(2) Purchase or sell one or more financial instruments for any purpose, if the banking entity:

(i) Is licensed or registered, or is required to be licensed or registered, to engage in the business of a dealer, swap dealer, or security-based swap dealer, to the extent the instrument is purchased or sold in connection with the activities that require the banking entity to be licensed or registered as such; or

(ii) Is engaged in the business of a dealer, swap dealer, or security-based swap dealer outside of the United States, to the extent the instrument is purchased or sold in connection with the activities of such business; or

(3) Purchase or sell one or more financial instruments, with respect to a financial instrument that is recorded at fair value on a recurring basis under applicable accounting standards.

(c) *Presumption of compliance.* (1)(i) Each trading desk that does not purchase or sell financial instruments for a trading account defined in paragraphs (b)(1) or (b)(2) of this section may calculate the net gain or net loss on the trading desk's portfolio of financial instruments each business day, reflecting realized and unrealized gains and losses since the previous business day, based on the banking entity's fair value for such financial instruments.

(ii) If the sum of the absolute values of the daily net gain and loss figures determined in accordance with paragraph (c)(1)(i) of this section for the preceding 90-calendar-day period does not exceed $25 million, the activities of the trading desk shall be presumed to be in compliance with the prohibition in paragraph (a) of this section.

(2) The Commission may rebut the presumption of compliance in paragraph (c)(1)(ii) of this section by providing written notice to the banking entity that the Commission has determined that one or more of the banking entity's activities violates the prohibitions under subpart B.

(3) If a trading desk operating pursuant to paragraph (c)(1)(ii) of this section exceeds the $25 million threshold in that paragraph at any point, the banking entity shall, in accordance with any policies and procedures adopted by the Commission:

(i) Promptly notify the Commission;

(ii) Demonstrate that the trading desk's purchases and sales of financial instruments comply with subpart B; and

(iii) Demonstrate, with respect to the trading desk, how the banking entity will maintain compliance with subpart B on an ongoing basis.

* * * * *

(e) * * *

(3) Any purchase or sale of a security, foreign exchange forward (as that term is defined in section 1a(24) of the Commodity Exchange Act (7 U.S.C. 1a(24)), foreign exchange swap (as that term is defined in section 1a(25) of the Commodity Exchange Act (7 U.S.C. 1a(25)), or physically-settled cross-currency swap, by a banking entity for the purpose of liquidity management in accordance with a documented liquidity management plan of the banking entity that, with respect to such financial instruments:

(i) Specifically contemplates and authorizes the particular financial instruments to be used for liquidity management purposes, the amount, types, and risks of these financial instruments that are consistent with liquidity management, and the liquidity circumstances in which the particular financial instruments may or must be used;

(ii) Requires that any purchase or sale of financial instruments contemplated and authorized by the plan be principally for the purpose of managing the liquidity of the banking entity, and not for the purpose of short-term resale, benefitting from actual or expected short-term price movements, realizing short-term arbitrage profits, or hedging a position taken for such short-term purposes;

(iii) Requires that any financial instruments purchased or sold for liquidity management purposes be highly liquid and limited to financial instruments the market, credit, and other risks of which the banking entity does not reasonably expect to give rise to appreciable profits or losses as a result of short-term price movements;

(iv) Limits any financial instruments purchased or sold for liquidity management purposes, together with any other instruments purchased or sold for such purposes, to an amount that is consistent with the banking entity's near-term funding needs, including deviations from normal operations of the banking entity or any affiliate thereof, as estimated and documented pursuant to methods specified in the plan;

(v) Includes written policies and procedures, internal controls, analysis, and independent testing to ensure that the purchase and sale of financial instruments that are not permitted under §§ 75.6(a) or (b) of this subpart are for the purpose of liquidity management and in accordance with the liquidity management plan described in paragraph (e)(3) of this section; and

(vi) Is consistent with the Commission's supervisory requirements, guidance, and expectations regarding liquidity management;

* * * * *

(10) Any purchase (or sale) of one or more financial instruments that was made in error by a banking entity in the course of conducting a permitted or excluded activity or is a subsequent transaction to correct such an error, and the erroneously purchased (or sold) financial instrument is promptly transferred to a separately-managed trade error account for disposition.

(f) * * *

(5) *Cross-currency swap* means a swap in which one party exchanges with another party principal and interest rate payments in one currency for principal and interest rate payments in another currency, and the exchange of principal occurs on the date the swap is entered into, with a reversal of the exchange of principal at a later date that is agreed upon when the swap is entered into.

* * * * *

(g) *Reservation of Authority:* (1) The Commission may determine, on a case-by-case basis, that a purchase or sale of one or more financial instruments by a banking entity either is or is not for the trading account as defined at 12 U.S.C. 1851(h)(6).

(2) *Notice and Response Procedures.*—(i) *Notice.* When the Commission determines that the purchase or sale of one or more financial instruments is for the trading account under paragraph (g)(1) of this section, the Commission will notify the banking entity in writing of the determination and provide an explanation of the determination.

(ii) *Response.* (A) The banking entity may respond to any or all items in the notice. The response should include any matters that the banking entity would have the Commission consider in deciding whether the purchase or sale is for the trading account. The response must be in writing and delivered to the designated Commission official within 30 days after the date on which the banking entity received the notice. The Commission may shorten the time period when, in the opinion of the Commission, the activities or condition of the banking entity so requires, provided that the banking entity is informed promptly of the new time period, or with the consent of the banking entity. In its discretion, the Commission may extend the time period for good cause.

(B) Failure to respond within 30 days or such other time period as may be specified by the Commission shall constitute a waiver of any objections to the Commission's determination.

(iii) After the close of banking entity's response period, the Commission will decide, based on a review of the banking entity's response and other information concerning the banking entity, whether to maintain the Commission's determination that the purchase or sale of one or more financial instruments is for the trading account. The banking entity will be notified of the decision in writing. The notice will include an explanation of the decision.

■ 57. Amend § 75.4 by:

■ a. Revising paragraph (a)(2);

■ b. Adding paragraph (a)(8);

■ c. Revising paragraph (b)(2);

■ d. Revising the introductory text of paragraph (b)(3)(i);

■ e. In paragraph (b)(5) revising the references to ''*inventory*'' to read ''*positions*''*;* and

■ f. Adding paragraph (b)(6).

The revisions and additions to read as follows:

§ 75.4 Permitted underwriting and market making-related activities.

(a) * * *

(2) *Requirements.* The underwriting activities of a banking entity are permitted under paragraph (a)(1) of this section only if:

(i) The banking entity is acting as an underwriter for a distribution of securities and the trading desk's underwriting position is related to such distribution;

(ii)(A) The amount and type of the securities in the trading desk's underwriting position are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties, taking into account the liquidity, maturity, and depth of the market for the relevant type of security, and (B) reasonable efforts are made to sell or otherwise reduce the underwriting position within a reasonable period, taking into account the liquidity, maturity, and depth of the market for the relevant type of security;

(iii) In the case of a banking entity with significant trading assets and liabilities, the banking entity has established and implements, maintains, and enforces an internal compliance program required by subpart D of this part that is reasonably designed to ensure the banking entity's compliance with the requirements of paragraph (a) of this section, including reasonably designed written policies and procedures, internal controls, analysis, and independent testing identifying and addressing:

(A) The products, instruments or exposures each trading desk may purchase, sell, or manage as part of its underwriting activities;

(B) Limits for each trading desk, in accordance with paragraph (a)(8)(i) of this section;

(C) Internal controls and ongoing monitoring and analysis of each trading desk's compliance with its limits; and

(D) Authorization procedures, including escalation procedures that require review and approval of any trade that would exceed a trading desk's limit(s), demonstrable analysis of the basis for any temporary or permanent increase to a trading desk's limit(s), and independent review of such demonstrable analysis and approval;

(iv) The compensation arrangements of persons performing the activities described in this paragraph (a) are designed not to reward or incentivize prohibited proprietary trading; and

(v) The banking entity is licensed or registered to engage in the activity described in this paragraph (a) in accordance with applicable law.

* * * * *

(8) *Rebuttable presumption of compliance.*

(i) *Risk limits.*

(A) A banking entity shall be presumed to meet the requirements of paragraph (a)(2)(ii)(A) of this section with respect to the purchase or sale of a financial instrument if the banking entity has established and implements, maintains, and enforces the limits described in paragraph (a)(8)(i)(B) and does not exceed such limits.

(B) The presumption described in paragraph (8)(i)(A) of this section shall be available with respect to limits for each trading desk that are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties, based on the nature and amount of the trading desk's underwriting activities, on the:

(*1*) Amount, types, and risk of its underwriting position;

(*2*) Level of exposures to relevant risk factors arising from its underwriting position; and

(*3*) Period of time a security may be held.

(ii) *Supervisory review and oversight.* The limits described in paragraph (a)(8)(i) of this section shall be subject to supervisory review and oversight by the Commission on an ongoing basis. Any review of such limits will include assessment of whether the limits are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties.

(iii) *Reporting.* With respect to any limit identified pursuant to paragraph (a)(8)(i) of this section, a banking entity shall promptly report to the Commission (A) to the extent that any limit is exceeded and (B) any temporary or permanent increase to any limit(s), in each case in the form and manner as directed by the Commission.

(iv) *Rebutting the presumption.* The presumption in paragraph (a)(8)(i) of this section may be rebutted by the Commission if the Commission determines, based on all relevant facts and circumstances, that a trading desk is engaging in activity that is not based on the reasonably expected near term demands of clients, customers, or counterparties. The Commission will provide notice of any such determination to the banking entity in writing.

(b) * * *

(2) *Requirements.* The market making-related activities of a banking entity are permitted under paragraph (b)(1) of this section only if:

(i) The trading desk that establishes and manages the financial exposure routinely stands ready to purchase and sell one or more types of financial instruments related to its financial exposure and is willing and available to quote, purchase and sell, or otherwise enter into long and short positions in those types of financial instruments for its own account, in commercially reasonable amounts and throughout market cycles on a basis appropriate for the liquidity, maturity, and depth of the market for the relevant types of financial instruments;

(ii) The trading desk's market-making related activities are designed not to exceed, on an ongoing basis, the reasonably expected near term demands of clients, customers, or counterparties, based on the liquidity, maturity, and depth of the market for the relevant types of financial instrument(s).

(iii) In the case of a banking entity with significant trading assets and liabilities, the banking entity has established and implements, maintains, and enforces an internal compliance program required by subpart D of this part that is reasonably designed to ensure the banking entity's compliance with the requirements of paragraph (b) of this section, including reasonably designed written policies and procedures, internal controls, analysis and independent testing identifying and addressing:

(A) The financial instruments each trading desk stands ready to purchase and sell in accordance with paragraph (b)(2)(i) of this section;

(B) The actions the trading desk will take to demonstrably reduce or otherwise significantly mitigate promptly the risks of its financial exposure consistent with the limits required under paragraph (b)(2)(iii)(C) of this section; the products, instruments, and exposures each trading desk may use for risk management purposes; the techniques and strategies each trading desk may use to manage the risks of its market making-related activities and positions; and the process, strategies, and personnel responsible for ensuring that the actions taken by the trading desk to mitigate these risks are and continue to be effective;

(C) Limits for each trading desk, in accordance with paragraph (b)(6)(i) of this section;

(D) Internal controls and ongoing monitoring and analysis of each trading desk's compliance with its limits; and

(E) Authorization procedures, including escalation procedures that require review and approval of any trade that would exceed a trading desk's limit(s), demonstrable analysis that the basis for any temporary or permanent increase to a trading desk's limit(s) is consistent with the requirements of this paragraph (b), and independent review of such demonstrable analysis and approval;

(iv) In the case of a banking entity with significant trading assets and liabilities, to the extent that any limit identified pursuant to paragraph (b)(2)(iii)(C) of this section is exceeded, the trading desk takes action to bring the trading desk into compliance with the limits as promptly as possible after the limit is exceeded;

(v) The compensation arrangements of persons performing the activities described in this paragraph (b) are designed not to reward or incentivize prohibited proprietary trading; and

(vi) The banking entity is licensed or registered to engage in activity described in this paragraph (b) in accordance with applicable law.

(3) * * *

(i) A trading desk or other organizational unit of another banking entity is not a client, customer, or counterparty of the trading desk if that other entity has trading assets and liabilities of $50 billion or more as measured in accordance with the methodology described in definition of ''significant trading assets and liabilities'' contained in § 75.2 of this part, unless:

* * * * *

(6) *Rebuttable presumption of compliance.*—(i) *Risk limits.* (A) A banking entity shall be presumed to meet the requirements of paragraph (b)(2)(ii) of this section with respect to the purchase or sale of a financial instrument if the banking entity has established and implements, maintains, and enforces the limits described in paragraph (b)(6)(i)(B) of this section and does not exceed such limits.

(B) The presumption described in paragraph (6)(i)(A) of this section shall be available with respect to limits for each trading desk that are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties, based on the nature and amount of the trading desk's market making-related activities, on the:

(*1*) Amount, types, and risks of its market-maker positions;

(*2*) Amount, types, and risks of the products, instruments, and exposures the trading desk may use for risk management purposes;

(*3*) Level of exposures to relevant risk factors arising from its financial exposure; and

(*4*) Period of time a financial instrument may be held.

(ii) *Supervisory review and oversight.* The limits described in paragraph (b)(6)(i) of this section shall be subject to supervisory review and oversight by the Commission on an ongoing basis. Any review of such limits will include assessment of whether the limits are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties.

(iii) *Reporting.* With respect to any limit identified pursuant to paragraph (b)(6)(i) of this section, a banking entity shall promptly report to the Commission (A) to the extent that any limit is exceeded and (B) any temporary or permanent increase to any limit(s), in each case in the form and manner as directed by the Commission.

(iv) *Rebutting the presumption.* The presumption in paragraph (b)(6)(i) of this section may be rebutted by the Commission if the Commission determines, based on all relevant facts and circumstances, that a trading desk is engaging in activity that is not based on the reasonably expected near term demands of clients, customers, or counterparties. The Commission will provide notice of any such determination to the banking entity in writing.

■ 58. Amend § 75.5 by revising paragraph (b), the introductory text of paragraph (c)(1), and adding paragraph (c)(4) to read as follows:

§ 75.5 Permitted risk-mitigating hedging activities.

* * * * *

(b) *Requirements.* (1) The risk-mitigating hedging activities of a banking entity that has significant trading assets and liabilities are permitted under paragraph (a) of this section only if:

(i) The banking entity has established and implements, maintains and enforces an internal compliance program required by subpart D of this part that is reasonably designed to ensure the banking entity's compliance with the requirements of this section, including:

(A) Reasonably designed written policies and procedures regarding the positions, techniques and strategies that may be used for hedging, including documentation indicating what positions, contracts or other holdings a particular trading desk may use in its risk-mitigating hedging activities, as well as position and aging limits with respect to such positions, contracts or other holdings;

(B) Internal controls and ongoing monitoring, management, and authorization procedures, including relevant escalation procedures; and

(C) The conduct of analysis and independent testing designed to ensure that the positions, techniques and strategies that may be used for hedging may reasonably be expected to reduce or otherwise significantly mitigate the specific, identifiable risk(s) being hedged;

(ii) The risk-mitigating hedging activity:

(A) Is conducted in accordance with the written policies, procedures, and internal controls required under this section;

(B) At the inception of the hedging activity, including, without limitation, any adjustments to the hedging activity, is designed to reduce or otherwise significantly mitigate one or more specific, identifiable risks, including market risk, counterparty or other credit risk, currency or foreign exchange risk, interest rate risk, commodity price risk, basis risk, or similar risks, arising in connection with and related to identified positions, contracts, or other holdings of the banking entity, based upon the facts and circumstances of the identified underlying and hedging positions, contracts or other holdings and the risks and liquidity thereof;

(C) Does not give rise, at the inception of the hedge, to any significant new or additional risk that is not itself hedged contemporaneously in accordance with this section;

(D) Is subject to continuing review, monitoring and management by the banking entity that:

(*1*) Is consistent with the written hedging policies and procedures required under paragraph (b)(1)(i) of this section;

(*2*) Is designed to reduce or otherwise significantly mitigate the specific, identifiable risks that develop over time from the risk-mitigating hedging activities undertaken under this section and the underlying positions, contracts, and other holdings of the banking entity, based upon the facts and circumstances of the underlying and hedging positions, contracts and other holdings of the banking entity and the risks and liquidity thereof; and

(*3*) Requires ongoing recalibration of the hedging activity by the banking entity to ensure that the hedging activity satisfies the requirements set out in paragraph (b)(1)(ii) of this section and is not prohibited proprietary trading; and

(iii) The compensation arrangements of persons performing risk-mitigating hedging activities are designed not to reward or incentivize prohibited proprietary trading.

(2) The risk-mitigating hedging activities of a banking entity that does not have significant trading assets and liabilities are permitted under paragraph (a) of this section only if the risk-mitigating hedging activity:

(i) At the inception of the hedging activity, including, without limitation, any adjustments to the hedging activity, is designed to reduce or otherwise significantly mitigate one or more specific, identifiable risks, including market risk, counterparty or other credit risk, currency or foreign exchange risk, interest rate risk, commodity price risk, basis risk, or similar risks, arising in connection with and related to identified positions, contracts, or other holdings of the banking entity, based upon the facts and circumstances of the identified underlying and hedging positions, contracts or other holdings and the risks and liquidity thereof; and

(ii) Is subject, as appropriate, to ongoing recalibration by the banking entity to ensure that the hedging activity satisfies the requirements set out in paragraph (b)(2) of this section and is not prohibited proprietary trading.

(c) * * * (1) A banking entity that has significant trading assets and liabilities must comply with the requirements of paragraphs (c)(2) and (3) of this section, unless the requirements of paragraph (c)(4) of this section are met, with respect to any purchase or sale of financial instruments made in reliance on this section for risk-mitigating hedging purposes that is:

* * * * *

(4) The requirements of paragraphs (c)(2) and (3) of this section do not apply to the purchase or sale of a financial instrument described in paragraph (c)(1) of this section if:

(i) The financial instrument purchased or sold is identified on a written list of pre-approved financial instruments that are commonly used by the trading desk for the specific type of hedging activity for which the financial instrument is being purchased or sold; and

(ii) At the time the financial instrument is purchased or sold, the hedging activity (including the purchase or sale of the financial instrument) complies with written, pre-approved hedging limits for the trading desk purchasing or selling the financial instrument for hedging activities undertaken for one or more other trading desks. The hedging limits shall be appropriate for the:

(A) Size, types, and risks of the hedging activities commonly undertaken by the trading desk;

(B) Financial instruments purchased and sold for hedging activities by the trading desk; and

(C) Levels and duration of the risk exposures being hedged.

■ 59. Amend § 75.6 by revising paragraph (e)(3) and removing paragraph (e)(6) to read as follows:

§ 75.6 Other permitted proprietary trading activities.

* * * * *

(e) * * *

(3) A purchase or sale by a banking entity is permitted for purposes of this paragraph (e) if:

(i) The banking entity engaging as principal in the purchase or sale (including relevant personnel) is not located in the United States or organized under the laws of the United States or of any State;

(ii) The banking entity (including relevant personnel) that makes the decision to purchase or sell as principal is not located in the United States or organized under the laws of the United States or of any State; and

(iii) The purchase or sale, including any transaction arising from risk-mitigating hedging related to the instruments purchased or sold, is not accounted for as principal directly or on a consolidated basis by any branch or affiliate that is located in the United States or organized under the laws of the United States or of any State.

* * * * *

§ 75.10 [Amended]

■ 60. Amend § 75.10 by:

■ a. In paragraph (c)(8)(i)(A) revising the reference to ''§ 75.2(s)'' to read ''§ 75.2(u)'';

■ b. Removing paragraph (d)(1);

■ c. Redesignating paragraphs (d)(2) through (d)(10) as paragraphs (d)(1) through (d)(9);

■ d. In paragraph (d)(5)(i)(G) revising the reference to ''(d)(6)(i)(A)'' to read ''(d)(5)(i)(A)''; and

■ e. In paragraph (d)(9) revising the reference to ''(d)(9)'' to read ''(d)(8)'' and the reference to ''(d)(10)(i)(A)'' to read ''(d)(9)(i)(A)'' and the reference to ''(d)(10)(i)'' to read ''(d)(9)(i)''.

■ 61. Amend § 75.11 by revising paragraph (c) to read as follows:

§ 75.11 Permitted organizing and offering, underwriting, and market making with respect to a covered fund.

* * * * *

(c) *Underwriting and market making in ownership interests of a covered fund.* The prohibition contained in § 75.10(a) of this subpart does not apply to a banking entity's underwriting activities or market making-related activities involving a covered fund so long as:

(1) Those activities are conducted in accordance with the requirements of § 75.4(a) or § 75.4(b) of subpart B, respectively; and

(2) With respect to any banking entity (or any affiliate thereof) that: Acts as a sponsor, investment adviser or commodity trading advisor to a particular covered fund or otherwise acquires and retains an ownership interest in such covered fund in reliance on paragraph (a) of this section; or acquires and retains an ownership interest in such covered fund and is either a securitizer, as that term is used in section 15G(a)(3) of the Exchange Act (15 U.S.C. 78*o*–11(a)(3)), or is acquiring and retaining an ownership interest in such covered fund in compliance with section 15G of that Act (15 U.S.C. 78*o*–11) and the implementing regulations issued thereunder each as permitted by paragraph (b) of this section, then in each such case any ownership interests acquired or retained by the banking entity and its affiliates in connection with underwriting and market making related activities for that particular covered fund are included in the calculation of ownership interests permitted to be held by the banking entity and its affiliates under the limitations of § 75.12(a)(2)(ii); § 75.12(a)(2)(iii), and § 75.12(d) of this subpart.

§ 75.12 [Amended]

■ 62. In subpart C, section 75.12 is amended by:

■ a. In paragraphs (c)(1) and (d) revising the references to ''§ 75.10(d)(6)(ii)'' to read ''§ 75.10(d)(5)(ii)'';

■ b. Removing paragraph (e)(2)(vii); and

■ c. Redesignating the second instance of paragraph (e)(2)(vi) as paragraph (e)(2)(vii).

■ 63. Amend § 75.13 by revising paragraphs (a) and (b)(3) and removing (b)(4)(iv) to read as follows:

§ 75.13 Other permitted covered fund activities and investments.

(a) *Permitted risk-mitigating hedging activities.* (1) The prohibition contained in § 75.10(a) of this subpart does not apply with respect to an ownership interest in a covered fund acquired or retained by a banking entity that is designed to reduce or otherwise significantly mitigate the specific, identifiable risks to the banking entity in connection with:

(i) A compensation arrangement with an employee of the banking entity or an affiliate thereof that directly provides investment advisory, commodity trading advisory or other services to the covered fund; or

(ii) A position taken by the banking entity when acting as intermediary on behalf of a customer that is not itself a banking entity to facilitate the exposure by the customer to the profits and losses of the covered fund.

(2) *Requirements.* The risk-mitigating hedging activities of a banking entity are permitted under this paragraph (a) only if:

(i) The banking entity has established and implements, maintains and enforces an internal compliance program in accordance with subpart D of this part that is reasonably designed to ensure the banking entity's compliance with the requirements of this section, including:

(A) Reasonably designed written policies and procedures; and

(B) Internal controls and ongoing monitoring, management, and authorization procedures, including relevant escalation procedures; and

(ii) The acquisition or retention of the ownership interest:

(A) Is made in accordance with the written policies, procedures, and internal controls required under this section;

(B) At the inception of the hedge, is designed to reduce or otherwise significantly mitigate one or more specific, identifiable risks arising (1) out of a transaction conducted solely to accommodate a specific customer request with respect to the covered fund or (2) in connection with the compensation arrangement with the employee that directly provides investment advisory, commodity trading advisory, or other services to the covered fund;

(C) Does not give rise, at the inception of the hedge, to any significant new or additional risk that is not itself hedged contemporaneously in accordance with this section; and

(D) Is subject to continuing review, monitoring and management by the banking entity.

(iii) With respect to risk-mitigating hedging activity conducted pursuant to paragraph (a)(1)(i), the compensation arrangement relates solely to the covered fund in which the banking entity or any affiliate has acquired an ownership interest pursuant to paragraph (a)(1)(i) and such compensation arrangement provides that any losses incurred by the banking entity on such ownership interest will be offset by corresponding decreases in amounts payable under such compensation arrangement.

* * * * *

(b) * * *

(3) An ownership interest in a covered fund is not offered for sale or sold to a resident of the United States for purposes of paragraph (b)(1)(iii) of this section only if it is not sold and has not been sold pursuant to an offering that targets residents of the United States in which the banking entity or any affiliate of the banking entity participates. If the banking entity or an affiliate sponsors or serves, directly or indirectly, as the investment manager, investment adviser, commodity pool operator or commodity trading advisor to a covered fund, then the banking entity or affiliate will be deemed for purposes of this paragraph (b)(3) to participate in any offer or sale by the covered fund of ownership interests in the covered fund.

* * * * *

■ 64. Amend § 75.14 by revising paragraph (a)(2)(ii)(B) as follows:

§ 75.14 Limitations on relationships with a covered fund.

(a) * * *

(2) * * *

(ii) * * *

(B) The chief executive officer (or equivalent officer) of the banking entity certifies in writing annually no later than March 31 to the Commission (with a duty to update the certification if the information in the certification materially changes) that the banking entity does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the covered fund or of any covered fund in which such covered fund invests; and

* * * * *

■ 65. Amend § 75.20 by:

■ a. Revising paragraphs (a), (c), (d), and (f)(2);

■ b. Revising the introductory text of paragraphs (b) and (e)

■ c. Adding paragraphs (g) and (h).

The revisions amd additions to read as follows:

§ 75.20 Program for compliance; reporting.

(a) *Program requirement.* Each banking entity (other than a banking entity with limited trading assets and liabilities) shall develop and provide for the continued administration of a compliance program reasonably designed to ensure and monitor compliance with the prohibitions and restrictions on proprietary trading and covered fund activities and investments set forth in section 13 of the BHC Act and this part. The terms, scope, and detail of the compliance program shall be appropriate for the types, size, scope, and complexity of activities and business structure of the banking entity.

(b) *Banking entities with significant trading assets and liabilities.* With respect to a banking entity with significant trading assets and liabilities, the compliance program required by paragraph (a) of this section, at a minimum, shall include:

* * * * *

(c) *CEO attestation.*

(1) The CEO of a banking entity described in paragraph (2) must, based on a review by the CEO of the banking entity, attest in writing to the Commission, each year no later than March 31, that the banking entity has in place processes reasonably designed to achieve compliance with section 13 of the BHC Act and this part. In the case of a U.S. branch or agency of a foreign banking entity, the attestation may be provided for the entire U.S. operations of the foreign banking entity by the senior management officer of the U.S. operations of the foreign banking entity who is located in the United States.

(2) The requirements of paragraph (c)(1) apply to a banking entity if:

(i) The banking entity does not have limited trading assets and liabilities; or

(ii) The Commission notifies the banking entity in writing that it must satisfy the requirements contained in paragraph (c)(1).

(d) *Reporting requirements under the Appendix to this part.* (1) A banking entity engaged in proprietary trading activity permitted under subpart B shall comply with the reporting requirements described in the Appendix, if:

(i) The banking entity has significant trading assets and liabilities; or

(ii) The Commission notifies the banking entity in writing that it must satisfy the reporting requirements contained in the Appendix.

(2) Frequency of reporting: Unless the Commission notifies the banking entity in writing that it must report on a different basis, a banking entity with $50 billion or more in trading assets and liabilities (as calculated in accordance with the methodology described in the definition of ‘‘significant trading assets and liabilities’’ contained in § 75.2 of this part of this part) shall report the information required by the Appendix for each calendar month within 20 days of the end of each calendar month. Any other banking entity subject to the Appendix shall report the information required by the Appendix for each calendar quarter within 30 days of the end of that calendar quarter unless the Commission notifies the banking entity in writing that it must report on a different basis.

(e) *Additional documentation for covered funds.* A banking entity with significant trading assets and liabilities shall maintain records that include:

* * * * *

(f) * * *

(2) *Banking entities with moderate trading assets and liabilities.* A banking entity with moderate trading assets and liabilities may satisfy the requirements of this section by including in its existing compliance policies and procedures appropriate references to the requirements of section 13 of the BHC Act and this part and adjustments as appropriate given the activities, size, scope, and complexity of the banking entity.

(g) *Rebuttable presumption of compliance for banking entities with limited trading assets and liabilities.*

(1) *Rebuttable presumption.* Except as otherwise provided in this paragraph, a banking entity with limited trading assets and liabilities shall be presumed to be compliant with subpart B and subpart C and shall have no obligation to demonstrate compliance with this part on an ongoing basis.

(2) *Rebuttal of presumption.*

(i) If upon examination or audit, the Commission determines that the banking entity has engaged in proprietary trading or covered fund activities that are otherwise prohibited under subpart B or subpart C, the Commission may require the banking entity to be treated under this part as if it did not have limited trading assets and liabilities.

(ii) Notice and Response Procedures.

(A) Notice. The Commission will notify the banking entity in writing of any determination pursuant to paragraph (g)(2)(i) of this section to rebut the presumption described in this paragraph (g) and will provide an explanation of the determination.

(B) Response.

(I) The banking entity may respond to any or all items in the notice described in paragraph (g)(2)(ii)(A) of this section. The response should include any matters that the banking entity would have the Commission consider in deciding whether the banking entity has engaged in proprietary trading or covered fund activities prohibited under subpart B or subpart C. The response must be in writing and delivered to the designated Commission official within 30 days after the date on which the banking entity received the notice. The Commission may shorten the time period when, in the opinion of the Commission, the activities or condition of the banking entity so requires, provided that the banking entity is informed promptly of the new time period, or with the consent of the banking entity. In its discretion, the Commission may extend the time period for good cause.

(II) Failure to respond within 30 days or such other time period as may be specified by the Commission shall constitute a waiver of any objections to the Commission’s determination.

(C) After the close of banking entity’s response period, the Commission will decide, based on a review of the banking entity’s response and other information concerning the banking entity, whether to maintain the Commission’s determination that banking entity has engaged in proprietary trading or covered fund activities prohibited under subpart B or subpart C. The banking entity will be notified of the decision in writing. The notice will include an explanation of the decision.

(h) *Reservation of authority.* Notwithstanding any other provision of this part, the Commission retains its authority to require a banking entity without significant trading assets and liabilities to apply any requirements of this part that would otherwise apply if the banking entity had significant or moderate trading assets and liabilities if the Commission determines that the size or complexity of the banking entity’s trading or investment activities, or the risk of evasion of subpart B or subpart C, does not warrant a presumption of compliance under paragraph (g) of this section or treatment as a banking entity with moderate trading assets and liabilities, as applicable.

■ 66. Revise the Appendix to Part 75 to read as follows:

Appendix to Part 75—Reporting and Recordkeeping Requirements for Covered Trading Activities

I. Purpose

a. This appendix sets forth reporting and recordkeeping requirements that certain banking entities must satisfy in connection with the restrictions on proprietary trading set forth in subpart B (‘‘proprietary trading restrictions’’). Pursuant to § 75.20(d), this appendix applies to a banking entity that, together with its affiliates and subsidiaries, has significant trading assets and liabilities.

These entities are required to (i) furnish periodic reports to the Commission regarding a variety of quantitative measurements of their covered trading activities, which vary depending on the scope and size of covered trading activities, and (ii) create and maintain records documenting the preparation and content of these reports. The requirements of this appendix must be incorporated into the banking entity's internal compliance program under § 75.20.

b. The purpose of this appendix is to assist banking entities and the Commission in:

(i) Better understanding and evaluating the scope, type, and profile of the banking entity's covered trading activities;

(ii) Monitoring the banking entity's covered trading activities;

(iii) Identifying covered trading activities that warrant further review or examination by the banking entity to verify compliance with the proprietary trading restrictions;

(iv) Evaluating whether the covered trading activities of trading desks engaged in market making-related activities subject to § 75.4(b) are consistent with the requirements governing permitted market making-related activities;

(v) Evaluating whether the covered trading activities of trading desks that are engaged in permitted trading activity subject to §§ 75.4, 75.5, or 75.6(a)–(b) (*i.e.,* underwriting and market making-related related activity, risk-mitigating hedging, or trading in certain government obligations) are consistent with the requirement that such activity not result, directly or indirectly, in a material exposure to high-risk assets or high-risk trading strategies;

(vi) Identifying the profile of particular covered trading activities of the banking entity, and the individual trading desks of the banking entity, to help establish the appropriate frequency and scope of examination by the Commission of such activities; and

(vii) Assessing and addressing the risks associated with the banking entity's covered trading activities.

c. Information that must be furnished pursuant to this appendix is *not* intended to serve as a dispositive tool for the identification of permissible or impermissible activities.

d. In addition to the quantitative measurements required in this appendix, a banking entity may need to develop and implement other quantitative measurements in order to effectively monitor its covered trading activities for compliance with section 13 of the BHC Act and this part and to have an effective compliance program, as required by § 75.20. The effectiveness of particular quantitative measurements may differ based on the profile of the banking entity's businesses in general and, more specifically, of the particular trading desk, including types of instruments traded, trading activities and strategies, and history and experience (*e.g.,* whether the trading desk is an established, successful market maker or a new entrant to a competitive market). In all cases, banking entities must ensure that they have robust measures in place to identify and monitor the risks taken in their trading activities, to ensure that the activities are within risk tolerances established by the banking entity, and to monitor and examine for compliance with the proprietary trading restrictions in this part.

e. On an ongoing basis, banking entities must carefully monitor, review, and evaluate all furnished quantitative measurements, as well as any others that they choose to utilize in order to maintain compliance with section 13 of the BHC Act and this part. All measurement results that indicate a heightened risk of impermissible proprietary trading, including with respect to otherwise-permitted activities under §§ 75.4 through 75.6(a)–(b), or that result in a material exposure to high-risk assets or high-risk trading strategies, must be escalated within the banking entity for review, further analysis, explanation to the Commission, and remediation, where appropriate. The quantitative measurements discussed in this appendix should be helpful to banking entities in identifying and managing the risks related to their covered trading activities.

II. Definitions

The terms used in this appendix have the same meanings as set forth in §§ 75.2 and 75.3. In addition, for purposes of this appendix, the following definitions apply:

Applicability identifies the trading desks for which a banking entity is required to calculate and report a particular quantitative measurement based on the type of covered trading activity conducted by the trading desk.

Calculation period means the period of time for which a particular quantitative measurement must be calculated.

Comprehensive profit and loss means the net profit or loss of a trading desk's material sources of trading revenue over a specific period of time, including, for example, any increase or decrease in the market value of a trading desk's holdings, dividend income, and interest income and expense.

Covered trading activity means trading conducted by a trading desk under §§ 75.4, 75.5, 75.6(a), or 75.6(b). A banking entity may include in its covered trading activity trading conducted under §§ 75.3(e), 75.6(c), 75.6(d), or 75.6(e).

Measurement frequency means the frequency with which a particular quantitative metric must be calculated and recorded.

Trading day means a calendar day on which a trading desk is open for trading.

III. Reporting and Recordkeeping

a. Scope of Required Reporting

1. *Quantitative measurements.* Each banking entity made subject to this appendix by § 75.20 must furnish the following quantitative measurements, as applicable, for each trading desk of the banking entity engaged in covered trading activities and calculate these quantitative measurements in accordance with this appendix:

i. Risk and Position Limits and Usage;

ii. Risk Factor Sensitivities;

iii. Value-at-Risk and Stressed Value-at-Risk;

iv. Comprehensive Profit and Loss Attribution;

v. Positions;

vi. Transaction Volumes; and

vii. Securities Inventory Aging.

2. *Trading desk information.* Each banking entity made subject to this appendix by § 75.20 must provide certain descriptive information, as further described in this appendix, regarding each trading desk engaged in covered trading activities.

3. *Quantitative measurements identifying information.* Each banking entity made subject to this appendix by § 75.20 must provide certain identifying and descriptive information, as further described in this appendix, regarding its quantitative measurements.

4. *Narrative statement.* Each banking entity made subject to this appendix by § 75.20 must provide a separate narrative statement, as further described in this appendix.

5. *File identifying information.* Each banking entity made subject to this appendix by § 75.20 must provide file identifying information in each submission to the Commission pursuant to this appendix, including the name of the banking entity, the RSSD ID assigned to the top-tier banking entity by the Board, and identification of the reporting period and creation date and time.

b. Trading Desk Information

1. Each banking entity must provide descriptive information regarding each trading desk engaged in covered trading activities, including:

i. Name of the trading desk used internally by the banking entity and a unique identification label for the trading desk;

ii. Identification of each type of covered trading activity in which the trading desk is engaged;

iii. Brief description of the general strategy of the trading desk;

iv. A list of the types of financial instruments and other products purchased and sold by the trading desk; an indication of which of these are the main financial instruments or products purchased and sold by the trading desk; and, for trading desks engaged in market making-related activities under § 75.4(b), specification of whether each type of financial instrument is included in market-maker positions or not included in market-maker positions. In addition, indicate whether the trading desk is including in its quantitative measurements products excluded from the definition of ''financial instrument'' under § 75.3(d)(2) and, if so, identify such products;

v. Identification by complete name of each legal entity that serves as a booking entity for covered trading activities conducted by the trading desk; and indication of which of the identified legal entities are the main booking entities for covered trading activities of the trading desk;

vii. For each legal entity that serves as a booking entity for covered trading activities, specification of any of the following applicable entity types for that legal entity:

A. National bank, Federal branch or Federal agency of a foreign bank, Federal savings association, Federal savings bank;

B. State nonmember bank, foreign bank having an insured branch, State savings association;

C. U.S.-registered broker-dealer, U.S.-registered security-based swap dealer, U.S.-

registered major security-based swap participant;

D. Swap dealer, major swap participant, derivatives clearing organization, futures commission merchant, commodity pool operator, commodity trading advisor, introducing broker, floor trader, retail foreign exchange dealer;

E. State member bank;

F. Bank holding company, savings and loan holding company;

G. Foreign banking organization as defined in 12 CFR 211.21(o);

H. Uninsured State-licensed branch or agency of a foreign bank; or

I. Other entity type not listed above, including a subsidiary of a legal entity described above where the subsidiary itself is not an entity type listed above;

2. Indication of whether each calendar date is a trading day or not a trading day for the trading desk; and

3. Currency reported and daily currency conversion rate.

c. Quantitative Measurements Identifying Information

Each banking entity must provide the following information regarding the quantitative measurements:

1. A Risk and Position Limits Information Schedule that provides identifying and descriptive information for each limit reported pursuant to the Risk and Position Limits and Usage quantitative measurement, including the name of the limit, a unique identification label for the limit, a description of the limit, whether the limit is intraday or end-of-day, the unit of measurement for the limit, whether the limit measures risk on a net or gross basis, and the type of limit;

2. A Risk Factor Sensitivities Information Schedule that provides identifying and descriptive information for each risk factor sensitivity reported pursuant to the Risk Factor Sensitivities quantitative measurement, including the name of the sensitivity, a unique identification label for the sensitivity, a description of the sensitivity, and the sensitivity's risk factor change unit;

3. A Risk Factor Attribution Information Schedule that provides identifying and descriptive information for each risk factor attribution reported pursuant to the Comprehensive Profit and Loss Attribution quantitative measurement, including the name of the risk factor or other factor, a unique identification label for the risk factor or other factor, a description of the risk factor or other factor, and the risk factor or other factor's change unit;

4. A Limit/Sensitivity Cross-Reference Schedule that cross-references, by unique identification label, limits identified in the Risk and Position Limits Information Schedule to associated risk factor sensitivities identified in the Risk Factor Sensitivities Information Schedule; and

5. A Risk Factor Sensitivity/Attribution Cross-Reference Schedule that cross-references, by unique identification label, risk factor sensitivities identified in the Risk Factor Sensitivities Information Schedule to associated risk factor attributions identified in the Risk Factor Attribution Information Schedule.

d. Narrative Statement

Each banking entity made subject to this appendix by § 75.20 must submit in a separate electronic document a Narrative Statement to the Commission describing any changes in calculation methods used, a description of and reasons for changes in the banking entity's trading desk structure or trading desk strategies, and when any such change occurred. The Narrative Statement must include any information the banking entity views as relevant for assessing the information reported, such as further description of calculation methods used. If a banking entity does not have any information to report in a Narrative Statement, the banking entity must submit an electronic document stating that it does not have any information to report in a Narrative Statement.

e. Frequency and Method of Required Calculation and Reporting

A banking entity must calculate any applicable quantitative measurement for each trading day. A banking entity must report the Narrative Statement, the Trading Desk Information, the Quantitative Measurements Identifying Information, and each applicable quantitative measurement electronically to the Commission on the reporting schedule established in § 75.20 unless otherwise requested by the Commission. A banking entity must report the Trading Desk Information, the Quantitative Measurements Identifying Information, and each applicable quantitative measurement to the Commission in accordance with the XML Schema specified and published on the Commission's website.

f. Recordkeeping

A banking entity must, for any quantitative measurement furnished to the Commission pursuant to this appendix and § 75.20(d), create and maintain records documenting the preparation and content of these reports, as well as such information as is necessary to permit the Commission to verify the accuracy of such reports, for a period of five years from the end of the calendar year for which the measurement was taken. A banking entity must retain the Narrative Statement, the Trading Desk Information, and the Quantitative Measurements Identifying Information for a period of five years from the end of the calendar year for which the information was reported to the Commission.

IV. Quantitative Measurements

a. Risk-Management Measurements

1. Risk and Position Limits and Usage

i. *Description:* For purposes of this appendix, Risk and Position Limits are the constraints that define the amount of risk that a trading desk is permitted to take at a point in time, as defined by the banking entity for a specific trading desk. Usage represents the value of the trading desk's risk or positions that are accounted for by the current activity of the desk. Risk and position limits and their usage are key risk management tools used to control and monitor risk taking and include, but are not limited to, the limits set out in § 75.4 and § 75.5. A number of the metrics that are described below, including ''Risk Factor Sensitivities'' and ''Value-at-Risk,'' relate to a trading desk's risk and position limits and are useful in evaluating and setting these limits in the broader context of the trading desk's overall activities, particularly for the market making activities under § 75.4(b) and hedging activity under § 75.5. Accordingly, the limits required under § 75.4(b)(2)(iii) and § 75.5(b)(1)(i)(A) must meet the applicable requirements under § 75.4(b)(2)(iii) and § 75.5(b)(1)(i)(A) and also must include appropriate metrics for the trading desk limits including, at a minimum, the ''Risk Factor Sensitivities'' and ''Value-at-Risk'' metrics except to the extent any of the ''Risk Factor Sensitivities'' or ''Value-at-Risk'' metrics are demonstrably ineffective for measuring and monitoring the risks of a trading desk based on the types of positions traded by, and risk exposures of, that desk.

A. A banking entity must provide the following information for each limit reported pursuant to this quantitative measurement: the unique identification label for the limit reported in the Risk and Position Limits Information Schedule, the limit size (distinguishing between an upper and a lower limit), and the value of usage of the limit.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks engaged in covered trading activities.

2. Risk Factor Sensitivities

i. *Description:* For purposes of this appendix, Risk Factor Sensitivities are changes in a trading desk's Comprehensive Profit and Loss that are expected to occur in the event of a change in one or more underlying variables that are significant sources of the trading desk's profitability and risk. A banking entity must report the risk factor sensitivities that are monitored and managed as part of the trading desk's overall risk management policy. Reported risk factor sensitivities must be sufficiently granular to account for a preponderance of the expected price variation in the trading desk's holdings. A banking entity must provide the following information for each sensitivity that is reported pursuant to this quantitative measurement: The unique identification label for the risk factor sensitivity listed in the Risk Factor Sensitivities Information Schedule, the change in risk factor used to determine the risk factor sensitivity, and the aggregate change in value across all positions of the desk given the change in risk factor.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks engaged in covered trading activities.

3. Value-at-Risk and Stressed Value-at-Risk

i. *Description:* For purposes of this appendix, Value-at-Risk (''VaR'') is the measurement of the risk of future financial loss in the value of a trading desk's aggregated positions at the ninety-nine percent confidence level over a one-day period, based on current market conditions. For purposes of this appendix, Stressed Value-at-Risk (''Stressed VaR'') is the measurement of the risk of future financial loss in the value of a trading desk's aggregated positions at the ninety-nine percent confidence level over a one-day period, based on market conditions during a period of significant financial stress.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* For VaR, all trading desks engaged in covered trading activities. For Stressed VaR, all trading desks engaged in covered trading activities, except trading desks whose covered trading activity is conducted exclusively to hedge products excluded from the definition of ''financial instrument'' under § 75.3(d)(2).

b. Source-of-Revenue Measurements

1. Comprehensive Profit and Loss Attribution

i. *Description:* For purposes of this appendix, Comprehensive Profit and Loss Attribution is an analysis that attributes the daily fluctuation in the value of a trading desk's positions to various sources. First, the daily profit and loss of the aggregated positions is divided into three categories: (i) Profit and loss attributable to a trading desk's existing positions that were also positions held by the trading desk as of the end of the prior day (''existing positions''); (ii) profit and loss attributable to new positions resulting from the current day's trading activity (''new positions''); and (iii) residual profit and loss that cannot be specifically attributed to existing positions or new positions. The sum of (i), (ii), and (iii) must equal the trading desk's comprehensive profit and loss at each point in time.

A. The comprehensive profit and loss associated with existing positions must reflect changes in the value of these positions on the applicable day. The comprehensive profit and loss from existing positions must be further attributed, as applicable, to changes in (i) the specific risk factors and other factors that are monitored and managed as part of the trading desk's overall risk management policies and procedures; and (ii) any other applicable elements, such as cash flows, carry, changes in reserves, and the correction, cancellation, or exercise of a trade.

B. For the attribution of comprehensive profit and loss from existing positions to specific risk factors and other factors, a banking entity must provide the following information for the factors that explain the preponderance of the profit or loss changes due to risk factor changes: the unique identification label for the risk factor or other factor listed in the Risk Factor Attribution Information Schedule, and the profit or loss due to the risk factor or other factor change.

C. The comprehensive profit and loss attributed to new positions must reflect commissions and fee income or expense and market gains or losses associated with transactions executed on the applicable day. New positions include purchases and sales of financial instruments and other assets/liabilities and negotiated amendments to existing positions. The comprehensive profit and loss from new positions may be reported in the aggregate and does not need to be further attributed to specific sources.

D. The portion of comprehensive profit and loss that cannot be specifically attributed to known sources must be allocated to a residual category identified as an unexplained portion of the comprehensive profit and loss. Significant unexplained profit and loss must be escalated for further investigation and analysis.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks engaged in covered trading activities.

c. Positions, Transaction Volumes, and Securities Inventory Aging Measurements

1. Positions

i. *Description:* For purposes of this appendix, Positions is the value of securities and derivatives positions managed by the trading desk. For purposes of the Positions quantitative measurement, do not include in the Positions calculation for ''securities'' those securities that are also ''derivatives,'' as those terms are defined under subpart A; instead, report those securities that are also derivatives as ''derivatives.'' [1] A banking entity must separately report the trading desk's market value of long securities positions, market value of short securities positions, market value of derivatives receivables, market value of derivatives payables, notional value of derivatives receivables, and notional value of derivatives payables.

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks that rely on § 75.4(a) or § 75.4(b) to conduct underwriting activity or market-making-related activity, respectively.

2. Transaction Volumes

i. *Description:* For purposes of this appendix, Transaction Volumes measures four exclusive categories of covered trading activity conducted by a trading desk. A banking entity is required to report the value and number of security and derivative transactions conducted by the trading desk with: (i) Customers, excluding internal transactions; (ii) non-customers, excluding internal transactions; (iii) trading desks and other organizational units where the transaction is booked in the same banking entity; and (iv) trading desks and other organizational units where the transaction is booked into an affiliated banking entity. For securities, value means gross market value. For derivatives, value means gross notional value. For purposes of calculating the Transaction Volumes quantitative measurement, do not include in the Transaction Volumes calculation for ''securities'' those securities that are also ''derivatives,'' as those terms are defined under subpart A; instead, report those securities that are also derivatives as ''derivatives.'' [2] Further, for purposes of the Transaction Volumes quantitative measurement, a customer of a trading desk that relies on § 75.4(a) to conduct underwriting activity is a market participant identified in § 75.4(a)(7), and a customer of a trading desk that relies on § 75.4(b) to conduct market making-related activity is a market participant identified in § 75.4(b)(3).

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks that rely on § 75.4(a) or § 75.4(b) to conduct underwriting activity or market-making-related activity, respectively.

3. Securities Inventory Aging

i. *Description:* For purposes of this appendix, Securities Inventory Aging generally describes a schedule of the market value of the trading desk's securities positions and the amount of time that those securities positions have been held. Securities Inventory Aging must measure the age profile of a trading desk's securities positions for the following periods: 0–30 calendar days; 31–60 calendar days; 61–90 calendar days; 91–180 calendar days; 181–360 calendar days; and greater than 360 calendar days. Securities Inventory Aging includes two schedules, a security asset-aging schedule, and a security liability-aging schedule. For purposes of the Securities Inventory Aging quantitative measurement, do not include securities that are also ''derivatives,'' as those terms are defined under subpart A.[3]

ii. *Calculation Period:* One trading day.

iii. *Measurement Frequency:* Daily.

iv. *Applicability:* All trading desks that rely on § 75.4(a) or § 75.4(b) to conduct underwriting activity or market-making related activity, respectively.

Dated: May 31, 2018.

Joseph M. Otting,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, May 30, 2018.

Ann E. Misback,

Secretary of the Board.

Dated at Washington, DC, on May 31, 2018.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie Jean Best,

Assistant Executive Secretary.

By the Securities and Exchange Commission.

Dated: June 5, 2018.

Brent J. Fields,

Secretary.

Issued in Washington, DC, on June 11, 2018, by the Commodity Futures Trading Commission.

Robert Sidman,

Deputy Secretary of the Commodity Futures Trading Commission.

[FR Doc. 2018–13502 Filed 7–16–18; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 8011–01–P; 6351–01–P

[1] *See* §§ 75.2(i), (bb). For example, under this part, a security-based swap is both a ''security'' and a ''derivative.'' For purposes of the Positions quantitative measurement, security-based swaps are reported as derivatives rather than securities.

[2] *See* §§ 75.2(i), (bb).

[3] *See* §§ 75.2(i), (bb).

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Part IV

Office of the United States Trade Representative

Request for Comments Concerning Proposed Modification of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation; Notice

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2018–0026]

Request for Comments Concerning Proposed Modification of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing.

SUMMARY: On June 20, 2018 (83 FR 28710), the U.S. Trade Representative (Trade Representative) provided notice of an initial action in the Section 301 investigation of the acts, policies, and practices of the Government of China related to technology transfer, intellectual property, and innovation. The initial action was the imposition of an additional 25 percent *ad valorem* duty on products of China with an annual trade value of approximately $34 billion, effective July 6, 2018. The June 20 notice also sought public comment on another proposed action, in the form of an additional 25 percent *ad valorem* duty on products of China with an annual trade value of approximately $16 billion. The public comment process in connection with the proposed additional action is ongoing. On July 6, 2018, China responded to the initial action by imposing increased duties on goods of the United States. In light of China's decision to respond to the investigation by imposing duties on U.S. goods, the Trade Representative proposes a modification of the action taken in this investigation. The proposed modification is to maintain the original $34 billion action and the proposed $16 billion action, and to take further action in the form of an additional 10 percent *ad valorem* duty on products of China with an annual trade value of approximately $200 billion. The products subject to this proposed supplemental action are classified in the HTSUS subheadings set out in the Annex to this notice. The Office of the U.S. Trade Representative (USTR) is seeking public comment and will hold a public hearing regarding this proposed modification of the action in the investigation.

DATES: To be assured of consideration, you must submit comments and responses in accordance with the following schedule:

July 27, 2018: Due date for filing requests to appear and a summary of expected testimony at the public hearing, and for filing pre-hearing submissions.

August 17, 2018: Due date for submission of written comments.

August 20–23, 2018: The Section 301 Committee will convene a public hearing in the main hearing room of the U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436 beginning at 9:30 a.m.

August 30, 2018: Due date for submission of post-hearing rebuttal comments.

ADDRESSES: USTR strongly prefers electronic submissions made through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments in sections D and F below. The docket number is USTR–2018–0026.

FOR FURTHER INFORMATION CONTACT: For questions about the ongoing investigation or proposed action, contact Arthur Tsao, Assistant General Counsel, or Justin Hoffmann, Director of Industrial Goods, at (202) 395–5725. For questions on customs classification of products identified in the Annex to this notice, contact *Traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

On August 18, 2017, USTR initiated an investigation into certain acts, policies, and practices of the Government of China related to technology transfer, intellectual property, and innovation (82 FR 40213).

In a notice published on April 6, 2018 (83 FR 14906), the Trade Representative announced a determination that the acts, policies, and practices of the Government of China covered in the investigation are unreasonable or discriminatory and burden or restrict U.S. commerce. The April 6 notice also invited public comment on a proposed action in the investigation, in the form of an additional 25 percent *ad valorem* duty on products from China classified in a list of 1,333 tariff subheadings, with an annual trade value of approximately $50 billion. As explained in the notice, the level was appropriate both in light of the estimated harm to the U.S. economy, and to obtain elimination of China's harmful acts, policies, and practices.

The public comment process included two opportunities for the submission of written comments, and the opportunity to participate in a public hearing. USTR received thousands of submissions, and held a 3 day public hearing with more than 100 witnesses. The public versions of submissions and a transcript of the hearing are available on *www.regulations.gov* in docket number USTR–2018–0005.

USTR and the interagency Section 301 Committee carefully reviewed the public comments and the testimony from the public hearing. USTR and the Section 301 Committee also carefully reviewed the extent to which the tariff subheadings in the April 6, 2018 notice include products containing industrially significant technology, including technologies and products related to China's ''Made in China 2025'' industrial policy program.

Based on this review process, the Trade Representative determined to take an initial action in the investigation, and to consider an additional proposed action. The Trade Representative announced the determination on June 15, 2018, and published a notice on June 20, 2018 (83 FR 28710). The Trade Representative narrowed the proposed list in the April 6 notice to 818 tariff subheadings, with an approximate annual trade value of $34 billion. This initial action became effective on July 6, 2018. The additional proposed action is an additional *ad valorem* duty of 25 percent on products of China classified in 284 tariff subheadings, with an annual trade value of approximately $16 billion. The June 20 notice explained that including these tariff subheadings in the Section 301 action would maintain the effectiveness of a $50 billion trade action. The public comment process in connection with the proposed additional action is ongoing.

B. China's Response to the Action in the Investigation

The Government of China has chosen to respond to the initial U.S. action in the investigation by imposing retaliatory tariffs on U.S. goods, instead of addressing U.S. concerns with the unfair practices found in the investigation. On Friday, June 15, 2018, the day that the Trade Representative announced the initial action in the investigation, China issued a statement saying that it was imposing equivalent tariff measures on U.S. goods.

On Saturday, June 16, 2018, the Government of China specified that it would impose an additional 25 percent tariff on U.S. goods with a value of $50 billion (State Council Customs Tariff Commission 2018 Public Notice No. 5). China's announcement sets out two lists. The first list contains 545 tariff subheadings that supposedly corresponds to the initial U.S. $34 billion action, and had an effective date of July 6, 2018. The second list contains 114 tariff subheadings that supposedly corresponds to the additional proposed

$16 billion U.S. action, and will be effective on a date to be determined.

On Monday, June 18, 2018, the President issued a statement in response to China's announcement that it was imposing retaliatory tariffs on U.S. goods. *See https://www.whitehouse.gov/briefings-statements/statement-president-regarding-trade-china-2/.* The statement ''directed the United States Trade Representative to identify $200 billion worth of Chinese goods for additional tariffs at a rate of 10 percent. After the legal process is complete, these tariffs will go into effect if China refuses to change its practices, and also if it insists on going forward with the new tariffs that it has recently announced.''

On July 6, 2018, the day the initial $34 billion action in the investigation became effective, the Government of China confirmed that it is going forward with the new tariffs it announced on June 16. China also has not changed the acts, policies, and practices identified in the investigation.

C. Proposed Supplemental Action

Section 301(b) of the Trade Act of 1974, as amended (Trade Act) provides that ''the Trade Representative shall take all appropriate and feasible action authorized under [Section 301(c)], subject to the specific direction, if any, of the President regarding any such action . . . to obtain the elimination of [the] act, policy, or practice'' covered in the investigation. Section 307 of the Trade Act provides that ''The Trade Representative may modify or terminate any action, subject to the specific direction, if any, of the President with respect to such action, that is being taken under [Section 301] if . . . such action is being taken under section 301(b) of this title and is no longer appropriate.'' In light of China's response to the $50 billion action announced in the investigation and its refusal to change its acts, policies, and practices, it has become apparent that U.S. action at this level is not sufficient to obtain the elimination of China's acts, policies, and practices covered in the investigation. Accordingly, the Trade Representative is proposing to modify the action in this investigation by maintaining the original $34 billion action and the proposed $16 billion action, and by taking a further, supplemental action. The Trade Representative proposes an additional 10 percent *ad valorem* duty on products of China covered in the attached list of 6,031 tariff subheadings. The attached list has an annual trade value of approximately $200 billion.

Modification of the action in this investigation by taking a supplemental $200 billion action is appropriate in light of the statutory goal of obtaining the elimination of the acts, policies, and practices covered in the investigation. China has shown that it will not respond to action at a $50 billion level by addressing U.S. concerns with China's acts, policies, and practices involving technology transfer, intellectual property, and innovation. Rather, China is responding to action at a $50 billion level by imposing retaliatory duties.

Supplemental action at a $200 billion level is in accord with the President's direction. In addition, action at this level is appropriate in light of the level of China's announced retaliatory action ($50 billion) and the level of Chinese goods imported into the United States ($505 billion in 2017). China's retaliatory action covers a substantial percentage of U.S. goods exported to China ($130 billion in 2017). In order to enhance effectiveness, the level of the U.S. supplemental action must cover a substantial percentage of Chinese imports.

In developing the list of tariff subheadings included in this proposed supplemental action, trade analysts considered products from across all sectors of the Chinese economy. The tariff subheadings considered by the analysts included subheadings that commenters suggested for inclusion in response to the April 6 notice. The selection process took account of likely impacts on U.S. consumers, and involved the removal of subheadings identified by analysts as likely to cause disruptions to the U.S. economy, as well as tariff lines subject to legal or administrative constraints.

To ensure the effectiveness of the action, any merchandise subject to the increased tariffs admitted into a U.S. foreign trade zone on or after the effective date of the increased tariffs, except those eligible for admission under ''domestic status'' as defined in 19 CFR 146.43, would have to be admitted as ''privileged foreign status'' as defined in 19 CFR 146.41, and would be subject upon entry for consumption to the additional duty.

D. Request for Public Comments

In accordance with section 304(b) of the Trade Act (19 U.S.C. 2414(b)), USTR invites comments from interested persons with respect to the proposed supplemental action to be taken in the investigation. To be assured of consideration, you must submit written comments by August 17, 2018, and post-hearing rebuttal comments by August 30, 2018.

USTR requests comments with respect to any aspect of the proposed supplemental action, including:

- The specific tariff subheadings to be subject to increased duties, including whether the subheadings listed in the Annex should be retained or removed, or whether subheadings not currently on the list should be added.
- The level of the increase, if any, in the rate of duty.
- The appropriate aggregate level of trade to be covered by additional duties.

In commenting on the inclusion or removal of particular tariff subheadings listed in the Annex, USTR requests that commenters address specifically whether imposing increased duties on a particular product would be practicable or effective to obtain the elimination of China's acts, policies, and practices, and whether maintaining or imposing additional duties on a particular product would cause disproportionate economic harm to U.S. interests, including small- or medium-size businesses and consumers.

E. Hearing Participation

The Section 301 Committee will convene a public hearing in the main hearing room of the U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, beginning at 9:30 a.m. on August 20, 2018. You must submit requests to appear at the hearing by July 27, 2018. The request to appear must include a summary of testimony, and may be accompanied by a pre-hearing submission. Remarks at the hearing may be no longer than five minutes to allow for possible questions from the Section 301 Committee.

All requests to appear at the hearing must be in English and sent electronically via *www.regulations.gov.* To submit a request to appear at the hearing via *www.regulations.gov,* enter docket number USTR–2018–0026 on the home page and click ''search''. The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link titled ''comment now!''. In the ''comment'' field, include the name, address, email address, and telephone number of the person presenting the testimony. Attach a summary of the proposed testimony, and a pre-hearing submission if provided, by using the ''upload file'' field. The file name should include both the name of the person who will be presenting testimony and the entity they represent. In addition, please submit a request to appear and a PDF of the summary of proposed testimony by email to *301investigation@ustr.eop.gov.* In the subject line of the email, please include the name of the person who will be presenting testimony, followed by ''request to appear''. Please also include the name, address, email address, and telephone number of the person presenting testimony in the body of the email message.

F. Procedures for Written Submissions

All submissions must be in English and sent electronically via *www.regulations.gov.* To submit comments via *www.regulations.gov,* enter docket number USTR–2018–0026 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled ''comment now!'' For further information on using the *www.regulations.gov* website, please consult the resources provided on the website by clicking on ''How to Use Regulations.gov'' on the bottom of the home page. We will not accept hand-delivered submissions.

The *www.regulations.gov* website allows users to submit comments by filling in a ''comment'' field or by attaching a document using an ''upload file'' field. USTR prefers that you submit comments in an attached document. If you attach a document, it is sufficient to type ''see attached'' in the ''comment'' field. USTR prefers submissions in Microsoft Word (.doc) or searchable Adobe Acrobat (.pdf). If you use an application other than those two, please indicate the name of the application in the ''comment'' field.

File names should reflect the name of the person or entity submitting the comments. Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

For any comments submitted electronically that contain business confidential information, the file name of the business confidential version should begin with the characters ''BC''. Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. If you request business confidential treatment, you must certify in writing that disclosure of the information would endanger trade secrets or profitability, and that the information would not customarily be released to the public. Filers of submissions containing business confidential information also must submit a public version of their comments. The file name of the public version should begin with the character ''P''. The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments or rebuttal comments. If these procedures are not sufficient to protect business confidential information or otherwise protect business interests, please contact the USTR Tech Transfer Section 301 line at (202) 395–5725 to discuss whether alternative arrangements are possible.

USTR will post submissions in the docket for public inspection, except business confidential information. You can view submissions on the *https://www.regulations.gov* website by entering docket number USTR–2018–0026 in the search field on the home page.

Robert E. Lighthizer,

United States Trade Representative.

ANNEX

Note: All products that are classified in the 8-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS) that are listed in this Annex are covered by the proposed supplemental action. The product descriptions that are contained in this Annex are provided for informational purposes only, and are not intended to delimit in any way the scope of the proposed action. Any questions regarding the scope of particular HTSUS subheadings should be referred to U.S. Customs and Border Protection. In the product descriptions, the abbreviation ''nesoi'' means ''not elsewhere specified or included''.

HTSUS subheading	Product description
0203.29.20	Frozen retail cuts of meat of swine, nesoi.
0203.29.40	Frozen meat of swine, other than retail cuts, nesoi.
0206.10.00	Edible offal of bovine animals, fresh or chilled.
0208.10.00	Meat and edible meat offal of rabbits or hares, fresh, chilled or frozen.
0208.90.20	Meat and edible offal of deer, fresh, chilled or frozen.
0208.90.25	Frog legs, fresh, chilled or frozen.
0210.19.00	Meat of swine other than hams, shoulders, bellies (streaky) and cuts thereof, salted, in brine, dried or smoked.
0301.11.00	Live ornamental freshwater fish.
0301.19.00	Live ornamental fish, other than freshwater.
0301.91.00	Live trout.
0301.92.00	Live eels.
0301.93.02	Live carp.
0301.94.01	Other live Fish, Atlantic & Pacific Bluefin Tunas.
0301.95.00	Other live Fish, Southern Bluefin Tunas.
0301.99.03	Live Tench (Tinca Tinca), sheatfish (Silurus Glanis), bighead carp (Aristichthys Nobilis) and other fish, nesoi.
0302.11.00	Trout, fresh or chilled, excluding fillets, other meat portions, livers and roes.
0302.13.00	Pacific salmon, fresh or chilled, excluding fillets, other meat portions, livers and roes.
0302.14.00	Atlantic and Danube salmon, fresh or chilled, excluding fillets, other meat portions, livers and roes.
0302.19.00	Salmonidae other than trout or Pacific, Atlantic & Danube salmon, fresh or chilled, excluding fillets, other meat portions, livers & roes.
0302.21.00	Halibut and Greenland turbot, fresh or chilled, excluding fillets, other meat portions, livers and roes.
0302.22.00	Plaice, fresh or chilled, excluding fillets, other meat portions, livers and roes.
0302.23.00	Sole, fresh or chilled, excluding fillets, other meat portions, livers and roes.
0302.24.00	Turbots.
0302.29.01	Flat fish, nesoi, fresh or chilled, excluding fillets, other meat portions, livers and roes.
0302.31.00	Albacore or longfinned tunas, fresh or chilled, excluding fillets, other meat portions, livers and roes.
0302.32.00	Yellowfin tunas, fresh or chilled, excluding fillets, other meat portions, livers and roes.
0302.33.00	Skipjack or stripe-bellied bonito, fresh or chilled, excluding fillets, other meat portions, livers and roes.
0302.34.00	Bigeye tunas (Thunnas obesus), fresh or chilled, excluding fillets, other meat portions, livers and roes.

ANNEX—Continued

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HTSUS subheading	Product description
0302.35.01	Atlantic & Pacific bluefin tunas, fresh or chilled, excluding fillets, other meat portions, livers and roes.
0302.36.00	Southern bluefin tunas (Thunnas maccoyii), fresh or chilled, excluding fillets, other meat portions, livers and roes.
0302.39.02	Tunas not elsewhere specified or included, fresh or chilled, excluding fillets, other meat portions, livers and roes.
0302.41.00	Herrings, fresh or chilled, excluding fillets, other meat portions, livers and roes.
0302.42.00	Anchovies, excl. fillets, livers & roes, fresh or chilled, scaled, in immediate containers weighing with their contents <6.8 kg.
0302.43.00	Sardines, sardinella, brisling or sprats, fresh or chilled, excluding fillets, other meat portions, livers and roes.
0302.44.00	Mackerel, excl. fillets, livers & roes, fresh or chilled.
0302.45.11	Jack & horse mackerel, excl. fillets, livers & roes, fresh or chilled, scaled, in immediate containers weighing with their contents <6.8 kg.
0302.45.50	Jack & horse mackerel excl. fillets, livers & roes, fresh or chilled, not scaled, or scaled in immediate containers >6.8 kg.
0302.46.11	Cobia, excl. fillets, livers and roes, fresh or chilled, scaled, in immediate containers weighing with their contents 6.8 kg or less.
0302.46.50	Cobia, excl. fillets, livers & roes, fresh or chilled, not scaled, or scaled in immediate containers over 6.8 kg.
0302.47.00	Swordfish, fresh or chilled, excluding livers and roes.
0302.49.00	Herrings, anchovies, sardines, nesoi.
0302.51.00	Cod, fresh or chilled, excluding fillets, other meat portions, livers and roes.
0302.52.00	Haddock, fresh or chilled, excluding fillets, other meat portions, livers and roes.
0302.53.00	Coalfish, fresh or chilled, excluding fillets, other meat portions, livers and roes.
0302.54.11	Hake, excl. fillets, livers and roes, fresh or chilled, scaled, in immediate containers weighing with their contents 6.8 kg or less.
0302.54.50	Hake, excl. fillets, livers & roes, fresh or chilled, not scaled, or scaled in immediate containers over 6.8 kg.
0302.55.11	Alaska pollack, excl. fillets, livers, roes, fresh or chilled, scaled, in immediate containers weighing with their contents <6.8 kg.
0302.55.50	Alaska pollack excl. fillets, livers & roes, fresh or chilled, not scaled, or scaled in immediate containers over 6.8 kg.
0302.56.11	Blue whitings, excl. fillets, livers & roes, fresh or chilled, scaled, in immediate containers weighing with their contents <6.8 kg.
0302.56.50	Blue whitings, excl. fillets, livers & roes, fresh or chilled, not scaled, or scaled in immediate containers over 6.8 kg.
0302.59.11	Bregmacerotidae et al. fish, nesoi, excl. fillets, livers and roes, fresh or chilled, scaled, in immediate containers weighing <6.8 kg.
0302.59.50	Bregmacerotidae fish, etc. excl. fillets, livers & roes, fresh or chilled, not scaled, or scaled in immediate containers >6.8 kg.
0302.71.11	Tilapias, excl. fillets, livers and roes, fresh or chilled, scaled, in immediate containers weighing with their contents <6.8 kg.
0302.71.50	Tilapias, excl. fillets, livers & roes, fresh or chilled, not scaled, or scaled in immediate containers over 6.8 kg.
0302.72.11	Catfish, excl. fillets, livers and roes, fresh or chilled, scaled, in immediate containers weighing with their contents 6.8 kg or less.
0302.72.50	Catfish excl. fillets, livers & roes, fresh or chilled, not scaled, or scaled in immediate containers over 6.8 kg.
0302.73.11	Carp, excl. fillets, livers and roes, fresh or chilled, scaled, in immediate containers weighing with their contents 6.8 kg or less.
0302.73.50	Carp excl. fillets, livers & roes, fresh or chilled, not scaled, or scaled in immediate containers over 6.8 kg.
0302.74.00	Eels, fresh or chilled, excluding fillets, other meat portions, livers and roes.
0302.79.11	Fish beginning 0302.7, nesoi, excl. fillets, livers and roes, fresh or chilled, scaled, in immediate containers <6.8 kg.
0302.79.50	Fish beginning 0302.7, nesoi, excl. fillets, livers & roes, fresh or chilled, not scaled, or scaled in containers >6.8 kg.
0302.81.00	Dogfish and other sharks, fresh or chilled, excluding fillets, livers, roes and fish meat of 0304.
0302.82.00	Rays & skates, excl. fillets, livers & roes, fresh or chilled, not scaled, or scaled in immediate containers over 6.8 kg.
0302.83.00	Toothfish excl. fillets, livers & roes, fresh or chilled, not scaled, or scaled in immediate containers over 6.8 kg.
0302.84.11	Seabass, excl. fillets, livers and roes, fresh or chilled, scaled, in immediate containers weighing with their contents 6.8 kg or less.
0302.84.50	Seabass, excl. fillets, livers & roes, fresh or chilled, not scaled, or scaled in immediate containers over 6.8 kg.
0302.85.11	Seabream, excl. fillets, livers and roes, fresh or chilled, scaled, in immediate containers weighing with their contents 6.8 kg or less.
0302.85.50	Seabream, excl. fillets, livers & roes, fresh or chilled, not scaled, or scaled in immediate containers over 6.8 kg.
0302.89.11	Fish, nesoi, excl. fillets, livers and roes, fresh or chilled, scaled, in immediate containers weighing with their contents 6.8 kg or less.
0302.89.50	Fish, nesoi, excl. fillets, livers & roes, fresh or chilled, not scaled, or scaled in immediate containers over 6.8 kg.
0302.91.20	Sturgeon Roe, fresh or chilled.
0302.91.40	Mullet and other fish liver and roes, fresh or chilled.
0302.92.00	Shark fins, fresh or chilled, excluding fillet.
0302.99.00	Other fish, fresh or chilled, nesoi.

ANNEX—Continued

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HTSUS subheading	Product description
0303.11.00	Sockeye salmon (red salmon) (Orncorhynchus nerka), frozen, excluding fillets, other meat portions, livers and roes.
0303.12.00	Pacific salmon, other than sockeye, frozen, excluding fillets, other meat portions, livers and roes.
0303.13.00	Atlantic salmon and Danube salmon, frozen, excluding livers and roes.
0303.14.00	Trout, frozen, excluding fillets, other meat portions, livers and roes.
0303.19.01	Salmonidae, other than trout or Atlantic and Danube salmon, nesoi, frozen, excluding fillets, other meat portions, livers and roes.
0303.23.00	Tilapias, frozen, excluding fillets, other meat portions, livers and roes.
0303.24.00	Catfish, frozen, excluding fillets, other meat portions, livers and roes.
0303.25.01	Carp, frozen excluding fillets, livers and roes.
0303.26.00	Eels, frozen, excluding fillets, other meat portions, livers and roes.
0303.29.01	Other fish in 0303.2 grouping nesoi, frozen, excluding fillets, other meat portions, livers and roes.
0303.31.00	Halibut and Greenland turbot, frozen, excluding fillets, other meat portions & livers and roes.
0303.32.00	Plaice, frozen, excluding fillets, other meat portions, livers and roes.
0303.33.00	Sole, frozen, excluding fillets, other meat portions, livers and roes.
0303.34.00	Turbots, frozen, excluding fillets, other meat portions, livers and roes.
0303.39.01	Flat fish, other than halibut, Greenland turbot, plaice and sole, frozen, excluding fillets, other meat portions, livers and roes.
0303.41.00	Albacore or longfinned tunas, frozen, excluding fillets, other meat portions, livers and roes.
0303.42.00	Yellowfin tunas, frozen, excluding fillets, other meat portions, livers and roes.
0303.43.00	Skipjack or stripe-bellied bonito, frozen, excluding fillets, other meat portions, livers and roes.
0303.44.00	Bigeye tunas (Thunnas obesus), frozen, excluding fillets, other meat portions, livers and roes.
0303.45.01	Atlantic and Pacific bluefin tunas, frozen, excluding fillets, other meat portions, livers and roes.
0303.46.00	Southern bluefin tunas (Thunnas maccoyii), frozen, excluding fillets, other meat portions, livers and roes.
0303.49.02	Tunas, not elsewhere specified or included, frozen, excluding fillets, other meat portions, livers and roes.
0303.51.00	Herrings, frozen, excluding fillets, other meat portions, livers and roes.
0303.53.00	Sardines, sardinella, brisling or sprats, frozen, excluding fillets, other meat portions, livers and roes.
0303.54.00	Mackerel, frozen, excluding fillets, livers and roes.
0303.55.00	Jack & horse mackerel, frozen, excluding fillets, other meat portions, livers and roes.
0303.56.00	Cobia, frozen, excluding fillets, other meat portions, livers and roes.
0303.57.00	Swordfish steaks, other swordfish, excluding fillets, other meat portions, livers and roes.
0303.59.00	Other fish, frozen, excluding fillets, livers, roes and herrings.
0303.63.00	Cod, frozen, excluding fillets, other meat portions, livers and roes.
0303.64.00	Haddock, frozen, excluding fillets, other meat portions, livers and roes.
0303.65.00	Coalfish, frozen, excluding fillets, other meat portions, livers and roes.
0303.66.00	Hake, frozen, excluding fillets, other meat portions, livers and roes.
0303.67.00	Alaska pollack, frozen, excluding fillets, other meat portions, livers and roes.
0303.68.00	Blue whitings, frozen, excluding fillets, other meat portions, livers and roes.
0303.69.00	Other fish in Bregmacerotidae et al, etc. frozen, excluding fillets, other meat portions, livers and roes.
0303.81.00	Dogfish and other sharks, frozen, excluding fillets, livers, roes and fish meat of 0304.
0303.82.00	Rays & skates, frozen, excluding fillets, other meat portions, livers and roes.
0303.83.00	Toothfish excluding fillets, other meat portions, livers and roes.
0303.84.00	Sea bass, frozen, excluding fillets, other meat portions, livers and roes.
0303.89.00	Smelts, cusk, pollock, shad, sturgeon, atkafish, fresh-water fish, etc. frozen, excluding fillets, other meat portions, livers and roes.
0303.91.20	Sturgeon roe, frozen.
0303.91.40	Herring, salmon, alaskan pollock, mullet, other fist liver and roes, frozen.
0303.92.00	Shark fins excluding fillets, frozen.
0303.99.00	Other fish, frozen, nesoi.
0304.31.00	Tilapias, fillets, fresh or chilled.
0304.32.00	Catfish, fillets, fresh or chilled.
0304.33.00	Nile perch, fillets, fresh or chilled.
0304.39.00	Eels or snakeheads, fillets, fresh or chilled.
0304.41.00	Salmon fillets, fresh or chilled.
0304.42.00	Trout, fillets, fresh or chilled.
0304.43.00	‘‘Flat fish’’, sole, plaice, etc. fillets, fresh or chilled.
0304.44.00	Bregamacerotidae & like fish, fillets, fresh or chilled.
0304.45.00	Fresh or chilled swordfish fillets.
0304.46.00	Fresh or chilled toothfish fillets.
0304.47.00	Dogfish and other shark fillets, frozen or chilled.
0304.48.00	Ray and skate fillets, fresh or chilled.
0304.49.01	Pike, pickerel, whitefish, tilapia, perch, cusk, other fish fillets, fresh or chilled.
0304.51.01	Tilapias, catfish, carp, eels, nile perch, snakeheads, other than fillets, fresh or chilled.
0304.52.00	Salmonidae, other than fillets, fresh or chilled.
0304.53.00	Bregmacerotidae and other fish, nesoi, other than fillets, fresh or chilled.
0304.54.00	Fresh or chilled swordfish other than fillets.
0304.55.00	Fresh or chilled toothfish other than fillets.

ANNEX—Continued

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HTSUS subheading	Product description
0304.56.00	Dogfish and other sharks, fresh or chilled.
0304.57.00	Rays and skates, fresh or chilled.
0304.59.00	Other fish, nesoi, other than fillets, fresh or chilled.
0304.61.00	Frozen tilapia fillets.
0304.62.00	Frozen catfish fillets.
0304.63.00	Frozen Nile perch fillets.
0304.69.00	Frozen eel & snakehead fillets.
0304.71.10	Frozen cod fillets, skinned, in blocks weighing over 4.5 kg, to be minced, ground or cut into pieces of uniform weight and dimension.
0304.71.50	Fillets, frozen, of cod, other than above.
0304.72.10	Frozen haddock fillets, skinned, in blocks weighing over 4.5 kg, to be minced, ground or cut into pieces of uniform weight and dimension.
0304.72.50	Fillets, frozen, of haddock, other than above.
0304.73.10	Frozen coalfish fillets, skinned, in blocks weighing over 4.5 kg, to be minced, ground or cut into pieces of uniform weight and dimension.
0304.73.50	Other coalfish fillets.
0304.74.10	Frozen hake fillets, skinned, in blocks weighing over 4.5 kg, to be minced, ground or cut into pieces of uniform weight and dimension.
0304.74.50	Fillets, frozen, of hake.
0304.75.10	Frozen Alaska pollack fillets, skinned, in blocks weighing over 4.5 kg, to be minced, ground or cut.
0304.75.50	Fillets, frozen, of Alaska pollock, other than above.
0304.79.10	Frozen Bregmacerotidae et al. fish fillets, nesoi, skinned, in blocks weighing over 4.5 kg, to be minced, ground or cut into pieces.
0304.79.50	Frozen fillets of other fresh-water fish, flat fish, etc., nesoi, other than above.
0304.81.10	Frozen salmon fillets, skinned, in blocks weighing over 4.5 kg, to be minced, ground or cut into pieces of uniform weight.
0304.81.50	Other frozen salmon fillets.
0304.82.10	Frozen trout fillets, skinned, in blocks weighing over 4.5 kg, to be minced, ground or cut into pieces of uniform weight and dimension.
0304.82.50	Frozen trout fillets, other than above.
0304.83.10	Frozen "flat fish" fillets, skinned, in blocks weighing over 4.5 kg, to be minced, ground or cut into pieces of uniform weight and dimension.
0304.83.50	Frozen "other flat fish" fillets, other than above.
0304.84.00	Frozen swordfish fillets.
0304.85.00	Frozen toothfish fillets.
0304.86.00	Frozen herring fillets.
0304.87.00	Frozen tuna fillets.
0304.88.00	Dogfish, other shark, ray and skate fillets, frozen.
0304.89.10	Other frozen fish fillets, skinned, in blocks weighing over 4.5 kg, to be minced, ground or cut into pieces of uniform weight and dimension.
0304.89.50	Other frozen fish fillets, other than above.
0304.91.10	Chilled or Frozen Swordfish fillets, in bulk or in immediate containers weighing with their contents over 6.8 kg each.
0304.91.90	Chilled or Frozen Swordfish Fillets, nesoi.
0304.92.10	Chilled or Frozen Toothfish fillets, in bulk or in immediate containers weighing with their contents over 6.8 kg each.
0304.92.90	Chilled or Frozen Toothfish Fillets, nesoi.
0304.93.10	Chilled or Frozen tilapia & like fillets, nesoi, in bulk or in immediate containers weighing >6.8 kg each.
0304.93.90	Tilapias, catfish, carp, eels, nile perch & snakehead chilled or frozen fillets, nesoi.
0304.94.10	Alaska pollack chilled or frozen fillets, in bulk or in immediate containers weighing with their contents over 6.8 kg each.
0304.94.90	Alaska pollack, chilled or frozen fillets, nesoi.
0304.95.10	Chilled or Frozen fillets, Bregmacerotidae & like, nesoi, in bulk or in immediate containers >6.8 kg each.
0304.95.90	Bregamacerotidae other fish, other than Alaska pollack, nesoi, chilled or frozen fillets, nesoi.
0304.96.00	Dogfish and other sharks, frozen, nesoi.
0304.97.00	Ray and skates, frozen, nesoi.
0304.99.11	Chilled or Frozen fillets, nesoi, in bulk or in immediate containers weighing with their contents over 6.8 kg each.
0304.99.91	Chilled or Frozen fillets, nesoi.
0305.10.20	Flours, meals and pellets of fish, fit for human consumption, in bulk or in immediate containers weighing with contents over 6.8 kg each.
0305.10.40	Flours, meals and pellets of fish, fit for human consumption, other than in bulk or immediate containers weighing contents over 6.8 kg each.
0305.20.20	Sturgeon roe, dried, smoked, salted or in brine.
0305.20.40	Fish livers and roes, other than sturgeon roe, dried, smoked, salted or in brine.
0305.31.01	Tilapia, catfish, carp, eel, nile perch, snakehead fillets, dried or salted in brine, but not smoked.
0305.32.00	"Flat fish" fillets, nesoi, dried, salted or in brine, but not smoked.

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HTSUS subheading	Product description
0305.39.20	Fillets of herrings, dried, salted or in brine, but not smoked, in immediate containers weighing with their contents 6.8 kg or less each.
0305.39.40	Fillets of mackerel, dried, salted or in brine, but not smoked, in immediate containers weighing with their contents 6.8 kg or less each.
0305.39.61	Herring and other fist fillets, dried, salted or in brine, but not smoked.
0305.41.00	Smoked Pacific, Atlantic and Danube salmon, including fillets.
0305.42.00	Smoked herrings, including fillets.
0305.43.00	Smoked trout, including fillets.
0305.44.01	Tilapia, catfish, carp, eel, nile perch, snakehead including fillets, smoked.
0305.49.20	Smoked mackerel, including fillets.
0305.49.40	Smoked fish, including fillets, nesoi.
0305.51.00	Dried cod, whether or not salted but not smoked.
0305.52.00	Tilapia, catfish, carp, eel, nile perch, snakehead, not smoked, dried, whether or not salted.
0305.53.00	Fish of families Bregmacerotidae, Euclichthyidae, Gadidae, Macrouridae,Melanonidae, Merlucciidae, Moridae and Muraenolepididae, dried but not smoked.
0305.54.00	Herrings, anchovies, sardines, sardinella, brisling or sprat, mackerel, Indian mackeral, seerfish, dried, whether or not salted, but not smoked.
0305.59.00	Dried fish, other than cod or shark fins, whether or not salted but not smoked.
0305.61.20	Herrings, in brine or salted but not dried or smoked, in immediate containers weighing with their contents 6.8 kg or less each.
0305.61.40	Herrings, in brine or salted but not dried or smoked, other than in immediate containers weighing with their contents 6.8 kg or less each.
0305.62.00	Cod, in brine or salted but not dried or smoked.
0305.63.20	Anchovies, in brine or salted but not dried or smoked, in immediate airtight containers weighing with their contents 6.8 kg or less each.
0305.63.40	Anchovies, in brine or salted but not dried or smoked, in immediate containers, nesoi, weighing with their contents 6.8 kg or less each.
0305.63.60	Anchovies, in brine or salted but not dried or smoked, other than in immediate containers weighing with their contents 6.8 kg or less each.
0305.64.10	Tilapias, catfish, carp, eel, Nile perch, or snakehead, in brine or salted but not dried or smoked, in immediate containers <6.8 kg.
0305.64.50	Tilapias, catfish, carp, eel, Nile perch, or snakehead, in brine or salted but not dried or smoked, other than in containers <6.8 kg.
0305.69.10	Cusk, haddock, hake, and pollock, in brine or salted but not dried or smoked.
0305.69.20	Mackerel, in brine or salted but not dried or smoked, in immediate containers weighing with their contents 6.8 kg or less each.
0305.69.30	Mackerel, in brine or salted but not dried or smoked, other than in immediate containers weighing with their contents 6.8 kg or less each.
0305.69.40	Salmon, in brine or salted but not dried or smoked.
0305.69.50	Fish, nesoi, in brine or salted but not dried or smoked, in immediate containers weighing with their contents 6.8 kg or less each.
0305.69.60	Fish, nesoi, in brine or salted but not dried or smoked, other than in immediate containers weighing with their contents 6.8 kg or less each.
0305.71.00	Dried shark fins, whether or not salted but not smoked.
0305.72.00	Fish heads, tails, and maws, whether or not salted but not smoked.
0305.79.00	Edible fish offal, other fish heads tails and maws or shark fins, whether or not salted but not smoked.
0306.11.00	Rock lobster and other sea crawfish, cooked in shell or uncooked, dried, salted or in brine, frozen.
0306.12.00	Lobsters excluding rock lobster, cooked in shell or uncooked, dried, salted or in brine, frozen.
0306.14.20	Crabmeat, frozen.
0306.14.40	Crabs, cooked in shell or uncooked (whether in shell or not), dried, salted or in brine, frozen.
0306.15.00	Norway lobsters, cooked in shell or uncooked, dried, salted or in brine, frozen.
0306.16.00	Cold-water shrimps and prawns, cooked in shell or uncooked, dried, salted or in brine, frozen.
0306.17.00	Other shrimps and prawns, cooked in shell or uncooked, dried, salted or in brine, frozen.
0306.19.00	Crustateans, nesoi (including flours, meals and pellets of crustaceans fit for human consumption), cooked in shell or uncooked, etc., frozen.
0306.31.00	Live rock lobster and other sea crawfish, frozen or chilled.
0306.32.00	Live lobsters (Homarus spp.), frozen or chilled, except rock lobster.
0306.33.20	Crabmeat, fresh or chilled.
0306.33.40	Live crabs, fresh or chilled, other than crabmeat.
0306.34.00	Live Norway lobsters, frozen or chilled.
0306.35.00	Cold water shrimps and prawns, shell-on or peeled, live, frozen, or chilled.
0306.36.00	Shrimps and prawns, other than cold water shrimp, shell-on or peeled, live, frozen or chilled.
0306.39.00	Flours, meals and pellets of crustaceans, fress or chilled, fit for human consumption, or other crustaceans, live, fresh or chilled.
0306.91.00	Rock lobster and other sea crawfish nesoi.
0306.92.00	Lobsters (Homarus SPP.), except rock lobster nesoi.
0306.93.20	Crabmeat, nesoi.

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HTSUS subheading	Product description
0306.93.40	Crabs, other than crabmeat, nesoi.
0306.94.00	Norway lobsters (Nephrops Norvegicus), nesoi.
0306.95.00	Other shrimps and prawns, shell-on or peeled.
0306.99.00	Flours, meals and pellets of crustaceans, fit for human consumption or crustraceans nesoi.
0307.11.00	Oysters, whether in shell or not, live, fresh, or chilled.
0307.12.00	Oysters, frozen.
0307.19.01	Oysters, fresh or chilled.
0307.21.00	Scallops, including queen scallops, whether in shell or not, live, fresh or chilled.
0307.22.00	Scallops, including queen scallops, of the genera Pecten, Chlamys or Placopecten, frozen.
0307.29.01	Scallops, including queen scallops, of the genera Pecten, Chlamys or Placopecten, dried, salted or in brine.
0307.31.00	Mussels, whether in shell or not, live, fresh or chilled.
0307.32.00	Mussels (Mytilus Spp., Perna Spp.), frozen.
0307.39.01	Mussels (Mytilus Spp., Perna Spp.), dried, salted or in brine.
0307.42.00	Squid or cuttle fish, live, fresh or chilled.
0307.43.00	Squid or cuttle fish, frozen.
0307.49.01	Squid or cuttle fish, dried, salted or in brine.
0307.51.00	Octopus, live, fresh or chilled.
0307.52.00	Octopus, frozen.
0307.59.01	Octopus, dried, salted or in brine.
0307.60.00	Snails, other than sea snails, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine.
0307.71.00	Clams, cockles and ark shells, whether in shell or not, live, fresh or chilled.
0307.72.00	Clams, cockles and ark shells, frozen.
0307.79.01	Clams, cockles and ark shells, dried salted or in brine.
0307.81.00	Abalone, whether in shell or not, live, fresh or chilled.
0307.82.00	Live stromboid conch, fresh or chilled.
0307.83.00	Abalone, including flours, meals and pellets fit for human consumption, frozen.
0307.84.00	Stromboid conchs (Strombus Spp.), frozen.
0307.87.00	Abalone, including edible flours, meals and pellets, nesoi.
0307.88.00	Stromboid conchs, nesoi.
0307.91.02	Conch and other molluscs nesoi, including flours, meals and pellets, fit for human consumption, live, fresh or chilled.
0307.92.00	Conch and other molluscs nesoi, including flours, meals and pellets, fit for human consumption, frozen.
0307.99.02	Molluscs, including flours, meals and pellets fit for human consumption, nesoi.
0308.11.00	Sea cucumbers, live, fresh or chilled.
0308.12.00	Frozen sea cucumbers.
0308.19.01	Sea cucumbers, not frozen.
0308.21.00	Sea urchins, live, fresh or chilled.
0308.22.00	Frozen sea urchins.
0308.29.01	Sea urchins, not frozen.
0308.30.00	Jellly fish, live, fresh, chilled, frozen, dried, salted smoked, or in brine.
0308.90.00	Other aquatic invertebrates, oth than molluscs & crustaceans, nesoi, live, fresh or chilled, dried, salted, smoked or in brine.
0404.10.05	Whey protein concentrates.
0404.10.08	Modified whey (except protein conc.), subject to gen. note 15 of the HTS.
0404.10.11	Modified whey (except protein conc.), wheth/not conc. or sweetened, subject to add U.S. note 10 to Ch. 4.
0404.10.15	Modified whey (except protein conc.), wheth/not conc. or sweetened, not subject to gen. note 15 or.
0404.10.20	Fluid whey, whether or not concentrated or containing added sweeteners.
0404.10.48	Whey (except modified whey), dried, whether or not conc. or sweetened, subject to gen. note 15 of the HTS.
0404.10.50	Whey (except modified whey), dried, whether or not conc. or sweetened, subject to add. U.S. note 12 to Ch. 4.
0404.10.90	Whey (except modified whey), dried, whether or not conc. or sweetened, not subject to gen. note 15 or add U.S. nte 12 to Ch. 4.
0405.10.05	Butter subject to general note 15 (outside quota).
0405.10.10	Butter subject to quota pursuant to chapter 4 additional U.S. note 6.
0405.10.20	Butter not subject to general note 15 and in excess of quota in chapter 4 additional U.S. note 6.
0407.19.00	Birds' eggs, in shell, fertilized eggs for incubation, other than Gallus domesticus.
0407.21.00	Birds' eggs, in shell, other fresh, not fertilized eggs for incubation, of species Gallus domesticus.
0407.29.00	Birds' eggs, in shell, other fresh, not fertilized eggs for incubation, other than species Gallus domesticus.
0407.90.00	Birds' eggs, in shell, fresh, preserved or cooked.
0408.11.00	Egg yolks, dried, whether or not containing added sweeteners.
0408.19.00	Egg yolks, other than dried, whether or not containing added sweeteners.
0408.99.00	Birds' eggs, not in shell, other than dried, whether or not containing added sweeteners.
0409.00.00	Natural honey.
0410.00.00	Edible products of animal origin, nesoi.
0501.00.00	Human hair, unworked, whether or not washed and scoured; waste of human hair.
0502.10.00	Pigs', hogs' or boars' bristles and hair and waste thereof.
0502.90.00	Badger hair and other brushmaking hair, nesoi, and waste thereof.
0504.00.00	Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof.

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HTSUS subheading	Product description
0505.10.00	Feathers of a kind used for stuffing, and down.
0505.90.20	Feather meal and waste.
0505.90.60	Skins and parts of birds with their feathers or down (except meal and waste) nesoi.
0506.10.00	Ossein and bones treated with acid.
0506.90.00	Bones & horn-cores, unworked, defatted, simply prepared (but not cut to shape) or degelatinized; powder & waste of these products.
0507.90.00	Tortoise shell, whalebone and whalebone hair, horns, antlers, hooves, nails, claws and beaks, unworked or simply prepared; waste and powder.
0508.00.00	Coral, shells, cuttlebone and similar materials, unworked or simply prepared, but not cut to shape; powder and waste thereof.
0510.00.40	Cantharides; bile; glands and other animal products nesoi, used in pharmaceutical products.
0511.10.00	Bovine semen.
0511.91.00	Products of fish, crustaceans, molluscs or other aquatic invertebrates nesoi; dead animals of chapter 3, unfit for human consumption.
0511.99.20	Parings and similar waste of raw hides or skins; glue stock nesoi.
0511.99.30	Animal products chiefly used as food for animals or as ingredients in such food, nesoi.
0511.99.33	Horsehair and horsehair waste, whether or not put up as a layer with or without supporting material.
0511.99.36	Natural sponges of animal origin.
0511.99.40	Animal products nesoi; dead animals of chapter 1, unfit for human consumption.
0703.10.20	Onion sets, fresh or chilled.
0703.10.30	Pearl onions not over 16 mm in diameter, fresh or chilled.
0703.10.40	Onions, other than onion sets or pearl onions not over 16 mm in diameter, and shallots, fresh or chilled.
0703.20.00	Garlic, fresh or chilled.
0703.90.00	Leeks and other alliaceous vegetables nesoi, fresh or chilled.
0704.10.20	Cauliflower and headed broccoli, fresh or chilled, if entered June 5 to October 15, inclusive, in any year.
0704.10.40	Cauliflower and headed broccoli, fresh or chilled, not reduced in size, if entered Oct. 16 through June 4, inclusive.
0704.10.60	Cauliflower and headed broccoli, fresh or chilled, reduced in size, if entered Oct. 16 through June 4, inclusive.
0704.90.20	Cabbage, fresh or chilled.
0704.90.40	Kohlrabi, kale and similar edible brassicas nesoi, including sprouting broccoli, fresh or chilled.
0706.10.05	Carrots, fresh or chilled, reduced in size.
0706.10.10	Carrots, fresh or chilled, not reduced in size, under 10 cm in length.
0706.10.20	Carrots, fresh or chilled, not reduced in size, 10 cm or over in length.
0706.10.40	Turnips, fresh or chilled.
0706.90.20	Radishes, fresh or chilled.
0706.90.30	Beets and horseradish, fresh or chilled.
0706.90.40	Salsify, celeriac, radishes and similar edible roots nesoi, fresh or chilled.
0707.00.50	Cucumbers, including gherkins, fresh or chilled, if entered May 1 to June 30, inclusive, or Sept. 1 to Nov. 30, inclusive, in any year.
0708.10.20	Peas, fresh or chilled, shelled or unshelled, if entered July 1 to Sept. 30, inclusive, in any year.
0708.10.40	Peas, fresh or chilled, shelled or unshelled, if entered Nov. 1 through the following June 30, inclusive.
0708.20.20	Cowpeas (other than black-eye peas), fresh or chilled, shelled or unshelled.
0708.20.90	Beans nesoi, fresh or chilled, shelled or unshelled.
0708.90.15	Lentils, fresh or chilled, shelled or unshelled.
0708.90.40	Leguminous vegetables nesoi, fresh or chilled, shelled or unshelled.
0709.40.20	Celery, other than celeriac, fresh or chilled, reduced in size.
0709.40.40	Celery, other than celeriac, fresh or chilled, not reduced in size, if entered April 15 to July 31, inclusive, in any year.
0709.40.60	Celery, other than celeriac, fresh or chilled, not reduced in size, if entered August 1 through the following April 14, inclusive.
0709.51.01	Mushrooms of the genus Agaricus, fresh or chilled.
0709.59.10	Truffles, fresh or chilled.
0709.59.90	Mushrooms, other than of the genus Agaricus, fresh or chilled.
0709.60.20	Chili peppers, fresh or chilled.
0709.60.40	Fruits of the genus capsicum (peppers) (ex. chili peppers) or of the genus pimenta (*e.g.,* Allspice), fresh or chilled.
0709.93.20	Squash, fresh or chilled.
0709.99.05	Jicamas and breadfruit, fresh or chilled.
0709.99.10	Chayote (Sechium edule), fresh or chilled.
0709.99.14	Okra, fresh or chilled.
0709.99.30	Fiddlehead greens, fresh or chilled.
0709.99.45	Sweet corn, fresh or chilled.
0709.99.90	Vegetables, not elsewhere specified or included, fresh or chilled.
0710.10.00	Potatoes, uncooked or cooked by steaming or boiling in water, frozen.
0710.21.20	Peas, uncooked or cooked by steaming or boiling in water, frozen, if entered July 1 through September 30, inclusive, in any year.
0710.21.40	Peas, uncooked or cooked by steaming or boiling in water, frozen, if entered Jan. 1 through June 30, or Oct. 1 through Dec. 31, inclusive.

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HTSUS subheading	Product description
0710.22.10	Lima beans, uncooked or cooked by steaming or boiling in water, frozen, not reduced in size, entered Nov. 1 through the following May 31.
0710.22.15	Lima beans, frozen, entered June 1–October 31.
0710.22.20	Cowpeas (other than black-eye peas), uncooked or cooked by steaming or boiling in water, frozen, not reduced in size.
0710.22.25	Frozen string beans (snap beans), not reduced in size.
0710.22.37	Frozen beans nesoi, not reduced in size.
0710.22.40	Beans nesoi, uncooked or cooked by steaming or boiling in water, frozen, reduced in size.
0710.29.05	Chickpeas (garbanzos), uncooked or cooked by steaming or boiling in water, frozen.
0710.29.25	Pigeon peas, uncooked or cooked by steaming or boiling in water, frozen, if entered July 1 through September 30, inclusive, in any year.
0710.29.30	Pigeon peas, uncooked or cooked by steaming or boiling in water, frozen, if entered Oct. 1 through the following June 30, inclusive.
0710.29.40	Leguminous vegetables nesoi, uncooked or cooked by steaming or boiling in water, frozen.
0710.30.00	Spinach, New Zealand spinach and orache spinach (garden spinach), uncooked or cooked by steaming or boiling in water, frozen.
0710.40.00	Sweet corn, uncooked or cooked by steaming or boiling in water, frozen.
0710.80.15	Bamboo shoots and water chestnuts (other than Chinese water chestnuts), uncooked or cooked by steaming or boiling in water, frozen.
0710.80.20	Mushrooms, uncooked or cooked by steaming or boiling in water, frozen.
0710.80.40	Tomatoes, uncooked or cooked by steaming or boiling in water, frozen, if entered Mar. 1 thru July 14, incl. or Sept. 1 thru Nov. 14, incl.
0710.80.45	Tomatoes, uncooked or cooked by steaming or boiling in water, frozen, if entered July 15 through August 31, inclusive, in any year.
0710.80.50	Tomatoes, uncooked or cooked by steaming or boiling in water, frozen, if entered Nov. 15 through the following February, incl.
0710.80.65	Brussels sprouts, uncooked or cooked by steaming or boiling in water, frozen, not reduced in size.
0710.80.70	Vegetables nesoi, uncooked or cooked by steaming or boiling in water, frozen, not reduced in size.
0710.80.93	Okra, reduced in size, frozen.
0710.80.97	Vegetables nesoi, uncooked or cooked by steaming or boiling in water, frozen, reduced in size.
0710.90.11	Mixtures of pea pods and water chestnuts (other than Chinese water chestnuts), uncooked or cooked by steaming or boiling in water, frozen.
0710.90.91	Mixtures of vegetables not elsewhere specified or included, uncooked or cooked by steaming or boiling in water, frozen.
0711.40.00	Cucumbers including gherkins, provisionally preserved but unsuitable in that state for immediate consumption.
0711.51.00	Mushrooms of the genus Agaricus, provisionally preserved but unsuitable in that state for immediate consumption.
0711.59.10	Mushrooms, other than of the genus Agaricus, provisionally preserved but unsuitable in that state for immediate consumption.
0711.90.20	Leguminous vegetables, provisionally preserved but unsuitable in that state for immediate consumption.
0711.90.50	Onions, provisionally preserved but unsuitable in that state for immediate consumption.
0711.90.65	Vegetables nesoi, and mixtures of vegetables, provisionally preserved but unsuitable in that state for immediate consumption.
0712.20.20	Dried onion powder or flour.
0712.20.40	Dried onions whole, cut, sliced or broken, but not further prepared.
0712.31.10	Air dried or sun dried mushrooms of the genus Agaricus, whole, cut, sliced, broken or in powder, but not further prepared.
0712.31.20	Dried (not air or sun dried) mushrooms of the genus Agaricus, whole, cut, sliced, broken or in powder, but not further prepared.
0712.32.00	Dried wood ears (Auricularia spp.), whole, cut, sliced, broken or in powder, but not further prepared.
0712.33.00	Dried jelly fungi (Tremella spp), whole, cut, sliced, broken or in powder, but not further prepared.
0712.39.10	Air dried or sun dried mushrooms (other than of the genus Agaricus), whole, cut, sliced, broken or in powder, but not further prepared.
0712.39.20	Dried (not air or sun dried) mushrooms (other than of the genus Agaricus), whole, cut, sliced, broken or in powder, but not further prepared.
0712.39.40	Dried truffles, whole, cut, sliced, broken or in powder, but not further prepared.
0712.90.10	Dried carrots, whole, cut, sliced, broken or in powder, but not further prepared.
0712.90.15	Dried olives, not ripe.
0712.90.20	Dried olives, ripe.
0712.90.30	Dried potatoes, whether or not cut or sliced but not further prepared.
0712.90.40	Dried garlic, whole, cut, sliced, broken or in powder, but not further prepared.
0712.90.60	Dried fennel, marjoram, parsley, savory and tarragon, crude or not manufactured.
0712.90.65	Dried parsley nesoi, whole, cut, sliced, broken or in powder, but not further prepared.
0712.90.70	Dried fennel, marjoram, savory and tarragon nesoi, whole, cut, sliced, broken or in powder, but not further prepared.
0712.90.74	Tomatoes, dried in powder.
0712.90.78	Tomatoes, dried, whole, other.

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HTSUS subheading	Product description
0712.90.85	Dried vegetables nesoi, and mixtures of dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared.
0713.10.10	Seeds of peas of a kind used for sowing.
0713.10.20	Dried split peas, shelled.
0713.10.40	Dried peas, nesoi, shelled.
0713.20.10	Seeds of chickpeas (garbanzos) of a kind used for sowing.
0713.20.20	Dried chickpeas (garbanzos), shelled.
0713.31.10	Seeds of beans of a kind used for sowing.
0713.31.20	Dried beans, shelled, if entered May 1 through August 31, inclusive, in any year.
0713.31.40	Dried beans, shelled, if entered September 1 through the following April 30, or withdrawn for consumption at any time.
0713.32.10	Seeds of small red (adzuki) beans of a kind used for sowing.
0713.32.20	Dried small red (adzuki) beans, shelled.
0713.33.10	Seeds of kidney beans, including white pea beans of a kind used for sowing.
0713.33.20	Dried kidney beans, including white pea beans, shelled, if entered May 1 through August 31, inclusive, in any year.
0713.33.40	Dried kidney beans, including white pea beans, shelled, if entered Sept. 1 through April 30, or withdrawn for consumption at any time.
0713.34.20	Dried Bambara beans, shelled, if entered for consumption from May 1 through August 31, inclusive, in any year.
0713.34.40	Dried Bambara beans, shelled, if entered for consumption other than above period, or withdrawn for consumption.
0713.35.00	Dried cowpeas, shelled.
0713.39.11	Seeds of beans nesoi, of a kind used for sowing.
0713.39.21	Dried beans nesoi, shelled, if entered for consumption from May 1 through August 31, inclusive, in any year.
0713.39.41	Dried beans nesoi, shelled, if entered for consumption September 1 through April 30, or withdrawn for consumption at any time.
0713.40.10	Lentil seeds of a kind used for sowing.
0713.40.20	Dried lentils, shelled.
0713.50.10	Seeds of broad beans and horse beans of a kind used for sowing.
0713.50.20	Dried broad beans and horse beans, shelled.
0713.60.60	Dried pigeon pea seeds, shelled, if entered for consumption during the period from May 1 through August 31, inclusive, in any year.
0713.60.80	Dried pigeon pea seeds, shelled, if entered Sept. 1 through the following April 30, or withdrawn for consumption at any time.
0713.90.11	Seeds of leguminous vegetables nesoi, of a kind used for sowing.
0713.90.50	Dried guar seeds, shelled.
0713.90.61	Dried leguminous vegetables nesoi, shelled, if entered for consumption during the period from May 1 through August 31, inclusive, in any year.
0713.90.81	Dried leguminous vegetales, nesoi, shelled, if entered Sept. 1 through the following April 30, or withdrawn for consumption at any time.
0714.10.20	Cassava (manioc), fresh, chilled or dried, whether or not sliced or in the form of pellets.
0714.20.10	Sweet potatoes, frozen, whether or not sliced or in the form of pellets.
0714.20.20	Sweet potatoes, fresh, chilled or dried, whether or not sliced or in the form of pellets.
0714.30.10	Fresh or chilled yams (Dioscorea spp.), whether or not sliced or in the form of pellets.
0714.30.20	Frozen yams (Dioscorea spp.).
0714.30.60	Dried yams (Dioscorea spp.), whether or not sliced but not in pellets.
0714.40.10	Fresh or chilled taro (Colocasia spp.), whether or not sliced or in the form of pellets.
0714.40.20	Frozen taro (Colocasia spp.).
0714.40.50	Dried taro (Colocasia spp.), in the form of pellets.
0714.40.60	Dried taro (Colocasia spp.), whether or not sliced but not in pellets.
0714.50.10	Fresh or chilled yautia (Xanthosoma spp.), whether or not sliced or in the form of pellets.
0714.50.20	Frozen yautia (Xanthosoma spp.).
0714.50.50	Dried yautia (Xanthosoma spp.), in the form of pellets.
0714.50.60	Dried yautia (Xanthosoma spp.), whether or not sliced but not in pellets.
0714.90.05	Chinese water chestnuts, fresh or chilled.
0714.90.39	Fresh or chilled arrowroot/salep/Jerusalem artichokes/similar roots & tubers, nesoi.
0714.90.41	Mixtures of pea pods and Chineses water chestnuts, frozen.
0714.90.42	Other mixtures of Chinese water chestnuts, frozen.
0714.90.44	Chinese water chestnuts, not mixed, frozen.
0714.90.46	Frozen dasheens/arrowroot/salep/Jerusalem artichokes/similar roots & tubers, nesoi.
0714.90.48	Chinese water chestnuts, dried.
0714.90.51	Dried dasheens, arrowroot, salep, Jerusalem artichokes and similar roots and tubers nesoi, in the form of pellets.
0714.90.61	Dried dasheens, arrowroot, salep, Jerusalem artichokes, and similar roots and tubers nesoi, whether or not sliced but not in pellets.
0801.11.00	Coconuts, desiccated.
0801.19.01	Coconuts, fresh, not in the inner shell (endocarp).
0801.31.00	Cashew nuts, fresh or dried, in shell.

ANNEX—Continued

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HTSUS subheading	Product description
0801.32.00	Cashew nuts, fresh or dried, shelled.
0802.11.00	Almonds, fresh or dried, in shell.
0802.12.00	Almonds, fresh or dried, shelled.
0802.22.00	Hazelnuts or filberts, fresh or dried, shelled.
0802.31.00	Walnuts, fresh or dried, in shell.
0802.32.00	Walnuts, fresh or dried, shelled.
0802.41.00	Chestnuts, fresh or dried, in shell.
0802.42.00	Chestnuts, fresh or dried, shelled.
0802.51.00	Pistachios, fresh or dried, in shell.
0802.52.00	Pistachios, fresh or dried, shelled.
0802.62.00	Macadamia nuts, shelled.
0802.80.20	Areca nuts, fresh or dried, shelled.
0802.90.10	Pecans, fresh or dried, in shell.
0802.90.15	Pecans, fresh or dried, shelled.
0802.90.20	Pignolias, fresh or dried, in shell.
0802.90.25	Pignolias, fresh or dried, shelled.
0802.90.82	Nuts, nesoi, fresh or dried, in shell.
0802.90.98	Nuts, nesoi, fresh or dried, shelled.
0803.10.20	Plantains, dried.
0803.90.00	Bananas, fresh or dried.
0804.10.20	Dates, fresh or dried, whole, with or without pits, packed in units weighing (with immediate container, if any) not over 4.6 kg.
0804.10.40	Dates, fresh or dried, whole, with pits, packed in units weighing over 4.6 kg.
0804.10.60	Dates, fresh or dried, whole, without pits, packed in units weighing over 4.6 kg.
0804.10.80	Dates, fresh or dried, other than whole.
0804.20.40	Figs, fresh or dried, whole, in units weighing more than 0.5 kg each.
0804.20.60	Figs, fresh or dried, whole, in immediate containers weighing with their contents 0.5 kg or less.
0804.20.80	Figs, fresh or dried, other than whole (including fig paste).
0804.30.20	Pineapples, fresh or dried, not reduced in size, in bulk.
0804.30.40	Pineapples, fresh or dried, not reduced in size, in crates or other packages.
0804.30.60	Pineapples, fresh or dried, reduced in size.
0804.50.40	Guavas, mangoes, and mangosteens, fresh, if entered during the period September 1 through May 31, inclusive.
0804.50.60	Guavas, mangoes, and mangosteens, fresh, if entered during the period June 1 through August 31, inclusive.
0804.50.80	Guavas, mangoes, and mangosteens, dried.
0805.10.00	Oranges, fresh or dried.
0805.21.00	Mandarins and other similar citrus hybrids including tangerines, satsumas, clementines, wilkings, fresh or dried.
0805.22.00	Clementines, fresh or dried, other.
0805.29.00	Wilkings and similar citrus hybrids, fresh or dried, other.
0806.20.10	Raisins, made from dried seedless grapes.
0806.20.20	Raisins, made from other than seedless grapes.
0806.20.90	Grapes, dried, other than raisins.
0808.10.00	Apples, fresh.
0808.30.20	Pears, fresh, if entered during the period from April 1 through June 30, inclusive.
0808.30.40	Pears, fresh, if entered during the period from July 1 through the following March 31, inclusive.
0808.40.20	Quinces, fresh, if entered during the period from April 1 through June 30, inclusive.
0808.40.40	Quinces, fresh, if entered during the period from July 1 through the following March 31, inclusive.
0809.29.00	Other cherries, fresh.
0809.30.20	Peaches, including nectarines, fresh, if entered during the period from June 1 through November 30, inclusive.
0809.30.40	Peaches, including nectarines, fresh, if entered during the period from December 1 through the following May 31, inclusive.
0810.10.20	Strawberries, fresh, if entered during the period from June 15 through September 15, inclusive.
0810.10.40	Strawberries, fresh, if entered during the period from September 16 through the following June 14, inclusive.
0810.20.10	Raspberries and loganberries, fresh, if entered during the period from September 1 through the following June 30, inclusive.
0810.30.00	Black, white or red currants and gooseberries (other than kiwifruit), fresh.
0810.40.00	Cranberries, blueberries and other fruits of the genus Vaccinium, fresh.
0810.70.00	Persimmons, fresh.
0810.90.27	Other berries and tamarinds, fresh.
0810.90.46	Fruit, not elsewhere specified or included, fresh.
0811.10.00	Strawberries, frozen, in water or containing added sweetening.
0811.20.20	Raspberries, loganberries, black currants and gooseberries, frozen, in water or containing added sweetening.
0811.20.40	Blackberries, mulberries and white or red currants, frozen, in water or containing added sweetening.
0811.90.10	Bananas and plantains, frozen, in water or containing added sweetening.
0811.90.20	Blueberries, frozen, in water or containing added sweetening.
0811.90.22	Boysenberries, frozen, in water or containing added sweetening.
0811.90.25	Cashew apples, mameyes colorados, sapodillas, soursops and sweetsops, frozen, in water or containing added sweetening.

ANNEX—Continued

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HTSUS subheading	Product description
0811.90.30	Coconut meat, frozen, in water or containing added sweetening.
0811.90.35	Cranberries, frozen, in water or containing added sweetening.
0811.90.40	Papayas, frozen, in water or containing added sweetening.
0811.90.50	Pineapples, frozen, in water or containing added sweetening.
0811.90.52	Mangoes, frozen, whether or not previously steamed or boiled.
0811.90.55	Melons, frozen, in water or containing added sweetening.
0811.90.80	Fruit, nesoi, frozen, whether or not previously steamed or boiled.
0812.90.10	Mixtures of two or more fruits, provisionally preserved, but unsuitable in that state for consumption.
0812.90.20	Citrus fruit, provisionally preserved, but unsuitable in that state for immediate consumption.
0812.90.30	Figs, provisionally preserved, but unsuitable in that state for immediate consumption.
0812.90.40	Pineapples, provisionally preserved, but unsuitable in that state for immediate consumption.
0812.90.50	Strawberries, provisionally preserved, but unsuitable in that state for immediate consumption.
0812.90.90	Fruit and nuts nesoi, including mixtures containing nuts, provisionally preserved, but not for immediate consumption.
0813.10.00	Apricots, dried.
0813.20.10	Prunes and plums, soaked in brine and dried.
0813.20.20	Prunes and plums, dried, (except if presoaked in brine).
0813.30.00	Apples, dried.
0813.40.10	Papayas, dried.
0813.40.15	Barberries, dried.
0813.40.20	Berries except barberries, dried.
0813.40.30	Cherries, dried.
0813.40.40	Peaches, dried.
0813.40.80	Tamarinds, dried.
0813.40.90	Fruit nesoi, dried, other than that of headings 0801 to 0806, and excluding mixtures.
0813.50.00	Mixtures of nuts or dried fruits of Chapter 8.
0814.00.10	Peel of orange or citron, fresh, frozen, dried or provisionally preserved in brine, in sulfur water or other preservative solutions.
0814.00.40	Lime peel, fresh, frozen or in brine.
0814.00.80	Peel of citrus fruit, excl. orange or citron and peel, nesoi, of melon, fresh, frozen, dried or provisionally preserved.
1001.11.00	Durum wheat, seed.
1001.99.00	Wheat & meslin other than durum or seed wheat.
1003.10.00	Barley, seed.
1003.90.20	Barley, other than seed, for malting purposes.
1003.90.40	Barley, not seed, other than for malting purposes.
1004.10.00	Oats, seed.
1004.90.00	Oats, other than seed.
1005.90.20	Yellow dent corn.
1005.90.40	Corn (maize), other than seed and yellow dent corn.
1006.20.20	Basmati rice, husked.
1006.20.40	Husked (brown) rice, other than Basmati.
1006.30.10	Rice semi-milled or wholly milled, whether or not polished or glazed, parboiled.
1006.30.90	Rice semi-milled or wholly milled, whether or not polished or glazed, other than parboiled.
1006.40.00	Broken rice.
1007.10.00	Grain sorghum, seed.
1007.90.00	Grain sorghum, other than seed.
1008.10.00	Buckwheat.
1008.21.00	Millet, seed.
1008.29.00	Millet, other than seed.
1008.30.00	Canary seed.
1008.50.00	Quinoa (Chenopodium quinoa).
1008.90.01	Cereals nesoi (including wild rice).
1101.00.00	Wheat or meslin flour.
1102.20.00	Corn (maize) flour.
1102.90.20	Buckwheat flour.
1102.90.25	Rice flour.
1102.90.27	Rye flour.
1102.90.30	Cereal flours nesoi, mixed together.
1102.90.60	Cereal flours, other than of wheat or meslin, rye, corn, rice or buckwheat.
1103.11.00	Groats and meal of wheat.
1103.13.00	Groats and meal of corn (maize).
1103.19.12	Groats and meal of oats.
1103.19.14	Groats and meal of rice.
1103.19.90	Groats and meal of cereals other than wheat, oats, corn (maize) or rice.
1103.20.00	Pellets of cereals.
1104.12.00	Rolled or flaked grains of oats.
1104.19.10	Rolled or flaked grains of barley.

ANNEX—Continued

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HTSUS subheading	Product description
1104.19.90	Rolled or flaked grains of cereals, other than of barley or oats.
1104.22.00	Grains of oats, hulled, pearled, clipped, sliced, kibbled or otherwise worked, but not rolled or flaked.
1104.23.00	Grains of corn (maize), hulled, pearled, clipped, sliced, kibbled or otherwise worked, but not rolled or flaked.
1104.29.10	Grains of barley, hulled, pearled, clipped, sliced, kibbled or otherwise worked, but not rolled or flaked.
1104.29.90	Grains of cereals other than barley, oats or corn, hulled, pearled, clipped, sliced, kibbled or otherwise worked, but not rolled or flaked.
1104.30.00	Germ of cereals, whole, rolled, flaked or ground.
1105.10.00	Flour, meal and powder of potatoes.
1105.20.00	Flakes, granules and pellets, of potatoes.
1106.10.00	Flour, meal and powder of the dried leguminous vegetables of heading 0713.
1106.20.10	Flour, meal and powder of Chinese water chestnuts.
1106.20.90	Flour, meal and powder of sago, or of roots or tubers of heading 0714 (excluding Chinese water chestnuts).
1106.30.20	Flour, meal and powder of banana and plantain.
1106.30.40	Fruit and nut flour, meal and powder of the products of chapter 8, other than of banana and plantain.
1107.10.00	Malt, not roasted.
1107.20.00	Malt, roasted.
1108.11.00	Wheat starch.
1108.12.00	Corn (maize) starch.
1108.13.00	Potato starch.
1108.14.00	Cassava (manioc) starch.
1108.19.00	Starches other than wheat, corn (maize), potato or cassava (manioc) starches.
1108.20.00	Inulin.
1109.00.10	Wheat gluten, whether or not dried, to be used as animal feed.
1109.00.90	Wheat gluten, whether or not dried, to be used for other than animal feed.
1201.10.00	Soybeans, whether or not broken, seed.
1201.90.00	Soybeans, whether or not broken, other than seed.
1202.30.40	Peanuts (ground-nuts), seed, not roasted or cooked, shelled, subject to add. U.S. note 2 to Ch.12.
1204.00.00	Flaxseed (linseed), whether or not broken.
1205.10.00	Low erucic acid rape or colza seeds, whether or not broken.
1205.90.00	Rape or colza seeds (other than of low erucic acid), whether or not broken.
1206.00.00	Sunflower seeds, whether or not broken.
1207.40.00	Sesame seeds, whether or not broken.
1207.50.00	Mustard seeds, whether or not broken.
1207.60.00	Safflower (Carthamus tintorius) seeds.
1207.70.00	Melon seeds.
1207.91.00	Poppy seeds, whether or not broken.
1207.99.03	Other oil seeds and oleaginous fruits whether or not broken, incl niger seeds, hemp seeds and seeds nesoi.
1208.10.00	Flours and meals of soybeans.
1208.90.00	Flours and meals of oil seeds or oleaginous fruits other than those of mustard or soybeans.
1209.10.00	Sugar beet seeds of a kind used for sowing.
1209.21.00	Alfalfa (lucerne) seed of a kind used for sowing.
1209.25.00	Rye grass seeds of a kind used for sowing.
1209.29.10	Beet seed, other than sugar beet seed, of a kind used for sowing.
1209.29.91	Seeds of forage plants of a kind used for sowing, not elsewhere specified or included.
1209.30.00	Seeds of herbaceous plants cultivated principally for their flowers.
1209.91.10	Cauliflower seeds of a kind used for sowing.
1209.91.20	Celery seeds of a kind used for sowing.
1209.91.40	Onion seeds of a kind used for sowing.
1209.91.50	Parsley seeds of a kind used for sowing.
1209.91.60	Pepper seeds of a kind used for sowing.
1209.91.80	Vegetable seeds, nesoi, of a kind used for sowing.
1209.99.20	Tree and shrub seeds of a kind used for sowing.
1209.99.41	Seeds, fruits and spores, of a kind used for sowing, nesoi.
1210.10.00	Hop cones, fresh or dried, neither ground, powdered nor in the form of pellets.
1211.20.10	Ginseng roots, fresh or dried, whether or not cut, crushed or powdered.
1211.20.15	Ginseng roots, frozen or chilled.
1211.30.00	Coca leaf, of a kind used in perfumery, in pharmacy or for insecticidal, fungicidal or similar purposes.
1211.40.00	Poppy straw, of a kind used in perfumery, in pharmacy or for insecticidal, fungicidal or similar purposes.
1211.50.00	Ephedra.
1211.90.20	Mint leaves, crude or not manufactured, of a kind used in perfumery, in pharmacy or for insecticidal, fungicidal or similar purposes.
1211.90.40	Mint leaves nesoi, of a kind used in perfumery, in pharmacy or for insecticidal, fungicidal or similar purposes.
1211.90.92	Plants, parts of plants (including seeds and fruits), used in perfumery, pharmacy, insecticidal, fungicidal or similar puproses, other, fresh or dried.
1211.90.93	Plants, parts of plants (including seeds and fruits), used in perfumery, pharmacy, insecticidal, fungicidal or similar purposes, chilled or frozen.
1212.21.00	Seaweeds and other algae, fresh, chilled, frozen or dried, whether or not ground, fit for human consumption.

ANNEX—Continued

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HTSUS subheading	Product description
1212.29.00	Seaweeds and other algae, fresh, chilled, frozen or dried, whether or not ground, other than for human consumption.
1212.92.00	Locust beans (carob).
1212.99.20	Nectarine stones and kernels of a kind used primarily for human consumption, not elsewhere specified or included.
1212.99.30	Apricot, peach (other than nectarine) or plum stones and kernels used primarily for human consumption, not elsewhere specified or included.
1212.99.92	Fruit stone & kernel (not apricot/peach/plum) & other vegetable products used primary human consumption, nesoi.
1213.00.00	Cereal straw and husks, unprepared, whether or not chopped, ground, pressed or in the form of pellets.
1214.10.00	Alfalfa (lucerne) meal and pellets.
1214.90.00	Rutabagas, mangolds, fodder roots, hay, clover, sainfoin, kale, lupines, vetches & forage products nesoi.
1401.10.00	Bamboos, of a kind used primarily for plaiting.
1401.20.20	Rattans, in the rough or cut transversely into sections, of a kind used primarily for plaiting.
1401.20.40	Rattans, other than those in the rough or cut transversely into sections, of a kind used primarily for plaiting.
1401.90.20	Willow (osier), of a kind used primarily for plaiting.
1401.90.40	Lime bark, raffia, reeds, rushes, cleaned, bleached or dyed cereal straw, other vegetable materials nesoi, used primarily for plaiting.
1404.20.00	Cotton linters.
1404.90.10	Vegetable hair not elsewere specified or included.
1404.90.30	Istle of a kind used primarily in brooms or brushes.
1404.90.40	Piassava, couch-grass and other vegetable materials nesoi, of a kind used primarily in brooms or brushes.
1404.90.90	Other vegetable materials nesoi.
1504.10.20	Cod-liver oil and its fractions.
1504.10.40	Fish-liver oils and their fractions, other than cod-liver oil and its fractions.
1504.20.20	Cod oil and its fractions, other than liver oil.
1504.20.40	Herring oil and its fractions, other than liver oil.
1504.20.60	Fats and oils and their fractions, of fish other than cod and herring, excluding liver oil.
1505.00.10	Wool grease, crude.
1505.00.90	Fatty substances derived from wool grease (including lanolin).
1506.00.00	Animal fats and oils and their fractions nesoi, whether or not refined, but not chemically modified.
1602.32.00	Prepared or preserved meat or meat offal of chickens, nesoi.
1603.00.10	Clam juice.
1603.00.90	Extracts and juices of meat, fish, crustaceans, molluscs or other aquatic invertebrates, other than clam juice.
1604.11.20	Prepared or preserved salmon, whole or in pieces, but not minced, in oil, in airtight containers.
1604.11.40	Prepared or preserved salmon, whole or in pieces, but not minced, other than in oil and in airtight containers.
1604.12.20	Prepared or preserved herrings, whole or in pieces, but not minced, in oil, in airtight containers.
1604.12.40	Herrings, whole or in pieces, but not minced, in tomato sauce, smoked or kippered, in immediate containers over 0.45 kg each.
1604.12.60	Herrings prepared or preserved, whole or in pieces, but not minced, nesoi.
1604.13.10	Smoked sardines, in oil, not skinned nor boned, $1/kg or more in tin-plate containers, or $1.10/kg or more in other airtight containers.
1604.13.20	Sardines, not smoked, sardinella, brisling or sprats, neither skinned nor boned, in oil, in airtight containers.
1604.13.30	Sardines, sardinella, brisling or sprats, skinned or boned, in oil, in airtight containers.
1604.13.40	Sardines, sardinella, brisling, sprats in containers with their contents under 225 g each, except those in oil and in airtight containers.
1604.13.90	Sardines, sardinella and brisling or sprats (not in oil and airtight cont.), prepared or preserved, not minced, cont. 225 g or more.
1604.14.10	Tunas and skipjack, whole or in pieces, but not minced, in oil, in airtight containers.
1604.14.22	Tunas and skipjack, not in oil, in airtight cont., n/o 7 kg, not of U.S. possessions, product within quota.
1604.14.30	Tunas and skipjack, not in oil, in airtight containers, n/o 7 kg, not of U.S. possessions, over quota.
1604.14.40	Tunas and skipjack, not in airtight containers, not in oil, in bulk or in immediate containers weighing with contents over 6.8 kg each.
1604.14.50	Tunas and skipjack, not in airtight containers, not in bulk or in immediate containers weighing with contents over 6.8 kg each.
1604.14.70	Bonito (Sarda spp.), in oil.
1604.14.80	Bonito (Sarda spp.), not in oil.
1604.15.00	Prepared or preserved mackerel, whole or in pieces, but not minced.
1604.16.20	Anchovies, whole or in pieces but not minced, in oil, in airtight containers.
1604.16.40	Prepared or preserved anchovies, whole or in pieces, not minced, not in oil, in immediate containers with their contents 6.8 kg or less ea.
1604.16.60	Prepared or preserved anchovies, whole or in pieces, but not minced, not in oil, nesoi.
1604.17.10	Prepared or preserved eels, whole or in pieces, but not minced, in airtight containers, not in oil.
1604.17.40	Eel portions similar to fish sticks and like products of any size or shape, breaded, coated with batter, not cooked nor in oil.
1604.17.50	Eel similar to fish sticks and like products of any size or shape, if breaded, coated with batter, cooked or in oil.
1604.17.60	Prepared or preserved eel, in oil and in bulk or in immediate containers weighing over 7 kg each.

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HTSUS subheading	Product description
1604.17.80	Prepared or preserved eel, whole or in pieces, but not minced, nesoi.
1604.18.10	Shark fins, not in oil, in airtight containters.
1604.18.90	Shark fins, not in airtight containers.
1604.19.10	Bonito, yellowtail and pollock, whole or in pieces, but not minced, in airtight containers, not in oil.
1604.19.22	Other fish, excluding bonito, yellowtail and pollock, in airtight containers, not in oil.
1604.19.25	Bonito, yellowtail and pollock, whole or in pieces, but not minced, in airtight containers, in oil.
1604.19.32	Other fish, excluding bonito, yellowtail and pollock, in airtight containers, in oil.
1604.19.41	Fish sticks and like products of any size or shape, fillets or other portions of fish, breaded, coated with batter, not cooked nor in oil.
1604.19.51	Fish sticks and like products of any size or shape, fillets or other portions of fish, if breaded, coated with batter, cooked or in oil.
1604.19.61	Prepared or preserved fish nesoi, in oil and in bulk or in immediate containers weighing over 7 kg each.
1604.19.82	Fish, whole or in pieces, but not minced, prepared or preserved, nesoi.
1604.20.05	Products containing meat of crustaceans, molluscs or other aquatic invertebrates, prepared meals.
1604.20.10	Fish pastes.
1604.20.15	Fish balls, cakes and puddings, in oil.
1604.20.20	Fish balls, cakes and puddings, not in oil, in immediate airtight containers, weighing with their contents not over 6.8 kg each.
1604.20.25	Fish balls, cakes and puddings, not in oil, and in immediate nonairtight containers weighing with their contents not over 6.8 kg each.
1604.20.30	Fish balls, cakes and puddings, not in oil, not in immediate containers, weighing with their contents not over 6.8 kg each.
1604.20.40	Fish sticks and similar products of any size or shape, if breaded, coated with batter or similarly prepared, not cooked nor in oil.
1604.20.50	Fish sticks and similar products of any size or shape, if breaded, coated with batter or similarly prepared, cooked or in oil.
1604.20.60	Prepared or preserved fish, other than whole or in pieces, nesoi.
1604.31.00	Caviar.
1604.32.30	Caviar substitutes prepared from fish eggs, boiled and in airtight containers.
1604.32.40	Caviar substitutes prepared from fish eggs, nesoi.
1605.10.05	Crab products containing fish meat; prepared meals of crab.
1605.10.20	Crabmeat, prepared or preserved, in airtight containers.
1605.10.40	Crabmeat, prepared or preserved, other than in airtight containers.
1605.10.60	Crabs, other than crabmeat, prepared or preserved.
1605.21.05	Shrimp & prawns not in airtight containers: fish meat and prepared meals.
1605.21.10	Shrimp & prawns not in airtight containers: other than fish meat and prepared meals.
1605.29.05	Shrimp & prawns in airtight containers: fish meat and prepared meals.
1605.29.10	Shrimp & prawns in airtight containers: other than fish meat and prepared meals.
1605.30.05	Lobster products containing fish meat; prepared meals of lobster.
1605.30.10	Lobster, prepared or preserved, not containing fish meat, nesoi.
1605.40.05	Crustacean products nesoi, containing fish meat; prepared meals of crustaceans, nesoi.
1605.40.10	Crustaceans nesoi, prepared or preserved, not containing fish meat, nesoi.
1605.51.05	Oysters, fish meat or prepared meals.
1605.51.40	Smoked oysters.
1605.51.50	Oysters, prepared or preserved, but not smoked.
1605.52.05	Scallops, including queen scallops as containing fish meat; prepared meals.
1605.52.60	Scallops, including queen scallops, prepared or preserved.
1605.53.05	Mussels, containing fish meats or in prepared meals.
1605.53.60	Mussels, prepared or preserved.
1605.54.05	Cuttle fish and squid, as containing fish meat; prepared meals.
1605.54.60	Cuttle fish and squid, prepared or preserved.
1605.55.05	Octopus, as containing fish meat or prepared meals.
1605.55.60	Octopus, prepared or preserved.
1605.56.05	Products of clams, cockles, and arkshells containing fish meat; prepared meals.
1605.56.10	Razor clams, in airtight containers, prepared or preserved, nesoi.
1605.56.15	Boiled clams in immediate airtight containers, the contents of which do not exceed 680 g gross weight.
1605.56.20	Clams, prepared or preserved, excluding boiled clams, in immediate airtight containers, nesoi.
1605.56.30	Clams, prepared or preserved, other than in airtight containers.
1605.56.60	Cockles and arkshells, prepared or preserved.
1605.57.05	Products of abalone containing fish meat; prepared meals of abalone.
1605.57.60	Abalone, prepared or preserved.
1605.58.05	Products of snails, other than sea snails, containing fish meat; prepared meals of snails other than sea snails.
1605.58.55	Prepared or preserved snails, other than sea snails.
1605.59.05	Products of molluscs nesoi containing fish meat; prepared meals of molluscs nesoi.
1605.59.60	Molluscs nesoi, prepared or preserved.
1605.61.00	Sea cucumbers, prepared or preserved.
1605.62.00	Sea urchins, prepared or preserved.

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HTSUS subheading	Product description
1605.63.00	Jelly fish, prepared or preserved.
1605.69.00	Other aquatic invertebrates, nesoi, prepared or preserved.
1701.99.10	Cane/beet sugar & pure sucrose, refined, solid, w/o added coloring or flavoring, subject to add. U.S. 5 to Ch. 17.
1701.99.50	Cane/beet sugar & pure sucrose, refined, solid, w/o added coloring or flavoring, not subject to gen. note 15 or add. U.S. 5 to Ch. 17.
1702.90.90	Sugars and sugar syrups, and articles containing sugar, nesoi.
1704.90.35	Sugar confections or sweetmeats ready for consumption, not containing cocoa, other than candied nuts or cough drops.
1704.90.90	Sugar confectionery, w/o cocoa, nesoi.
1901.90.91	Flour-, meal-, starch-, malt extract- or dairy-based food preps not containing cocoa and not containing specific amounts of dairy, nesoi.
1902.19.20	Uncooked pasta, not stuffed or otherwise prepared, not containing eggs, exclusively pasta.
1902.19.40	Uncooked pasta, not stuffed or otherwise prepared, not containing eggs, nesoi, including pasta packaged with sauce preparations.
1902.20.00	Stuffed pasta, whether or not cooked or otherwise prepared.
1902.30.00	Pasta nesoi.
1905.90.10	Bread, pastry, cake, biscuit and similar baked products nesoi, and puddings whether or not containing chocolate, fruit, nuts or confectionery.
2001.10.00	Cucumbers including gherkins, prepared or preserved by vinegar or acetic acid.
2001.90.20	Capers, prepared or preserved by vinegar or acetic acid, nesoi.
2001.90.25	Artichokes, prepared or preserved by vinegar or acetic acid.
2001.90.30	Beans, prepared or preserved by vinegar or acetic acid.
2001.90.34	Onions, prepared or preserved by vinegar or acetic acid.
2001.90.35	Pimientos, prepared or preserved by vinegar or acetic acid.
2001.90.38	Vegetables (including olives) nesoi, prepared or preserved by vinegar or acetic acid.
2001.90.42	Chestnuts, prepared or preserved by vinegar or acetic acid.
2001.90.48	Chinese water chestnuts, prepared or preserved by vinegar or acetic acid.
2001.90.50	Walnuts, prepared or preserved by vinegar or acetic acid.
2001.90.60	Fruits, nuts, and other edible parts of plants, nesoi, prepared or preserved by vinegar or acetic acid.
2002.10.00	Tomatoes, whole or in pieces, prepared or preserved otherwise than by vinegar or acetic acid.
2002.90.40	Tomato prep/pres ex by vinegar/acetic acid, powder.
2002.90.80	Tomatoes prepared or preserved otherwise than by vinegar or acetic acid, nesoi.
2003.10.01	Mushrooms of the genus Agaricus, prepared or preserved otherwise than by vinegar or acetic acid.
2003.90.10	Truffles.
2003.90.80	Mushrooms other than of the genus Agaricus or truffles, prepared or preserved otherwise than by vinegar or acetic acid.
2004.10.80	Potatoes (not Solano), prepared or preserved otherwise than by vinegar or acetic acid, frozen.
2004.90.80	Beans, prepared or preserved otherwise than by vinegar or acetic acid, frozen.
2004.90.85	Vegetables and mixtures of vegetables, nesoi, prepared or preserved other than by vinegar or acetic acid, frozen, not preserved by sugar.
2005.20.00	Potato preparations, prepared or preserved otherwise than by vinegar or acetic acid, not frozen.
2005.40.00	Peas, prepared or preserved otherwise than by vinegar or acetic acid, not frozen.
2005.51.20	Black-eye cowpeas, shelled, prepared or preserved otherwise than by vinegar or acetic acid, not frozen.
2005.51.40	Beans other than black-eye cowpeas, shelled, prepared or preserved otherwise than by vinegar or acetic acid, not frozen.
2005.59.00	Beans, not shelled, prepared or preserved otherwise than by vinegar or acetic acid, not frozen.
2005.60.00	Asparagus, prepared or preserved otherwise than by vinegar or acetic acid, not frozen.
2005.70.25	Olives, green, in a saline solution, pitted or stuffed, not place packed.
2005.70.60	Olives (not green), in a saline solution, canned, pitted.
2005.70.70	Olives (not green), in a saline solution, in airtight containers of glass or metal but not canned.
2005.70.75	Olives (not green), in a saline solution, not canned, nesoi.
2005.70.97	Olives, prepared or preserved otherwise than by vinegar, acetic acid or saline soln, not frozen, nesoi.
2005.80.00	Sweet corn, prepared or preserved otherwise than by vinegar, acetic acid or sugar, not frozen.
2005.91.60	Bamboo shoots in airtight containers, prepared or preserved otherwise than by vinegar or acetic acid, not frozen, not preserved by sugar.
2005.91.97	Bamboo shoots, not in airtight containers, prepared or preserved otherwise than by vinegar or acetic acid, not frozen, not preserved by sugar.
2005.99.10	Carrots in airtight containers, prepared or preserved otherwise than by vinegar, acetic acid or sugar, not frozen.
2005.99.20	Onions, prepared or preserved otherwise than by vinegar or acetic acid, not frozen.
2005.99.30	Sauerkraut, prepared or preserved otherwise than by vinegar or acetic acid, not frozen.
2005.99.41	Whole or Sliced water chestnuts, other than Chinese water chestnuts, prepared or preserved otherwise than by vinegar or acetic acid or sugar.
2005.99.50	Pimientos, prepared or preserved otherwise than by vinegar or acetic acid, not frozen.
2005.99.55	Fruits of the genus Capsicum or Pimenta, not pimientos, prepared or preserved otherwise than by vinegar or acetic acid, not frozen.
2005.99.80	Artichokes, prepared or preserved otherwise than by vinegar or acetic acid, not frozen.
2005.99.85	Chickpeas (garbanzos), prepared or preserved otherwise than by vinegar or acetic acid, not frozen.

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HTSUS subheading	Product description
2005.99.97	Vegetables nesoi, & mixtures of vegetables, prepared or preserved otherwise than by vinegar or acetic acid, not frozen, not preserved by sugar.
2006.00.20	Cherries, preserved by sugar (drained, glace or crystallized).
2006.00.30	Ginger root, preserved by sugar (drained, glace or crystallized).
2006.00.40	Pineapples, preserved by sugar (drained, glace or crystallized).
2006.00.50	Mixtures of vegetables, fruit, nuts, fruit-peel or other parts of plants, preserved by sugar (drained, glace or crystallized).
2006.00.60	Citrus fruit or peel of citrus or other fruit, except mixtures, preserved by sugar (drained, glace or crystallized).
2006.00.70	Fruit nesoi, and nuts, except mixtures, preserved by sugar (drained, glace or crystallized).
2006.00.90	Vegetables and parts of plants, nesoi, preserved by sugar (drained, glace or crystallized), except mixtures,.
2007.10.00	Homogenized cooked preparations of fruit put up for retail sale as infant food or for dietetic purposes, in cont. not over 250 grams, net.
2007.91.10	Citrus fruit pastes and purees, being cooked preparations.
2007.91.40	Orange marmalade.
2007.99.05	Lingonberry and raspberry jams.
2007.99.10	Strawberry jam.
2007.99.15	Currant and other berry jams, nesoi.
2007.99.20	Apricot jam.
2007.99.25	Cherry jam.
2007.99.35	Peach jam.
2007.99.40	Pineapple jam.
2007.99.45	Jams, nesoi.
2007.99.48	Apple, quince and pear pastes and purees, being cooked preparations.
2007.99.50	Guava and mango pastes and purees, being cooked preparations.
2007.99.60	Strawberry pastes and purees, being cooked preparations.
2007.99.65	Fruit pastes and purees, nesoi, and nut pastes and purees, being cooked preparations.
2007.99.70	Currant and berry fruit jellies.
2007.99.75	Fruit jellies, other than currant and berry.
2008.11.02	Peanut butter and paste, subject to gen. note 15 of the HTS.
2008.11.05	Peanut butter and paste, subject to add. U.S. note 5 to Ch. 20, not GN15.
2008.11.15	Peanut butter and paste, nesoi, not subject to gen note 15 or add U.S. note 5 to Ch. 20.
2008.11.22	Blanched peanuts, subject to gen. note 15 of the HTS.
2008.11.25	Blanched peanuts, subject to add. U.S. note 2 to Ch. 12, not GN15.
2008.11.42	Peanuts, otherwise prepared or preserved, nesoi, subject to gen. note 15 of the HTS.
2008.11.45	Peanuts, otherwise prepared or preserved, nesoi, subject to add. U.S. note 2 to Ch. 12, not GN15.
2008.19.10	Brazil nuts and cashew nuts, otherwise prepared or preserved, nesoi.
2008.19.15	Coconuts, otherwise prepared or preserved, nesoi.
2008.19.20	Filberts, otherwise prepared or preserved, nesoi.
2008.19.25	Pecans, otherwise prepared or preserved, nesoi.
2008.19.30	Pignolia and pistachio nuts, otherwise prepared or preserved, nesoi.
2008.19.40	Almonds, otherwise prepared or preserved, nesoi.
2008.19.50	Watermelon seeds, otherwise prepared or preserved, nesoi.
2008.19.85	Mixtures of nuts or other seeds otherwise prepared or preserved, nesoi.
2008.19.90	Other nuts and seeds nesoi, excluding mixtures, otherwise prepared or preserved, nesoi.
2008.20.00	Pineapples, otherwise prepared or preserved, nesoi.
2008.30.10	Peel of oranges, mandarins, clementines, wilkings and similar citrus hybrids, otherwise prepared or preserved, nesoi.
2008.30.20	Peel of lemons, otherwise prepared or preserved, nesoi.
2008.30.30	Peel of citrus fruit, nesoi, otherwise prepared or preserved, nesoi.
2008.30.40	Oranges (other than peel or pulp), otherwise prepared or preserved, nesoi.
2008.30.42	Satsumas, prepared or preserved, in airtight containers, aggregate quantity n/o 40,000 metric tons/calandar yr.
2008.30.46	Satsumas, prepared or preserved, in airtight containers, aggregate quantity n/o 40,000 metric tons/calandar yr.
2008.30.48	Mandarins (other than satsuma), prepared or preserved, nesoi.
2008.30.55	Clementines, wilkings and similar citrus hybrids (other than peel or pulp), otherwise prepared or preserved, nesoi.
2008.30.70	Grapefruit (other than peel or pulp), otherwise prepared or preserved, nesoi.
2008.30.80	Kumquats (other than peel or pulp), otherwise prepared or preserved, nesoi.
2008.30.96	Citrus fruit nesoi (including bergamots), other than peel or pulp, otherwise prepared or preserved, nesoi.
2008.40.00	Pears, otherwise prepared or preserved, nesoi.
2008.50.20	Apricot pulp, otherwise prepared or preserved, nesoi.
2008.50.40	Apricots, other than pulp, otherwise prepared or preserved, nesoi.
2008.60.00	Cherries, otherwise prepared or preserved, nesoi.
2008.70.10	Nectarines, otherwise prepared or preserved, not elsewhere specified or included.
2008.70.20	Peaches (excluding nectarines), otherwise prepared or preserved, not elsewhere specified or included.
2008.80.00	Strawberries, otherwise prepared or preserved, nesoi.
2008.93.00	Cranberries.
2008.97.10	Mixtures of fruit or edible parts of plants, in airtight cont. excl. apricots, citrus, peaches or pears (incl. canned tropical fruit salad).

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HTSUS subheading	Product description
2008.97.90	Mixtures of fruit or other edible parts of plants, otherwise prepared or preserved, nesoi (excluding tropical fruit salad).
2008.99.05	Apples, otherwise prepared or preserved, nesoi.
2008.99.15	Bananas, other than pulp, otherwise prepared or preserved, nesoi.
2008.99.18	Blueberries, otherwise prepared or preserved, nesoi.
2008.99.21	Berries, other than cranberries, blueberries and strawberries, otherwise prepared or preserved, nesoi.
2008.99.23	Cashew apples, mameyes colorados, sapodillas, soursops and sweetsops, otherwise prepared or preserved, nesoi.
2008.99.25	Dates, otherwise prepared or preserved, nesoi.
2008.99.28	Figs, otherwise prepared or preserved, nesoi.
2008.99.29	Grapes, otherwise prepared or preserved, nesoi.
2008.99.30	Guavas, otherwise prepared or preserved, nesoi.
2008.99.35	Lychees and longans, otherwise prepared or preserved, nesoi.
2008.99.40	Mangoes, otherwise prepared or preserved, nesoi.
2008.99.50	Papayas, other than pulp, otherwise prepared or preserved, nesoi.
2008.99.60	Plums (including prune plums and sloes), otherwise prepared or preserved, nesoi.
2008.99.61	Soybeans, otherwise prepared or preserved, nesoi.
2008.99.63	Sweet ginger, otherwise prepared or preserved, nesoi.
2008.99.70	Chinese water chestnuts, otherwise prepared or preserved, frozen, not elsewhere specified or included.
2008.99.71	Chinese water chestnuts, otherwise prepared or preserved, not frozen, not elsewhere specified or included.
2008.99.80	Pulp of fruit nesoi, and other edible parts of plants nesoi, excluding mixtures, otherwise prepared or preserved, nesoi.
2008.99.91	Bean cake, bean stick, miso, other fruit, nuts and other edible parts of plans, prepared or preserved.
2009.11.00	Orange juice, frozen, unfermented and not containing added spirit.
2009.29.00	Grapefruit juice, of a Brix value exceeding 20, unfermented.
2009.31.20	Lime juice, of a Brix value not exceeding 20, fit for beverage purposes, unfermented.
2009.31.40	Citrus juice of any single citrus fruit (other than orange, grapefruit or lime), Brix value not exceeding 20, not concentrated, unfermented.
2009.31.60	Citrus juice of any single citrus fruit (other than orange, grapefruit or lime), of a Brix value not exceeding 20, concentrated, unfermented.
2009.39.60	Citrus juice of any single citrus fruit (other than orange, grapefruit or lime), of a Brix value exceeding 20, unfermented.
2009.41.40	Pineapple juice, of a Brix value not exceeding 20, concentrated (in degree of concentration greater than 3.5), unfermented.
2009.49.40	Pineapple juice, of a Brix value exceeding 20, concentrated (in degree of concentration greater than 3.5).
2009.50.00	Tomato juice, concentrated or not concentrated.
2009.69.00	Grape juice (including grape must), of a Brix value exceeding 30, unfermented.
2009.71.00	Apple juice, of a Brix value not exceeding 20, unfermented.
2009.79.00	Apple juice, of a Brix value exceeding 20, unfermented.
2009.89.20	Pear juice, concentrated or not concentrated.
2009.89.60	Juice of any other single fruit, nesoi, (including cherries and berries), concentrated or not concentrated.
2009.89.80	Juice of any single vegetable, other than tomato, concentrated or not concentrated.
2009.90.40	Mixtures of fruit juices, or mixtures of vegetable and fruit juices, concentrated or not concentrated.
2103.10.00	Soy sauce.
2103.90.80	Mixed condiments and mixed seasonings, not described in add U.S. note 3 to Ch. 21.
2106.10.00	Protein concentrates and textured protein substances.
2201.10.00	Mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavored.
2201.90.00	Waters (incl. ice, snow and steam), ot/than mineral waters or aerated waters, not cont. added sugar or other sweetening matter nor flavored.
2202.10.00	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavored.
2202.99.30	Orange juice, fortified with vitamins or minerals not made from a juice having a degree of concentration of >=1.5.
2202.99.35	Orange juice fortified with vitamins or minerals, nesoi.
2202.99.36	Juice of any single fruit or vegetable (except orange juice) fortified with vitamins or minerals, in nonconcentrated form.
2202.99.37	Fruit or vegetable juices, fortified with vitamins or minerals, mixtures of juices in non-concentrated form.
2202.99.90	Nonalcoholic beverages, nesoi, excluding fruit or vegetable juices of heading 2009.
2203.00.00	Beer made from malt.
2204.10.00	Sparkling wine, made from grapes.
2204.21.20	Effervescent grape wine, in containers holding 2 liters or less.
2204.21.30	Tokay wine (not carbonated) not over 14% alcohol, in containers not over 2 liters.
2204.21.50	Wine other than Tokay (not carbonated), not over 14% alcohol, in containers not over 2 liters.
2204.21.60	''Marsala'' wine, over 14% vol. alcohol, in containers holding 2 liters or less.
2204.21.80	Grape wine, other than ''Marsala'', not sparkling or effervescent, over 14% vol. alcohol, in containers holding 2 liters or less.
2206.00.45	Rice wine or sake.

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HTSUS subheading	Product description
2206.00.90	Fermented beverages (other than grape wine, beer, cider, prune wine, sake, vermouth, or other effervescent wines).
2207.10.30	Undenatured ethyl alcohol of 80 percent vol. alcohol or higher, for beverage purposes.
2207.10.60	Undenatured ethyl alcohol of 80 percent vol. alcohol or higher, for nonbeverage purposes.
2209.00.00	Vinegar and substitutes for vinegar obtained from acetic acid.
2301.10.00	Flours, meals, and pellets, of meat or meat offal unfit for human consumption; greaves (cracklings).
2301.20.00	Flours, meals, and pellets, of fish or of crustaceans, molluscs or other aquatic invertebrates, unfit for human consumption.
2302.30.00	Bran, sharps (middlings) and other residues, derived from the sifting, milling or other working of wheat.
2302.40.01	Bran, sharps (middlings) and other residues, derived from the sifting, milling or other working of cereals, excluding corn, rice and wheat.
2302.50.00	Bran, sharps (middlings) and other residues, derived from the sifting, milling or other working of leguminous plants.
2303.10.00	Residues of starch manufacture and similar residues.
2303.20.00	Beet-pulp, bagasse and other waste of sugar manufacture.
2303.30.00	Brewing or distilling dregs and waste.
2304.00.00	Oilcake and other solid residues, resulting from the extraction of soybean oil.
2305.00.00	Oilcake and other solid residues, resulting from the extraction of peanut (ground-nut) oil.
2306.20.00	Oilcake and other solid residues, resulting from the extraction of vegetable fats or oils, of linseed.
2306.30.00	Oilcake and other solid residues, resulting from the extraction of vegetable fats or oils, of sunflower seeds.
2306.41.00	Oilcake and other solid residues, resulting from the extraction of vegetable fats or oils, of low erucic acid rape or colza seeds.
2306.49.00	Oilcake and other solid residues, resulting from the extraction of vegetable fats/oils, of rape or colza seeds (other than low erucic acid).
2306.90.01	Oilcake and other solid residues, resulting from the extraction of vegetable fats or oils, nesoi.
2308.00.95	Dehydrated marigolds, of a kind used in animal feeding, not elsewhere specified or included.
2308.00.98	Vegetable materials and vegetable waste, vegetable residues and byproducts, of a kind used in animal feeding, nesoi.
2309.10.00	Dog or cat food, put up for retail sale.
2309.90.10	Mixed feed or mixed feed ingredients used in animal feeding.
2309.90.70	Other preps nes with a basis of vitamin B12, for supplementing animal in animal feeding, not cont milk or egg prods.
2309.90.95	Other preps nes of a kind used in animal feeding, not cont milk or egg prods.
2401.10.44	Tobacco, not stemmed or stripped, not or not over 35% wrapper tobacco, oriental or turkish type, cigarette leaf.
2401.20.05	Leaf tobacco, the product of two or more countries or dependencies, when mixed or packed together, partly or wholly stemmed, not threshed.
2401.20.14	Wrapper tobacco, partly or wholly stemmed (stripped), not threshed or similarly processed.
2401.20.18	Tobacco containing over 35% wrapper tobacco, partly or wholly stemmed (stripped), not threshed or similarly processed.
2401.20.23	Tobacco, partly or wholly stemmed/stripped, n/threshed or similarly processed, not or n/over 35% wrapper, oriental or turkish, cigarette lea.
2401.20.26	Tobacco, partly or wholly stemmed/stripped, n/threshed or similarly processed, not or n/over 35% wrapper, not cigarette leaf.
2401.20.29	Tobacco, partly or wholly stemmed/stripped, n/threshed or similarly processed, not or n/over 35% wrapper, cigar binder and filler.
2401.20.31	Tobacco, partly or wholly stemmed/stripped, n/threshed or similarly proc., not or n/over 35% wrapper, flue-cured burley etc, not for cigaret.
2401.20.33	Tobacco, partly or wholly stemmed/stripped, n/threshed or similarly proc., not or n/over 35% wrapper, des. in addl U.S. note 5 to ch. 24.
2401.20.35	Tobacco, partly or wholly stemmed/stripped, n/threshed or similarly proc., not or n/over 35% wrapper, flue-cured burley etc, other nesoi.
2401.20.57	Tobacco, partly or wholly stemmed/stripped, n/threshed or similarly proc., not or n/over 35% wrapper, not flue-cured burley etc., other nesoi.
2401.20.60	Tobacco, partly or wholly stemmed (stripped), threshed or similarly processed, from cigar leaf.
2401.20.75	Tobacco, partly or wholly stemmed/stripped, threshed or similarly processed, not from cigar leaf, oriental or turkish.
2401.20.83	Tobacco, partly or wholly stemmed/stripped, threshed or similarly processed, not from cigar leaf, not oriental or turkish, not for cigarett.
2401.20.85	Tobacco, partly or wholly stemmed/stripped, threshed or similarly processed, not from cigar leaf, described in addl U.S. note 5 to chap 24.
2401.20.87	Tobacco, partly or wholly stemmed/stripped, threshed or similarly processed, not from cigar leaf, not oriental or turkish, other nesoi.
2401.30.03	Tobacco refuse, tobacco stems, not cut, ground or pulverized.
2401.30.06	Tobacco refuse, from cigar leaf, tobacco stems, cut, ground or pulverized.
2401.30.09	Tobacco refuse, from cigar leaf, other than tobacco stems.
2401.30.13	Tobacco refuse, from oriental or turkish type, tobacco stems, not cut, ground or pulverized.
2401.30.16	Tobacco refuse, from oriental or turkish type, tobacco stems, cut, ground or pulverized.

ANNEX—Continued

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HTSUS subheading	Product description
2401.30.19	Tobacco refuse, from oriental or turkish type, other than tobacco stems.
2401.30.23	Tobacco refuse, from other tobacco, other than for cigarettes, tobacco stems, not cut, ground or pulverized.
2401.30.25	Tobacco refuse, from other tobacco, other than for cigarettes, tobacco stems, cut, ground or pulverized.
2401.30.27	Tobacco refuse, from other tobacco, other than for cigarettes,tother than tobacco stems.
2401.30.33	Tobacco refuse, from other tobacco, for cigarettes, described in addl U.S. note 5 to chap 24, tobacco stems, not cut, ground or pulverized.
2401.30.35	Tobacco refuse, from other tobacco, for cigarettes, described in addl U.S. note 5 to chap 24, tobacco stems, cut, ground or pulverized.
2401.30.37	Tobacco refuse, from other tobacco, for cigarettes, described in addl U.S. note 5 to chap 24, not tobacco stems.
2401.30.70	Tobacco refuse, from other tobacco, for cigarettes, other nesoi.
2402.10.30	Cigars, cheroots and cigarillos containing tobacco, each valued less than 15 cents.
2402.10.60	Cigars, cheroots and cigarillos containing tobacco, each valued 15 cents or over but less than 23 cents.
2402.10.80	Cigars, cheroots and cigarillos containing tobacco, each valued 23 cents or over.
2402.20.10	Cigarettes containing tobacco and clove.
2402.20.80	Cigarettes containing tobacco but not containing clove, paper-wrapped.
2402.20.90	Cigarettes containing tobacco, nesoi.
2402.90.00	Cigars, cheroots and cigarillos and cigarettes of tobacco substitutes.
2403.11.00	Water pipe tobacco, whether or not containing tobacco substitutes.
2403.19.20	Smoking tobacco, whether or not containing tobacco substitutes, prepared for marketing directly to consumer as packaged.
2403.19.30	Smoking tobacco, other than for water pipes, whether or not containing tobacco subst, other, to be used in products other than cigarettes.
2403.19.60	Smoking tobacco, not water pipe, whether or not containing substitutes, other, to be used in cigarettes, in addl U.S. note 5 to chapter.
2403.19.90	Smoking tobacco, not water pipe, whether or not containing substitutes, other, to be used in cigarettes, other nesoi.
2403.91.43	"Homogenized" or "reconstituted" tobacco, not suitable for use as wrapper tobacco, to be used in products other than cigarettes.
2403.99.20	Other manufactured tobacco, tobacco substitutes, tobacco extracts or essences, prepared for marketing directly to consumer as packaged.
2403.99.30	Other manufactured tobacco, tobacco substitutes, tobacco extracts or essences, other, to be used in products other than cigarettes.
2403.99.60	Other manufactured tobacco, tobacco substitutes, tobacco extracts or essences, to be used in cigarettes, described in addl U.S. note 5 to chap.
2403.99.90	Other manufactured tobacco, tobacco substitutes, tobacco extracts or essences, other, to be used in cigarettes, other nesoi.
2501.00.00	Salt & pure sodium chloride, whether or not in aqueous solution or cont. added anticaking or free-flowing agents; sea water.
2502.00.00	Iron pyrites, unroasted.
2503.00.00	Sulfur of all kinds, other than sublimed, precipitated and colloidal sulfur.
2504.10.10	Natural graphite, crystalline flake (not including flake dust).
2504.10.50	Natural graphite in powder or flakes (other than crystalline flake).
2504.90.00	Natural graphite, other than in powder or in flakes.
2505.10.10	Natural silica and quartz sands, containing by weight 95% or more of silica and not more than 0.6% of oxide of iron.
2505.10.50	Natural silica and quartz sands, nesoi.
2505.90.00	Natural sands, other than silica or quartz sands and other than metal-bearing sands of chapter 26.
2506.10.00	Quartz (other than natural sands).
2506.20.00	Quartzite.
2507.00.00	Kaolin and other kaolinic clays, whether or not calcined.
2508.10.00	Bentonite clay, whether or not calcined.
2508.30.00	Fire-clay, whether or not calcined.
2508.40.01	Clays, (not including expanded clays of heading 6806), nesoi, whether or not calcined.
2508.50.00	Andalusite, kyanite and sillimanite, whether or not calcined.
2508.60.00	Mullite.
2508.70.00	Chamotte or dinas earths.
2509.00.10	Chalk, crude.
2509.00.20	Chalk, other than crude.
2510.10.00	Natural calcium phosphates, natural aluminum calcium phosphates and phosphatic chalk, unground.
2510.20.00	Natural calcium phosphates, natural aluminum calcium phosphates and phosphatic chalk, ground.
2511.10.10	Natural barium sulfate (barytes), ground.
2511.10.50	Natural barium sulfate (barytes), not ground.
2511.20.00	Natural barium carbonate (witherite), whether or not calcined.
2512.00.00	Siliceous fossil meals and similar siliceous earths, whether or not calcined, of an apparent specific gravity of 1 or less.
2513.10.00	Pumice.

ANNEX—Continued

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HTSUS subheading	Product description
2513.20.10	Emery; natural corundum, nat. garnet and other nat. abrasives, whether or not heat-treated, all the foregoing crude or in irregular pieces.
2513.20.90	Emery; natural corundum, nat. garnet and other nat. abrasives, whether or not heat-treated, all the foregoin not crude or irregular pieces.
2514.00.00	Slate, whether or not roughly trimmed or merely cut into blocks or slabs of a rectangular (including square) shape.
2515.11.00	Marble and travertine, crude or roughly trimmed.
2515.12.10	Marble, merely cut into blocks or slabs of a rectangular (including square) shape.
2515.12.20	Travertine, merely cut into blocks or slabs of a rectangular (including square) shape.
2515.20.00	Calcareous monument.or build.stone (o/than marble/traver.) of spec. gravity >=2.5 & alabaster, crude, rough, trimmed or cut blocks or slabs.
2516.11.00	Granite, crude or roughly trimmed.
2516.12.00	Granite, merely cut into blocks or slabs of a rectangular (including square) shape.
2516.20.10	Sandstone, crude or roughly trimmed.
2516.20.20	Sandstone, merely cut into blocks or slabs of a rectangular (including square) shape.
2516.90.00	Porphyry, basalt and other monument. or build. stone (except granite/sandstone), crude or roughly trimmed or cut into rect. blocks/slabs.
2517.10.00	Pebbles, gravel, broken or crushed stones, for concrete aggregates, road metalling, ballast, shingle or flint, whether o/not heat-treated.
2517.20.00	Macadam of slag, dross or similar industrial waste, whether or not incorporating pebbles, gravel, etc.
2517.30.00	Tarred macadam.
2517.41.00	Granules, chippings and powder of marble, whether or not heat-treated.
2517.49.00	Granules, chippings and powder, of travertine/calcareous monument. or build.stone (except marble)/granite/porphyry/basalt/sandstone etc.
2518.10.00	Dolomite, not calcined, whether or not or roughly trimmed or merely cut into blocks or slabs of a rectangular (including square) shape.
2518.20.00	Dolomite, calcined, whether or not roughly trimmed or merely cut into blocks or slabs of a rectangular (including square) shape.
2518.30.00	Agglomerated dolomite (including tarred dolomite).
2519.10.00	Natural magnesoium carbonate (magnesoite).
2519.90.10	Fused magnesoia; dead-burned (sintered) magnesoia, whether or not cont. small quant. of other oxides added before sintering.
2519.90.20	Caustic calcined magnesoite.
2519.90.50	Magnesoium oxide, nesoi, whether or not pure.
2520.10.00	Gypsum; anhydrite.
2520.20.00	Plasters (of calcined gypsum or calcium sulfate), whether or not colored, with or without small quantities of accelerators or retarders.
2521.00.00	Limestone flux; limestone and other calcareous stone, of a kind used for the manufacture of lime or cement.
2522.10.00	Quicklime (other than calcium oxide and hydroxide of heading 2825).
2522.20.00	Slaked lime (other than calcium oxide and hydroxide of heading 2825).
2522.30.00	Hydraulic lime (other than calcium oxide and hydroxide of heading 2825).
2523.10.00	Clinkers of portland, aluminous, slag, supersulfate and similar hydraulic cements.
2523.21.00	Portland cement (white cement), whether or not artificially colored.
2523.29.00	Portland cement (other than white cement), whether or not colored.
2523.30.00	Aluminous cement, whether or not colored.
2523.90.00	Slag cement, supersulfate cement and other hydraulic cements, nesoi, whether or not colored.
2524.10.00	Crocidolite.
2524.90.00	Asbestos other than crocidolite.
2525.10.00	Mica, crude or rifted into sheets or splittings.
2525.20.00	Mica, powder.
2525.30.00	Mica, waste.
2526.10.00	Steatite, natural n/crushed or powdered, whether or not roughly trimmed or cut into rect. blocks or slabs; talc n/crushed or powdered.
2526.20.00	Steatite, natural; talc; the foregoing crushed or powdered.
2528.00.00	Borates, natural and conc., but n/incl. borates from nat. brine; nat. boric acid w/not over 85% H3B03 by dry weight.
2529.10.00	Feldspar.
2529.21.00	Fluorspar, containing by weight 97 percent or less of calcium fluoride.
2529.22.00	Fluorspar, containing by weight more than 97 percent of calcium fluoride.
2529.30.00	Leucite; nepheline and nepheline syenite.
2530.10.00	Vermiculite, perlite and chlorites, unexpanded.
2530.20.10	Kieserite.
2530.20.20	Epsom salts (natural magnesoium sulfates).
2530.90.10	Natural cryolite; natural chiolite.
2530.90.20	Natural micaceous iron oxides.
2530.90.80	Other mineral substances, not elsewhere specified or included.
2601.11.00	Iron ores and concentrates (other than roasted iron pyrites), not agglomerated.

ANNEX—Continued

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HTSUS subheading	Product description
2601.12.00	Iron ores and concentrates (other than roasted iron pyrites), agglomerated.
2601.20.00	Roasted iron pyrites.
2602.00.00	Manganese ores and concentrates including ferruginous manganese ores & concentrates with manganese content over 20% calculated on dry weight.
2603.00.00	Copper ores and concentrates.
2604.00.00	Nickel ores and concentrates.
2605.00.00	Cobalt ores and concentrates.
2606.00.00	Aluminum ores and concentrates.
2607.00.00	Lead ores and concentrates.
2608.00.00	Zinc ores and concentrates.
2609.00.00	Tin ores and concentrates.
2610.00.00	Chromium ores and concentrates.
2611.00.30	Tungsten ores.
2611.00.60	Tungsten concentrates.
2612.10.00	Uranium ores and concentrates.
2612.20.00	Thorium ores and concentrates.
2613.10.00	Molybdenum ores and concentrates, roasted.
2613.90.00	Molybdenum ores and concentrates, not roasted.
2614.00.30	Synthetic rutile.
2614.00.60	Titanium ores and concentrates, other than synthetic rutile.
2615.10.00	Zirconium ores and concentrates.
2615.90.30	Synthetic tantalum-niobium concentrates.
2615.90.60	Niobium, tantalum or vanadium ores and concentrates, nesoi.
2616.10.00	Silver ores and concentrates.
2616.90.00	Precious metal (other than silver) ores and concentrates.
2617.10.00	Antimony ores and concentrates.
2617.90.00	Metal ores and concentrates, nesoi.
2618.00.00	Granulated slag (slag sand) from the manufacture of iron or steel.
2619.00.30	Ferrous scale.
2619.00.90	Slag, dross and other waste (except ferrous scale) from the manufacture of iron or steel.
2620.11.00	Hard zinc spelter.
2620.19.30	Zinc dross and skimmings (not from from the mfr. of iron or steel).
2620.19.60	Ash and residues (not from the mfr. of iron or steel), containing mainly zinc, other than hard zinc spelter/zinc dross & skimmings.
2620.21.00	Leaded gasoline sludges and leaded anti-knock compound sludges, containing mainly lead.
2620.29.00	Ash and residues (other than from the manufacture of iron or steel), containing mainly lead, nesoi.
2620.30.00	Ash and residues (not from the mfr. of iron or steel), containing mainly copper.
2620.40.00	Ash and residues (not from the mfr. of iron or steel), containing mainly aluminum.
2620.60.10	Ash/residues contain arsenic, mercury, thallium or their mixtures, kind used only for extraction of arsenic or manufacture of its compounds.
2620.60.90	Ash/residue contain arsenic, mercury, thallium/their mixtures, kind used only for extraction of those metals or manufacture of their compounds.
2620.91.00	Ash and residues (other than from the manufacture of iron or steel), containing antimony, beryllium, cadmium, chromium or their mixtures.
2620.99.10	Ash and residues (other than from the manufacture of iron or steel), containing mainly vanadium.
2620.99.20	Ash and residues (other than from the manufacture of iron or steel), containing mainly tungsten.
2620.99.30	Materials (ash and residues) not provided for elsewhere in heading 2620 containing by weight over 10 percent nickel.
2620.99.50	Slag (other than from the manufacture of iron or steel) contains over 40% titanium & if has over 2% Cu/Pb/Zn is not for recovery thereof.
2620.99.75	Residues (not from mfr. of iron or steel) cont. metals/metal compounds nesoi, and n/adv. in value or cond. & if >2% Cu/Pb/Zn n/for recovery.
2620.99.85	Other ash and residues (other than from the manufacture of iron or steel), containing metals or metal compounds, nesoi.
2621.90.00	Other slag and ash, including seaweed ash (kelp), not elsewhere specified or included.
2701.11.00	Coal, anthracite, whether or not pulverized, but not agglomerated.
2701.12.00	Coal, bituminous, whether or not pulverized, but not agglomerated.
2701.19.00	Coal, other than anthracite or bituminous, whether or not pulverized, but not agglomerated.
2701.20.00	Coal, briquettes, ovoids and similar solid fuels manufactured from coal.
2702.10.00	Lignite (excluding jet), whether or not pulverized, but not agglomerated.
2702.20.00	Lignite (excluding jet), agglomerated.
2703.00.00	Peat (including peat litter), whether or not agglomerated.
2704.00.00	Coke and semicoke of coal, lignite or peat, whether or not agglomerated; retort carbon.
2705.00.00	Coal gas, water gas, producer gas and similar gases, other than petroleum gases or other gaseous hydrocarbons.
2706.00.00	Tars (including reconstituted tars), distill. from coal, lignite or peat, and other mineral tars, whether dehydrated or partially distilled.

ANNEX—Continued

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HTSUS subheading	Product description
2707.10.00	Benzene, from distillation of hi-temp coal tar or in which wt. of aromatic components o/wt. of nonaromatic components.
2707.20.00	Toluene, from distillation of hi-temp coal tar or in which wt. of aromatic components o/wt. of nonaromatic components.
2707.30.00	Xylenes, from distillation of hi-temp coal tar or in which wt. of aromatic components o/wt. of nonaromatic components.
2707.40.00	Naphthalene, from distillation of hi-temp coal tar or in which wt. of aromatic components o/wt. of nonaromatic components.
2707.50.00	Aromatichydrocarbon mix. (from dist. of hi-temp coaltar or wt. of aromatic >nonaromatic), 65%+ by vol. (incl. losses) dist. at 250 C/ASTM D 86.
2707.91.00	Creosote oils, from dist. of hi-temp coal tar or wt. of aromatic exceeds nonaromatic.
2707.99.10	Light oil, from dist. of hi-temp coal tar or wt. of aromatic exceeds nonaromatic.
2707.99.20	Picolines, from dist. of hi-temp coal tar or wt. of aromatic exceeds nonaromatic.
2707.99.40	Carbazole, from dist. of hi-temp coal tar or wt. of aromatic exceeds nonaromatic, w/purity of 65% or more by wt.
2707.99.51	Phenols >50% by wt hydroxybenzene.
2707.99.55	Metacresol/orthocresol/paracresol/metaparacresol (from dist. of hi-temp coal tar or wt. of aromatic >nonaromatic), w/purity of 75%+ by wt.
2707.99.59	Phenols, nesoi.
2707.99.90	Other products of hi-temp coal tar distillation and like products in which aromatic constituents exceed non-aromatic constituents, nesoi.
2708.10.00	Pitch, obtained from coal tar or other mineral tars.
2708.20.00	Pitch coke, obtained from coal tar or other mineral tars.
2709.00.10	Petroleum oils and oils from bituminous minerals, crude, testing under 25 degrees A.P.I.
2709.00.20	Petroleum oils and oils from bituminous minerals, crude, testing 25 degrees A.P.I. or more.
2710.12.15	Light oil motor fuel from petroleum oils and bituminous minerals (o/than crude) or preps. 70%+ by wt. from petroleum oils.
2710.12.18	Light oil motor fuel blending stock from petroleum oils & bituminous minerals (o/than crude) or prep 70%+ by wt. from petroleum oils.
2710.12.25	Naphthas (exc. motor fuel/mtr fuel blend. stock) fr petroleum oils & bitumin minerals (o/than crude) or preps 70%+ by wt. fr petroleum oils.
2710.12.45	Light oil mixt. of hydrocarbons fr petro oils & bitum min (o/than crude) or prep 70%+ wt. fr petro oils, nesoi, n/o 50% any single hydrocarbon.
2710.12.90	Light oils and preparations from petroleum oils & oils from bituminous min. or preps 70%+ by wt. from petro. oils or bitum. min., nesoi.
2710.19.06	Distillate and residual fuel oil (including blends) derived from petroleum or oils from bituminous minerals, testing <25 degrees A.P.I.
2710.19.11	Distillate and residual fuel oil (including blends) derived from petroleum oils or oil of bituminous minerals, testing 25 degree A.P.I. or >.
2710.19.16	Kerosene-type jet fuel from petroleum oils and oils of bitumin minerals (o/than crude) or preps. 70%+ by wt. from petroleum oils.
2710.19.24	Kerosene motor fuel (not jet) from petro oils and bitumin minerals (o/than crude) or preps. 70%+ by wt. from petroleum oils.
2710.19.25	Kerosene motor fuel blending stock (not jet), from petro oils and bitumin. minerals (o/than crude) or preps. 70%+ by wt. from petro oils.
2710.19.26	Kerosene (ex. motor fuel/mtr fuel blend stock/xc jet), fr petro oils and bitumin minerals (o/than crude) or preps 70%+ by wt fr petro oils.
2710.19.45	Mixture of hydrocarbons from petro oils & bitum. min. or preps. 70%+ by wt. fr. petro. oils, nesoi, n/o 50% any single hydrocarbon.
2710.19.90	Petroleum oils & oils from bituminous minerals or preps nesoi 70%+ by wt. from petroleum oils or bitum. min., not waste, nesoi.
2710.20.05	Dist and resid fuel oil (including blends) derived from petro or oils fr bitum min, testing under 25 degrees A.P.I., contng biodiesel.
2710.20.10	Dist and resid fuel oil (including blends) derived from petro or oils fr bitum min testing 25 degree A.P.I. or >, contng biodiesel.
2710.20.15	Kerosene-type jet fuel/mtr ful/mtr ful blend stck fr pet oils & bitumin min (o/th crude), or preps. 70%+ by w fr pet oils, ctg biodiesel.
2710.20.25	Kerosene (ex jet fuel,mtr ful/mtr ful blend stck/jet), fr pet oils and bitumin. min (o/th crude) or preps 70%+ by wt fr pet oils, ctg biodie.
2711.11.00	Natural gas, liquefied.
2711.12.00	Propane, liquefied.
2711.13.00	Butanes, liquefied.
2711.14.00	Ethylene, propylene, butylene and butadiene, liquefied.
2711.19.00	Liquefied petroleum gases and other gaseous hydrocarbons, nesoi.
2711.21.00	Natural gas, in gaseous state.
2711.29.00	Petroleum gases and other gaseous hydrocarbons, except natural gas.
2712.10.00	Petroleum jelly.
2712.20.00	Paraffin wax (whether or not colored), obtained by synthesis or other process and less than 0.75% oil by wt.

ANNEX—Continued

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HTSUS subheading	Product description
2712.90.10	Montan wax (whether or not colored), obtained by synthesis or other process.
2712.90.20	Mineral waxes (*i.e.,* paraffin w/0.75%+ oil, microcrystall. wax, slack lignite & peat waxes, ozokerite), obtained by synthesis.
2713.11.00	Coke, petroleum, not calcined.
2713.12.00	Coke, petroleum coke, calcined.
2713.20.00	Petroleum bitumen.
2713.90.00	Residues (except petroleum coke or petroleum bitumen) of petroleum oils or of oils obtained from bituminous materials.
2714.10.00	Bituminous or oil shale and tar sands.
2714.90.00	Bitumen and asphalt, natural; asphaltites and asphaltic rocks.
2715.00.00	Bituminous mixtures based on natural asphalt, natural bitumen, petroleum bitumen, mineral tar or mineral tar pitch.
2716.00.00	Electrical energy.
2801.10.00	Chlorine.
2801.20.00	Iodine.
2801.30.10	Fluorine.
2801.30.20	Bromine.
2802.00.00	Sulfur, sublimed or precipitated; colloidal sulfur.
2803.00.00	Carbon (carbon blacks and other forms of carbon not elsewhere specified or included).
2804.10.00	Hydrogen.
2804.21.00	Argon.
2804.29.00	Rare gases, other than argon.
2804.30.00	Nitrogen.
2804.40.00	Oxygen.
2804.50.00	Boron; tellurium.
2804.61.00	Silicon containing by weight not less than 99.99 percent of silicon.
2804.69.10	Silicon, containing by weight less than 99.99 percent but not less than 99 percent of silicon.
2804.69.50	Silicon, containing by weight less than 99 percent of silicon.
2804.70.00	Phosphorus.
2804.80.00	Arsenic.
2804.90.00	Selenium.
2805.11.00	Sodium.
2805.12.00	Calcium.
2805.19.10	Strontium.
2805.19.20	Barium.
2805.19.90	Alkali metals, other than sodium.
2805.30.00	Rare-earth metals, scandium and yttrium, whether or not intermixed or interalloyed.
2805.40.00	Mercury.
2806.10.00	Hydrogen chloride (Hydrochloric acid).
2806.20.00	Chlorosulfuric acid.
2807.00.00	Sulfuric acid; oleum.
2808.00.00	Nitric acid; sulfonitric acids.
2809.10.00	Diphosphorus pentoxide.
2809.20.00	Phosphoric acid and polyphosphoric acids.
2810.00.00	Oxides of boron; boric acids.
2811.11.00	Hydrogen fluoride (Hydrofluoric acid).
2811.12.00	Hydrogen cyanide.
2811.19.10	Arsenic acid.
2811.19.30	Hydrobromic acid.
2811.19.61	Sulfamic acid and other inorganic acids nesoi.
2811.21.00	Carbon dioxide.
2811.22.10	Synthetic silica gel.
2811.22.50	Silicon dioxide, other than synthetic silica gel.
2811.29.10	Arsenic trioxide.
2811.29.20	Selenium dioxide.
2811.29.30	Sulfur dioxide.
2811.29.50	Other inorganic oxygen compounds of nonmetals, nesoi.
2812.11.00	Carbonyl dichloride (Phosgene).
2812.12.00	Phosphorus oxychloride.
2812.13.00	Phosphorus trichloride.
2812.14.00	Phosphorus pentachloride.
2812.15.00	Sulfur monochloride.
2812.16.00	Sulfur dichloride.
2812.17.00	Thionyl chloride.
2812.19.00	Other chlorides and chloride oxides.
2812.90.00	Halides and halide oxides of nonmetals, excluding chlorides and chloride oxides.
2813.10.00	Carbon disulfide.

ANNEX—Continued

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HTSUS subheading	Product description
2813.90.10	Arsenic sulfides.
2813.90.20	Phosphorus sulfides.
2813.90.50	Sulfides of nonmetals, excluding carbon disulfide and sulfides of arsenic or phosphorus.
2814.10.00	Anhydrous ammonia.
2814.20.00	Ammonia in aqueous solution.
2815.11.00	Sodium hydroxide (Caustic soda), solid.
2815.12.00	Sodium hydroxide (Caustic soda), in aqueous solution (Soda lye or liquid soda).
2815.20.00	Potassium hydroxide (Caustic potash).
2815.30.00	Peroxides of sodium or potassium.
2816.10.00	Hydroxide and peroxide of magnesoium.
2816.40.10	Oxides, hydroxides and peroxides of strontium.
2816.40.20	Oxides, hydroxides and peroxides of barium.
2817.00.00	Zinc oxide; zinc peroxide.
2818.10.10	Artificial corundum, crude.
2818.10.20	Artificial corundum, in grains, or ground, pulverized or refined.
2818.20.00	Aluminum oxide, other than artificial corundum.
2818.30.00	Aluminum hydroxide.
2819.10.00	Chromium trioxide.
2819.90.00	Chromium oxides and hydroxides, other than chromium trioxide.
2820.10.00	Manganese dioxide.
2820.90.00	Manganese oxides, other than manganese dioxide.
2821.10.00	Iron oxides and hydroxides.
2821.20.00	Earth colors containing 70 percent or more by weight of combined iron evaluated as Fe2O3.
2822.00.00	Cobalt oxides and hydroxides; commercial cobalt oxides.
2823.00.00	Titanium oxides.
2824.10.00	Lead monoxide (Litharge, massicot).
2824.90.10	Lead suboxide (Leady litharge).
2824.90.20	Red lead and orange lead.
2824.90.50	Lead oxides, nesoi.
2825.10.00	Hydrazine and hydroxylamine and their inorganic salts.
2825.20.00	Lithium oxide and hydroxide.
2825.30.00	Vanadium oxides and hydroxides.
2825.40.00	Nickel oxides and hydroxides.
2825.50.10	Cupric oxide.
2825.50.20	Cuprous oxide.
2825.50.30	Copper hydroxides.
2825.60.00	Germanium oxides and zirconium dioxide.
2825.70.00	Molybdenum oxides and hydroxides.
2825.80.00	Antimony oxides.
2825.90.10	Beryllium oxide and hydroxide.
2825.90.15	Niobium oxide.
2825.90.20	Tin oxides.
2825.90.30	Tungsten oxides.
2825.90.75	Cadmium oxide.
2825.90.90	Other inorganic bases; other metal oxides, hydroxides and peroxides, nesoi.
2826.12.00	Fluorides of aluminum.
2826.19.10	Ammonium fluoride.
2826.19.20	Sodium fluoride.
2826.19.90	Fluorides, other than of ammonium, sodium or aluminum.
2826.30.00	Sodium hexafluoroaluminate (Synthetic cryolite).
2826.90.10	Fluorosilicates of sodium or of potassium.
2826.90.90	Other complex fluorine salts, nesoi.
2827.10.00	Ammonium chloride.
2827.20.00	Calcium chloride.
2827.31.00	Magnesoium chloride.
2827.32.00	Aluminum chloride.
2827.35.00	Nickel chloride.
2827.39.10	Vanadium chlorides.
2827.39.25	Tin chlorides.
2827.39.30	Titanium chlorides.
2827.39.40	Tungsten hexachloride.
2827.39.45	Barium chloride.
2827.39.55	Iron chlorides.
2827.39.60	Cobalt chlorides.
2827.39.65	Zinc chloride.
2827.39.90	Chlorides, nesoi.
2827.41.00	Chloride oxides and chloride hydroxides of copper.

ANNEX—Continued

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HTSUS subheading	Product description
2827.49.10	Chloride oxides and chloride hydroxides of vanadium.
2827.49.50	Chloride oxides and chloride hydroxides other than of copper or of vanadium.
2827.51.00	Bromides of sodium or potassium.
2827.59.25	Bromides or bromide oxides of ammonium, calcium, or zinc.
2827.59.51	Other bromides and bromide oxides, other than ammonium, calcium or zinc.
2827.60.10	Iodide and iodide oxide of calcium or copper.
2827.60.20	Iodide and iodide oxide of potassium.
2827.60.51	Iodides and iodide oxides, other than of calcium, copper or potassium.
2828.10.00	Commercial calcium hypochlorite and other calcium hypochlorites.
2828.90.00	Hypochlorites, except of calcium; hypobromites; chlorites.
2829.11.00	Sodium chlorate.
2829.19.01	Other chlorates and perchlorates, other than sodium.
2829.90.05	Potassium bromate.
2829.90.25	Sodium bromate.
2829.90.40	Perchlorates, perbromates, iodates, periodates; of potassium.
2829.90.61	Other perbromates, iodates and periodates other than potassium.
2830.10.00	Sodium sulfides.
2830.90.10	Zinc sulfide, luminescent grade, purity ≤=99.99% By wt.
2830.90.15	Zinc sulfide excluding luminescent grade.
2830.90.20	Cadmium sulfide.
2830.90.90	Polysulfides; sulfides, other than those of zinc and cadmium.
2831.10.10	Sodium formaldehyde sulfoxylate.
2831.10.50	Dithionites and sulfoxylates of sodium.
2831.90.00	Dithionites and sulfoxylates, other than those of sodium.
2832.10.00	Sodium sulfites.
2832.20.00	Sulfites, except sodium sulfites.
2832.30.10	Sodium thiosulfate.
2832.30.50	Thiosulfates, except sodium thiosulfate.
2833.11.10	Disodium sulfate, crude (Salt cake).
2833.11.50	Disodium sulfate, other than crude.
2833.19.00	Sodium sulfates, other than disodium sulfate.
2833.21.00	Magnesoium sulfate.
2833.22.00	Aluminum sulfate.
2833.24.00	Nickel sulfate.
2833.25.00	Copper sulfate.
2833.27.00	Barium sulfate.
2833.29.10	Cobalt sulfate.
2833.29.20	Iron sulfate.
2833.29.30	Vanadium sulfate.
2833.29.40	Chromium sulfate.
2833.29.45	Zinc sulfate.
2833.29.51	Other sulfates nesoi.
2833.30.00	Alums.
2833.40.20	Sodium peroxosulfates (sodium persulfates).
2833.40.60	Peroxosulfates (persulfates), nesoi.
2834.10.10	Sodium nitrite.
2834.10.50	Nitrites, other than of sodium.
2834.21.00	Potassium nitrate.
2834.29.05	Bismuth nitrate.
2834.29.10	Calcium nitrate.
2834.29.20	Strontium nitrate.
2834.29.51	Nitrates, nesoi.
2835.10.00	Phosphinates (hypophosphites) and phosphonates (phosphites).
2835.22.00	Mono- or disodium phosphates.
2835.24.00	Potassium phosphate.
2835.25.00	Calcium hydrogenorthophosphate ("Dicalcium phosphate").
2835.26.00	Other phosphates of calcium, nesoi.
2835.29.10	Aluminum phosphate.
2835.29.20	Triammonium phosphate.
2835.29.30	Trisodium phosphate.
2835.29.51	Other phosphates nesoi.
2835.31.00	Sodium triphosphate (Sodium tripolyphosphate).
2835.39.10	Potassium polyphosphate.
2835.39.50	Polyphosphates, other than sodium triphosphate and potassium polyphosphate.
2836.20.00	Disodium carbonate.
2836.30.00	Sodium hydrogencarbonate (Sodium bicarbonate).
2836.40.10	Dipotassium carbonate.

ANNEX—Continued

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HTSUS subheading	Product description
2836.40.20	Potassium hydrogencarbonate (Potassium bicarbonate).
2836.50.00	Calcium carbonate.
2836.60.00	Barium carbonate.
2836.91.00	Lithium carbonates.
2836.92.00	Strontium carbonate.
2836.99.10	Cobalt carbonates.
2836.99.20	Bismuth carbonate.
2836.99.30	Commercial ammonium carbonate, containing ammonium carbamate, and other ammonium carbonates.
2836.99.40	Lead carbonate.
2836.99.50	Carbonates nesoi, and peroxocarbonates (percarbonates).
2837.11.00	Sodium cyanide.
2837.19.01	Cyanides and cyanide oxides, except those of sodium.
2837.20.10	Potassium ferricyanide.
2837.20.51	Complex cyanides, excluding potassium ferricyanide.
2839.11.00	Sodium metasilicates.
2839.19.00	Sodium silicates except sodium metasilicates.
2839.90.10	Potassium silicate.
2839.90.50	Other alkali metal silicates nesoi.
2840.11.00	Anhydrous disodium tetraborate (refined borax).
2840.19.00	Disodium tetraborate (refined borax) except anhydrous.
2840.20.00	Borates, other than disodium tetraborate (refined borax).
2840.30.00	Peroxoborates (perborates).
2841.30.00	Sodium dichromate.
2841.50.10	Potassium dichromate.
2841.50.91	Chromates except of zinc or lead and dichromates except of sodium or potassium; peroxochromates.
2841.61.00	Potassium permanganate.
2841.69.00	Manganites, manganates and permanganates (except potassium permanganate).
2841.70.10	Ammonium molybdate.
2841.70.50	Molybdates, other than of ammonium.
2841.80.00	Tungstates (wolframates).
2841.90.10	Vanadates.
2841.90.20	Ammonium perrhenate.
2841.90.30	Potassium stannate.
2841.90.40	Aluminates.
2841.90.45	Chromates of zinc or of lead.
2841.90.50	Salts of oxometallic or peroxometallic acids nesoi.
2842.10.00	Double or complex silicates.
2842.90.10	Fulminates, cyanates and thiocyanates.
2842.90.90	Salts of inorganic acids or peroxoacids nesoi, excluding azides.
2843.10.00	Colloidal precious metals.
2843.21.00	Silver nitrate.
2843.29.01	Silver compounds, other than silver nitrate.
2843.30.00	Gold compounds.
2843.90.00	Inorganic or organic compounds of precious metals, excluding those of silver and gold; amalgams of precious metals.
2844.10.10	Natural uranium metal.
2844.10.20	Natural uranium compounds.
2844.10.50	Alloys, dispersions (including cermets), ceramic products and mixtures containing natural uranium or natural uranium compounds.
2845.10.00	Heavy water (Deuterium oxide).
2846.10.00	Cerium compounds.
2846.90.20	Mixtures of rare-earth oxides or of rare-earth chlorides.
2846.90.40	Yttrium materials and compounds containing by wt. >19% But <85% yttrium oxide equivalent.
2846.90.80	Compounds, inorganic or organic, of rare-earth metals, of yttrium or of scandium, or of mixtures of these metals, nesoi.
2847.00.00	Hydrogen peroxide, whether or not solidified with urea.
2849.10.00	Calcium carbide.
2849.20.10	Silicon carbide, crude.
2849.20.20	Silicon carbide, in grains, or ground, pulverized or refined.
2849.90.10	Boron carbide.
2849.90.20	Chromium carbide.
2849.90.30	Tungsten carbide.
2849.90.50	Carbides, nesoi.
2850.00.05	Hydride, nitride, azide, silicide and boride of calcium.
2850.00.07	Hydride, nitride, azide, silicide and boride of titanium.
2850.00.10	Hydride, nitride, azide, silicide and boride of tungsten.
2850.00.20	Hydride, nitride, azide, silicide and boride of vanadium.

ANNEX—Continued

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HTSUS subheading	Product description
2850.00.50	Hydrides, nitrides, azides, silicides and borides other than of calcium, titanium, tungsten or vanadium.
2852.10.10	Mercuric oxide, mercuric cyanide, mercuric oxycyanide and mercuric potassium cyanide.
2852.10.90	Other chemically defined compounds of mercury excluding amalgams.
2852.90.05	Albuminates, tannates, and phosphides of mercury.
2852.90.90	Inorganic or organic compounds of mercury, not chemically defined, not albuminates, tannates, or phosphides, excluding amalgams.
2853.10.00	Cyanogen chloride (Chlorocyan).
2853.90.10	Phosphor copper containing more than 15% by weight of phosphorus, excluding ferrosphosphorus.
2853.90.50	Phosphides, whether or not chemically defined, excluding ferrophosphorus, of other metals or of nonmetals.
2853.90.90	Other phosphides, excl ferrophosphorous, nesoi.
2901.10.10	Ethane and butane.
2901.10.30	n-Pentane and isopentane.
2901.10.40	Saturated acyclic hydrocarbon (not ethane, butane, n-pentane or isopentane), derived in whole or part from petroleum, shale oil or natural gas.
2901.10.50	Saturated acyclic hydrocarbon (not ethane, butane, n-pentane or isopentane), not derived in whole or part petroleum, shale oil or natural gas.
2901.21.00	Ethylene.
2901.22.00	Propene (Propylene).
2901.23.00	Butene (Butylene) and isomers thereof.
2901.24.10	Buta-l,3-diene.
2901.24.20	Isoprene, having a purity of 95 percent or more by weight.
2901.24.50	Isoprene less than 95 percent pure.
2901.29.10	Unsaturated acyclic hydrocarbons, nesoi, derived in whole or in part from petroleum, shale oil or natural gas.
2901.29.50	Unsaturated acyclic hydrocarbons, nesoi, not derived in whole or in part from petroleum, shale oil or natural gas.
2902.11.00	Cyclohexane.
2902.19.00	Cyclanic hydrocarbons (except cyclohexane), cyclenic hydrocarbons and cycloterpenes.
2902.20.00	Benzene.
2902.30.00	Toluene.
2902.41.00	o-Xylene.
2902.42.00	m-Xylene.
2902.43.00	p-Xylene.
2902.44.00	Mixed xylene isomers.
2902.50.00	Styrene.
2902.60.00	Ethylbenzene.
2902.70.00	Cumene.
2902.90.10	Pseudocumene.
2902.90.20	Acenaphthene, chrysene, cymene, dimethylnaphthalenes, fluoranthene, fluorene, indene, mesitylene, and other specified cyclic hydrocarbons.
2902.90.30	Alkylbenzenes and polyalkylbenzenes.
2902.90.40	Anthracene and 1,4-di-(2-methylstyryl)benzene.
2902.90.60	Biphenyl (diphenyl), in flakes.
2902.90.90	Cyclic hydrocarbons, nesoi.
2903.11.00	Chloromethane (Methyl chloride) & chloroethane (Ethyl chloride).
2903.12.00	Dichloromethane (Methylene chloride).
2903.13.00	Chloroform (Trichloromethane).
2903.14.00	Carbon tetrachloride.
2903.15.00	1,2-Dichloroethane (Ethylene dichloride).
2903.19.05	1,2-Dichloropropane (Propylene dichloride) and dichlorobutanes.
2903.19.10	Hexachloroethane and tetrachloroethane.
2903.19.30	sec-Butyl chloride.
2903.19.60	Saturated chlorinated derivatives of acyclic hydrocarbons, nesoi.
2903.21.00	Vinyl chloride (Chloroethylene).
2903.22.00	Trichloroethylene.
2903.23.00	Tetrachloroethylene (Perchloroethylene).
2903.29.00	Unsaturated chlorinated derivatives of acyclic hydrocarbons, nesoi.
2903.31.00	Ethylene dibromide.
2903.39.15	Acetylene tetrabromide; alkyl bromides; methylene dibromide; and vinyl bromide.
2903.39.20	Fluorinated, brominated or iodinated derivatives of acyclic hydrocarbons, nesoi.
2903.71.00	Chlorodifluoromethane.
2903.72.00	Dichlorotrifluoroethanes.
2903.73.00	Dichlorofluoroethanes.
2903.74.00	Chlorodifluoroethanes.
2903.75.00	Dichloropentafluoropropanes.
2903.76.00	Bromochlorodifluoromethane, bromotrifluoromethane and dibromotetrafluoroethanes.
2903.77.00	Other acyclic hydrocarbon derivatives, perhalogenated only with flourine and chlorine.
2903.78.00	Other perhalogenated acyclic hydrocarbon derivatives, nesoi.
2903.79.10	Bromochloromethane.

ANNEX—Continued

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HTSUS subheading	Product description
2903.79.90	Other halogenated derivatives of acyclic hydrocarbons containing two or more different halogens, nesoi.
2903.81.00	1,2,3,4,5,6-Hexachlorocyclohexane (HCH (ISO)), including Lindane (ISO, INN).
2903.82.00	Aldrin (ISO), chlordane (ISO) and heptachlor (ISO).
2903.83.00	Halogenated derivatives of cyclanic cyclenic or cycloterpenic hydrocarbons: Mirex (ISO).
2903.89.05	Dibromoethyldibromocyclohexane.
2903.89.11	Halogenated pesticides derived in whole or in part from benzene or other aromatic hydrocarbon, nesoi.
2903.89.15	Halogenated products derived in whole or in part from benzene or other aromatic hydrocarbon, described in additional U.S. note 3 to sec. VI.
2903.89.20	Halogenated derivatives derived in whole or in part from benzene or other aromatic hydrocarbon, nesoi.
2903.89.31	Chlorinated, but not otherwise halogenated derivatives of cyclanic, cyclenic or cycloterpenic hydrocarbons.
2903.89.40	1,3,5,7,9,11-Hexabromocyclododecane.
2903.89.60	Tetrabromocyclooctane.
2903.89.70	Other halogenated derivatives of cyclanic etc hydrocarbons not deriv. from benzene or other aromatic hydrocarbons.
2903.91.10	Chlorobenzene.
2903.91.20	o-Dichlorobenzene.
2903.91.30	p-Dichlorobenzene.
2903.92.00	Hexachlorobenzene (ISO) and DDT (clofenatone (INN), (1,1,1-Trichloro-2,2-bis(p-chlorophenyl)ethane)).
2903.93.00	Halogenated derivatives of aromatic hydrocarbons, pentachlorobenzene.
2903.94.00	Halogenated derivatives of aromatic hydrocarbons, hexabromobiphenyls.
2903.99.05	3-Bromo-alpha,alpha,alpha-trifluorotoluene; and other specified halogenated derivatives of aromatic hydrocarbons.
2903.99.08	p-Chlorobenzotrifluoride; and 3,4-Dichlorobenzotrifluoride.
2903.99.10	m-Dichlorobenzene; 1,1-dichloro-2,2-bis(p-ethylphenyl)ethane; and trichlorobenzenes.
2903.99.15	Triphenylmethyl chloride.
2903.99.20	Benzyl chloride (alpha-Chlorotoluene); benzotrichloride (alpha,alpha,alpha-trichlorotoluene).
2903.99.23	Pentabromoethylbenzene.
2903.99.27	Tribromocumene.
2903.99.30	Pesticides derived from halogenated derivatives of aromatic hydrocarbons.
2903.99.80	Other halogenated derivatives of aromatic hydrocarbons, nesoi.
2904.10.04	2-Anthracenesulfonic acid.
2904.10.08	Benzenesulfonyl chloride.
2904.10.10	m-Benzenedisulfonic acid, sodium salt; 1,5-naphthalenedisulfonic acid; and p-toluenesulfonyl chloride.
2904.10.15	Mixtures of 1,3,6-naphthalenetrisulfonic acid and 1,3,7-naphthalenetrisulfonic acid.
2904.10.32	Aromatic derivatives of hydrocarbons containing only sulfo groups, their salts and ethyl esters, described in add. U.S. note 3 to sec. VI.
2904.10.37	Aromatic derivatives of hydrocarbons containing only sulfo groups, their salts and ethyl esters, nesoi.
2904.10.50	Nonaromatic derivatives of hydrocarbons containing only sulfo groups, their salts and ethyl esters, nesoi.
2904.20.10	p-Nitrotoluene.
2904.20.15	p-Nitro-o-xylene.
2904.20.20	Trinitrotoluene.
2904.20.30	5-tert-Butyl-2,4,6-trinitro-m-xylene (Musk xylol) and other artificial musks.
2904.20.35	Nitrated benzene, nitrated toluene (except p-nitrotoluene) or nitrated naphthalene.
2904.20.40	Aromatic derivatives of hydrocarbons containing only nitro or only nitroso groups, described in additional U.S. note 3 to section VI.
2904.20.45	Aromatic derivatives of hydrocarbons containing only nitro or only nitroso groups, nesoi.
2904.20.50	Nonaromatic derivatives of hydrocarbons containing only nitro or only nitroso groups, nesoi.
2904.31.00	Perfluorooctane sulfonic acid.
2904.32.00	Ammonium perfluorooctane sulfonate.
2904.33.00	Lithium perfluorooctane sulfonate.
2904.34.00	Potassium perfluorooctane sulfonate.
2904.35.00	Other salts of perfluorooctane sulfonic acid.
2904.36.00	Perfluorooctane sulfonyl fluoride.
2904.91.00	Trichloronitromethane (chloropicrin).
2904.99.04	Monochloromononitrobenzenes; o-nitrochlorobenzene; p-nitrochlorobenzene.
2904.99.08	Monochloromononitrobenzenes nesoi.
2904.99.15	4-Chloro-3-nitro-a,a,a-trifluorotoluene; 2-Chloro-5-nitro-a,a,a-trifluorotoluene; and 4-Chloro-3,5-dinitro-a,a,a-trifluorotoluene.
2904.99.20	Nitrotoluenesulfonic acids.
2904.99.30	1-Bromo-2-nitrobenzene; 1,2-Dichloro-4-nitrobenzene and o-Fluoronitrobenzene.
2904.99.35	4,4′-Dinitrostilbene-2,2′-disulfonic acid.
2904.99.40	Sulfonated, nitrated or nitrosated derivatives of aromatic products described in additional U.S. note 3 to section 6.
2904.99.47	Other sulfonated, nitrated or nitrosated derivatives of aromatic hydrocarbons excluding aromatic products described in add. U.S. note 3 to section 6.
2904.99.50	Nonaromatic sulfonated, nitrated or nitrosated derivatives of hydrocarbons, nesoi.
2905.11.10	Methanol (Methyl alcohol) imported only for use in producing synthetic natural gas (SNG) or for direct use as a fuel.

ANNEX—Continued

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HTSUS subheading	Product description
2905.11.20	Methanol (Methyl alcohol), other than imported only for use in producing synthetic natural gas (SNG) or for direct use as fuel.
2905.12.00	Propan-1-ol (Propyl alcohol) and Propan-2-ol (isopropyl alcohol).
2905.13.00	Butan-1-ol (n-Butyl alcohol).
2905.14.10	tert-Butyl alcohol, having a purity of less than 99 percent by weight.
2905.14.50	Butanols other than butan-1-ol and tert-butyl alcohol having a purity of less than 99 percent by weight.
2905.16.00	Octanol (Octyl acohol) and isomers thereof.
2905.17.00	Dodecan-1-ol (Lauryl alcohol); hexadecan-1-ol (Cetyl alcohol); octadecan-1-ol (Stearyl alcohol).
2905.19.10	Pentanol (Amyl alcohol) and isomers thereof.
2905.19.90	Saturated monohydric alcohols, nesoi.
2905.22.10	Geraniol.
2905.22.20	Isophytol.
2905.22.50	Acyclic terpene alcohols, other than geraniol and isophytol.
2905.29.10	Allyl alcohol.
2905.29.90	Unsaturated monohydric alcohols, other than allyl alcohol or acyclic terpene alcohols.
2905.31.00	Ethylene glycol (Ethanediol).
2905.32.00	Propylene glycol (Propane-1,2-diol).
2905.39.10	Butylene glycol.
2905.39.20	Neopentyl glycol.
2905.39.60	Hexylene glycol.
2905.39.90	Dihydric alcohols (diols), nesoi.
2905.41.00	2-Ethyl-2-(hydroxymethyl)propane-1,3-diol (Trimethylolpropane).
2905.42.00	Pentaerythritol.
2905.49.10	Triols and tetrols.
2905.49.20	Esters of glycerol formed with the acids of heading 2904.
2905.49.30	Xylitol.
2905.49.40	Polyhydric alcohols derived from sugars, nesoi.
2905.49.50	Polyhydric alcohols, nesoi.
2905.59.10	Halogenated, sulfonated, nitrated or nitrosated derivatives of monohydric alcohols.
2905.59.30	Dibromoneopentylglycol.
2905.59.90	Halogenated, sulfonated, nitrated or nitrosated derivatives of acyclic alcohols, nesoi.
2906.11.00	Menthol.
2906.12.00	Cyclohexanol, methylcyclohexanols and dimethylcyclohexanols.
2906.13.10	Inositols.
2906.13.50	Sterols.
2906.19.10	4,4′-Isopropylidenedicyclohexanol; and mixt. w/not less 90% stereoisomers of 2-isopropyl-5-methylcyclohexanol but n/o 30% any 1 stereoisomer.
2906.19.30	Terpineols.
2906.19.50	Other cyclanic, cyclenic or cycloterpenic alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives.
2906.21.00	Benzyl alcohol.
2906.29.10	Phenethyl alcohol.
2906.29.20	Odoriferous or flavoring compounds of aromatic alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives, nesoi.
2906.29.30	1,1-Bis(4-chlorophenyl)-2,2,2-trichloroethanol (Dicofol); and p-nitrobenzyl alcohol.
2906.29.60	Other aromatic alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives.
2907.11.00	Phenol (Hydroxybenzene) and its salts.
2907.12.00	Cresols and their salts.
2907.13.00	Octylphenol, nonylphenol and their isomers; salts thereof.
2907.15.10	alpha-Naphthol.
2907.15.30	2-Naphthol.
2907.15.60	Naphthols and their salts, other than alpha-Naphthol and 2-Naphthol.
2907.19.10	Alkylcresols.
2907.19.20	Alkylphenols.
2907.19.40	Thymol.
2907.19.61	2-t-Butyl ethyl phenol; and 6-t-butyl-2,4-xylenol and ylenols and their salts.
2907.19.80	Other monophenols.
2907.21.00	Resorcinol and its salts.
2907.22.10	Hydroquinone (Quinol) and its salts, photographic grade.
2907.22.50	Hydroquinone (Quinol) and its salts, other than photographic grade.
2907.23.00	4,4′-Isopropylidenediphenol (Bisphenol A, Diphenylolpropane) and its salts.
2907.29.05	Phenol-alcohols.
2907.29.10	Pyrogallic acid.
2907.29.15	4,4′-Biphenol.
2907.29.25	tert-Butylhydroquinone.
2907.29.90	Other polyphenols, nesoi.
2908.11.00	Pentachlorophenol (ISO).

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HTSUS subheading	Product description
2908.19.05	2,2-Bis(4-hydroxyphenyl)-1,1,1,3,3,3-hexafluoropropane.
2908.19.10	6-Chloro-m-cresol [OH=1]; m-chlorophenol; and chlorothymol.
2908.19.15	3-Hydroxy-alpha,alpha,alpha-trifluorotoluene.
2908.19.20	Pentachlorophenol and its salts; and 2,4,5-trichlorophenol and its salts.
2908.19.25	Tetrabromobisphenol A.
2908.19.35	Derivatives of phenols or phenol-alcohols containing only halogen substituents and their salts described in add. U.S. note 3 to sec. VI.
2908.19.60	Other halogenated, sulfonated, nitrated or nitrosated derivatives of phenol or phenol-alcohols.
2908.91.00	Dinoseb (ISO) and its salts.
2908.92.00	4,6-Dinitro-o-cresol (DNOC (ISO)) and its salts.
2908.99.03	Specified derivatives of phenols or phenol-alcohols containing only sulfo groups, their salts and esters.
2908.99.06	4-Hydroxy-1-naphthalenesulfonic acid.
2908.99.09	1,8-Dihydroxynaphthalene-3,6-disulfonic acid and its sodium salt.
2908.99.12	Derivatives nesoi, of phenols or phenol-alcohols cont. only sulfo groups, their salts and esters, described in add. U.S. note 3 to section VI.
2908.99.15	Derivatives of phenol or phenol-alcohols containing only sulfo groups, their salts and esters, nesoi.
2908.99.20	p-Nitrophenol.
2908.99.25	Nitrophenols, except p-nitrophenol.
2908.99.33	Dinitro-o-cresols (other than 4,6-dinitro-o-cresol) and 4-nitro-m-cresol.
2908.99.40	Dinitrobutylphenol and its salts.
2908.99.80	Halogenated, sulfonated, nitrated or nitrosated derivatives of phenols or phenol-alcohols described in additional U.S. note 3 to section VI.
2908.99.90	Halogenated, sulfonated, nitrated or nitrosated derivatives of phenols or phenol-alcohols, nesoi.
2909.11.00	Diethyl ether.
2909.19.14	Methyl tertiay-butyl ether (MTBE).
2909.19.18	Ethers of acyc monohydric alcohols & deriv., nesoi.
2909.19.30	Triethylene glycol dichloride.
2909.19.60	Ethers of polyhydric alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives, nesoi.
2909.20.00	Cyclanic, cyclenic or cycloterpenic ethers and their halogenated, sulfonated, nitrated or nitrosated derivatives.
2909.30.05	5-Chloro-2-nitroanisole; 6-chloro-3-nitro-p-dimethoxybenzene; and dimethyl diphenyl ether.
2909.30.07	Decabromodiphenyl oxide; and octabromodiphenyl oxide.
2909.30.09	Bis-(tribromophenoxy)ethane; pentabromodiphenyl oxide; and tetradecabromodiphenoxy benzene.
2909.30.10	6-tert-Butyl-3-methyl-2,4-dinitroanisole (Musk ambrette) and other artificial musks.
2909.30.20	Odoriferous or flavoring compounds of aromatic ethers and their halogenated, sulfonated, nitrated or nitrosated derivatives, nesoi.
2909.30.30	Pesticides, of aromatic ethers and their halogenated, sulfonated, nitrated or nitrosated derivatives.
2909.30.40	Aromatic ethers and their halogenated, sulfonated, nitrated or nitrosated derivatives, nesoi, described in add. U.S. note 3 to section VI.
2909.30.60	Other aromatic ethers and their halogenated, sulfonated, nitrated, or nitrosated derivatives, nesoi.
2909.41.00	2,2′-Oxydiethanol (Diethylene glycol, Digol).
2909.43.00	Monobutyl ethers of ethylene glycol or of diethylene glycol.
2909.44.01	Monoalkyl ethers of ethylene glycol or of diethylene glycol.
2909.49.05	Guaifenesoin.
2909.49.10	Other aromatic ether-alcohols, their halogenated, sulfonated, nitrated or nitrosated derivatives described in add. U.S. note 3 to section VI.
2909.49.15	Aromatic ether-alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives, nesoi.
2909.49.20	Nonaromatic glycerol ethers.
2909.49.30	Di-pentaerythritol having a purity of 94% or more by weight.
2909.49.60	Other non-aromatic ether-alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives.
2909.50.10	4-Ethylguaiacol.
2909.50.20	Guaiacol and its derivatives.
2909.50.40	Odoriferous or flavoring compounds of ether-phenols, ether-alcohol-phenols & their halogenated, sulfonated, nitrated, nitrosated derivatives.
2909.50.45	Ether-phenols, ether-alcohol-phenols & their halogenated, sulfonated, nitrated, nitrosated derivatives nesoi, in add. U.S. note 3 to sec. VI.
2909.50.50	Ether-phenols, ether-alcohol-phenols and their halogenated, sulfonated, nitrated or nitrosated derivatives, nesoi.
2909.60.10	Aromatic alcohol, ether and ketone peroxides and their halogenated, sulfonated, nitrated, nitrosated derivatives, in add. U.S. note 3 sec. VI.
2909.60.20	Aromatic alcohol peroxides, ether peroxides, ketone peroxides and their halogenated, sulfonated, nitrated or nitrosated derivatives, nesoi.
2909.60.50	Nonaromatic alcohol, ether and ketone peroxides and their halogenated, sulfonated, nitrated or nitrosated derivatives.
2910.10.00	Oxirane (Ethylene oxide).
2910.20.00	Methyloxirane (Propylene oxide).
2910.30.00	1-Chloro-2,3-epoxypropane (Epichlorohydrin).
2910.40.00	Dieldrin.
2910.50.00	Endrin.

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HTSUS subheading	Product description
2910.90.10	Butylene oxide.
2910.90.20	Aromatic epoxides, epoxyalcohols, epoxyphenols and epoxyethers, with a three-membered ring, and their derivatives, nesoi.
2910.90.91	Other nonaromatic epoxides, epoxyalcohols and epoxyethers, with a three-membered ring and their halogenated, sulfonated, nitrated or nitrosated deriv.
2911.00.10	1,1-Bis-(1-methylethoxy)cyclohexane.
2911.00.50	Acetals and hemiacetals, whether or not with other oxygen function, and their halogenated, sulfonated, nitrated or nitrosated derivatives.
2912.11.00	Methanal (Formaldehyde).
2912.12.00	Ethanal (Acetaldehyde).
2912.19.10	Citral.
2912.19.20	Odoriferous or flavoring compounds of acyclic aldehydes without other oxygen function, nesoi.
2912.19.25	Butanal (Butyraldehyde, normal isomer).
2912.19.30	Glyoxal.
2912.19.40	Isobutanal.
2912.19.50	Acyclic aldehydes without other oxygen function, nesoi.
2912.21.00	Benzaldehyde.
2912.29.10	Phenylacetaldehyde.
2912.29.30	3,4-Dimethylbenzaldehyde; paraldehyde, USP grade; and p-tolualdehyde.
2912.29.60	Other cyclic aldehydes without other oxygen function.
2912.41.00	Vanillin (4-Hydroxy-3-methoxybenzaldehyde).
2912.42.00	Ethylvanillin (3-Ethoxy-4-hydroxy-benzaldehyde).
2912.49.10	p-Anisaldehyde.
2912.49.15	P-Hydroxybenzaldehyde.
2912.49.26	Other aromatic aldehyde-alcohols, aldehyde-ethers, aldehyde-phenols and aldehydes with other oxygen function.
2912.49.55	Hydroxycitronellal.
2912.49.60	Nonaromatic aldehyde-alcohols, other than hydroxycitronellal.
2912.49.90	Nonaromatic aldehyde-ethers, aldehyde-phenols and aldehydes with other oxygen function, nesoi.
2912.50.10	Metaldehyde from cyclic polymers of aldehydes.
2912.50.50	Cyclic polymers of aldehydes, other than Metaldehyde.
2912.60.00	Paraformaldehyde.
2913.00.20	4-Fluoro-3-phenoxybenzaldehyde.
2913.00.40	Aromatic halogenated, sulfonated, nitrated or nitrosated derivatives of product of heading 2912.
2913.00.50	Nonaromatic halogenated, sulfonated, nitrated or nitrosated derivatives of products of heading 2912.
2914.11.10	Acetone, derived in whole or in part from cumene.
2914.11.50	Acetone, not derived in whole or in part from cumene.
2914.12.00	Butanone (Methyl ethyl ketone).
2914.13.00	4-Methylpentan-2-one (Methyl isobutyl ketone).
2914.19.00	Acyclic ketones without other oxygen function, nesoi.
2914.22.10	Cyclohexanone.
2914.22.20	Methylcyclohexanone.
2914.23.00	Ionones and methylionones.
2914.29.10	Isophorone.
2914.29.30	Natural camphor.
2914.29.31	Synthetic camphor.
2914.29.50	Cyclanic, cyclenic or cycloterpenic ketones without other oxygen function, nesoi.
2914.31.00	Phenylacetone (Phenylpropan-2-one).
2914.39.10	7-Acetyl-1,1,3,4,4,6-hexamethyltetrahydronaphthalene; 1-(2-Naphthalenyl)ethanone; and 6-Acetyl-1,1,2,3,3,5-hexamethylindan.
2914.39.90	Aromatic ketones without other oxygen function, nesoi.
2914.40.10	4-Hydroxy-4-methylpentan-2-one (Diacetone alcohol).
2914.40.20	1,2,3-Indantrione monohydrate (Ninhydrin).
2914.40.40	Aromatic ketone-alcohols and ketone-aldehydes, nesoi.
2914.40.60	1,3-Dihydroxyacetone.
2914.40.90	Nonaromatic ketone-alcohols and ketone-aldehydes, nesoi.
2914.50.10	5-Benzoyl-4-hydroxy-2-methoxy-benzenesulfonic acid.
2914.50.30	Aromatic ketone-phenols and ketones with other oxygen function.
2914.50.50	Nonaromatic ketone-phenols and ketones with other oxygen function.
2914.61.00	Anthraquinone.
2914.69.10	Photographic chemicals of quinones.
2914.69.60	1,4-Dihydroxyanthraquinone; and 2-ethylanthraquinone.
2914.69.90	Quinones, nesoi.
2914.71.00	Halogenated, sulfonated, nitrated or nitrosated derivatives: chlordecone (ISO).
2914.79.10	2,3-dichloro-1,4-naphthoquinone and other artificial musks.
2914.79.30	Anthraquinone disulfonic acid, sodium salt; and 4-(3,4-Dichlorophenyl)-1-tetralone.
2914.79.40	Other halogenated, sulfonated, nitrated, etc derivatives of aromatic ketones and quinones whether or not with other oxygen function.

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HTSUS subheading	Product description
2914.79.60	1-Chloro-5-hexanone.
2914.79.90	Other halogenated, sulfonated, nitrated or nitrosated derivatives of nonaromatic ketones and quinones whether or not with other ogygen function.
2915.11.00	Formic acid.
2915.12.00	Salts of formic acid.
2915.13.10	Aromatic esters of formic acid.
2915.13.50	Nonaromatic esters of formic acid.
2915.21.00	Acetic acid.
2915.24.00	Acetic anhydride.
2915.29.10	Cupric acetate monohydrate.
2915.29.20	Sodium acetate.
2915.29.30	Cobalt acetates.
2915.29.50	Other salts of acetic acid.
2915.31.00	Ethyl acetate.
2915.32.00	Vinyl acetate.
2915.33.00	n-Butyl acetate.
2915.36.00	Dinoseb (ISO) acetate.
2915.39.10	Benzyl acetate.
2915.39.20	Odoriferous or flavoring compounds of aromatic esters of acetic acid, other than benzyl acetate.
2915.39.31	Aromatic esters of acetic acid described in additional U.S. note 3 to section VI.
2915.39.35	Aromatic esters of acetic acid, nesoi.
2915.39.40	Linalyl acetate.
2915.39.45	Odoriferous or flavoring compounds of nonaromatic esters of acetic acid, nesoi.
2915.39.47	Acetates of polyhydric alcohols or of polyhydric alcohol ethers.
2915.39.60	Bis(bromoacetoxy)butene.
2915.39.70	Isobutyl acetate.
2915.39.80	2-Ethoxyethyl acetate (Ethylene glycol, monoethyl ether acetate).
2915.39.90	Other non-aromatic esters of acetic acid.
2915.40.10	Chloroacetic acids.
2915.40.20	Aromatic salts and esters of chlorocetic acids, described in additional U.S. note 3 to section VI.
2915.40.30	Aromatic salts and esters of chlorocetic acids, nesoi.
2915.40.50	Nonaromatic salts and esters of chlorocetic acids, nesoi.
2915.50.10	Propionic acid.
2915.50.20	Aromatic salts and esters of propionic acid.
2915.50.50	Nonaromatic salts and esters of propionic acid.
2915.60.10	Aromatic salts and esters of butyric acids and valeric acids.
2915.60.50	Butyric acids, valeric acids, their nonaromatic salts and esters.
2915.70.01	Palmitic acid, stearic acid, their salts and esters.
2915.90.10	Fatty acids of animal or vegetable origin, nesoi.
2915.90.14	Valproic acid.
2915.90.18	Saturated acyclic monocarboxylic acids, nesoi.
2915.90.20	Aromatic anhydrides, halides, peroxides and peroxyacids, of saturated acyclic monocarboxylic acids, and their derivatives, nesoi.
2915.90.50	Nonaromatic anhydrides, halides, peroxides and peroxyacids, of saturated acyclic monocarboxylic acids, and their derivatives, nesoi.
2916.11.00	Acrylic acid and its salts.
2916.12.10	Aromatic esters of acrylic acid.
2916.12.50	Nonaromatic esters of acrylic acid.
2916.13.00	Methacrylic acid and its salts.
2916.14.10	Dicyclopentenyloxyethyl methacrylate.
2916.14.20	Other esters of methacrylic acid.
2916.15.10	Oleic, linoleic or linolenic acids.
2916.15.51	Salts and esters of oleic, linoleic or linolenic acids.
2916.16.00	Binapacryl (ISO).
2916.19.10	Potassium sorbate.
2916.19.20	Sorbic acid.
2916.19.30	Unsaturated acyclic monocarboxylic acids, nesoi.
2916.19.50	Unsaturated acyclic monocarboxylic acid anhydrides, halides, peroxides, peroxyacids and their derivatives, nesoi.
2916.20.10	Tefluthrin.
2916.20.50	Cyclanic, cyclenic or cycloterpenic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives.
2916.31.11	Benzoic acid and its salts.
2916.31.20	Odoriferous or flavoring compounds of benzoic acid esters.
2916.31.30	Benzoic acid esters, except odoriferous or flavoring compounds, described in additional U.S. note 3 to section VI.
2916.31.50	Benzoic acid esters, nesoi.
2916.32.10	Benzoyl peroxide.
2916.32.20	Benzoyl chloride.

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HTSUS subheading	Product description
2916.34.10	Phenylacetic acid (alpha-Toluic acid).
2916.34.15	Odoriferous or flavoring compounds of phenylacetic acid and its salts.
2916.34.25	Phenylacetic acid salts, nesoi, described in additional U.S. note 3 to section VI.
2916.34.55	Phenylacetic acid salts, nesoi.
2916.39.03	Benzoic anhydride; tert-butyl peroxybenzoate; p-nitrobenzoyl chloride; 2-nitro-m-toluic acid; and 3-nitro-o-toluic acid.
2916.39.04	Specified derivatives of benzoic and toluic acids.
2916.39.06	Cinnamic acid.
2916.39.08	4-Chloro-3-nitrobenzoic acid.
2916.39.12	4-Chloro-3,5-dinitrobenzoic acid and its esters.
2916.39.15	Ibuprofen.
2916.39.16	4-Chlorobenzoic acid.
2916.39.17	2,2-Dichlorophenylacetic acid ethyl ester and m-toluic acid.
2916.39.21	Odoriferous or flavoring compounds of aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and derivatives.
2916.39.46	Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and derivatives described in add'l U.S. note 3 to section VI.
2916.39.77	Phenylacetic acid esters, nesoi.
2916.39.79	Other aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives.
2917.11.00	Oxalic acid, its salts and esters.
2917.12.10	Adipic acid.
2917.12.20	Plasticizers of adipic acid salts and esters.
2917.12.50	Adipic acid salts and esters, nesoi.
2917.13.00	Azelaic acid, sebacic acid, their salts and esters.
2917.14.10	Maleic anhydride derived in whole or in part from benzene or other aromatic hydrocarbons.
2917.14.50	Maleic anhydride, except derived in whole or in part from benzene or other aromatic hydrocarbons.
2917.19.10	Ferrous fumarate.
2917.19.15	Fumaric acid, derived in whole or in part from aromatic hydrocarbons.
2917.19.17	Fumaric acid except derived in whole or in part from aromatic hydrocarbons.
2917.19.20	Specified acyclic polycarboxylic acids and their derivatives, described in additional U.S. note 3 to section VI.
2917.19.23	Maleic acid.
2917.19.27	Succinic acid, glutaric acid, and their derivatives, and derivatives of adipic, fumeric and maleic acids, nesoi.
2917.19.30	Ethylene brassylate.
2917.19.35	Malonic acid.
2917.19.40	Acyclic polycarboxylic acids, derived from aromatic hydrocarbons, and their derivatives, nesoi.
2917.19.70	Acyclic polycarboxylic acids and derivative (excluding plasticizers).
2917.20.00	Cyclanic, cyclenic or cycloterpenic polycarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives.
2917.32.00	Dioctyl orthophthalates.
2917.33.00	Dinonyl or didecyl orthophthalates.
2917.34.01	Esters of orthophthalic acid, nesoi.
2917.35.00	Phthalic anhydride.
2917.36.00	Terephthalic acid and its salts.
2917.37.00	Dimethyl terephthalate.
2917.39.04	1,2,4-Benzenetricarboxylic acid,1,2-dianhydride(trimellitic anhydride); naphthalic anhydride; phthalic acid; & 4-sulfo-1,8-naphthalic anhydride.
2917.39.08	Naphthalic anhydride.
2917.39.12	4,4′-(Hexafluoroisopropyl-indene)bis(phthalic anhydride).
2917.39.15	Isophthalic acid.
2917.39.17	Tetrabromophthalic anhydride.
2917.39.20	Plasticizers of aromatic polycarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives.
2917.39.30	Aromatic polycarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives nesoi, in add. U.S. note 3 to sec. VI.
2917.39.70	Other aromatic polycarboxylic acids and their derivatives (excluding those described in additional U.S. note 3 to section VI.
2918.11.10	Lactic acid.
2918.11.51	Salts and esters of lactic acid.
2918.12.00	Tartaric acid.
2918.13.10	Potassium antimony tartrate (Tartar emetic).
2918.13.20	Potassium bitartrate (Cream of tartar).
2918.13.30	Potassium sodium tartrate (Rochelle salts).
2918.13.50	Salts and esters of tartaric acid, nesoi.
2918.14.00	Citric acid.
2918.15.10	Sodium citrate.
2918.15.50	Salts and esters of citric acid, except sodium citrate.
2918.16.10	Gluconic acid.

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HTSUS subheading	Product description
2918.16.50	Salts and esters of gluconic acid.
2918.17.00	2,2-Diphenyl-2-hydroxyacetic acid (benzilic acid).
2918.18.00	Chlorobenzilate (ISO).
2918.19.11	Benzilic acid, methyl ester.
2918.19.12	Phenylglycolic acid (Mandelic acid).
2918.19.15	Phenylglycolic (Mandelic) acid salts and esters.
2918.19.20	Aromatic carboxylic acids with alcohol function, w/o other oxygen functions, and their derivatives, described in add. U.S. note 3 to sec. VI.
2918.19.31	Aromatic carboxylic acids with alcohol function, without other oxygen functions, and their derivatives, nesoi.
2918.19.60	Malic acid.
2918.19.90	Nonaromatic carboxylic acids with alcohol function, without other oxygen function, and their derivatives, nesoi.
2918.21.10	Salicylic acid and its salts, suitable for medicinal use.
2918.21.50	Salicylic acid and its salts, not suitable for medicinal use.
2918.23.10	Salol (Phenyl salicylate) suitable for medicinal use.
2918.23.20	Odoriferous or flavoring compounds of other esters of salicyclic acid and their salts, nesoi.
2918.23.30	Esters of salicylic acid and their salts, described in additional U.S. note 3 to section VI.
2918.23.50	Esters of salicylic acid and their salts, nesoi.
2918.29.04	2,3-Cresotic acid; m-hydroxybenzoic acid; 2-hydroxybenzoic acid, calcium salt; and other specified carboxylic acids w/phenol function.
2918.29.06	1,6-hexanediol-bis(3,5-dibutyl-4-hydroxyphenyl)propionate.
2918.29.08	m-Hydroxybenzoic acid.
2918.29.20	Gentisic acid; and hydroxycinnamic acid and its salts.
2918.29.22	p-Hydroxybenzoic acid.
2918.29.25	3-Hydroxy-2-naphthoic acid.
2918.29.30	Gallic acid.
2918.29.39	4,4-Bis(4-hydroxyphenyl)-pentanoic acid; and 3,5,6-triclorosalicylic acid.
2918.29.65	Carboxylic acids with phenol function but w/o other oxygen function, described in add'l. U.S. note 3 to section VI.
2918.29.75	Other carboxylic acids w/phenol function but w/o other oxygen function & their derivatives (excluding goods of add. U.S. note 3 to section VI).
2918.30.10	1-Formylphenylacetic acid, methyl ester.
2918.30.15	2-Chloro-4,5-difluoro-beta-oxobenzenepropanoic acid, ethyl ester; and ethyl 2-keto-4-phenylbutanoate.
2918.30.25	Aromatic carboxylic acids w/aldehyde or ketone function but w/o other oxygen function & their deriv desc. in add U.S. note 3 to sec VI, nesoi.
2918.30.30	Aromatic carboxylic acids with aldehyde or ketone function, but without other oxygen function, and derivatives, nesoi.
2918.30.70	Dimethyl acetyl succinate; oxalacetic acid diethyl ester sodium salt; 4,4,4-trifluoro-3-oxobutanoic acid, both ethyl & methyl ester versions.
2918.30.90	Non-aromatic carboxylic acids w/aldehyde or ketone function but w/o other oxygen func. their anhydrides, halides, peroxides, etc derivatives.
2918.91.00	2, 4, 5–T (ISO) (2, 4, 5-trichlorophenoxyacetic acid), its salts and esters.
2918.99.05	p-Anisic acid; clofibrate and 3-phenoxybenzoic acid.
2918.99.06	1-Hydroxy-6-octadecyloxy-2-naphthalenccarboxylic acid; and 1-hydroxy-6-docosyloxy-2-naphthalene carboxylic acid.
2918.99.18	4-(4-Chloro-2-methyl-phenoxy)butyric acid; p-chlorophenoxyacetic acid; and 2-(2,4-dichlorophenoxy)propionic acid.
2918.99.20	Aromatic pesticides, derived from carboxylic acids with additional oxygen function, and their derivatives, nesoi.
2918.99.35	Odoriferous or flavoring compounds of carboxylic acids with additional oxygen function, and their derivatives, nesoi.
2918.99.43	Aromatic carboxylic acids with add'l oxygen function and their anhydrides, halide, etc deriv described in add U.S. note 3 to sect VI, nesoi.
2918.99.47	Other aromatic carboxylic acids with add'l oxygen function and their anhydrides, halide, etc deriv (exclud goods in add U.S. note 3 to sec VI).
2918.99.50	Nonaromatic carboxylic acids with additional oxygen function, and their derivatives, nesoi.
2919.10.00	Tris (2,3-dibromopropyl phosphate).
2919.90.15	Triphenyl phosphate plasticizers.
2919.90.25	Other aromatic plasticizers.
2919.90.30	Aromatic phosphoric esters and their salts, including lactophosphates, and their derivatives, not used as plasticizers.
2919.90.50	Nonaromatic phosphoric esters and their salts, including lactophosphates, and their derivatives.
2920.11.00	Parathion (ISO) and parathion-methyl (ISO) (methyl-parathion).
2920.19.10	O,O-Dimethyl-O-(4-nitro-m-tolyl)-phosphorothioate (Fenitrothion).
2920.19.40	Other aromatic thiophosphoric esters (phosphorothioates) and their salts; their halogenated, sulfonated, nitrated or nitrosated derivatives.
2920.19.50	Nonaromatic phosphorothioates, their salts and halogenated, sulfonated, nitrated or nitrosated derivatives, nesoi.
2920.21.00	Dimethyl phosphite.
2920.22.00	Diethyl phosphite.
2920.23.00	Trimethyl phosphite.

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HTSUS subheading	Product description
2920.24.00	Triethyl phosphite.
2920.29.00	Other phosphite esters and their salts; their haolgenated, sulfonated, nitrated or nitrosated derivatives.
2920.30.00	Endosulfan (ISO).
2920.90.10	Aromatic pesticides of esters of other inorganic acids (excluding hydrogen halides), their salts and their derivatives.
2920.90.20	Aromatic esters of other inorganic acids (excluding hydrogen halides) their salts and their derivatives, nesoi.
2920.90.51	Nonaromatic esters of inorganic acids of nonmetals and their salts and derivatives, excluding esters of hydrogen halides, nesoi.
2921.11.00	Methylamine, di- or trimethylamine, and their salts.
2921.12.01	2-(N,N-Dimethylamino)ethyl chloride hydrochloride.
2921.13.00	2-(N,N-Diethylamino)ethyl chloride hydrochloride.
2921.14.00	2-(N,N,-Diisopropylamino)ethyl chloride hydrochloride.
2921.19.11	Mono- and triethylamines; mono-, di-, and tri(propyl- and butyl-) monoamines; salts of any of the foregoing.
2921.19.31	3-Amino-3-methyl-1-butyne; (Dimethylamino)isopropyl chloride hydrochloride.
2921.19.61	N,N-Dialkyl (methyl, ethyl, N-Propyl or Isopropyl)-2-Chloroethylamines and their protonated salts; Acylcic monoamines and their derivatives, nesoi.
2921.21.00	Ethylenediamine and its salts.
2921.22.05	Hexamethylenediamine adipate (Nylon salt).
2921.22.10	Hexamethylenediamine and its salts (except Nylon salt), derived in whole or in part from adipic acid.
2921.22.50	Hexamethylenediamine and its salts (except Nylon salt), not derived in whole or in part from adipic acid.
2921.29.00	Acyclic polyamines, their derivatives and salts, other than ethylenediamine or hexamethylenediamine and their salts.
2921.30.05	1,3-Bis(aminoethyl)cyclohexane.
2921.30.10	Cyclanic, cyclenic, cycloterpenic mono- or polyamines, derivatives and salts, from any aromatic compound desc in add U.S. note 3, sec. VI.
2921.30.30	Cyclanic, cyclenic, cycloterpenic mono- or polyamines and their derivative, deriv from any aromatic cmpd (excl goods in add U.S. note 3 sec VI.
2921.30.50	Cyclanic, cyclenic or cycloterpenic mono- or polyamines, and their derivatives and salts, from any nonaromatic compounds.
2921.41.10	Aniline.
2921.41.20	Aniline salts.
2921.42.10	N,N-Dimethylaniline.
2921.42.15	N-Ethylaniline and N,N-diethylaniline.
2921.42.16	2,4,5-Trichloroaniline.
2921.42.18	o-Aminobenzenesulfonic acid; 6-chlorometanilic acid; 2-chloro-5-nitroaniline; 4-chloro-3-nitroaniline; dichloroanilines; and other specified.
2921.42.21	Metanilic acid.
2921.42.22	Sulfanilic acid.
2921.42.23	3,4-Dichloroaniline.
2921.42.36	m-Chloroaniline; 2-chloro-4-nitroaniline; 2,5-dicholoraniline-4-sulfonic acid & its monosodium salt; & other specified aniline derivatives.
2921.42.55	Fast color bases of aniline derivatives and their salts.
2921.42.65	Aniline derivatives and their salts of products in additional U.S. note 3 to section VI.
2921.42.90	Other aniline derivatives and their salts.
2921.43.04	3-Chloro-o-toluidine; and 6-chloro-o-toluidine.
2921.43.08	4-Chloro-o-toluidine hydrochloride; 5-chloro-o-o-toluidine; 6-chloro-2-toluidine-sulfonic acid; 4-chloro-a,a,a-trifluoro-o-toluidine;& other.
2921.43.15	alpha,alpha,alpha-Trifluoro-2,6-dinitro-N,N-dipropyl-p-toluidine (Trifluralin).
2921.43.19	alpha,alpha,alpha-Trifluoro-o-toluidine; alpha,alpha,alpha-trifluoro-6-chloro-m-toluidine.
2921.43.22	N-Ethyl-N-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)benzenamine.
2921.43.24	2-Amino-5-chloro-4-ethyl-benzenesulfonic acid; 2-amino-5-chloro-p-toluenesulfonic acid; p-nitro-o-toluidine; and 3-(trifluoromethyl)aniline.
2921.43.40	Toluidines and their derivatives; salts thereof; described in additional U.S. note 3 to section VI.
2921.43.90	Other toluidines and their derivatives; and salts thereof, nesoi.
2921.44.05	4,4′-Bis(alpha,alpha-dimethlbenzyl)diphenylamine; and N-nitrosodiphenylamine.
2921.44.10	Nitrosodiphenylamine.
2921.44.20	Diphenylamine and its derivatives (except nitrodiphenylamine); salts thereof, described in additional U.S. note 3 to section VI.
2921.44.70	Diphenylamine and its derivatives; salts thereof; excluding goods in additional U.S. note 3 to section VI.
2921.45.10	7-Amino-1,3-naphthalenedisulfonic acid, specified naphthalenesulfonic acids and their salts; N-phenyl-2-napthylamine.
2921.45.20	Specified aromatic monoamines and their derivatives; salts thereof.
2921.45.25	Mixture of 5- & 8-amino-2-naphthalenesulfonic acid;2-naphthalamine-o-sulfonic acid;& o-naphthionic acid (1-amino-2-naphthalenesulfonic acid).
2921.45.60	Aromatic monoamines and their derivatives and salts described in additional U.S. note 3 to section VI, nesoi.
2921.45.90	Aromatic monoamines and their derivatives and salts thereof nesoi.

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HTSUS subheading	Product description
2921.49.10	4-Amino-2-stilbenesulfonic acid and its salts, p-ethylaniline; 2,4,6-trimethylaniline (Mesidine); and specified xylidines.
2921.49.15	m-Nitro-p-toluidine.
2921.49.45	Aromatic monoamines and their derivatives nesoi; salts thereof, described in additional U.S. note 3 to section VI.
2921.49.50	Aromatic monoamines and their derivatives and salts thereof, nesoi.
2921.51.10	4-Amino-2-(N,N-diethylamino)toluene hydrochloride; m- and o-phenylenediamine; toluene-2,4- and -2,5-diamine; and toluene-2,5-diamine sulfate.
2921.51.20	Photographic chemicals of o-, m-, p-phenylenediamine, diaminotoluenes, and their derivatives, and salts thereof.
2921.51.30	o-, m-, p-Phenylenediamine, diaminotoluenes, and their derivatives, and salts thereof, described in additional U.S. note 3 to section VI.
2921.51.50	o-, m-, p-Phenylenediamine, and diaminotoluenes and their derivatives, and salts thereof, nesoi.
2921.59.04	1,8-diaminonaphthalene (1,8-naphthalenediamino).
2921.59.08	5-Amino-2-(p-aminoanilino)benzenesulfonic acid; 4,4-diamino-3-biphenylsulfonic acid; 3,3-dimethylbenzidine (o-tolidine); & other specified.
2921.59.17	4,4′-Benzidine-2,2′-disulfonic acid; 1,4-diaminobenzene-2-sulfonic acid; 4,4′-methylenebis-(2,6-diethylaniline); m-xylenediamine; and 1 other.
2921.59.20	4,4′-Diamino-2,2′-stilbenedisulfonic acid.
2921.59.30	4,4′-Methylenedianiline.
2921.59.40	Aromatic polyamines and their derivatives and salts thereof, described in additional U.S. note 3 to section VI.
2921.59.80	Aromatic polyamines and their derivatives; salts thereof nesoi.
2922.11.00	Monoethanolamine and its salts.
2922.12.00	Diethanolamine and its salts.
2922.15.00	Triethanolamine.
2922.16.00	Diethylammonium perfluorooctane sulfonate.
2922.17.00	Methyldiethanolamine and ethyldiethanolamine.
2922.18.00	2-(N,N-Diisopropylamino)ethanol.
2922.21.10	1-Amino-8-hydroxy-3,6-naphthalenedisulfonic acid; and other specified aminohydroxynaphthalenesulfonic acids and their salts.
2922.21.25	1-Amino-8-hydroxy-4,6-naphthalenedisulfonic acid, monosodium salts.
2922.21.40	Aminohydroxynaphthalene sulfonic acids and their salts of products described in additional U.S. note 3 to section VI.
2922.21.50	Aminohydroxynaphthalene sulfonic acids and their salts, nesoi.
2922.29.03	o-Anisidine; p-anisidine; and p-phenetidine.
2922.29.06	m-Nitro-p-anisidine and m-nitro-o-anisidine as fast color bases.
2922.29.08	m-Nitro-p-anisidine and m-nitro-o-anisidine, nesoi.
2922.29.10	2-Amino-6-chloro-4-nitrophenol and other specified amino-naphthols and amino-phenols, their ethers and esters; salts thereof.
2922.29.13	o-Aminophenol; and 2,2-bis-[4-(4-aminophenoxy)phenyl]propane.
2922.29.15	m-Diethylaminophenol; m-dimethylaminophenol; 3-ethylamino-p-cresol; and 5-methoxy-m-phenylenediamine.
2922.29.20	4-Chloro-2,5-dimethoxyaniline; and 2,4-dimethoxyaniline.
2922.29.26	Amino-naphthols and other amino-phenols and their derivatives used as fast color bases.
2922.29.27	Drugs of amino-naphthols and -phenols, their ethers and esters, except those cont. more than one oxygen function; salts thereof, nesoi.
2922.29.29	Photographic chemicals of amino-naphthols and -phenols, their ethers/esters, except those cont. more than one oxygen function; salts, nesoi.
2922.29.61	Amino-naphthols and other amino-phenols and their derivatives of products described in add'l U.S. note 3 to section VI.
2922.29.81	Amino-naphthols and other amino-phenols; their ethers, esters & salts (not containing more than one oxygen function) thereof nesoi.
2922.39.05	1-Amino-2,4-dibromoanthraquinone; and 2-Amino-5-chlorobenzophenone.
2922.39.10	2′-Aminoacetophenone & other specified aromatic amino-aldehydes, -ketones and -quinones, other than those with more than one oxygen function.
2922.39.14	2-Aminoanthraquinone.
2922.39.17	1-Aminoanthraquinone.
2922.39.25	Aromatic amino-aldehydes, -ketones and -quinones, other than those with more than one oxygen function; salts; desc in add U.S. note 3 sec VI.
2922.39.45	Aromatic amino-aldehydes, -ketones and -quinones, other than those with more than one oxygen function; salts thereof; nesoi.
2922.39.50	Nonaromatic amino-aldehydes, -ketones and -quinones, other than those with more than one kind of oxygen function, salts thereof; nesoi.
2922.42.10	Monosodium glutamate.
2922.42.50	Glutamic acid and its salts, other than monosodium glutamate.
2922.43.10	Anthranilic acid and its salts, described in additional U.S. note 3 to section VI.
2922.43.50	Anthranilic acid and its salts, nesoi.
2922.49.05	(R)-alpha-Aminobenzeneacetic acid; and 2-amino-3-chlorobenzoic acid, methyl ester.
2922.49.10	m-Aminobenzoic acid, technical; and other specified aromatic amino-acids and their esters, except those with more than one oxygen function.

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HTSUS subheading	Product description
2922.49.26	Aromatic amino-acids drugs and their esters, not containing more than one kind of oxygen function, nesoi.
2922.49.30	Aromatic amino-acids and their esters, excl. those with more than one oxygen function; salts; described in add. U.S. note 3 to sect VI.
2922.49.37	Aromatic amino-acids and their esters, not contng more than 1 kind of oxygen function (excluding goods in add U.S. note 3 to sec VI), nesoi.
2922.49.43	Glycine (aminoacetic acid).
2922.49.49	Nonaromatic amino-acids, other than those containing more than one kind of oxygen function, other than glycine.
2922.49.60	3-Aminocrotonic acid, methyl ester; and (R)-alpha-amino-1,4-cyclohexadiene-1-acetic acid.
2922.49.80	Non-aromatic esters of amino-acids, other than those containing more than one kind of oxygen function; salts thereof.
2923.10.00	Choline and its salts.
2923.20.10	Purified egg phospholipids, pharmaceutical grade meeting requirements of the U.S. FDA for use in intravenous fat emulsion.
2923.20.20	Lecithins and other phosphoaminolipids, nesoi.
2923.30.00	Tetraethylammonium perfluorooctane sulfonate.
2923.40.00	Didecylmethylammonium perfluorooctane sulfonate.
2923.90.01	Quaternary ammonium salts and hydroxides, whether or not chemically defined, nesoi.
2924.12.00	Fluoroacetamide (ISO), monocrotophos (ISO) and phosphamidon (ISO).
2924.19.11	Acyclic amides (including acyclic carbamates).
2924.19.80	Acyclic amide derivatives; salts thereof; nesoi.
2924.21.04	3-(p-Chlorophenyl)-1,1-dimethylurea (Monuron).
2924.21.08	1,1-Diethyl-3-(alpha,alpha,alpah-trifluoro-m-tolyl)urea (Fluometuron).
2924.21.12	1-(2-Methylcyclohexyl)-3-phenylurea.
2924.21.16	Aromatic ureines and their derivatives pesticides, nesoi.
2924.21.18	sym-Diethyldiphenylurea.
2924.21.20	Aromatic ureines and their derivatives; salts thereof; described in additional U.S. note 3 to section VI.
2924.21.45	Aromatic ureines and their derivatives; salts thereof, nesoi.
2924.21.50	Nonaromatic ureines and their derivatives; and salts thereof.
2924.23.10	2-Acetamidobenzoic acid.
2924.23.70	2-Acetamidobenzoic acid salts described in additional U.S. note 3 to section VI.
2924.23.75	2-Acetamidobenzoic acid salts, nesoi.
2924.25.00	Alachlor (ISO).
2924.29.01	p-Acetanisidide; p-acetoacetatoluidide; 4′-amino-N-methylacetanilide; 2,5-dimethoxyacetanilide; and N-(7-hydroxy-1-naphthyl)acetamide.
2924.29.03	3,5-Dinitro-o-toluamide.
2924.29.10	Acetanilide; N-acetylsulfanilyl chloride; aspartame; and 2-methoxy-5-acetamino-N,N-bis(2-acetoxyethyl)aniline.
2924.29.20	2-Acetamido-3-chloroanthraquinone; o-acetoacetaidide; o-acetoacetotoluidide; 2,4-acetoacetoxylidide; and 1-amino-5-benzamidoanthraquinone.
2924.29.23	4-Aminoacetanilide; 2–2-oxamidobis[ethyl-3-(3,5-di-tert-butyl-4-hydroxyphenyl)propionate]; and other specified cyclic amide chemicals.
2924.29.26	3-Aminomethoxybenzanilide.
2924.29.28	N-[[(4-Chlorophenyl)amino]carbonyl]difluorobenzamide; and 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)benzamide (pronamide).
2924.29.31	4-Acetamido-2-aminophenol; p-acetaminobenzaldehyde; acetoacetbenzylamide; p-acetoacetophenetidide; N-acetyl-2,6-xylidine; & other specified.
2924.29.33	3-Hydroxy-2-naphthanilide; 3-hydroxy-2-naphtho-o-toluidide; 3-hydroxy-2-naphtho-o-anisidine; 3-hydroxy-2-naphtho-o-phenetidide; & other.
2924.29.43	3-Ethoxycarbonylaminophenyl-N-phenylcarbamate (desmedipham); and Isopropyl-N-(3-chlorophenyl)carbamate (CIPC).
2924.29.47	Other cyclic amides used as pesticides.
2924.29.65	5-Bromoacetyl-2-salicylamide.
2924.29.71	Aromatic cyclic amides and their derivatives of products described in additional U.S. note 3 to section VI, nesoi.
2924.29.77	Aromatic cyclic amides (incl cyclic carbamates) and their derivatives and salts thereof, nesoi.
2924.29.80	2,2-Dimethylcyclopropylcarboxamide.
2924.29.95	Other nonaromatic cyclic amides and their derivatives; salts thereof; nesoi.
2925.11.00	Saccharin and its salts.
2925.19.10	Ethylenebistetrabromophthalimide.
2925.19.30	Bis(o-tolyl)carbodiimide; and 2,2,6,6-tetraisopropyldiphenylcarbodiimide.
2925.19.42	Other aromatic imides and their derivatives; salts thereof; nesoi.
2925.19.70	N-Chlorosuccinimide; and N,N-ethylenebis(5,6-dibromo-2,3-norbornanedicarbooximide.
2925.19.91	Other non-aromatic imides and their derivatives.
2925.21.00	Chlordimeform (ISO).
2925.29.10	N′-(4-Chloro-o-tolyl)-N,N-dimethylformamidine; bunamidine hydrochloride; and pentamidine.
2925.29.18	N,N′-diphenylguanidine; 3-dimethylaminomethyleneiminophenol hydrochloride; 1,3-di-o-tolyguandidine; and one other specified chemical.
2925.29.20	Aromatic drugs of imines and their derivatives, nesoi.
2925.29.60	Aromatic imines and their derivatives; salts thereof (excluding drugs); nesoi.

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HTSUS subheading	Product description
2925.29.70	Tetramethylguanidine.
2925.29.90	Non-aromatic imines and their derivatives; salts thereof.
2926.10.00	Acrylonitrile.
2926.20.00	1-Cyanoguanidine (Dicyandiamide).
2926.30.10	Fenproporex (INN) and its salts.
2926.30.20	4-Cyano-2-dimethylamino-4,4-diphenylbutane.
2926.90.01	2-Cyano-4-nitroaniline.
2926.90.05	2-Amino-4-chlorobenzonitrile (5-chloro-2-cyanoaniline); 2-amino-5-chlorobenzonitrile; 4-amino-2-chlorobenzonitrile; and others specified.
2926.90.08	Benzonitrile.
2926.90.11	2,6-Diclorobenzonitrile.
2926.90.12	Other dichlorobenzonitriles.
2926.90.14	p-Chlorobenzonitrile and verapamil hydrochloride.
2926.90.16	Specifically named derivative of dimethylcyclopropanecarboxylic acid.
2926.90.17	o-Chlorobenzonitrile.
2926.90.19	N,N-Bis(2-cyanoethyl)aniline; and 2,6-diflourobenzonitrile.
2926.90.21	Aromatic fungicides of nitrile-function compounds.
2926.90.23	3,5-Dibromo-4-hydroxybenzonitrile (Bromoxynil).
2926.90.25	Aromatic herbicides of nitrile-function compounds, nesoi.
2926.90.30	Other aromatic nitrile-function pesticides.
2926.90.43	Aromatic nitrile-function compounds, nesoi, described in additional U.S. note 3 to section VI.
2926.90.48	Aromatic nitrile-function compounds other than those products in additional U.S. note 3 to section VI, nesoi.
2926.90.50	Nonaromatic nitrile-function compounds, nesoi.
2927.00.03	4-Aminoazobenzenedisulfonic acid, monosodium salt.
2927.00.06	p-Aminoazobenzenedisulfonic acid; and diazoaminobenzene (1,3-diphenyltriazine).
2927.00.15	1,1′-Azobisformamide.
2927.00.18	1-Naphthalenesulfonic acid, 6-diazo-5,6-dihydro-5-oxo, ester with phenyl compound; and three other specified chemicals.
2927.00.25	Diazo-, azo- or azoxy-compounds used as photographic chemicals.
2927.00.30	Fast color bases and fast color salts, of diazo-, azo- or azoxy-compounds.
2927.00.40	Diazo-, azo- or azoxy-compounds, nesoi, described in additional U.S. note 3 to section VI.
2927.00.50	Other diazo-, azo- or azoxy-compounds, nesoi.
2928.00.15	Phenylhydrazine.
2928.00.25	Aromatic organic derivatives of hydrazine or of hydroxylamine.
2928.00.30	Nonaromatic drugs of organic derivatives of hydrazine or of hydroxylamine, other than Methyl ethyl ketoxime.
2928.00.50	Nonaromatic organic derivatives of hydrazine or of hydroxylamine, nesoi.
2929.10.10	Toluenediisocyanates (unmixed).
2929.10.15	Mixtures of 2,4- and 2,6-toluenediisocyanates.
2929.10.20	Bitolylene diisocyanate (TODI); o-Isocyanic acid, o-tolyl ester; and Xylene diisocyanate.
2929.10.27	N-Butylisocyanate; cyclohexyl isocyanate; 1-isocyanato-3-(trifluoromethyl)benzene; 1,5-naphthalene diisocyanate; and octadecyl isocyanate.
2929.10.30	3,4-Dichlorophenylisocyanate.
2929.10.35	1,6-Hexamethylene diisocyanate.
2929.10.55	Isocyanates of products described in additioonal U.S. note 3 to sect VI.
2929.10.80	Other isocyanates, nesoi.
2929.90.05	2,2-Bis(4-cyanatophenyl)-1,1,1,3,3,3,-hexafluoropropane; 2,2-bis(4-cyanatophenyl)propane; 1,1-ethylidenebis(phenyl-4-cyanate); and 2 others.
2929.90.15	Other aromatic compounds with other nitrogen function of products described in additional U.S. note 3 to section VI.
2929.90.20	Aromatic compounds with other nitrogen function, nesoi.
2929.90.50	Nonaromatic compounds with other nitrogen functions, except isocyanates.
2930.20.10	Aromatic pesticides of thiocarbamates and dithiocarbamates.
2930.20.20	Aromatic compounds of thiocarbamates and dithiocarbamates, excluding pesticides.
2930.20.70	S-(2,3,3-trichloroallyl)diisopropylthiocarbamate.
2930.20.90	Other non-aromatic thiocarbamates and dithiocarbamates.
2930.30.30	Tetramethylthiuram monosulfide.
2930.30.60	Thiuram mono-, di- or tetrasulfides, other than tetramethylthiuram monosulfide.
2930.40.00	Methionine.
2930.60.00	2-(N,N-Diethylamino)ethanethiol.
2930.70.00	Bis(2-hydroxyethyl)sulfide (thiodiglycol (INN)).
2930.80.00	Aldicarb (ISO), captafol (ISO) and methamidophos (ISO).
2930.90.10	Aromatic pesticides of organo-sulfur compounds, nesoi.
2930.90.24	N-Cyclohexylthiophthalimide.
2930.90.26	3-(4-Aminobenzamido)phenyl-beta-hydroxyethylsulfone; 2-[(4-aminophenyl)sulfonyl]ethanol, hydrogen sulfate ester; diphenylthiourea; & others.
2930.90.29	Other aromatic organo-sulfur compounds (excluding pesticides).
2930.90.30	Thiocyanates, thiurams and isothiocyanates.

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HTSUS subheading	Product description
2930.90.42	O,O-Dimethyl-S-methylcarbamoylmethyl phosphorodithioate; and malathion.
2930.90.43	Other non-aromatic organo-sulfur compounds used as pesticides.
2930.90.46	dl(underscored)-Hydroxy analog of dl(underscored)-methionine.
2930.90.49	Nonaromatic organo-sulfur acids, nesoi.
2930.90.71	Dibutylthiourea.
2930.90.91	Other non-aromatic organo-sulfur compounds.
2931.10.00	Tetramethyl lead & tetraethyl lead.
2931.20.00	Tributyltin compounds.
2931.31.00	Dimethyl methylphosphonate.
2931.32.00	Dimethyl propylphosphonate.
2931.33.00	Diethyl ethylphosphonate.
2931.34.00	Sodium 3-(trihydroxysilyl)propyl methylphosphonate.
2931.35.00	2,4,6-Tripropyl-1,3,5,2,4,6-trioxatriphosphinane-2,4,6-trioxide.
2931.36.00	(5-Ethyl-2-methyl-2-oxido-1,3,2-dioxaphosphinan-5-yl)methyl methylphosphonate.
2931.37.00	Bis[(5-ethyl-2-methyl-2-oxido-1,3,2-dioxaphosphinan-5-yl)methyl] methylphosphonate.
2931.38.00	Salt of methylphosphonic acid and (aminoiminiomethyl)urea (1:1).
2931.39.00	Other organo-phosphorous derivatives, nesoi.
2931.90.05	Diphenyldichlorosilane; and phenyltrichlorosilane.
2931.90.15	Sodium tetraphenylboron.
2931.90.22	Drugs of aromatic organo-inorganic (except organo-sulfur) compounds.
2931.90.26	Pesticides of aromatic organo-inorganic (except organo-sulfur) compounds.
2931.90.30	Aromatic organo-inorganic compounds, nesoi, described in additional U.S. note 3 to section VI.
2931.90.60	Other aromatic organo-inorganic compounds (excluding products described in additional U.S. note 3 to section VI).
2931.90.70	N,N′-Bis(trimethylsilyl)urea;2-Phosphonobutane-1,2,4-tricarboxylic acid and its salts; and one other specified chemical.
2931.90.90	Other non-aromatic organo-inorganic compounds.
2932.11.00	Tetrahydrofuran.
2932.12.00	2-Furaldehyde (Furfuraldehyde).
2932.13.00	Furfuryl alcohol and tetrahydrofurfuryl alcohol.
2932.14.00	Sucralose.
2932.19.10	Aromatic heterocyclic compounds with oxygen hetero-atom(s) only, containing an unfused furan ring, nesoi.
2932.19.51	Nonaromatic compounds containing an unfused furan ring (whether or not hydrogenated) in the ring.
2932.91.00	Isosafrole.
2932.92.00	1-(1,3-Benzodioxol-5-yl)propan-2-one.
2932.93.00	Piperonal (heliotropin).
2932.94.00	Safrole.
2932.95.00	Tetrahydrocannabinols (all isomers).
2932.99.04	2,2-Dimethyl-1,3-benzodioxol-4-yl methylcarbamate (Bendiocarb).
2932.99.08	2-Ethoxy-2,3-dihydro-3,3-dimethyl-5-benzofuranylmethanesulfonate.
2932.99.20	Aromatic pesticides of heterocyclic compounds with oxygen hetero-atom(s) only, nesoi.
2932.99.32	Benzofuran (Coumarone); and Dibenzofuran (Diphenylene oxide).
2932.99.35	2-Hydroxy-3-dibenzofurancarboxylic acid.
2932.99.39	Benzointetrahydropyranyl ester; and Xanthen-9-one.
2932.99.55	Bis-O-[(4-methylphenyl)methylene]-D-glucitol (Dimethylbenzylidene sorbitol); and Rhodamine 2C base.
2932.99.70	Aromatic heterocyclic compounds with oxygen hetero-atom(s) only, nesoi.
2932.99.90	Nonaromatic heterocyclic compounds with oxygen hetero-atom(s) only, nesoi.
2933.19.04	Aminoethylphenylpyrazole (phenylmethylaminopyrazole); 3-methyl-1-(p-tolyl)-2-pyrazolin-5-one (p-tolylmethylpyrazolone).
2933.19.08	3-(5-Amino-3-methyl-1H-pyrazol-1-yl)benzenesulfonic acid; amino-J-pyrazolone; and another 12 specified chemicals.
2933.19.15	1,2-Dimethyl-3,5-diphenyl-1H-pyrazolium methyl sulfate (difenzoquat methyl sulfate).
2933.19.18	2-Chloro-5-sulfophenylmethylpyrazolone; phenylcarbethyoxypyrazolone; and 3 other specified chemicals.
2933.19.23	Aromatic or modified aromatic pesticides containing an unfused pyrazole ring (whether or not hydrogenated) in the structure.
2933.19.30	Aromatic or modified aromatic photographic chemicals containing an unfused pyrazole ring (whether or n/hydrogenated) in the structure, nesoi.
2933.19.35	Aromatic or modified aromatic drugs of heterocyclic compounds with nitrogen hetero-atom(s) only containing an unfused pyrazole ring.
2933.19.37	Aromatic or mod. aromatic compound desc in add U.S. note 3 to section VI contain an unfused pyrazole ring (w/wo hydrogenated) in the structure.
2933.19.43	Aromatic or modified aromatic compounds (excluding products in add U.S. note 3 to sec VI) containing an unfused pyrazole ring in the structure.
2933.19.45	Nonaromatic drugs of heterocyclic compounds with nitrogen hetero-atom(s) only containing an unfused pyrazole ring.
2933.19.70	3-Methyl-5-pyrazolone.

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HTSUS subheading	Product description
2933.19.90	Other compound (excluding aromatic, modified aromatic & drugs) containing unfused pyrazole ring (whether or n/hydrogenated) in the structure.
2933.21.00	Hydantoin and its derivatives.
2933.29.05	1-[1-((4-Chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl]-1H-imidazole (triflumizole); and ethylene thiourea.
2933.29.10	2-Phenylimidazole.
2933.29.20	Aromatic or modified aromatic drugs of heterocyclic compounds with nitrogen hetero-atom(s) only cont. an unfused imidazole ring.
2933.29.35	Aromatic or mod. aromatic goods in add U.S. note 3 to sect VI containing an unfused imidazole ring (whether or n/hydrogenated) in structure.
2933.29.43	Aromatic or mod aromatic goods contng unfused imidazole ring (whether or n/hydrogenated) in the structure (exc prod in add U.S. note 3 sec VI).
2933.29.45	Nonaromatic drugs of heterocyclic compounds with nitrogen hetero-atom(s) only, containing an unfused imidazole ring, nesoi.
2933.29.60	Imidazole.
2933.29.90	Other compounds (excluding drugs, aromatic and modified aromatic compounds) containing an unfused imidazole ring (whether or n/hydrogenated).
2933.31.00	Pyridine and its salts.
2933.32.10	Piperidine.
2933.32.50	Piperidine salts.
2933.61.00	Melamine.
2933.69.20	2,4-Diamino-6-phenyl-1,3,5-triazine.
2933.69.50	Hexamethylenetetramine.
2933.69.60	Other compounds containing an unfused triazine ring (whether or not hydrogenated) in the structure.
2933.71.00	6-Hexanelactam (epsilon-Caprolactam).
2933.79.04	2,4-Dihydro-3,6-diphenylpyrrolo-(3,4–C)pyrrole-1,4-dione.
2933.79.08	Aromatic or modified aromatic lactams with nitrogen hetero-atoms only described in additional U.S. note 3 to section VI.
2933.79.15	Aromatic or modified aromatic lactams, nesoi.
2933.79.20	N-Methyl-2-pyrrolidone; and 2-pyrrolidone.
2933.79.30	N-Vinyl-2-pyrrolidone, monomer.
2933.79.40	12-Aminododecanoic acid lactam.
2933.79.85	Aromatic or modified aromatic lactams with nitrogen hetero-atoms only, nesoi.
2933.92.00	Azinphos-methyl.
2934.10.10	Aromatic or modified aromatic heterocyclic compounds cont. an unfused thiazole ring, described in add. U.S. note 3 to section VI.
2934.10.20	Aromatic or modified aromatic heterocyclic compounds, nesoi, containing an unfused thiazole ring.
2934.10.70	4,5-Dichloro-2-n-octyl-4-isothiazolin-3-one; thiothiamine hydrochloride; and 4 other specified chemicals.
2934.10.90	Other compounds (excluding aromatic or modified aromatic) containing an unfused thiazole ring (whether or not hydrogenated) in the structure.
2934.20.05	N-tert-Butyl-2-benzothiazolesulfenamide.
2934.20.10	2,2′-Dithiobisbenzothiazole.
2934.20.15	2-Mercaptobenzothiazole; and N-(Oxydiethylene)benzothiazole-2-sulfenamide.
2934.20.20	2-Mercaptobenzothiazole, sodium salt (2-Benzothiazolethiol, sodium salt).
2934.20.25	2-Amino-5,6-dichlorobenzothiazole; 2-amino-6-nitrobenzothiazole; and 2 other specified chemicals.
2934.20.30	2-Amino-6-methoxybenzothiazole and other specified heterocyclic compounds, cont. a benzothiazole ring-system, not further fused.
2934.20.35	Pesticides containing a benzothiazole ring-system, not further fused.
2934.20.40	Heterocyclic compounds containing a benzothiazole ring-system, not further fused, described in add. U.S. note 3 to section VI.
2934.20.80	Other compounds containing a benzothiazole ring system (whether or not hydrogenated), not further fused.
2939.80.00	Other alkaloids, natural or reproduced by synthesis and their salts, ethers, esters & other derivatives, nesoi.
2940.00.20	D-Arabinose.
2940.00.60	Other sugars, nesoi excluding d-arabinose.
2942.00.03	[2,2′-Thiobis(4-(1,1,3,3-tetramethyl-n-butyl)phenolato)(2,1)]-O,O′,S-s(1-butanamine), nickel II.
2942.00.05	Aromatic or modified aromatic drugs of other organic compounds, nesoi.
2942.00.10	Aromatic or modified aromatic organic compounds, nesoi, described in additional U.S. note 3 to section VI.
2942.00.35	Other aromatic or modified aromatic organic compounds (excluding products described in additional U.S. note 3 to section VI).
2942.00.50	Nonaromatic organic compounds, nesoi.
3101.00.00	Animal or vegetable fertilizers; fertilizers produced by the mixing or chemical treatment of animal or vegetable products.
3102.10.00	Urea, whether or not in aqueous solution.
3102.21.00	Ammonium sulfate.
3102.29.00	Double salts and mixtures of ammonium sulfate and ammonium nitrate.
3102.30.00	Ammonium nitrate, whether or not in aqueous solution.
3102.40.00	Mixtures of ammonium nitrate with calcium carbonate or other inorganic nonfertilizing substances.
3102.50.00	Sodium nitrate.

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HTSUS subheading	Product description
3102.60.00	Double salts and mixtures of calcium nitrate and ammonium nitrate.
3102.80.00	Mixtures of urea and ammonium nitrate in aqueous or ammoniacal solution.
3102.90.01	Mineral or chemical fertilizers, nitrogenous, nesoi, including mixtures not specified elsewhere in heading 3102.
3103.11.00	Superphosphates containing by weight 35% or more of diphosphorous pentaoxide (P2O5).
3103.19.00	Superphosphates nesoi.
3103.90.01	Mineral or chemical fertilizers, phosphatic.
3104.20.00	Potassium chloride.
3104.30.00	Potassium sulfate.
3104.90.01	Mineral or chemical fertilizers, potassic, nesoi.
3105.10.00	Fertilizers of chapter 31 in tablets or similar forms or in packages of a gross weight not exceeding 10 kg.
3105.20.00	Mineral or chemical fertilizers nesoi, containing the three fertilizing elements nitrogen, phosphorus and potassium.
3105.30.00	Diammonium hydrogenorthophosphate (Diammonium phosphate).
3105.40.00	Ammonium dihydrogenorthophosphate (Monoammonium phosphate), mixtures thereof with diammonium hydrogenorthophosphate (Diammonium phosphate).
3105.51.00	Mineral or chemical fertilizers nesoi, containing nitrates and phosphates.
3105.59.00	Mineral or chemical fertilizers nesoi, containing the two fertilizing elements nitrogen and phosphorus.
3105.60.00	Mineral or chemical fertilizers nesoi, containing the two fertilizing elements phosphorous and potassium.
3105.90.00	Mineral or chemical fertilizers cont. two or three of the fertilizing elements nitrogen, phosphorus and potassium fertilizers, nesoi.
3201.10.00	Quebracho tanning extract.
3201.20.00	Wattle tanning extract.
3201.90.10	Tannic acid, containing by weight 50 percent or more of tannic acid.
3201.90.25	Tanning extracts of canaigre, chestnut curupay, divi-divi, eucalyptus, gambier, hemlock, larch, mangrove, myrobalan, oak, sumac, tara, urunday, valonia.
3201.90.50	Tanning extracts of vegetable origin nesoi; tannins and their salts, ethers, esters and other derivatives.
3202.10.10	Aromatic or modified aromatic synthetic organic tanning substances.
3202.10.50	Synthetic organic tanning substances, nonaromatic.
3202.90.10	Tanning substances, tanning preparations and enzymatic preparations for pre-tanning consisting wholly of inorganic substances.
3202.90.50	Tanning substances, tanning preparations and enzymatic preparations for pre-tanning, nesoi.
3203.00.10	Coloring matter of annato, archil, cochineal, cudbear, litmus and marigold meal.
3203.00.30	Mixtures of 3,4-dihydroxyphenyl-2,4,6,-trihydroxypphenylmethanone and 2-(2,4-dihydroxyphenyl)-3,5,7-trihydroxy-4H–1-benzopyran-4-one.
3203.00.80	Coloring matter of vegetable or animal origin, nesoi.
3204.11.10	Disperse blue 19 and other specified dispersed dyes and preparations based thereon.
3204.11.15	Disperse blue 30 and preparations based thereon.
3204.11.18	N-[2-[2,6-Dicyano-4-methylphenylazo]-5-(diethylamino)phenyl]methanesulfonamide; and 1 other specified disperse dye.
3204.11.35	Disperse dyes described in add'l U.S. note 3 to section VI.
3204.11.50	Disperse dyes and preparations based thereon, nesoi.
3204.12.05	Acid black 210 powder and presscake.
3204.12.13	Acid violet 19.
3204.12.17	Acid dyes, whether or not premetallized, and preparations based thereon, acid black 31, and other specified acid or mordant dyes.
3204.12.20	Acid black 61 and other specified acid and mordant dyes and preparations based thereon.
3204.12.30	Mordant black 75, blue 1, brown 79, red 81, 84 and preparations based thereon.
3204.12.45	Acid dyes, whether or not premetallized, and preparations based thereon, described in add'l U.S. note 3 to section VI.
3204.12.50	Synthetic acid and mordant dyes and preparations based thereon, nesoi.
3204.13.10	Basic black 7 and other specified basic dyes and preparations based thereon.
3204.13.20	Basic orange 22, basic red 13 dyes, and preparations based thereon.
3204.13.25	Basic blue 3; basic red 14; and basic yellow 1, 11, 13; and preparations based thereon.
3204.13.45	3,7-Bis(dimethylamino)phenazathionium chloride (methylene blue); and basic blue 147.
3204.13.60	Basic dyes and preparations based thereon, described in add'l U.S note 3 to section VIvi.
3204.13.80	Basic dyes and preparations based thereon, nesoi.
3204.14.10	Direct black 62 and other specified basic dyes and preparations based thereon.
3204.14.20	Direct black 51 and other specified basic dyes and preparations based thereon.
3204.14.25	Direct blue 86; direct red 83; direct yellow 28 dyes; and preparations based thereon.
3204.14.30	Direct dyes nesoi, and preparations based thereon, described in additional U.S. note 3 to section VI.
3204.14.50	Direct dyes and preparations based thereon, nesoi.
3204.15.10	Vat blue 1 (synthetic indigo) dye, "Colour Index No. 73000" and preparations based thereon.
3204.15.20	Vat brown 3; vat orange 2, 7; and vat violet 9, 13 dyes and preparations based thereon.
3204.15.25	Vat red 1.
3204.15.30	Solubilized vat blue 5 and specified solubilized vat dyes and preparations based thereon.
3204.15.35	Solubilized vat orange 3, vat blue 2, vat red 44; and vat yellow 4, 20 and preparations based thereon.
3204.15.40	Vat dyes (incl. those usable as pigments) and preparations based thereon, described in add. U.S. note 3 to sec. VI.

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HTSUS subheading	Product description
3204.15.80	Vat dyes (including those usable in that state as pigments) and preparations based thereon, nesoi.
3204.16.10	Reactive black 1; blue 1, 2, 4; orange 1; red 1, 2, 3, 5, 6; and yellow 1; and preparations based thereon.
3204.16.20	Specified reactive dye mixtures and preparations based thereon.
3204.16.30	Reactive dyes and preparations based thereon nesoi, described in additional U.S. note 3 to section VI.
3204.16.50	Synthetic reactive dyes and preparations based thereon, nesoi.
3204.17.04	Pigments and preparations based thereon, pigment black 1, and other specified pigments, nesoi.
3204.17.08	Pigment red 178; pigment yellow 101, 138.
3204.17.20	Copper phthalocyanine ([Phthalocyanato(2-)]copper) not ready for use as a pigment.
3204.17.40	Pigments and preparations based thereon, isoindoline red pigment; pigment red 242, 245; pigment yellow 155, 183, nesoi.
3204.17.60	Pigments and preparations based thereon, products described in add'l U.S. note 3 to section VI, nesoi.
3204.17.90	Other pigments and preparations based thereon, nesoi.
3204.19.06	Solvent yellow 43, 44, 85, 172.
3204.19.11	Solvent black 2 and other specified solvent dyes and preparations based thereon.
3204.19.20	Solvent dyes and preparations based thereon, products described in add'l U.S. note 3 to section VI.
3204.19.25	Solvent dyes and preparations based thereon nesoi.
3204.19.30	Sulfur black, "Colour Index Nos. 53185, 53190 and 53195" and preparations based thereon.
3204.19.35	Beta-carotene and other carotenoid coloring matter.
3204.19.40	Synthetic organic coloring matter and preparations based thereon, nesoi, described in additional U.S. note 3 to section VI.
3204.19.50	Synthetic organic coloring matter and preparations based thereon nesoi, including mixtures of items from subheading 320411 to 320419.
3204.20.10	Fluorescent brightening agent 32.
3204.20.40	Benzoxazol.
3204.20.80	Synthetic organic products of a kind used as fluorescent brightening agents, nesoi.
3204.90.00	Synthetic organic coloring matter or preparations based thereon, nesoi; synthetic organic products used as luminophores.
3205.00.05	Carmine food coloring solutions, cont cochineal carmine lake and paprika oleoresins, not including any synthetic organic coloring matter.
3205.00.15	Carmine color lakes and preparations as specified in note 3 to this chapter, nesoi.
3205.00.40	Color lakes and preparations based thereon, described in additional U.S. note 3 to section VI.
3205.00.50	Color lakes and preparations based thereon, nesoi.
3206.11.00	Pigments & preparations based on titanium dioxide containing 80 percent or more by weight off titanium dioxide calculated on the dry weight.
3206.19.00	Pigments and preparations based on titanium dioxide, nesoi.
3206.20.00	Pigments and preparations based on chromium compounds.
3206.41.00	Ultramarine and preparations based thereon.
3206.42.00	Lithopone and other pigments and preparations based on zinc sulfide.
3206.49.10	Concentrated dispersions of pigments in plastics materials.
3206.49.20	Coloring preparations based on iron oxides, as specified in note 3 to this chapter 32.
3206.49.30	Coloring preparations based on zinc oxides, as specified in note 3 to this chapter 32.
3206.49.40	Coloring preparations based on carbon black, as specified in note 3 to this chapter 32.
3206.49.55	Pigments and preparations based on hexacyanoferrates (ferrocyanides and ferricyanides).
3206.49.60	Coloring matter and preparations, nesoi, as specified in note 3 to this chapter 32.
3206.50.00	Inorganic products of a kind used as luminophores.
3207.10.00	Prepared pigments, opacifiers, colors, and similar preparations, of a kind used in the ceramic, enamelling or glass industry.
3207.20.00	Vitrifiable enamels and glazes, engobes (slips), and similar preparations, of a kind used in the ceramic, enamelling or glass industry.
3207.30.00	Liquid lustres and similar preparations, of a kind used in the ceramic, enamelling or glass industry.
3207.40.10	Glass frit and other glass, ground or pulverized.
3207.40.50	Glass frit and other glass, in the form of granules or flakes.
3208.10.00	Paints and varnishes (including enamels and lacquers) based on polyesters in a nonaqueous medium.
3208.20.00	Paints and varnishes (including enamels and lacquers) based on acrylic or vinyl polymers in a nonaqueous medium.
3208.90.00	Paints and varnishes based on synthetic polymers or chemically modified natural polymers nesoi, in a nonaqueous medium.
3209.10.00	Paints and varnishes (including enamels and lacquers) based on acrylic or vinyl polymers in an aqueous medium.
3209.90.00	Paints and varnishes based on synthetic polymers or chemically modified natural polymers nesoi, in an aqueous medium.
3210.00.00	Other paints and varnishes (including enamels, lacquers and distempers) nesoi; prepared water pigments of a kind used for finishing leather.
3211.00.00	Prepared driers for paints and varnishes.
3212.10.00	Stamping foils.
3212.90.00	Pigments dispersed in nonaqueous media, in liquid or paste form, used in making paints; dyes & coloring matter packaged for retail sale.
3213.10.00	Artists', students' or signboard painters' colors, in tablets, tubes, jars, bottles, pans or in similar packings, in sets.

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HTSUS subheading	Product description
3213.90.00	Artists', students' or signboard painters' colors, in tablets, tubes, jars, bottles, pans or in similar packings, not in sets.
3214.10.00	Glaziers' putty, grafting putty, resin cements, caulking compounds and other mastics; painters' fillings.
3214.90.10	Nonrefractory surfacing preparations for facades, indoor walls, floors, ceilings or the like, based on rubber.
3214.90.50	Nonrefractory surfacing preparations for facades, indoor walls, floors, ceilings or the like, not based on rubber.
3215.11.10	Printing ink, black, solid, in engineered shapes for apparatus in 8443.31, 32, 39.
3215.11.30	Printing ink, black, solid, other.
3215.11.90	Printing ink, black, not solid, other.
3215.19.10	Printing ink, not black, solid, in engineered shapes for apparatus in 8443.31, 32, 39.
3215.19.30	Printing ink, not black, solid, other.
3215.19.90	Printing ink, not black, not solid.
3215.90.10	Drawing ink.
3215.90.50	Inks, other than printing or drawing inks.
3301.13.00	Essential oils of lemon.
3302.90.10	Mixtures of or with a basis of odoriferous substances, used in other than the food or drink industries, zero to 10% alcohol by weight.
3302.90.20	Mixtures of or with a basis of odoriferous substances, used in other than the food or drink industries, over 10 percent alcohol by weight.
3303.00.10	Floral or flower waters, not containing alcohol.
3303.00.20	Perfumes and toilet waters, other than floral or flower waters, not containing alcohol.
3303.00.30	Perfumes and toilet waters, containing alcohol.
3304.10.00	Lip make-up preparations.
3304.20.00	Eye make-up preparations.
3304.30.00	Manicure or pedicure preparations.
3304.91.00	Beauty or make-up powders, whether or not compressed.
3304.99.10	Petroleum jelly put up for retail sale.
3304.99.50	Beauty or make-up preparations & preparations for the care of the skin, excl. medicaments but incl. sunscreen or sun tan preparations, nesoi.
3305.10.00	Shampoos.
3305.20.00	Preparations for permanent waving or straightening the hair.
3305.30.00	Hair lacquers.
3305.90.00	Preparations for use on the hair, nesoi.
3306.90.00	Preparations for oral or dental hygiene, including denture fixative pastes and powders, excluding dentifrices.
3307.10.10	Pre-shave, shaving or after-shave preparations, not containing alcohol.
3307.10.20	Pre-shave, shaving or after-shave preparations, containing alcohol.
3307.20.00	Personal deodorants and antiperspirants.
3307.30.10	Bath salts, whether or not perfumed.
3307.30.50	Bath preparations, other than bath salts.
3307.41.00	''Agarbatti'' and other odoriferous preparations which operate by burning, to perfume or deodorize rooms or used during religious rites.
3307.49.00	Preparations for perfuming or deodorizing rooms, including odoriferous preparations used during religious rites, nesoi.
3307.90.00	Depilatories and other perfumery, cosmetic or toilet preparations. nesoi.
3401.11.10	Castile soap in the form of bars, cakes or molded pieces or shapes.
3401.11.50	Soap, nesoi; organic surface-active products used as soap, in bars, cakes, pieces, soap-impregnated paper, wadding, felt, for toilet use.
3401.19.00	Soap; organic surface-active products used as soap, in bars, cakes, pieces; soap-impregnated paper, wadding, felt, not for toilet use.
3401.20.00	Soap, not in the form of bars, cakes, molded pieces or shapes.
3401.30.10	Organic surface-active products for wash skin, in liquid or cream, contain any aromatic/mod aromatic surface-active agent, put up for retail.
3401.30.50	Organic surface-active products and preparations for washing the skin, in liquid or cream form, put up for retail sale, nesoi.
3402.11.20	Linear alkylbenzene sulfonates.
3402.11.40	Anionic, aromatic or modified aromatic organic surface-active agents, whether or not put up for retail sale, nesoi.
3402.11.50	Nonaromatic anionic organic surface-active agents (other than soap).
3402.12.10	Aromatic or modified aromatic cationic organic surface-active agents (other than soap).
3402.12.50	Nonaromatic cationic organic surface-active agents (other than soap).
3402.13.10	Aromatic or modified aromatic nonionic organic surface-active agents (other than soap).
3402.13.20	Nonaromatic nonionic organic surface-active agents (other than soap) of fatty substances of animal or vegetable origin.
3402.13.50	Nonaromatic nonionic organic surface-active agents (other than soap), other than of fatty substances of animal or vegetable origin.
3402.19.10	Aromatic or modified aromatic organic surface-active agents (other than soap) other than anionic, cationic or nonionic.
3402.19.50	Nonaromatic organic surface-active agents (other than soap) nesoi.

ANNEX—Continued

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HTSUS subheading	Product description
3402.20.11	Surface-active/washing/cleaning preparations containing any aromatic or mod aromatic surface-active agent, put up for retail, not head 3401.
3402.20.51	Surface-active, washing, and cleaning preparations nesoi, put up for retail sale, not of heading 3401.
3402.90.10	Synthetic detergents put up for retail sale.
3402.90.30	Surface-active, washing, and cleaning preparations cont. any aromatic or modified aromatic surface-active agent, put up for retail sale.
3402.90.50	Surface-active, washing, and cleaning preparations nesoi, put up for retail sale.
3403.11.20	Preparations for the treatment of textile materials, containing 50 but not over 70 percent or more by weight of petroleum oils.
3403.11.40	Preparations for the treatment of textile materials, containing less than 50 percent by weight of petroleum oils.
3403.11.50	Preparations for the treatment of leather, furskins, other materials nesoi, containing less than 70% petroleum or bituminous mineral oils.
3403.91.10	Preparations for the treatment of textile materials, nesoi.
3403.91.50	Preparations nesoi, for the treatment of leather, furskins or other materials nesoi.
3404.20.00	Artificial waxes and prepared waxes of polyethylene glycol.
3404.90.10	Artificial waxes and prepared waxes containing bleached beeswax.
3404.90.51	Artificial waxes and prepared waxes.
3405.10.00	Polishes, creams and similar preparations for footwear or leather.
3405.20.00	Polishes, creams and similar preparations for the maintenance of wooden furniture, floors or other woodwork.
3405.30.00	Polishes and similar preparations for coachwork, other than metal polishes.
3405.40.00	Scouring pastes and powders and other scouring preparations.
3405.90.00	Polishes, creams and similar preparations for glass or metal.
3502.11.00	Egg albumin, dried.
3502.90.00	Albumins, albuminates and other albumin derivatives, nesoi.
3506.10.10	Animal glue, including casein glue but not including fish glue, not exceeding a net weight of 1 kg, put up for retail sale.
3506.10.50	Products suitable for use as glues or adhesives, nesoi, not exceeding 1 kg, put up for retail sale.
3506.91.10	Adhesive preparations based on rubber or plastics (including artificial resins), optically clear, for flat panel & touchscreen displays.
3506.91.50	Other adhesive preparations based on rubber or plastics (including artificial resins).
3506.99.00	Prepared glues and other prepared adhesives, excluding adhesives based on rubber or plastics, nesoi.
3507.10.00	Rennet and concentrates thereof.
3507.90.20	Penicillin G amidase.
3507.90.70	Enzymes and prepared enzymes, nesoi.
3606.10.00	Liquid or liquefied-gas fuels in containers used for filling cigarette or similar lighters of a capacity not exceeding 300 cubic cm.
3701.10.00	Photographic plates and film in the flat, sensitized, unexposed, of any material other than paper, paperboard or textiles, for X-ray use.
3701.20.00	Instant print film in the flat, sensitized, unexposed, whether or not in packs.
3701.30.00	Photographic plates and film nesoi, with any side 255 mm, in the flat, sensitized, unexposed, not of paper, paperboard, or textiles.
3701.91.00	Photographic plates, film, for color photography, nesoi, in the flat, sensitized, unexposed, not of paper, paperboard, textiles.
3701.99.30	Photographic dry plates, nesoi, sensitized, unexposed, of any material other than paper, paperboard or textiles.
3701.99.60	Photographic plates and film, nesoi, in the flat, sensitized, unexposed, of any material other than paper, paperboard or textiles.
3702.10.00	Photographic film in rolls, sensitized, unexposed, for X-ray use; of any material other than paper, paperboard or textiles.
3702.31.01	Film in rolls, for color photography, without sprocket holes, of a width not exceeding 105 mm, sensitized, unexposed.
3702.32.01	Film in rolls, with silver halide emulsion, without sprocket holes, of a width not exceeding 105 mm, sensitized, unexposed.
3702.39.01	Film in rolls without sprocket holes, width not exceeding 105 mm, other than color photography or silver halide emulsion film.
3702.41.01	Film in rolls, without sprocket holes, of a width exceeding 610 mm and of a length exceeding 200 m, for color photography.
3702.42.01	Film in rolls, without sprocket holes, of a width exceeding 610 mm and of a length exceeding 200 m, other than for color photography.
3702.43.01	Film in rolls, without sprocket holes, of a width exceeding 610 mm and of a length not exceeding 200 m.
3702.44.01	Film in rolls, without sprocket holes, of a width exceeding 105 mm but not exceeding 610 mm.
3702.52.01	Film for color photography, in rolls, of a width not exceeding 16 mm.
3702.53.00	Film for color photography, in rolls, exceeding 16 but not 35 mm in width and of a length not exceeding 30 m, for slides.
3702.54.00	Film for color photography, in rolls, exceeding 16 but not 35 mm in width, of a length not exceeding 30 m, other than for slides.
3702.55.00	Film for color photography, in rolls, exceeding 16 but not 35 mm in width and of a length exceeding 30 m.
3702.56.00	Film for color photography, in rolls, of a width exceeding 35 mm.

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HTSUS subheading	Product description
3702.96.00	Photographic film nesoi, in rolls, of a width not exceeding 35 mm and of a length not exceeding 30 m.
3702.97.00	Photographic film nesoi, in rolls, of a width not exceeding 35 mm and of a length exceeding 30 m.
3702.98.00	Photographic film nesoi, in rolls, of a width exceeding 35 mm.
3703.10.30	Silver halide photographic papers, sensitized, unexposed, in rolls of a width exceeding 610 mm.
3703.10.60	Photographic paper (other than silver halide), paperboard and textiles, sensitized, unexposed, in rolls of a width exceeding 610 mm.
3703.20.30	Silver halide papers, other than in rolls of a width exceeding 610 mm, for color photography, sensitized, unexposed.
3703.20.60	Photographic paper (not silver halide), paperbd & textiles for color photos, other than in rolls of a width >610 mm, sensitized, unexposed.
3703.90.30	Silver halide photographic papers, sensitized, unexposed, not for color photography, other than in rolls of a width exceeding 610 mm.
3703.90.60	Photographic paper (not silver halide), paperbd, tex., not for color photo, other than in rolls of a width >610 mm, sensitized, unexposed.
3704.00.00	Photographic plates, film, paper, paperboard and textiles, exposed but not developed.
3705.00.00	Photographic plates and film, exposed and developed, other than cinematographic film.
3706.10.30	Sound recordings on motion-picture film of a width of 35 mm or more, suitable for use with motion-picture exhibits.
3706.10.60	Motion-picture film of a width of 35 mm or more, exposed and developed, whether or not incorporating sound track, nesoi.
3706.90.00	Motion-picture film, exposed and developed, less than 35 mm wide.
3707.10.00	Sensitizing emulsions, for photographic uses, nesoi.
3707.90.31	Acid violet 19 for photographic uses.
3707.90.32	Chemical preparations for photographic uses, nesoi.
3707.90.60	Unmixed products for photographic uses, put up in measured portions or put up for retail sale in a form ready for use.
3801.10.10	Artificial graphite plates, rods, powder and other forms, for manufacture into brushes for electric generators, motors or appliances.
3801.10.50	Artificial graphite, nesoi.
3801.20.00	Colloidal or semi-colloidal graphite.
3801.30.00	Carbonaceous pastes for electrodes and similar pastes for furnace linings.
3801.90.00	Preparations based on graphite or other carbon in the form of pastes, blocks, plates or other semimanufactures, nesoi.
3802.10.00	Activated carbon.
3802.90.10	Bone black.
3802.90.20	Activated clays and activated earths.
3802.90.50	Activated natural mineral products, nesoi; animal black, including spent animal black.
3803.00.00	Tall oil, whether or not refined.
3804.00.10	Lignin sulfonic acid and its salts.
3804.00.50	Residual lyes from the manufacture of wood pulp, nesoi, excluding tall oil.
3805.10.00	Gum, wood or sulfate turpentine oils.
3805.90.10	Pine oil containing alpha-terpineol as the main constituent.
3805.90.50	Terpenic oils, nesoi, produced by treatment of coniferous woods; crude dipentene; sulfite turpentine and other crude para-cymene.
3806.10.00	Rosin and resin acids.
3806.20.00	Salts of rosin or of resin acids.
3806.30.00	Ester gums.
3806.90.00	Resin acids, derivatives of resin acids and rosin, rosin spirit and rosin oils, run gums, nesoi.
3807.00.00	Wood tar and its oils; wood creosote; wood naphtha; vegetable pitch; preparations based on rosin, resin acids or vegetable pitch.
3808.52.00	DDT (ISO) (clofenatone (INN)), in packings of a net weight content not exceeding 300 g.
3808.59.10	Pesticides containing any aromatic or modified aromatic specified in note 1 to chapter 38.
3808.59.40	Disinfectants specified in note 1 to chapter 38.
3808.59.50	Pesticides, nesoi specified in note 1 to chapter 38.
3808.61.10	Pesticides containing any aromatic or modified aromatic, not exceeding 300 g, specified in note 2 to chapter 38.
3808.61.50	Pesticides, nesoi, not exceeding 300 g, specified in note 2 to chapter 38.
3808.62.10	Pesticides containing any aromatic or modified aromatic, >300 g but <7.5 kg, specified in note 2 to chapter 38.
3808.62.50	Pesticides, nesoi, >300 g but <7.5 kg, specified in note 2 to chapter 38.
3808.69.10	Pesticides containing any aromatic or modified aromatic, >7.5 kg, specified in note 2 to chapter 38.
3808.69.50	Pesticides, nesoi, >7.5 kg, specified in note 2 to chapter 38.
3808.91.10	Fly ribbons (ribbon fly catchers), put up in packings for retail sale.
3808.91.15	Mixtures of N-[[(chlorophenyl)amino]carbonyl]-2,6-difluorobenzamide and inert substances.
3808.91.25	Insecticides containing any aromatic or modified aromatic insecticide, nesoi.
3808.91.30	Insecticides, nesoi, containing an inorganic substance, put up for retail sale.
3808.91.50	Insecticides, nesoi, for retail sale or as preparations or articles.
3808.92.05	Mixtures of dinocap and application adjuvants.
3808.92.15	Fungicides containing any aromatic or modified aromatic fungicide, nesoi.

ANNEX—Continued

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HTSUS subheading	Product description
3808.92.24	Maneb; zinab; mancozeb; and metiram.
3808.92.28	Fungicides containing any fungicide which is a thioamide, thiocarbamate, dithio carbamate, thiuram or isothiocyanate, nesoi.
3808.92.30	Fungicides, nesoi, containing an inorganic substance, put up for retail sale.
3808.92.50	Fungicides nesoi, put up in forms or packing for retail sale or as preparations or articles.
3808.93.05	Herbicides, antisprouting products and plant-growth regulators, aromatic or modified aromatic, for retail sale.
3808.93.15	Herbicides containing any aromatic or modified aromatic herbicide, antisprouting agent or plant-growth regulator, nesoi.
3808.93.20	Herbicides, antisprouting products and plant-growth regulators, nesoi, containing an inorganic substance, for retail sale.
3808.93.50	Herbicides, antisprouting products and plant-growth regulators nesoi, put up for retail sale.
3808.94.10	Disinfectants, containing any aromatic or modified aromatic disinfectant.
3808.94.50	Disinfectants not subject to subheading note 1 of chapter 38, nesoi.
3808.99.04	Mixtures of 1,1-bis(4-chlorophenyl)-2,2,2-trichloroethanol (Dicofol) and application adjuvants.
3808.99.08	Rodenticides containing any aromatic or modified aromatic pesticide, nesoi.
3808.99.30	Formulated biocides based on 2-methyl-4-isothiazolin-3-one, or 2-n-octyl-4-isothiazolin-3-one, or on certain other chemicals; metaldehyde.
3808.99.70	Rodenticides containing an inorganic substance.
3808.99.95	Rodenticides, nesoi.
3809.91.00	Finishing agents, dye carriers and like products, nesoi, used in the textile or like industries.
3809.92.10	Finishing agents, dye carriers and other preparations used in paper or like industries, 5% or more by wt. aromatic (mod.) substance(s).
3809.92.50	Finishing agents, dye carriers and other preparations used in paper or like industries, <5% by weight of aromatic (mod.) substance(s).
3809.93.10	Finishing agents, dye carriers and other preparations used in leather and like industries, >5% by weight aromatic (mod.) substance(s).
3809.93.50	Finishing agents, dye carriers and other preparations used in leather and like industries, <5% by weight aromatic (mod.) substance(s).
3810.10.00	Pickling preparations for metal surfaces; soldering, brazing or welding powders and pastes consisting of metal and other materials.
3810.90.10	Preparations used for soldering or cores or coatings for welding electrodes or rods, 5% or more by weight aromatic (or mod.) substance(s).
3810.90.20	Preparations used for soldering or as cores or coatings for welding electrodes or rods, consisting wholly of inorganic substances.
3810.90.50	Preparations used for soldering or as cores or coatings for welding electrodes or rods, nesoi.
3811.11.10	Antiknock preparations based on tetraethyl lead or on a mixture of tetraethyl lead and tetramethyl lead.
3811.11.50	Antiknock preparations based on lead compounds, nesoi.
3811.19.00	Antiknock preparations based on other than lead compounds.
3811.90.00	Prepared additives for mineral oils (incl. gasoline) or other liquids used for the same purposes as mineral oils, nesoi.
3812.10.10	Prepared rubber accelerators containing any aromatic or modified aromatic rubber accelerator nesoi.
3812.10.50	Prepared rubber accelerators not containing any aromatic or modified aromatic rubber accelerator nesoi.
3812.20.10	Compound plasticizers for rubber or plastics containing any aromatic or modified aromatic plasticizer nesoi.
3812.20.50	Compound plasticizers for rubber or plastics not containing any aromatic or modified aromatic plasticizer nesoi.
3812.31.00	Mixtures of oligomers of 2,2,4-trimethyl-1,2-dihydroquinoline (TMQ).
3812.39.20	Mixtures of N,N′-diaryl-p-phenylenediamines.
3812.39.30	Master batches of poly[nitrilomethanetetraartlnitr.
3812.39.60	Compound plasticizers for rubber/plastics cont any aromatic or modified aromatic antioxidant or other stabilizer, nesoi.
3812.39.70	Bis(1,2,2,6,6-pentamethyl-4-piperidinyl) sebacate.
3812.39.90	Antioxiding prep & oth compound stabilizers for rubber or plastics, nesoi.
3813.00.10	Preparations and charges for fire extinguishers; charged fire-extinguishing grenades; consisting wholly of inorganic substances.
3813.00.50	Preparations and charges for fire extinguishers; charged fire-extinguishing grenades; nesoi.
3814.00.10	Organic composite solvents and thinners containing 5 to 25 percent, by weight of one or more aromatic substances.
3814.00.20	Organic composite solvents and thinners containing more than 25 percent by weight of one or more aromatic substances.
3814.00.50	Organic composite solvents and thinners, nesoi; prepared paint or varnish removers; nesoi.
3815.11.00	Supported catalysts with nickel or nickel compounds as the active substance.
3815.12.00	Supported catalysts with precious metal or precious metal compounds as the active substance.
3815.19.00	Supported catalysts other than with nickel or precious metal or their compounds as the active substance.
3815.90.10	Reaction initiators, reaction accelerators and catalytic preparations, nesoi, consisting wholly of bismuth, of tungsten or of vanadium.
3815.90.20	Reaction initiators, reaction accelerators and catalytic preparations, nesoi, consisting wholly of mercury or of molybdenum.

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HTSUS subheading	Product description
3815.90.30	Reaction initiators, reaction accelerators and catalytic preparations, nesoi, consisting wholly of inorganic substances nesoi.
3815.90.50	Reaction initiators, reaction accelerators and catalytic preparations, nesoi.
3816.00.00	Refractory cements, mortars, concretes and similar compositions, other than products of heading 3801.
3817.00.10	Mixed linear alkylbenzenes, other than those of heading 2707 or 2902.
3817.00.15	Mixed alkylbenzenes, other than linear or those of heading 2707 or 2902.
3817.00.20	Mixed alkylnaphthalenes, other than those of heading 2707 or 2902.
3818.00.00	Chemical elements doped for use in electronics, in the form of discs, wafers etc., chemical compounds doped for electronic use.
3819.00.00	Hydraulic brake fluids and transmission fluids cont. less than 70% by weight of petroleum oils, or bituminous mineral oils.
3824.10.00	Prepared binders for foundry molds or cores.
3824.30.00	Nonagglomerated metal carbides mixed together or with metallic binders.
3824.40.10	Prepared additives for cements, mortars or concretes containing 5% or more by weight of aromatic or modified aromatic substances.
3824.40.20	Prepared additives for cements, mortars or concretes consisting wholly of inorganic substances.
3824.40.50	Prepared additives for cements, mortars or concretes, nesoi.
3824.50.00	Non-refractory mortars and concretes.
3824.71.01	Mixtures containing chlorofluorocarbons.
3824.72.00	Containing bromochlorodiflourormethane, bromotrifluoromethane or dibromotetrafluroroethane.
3824.73.00	Mixtures containing hydrobromofluorocarbons.
3824.74.00	Mixtures containing hydrochlorofluorocarbons.
3824.75.00	Mixtures of halogenated hydrocarbons containing carbon tetrachloride.
3824.76.00	Containing 1,1,1,-trichloroethane.
3824.77.00	Containing bromomethane or bomochloromethane.
3824.78.00	Containing PFCs or HFCs but not CFCs or HCFCs.
3824.79.10	Mixtures containing halogenated derivatives of methane, ethane, or propane, nesoi, chlorinated but not otherwise halogenated.
3824.79.90	Mixtures containing halogenated derivatives of methane, ethane, or propane, nesoi, other than chlorinated but not halogenated.
3824.81.00	Chemical mixtures containing oxirane (ethylene oxide).
3824.82.10	Containing PCBs, PCTs or PBBs: mixtures of halogenated hydrocarbons, chlorinated but not otherwise halogenated, nesoi.
3824.82.90	Containing PCBs, PCTs or PBBs: mixtures of halogenated hydrocarbons other than chlorinated only, nesoi.
3824.83.00	Containing tris (2,3-dibromopropyl phosphate).
3824.84.00	Other mixtures cont aldrin, camphechlor(toxaphene), chlordane, chlordecone, DDT(clofenatone), 1,1,1-TRICHLORO-2,2-BIS(P-CHLOROPHENYL)ETHANE), ETC.
3824.85.00	Mixtures containing 1,2,3,4,5,6-hexachlorocyclohexane (HCH (ISO)), including lindane (ISO,INN).
3824.86.00	Mixtures containing pentachlorobenzene (ISO) or hexachlorobenzene (ISO).
3824.87.00	Mixtures containing perfluorooctane sulfonic acid, its salts, perfluorooctane sulfonamides, or perfluorooctane sulfonyl fluoride.
3824.88.00	Mixtures containing tetra-, penta-, hexa-, hepta-, or octabromodiphenyl ethers.
3824.91.00	Mixtures consisting mainly of methylphosphonate etc.
3824.99.11	Cultured crystals, weighing not less than 2.5g each, in the form of ingots.
3824.99.19	Cultured crystals, weighing not less than 2.5g each except in the form of ingots.
3824.99.21	Mixtures consisting wholly of substances found naturally in coal tar, whether obtained from coal tar or other source.
3824.99.25	Mixtures of triphenyl sulfonium chloride, diphenyl (4-phenylthio)phenyl sulfonium chloride & (thiodi-4,1-phenylene)bis(diphenyl sulfonium) dichloride.
3824.99.26	Benzene,2,4-Diisocyanate-1,3,5-tris-(1-methylethyl).
3824.99.28	Mixtures containing 5% or more by weight of one or more aromatic or modified aromatic substance, nesoi.
3824.99.31	Mixtures of bismuth.
3824.99.32	Mixtures of hydrosulfite compounds, of sulfoxylate compounds, or of both.
3824.99.33	Mixtures of mercury.
3824.99.34	Mixtures of molybdenum.
3824.99.35	Mixtures of tungsten.
3824.99.36	Mixture of vanadium.
3824.99.39	Mixtures of two or more inorganic compounds, nesoi.
3824.99.41	Mixtures of fatty substances of animal or vegetable origin and mixtures thereof.
3824.99.48	Mixtures that are in whole or in part of hydrocarbons derived in whole or in part from petroleum, shale oil or natural gas.
3824.99.50	Mixtures chlorinated but not otherwise halogenated.
3824.99.55	Mixtures of halogenated hydrocarbons, nesoi.
3824.99.70	Mixtures of dibromoneopentyl gylcol; polydibromophenylene oxide; tetrabromobisphenol-A-carbonate oligomers; electroplating chemical and electroless.
3824.99.75	Mixtures of naphthenic acids, their water-insoluble salts and their esthers.
3824.99.92	Chemical products and preparations and residual products of the chemical or allied industries, nesoi.

ANNEX—Continued

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HTSUS subheading	Product description
3825.41.00	Halogenated waste organic solvents.
3825.49.00	Waste organic solvents, other than halogenated.
3825.50.00	Wastes of metal-pickling liquors, hydraulic fluids, brake fluids and anti-freeze fluids.
3825.61.00	Other wastes from the chemical or allied industries mainly containing organic constituents.
3825.69.00	Other wastes from the chemical or allied industries, other than those mainly containing organic constituents.
3825.90.00	Residual products of the chemical or allied industries, nesoi; other wastes, nesoi, specified in note 6 to chapter 38.
3826.00.10	Biodiesel not containing petroleum or bituminous oil.
3826.00.30	Biodiesel containing <70% petroleum or bituminous oil.
3901.40.00	Ethylene-alpha-olefin copolymers, having a specific gravity of less than 0.94.
3905.99.30	Polyvinyl carbazole (including adjuvants).
3909.31.00	Poly(methylene phenyl isocyanate) (crude MDI, polymeric MDI).
3909.39.00	Amino-resins, nesoi.
3912.11.00	Cellulose acetates, nesoi, in primary forms, nonplasticized.
3912.31.00	Carboxymethylcellulose and its salts.
3913.90.20	Polysaccharides and their derivatives, nesoi, in primary forms.
3915.10.00	Waste, parings and scraps, of polymers of ethylene.
3915.20.00	Waste, parings and scrap, of polymers of styrene.
3915.30.00	Waste, parings and scrap, of polymers of vinyl chloride.
3915.90.00	Waste, parings and scrap, of plastics, nesoi.
3916.90.20	Monofilament racket strings of plastics of which any cross-sectional dimension exceeds 1 mm.
3917.10.10	Artificial guts (sausage casings) of cellulosic plastics materials.
3917.10.60	Artificial guts (sausage casings) of collagen.
3917.10.90	Artificial guts (sausage casings) of hardened protein, nesoi.
3917.33.00	Flexible plastic tubes, pipes and hoses, nesoi, with fittings, not reinforced or otherwise combined with other materials.
3917.39.00	Flexible plastic tubes, pipes and hoses, nesoi.
3918.10.10	Vinyl tile floor coverings.
3918.10.20	Vinyl flooring, excluding vinyl tile.
3918.10.31	Wall or ceiling coverings, with a backing of manmade fibers, greater than 70% by weight of PVC.
3918.10.32	Wall or ceiling coverings, with a backing of manmade fibers, less than or equal to 70% by weight of PVC.
3918.10.40	Wall or ceiling coverings of polymers of vinyl chloride with a backing of textile fibers other than of manmade fibers.
3918.10.50	Wall or ceiling coverings of polymers of vinyl chloride, without a backing of textile fibers.
3918.90.10	Floor coverings of plastics, other than of polymers of vinyl chloride, nesoi.
3918.90.20	Wall or ceiling coverings, with a backing of manmade fibers, of plastics other than polymers of vinyl chloride.
3918.90.30	Wall or ceiling coverings of plastics other than of polymers of vinyl chloride with a backing of textile fibers other than of manmade fiber.
3918.90.50	Wall or ceiling coverings of plastics other than vinyl chloride, without a backing of textile fibers.
3922.90.00	Bidets, lavatory pans, flushing cisterns and similar sanitary ware nesoi, of plastics.
3923.10.20	Boxes and similar articles for the conveyance or packing of semiconductor wafers, masks or reticules of subheadings 3923.10 or 8485.90.
3923.10.90	Other boxes, cases, crates and similar articles for the conveyance or packing of goods, of plastics.
3923.21.00	Sacks and bags (including cones) for the conveyance or packing of goods, of polymers of ethylene.
3923.29.00	Sacks and bags (including cones) for the conveyance or packing of goods, of plastics other than polymers of ethylene.
3923.30.00	Carboys, bottles, flasks and similar articles for the conveyance or packing of goods, of plastics.
3923.40.00	Spools, cops, bobbins and similar supports, of plastics.
3923.50.00	Stoppers, lids, caps and other closures, of plastics.
3923.90.00	Articles nesoi, for the conveyance or packing of goods, of plastics.
3925.10.00	Reservoirs, tanks, vats and similar containers, of a capacity exceeding 300 liters, of plastics.
3925.90.00	Builders' ware of plastics, nesoi.
3926.20.10	Gloves, seamless, of plastics.
3926.20.20	Baseball and softball gloves and mitts, of plastics.
3926.20.30	Gloves specially designed for use in sports, nesoi, of plastics.
3926.20.40	Gloves, nesoi, of plastics.
3926.20.60	Plastic rainwear, incl jackets, coats, ponchos, parkas & slickers, w/outer shell PVC and w/wo attached hoods, val not over $10 per unit.
3926.20.90	Articles of apparel & clothing accessories, of plastic, nesoi.
3926.90.30	Parts for yachts or pleasure boats of heading 8903 and watercraft not used with motors or sails, of plastics.
3926.90.45	Gaskets, washers and other seals, of plastics.
3926.90.55	V-belts of plastics, containing textile fibers.
3926.90.56	Belting and belts (except V-belts) for machinery, of plastics, containing predominately vegetable fibers.
3926.90.57	Belting and belts (except V-belts) for machinery, of plastics, containing predominately man-made fibers.
3926.90.59	Belting and belts (except V-belts) for machinery, of plastics, containing textile fibers nesoi.
3926.90.60	Belting and belts (except V-belts) for machinery, of plastics, not containing textile fibers.
3926.90.83	Empty cartridges and cassettes for typewriter and machine ribbons, of plastics.

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HTSUS subheading	Product description
3926.90.87	Flexible document binders with tabs, rolled or flat, of plastics.
3926.90.94	Cards, not punched, suit. for jacquard cards; jacquard cards & jacquard heads for power-driven weaving mach, etc; & trans sheet plast 30% lead.
3926.90.96	Casing for bicycle derailleur cable; and casing for cable or inner wire for caliper and cantilever bake, whether or not cut length; of plastic.
4001.10.00	Natural rubber latex, whether or not prevulcanized.
4001.21.00	Natural rubber smoked sheets.
4001.22.00	Technically specified natural rubber (TSNR), in primary forms.
4001.29.00	Natural rubber in primary forms other than latex, smoked sheets or technically specified natural rubber (TSNR).
4001.30.00	Balata, gutta-percha, guayule, chicle and similar natural rubber gums, in primary forms.
4002.11.00	Styrene-butadiene rubber (SBR) or carboxylated styrene-butadiene rubber (XSBR), latex, in primary forms or in plates, sheets or strip.
4002.19.00	Styrene-butadiene rubber (SBR), carboxylated styrene-butadiene rubber (XSBR), except latex, in primary forms or in plates, sheets or strip.
4002.20.00	Butadiene rubber (BR), in primary forms or in plates, sheets or strip.
4002.31.00	Isobutene-isoprene (butyl) rubber (IIR), in primary forms or in plates, sheets or strip.
4002.39.00	Halo-isobutene-isoprene rubber (CIIR or BIIR), in primary forms or in plates, sheets or strip.
4002.41.00	Chloroprene (chlorobutadiene) rubber (CR), latex, in primary forms or in plates, sheets or strip.
4002.49.00	Chloroprene (chlorobutadiene) rubber (CR), other than latex, in primary forms or in plates, sheets or strip.
4002.51.00	Acrylonitrile-butadiene rubber (NBR), latex, in primary forms or in plates, sheets or strip.
4002.59.00	Acrylonitrile-butadiene rubber (NBR), other than latex, in primary forms or in plates, sheets or strip.
4002.60.00	Isoprene rubber (IR), in primary forms or in plates, sheets or strip.
4002.70.00	Ethylene-propylene-nonconjugated diene rubber (EPDM), in primary forms or in plates, sheets or strip.
4002.80.00	Mixtures of natural rubber gums with synthetic rubber, in primary forms or in plates, sheets or strip.
4002.91.00	Synthetic rubber and factice derived from oils, in latex form, in primary forms or in plates, sheets or strip, nesoi.
4002.99.00	Synthetic rubber and factice derived from oils, in primary forms or in plates, sheets or strip, nesoi.
4003.00.00	Reclaimed rubber in primary forms or in plates, sheets or strip.
4004.00.00	Waste, parings and scrap of rubber (other than hard rubber) and powders and granules obtained therefrom.
4005.10.00	Rubber, unvulcanized, compounded with carbon black or silica, in primary forms or in plates, sheets or strip.
4005.20.00	Solutions and dispersions of rubber, unvulcanized, compounded with other than carbon black or silica.
4005.91.00	Compounded rubber, unvulcanized, in plates, sheets and strip.
4005.99.00	Compounded rubber, unvulcanized, in primary forms, nesoi.
4006.90.10	Rods, tubes, profile shapes, discs, rings, and similar articles, of natural, unvulcanized rubber.
4006.90.50	Rods, tubes, profile shapes, discs, rings, and similar articles, of synthetic unvulcanized rubber.
4007.00.00	Vulcanized rubber thread and cord.
4008.11.10	Plates, sheets and strip of vulcanized natural cellular rubber, other than hard rubber.
4008.11.50	Plates, sheets and strip of vulcanized synthetic cellular rubber, other than hard rubber.
4008.19.20	Rods and profile shapes of vulcanized natural cellular rubber, other than hard rubber.
4008.19.40	Vulcanized natural cellular rubber, other than hard rubber, other than rods and profile shapes, nesoi.
4008.19.60	Rods and profile shapes of vulcanized, synthetic cellular rubber, other than hard rubber.
4008.19.80	Vulcanized, synthetic cellular rubber, other than hard rubber, other than rods and profile shapes.
4008.21.00	Plates, sheets and strip of vulcanized, noncellular rubber, other than hard rubber.
4008.29.20	Rods and profile shapes of vulcanized, noncellular rubber, other than hard rubber.
4008.29.40	Vulcanized, noncellular rubber, other than hard rubber, other than rods and profile shapes, nesoi.
4009.11.00	Tubes, pipes and hoses of vulcanized rubber other than hard rubber, not reinforced or combined w/other materials, without fittings.
4009.21.00	Tubes, pipes and hoses of vulcanized rubber other than hard rubber, reinforced or combined only with metal, without fittings.
4009.22.00	Tubes, pipes and hoses of vulcanized rubber other than hard rubber, reinforced or combined only with metal, with fittings.
4009.31.00	Tubes, pipes and hoses of vulcanized rubber other than hard rubber, reinforced or combined only with textile materials, without fittings.
4009.32.00	Tubes, pipes and hoses of vulcanized rubber other than hard rubber, reinforced or combined only with textile materials, with fittings.
4009.41.00	Tubes, pipes and hoses of vulcanized rubber other than hard rubber, reinforced or combined with other materials nesoi, without fittings.
4010.12.10	Conveyor belts or belting of vulcanized rubber reinforced only with textile materials, in which vegetable fibers predominate ov other fibers.
4010.12.50	Conveyor belts/belting of vulcanized rubber reinforced w/textile material, mostly man-made fiber, width exceeds 20 cm.
4010.12.55	Conveyor belts/belting of vulcanized rubber reinforced only w/textile material, mostly man-made fiber, width not over 20 cm.
4010.12.90	Conveyor belts or belting of vulcanized rubber reinforced only with textile materials, nesoi.
4010.19.10	Conveyor belts or belting of vulcanized rubber, nesoi, combined with textile materials in which vegetable fibers predominate ov other fibers.
4010.19.50	Conveyor belts/belting of vulcanized rubber, nesoi, combined w/textile components in which man-made fibers predominate, width exceed 20 cm.

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HTSUS subheading	Product description
4010.19.55	Conveyor belts/belting of vulcanized rubber, nesoi, combined w/textile components in which man-made fibers predominate, width under 20 cm.
4010.19.80	Conveyor belts/belting of vulcanized rubber, nesoi, combined with textile materials nesoi.
4010.19.91	Conveyor belts/belting of vulcanized rubber, nesoi.
4010.31.30	Transmission V-belts of vulcanized rubber, V-ribbed, circumference exceed 60 cm but not exceed 180 cm, combined with textile materials.
4010.31.60	Transmission V-belt of vulcanized rubber, V-ribbed, circumference exceed 60 cm but not exceed 180 cm, other than combined w/textile material.
4010.32.30	Transmission V-belts of vulcanized rubber, not V-ribbed, circumference exceed 60 cm but not exceed 180 cm, combined with textile materials.
4010.32.60	Transmission V-belt of vulcanized rubber, not V-ribbed, circumference exceed 60 cm not exceed 180 cm, other than combined w/textile material.
4010.33.30	Transmission V-belts of vulcanized rubber, V-ribbed, circumference exceed 180 cm but not exceed 240 cm, combined with textile materials.
4010.33.60	Transmission V-belt of vulcanized rubber, V-ribbed, circumference exceed 180 cm not exceed 240 cm, other than combined w/textile material.
4010.34.30	Transmission V-belts of vulcanized rubber, not V-ribbed, circumference exceed 180 cm but not exceed 240 cm, combined with textile materials.
4010.34.60	Transmission V-belt of vulcanized rubber, not V-ribbed, circumference exceed 180 cm not exceed 240 cm,other than combined w/textile material.
4010.35.30	Endless synchronous transmission belt of vulcan. rubber, circum. 60–150 cm, combined w/textile mat. w/vegetable fiber more than other fibers.
4010.35.41	Endless synchronous transmission belt of vulcan. rubber, circum. 60–150 cm, combine w/textile mat.;manmade fiber predominant; width ov 20 cm.
4010.35.45	Endless synchronous transmission belt of vulcan. rubber, circum. 60–150 cm, combine w/text. mat.;manmade fiber predominant; width n/o 20 cm.
4010.35.50	Endless synchronous transmission belt of vulcanized rubber, circumference 60 to 150 cm, combined with textile materials nesoi.
4010.35.90	Endless synchronous transmission belt of vulcanized rubber, circumference 60 to 150 cm, other than combined with textile materials.
4010.36.30	Endless synchronous transmission belt of vulcan. rubber, circum. 150–198 cm, combined w/textile with vegetable fiber predom over other fiber.
4010.36.41	Endless synchronous transmission belt of vulcan. rubber, circum. 150–198cm, combined w/manmade fiber exceeding other fibers, width ov 20 cm.
4010.36.45	Endless synchronous transmission belt of vulcan. rubber, circum. 150–198cm, combined w/manmade fiber exceeding other fiber, width n/o 20 cm.
4010.36.50	Endless synchronous transmission belts of vulcanized rubber, circumference 150 to 198 cm, combined with textile materials nesoi.
4010.36.90	Endless synchronous transmission belts of vulcanized rubber, circumference 150 to 198 cm, other than combined with textile materials.
4010.39.10	Transmission V-belts and V-belting of vulcanized rubber, nesoi, combined with textile materials.
4010.39.20	Transmission V-belts and V-belting of vulcanized rubber, nesoi, other than combined with textile materials.
4010.39.30	Transmission belts or belting of vulcanized rubber, nesoi, combined with textile materials in which vegetable fiber predominate other fibers.
4010.39.41	Transmission belts or belting of vulcanized rubber, nesoi, combined w. textile materials with man-made fibers predominant, width over 20 cm.
4010.39.45	Transmission belts or belting of vulcanized rubber, nesoi, combined w. textile materials with man-made fibers predominant, width n/o 20 cm.
4010.39.50	Transmission belts or belting of vulcanized rubber, nesoi, combined with textile materials nesoi.
4010.39.90	Transmission belts or belting of vulcanized rubber, nesoi, other than combined with textile materials.
4011.10.10	New pneumatic radial tires, of rubber, of a kind used on motor cars (including station wagons and racing cars).
4011.10.50	New pneumatic tires excluding radials, of rubber, of a kind used on motor cars (including station wagons and racing cars).
4011.20.10	New pneumatic radial tires, of rubber, of a kind used on buses or trucks.
4011.20.50	New pneumatic tires excluding radials, of rubber, of a kind used on buses or trucks.
4011.40.00	New pneumatic tires, of rubber, of a kind used on motorcycles.
4011.50.00	New pneumatic tires, of rubber, of a kind used on bicycles.
4011.70.00	New pneumatic tires of a kind used on agricultural or forestry vehicles and machines.
4011.80.10	New pneumatic tires of a kind used on construction, mining or industrial handling vehicles and machines having a herring-bone or similar tread.
4011.80.20	New pneumatic tires of a kind used on construction, mining or industrial handling vehicles and machines having a radial tread.
4011.80.80	New pneumatic tires of a kind used on construction, mining or industrial handling vehicles and machines, other.
4011.90.10	New pneumatic tires, of a kind nesoi, have a herring-bone or similar tread.
4011.90.20	New pneumatic tires, of a kind nesoi, have a radial tread.
4011.90.80	New pneumatic tires, nesoi.

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HTSUS subheading	Product description
4012.11.40	Retreaded radial pnuematic tires, of rubber, of a kind used on motor cars (including station wagons and racing cars).
4012.11.80	Retreaded pnuematic tires (nonradials), of rubber, of a kind used on motor cars (including station wagons and racing cars).
4012.12.40	Retreaded pnuematic radial tires, of rubber, of a kind used on buses or trucks.
4012.12.80	Retreaded pnuematic tires (nonradials), of rubber, of a kind used on buses or trucks.
4012.19.20	Retreaded pneumatic tires, of rubber, designed for certain agricultural or horticultural machinery.
4012.19.40	Retreaded pnuematic radial tires, of rubber, not elsewhere specified or included.
4012.20.10	Used pneumatic tires of rubber, for aircraft.
4012.20.15	Used pneumatic tires of rubber, designed for certain agricultural or horticultural machinery,for on-highway trasnport of passengers or goods.
4012.20.45	Used pneumatic tires of rubber, designed for certain agricultural or horticultural machinery, nesoi.
4012.20.60	Used pneumatic tires, of rubber, for vehicles for on-highway transport of passengers or goods nesoi, or vehicles of heading 8705.
4012.20.80	Used pneumatic tires, of rubber for machinery, nesoi.
4012.90.10	Solid or cushion tires of rubber.
4012.90.30	Bicycle rim strips of natural rubber.
4012.90.45	Interchangeable tire treads and tire flaps, of natural rubber, nesoi.
4012.90.70	Bicycle rim strips of rubber other than of natural rubber.
4012.90.90	Interchangeable tire treads and tire flaps, of rubber other than natural rubber, except bicycle rim strips, nesoi.
4013.10.00	Inner tubes of rubber, of a kind used on motor cars (including station wagons and racing cars), buses or trucks.
4013.20.00	Inner tubes of rubber, of a kind used on bicycles.
4013.90.10	Inner tubes of rubber designed for tires used on certain agricultural or horticultural machinery.
4013.90.50	Inner tubes of rubber for vehicles nesoi.
4015.19.05	Medical gloves of vulcanized rubber other than hard rubber.
4015.19.10	Seamless gloves of vulcanized rubber other than hard rubber, other than surgical or medical gloves.
4015.19.50	Nonseamless gloves of vulcanized rubber other than hard rubber, other than surgical or medical gloves.
4015.90.00	Articles of apparel and clothing accessories, excluding gloves, of vulcanized rubber other than hard rubber.
4016.10.00	Articles of vulcanized cellular rubber other than hard rubber.
4016.91.00	Floor covering and mats, of noncellular vulcanized rubber other than hard rubber.
4016.93.10	Gaskets, washers and other seals, of noncellular vulcanized rubber other than hard rubber, for use in automotive goods in C87.
4016.93.50	Gaskets, washers and other seals, of noncellular vulcanized rubber other than hard rubber, not for use in automotive goods in C87.
4016.94.00	Boat or dock fenders, whether or not inflatable, of noncellular vulcanized rubber other than hard rubber.
4016.99.03	Containers of noncellular vulcanized rubber, other than hard rubber, of a kind for packing, transport or marketing of merchandise.
4016.99.30	Articles made of noncellular vulcanized natural rubber, used as vibration control goods in vehicles of 8701 through 8705.
4016.99.35	Articles made of noncellular vulcanized natural rubber, not used as vibration control goods in vehicles of 8701 through 8705 nesoi.
4016.99.55	Articles nesoi, of noncellular vulcanized synthetic rubber other than hard rubber, used as vibration control goods in veh 8701/8705.
4016.99.60	Articles of noncellular vulcanized synthetic rubber other than hard rubber.
4017.00.00	Hard rubber (for example, ebonite) in all forms, including waste and scrap; articles of hard rubber.
4104.11.10	Tanned whole bovine skin and hide upper/lining leather, w/o hair on, unit surface area n/o 2.6 sq m, in the wet state.
4104.11.20	Tanned whole bovine skin and hide leather (not upper/lining), w/o hair on, unit surface area n/o 2.6 sq m, in the wet state.
4104.11.30	Full grain unsplit or grain split buffalo hide or skin, w/o hair on, tanned but not further prepared, surface ov 2.6 m2, in the wet state.
4104.11.40	Full grain unsplit/grain split bovine nesoi and equine upper & sole hides/skins, w/o hair, tanned but not further prepared, in the wet state.
4104.11.50	Full grain unsplit/grain split bovine (except buffalo) nesoi and equine hides/skins, w/o hair, tanned not further prepared, in the wet state.
4104.19.10	Whole bovine skin upper or lining leather, w/o hair on, unit surface n/o 2.6 sq m, tanned but not further prepared, in the wet state.
4104.19.20	Whole bovine skin leather (not upper or lining), w/o hair on, surface n/o 2.6 sq m, tanned but not further prepared, in the wet state.
4104.19.30	Buffalo hides and skins nesoi, w/o hair on, unit surface area ov 2.6 m2, tanned but not further prepared, in the wet state.
4104.19.40	Upper and sole bovine (except buffalo) and equine hides and skins, nesoi, w/o hair, tanned but not further prepared, in the wet state.
4104.19.50	Bovine (except buffalo) and equine hides and skins (not upper/sole) nesoi, w/o hair, tanned but not further prepared, in the wet state.
4104.41.10	Crust whole bovine hide and skin upper or lining leather, w/o hair on, unit surface n/o 2.6 sq m, tanned but not further prepared.

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HTSUS subheading	Product description
4104.41.20	Crust whole bovine hide and skin leather (not upper or lining), w/o hair on, surface n/o 2.6 sq m, tanned but not further prepared.
4104.41.30	Crust full grain unsplit or grain split buffalo hides and skins, surface area over 2.6 m2, without hair on, tanned but not further prepared.
4104.41.40	Crust full grain unsplit/grain split bovine (ex. buffalo) nesoi/equine hides/skins upper/sole leather, w/o hair, tanned not further prepared.
4104.41.50	Crust full grain unsplit/grain split bovine (except buffalo) nesoi and equine hides and skins, nesoi, w/o hair, tanned not further prepared.
4104.49.10	Crust whole bovine hide and skin upper or lining leather, w/o hair on, unit surface n/o 2.6 sq m, tanned but not further prepared, nesoi.
4104.49.20	Crust whole bovine hide and skin (not upper or lining leather), w/o hair on, surface n/o 2.6 sq m, tanned but not further prepared, nesoi.
4104.49.30	Crust buffalo hides and skins nesoi, without hair on, surface area over 2.6 m2, tanned but not further prepared.
4104.49.40	Crust upper and sole equine and bovine (except buffalo) nesoi hides and skins, nesoi, w/o hair, tanned but not further prepared.
4104.49.50	Crust bovine (except buffalo) nesoi and equine hides and skins, nesoi, w/o hair, tanned but not further prepared.
4105.10.10	Sheep or lamb skins, without wool on, tanned but not further prepared, wet blue.
4105.10.90	Sheep or lamb skins, without wool on, tanned but not further prepared, in the wet state other than wet blue.
4105.30.00	Sheep or lamb skins, without wool on, tanned but not further prepared, in the dry state (crust).
4106.21.10	Hides and skins of goats or kids, without hair on, tanned but not further prepared, wet blue.
4106.21.90	Hides and skins of goats or kids, without hair on, tanned but not further prepared, in the wet state other than wet blue.
4106.22.00	Hides and skins of goats or kids, without hair on, tanned but not further prepared, in the dry state (crust).
4106.31.10	Hides and skins of swine, without hair on, tanned but not further prepared, wet blue.
4106.31.90	Hides and skins of swine, without hair on, tanned but not further prepared, in the wet state other than wet blue.
4106.32.00	Hides and skins of swine, without hair on, tanned but not further prepared, in the dry state (crust).
4106.40.00	Tanned or cust hides and skins of reptiles, whether or not split, but not further prepared.
4106.91.00	Hides and skins of animals nesoi, without hair on, tanned but not further prepared, in the wet state (including wet-blue).
4106.92.00	Hides and skins of animals nesoi, without hair on, tanned but not further prepared, in the dry state (crust).
4107.11.10	Full grain unsplit whole bovine upper or lining leather, w/o hair on, surface n/o 2.6 m2, prepared after tanning or crusting, not head 4114.
4107.11.20	Full grain unsplit whole bovine leather (not upper/lining), w/o hair on, not fancy, n/o 2.6 m2, prepared after tanning or crust, not head 4114.
4107.11.30	Full grain unsplit whole bovine leather (not upper/lining), w/o hair on, fancy, n/o 2.6 m2, prepared after tanning or crusting, not head 4114.
4107.11.40	Full grain unsplit whole buffalo leather, without hair on, surface over 2.6 sq m, prepared after tanning or crusting, not heading 4114.
4107.11.50	Full grain unsplit upholstery leather of bovines (not buffalo) nesoi and equines, w/o hair on, prepared after tanning or crusting, not 4114.
4107.11.60	Full grain unsplit upper & sole leather of bovines (not buffalo) nesoi or equine, w/o hair on, prepared after tanning or crusting, not 4114.
4107.11.70	Full grain unsplit whole bovine (not buffalo) nesoi and equine leather nesoi, w/o hair, prepared after tanning/crusting, not fancy, not 4114.
4107.11.80	Full grain unsplit whole bovine (not buffalo) nesoi and equine leather nesoi, w/o hair, prepared after tanning or crusting, fancy, not 4114.
4107.12.10	Grain split whole bovine skin upper or lining leather, w/o hair on, unit surface n/o 2.6 sq m, prepared after tanning or crusting, not 4114.
4107.12.20	Grain split whole bovine skin leather (not upper or lining), w/o hair, not fancy, n/o 2.6 sq m, prepared after tanning or crusting, not 4114.
4107.12.30	Grain split whole bovine skin leather (not upper or lining), w/o hair on, fancy, n/o 2.6 sq m, prepared after tanning or crusting, not 4114.
4107.12.40	Grain split whole buffalo leather, without hair on, unit surface area over 2.6 sq m, prepared after tanning or crusting, not of heading 4114.
4107.12.50	Grain split whole upholstery leather of bovines (not buffalo) nesoi and equines, w/o hair on, prepared after tanning or crusting, not 4114.
4107.12.60	Grain split whole upper & sole leather of bovines (not buffalo) nesoi or equines, w/o hair on, prepared after tanning or crusting, not 4114.
4107.12.70	Grain split whole bovine (not buffalo) nesoi and equine nesoi leathers, w/o hair on, prepared after tanning or crusting, not fancy, not 4114.
4107.12.80	Grain split whole bovine (not buffalo) nesoi and equine nesoi leathers, without hair on, prepared after tanning or crusting, fancy, not 4114.
4107.19.10	Whole bovine skin upper or lining leather nesoi, w/o hair on, unit surface n/o 2.6 m2, prepared after tanning or crusting, not of head 4114.
4107.19.20	Whole bovine skin leather (not upper or lining) nesoi, w/o hair on, not fancy, n/or 2.6 sq m, prepared after tanning or crusting, not 4114.

ANNEX—Continued

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HTSUS subheading	Product description
4107.19.30	Whole bovine skin leather (not upper or lining) nesoi, w/o hair on, fancy, surface n/o 2.6 m2, prepared after tanning or crusting, not 4114.
4107.19.40	Whole buffalo skin leather (not full grain unsplits/grain splits), w/o hair on, over 2.6 sq m, prepared after tanning or crusting, not 4114.
4107.19.50	Whole upholstery leather of bovines (not buffalo) nesoi and equines nesoi, without hair on, prepared after tanning or crusting, not 4114.
4107.19.60	Whole upper & sole leather of bovines (not buffalo) nesoi or equines nesoi, without hair on, prepared after tanning or crusting, not 4114.
4107.19.70	Whole bovine (not buffalo) and equine leather, nesoi, without hair on, not fancy, prepared after tanning or crusting, not of heading 4114.
4107.19.80	Whole bovine (not buffalo) and equine leather, nesoi, without hair on, fancy, prepared after tanning or crusting, not of heading 4114.
4107.91.40	Full grain unsplit buffalo leather (not whole), w/o hair on, prepared after tanning or crusting (including parchment-dressed), not head 4114.
4107.91.50	Full grain unsplit upholstery leather of bovines (not buffalo) & equines, not whole, w/o hair, prepared after tanning or crusting, not 4114.
4107.91.60	Full grain unsplit upper & sole leather of bovines (not buffalo) or equines, not whole, w/o hair, prep. after tanning or crusting, not 4114.
4107.91.70	Full grain unsplit bovine (not buffalo) & equine leather, not whole, w/o hair on, nesoi, not fancy, prep. after tanning/crusting, not 4114.
4107.91.80	Full grain unsplit bovine (not buffalo) & equine leather, not whole, w/o hair on, nesoi, fancy, prepared after tanning or crusting, not 4114.
4107.92.40	Grain splits buffalo leather (not whole), without hair on, prepared after tanning or crusting, other than of heading 4114.
4107.92.50	Grain splits upholstery leather of bovines (not buffalo) and equines, not whole, w/o hair on, prepared after tanning or crusting, not 4114.
4107.92.60	Grain splits upper & sole leather of bovines (not buffalo) or equines, not whole, w/o hair on, prepared after tanning or crusting, not 4114.
4107.92.70	Grain splits bovine (not buffalo) and equine leather, not whole, w/o hair on, nesoi, not fancy, prepared after tanning or crusting, not 4114.
4107.92.80	Grain splits bovine (not buffalo) and equine leather, not whole, without hair on, nesoi, fancy, prepared after tanning or crusting, not 4114.
4107.99.40	Buffalo leather other than full grains unsplit & grain splits, not whole, w/o hair on, prepared after tanning or crusting, not heading 4114.
4107.99.50	Upholstery leather of bovines (not buffalo) or equines, not whole, nesoi, without hair on, prepared after tanning or crusting, not 4114.
4107.99.60	Upper & sole leather of bovines (not buffalo) or equines, not whole, nesoi, w/o hair on, prepare after tanning or crusting, not 4114.
4107.99.70	Bovine (not buffalo) and equine leather, not whole, nesoi, without hair on, not fancy, prepared after tanning or crusting, not heading 4114.
4107.99.80	Bovine (not buffalo) and equine leather, not whole, nesoi, without hair on, fancy, prepared after tanning or crusting, not of heading 4114.
4112.00.30	Sheep or lamb skin leather, without wool on, not fancy, prepared after tanning or crusting, other than of heading 4114.
4112.00.60	Sheep or lamb skin leather, without wool on, fancy, further prepared after tanning or crusting, other than of heading 4114.
4113.10.30	Goat or kidskin leather, without hair on, not fancy, further prepared after tanning or crusting, other than of heading 4114.
4113.10.60	Goat or kidskin leather, without hair on, fancy, further prepared after tanning or crusting, other than of heading 4114.
4113.20.00	Leather of swine, without hair on, further prepared after tanning or crusting, other than leather of heading 4114.
4113.30.30	Reptile leather, not fancy, further prepared after tanning or crusting, other than leather of heading 4114.
4113.30.60	Reptile leather, fancy, further prepared after tanning or crusting, other than leather of heading 4114.
4113.90.30	Leather of animals nesoi, without hair on, not fancy, further prepared after tanning or crusting, other than leather of heading 4114.
4113.90.60	Leather of animals nesoi, without hair on, fancy, further prepared after tanning or crusting, other than leather of heading 4114.
4114.10.00	Chamois (including combination chamois) leather.
4114.20.30	Patent leather.
4114.20.40	Patent laminated leather or metallized leather, of calf or kip.
4114.20.70	Patent laminated leather or metallized leather, other than calf or kip.
4115.10.00	Composition leather with a basis of leather or leather fiber, in slabs, sheets or strip, whether or not in rolls.
4201.00.30	Dog leashes, collars, muzzles, harnesses and similar dog equipment, of any material.
4201.00.60	Saddlery and harnesses for animals nesoi, (incl. traces, leads, knee pads, muzzles, saddle cloths and bags and the like), of any material.
4202.11.00	Trunks, suitcases, vanity & all other cases, occupational luggage & like containers, surface of leather, composition or patent leather.

ANNEX—Continued

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HTSUS subheading	Product description
4202.12.21	Trunks, suitcases, vanity and attache cases and similar containers, with outer surface of plastics.
4202.12.29	Occupational luggage and similar containers, with outer surface of plastics.
4202.12.40	Trunks, suitcases, vanity & attache cases, occupational luggage & like containers, surfaces of cotton, not of pile or tufted construction.
4202.12.60	Trunks, suitcases, vanity & attache cases, occupational luggage & like containers, w outer surface of veg. fibers, excl. cotton.
4202.12.81	Trunks, suitcases, vanity & attache cases, occupational luggage and similar containers, with outer surface of MMF materials.
4202.12.89	Trunks, suitcases, vanity & attache cases, occupational luggage and similar containers, with outer surface of textile materials nesoi.
4202.19.00	Trunks, suitcases, vanity cases, attache cases, occupational luggage & like containers surface of vulcanized fiber or paperboard nesoi.
4202.21.30	Handbags, with or without shoulder strap or without handle, with outer surface of reptile leather.
4202.21.60	Handbags, with or without shoulder strap or without handle, with outer surface of leather, composition or patent leather, nesoi, n/o $20 ea..
4202.21.90	Handbags, with or without shoulder strap or without handle, with outer surface of leather, composition or patent leather, nesoi, over $20 ea..
4202.22.15	Handbags, with or without shoulder straps or without handle, with outer surface of sheeting of plastics.
4202.22.35	Handbags with or without shoulder strap or without handle, with outer surface of textile materials, wholly or in part of braid, of abaca.
4202.22.40	Handbags with or without shoulder strap or without handle, with outer surface of textile materials, wholly or in part of braid, nesoi.
4202.22.45	Handbags with or without shoulder strap or without handle, with outer surface of cotton, not of pile or tufted construction or braid.
4202.22.60	Handbags with or w/o shoulder strap or w/o handle, outer surface of veg. fibers, exc. cotton, not of pile or tufted construction or braid.
4202.22.70	Handbags with or w/o shoulder strap or w/o handle, with outer surface containing 85% or more of silk, not braided.
4202.22.81	Handbags with or without shoulder strap or without handle, with outer surface of MMF materials.
4202.22.89	Handbags with or without shoulder strap or without handle, with outer surface of textile materials nesoi.
4202.29.10	Handbags w. or w/o shld. strap or w/o handle of mat. (o/t leather, shtng. of plas., tex. mat., vul. fib. or paperbd.), paper cov., of plas..
4202.29.20	Handbags w. or w/o shld. strap or w/o handle of mat. (o/t leather, shtng. of plas., tex. mat., vul. fib. or paperbd.), paper cov., of wood.
4202.29.50	Handbags w. or w/o shld. strap or w/o handle of mat. (o/t leather, shtng. of plas., tex. mat., vul. fib. or paperbd.), pap.cov.,of mat. nesoi.
4202.29.90	Handbags with or without shoulder straps or without handle, with outer surface of vulcanized fiber or of paperboard, not covered with paper.
4202.31.30	Articles of a kind normally carried in the pocket or handbag, with outer surface of reptile leather.
4202.31.60	Articles of a kind normally carried in the pocket or handbag, with outer surface of leather, composition or patent leather, nesoi.
4202.32.10	Articles of a kind normally carried in the pocket or handbag, with outer surface of reinforced or laminated plastics.
4202.32.20	Articles of a kind normally carried in the pocket or handbag, with outer surface of plastic sheeting, nesoi.
4202.32.40	Articles of a kind normally carried in the pocket or handbag, with outer surface of cotton, not of pile or tufted construction.
4202.32.80	Articles of a kind normally carried in the pocket or handbag, with outer surface of vegetable fibers, not of pile or tufted construction, nesoi.
4202.32.85	Articles of a kind normally carried in the pocket or handbag, with outer surface 85% or more silk or silk waste.
4202.32.91	Articles of a kind normally carried in the pocket or handbag, with outer surface of cotton.
4202.32.93	Articles of a kind normally carried in the pocket or handbag, with outer surface of MMF.
4202.32.99	Articles of a kind normally carried in the pocket or handbag, with outer surface of other textile materials.
4202.39.10	Articles of kind usually carried in pocket or handbag (o/t leather, shtng. of plas., tex. mat., vul. fib. or paperbd.), pap. cov., of plas.
4202.39.20	Articles of kind usually carried in pocket or handbag (o/t leather, shtng. of plas., tex. mat., vul. fib. or paperbd.), pap. cov., of wood.
4202.39.50	Articles of kind usu. carried in pocket or handbag (o/t lea., shtng. of plas., tex. mat., vul. fib. or paperbd.), pap. cov., of mat. nesoi.
4202.39.90	Articles of a kind normally carried in the pocket or handbag, with outer surface of vulcanized fiber or of paperboard.
4202.91.10	Golf bags, with outer surface of leather or composition leather.
4202.91.90	Cases, bags and containers nesoi, other than golf bags, with outer surface of leather, of composition leather.
4202.92.04	Insulated beverage bag w/outer surface textiles, interior only flexible plastic container storing/dispensing beverage thru flexible tubing.
4202.92.08	Insulated food or beverage bags with outer surface of textile materials, nesoi.
4202.92.10	Insulated food or beverage bags with outer surface of sheeting of plastic.
4202.92.15	Travel, sports and similar bags with outer surface of cotton, not of pile or tufted construction.
4202.92.20	Travel, sports and similar bags with outer surface of vegetable fibers, excl. cotton, not of pile construction.

ANNEX—Continued

Note: All products that are classified in the 8-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS) that are listed in this Annex are covered by the proposed supplemental action. The product descriptions that are contained in this Annex are provided for informational purposes only, and are not intended to delimit in any way the scope of the proposed action. Any questions regarding the scope of particular HTSUS subheadings should be referred to U.S. Customs and Border Protection. In the product descriptions, the abbreviation "nesoi" means "not elsewhere specified or included".

HTSUS subheading	Product description
4202.92.31	Travel, sports and similar bags with outer surface of MMF textile materials.
4202.92.33	Travel, sports and similar bags with outer surface of textile materials of paper yarn, silk or cotton.
4202.92.39	Travel, sports and similar bags with outer surface of textile materials other than MMF, paper yarn, silk, cotton.
4202.92.45	Travel, sports and similar bags with outer surface of plastic sheeting.
4202.92.50	Musical instrument cases, with outer surface of plastic sheeting or of textile materials.
4202.92.60	Bags, cases and similar containers, nesoi, with outer surface of cotton.
4202.92.91	Bags, cases and similar containers with outer surface of textile materials, of MMF except jewelry boxes.
4202.92.93	Bags, cases and similar containers with outer surface of textile materials, not of MMF.
4202.92.94	Cases for CDs, CD players, cassettes, or cassette players.
4202.92.97	Bags, cases & similar containers with outer surface of sheeting of plastic materials, not containers for CDs or cassettes, or CD or cassette players.
4202.99.10	Cases, bags and sim. containers, nesoi, of mat. (o/t leather, shtng. of plas., tex. mat., vul. fib., or paperbd.), pap. cov., of plastic.
4202.99.20	Cases & sim. cont., nesoi, of mat. (o/t lea., shtng. of plas., tex. mat., vul. fib. or paperbd.), pap. cov., of wood, not lined with tex.fab.
4202.99.30	Cases, bags & sim. cont., nesoi, of mat. (o/t lea., plas. shtng., tex. mat., vul. fib. or paperbd.), pap. cov., of wood, lined with tex. fab.
4202.99.50	Cases, bags & sim. cont., nesoi, of mat. (o/t lea., plas. shtng., tex. mat., vul. fib. or paperbd.), pap. cov., except of wood or plastic.
4202.99.90	Cases, bags and similar containers, nesoi, with outer surface of vulcanized fiber or of paperboard.
4203.10.20	Articles of apparel, of reptile leather.
4203.10.40	Articles of apparel, of leather or of composition leather, nesoi.
4203.21.20	Batting gloves, of leather or of composition leather.
4203.21.40	Baseball and softball gloves and mitts, excluding batting gloves, of leather or of composition leather.
4203.21.55	Cross-country ski gloves, mittens and mitts, of leather or of composition leather.
4203.21.60	Ski or snowmobile gloves, mittens and mitts, nesoi, of leather or of composition leather.
4203.21.70	Ice hockey gloves, of leather or of composition leather.
4203.21.80	Gloves, mittens and mitts specially designed for use in sports, nesoi, of leather or of composition leather.
4203.29.05	Gloves, wholly of horsehide or cowhide leather not specially designed for use in sports, with fourchettes or sidewalls.
4203.29.08	Gloves, wholly of horsehide or cowhide (except calfskin) leather, not specially designed for use in sports, nesoi.
4203.29.15	Gloves not wholly of horsehide or cowhide leather not specially designed for use in sports, with fourchettes or sidewalls.
4203.29.18	Gloves not wholly of horsehide or cowhide leather not specially designed for use in sports, nesoi.
4203.29.20	Gloves, mittens and mitts of leather or composition leather, nesoi, not seamed.
4203.29.30	Men's gloves, mittens and mitts of leather or composition leather, nesoi, seamed.
4203.29.40	Gloves, mittens and mitts of leather or composition leather, nesoi, not lined, for persons other than men.
4203.29.50	Gloves, mittens and mitts of leather or composition leather, nesoi, lined, for persons other than men.
4203.30.00	Belts and bandoliers with or without buckles, of leather or of composition leather.
4203.40.30	Clothing accessories nesoi, of reptile leather.
4203.40.60	Clothing accessories of leather or of composition leather, nesoi.
4205.00.05	Belting leather cut or wholly or partly manufactured into forms or shapes suit. for conversion into belting for machinery or appliances.
4205.00.10	Articles of leather or composition leather used in machinery or mechanical appliances or for other technical uses, except belting leathers.
4205.00.20	Shoelaces of leather or of composition leather.
4205.00.40	Straps and strops of leather or of composition leather.
4205.00.60	Articles of reptile leather, nesoi.
4205.00.80	Articles of leather or of composition leather, nesoi, excluding reptile leather.
4302.11.00	Tanned or dressed whole furskins of mink, with or without head, tail or paws, not assembled.
4302.19.13	Tanned/dressed whole skins of Astrakhan, Broadtail, Caracul, Persian, Indian, Mongolian, Chinese & Tibetan lamb, not assembled.
4302.19.15	Tanned or dressed whole furskins of silver, black or platinum fox (including mutations), with or without head, tail or paws, not assembled.
4302.19.30	Tanned or dressed whole furskins of beaver, chinchilla, ermine, lynx, raccoon, sable, other specified animals, not dyed, not assembled.
4302.19.45	Tanned or dressed whole furskins of beaver, chinchilla, ermine, lynx, raccoon, sable, wolf, other specified animals, dyed, not assembled.
4302.19.55	Tanned or dressed whole furskins of rabbit or hare, with or without head, tail or paws, not assembled.
4302.19.60	Tanned or dressed whole furskins, nesoi, with or without head, tail or paws, not assembled, not dyed.
4302.19.75	Tanned or dressed whole furskins, nesoi, with or without head, tail or paws, not assembled, dyed.
4302.20.30	Heads, tails, paws, other pieces or cuttings of dressed or tanned furskins, of beaver, ermine, wolf, other specified animals, nt assembled.
4302.20.60	Heads, tails, paws and other pieces or cuttings of dressed or tanned furskins, nesoi, not assembled, not dyed.
4302.20.90	Heads, tails, paws and other pieces or cuttings of dressed or tanned furskins, nesoi, not assembled, dyed.
4302.30.00	Whole furskins and pieces or cuttings thereof, tanned and dressed, assembled.
4303.10.00	Articles of apparel and clothing accessories, of furskins.

ANNEX—Continued

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HTSUS subheading	Product description
4303.90.00	Articles of furskin, nesoi.
4304.00.00	Artificial fur and articles thereof.
4401.10.00	Fuel wood, in logs, in billets, in twigs, in faggots or similar forms.
4401.21.00	Coniferous wood in chips or particles.
4401.22.00	Nonconiferous wood in chips or particles.
4401.31.00	Sawdust and wood waste and scrap, pellets.
4401.39.20	Artificial fire logs, composed of wax and sawdust, with or without added materials.
4401.39.40	Sawdust and wood waste and scrap, excluding pellets or artificial logs, nesoi.
4402.10.00	Wood charcoal (including shell or nut charcoal), whether or not agglomerated, of bamboo.
4402.90.00	Wood charcoal (including shell or nut charcoal), whether or not agglomerated, other than of bamboo.
4403.10.00	Wood in the rough whether or not stripped of bark or sapwood, or roughly squared, treated with paint, stain, creosote or other preservatives.
4403.20.00	Coniferous wood in the rough, whether or not stripped of bark or sapwood or roughly squared, not treated with preservatives.
4403.41.00	Wood in the rough/roughly squared, of Dark Red Meranti, Light Red Meranti and Meranti Bakau, not treated with paint/stain/cresote/other preserv.
4403.49.01	Wood in the rough/roughly squared, of other tropical wood, not treated with paint/stain/creosote/other preserv.
4403.91.00	Oak wood in the rough, whether or not stripped of bark or sapwood, or roughly squared, not treated with preservatives.
4403.92.00	Beech wood in the rough, not treated with preservatives.
4403.99.00	Wood in the rough, nesoi.
4404.10.00	Coniferous wood, roughly shaped into poles, pickets, stakes, sticks and other forms, to be finished into specific articles or products.
4404.20.00	Nonconiferous wood, roughly shaped into poles, pickets, stakes, sticks and other forms, to be finished into specific articles or products.
4405.00.00	Wood wool (excelsior); wood flour.
4406.10.00	Railway or tramway sleepers (cross-ties) of wood, not impregnated.
4406.90.00	Railway or tramway sleepers (cross-ties) of wood, impregnated.
4407.10.01	Coniferous wood sawn or chipped lengthwise, sliced or peeled, of a thickness exceeding 6 mm.
4407.21.00	Dark Red Meranti, Light Red Meranti and other specified tropical woods, sawn or chipped lengthwise, sliced or peeled, over 6 mm thick.
4407.22.00	Okoume, Obeche, Sapelli and other specified tropical woods, sawn or chipped lengthwise, sliced or peeled, over 6 mm thick.
4407.25.00	Dark Red Meranti, Light Red Meranti and Meranti Bakau wood sawn or chipped lengthwise, sliced or peeled, over 6 mm thick.
4407.26.00	White Lauan, White Meranti, White Seraya, Yellow Meranta and Alan wood sawn or chipped lengthwise, sliced or peeled, over 6 mm thick.
4407.27.00	Sapelli wood sawn or chipped lengthwise, sliced or peeled, over 6 mm thick.
4407.28.00	Iroko wood sawn or chipped lengthwise, sliced or peeled, over 6 mm thick.
4407.29.01	Tropical wood specified in chapter 44 subheading note 1, nesoi, sawn or chipped lengthwise, sliced or peeled, over 6 mm thick.
4407.91.00	Oak wood, sawn or chipped lengthwise, sliced or peeled, over 6 mm thick.
4407.92.00	Beech wood, sawn or chipped lengthwise, sliced or peeled, over 6 mm thick.
4407.93.00	Maple wood sawn or chipped lengthwise, sliced or peeled, over 6 mm thick.
4407.94.00	Cherry wood sawn or chipped lengthwise, sliced or peeled, over 6 mm thick.
4407.95.00	Ash wood sawn or chipped lengthwise, sliced or peeled, over 6 mm thick.
4407.99.01	Nonconiferous woods, nesoi, sawn or chipped lengthwise, sliced or peeled, over 6 mm thick.
4408.10.01	Coniferous veneer sheets and sheets for plywood & coniferous wood sawn/sliced/peeled not over 6 mm thick.
4408.31.01	Dark Red Meranti, Light Red Meranti and Meranti Bakau veneer sheets and sheets for plywood and other wood sawn/sliced/peeled, n/o 6 mm thick.
4408.39.02	Other tropical wood veneer sheets and sheets for plywood, and wood sawn/sliced/peeled n/o 6 mm thick.
4408.90.01	Nontropical nonconiferous veneer sheets and sheets for plywood and other wood sawn/sliced/peeled, not over 6 mm thick.
4409.10.05	Coniferous wood continuously shaped along any of its ends, whether or not also continuously shaped along any its edges or faces.
4409.10.10	Coniferous wood siding continuously shaped along any of its edges or faces but not on its ends.
4409.10.20	Coniferous wood flooring continuously shaped along any of its edges or faces but not on its ends.
4409.10.40	Standard wood moldings of pine (Pinus spp.) continuously shaped along any of its edges or faces but not on its ends.
4409.10.45	Standard coniferous wood moldings, other than of pine, continuously shaped along any of its edges or faces but not on its ends.
4409.10.50	Coniferous wood moldings, other than standard type, continuously shaped along any of its edges or faces but not on its ends.
4409.10.60	Coniferous wood dowel rods, plain, continuously shaped along any of its edges or faces but not on its ends.
4409.10.65	Coniferous wood dowel rod, sanded/grooved/otherwise advanced in condition, continuously shaped along any of edges or faces but not its ends.

ANNEX—Continued

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HTSUS subheading	Product description
4409.10.90	Coniferous wood, other than siding, flooring, moldings or dowel rod, continuously shaped along any of its edges or faces but not on its ends.
4409.21.05	Nonconiferous wood (bamboo) continuously shaped along any of its ends, wether or not also continuously shaped along any its edges or faces.
4409.21.90	Bamboo, other than continuously shaped along any of its ends.
4409.22.05	Nonconiferous tropical wood continuously shaped along any ends, whether or not also continuously shaped along any edges or faces.
4409.22.10	Nonconiferous tropical wood siding, whether or not continuously shaped along its edges or faces but not its ends.
4409.22.25	Nonconiferous tropical wood flooring, whether or not continuously shaped along its edges or faces but not its ends.
4409.22.40	Nonconiferous tropical wood standard moldings, whether or not continuously shaped along its edges or faces but not its ends.
4409.22.50	Other nonconiferous tropical wood moldings, whether or not continuously shaped along its edges or faces but not its ends.
4409.22.60	Plain nonconiferous tropical wood dowel rods, whether or not continuously shaped along its edges or faces but not its ends.
4409.22.65	Nonconif. tropical wood dowel rods, sanded/grooved/otherwise advanced in condition, whether or not continuous. along edges or faces but not ends.
4409.22.90	Other nonconiferous tropical wood, whether or not continuously shaped along its edges or faces but not its ends.
4409.29.06	Other nonconiferous wood, continuously shaped along any ends, whether or not also continuously shaped along any edges or faces.
4409.29.11	Other nonconiferous wood siding, whether or not continuously shaped along its edges or faces but not its ends.
4409.29.26	Other nonconiferous wood flooring, whether or not continuously shaped along its edges or faces but not its ends.
4409.29.41	Other nonconiferous standard wood moldings, whether or not continuously shaped along its edges or faces but not its ends.
4409.29.51	Other nonconiferous wood moldings, whether or not continuously shaped along its edges or faces but not its ends.
4409.29.61	Plain other nonconif. wood dowel rods, whether or not continuously shaped along edges or faces but not ends.
4409.29.66	Other nonconif. wood dowel rods, sanded/grooved/otherwise advanced in condition, whether or not continuously shaped along edges or faces but not ends.
4409.29.91	Other nonconiferous wood, whether or not continuously shaped along its edges or faces but not its ends.
4410.11.00	Waferboard, including oriented strand board, of wood.
4410.12.00	Oriented strand board and waferboard, of wood, unworked or not further worked than sanded.
4410.19.00	Particle board and similar board of wood, other than waferboard.
4410.90.00	Particle board and similar board of ligneous materials other than wood.
4411.12.10	MDF, =5 mm thick, not mechanically worked or surface covered.
4411.12.20	MDF, <=5 mm thick, for construction, laminated.
4411.12.30	MDF, >=5 mm thick, for construction, not laminated, nesoi.
4411.12.60	Fiberboard of a density over 0.5 g/cm3 but not over 0.8 g/cm3, not mechanically worked surface covered (Except for oil treatment).
4411.12.90	MDF, <=5 mm thick, not for construction, nesoi.
4411.13.10	MDF, >5 mm but <=9 mm thick, not mechanically worked or surface covered.
4411.13.20	MDF, >5 mm but <=9 mm thick, for construction, laminated.
4411.13.30	MDF, >5 mm but <=9 mm thick, for construction, not laminated, nesoi.
4411.13.60	Fiberboard of a density over 0.5 g/cm3 but not over 0.8 g/cm3, not mechanically worked surface covered(except for oil treatment).
4411.13.90	MDF, >5 mm but <=9 mm thick, not for construction, nesoi.
4411.14.10	Fiberboard of a thickness exceeding 9 mm, not mechanically worked or surface covered.
4411.14.20	Fiberboard of a thickness exceeding 9 mm, edgeworked continuously, laminated, for construction uses.
4411.14.30	Fiberboard of a thickness exceeding 9 mm, tongued, grooved or rabbetted continuously, for construction uses, nesoi.
4411.14.60	Fiberboard of a thickness exceeding 9 mm, not mechanically worked surface covered (except for oil treatment).
4411.14.90	Fiberboard nesoi,of a thickness exceeding 9 mm.
4411.92.10	Fiberboard of a density exceeding 0.8 g/cm3, not mechanically worked or surface covered.
4411.92.20	Fiberboard, of a density exceeding 0.8 g/cm3, mechanically worked, not surface covered (except for oil treatment).
4411.92.30	Fiberboard, of a density exceeding 0.8 g/cm3, mechanically edged-worked, for construction uses.
4411.92.40	Fiberboard nesoi, density exceeding 0.8 g/cm3.
4411.93.10	Fiberboard, not MDF, of a density >0.5 but <=0.8 g/cm3, not mechanically worked or surface covered.
4411.93.20	Fiberboard, not MDF, of a density >0.5 but <=0.8 g/cm3, edgeworked continuously, laminated, for construction uses.
4411.93.30	Fiberboard, not MDF, of a density >0.5 but <=0.8 g/cm3, tongued, grooved or rabbetted continuously, for construction, nesoi.
4411.93.60	Fiberboard of a density over 0.5 g/cm3 but not over 0.8 g/cm3, not mechanically worked surface covered (Except for oil).
4411.93.90	Fiberboard, not MDF, of a density >0.5 but <=0.8 g/cm3, nesoi.

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HTSUS subheading	Product description
4411.94.00	Fiberboard of a density exceeding 0.35 g/cm3 but not exceeding 0.5 g/cm3, not mechanically worked or surface covered.
4412.10.05	Plywood, veneered panels and similar laminated wood, of bamboo.
4412.10.90	Veneered panels and similar laminated wood, of bamboo, other than plywood.
4412.31.06	Plywood sheets n/o 6 mm thick, tropical wood outer ply, birch face ply, not surface covered beyond clear/transparent.
4412.31.26	Plywood sheets n/o 6 mm thick, tropical wood outer ply, Spanish cedar or walnut face ply, not surface covered beyond clear/transparent.
4412.31.41	Plywood sheets n/o 6 mm thick, with specified tropical wood outer ply, with face ply nesoi, not surface covered beyond clear/transparent.
4412.31.52	Plywood sheets n/o 6 mm thick, tropical wood nesoi at least one outer ply, with face ply nesoi, not surface covered beyond clear/transparent.
4412.31.61	Plywood sheets n/o 6 mm thick, with certain specified tropical wood outer ply, surface covered beyond clear or transparent.
4412.31.92	Plywood sheets n/o 6 mm thick, tropical wood nesoi at least one outer ply, surface covered beyond clear or transparent.
4412.32.06	Plywood sheets n/o 6 mm thick, outer ply of nonconiferous wood, birch face ply, not surface covered beyond clear/transparent.
4412.32.26	Plywood sheets n/o 6 mm thick, outer ply nonconiferous wood, face ply Spanish ceder or walnut, not surface covered beyond clear/transparent.
4412.32.32	Plywood sheets n/o 6 mm thick, outerply of nonconiferous wood nesoi, face ply nesoi, not surface covered beyond clear/transparent.
4412.32.57	Plywood sheets n/o 6 mm thick, outerply of nonconiferous wood nesoi, face ply nesoi, surface covered beyond clear/transparent.
4412.39.10	Plywood of wood sheets, n/o 6 mm thick each, with outer plies of coniferous wood, face ply of Parana pine, not or clear surface covered.
4412.39.30	Plywood of wood sheets, n/o 6 mm thick each, with outer plies of coniferous wood, European red pine face ply, not or clear surface covered.
4412.39.40	Plywood of wood sheets, n/o 6 mm thick each, with outer plies of coniferous wood, with face ply nesoi, not or clear surface covered.
4412.39.50	Plywood of wood sheets, n/o 6 mm thick each, with outer plies of coniferous wood, nesoi, surface covered, nesoi.
4412.94.10	Plywood nesoi, at least one nonconiferous outer ply, not surface-covered beyond clear/transparent, face ply of birch.
4412.94.31	Blockboard etc.: plywood nesoi, at least one nonconifer outer ply, not surface-covered beyond clear/transparent, not w/face ply of birch.
4412.94.41	Blockboard etc.: plywood nesoi, at least one nonconiferous outer ply, surface covered other than clear or transparent.
4412.94.51	Blockboard etc.: veneered panels and similar laminated wood w/at least one nonconiferous outer ply, nesoi.
4412.94.60	Blockboard etc.: plywood nesoi, other outer plies, not surf.-cov. Beyond clear/transp., face ply Parana pine.
4412.94.70	Blockboard etc.: plywood nesoi, other outer plies, not surf.-cov. Beyond clear/transp., face ply Europe red pine.
4412.94.80	Blockboard etc.: plywood nesoi, other outer plies, not surface-covered beyond clear/transparent, face ply nesoi.
4412.94.90	Blockboard etc.: plywood nesoi, other outer plies, surface covered other than clear or transparent.
4412.94.95	Blockboard etc.: veneered panels and similar laminated wood nesoi, other outer plies.
4412.99.06	Plywood nesoi, veneered panel & similar laminated wood w/nonconiferous outer ply, at least one layer of particle board.
4412.99.10	Not blockboard: plywood at least 1 outer ply of nonconif wood, nesoi, with a face ply of birch, not surface covered or clear/transparent.
4412.99.31	Not blockboard: plywood nesoi, at least 1 nonconiferous outer ply, not surface-covered beyond clear/transparent, not w/face ply of birch.
4412.99.41	Not blockboard: plywood nesoi, at least 1 nonconiferous outer ply, surface covered other than clear or transparent.
4412.99.51	Not blockboard: veneered panels and similar laminated wood w/at least 1 nonconiferous outer ply, nesoi.
4412.99.57	Not blockboard: plywood/veneered panel/sim. Laminated wood nesoi, at least 1 nonconiferous outer ply,at least 1 layer of particle board.
4412.99.60	Not blockboard: plywood nesoi, at least 1 nonconiferous outer ply, no particle board, not surf.-cov. Beyond clear/transp., face ply Parana pine.
4412.99.70	Not blockboard: plywood nesoi, at least 1 nonconif. outer ply, no particle board, not surf.-cov. Beyond clear/transp., face ply Europe red pine.
4412.99.80	Not blockboard: plywood nesoi, at least 1 nonconif. outer ply, no particle board, not surface-covered beyond clear/transparent, face ply nesoi.
4412.99.90	Not blockboard: plywood, veneer panels and similar laminated wood, at least 1 nonconiferous outer ply, nesoi.
4412.99.95	Not blockboard: veneered panels and similar laminated wood, nesoi, at least 1 nonconiferous outer ply, no particle board, nesoi.
4413.00.00	Densified wood, in blocks, plates, strips or profile shapes.
4415.10.30	Packing boxes and cases of wood with solid sides, lids and bottoms.
4415.10.60	Wooden containers designed for use in the harvesting of fruits and vegetables.
4415.10.90	Wood cases, boxes, crates, drums and similar packings nesoi; cable-drums of wood.

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HTSUS subheading	Product description
4415.20.40	Wooden pallets, box-pallets and other load boards designed for use in the harvesting of fruits and vegetables.
4415.20.80	Wooden pallets, box-pallets and other load boards, other than designed for use in the harvesting of fruits and vegetables.
4416.00.30	Wooden casks, barrels and hogsheads.
4416.00.60	Wooden staves and hoops; tight barrelheads of softwood.
4416.00.90	Wooden vats, tubs and other coopers' products and parts thereof.
4417.00.60	Wooden brush backs.
4417.00.80	Wooden tools, tool bodies, tool handles, broom or brush bodies and handles nesoi; wooden boot or shoe lasts and trees.
4418.10.00	Wooden windows, French-windows and their frames.
4418.20.40	French doors of wood.
4418.20.80	Doors of wood, other than French doors.
4418.40.00	Wooden formwork (shuttering) for concrete constructional work.
4418.50.00	Wooden shingles and shakes.
4418.60.00	Builders' joinery and carpentry of wood, Posts and Beams.
4418.73.10	Assembled flooring panels of bamboo, for mosaic floors, solid.
4418.73.20	Assembled flooring panels of bamboo, for mosaic floors other than solid, having a face ply more than 6mm in thickness.
4418.73.30	Assembled flooring panels of bamboo, for mosaic floors other than solid, having a face ply less than or equal to 6 mm in thickness.
4418.73.40	Assembled flooring panels of bamboo, other than for mosaic, multilayer, having a face ply more than 6mm in thickness.
4418.73.60	Assembled flooring panels of bamboo, other than mosaic, multilayer, having a face ply <= equal to 6mm in thickness, of unidirectional bamboo.
4418.73.70	Assembled flooring panels of bamboo, other than for mosaic, multilayer, having a face ply <=6mm in thickness, not of unidirectional bamboo.
4418.73.90	Assembled flooring panels of bamboo, other than for mosaic or multilayer, nesoi.
4418.74.10	Assembled wood flooring panels, other than of bamboo, for mosaic floors, solid.
4418.74.20	Assembled wood flooring panels, other than of bamboo, for mosaic floors other than solid, having a face ply more than 6 mm in thickness.
4418.74.90	Assembled wood flooring panels, other than of bamboo, for mosaic floors other than solid, having a face ply less than or equal to 6 mm in thickness.
4418.75.40	Assembled wood flooring panels, other than of bamboo, other than for mosaic, multilayer, having a face ply more than 6 mm in thickness.
4418.75.70	Assembled wood flooring panels, other than of bamboo, other than for mosaic, multilayer, having a face ply less than or equal to 6 mm in thickness.
4418.79.01	Assembled wood flooring panels, other than of bamboo, other than for mosaic or multilayer.
4418.91.10	Builders' joinery and carpentry of wood, of bamboo, drilled or notched lumber studs.
4418.91.90	Builders' joinery and carpentry of wood, of bamboo, other than drilled or notched lumber studs.
4418.99.10	Builders' joinery and carpentry of wood, of wood other than of bamboo, drilled or notched lumber studs.
4418.99.90	Builders' joinery and carpentry of wood, of wood other than of bamboo, other than drilled or notched lumber studs.
4420.90.45	Wooden jewelry boxes, silverware chests, microscope, tool or utensil cases, similar boxes, cases and chests, not lined with textile fabrics.
4420.90.65	Wooden jewelry boxes, silverware chests, microscope, tool or utensil cases, similar boxes, cases and chests, lined with textile fabrics.
4420.90.80	Wood marquetry and inlaid wood; wooden articles of furniture, nesoi.
4421.91.10	Plain wood dowel pins of bamboo.
4421.91.20	Wood dowel pins of bamboo, sanded, grooved or otherwise advanced in condition.
4421.91.70	Pickets, palings, posts and rails of bamboo, sawn; assembled fence sections of bamboo.
4421.91.93	Theatrical, ballet and operatic scenery and properties, including sets, of bamboo.
4421.91.94	Edge-glued lumber of bamboo.
4421.91.97	Other articles, nesoi, of bamboo, incl pencil slats, burial caskets, gates for confining children or pets.
4421.99.10	Plain coniferous wood dowel pins.
4421.99.15	Plain wood dowel pins, other than of coniferous wood or of bamboo.
4421.99.20	Wood dowel pins of wood other than of bamboo, the foregoing sanded, grooved or otherwise advanced in condition.
4421.99.70	Pickets, palings, posts and rails, sawn, of wood other than of bamboo; assembled fence sections of wood other than of bamboo.
4421.99.93	Theatrical, ballet and operatic scenery and properties, including sets, of wood other than of bamboo.
4421.99.94	Edge-glued lumber of wood other than of bamboo.
4421.99.97	Other articles, nesoi, of wood other than of bamboo, incl pencil slats, burial caskets, gates for confining children or pets.
4501.10.00	Natural cork, raw or simply prepared.
4501.90.20	Waste cork.
4501.90.40	Crushed, granulated or ground cork.

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HTSUS subheading	Product description
4502.00.00	Natural cork, debacked or roughly squared or in rectangular blocks, plates, sheets or strip (incl. sharp-edged blanks for corks or stoppers).
4503.10.20	Corks and stoppers of natural cork, tapered and of a thickness (or length) greater than the maximum diameter, n/o 19 mm maximum diameter.
4503.10.30	Corks and stoppers wholly of natural cork, tapered & of a thickness (or length) greater than the maximum diam., over 19 mm maximum diam.
4503.10.40	Corks and stoppers of natural cork, tapered & of a thickness (or length) greater than the maximum diam., over 19 mm maximum diam., nesoi.
4503.10.60	Corks and stoppers of natural cork, of a thickness (or length) not greater than the maximum diameter.
4503.90.20	Disks, wafers and washers of natural cork.
4503.90.40	Natural cork wallcoverings, backed with paper or otherwise reinforced.
4503.90.60	Articles of natural cork, other than corks and stoppers.
4504.10.10	Vulcanized sheets and slabs wholly of agglomerated ground or pulverized cork and rubber.
4504.10.20	Insulation of compressed agglomerated cork, coated or not coated.
4504.10.30	Floor coverings of agglomerated cork.
4504.10.40	Agglomerated cork wallcoverings, backed with paper or otherwise reinforced.
4504.10.45	Agglomerated cork stoppers, not tapered, wholly of cork, of a thickness (or length) greater than the maximum diameter.
4504.10.47	Corks, stoppers, disks, wafers and washers of agglomerated cork, nesoi.
4504.10.50	Blocks, plates, sheets and strip; tiles of any shape; solid cylinder; all the foregoing of cork; all the foregoing, nesoi.
4504.90.00	Agglomerated cork and articles of cork, nesoi.
4601.21.40	Woven or partly assembled materials of bamboo, for mats, matting and screens.
4601.21.80	Bamboo floor coverings.
4601.21.90	Mats, matting and screens of bamboo, nesoi.
4601.22.40	Woven or partly assembled materials of rattan for mats, matting and screens.
4601.22.80	Rattan floor coverings.
4601.22.90	Mats, matting and screens of rattan, nesoi.
4601.29.40	Woven or partly assembled materials of willow for mats, matting and screens.
4601.29.60	Woven or partly assembled vegetable materials other than bamboo, rattan or willow, for mats, matting and screens.
4601.29.80	Willow floor coverings.
4601.29.90	Mats, matting and screens of willow, nesoi.
4601.92.05	Plaits of bamboo and similar products of such plaiting materials, whether or not assembled into strips.
4601.92.20	Products of bamboo other than plaits and similar products such as plaiting materials.
4601.93.01	Rattan webbing for mats, matting and screens.
4601.93.05	Plaits of rattan and similar products of such plaiting materials, whether or not assembled into strips.
4601.93.20	Products of rattan other than plaits and similar products such as plaiting materials.
4601.94.05	Plaits of vegetable materials and similar products of such plaiting materials, whether or not assembled into strips.
4601.94.20	Products nesoi, of plaiting materials, bound together in parallel strands or woven, in sheet form, of willow or wood.
4601.94.40	Products nesoi, of plaiting vegetable materials nesoi, bound together in parallel strands or woven, in sheet form.
4601.99.05	Plaits and similar products of plaiting materials (not vegetable), whether or not assembled into strips.
4601.99.90	Products nesoi of plaiting materials (not vegetable), bound together in parallel strands or woven, in sheet form, nesoi.
4602.11.05	Fishing baskets or creels made from bamboo.
4602.11.07	Baskets and bags of bamboo wickerwork.
4602.11.09	Baskets and bags of bamboo other than wickerwork.
4602.11.21	Luggage, handbags and flat goods, whether or not lined, of bamboo.
4602.11.35	Articles of wickerwork, nesoi, of bamboo.
4602.11.45	Basketwork and other articles, nesoi, of one or more of bamboo.
4602.12.05	Fishing baskets or creels made from rattan.
4602.12.14	Baskets and bags of rattan wickerwork.
4602.12.16	Baskets and bags of rattan other than wickerwork.
4602.12.23	Articles of a kind normally carried in the pocket or in the handbag, of rattan.
4602.12.25	Luggage, handbags and flat goods, whether or not lined, of rattan, nesoi.
4602.12.35	Articles of wickerwork, nesoi, of rattan.
4602.12.45	Basketwork and other articles, nesoi, of rattan.
4602.19.05	Fishing baskets or creels made from vegetable materials.
4602.19.12	Baskets and bags, nesoi, whether or not lined, of willow.
4602.19.14	Baskets and bags of palm leaf wickerwork.
4602.19.16	Baskets and bags of palm leaf other than wickerwork.
4602.19.17	Baskets and bags of vegetable material wickerwork, nesoi.
4602.19.18	Baskets and bags of vegetable material, nesoi.
4602.19.22	Luggage, handbags and flat goods, whether or not lined, of willow.
4602.19.23	Articles of a kind normally carried in the pocket or in the handbag,of palm leaf.
4602.19.25	Luggage, handbags and flat goods, whether or not lined, of palm leaf, nesoi.

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HTSUS subheading	Product description
4602.19.29	Luggage, handbags and flat goods, whether or not lined, made from plaiting materials nesoi.
4602.19.35	Articles of wickerwork, nesoi, of willow or wood.
4602.19.45	Basketwork and other articles, nesoi, of willow or wood.
4602.19.60	Articles of wickerwork, nesoi, of vegetable materials, nesoi.
4602.19.80	Basketwork and other articles, nesoi, of vegetables materials, nesoi.
4602.90.00	Basketwork, wickerwork and other articles made directly from plaiting materials or from articles of heading 4601, nesoi; loofah articles.
4701.00.00	Mechanical woodpulp.
4702.00.00	Chemical woodpulp, dissolving grades.
4703.11.00	Chemical woodpulp, soda or sulfate, other than dissolving grades, of unbleached coniferous wood.
4703.19.00	Chemical woodpulp, soda or sulfate, other than dissolving grades, of unbleached nonconiferous wood.
4703.21.00	Chemical woodpulp, soda or sulfate, other than dissolving grades, of semibleached or bleached coniferous wood.
4703.29.00	Chemical woodpulp, soda or sulfate, other than dissolving grades, of semibleached or bleached nonconiferous wood.
4704.11.00	Chemical woodpulp, sulfite, other than dissolving grades, of unbleached coniferous wood.
4704.19.00	Chemical woodpulp, sulfite, other than dissolving grades, of unbleached nonconiferous wood.
4704.21.00	Chemical woodpulp, sulfite, other than dissolving grades, of semibleached or bleached coniferous wood.
4704.29.00	Chemical woodpulp, sulfite, other than dissolving grades, of semibleached or bleached nonconiferous wood.
4705.00.00	Semichemical woodpulp.
4706.10.00	Cotton linters pulp.
4706.20.00	Pulps of fibers derived from recovered (waste and scrap) paper or paperboard.
4706.30.00	Pulps of fibrous cellulosic material, of bamboo.
4706.91.00	Pulps of fibrous cellulosic material, other than cotton linters pulp, mechanical.
4706.92.01	Pulps of fibrous cellulosic material, other than cotton linters pulp, chemical.
4706.93.01	Pulps of fibrous cellulosic material, other than cotton linters pulp, semichemical.
4707.10.00	Waste and scrap of unbleached kraft paper or paperboard or of corrugated paper or paperboard.
4707.20.00	Waste and scrap of other paper or paperboard, made mainly of bleached chemical pulp, not colored in the mass.
4707.30.00	Waste and scrap of paper or paperboard made mainly of mechanical pulp (for example, newspapers, journals, and similar printed matter).
4707.90.00	Waste and scrap of paper or paperboard nesoi, including unsorted waste and scrap.
4801.00.01	Newsprint, in rolls or sheets.
4802.10.00	Handmade paper and paperboard.
4802.20.10	Paper & paperboard use for photo-sensitive/heat-sensitive/electro-sensitive paper/paperboard, in strip/rolls ov 15 cm wide or certain sheets.
4802.20.20	Uncoated basic paper for photo-sensitive/heat-sensitve/eletro-sensitive paper/paperboard to be sensitized for photography, roll/sheets nesoi.
4802.20.40	Uncoated paper and paperboard of a kind used for photo-sensitive/heat-sensitve/eletro-sensitive paper/paperboard, in rolls or sheets nesoi.
4802.40.00	Wallpaper base (hanging paper), in rolls or sheets.
4802.54.10	Writing paper, weigh <40 g/m2, cont. n/o 10% total fiber content by a mechanical/chemi- process, in strip/roll ov 15 cm wide/certain sheets.
4802.54.20	India & bible paper, weigh <40 g/m2, n/o 10% total fiber content by a mechanical/chemi- process, in strip/roll ov 15 cm wide/certain sheets.
4802.54.31	Carbonizing base paper weighing n/ov 15 g/m2, in strip/roll over 15 cm wide or rectangular sheets w/side ov 36 cm and other ov 15 cm unfold.
4802.54.50	Other basic paper to be sensitized use in photography, wt <40g/m2, n/o 10% total fiber by mechanical/chem- process, in rolls/sheets nesoi.
4802.54.61	Carbonizing base paper of a kind used for writing, printing or other graphic purposes, in rolls or sheets nesoi.
4802.55.10	Writing/cover paper, wt 40 g/m2–150 g/m2, n/o 10% total fiber by mechanical/chemi- process, in rolls exceeding 15 cm in width.
4802.55.20	Drawing paper, wt 40 g/m2-150 g/m2, n/o 10% total fiber content by mechanical/chemi- process, in rolls exceeding 15 cm in width.
4802.55.30	India/bible paper, wt 40 g/m2–150 g/m2, n/o 10% total fiber content by mechanical/chemi- process, in rolls exceeding 15 cm in width.
4802.55.40	Paper & paperboard, nesoi, 40 g/m2–150 g/m2, n/o 10% total fiber by mechanical/chemi- process, in rolls exceeding 15 cm in width.
4802.55.60	Other basic paper be sensitized for use photography, 40g/m2–150g/m2, n/o 10% total fiber by mechanical/chemi- process, rolls n/o 15 cm wide.
4802.55.70	Other paper/paperboard for writing/printing/other graphic purpose, 40g/m2–150g/m2, n/o 10% fiber mechanical/chemi- process, roll n/o 15 cm wide.
4802.56.10	Writing & cover paper, wt 40 g/m2–150 g/m2, n/o 10% by weight total fiber content by mechanical/chemi- process, in certain size sheets.
4802.56.20	Drawing paper, wt 40 g/m2–150 g/m2, contain n/o 10% weight total fiber content obtained by mechanical/chemi- process, in certain size sheets.
4802.56.30	India & bible paper, wt 40 g/m2–150 g/m2, n/o 10% by wt. total fiber content obtained by mechanical/chemi- process, in certain size sheets.

ANNEX—Continued

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HTSUS subheading	Product description
4802.56.40	Paper & paperboard nesoi, 40 g/m2–150 g/m2, n/o 10% by wt. total fiber content obtained by mechanical/chemi- process, in certain size sheets.
4802.56.60	Other basic paper be sensitized use in photography, wt. 40g/m2–150g/m2, n/o 10% total fiber by mechanical/ chemi- process, other sized sheets.
4802.56.70	Paper/paperboard for writing/printing/other graphic purpose,wt 40g/m2–150g/m2, n/o 10% fiber by mechanical/ chemi- process,other sized sheets.
4802.57.10	Writing/cover paper, wt 40 g/m2–150 g/m2, cont. n/o 10% by weight total fiber content obtained by mechanical/ chemi- process, in sheets nesoi.
4802.57.20	Drawing paper, wt 40 g/m2 to 150 g/m2, cont. n/o 10% by weight total fiber content obtained by mechanical/ chemi- process, in sheets nesoi.
4802.57.30	India & bible paper, wt 40 g/m2 to 150 g/m2, cont. n/o 10% by wt. total fiber content obtained by mechanical/ chemi- process, in sheets nesoi.
4802.57.40	Paper & paperboard nesoi, 40 g/m2–150 g/m2, cont. n/o 10% by wt. total fiber content obtained by mechanical/ chemi- process, in sheets nesoi.
4802.58.10	Writing/cover paper, >150 g/m2, n/o 10% by wt total fiber content by mechanical process/chemi-, in strip/roll ov 15 cm wide or certain sheet.
4802.58.20	Paper & paperboard nesoi, >150 g/m2, n/o 10% total fiber content by mechanical/chemi- process, in strip/roll ov 15 cm wide or certain sheets.
4802.58.50	Basic paper be sensitized for photography, wt >150 g/m2, n/o 10% total fiber content by mechanical process/ chemi-, in rolls/sheets nesoi.
4802.58.60	Paper/paperboard for writing/printing/other graphic purpose, ≤150 g/m2, n/o 10% fiber content by mechanical process/chemi-, rolls/sheets nesoi.
4802.61.10	Writing & cover paper, over 10% by wt total fiber content consists of fiber obtained by mechanical/chemi- process, in rolls over 15 cm wide.
4802.61.20	Drawing paper, over 10% by weight total fiber content consists of fiber obtained by mechanical/chemi- process, in rolls over 15 cm wide.
4802.61.31	Paper and paperboard for graphic purpose nesoi, ov 10% total fiber content obtained by mechanical/chemi- process, in rolls over 15 cm wide.
4802.61.50	Basic paper to be sensitized for photography, ov 10% total fiber content obtained by mechanical/chemi- process, in rolls n/o 15 cm wide.
4802.61.60	Paper/paperboard for writing/printing/other graphic purposes nesoi, ov 10% total fiber by mechanical/chemi- process, in rolls n/o 15 cm wide.
4802.62.10	Writing & cover paper, over 10% by wt total fiber content consists of fiber obtained by mechanical/chemi- process, in certain size sheets.
4802.62.20	Drawing paper, which ov 10% by weight total fiber content consists of fiber obtained by mechanical/chemi- process, in certain size sheets.
4802.62.30	Paper and paperboard for graphic purposes nesoi, ov 10% by wt total fiber obtained by mechanical/chemi- process, in certain size sheets.
4802.62.50	Basic paper to be sensitized for use in photography, ov 10% by wt total fiber obtained by mechanical/chemi- process, other sized sheets.
4802.62.61	Paper/paperboard for graphic purposes nesoi, ov 10% by wt total fiber obtained by mechanical/chemi- process, other sized sheets.
4802.69.10	Writing & cover paper, of which over 10% by weight total fiber content consists of fiber obtained by mechanical process, sheets nesoi.
4802.69.20	Drawing paper, of which over 10% by weight total fiber content consists of fiber obtained by mechanical process, in sheets nesoi.
4802.69.30	Paper and paperboard for graphic purposes nesoi, ov 10% by wt total fiber obtained by mechanical/chemi- process, in sheets nesoi.
4803.00.20	Cellulose wadding in rolls over 36 cm wide or sheets with at least one side over 36 cm.
4803.00.40	Toilet, facial tissue, towel or napkin stock and paper for household/sanitary purposes, in rolls or sheets of specific measure.
4804.11.00	Uncoated, unbleached kraftliner, in rolls or sheets.
4804.19.00	Uncoated kraftliner, other than unbleached, in rolls or sheets.
4804.21.00	Uncoated, unbleached sack kraft paper, in rolls or sheets.
4804.29.00	Uncoated sack kraft paper, other than unbleached, in rolls or sheets.
4804.31.10	Uncoated, unbleached kraft condenser paper, in rolls or sheets, weighing more than 15 g/m 2 but not over 30 g/ m 2.
4804.31.20	Uncoated, unbleached kraft condenser paper, in rolls or sheets, weighing less than 15 g/m 2 or more than 30 g/ m 2 to 150 g/m 2.
4804.31.40	Uncoated, unbleached kraft wrapping paper in rolls or sheets, weighing 150 g/m2 or less.
4804.31.60	Uncoated, unbleached kraft paper nesoi, in rolls or sheets, weighing 150 g/m2 or less.
4804.39.20	Uncoated kraft condenser paper, other than unbleached, in rolls or sheets, weighing 150 g/m2 or less.
4804.39.40	Uncoated kraft wrapping paper, other than unbleached, in rolls or sheets, weighing 150 g/m2 or less.
4804.39.60	Uncoated kraft paper and paperboard, other than unbleached, in rolls or sheets, weighing 150 g/m2 or less, nesoi.
4804.41.20	Uncoated, unbleached kraft wrapping paper in rolls or sheets, weighing more than 150 but less than 225 g/m2.

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HTSUS subheading	Product description
4804.41.40	Uncoated, unbleached kraft paper and paperboard, nesoi, in rolls or sheets, weighing more than 150 but less than 225 g/m2.
4804.42.00	Uncoated, bleached kraft paper and paperboard, over 150 but n/o 225 g/m2, over 95% content of wood fibers by chemical process, rolls or sheets.
4804.49.00	Uncoated kraft paper and paperboard, nesoi, in rolls or sheets, weighing more than 150 but less than 225 g/m2, nesoi.
4804.51.00	Uncoated, unbleached kraft paper and paperboard, in rolls or sheets, weighing 225 g/m2 or more.
4804.52.00	Uncoated, bleached kraft paper & paperboard, over 225 g/m2, over 95% content of wood fibers obtained by chemical process, rolls or sheets.
4804.59.00	Uncoated kraft paper and paperboard in rolls or sheets, weighing 225 g/m2 or more, nesoi.
4805.11.00	Uncoated semichemical fluting paper, in rolls or sheets, not further worked than as specified in note 3 to chapter 48.
4805.12.10	Uncoated straw fluting paper, weighing 150 g/m2 or less, in rolls or sheets, not further worked than as specified in note 3 to chapter 48.
4805.12.20	Uncoated straw fluting pape, weighing over 150 g/m2, in rolls or sheets, not further worked than as specified in note 3 to chapter 48.
4805.19.10	Uncoated fluting paper nesoi, weighing 150 g/m2 or less, in rolls or sheets, not further worked than as specified in note 3 to chapter 48.
4805.19.20	Uncoated fluting paper nesoi, weighing over 150 g/m2, in rolls or sheets, not further worked than as specified in note 3 to chapter 48.
4805.24.50	Uncoated testliner (recycled liner board), weighing n/o 15 g/m2, in rolls or sheets, not further worked than in note 3 to chapter 48.
4805.24.70	Uncoated testliner, weighing over 15 g/m2 but not over 30 g/m2, in rolls or sheets, not further worked than in note 3 to chapter 48.
4805.24.90	Uncoated testliner, weighing over 30 g/m2 but not over 150 g/m2, in rolls or sheets, not further worked than in note 3 to chapter 48.
4805.25.00	Uncoated testliner, weighing more than 150 g/m2, in rolls or sheets, not further worked than as specified in note 3 to chapter 48.
4805.30.00	Uncoated sulfite wrapping paper in rolls or sheets.
4805.40.00	Uncoated filter paper and paperboard in rolls or sheets.
4805.50.00	Uncoated felt paper and paperboard in rolls or sheets.
4805.91.10	Uncoated multi-ply paper & paperboard, bibulous & wrapping paper, weigh 150 g/m2 or less, in rolls/sheets, not further worked than in note 3.
4805.91.20	Uncoated condenser paper, weighing 150 g/m2 or less, in rolls or sheets, not further worked than as specified in note 3 to chapter 48.
4805.91.50	Uncoated paper and paperboard nesoi, weighing not over 15 g/m2, in rolls or sheets, not further worked than as in note 3 to chapter 48.
4805.91.70	Uncoated paper and paperboard nesoi, weigh over 15 g/m2 but n/o 30 g/m2, in rolls or sheets, not further worked than in note 3 to chapter 48.
4805.91.90	Uncoated paper and paperboard nesoi, weigh ov 30 g/m2 but n/o 150 g/m2, in rolls or sheets, not further worked than in note 3 to chapter 48.
4805.92.20	Uncoated pressboard, weighing more than 150 g/m2 but less than 225 g/m2, in rolls or sheets, not further worked than in note 3 to chapter 48.
4805.92.40	Uncoated paper & paperboard nesoi, weighing >150 g/m2 but <225 g/m2, in rolls or sheets, not further worked than in note 3 to chapter 48.
4805.93.20	Uncoated pressboard weighing 225 g/m2 or more, in rolls or sheets, not further worked than as specified in note 3 to chapter 48.
4805.93.40	Uncoated paper and paperboard nesoi, weighing 225 g/m2 or more, in rolls or sheets, not further worked than as in note 3 to chapter 48.
4806.10.00	Vegetable parchment in rolls or sheets.
4806.20.00	Greaseproof papers in rolls or sheets.
4806.30.00	Tracing papers in rolls or sheets.
4806.40.00	Glassine and other glazed transparent or translucent papers, in rolls or sheets.
4807.00.10	Composite paper and paperboard, laminated internally with bitumen, tar or asphalt, not surface-coated or impregnated, in rolls or sheets.
4807.00.91	Composite straw paper and paperboard, not surface-coated or impregnated, in rolls or sheets.
4807.00.92	Composite cloth-lined or reinforced paper, not surface-coated or impregnated, in rolls or sheets.
4807.00.94	Composite paper and paperboard nesoi, not surface-coated or impregnated, in rolls or sheets.
4808.10.00	Corrugated paper and paperboard, whether or not perforated, in rolls or sheets.
4808.40.00	Kraft paper, creped or crinkled, whether or not embossed or perforated.
4808.90.20	Paper and paperboard, creped or crinkled, in rolls or sheets, nesoi.
4808.90.40	Paper and paperboard, embossed, in rolls or sheets, nesoi.
4808.90.60	Paper and paperboard, in rolls or sheets, nesoi.
4809.20.20	Self-copy writing paper in rolls over 36 cm wide or rectangular sheets over 36 cm on side(s).
4809.20.40	Self-copy paper in rolls over 36 cm wide or rectangular sheets over 36 cm on side(s), other than writing paper.
4809.90.20	Stereotype-matrix board and mat in rolls over 36 cm wide or in rectangular sheets over 36 cm on side(s).
4809.90.40	Simplex decalcomania paper in rolls over 36 cm wide or in rectangular sheets over 36 cm on side(s).

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HTSUS subheading	Product description
4809.90.60	Duplex decalcomania paper in rolls over 36 cm wide or in rectangular sheets over 36 cm on side(s).
4809.90.71	Carbon paper, self-copy paper and other copying or transfer paper, Impregnated, coated or both, but otherwise not treated.
4809.90.80	Copying or transfer papers, nesoi, in rolls over 36 cm wide or rectangular sheets over 36 cm on side(s).
4810.13.11	Basic paper be sensitized for photography, coated w/inorganic, n/o 150 g/m2, n/o 10% fiber by mechanical/chemi- process, rolls ov 15 cm wide.
4810.13.13	India or bible paper, coated w/inorganic, n/o 150 g/m2, n/o 10% fiber content obtained by a mechanical/chemi-process, rolls ov 15 cm wide.
4810.13.19	Paper/paperboard for graphic use nesoi, coated w/inorganic, n/o 150g/m2, n/o 10% fiber by mechanical/chemi-process, rolls ov 15 cm wide.
4810.13.20	Paper and paperboard for graphic use, coated w/inorganic, ov 150g/m2, n/o 10% fiber by mechanical/chemi-process, in rolls over 15 cm wide.
4810.13.50	Printed/embossed/perforated paper & paperboard graphic use, coated w/inorganic, n/o 10% fiber by mech/chemi-process, rolls n/o 15 cm wide.
4810.13.60	Basic paper be sensitized for photography, coated w/kaolin/inorganic, n/o 10% fiber by mechanical/chemi- process, rolls n/o 15 cm wide.
4810.13.70	Paper & paperboard for graphic purposes nesoi, coated w/kaolin/inorganic, n/o 10% fiber by mechanical/chemi-process, rolls n/o 15 cm wide.
4810.14.11	Basic paper be sensitized for photography, coated w/inorganic, n/o 150g/m2, n/o 10% fiber by mechanical/chemi-process, certain size sheets.
4810.14.13	India or bible paper, coated w/inorganic, n/o 150 g/m2, of n/o 10% fiber content obtained by mechanical/chemi-process, certain size sheets.
4810.14.19	Paper and paperboard for graphic use nesoi, coated w/inorganic, n/o 150g/m2, n/o 10% fiber by mechanical/chemi- process, certain size sheets.
4810.14.20	Paper and paperboard for graphic use, coated w/inorganic, ov 150g/m2, n/o 10% fiber obtained mechanical/chemi- process, certain size sheets.
4810.14.50	Printed/embossed/perforated paper & paperboard, coated w/inorganic, n/o 10% fiber obtained mechanical/chemi-process, other sized sheets.
4810.14.60	Basic paper be sensitized use in photography, coated w/inorganic, n/o 10% fiber obtained mechanical/chemi-process, other sized sheets.
4810.14.70	Paper & paperboard for graphic purposes nesoi, coated w/inorganic, n/o 10% fiber obtained mechanical/chemi-process, other sized sheets.
4810.19.11	Basic paper be sensitized use in photography, coated w/inorganic, n/o 150g/m2, n/o 10% fiber by mechanical/chemi- process, sheets nesoi.
4810.19.13	India or bible paper, coated w/inorganic, n/o 150 g/m2, of n/o 10% fiber content obtained by a mechanical/chemi-process, sheets nesoi.
4810.19.19	Paper & paperboard for graphic use nesoi, coated w/inorganic, n/o 150g/m2, n/o 10% fiber obtained by mechanical/chemi- process, sheets nesoi.
4810.19.20	Paper and paperboard for graphic use, coated w/inorganic, ov 150g/m2, n/o 10% fiber obtained by a mechanical/chemi- process, sheets nesoi.
4810.22.10	Light-weight coated paper for graphic use, >10% fiber content obtained by mechanical/chemi- process, strip/roll ov 15 cm wide/sized sheets.
4810.22.50	Light-wt coated printed/embossed/perforated paper/paperboard for graphic, >10% fiber obtained mechanical/chemi- process, roll/sheet nesoi.
4810.22.60	Light-weight coated basic paper be sensitized use in photography, >10% fiber obtained mechanical/chemi- process, rolls/sheets nesoi.
4810.22.70	Light-wt coated paper & paperboard used for graphic purposes, >10% fiber obtained by a mechanical/chemi-process, roll/sheet nesoi.
4810.29.10	Paper/paperboard for graphic, coated w/inorganic, >10% fiber obtained by mechanical/chemi- process, strip/roll ov 15 cm wide & sized sheets.
4810.29.50	Printed/embossed/perforated paper/paperboard for graphic, coated w/inorganic, >10% fiber by mechanical/chemi-process, rolls/sheets nesoi.
4810.29.60	Basic paper to be sensitized for use in photography, coated w/inorganic, >10% fiber by mechanical/chemi- process, rolls/sheets nesoi.
4810.29.70	Paper/paperboard used for graphic purposes, coated w/inorganic, >10% fiber by mechanical/chemi- process, rolls/sheets nesoi.
4810.31.10	Nongraphic bleached coated kraft paper/paperboard, >95% wood fiber by chemical process, 150g/m2 or <, strip/roll ov 15 cm wide/certain sheet.
4810.31.30	Bleached coated kraft paper cards, not punched, for punchcard machine, >95% wood fiber by chemical process, 150g/m2 or <, rolls/sheets nesoi.
4810.31.65	Nongraphic bleached coated kraft paper/paperboard nesoi, of >95% wood fiber by chemical process, 150 g/m2 or less, in rolls or sheets nesoi.
4810.32.10	Nongraphic bleached coated kraft paper/paperboard, >95% wood fiber by chemical process, >150g/m2, strip/roll ov 15 cm wide/certain sheets.
4810.32.30	Bleached coated kraft paper card, not punched, for punchcard machine, >95% wood fiber by chemical process, >150g/m2, in strips/sheets nesoi.

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HTSUS subheading	Product description
4810.32.65	Nongraphic bleached coated kraft paper/paperboard nesoi, of >95% wood fiber obtained chemical process, >150 g/m2, in rolls or sheets nesoi.
4810.39.12	Nongraphic nonbleach uniformly kraft paper/paperboard,coated w/inorganic,wheth impreg but not treated,strip/roll ov 15cm wide/certain sheet.
4810.39.14	Nongraphic nonbleached uniformly kraft paper and paperboard nesoi, coated w/kaolin/inorganic substances, strip/roll ov 15 cm/certain sheets.
4810.39.30	Nonbleached uniformly kraft paper cards, not punched, for punchcard machines, coated w/inorganic substances, strips/sheets nesoi.
4810.39.65	Nongraphic nonbleached uniformly kraft paper or paperboard nesoi, coated with kaolin or other inorganic substances, in rolls or sheets nesoi.
4810.92.12	Multi-ply paper & paperboard nesoi, coat w/kaolin/other inorganic substances, wt >150g/m2, strips/rolls ov 15 cm wide or certain sheets.
4810.92.14	Multi-ply paper/paperboard nesoi, coat w/kaolin/other inorganic substances, wt 150g/m2 or less, strips/rolls ov 15 cm wide or certain sheets.
4810.92.30	Multi-ply paper/paperboard cards, not punched, for punchcard machines, coated w/kaolin/other inorganic substances, in strips/sheets nesoi.
4810.92.65	Multi-ply paper or paperboard nesoi, coated with kaolin or other inorganic substances, in rolls n/o 15 cm wide and rectangular sheets nesoi.
4810.99.10	Paper & paperboard nesoi, coated with kaolin or other inorganic substances, in strips/rolls ov 15 cm wide or certain size rectangular sheets.
4810.99.30	Paper & paperboard cards nesoi, not punched, for punchcard machines, coated w/kaolin/inorganic substances, in strips or sheets nesoi.
4810.99.65	Paper and paperboard nesoi, coated with kaolin or other inorganic substances, in rolls n/o 15 cm wide and rectangular sheets nesoi.
4811.10.11	Tarred, bituminized or asphalted paper & paperboard, in strip/roll ov 15cm wide or rectangular sheet w/side ov 36cm & other ov 15cm unfolded.
4811.10.21	Tarred, bituminized or asphalted paper and paperboard, in strips or rolls not over 15 cm wide or in rectangular sheets nesoi.
4811.41.10	Self-adhesive paper & paperboard, in strips/rolls ov 15cm wide or rectangular sheets w/1 side ov 36cm & other side ov 15cm in unfolded.
4811.41.21	Self-adhesive paper and paperboard, in strips or rolls not over 15 cm wide.
4811.41.30	Self-adhesive paper and paperboard, in rectangular sheets nesoi.
4811.49.10	Gummed or adhesive paper and paperboard (other than self-adhesive), in strips or rolls over 15 cm wide or certain sized rectangular sheets.
4811.49.21	Gummed or adhesive paper and paperboard (other than self-adhesive), in strips or rolls not over 15 cm wide.
4811.49.30	Gummed or adhesive paper and paperboard (other than self-adhesive), in rectangular sheets nesoi.
4811.51.20	Bleached paper and paperboard, coated/impregnated/covered w/plastics, wt >150g/m2, 0.3mm or more thick, in certain size strips/rolls/sheets.
4811.51.40	Bleached paper and paperboard, coated/impregnated/covered w/plastics, wt >150 g/m2, <0.3 mm thick, in certain size strips/rolls/sheets.
4811.51.60	Bleached paper and paperboard, coated/impregnated/covered w/plastics, wt >150 g/m2, in rolls n/o 15 cm wide or rectangular sheets nesoi.
4811.59.20	Bleached nesoi/nonbleached printing paper, coated, impregnated or covered with plastics, in strips/rolls ov 15cm wide or certain size sheets.
4811.59.40	Bleached nesoi/nonbleached paper and paperboard nesoi, coated/impregnated/covered with plastics, in certain size strip/rolls/sheets.
4811.59.60	Bleached nesoi/nonbleached paper & paperboard, coated/impregnated/covered with plastics, in rolls n/o 15 cm wide or rectangular sheets nesoi.
4811.60.40	Paper and paperboard, coated/impregnated/covered with wax/paraffin/stearin/oil/glycerol, in strips/rolls ov 15cm wide or certain size sheets.
4811.60.60	Paper and paperboard, coated/impregnated/covered with wax/paraffin/stearin/oil/glycerol, in rolls n/o 15cm wide or rectangular sheets nesoi.
4811.90.10	Handmade paper of cellulose fibers, in strip or roll ov 15 cm wide or rectangular sheets w/1 side ov 36 cm and other ov 15 cm in unfolded.
4811.90.20	Paper/paperboard/cell wadding/webs of cell fibers, all/partly covered w/flock/gelatin/metal/metal solutions, in certain strip/rolls/sheets.
4811.90.30	Paper, paperboard, cellulose wadding and webs of cellulose fibers, impregnated with latex, in certain size strips/rolls/sheets.
4811.90.40	Paper, paperboard, cellulose wadding and webs of cellulose fibers, nesoi, weighing not over 15 g/m2, in certain size strips, rolls or sheets.
4811.90.60	Paper, paperboard, cellulose wadding and web of cellulose fibers, nesoi, wt ov 15g/m2 n/o 30g/m2, in certain size strips, rolls or sheets.
4811.90.80	Paper, paperboard, cellulose wadding and webs of cellulose fibers, nesoi, weighing over 30 g/m2, in certain size strips, rolls or sheets.
4811.90.90	Paper, paperboard, cellulose wadding and webs of cellulose fibers, nesoi, in rolls n/o 15 cm wide or rectangular sheets nesoi.
4812.00.00	Filter blocks, slabs and plates of paper pulp.

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HTSUS subheading	Product description
4813.10.00	Cigarette paper in the form of booklets or tubes.
4813.20.00	Cigarette paper in rolls of a width not exceeding 5 cm.
4813.90.00	Cigarette paper, whether or not cut to size, nesoi.
4816.20.00	Self-copy paper, nesoi.
4816.90.01	Carbon or similar copying papers, nesoi.
4817.10.00	Envelopes of paper or paperboard.
4817.20.20	Sheets of writing paper with border gummed or perforated, prepared for use as combination sheets and envelopes.
4817.20.40	Other letter cards, plain postcards and correspondence cards, nesoi.
4817.30.00	Boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery.
4818.10.00	Toilet paper.
4818.20.00	Handkerchiefs, cleansing or facial tissues and towels of paper pulp, paper, cellulose wadding or webs of cellulose fiber.
4818.30.00	Tablecloths and table napkins of paper pulp, paper, cellulose wadding or webs of cellulose fiber.
4818.50.00	Articles of apparel and clothing accessories of paper pulp, paper, cellulose wadding or webs of cellulose fibers.
4818.90.00	Bedsheets and similar household, sanitary or hospital articles of paper, cellulose wadding or webs of cellulose fibers, nesoi.
4819.10.00	Cartons, boxes and cases of corrugated paper or paperboard.
4819.20.00	Folding cartons, boxes and cases of noncorrugated paper or paperboard.
4819.30.00	Sacks and bags, having a base of a width of 40 cm or more, of paper, paperboard, cellulose wadding or webs of cellulose fibers.
4819.40.00	Sacks and bags, nesoi, including cones, of paper, paperboard, cellulose wadding or webs of cellulose fibers.
4819.50.20	Sanitary food and beverage containers of paper, paperboard, cellulose wadding or webs of cellulose fibers, nesoi.
4819.50.30	Record sleeves of paper, paperboard, cellulose wadding or webs of cellulose fibers.
4819.50.40	Packing containers, nesoi, of paper, paperboard, cellulose wadding or webs of cellulose fibers.
4819.60.00	Box files, letter trays, storage & like articles, used in offices & shops, of paper, paperboard,cellulose wadding/webs of cellulose fibers.
4820.10.20	Diaries, notebooks and address books, bound; letter and memorandum pads and similar articles, of paper or paperboard.
4820.10.40	Registers, account, order and receipt books, and similar articles, of paper or paperboard, nesoi.
4820.20.00	Exercise books of paper or paperboard.
4820.30.00	Binders (other than book covers), folders and file covers of paper or paperboard.
4820.40.00	Manifold business forms and interleaved carbon sets of paper or paperboard.
4820.50.00	Albums for samples or for collections, of paper or paperboard.
4820.90.00	Blotting pads and other articles of stationery nesoi, and book covers, of paper or paperboard.
4821.10.20	Paper and paperboard labels, printed in whole or part by a lithographic process.
4821.10.40	Paper and paperboard labels, printed by other than a lithographic process.
4821.90.20	Pressure-sensitive paper and paperboard labels, not printed.
4821.90.40	Paper and paperboard labels, not printed, nesoi.
4822.10.00	Bobbins, spools, cops and similar supports of paper pulp, paper or paperboard of a kind used for winding textile yarn.
4822.90.00	Bobbins, spools, cops and similar supports of paper pulp, paper or paperboard, nesoi.
4823.20.10	Paint filters and strainers of paper or paperboard.
4823.20.90	Filter paper and paperboard, nesoi.
4823.40.00	Rolls, sheets and dials of paper or paperboard printed for self-recording apparatus.
4823.61.00	Trays, dishes, plates, cups and the like, of paper or paperboard: of bamboo.
4823.69.00	Trays, dishes, plates, cups and the like, of paper or paperboard.
4823.70.00	Molded or pressed articles of paper pulp.
4823.90.10	Articles of paper pulp, nesoi.
4823.90.20	Articles of papier-mache, nesoi.
4823.90.31	Cards of paper or paperboard, nesoi, not punched, for punchcard machines, whether or not in strips.
4823.90.40	Frames or mounts for photographic slides of paper or paperboard.
4823.90.50	Hand fans of paper or paperboard.
4823.90.60	Gaskets, washers and other seals of coated paper or paperboard.
4823.90.67	Coated paper or paperboard, nesoi.
4823.90.70	Articles of cellulose wadding, nesoi.
4823.90.80	Gaskets, washers and other seals of paper, paperboard and webs of cellulose fibers, nesoi.
4823.90.86	Articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibers, nesoi.
5001.00.00	Silkworm cocoons suitable for reeling.
5002.00.00	Raw silk (not thrown).
5003.00.10	Silk waste (including cocoons unsuitable for reeling, yarn waste and garnetted stock) not carded or combed.
5003.00.90	Silk waste (including cocoons unsuitable for reeling, yarn waste and garnetted stock) carded or combed.
5004.00.00	Silk yarns (other than yarn spun from silk waste) not put up for retail sale.
5005.00.00	Yarn spun from silk waste, not put up for retail sale.
5006.00.10	Spun yarn, containing 85% or more by weight of silk, put up for retail sale; silkworm gut.
5006.00.90	Spun silk yarn, containing less than 85% by weight of silk, put up for retail sale.

ANNEX—Continued

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HTSUS subheading	Product description
5007.10.30	Woven fabrics of noil silk, containing 85 percent or more by weight of silk or silk waste.
5007.10.60	Woven fabrics of noil silk, containing less than 85 percent by weight of silk or silk waste.
5007.20.00	Woven fabrics containing 85 percent or more by weight of silk or of silk waste, other than noil silk.
5007.90.30	Woven silk fabrics, containing 85 percent or more by weight of silk or silk waste, nesoi.
5007.90.60	Other silk woven fabrics, containing less than 85 percent by weight of silk or silk waste, nesoi.
5101.11.10	Unimproved wool and other wool not finer than 46s, greasy, shorn, not carded or combed, for special uses.
5101.11.20	Unimproved wool and other wool not finer than 40s, greasy, shorn, not carded or combed, not for special uses.
5101.11.40	Wool, excluding unimproved, finer than 40s but not 44s, greasy, shorn, not carded or combed, not for special uses.
5101.11.50	Wool, excluding unimproved, finer than 44s but not 46s, greasy, shorn, not carded or combed, not for special uses.
5101.11.60	Wool, excluding unimproved, finer than 46s, greasy, shorn, not carded or combed.
5101.19.10	Unimproved wool and other wool not finer than 46s, greasy, not shorn, not carded or combed, for special uses.
5101.19.20	Unimproved wool and other wool not finer than 40s, greasy, not shorn, not carded or combed, not for special uses.
5101.19.40	Wool, excl. unimproved, finer than 40s, but not 44s, greasy, not shorn, not carded or combed, not for special uses.
5101.19.50	Wool, excluding unimproved, finer than 44s but not 46s, greasy, not shorn, not carded or combed, not for special uses.
5101.19.60	Wool, excluding unimproved, finer than 46s, greasy, incl. fleece-washed, not shorn, not carded or combed.
5101.21.10	Unimproved wool and other wool not finer than 46s, degreased, not further processed, shorn, not carded or combed, for special uses.
5101.21.15	Unimproved wool and other wool not finer than 40s, degreased, not further processed, shorn, not carded or combed, not for special uses.
5101.21.30	Wool, excl. unimproved, finer than 40s but not 44s, degreased, not further processed, shorn, not carded or combed, not for special uses.
5101.21.35	Wool, excl. unimproved, finer than 44s but not 46s, degreased, not further processed, shorn, not carded or combed, not for special uses.
5101.21.40	Wool, excl. unimproved, finer than 46s, degreased, not further processed, shorn, not carded or combed, not for special uses.
5101.21.65	Unimproved wool and other wool, not finer than 46s, degreased, shorn, not carbonized, not carded or combed.
5101.21.70	Unimproved wool and other wool, finer than 46s, degreased, shorn, not carbonized, not carded or combed.
5101.29.10	Unimproved wool and other wool not finer than 46s, degreased, not further processed, not shorn, not carded or combed, for special uses.
5101.29.15	Unimproved wool and other wool not finer than 40s, degreased, not further processed, not shorn, not carded or combed, not for special uses.
5101.29.30	Wool, excl. unimproved, finer than 40s but not 44s, degreased, not further processed, not shorn, not carded or combed, not for special uses.
5101.29.35	Wool, excl. unimproved, finer than 44s but not 46s, degreased, not further processed, not shorn, not carded or combed, not for special uses.
5101.29.40	Wool, excl. unimproved, finer than 46s, degreased, not further processed, not shorn, not carded or combed, not for special uses.
5101.29.65	Unimproved wool and other wool, not finer than 46s, not shorn, not carbonized, degreased and further processed, not carded or combed.
5101.29.70	Wool, finer than 46s, not carded or combed, not carbonized, not shorn, degreased and processed to remove grease.
5101.30.10	Unimproved wool and other wool, not finer than 40s, carbonized, not further processed, not carded or combed.
5101.30.15	Wool, excluding unimproved, finer than 40s but not finer than 44s, carbonized, not further processed, not carded or combed.
5101.30.30	Wool, excluding unimproved, finer than 44s but not finer than 46s, carbonized, not further processed, not carded or combed.
5101.30.40	Wool, excluding unimproved, finer than 46s, carbonized, not further processed, not carded or combed.
5101.30.65	Unimproved wool and other wool, not finer than 46s, carbonized and further processed, not carded or combed.
5101.30.70	Unimproved wool and other wool, finer than 46s, carbonized and further processed, not carded or combed.
5102.11.10	Fine hair of Kashmir (cashmere) goats, not processed in any manner beyond the degreased or carbonized condition, not carded or combed.
5102.11.90	Fine hair of Kashmir (cashmere) goats, processed beyond the degreased or carbonized condition, not carded or combed.
5102.19.20	Fine hair of the camel, not processed in any manner beyond the degreased or carbonized condition, not carded or combed.
5102.19.60	Fine animal hair (other than Kashmir or camel), not processed beyond the degreased or carbonized condition, not carded or combed.
5102.19.80	Fur, prepared for hatters' use, not carded or combed.
5102.19.90	Fine animal hair (other than Kashmir), processed beyond the degreased or carbonized condition, not carded or combed.
5102.20.00	Coarse animal hair, not carded or combed.
5103.10.00	Noils of wool or of fine animal hair.

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HTSUS subheading	Product description
5103.20.00	Waste, other than noils, of wool or of fine animal hair, including yarn waste but excluding garnetted stock.
5103.30.00	Waste of coarse animal hair, including yarn waste but excluding garnetted stock.
5104.00.00	Garnetted stock of wool or of fine or coarse animal hair.
5105.10.00	Carded wool.
5105.21.00	Combed wool in fragments.
5105.29.00	Wool tops and other combed wool, except in fragments.
5105.31.00	Fine hair of Kashmir (cashmere) goats, carded or combed.
5105.39.00	Fine animal hair (other than Kashmir), carded or combed.
5105.40.00	Coarse animal hair, carded or combed.
5106.10.00	Yarn of carded wool, containing 85 percent or more by weight of wool, not put up for retail sale.
5106.20.00	Yarn of carded wool, containing less than 85 percent by weight of wool, not put up for retail sale.
5107.10.30	Yarn of combed wool, containing 85% or more by weight of wool, not put up for retail sale, of wool fiber avg diameter 18.5 micron or <.
5107.10.60	Yarn of combed wool, containing 85% or more by weight of wool, not put up for retail sale, nesoi.
5107.20.30	Yarn of combed wool, containing less than 85 percent by weight of wool, not put up retail sale, of wool fiber avg diameter 18.5 micron or <.
5107.20.60	Yarn of combed wool, containing less than 85 percent by weight of wool, not put up retail sale, nesoi.
5108.10.30	Yarn of Angora rabbit hair, carded, not put up for retail sale.
5108.10.40	Yarn of mohair, carded, not put up for retail sale.
5108.10.80	Yarn of fine animal hair other than Angora rabbit hair or mohair, carded, not put up for retail sale.
5108.20.30	Yarn of Angora rabbit hair, combed, not put up for retail sale.
5108.20.40	Yarn of mohair, combed, not put up for retail sale.
5108.20.80	Yarn of fine animal hair other than Angora rabbit hair or mohair, combed, not put up for retail sale.
5109.10.20	Yarn of wool, containing 85 percent or more by weight of wool, colored, cut into uniform lengths of not over 8 cm, put up for retail sale.
5109.10.40	Yarn of Angora rabbit hair, containing 85 percent or more by weight of the Angora hair, put up for retail sale.
5109.10.80	Yarn of wool nesoi, or fine animal hair nesoi, over 85% or > of that wool/hair, for retail sale, of wool fiber avg diamter 18.5 micron or <.
5109.10.90	Yarn of wool nesoi, or fine animal hair nesoi, over 85% or > of that wool/hair, put up for retail sale, nesoi.
5109.90.20	Yarn of wool, colored, and cut into uniform lengths of not over 8 cm, containing less than 85% by weight of wool, put up for retail sale.
5109.90.40	Yarn of Angora rabbit hair containing less than 85 percent by weight of the Angora hair, put up for retail sale.
5109.90.80	Yarn of wool nesoi, or fine animal hair nesoi, <85% of that wool/hair, for retail sale, of wool fiber avg diameter 18.5 micron or <.
5109.90.90	Yarn of wool nesoi, or fine animal hair nesoi, <85% of that wool/hair, put up for retail sale, nesoi.
5110.00.00	Yarn of coarse animal hair or horsehair (including gimped horsehair yarn) whether or not put up for retail sale.
5111.11.20	Tapestry and upholstery fabrics of carded wool/fine animal hair, over 85% wool or hair, weighing not over 140 g/m2.
5111.11.30	Hand-woven fabrics of carded wool/fine animal hair, 85% or more wool or hair, loom width less than 76 cm, weight not over 300 g/m2.
5111.11.70	Woven fabrics, 85% or more by weight of carded wool/fine animal hair, weight not over 300 g/m2, nesoi.
5111.19.10	Tapestry and upholstery fabrics, woven, 85% or more by weight of carded wool/fine animal hair, weight over 300 g/m2.
5111.19.20	Hand-woven fabrics, with 85 percent or more by weight of carded wool/fine animal hair, loom width of less than 76 cm, weight ov 300 g/m2.
5111.19.60	Woven fabrics, with 85 percent or more by weight of carded wool/fine animal hair nesoi, weight over 300 g/m2.
5111.20.05	Tapestry & upholstery fabrics of carded wool/fine animal hair, mixed mainly or solely with man-made filaments, weight exceeding 300 g/m2.
5111.20.10	Tapestry & upholstery fabrics of carded wool/fine animal hair, mixed mainly or solely with man-made filaments, weight not over 140 g/m2.
5111.20.90	Woven fabrics of carded wool/fine animal hair, mixed mainly or solely with man-made filaments, nesoi.
5111.30.05	Tapestry & upholstery fabrics of carded wool/fine animal hair, mixed mainly/solely with man-made staple fibers, weight exceeding 300 g/m2.
5111.30.10	Tapestry & upholstery fabrics of carded wool/fine animal hair, mixed mainly/solely with man-made staple fibers, weight not over 140 g/m2.
5111.30.90	Woven fabrics of carded wool/fine animal hair, mixed mainly or solely with man-made staple fibers, nesoi.
5111.90.30	Woven fabrics of carded wool/fine animal hair, containing 30 percent or more by weight of silk or silk waste, valued over $33/kg.
5111.90.40	Tapestry and upholstery fabrics of carded wool/fine animal hair, weight over 300 g/m2, containing less than 85% wool or hair, nesoi.
5111.90.50	Tapestry and upholstery fabrics of carded wool/fine animal hair, weight not over 140 g/m2, containing less than 85% wool or hair, nesoi.
5111.90.90	Woven fabrics of carded wool/fine animal hair, containing less than 85% wool or hair, nesoi.
5112.11.10	Tapestry and upholstery fabrics of combed wool/fine animal hair, containing 85% or more wool or hair, weight not over 140 g/m2.
5112.11.30	Woven fabrics of combed wool/fine animal hair, over 85% wool or hair, weight not over 200 g/m2, avg wool fiber diameter 18.5 micron or <.

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HTSUS subheading	Product description
5112.11.60	Woven fabrics of combed wool/fine animal hair, over 85% wool or hair, weight not over 200 g/m2, nesoi.
5112.19.20	Tapestry and upholstery fabrics of combed wool/fine animal hair, over 85% wool or hair, weight over 300 g/m2.
5112.19.60	Woven fabrics of combed wool/fine animal hair, over 85% wool or fine animal hair, ov 200 g/m2, avg wool fiber diameter 18.5 micron or <.
5112.19.95	Woven fabrics of combed wool/fine animal hair, over 85% wool or fine animal hair, weight over 200 g/m2, nesoi.
5112.20.10	Tapestry and upholstery fabrics of combed wool/fine animal hair, mixed mainly/solely with man-made filaments, weight over 300 g/m2.
5112.20.20	Tapestry and upholstery fabrics of combed wool/fine animal hair, mixed mainly/solely with man-made filaments, weight not over 140 g/m2.
5112.20.30	Woven fabrics of combed wool/fine animal hair, mixed mainly or solely with man-made filaments, nesoi.
5112.30.10	Tapestry and upholstery fabrics of combed wool/fine animal hair, mixed mainly/solely with man-made staple fibers, weight over 300 g/m2.
5112.30.20	Tapestry & upholstery fabrics of combed wool/fine animal hair, mixed mainly/solely with man-made staple fibers, weight not over 140 g/m2.
5112.30.30	Woven fabrics of combed wool/fine animal hair, mixed mainly or solely with man-made staple fibers, nesoi.
5112.90.30	Woven fabrics of combed wool/fine animal hair, nesoi, containing 30 percent or more by weight of silk or silk waste, valued over $33/kg.
5112.90.40	Woven tapestry/upholstery fabrics of combed wool/fine animal hair, con. by wt. under 85% wool/hair & under 30% silk, over 300 g/m2, nesoi.
5112.90.50	Woven tapestry/upholstery fabrics of combed wool/fine animal hair, con. by wt. under 85% wool/hair & under 30% silk, n/o 140 g/m2, nesoi.
5112.90.90	Woven fabrics of combed wool or combed fine animal hair, nesoi.
5113.00.00	Woven fabrics of coarse animal hair or of horsehair.
5201.00.05	Cotton, not carded or combed, having a staple length under 19.05 mm (¾ inch), harsh or rough.
5201.00.12	Cotton, n/carded or combed, having a staple length <28.575 mm (1⅛ inches), n/harsh or rough, described in gen. note 15.
5201.00.14	Cotton, n/carded or combed, having a staple length <28.575 mm (1⅛ inches), n/harsh or rough, quota described in ch 52 add'l U.S. note 5.
5201.00.18	Cotton, not carded or combed, having a staple length under 28.575 mm (1⅛ inches), n/harsh or rough, nesoi.
5201.00.22	Cotton, not carded or combed, staple length of 28.575 mm or more but under 34.925 mm, described in gen. note 15.
5201.00.24	Cotton, n/carded or combed, harsh or rough, staple length 29.36875 mm or more but n/o 34.925 mm, white in color, quota descrd ch 52 add U.S. note 6.
5201.00.28	Cotton, not carded or combed, harsh or rough, staple length of 29.36875 mm or more but under 34.925 mm & white in color, nesoi.
5201.00.34	Cotton, not carded or combed, staple length of 28.575 mm or more but under 34.925 mm, other, quota described in chapter 52 add'l U.S. note 7.
5201.00.38	Cotton, not carded or combed, staple length of 28.575 mm or more but under 34.925 mm, nesoi.
5201.00.55	Cotton, not carded or combed, having a staple length of 34.925 mm or more, described in the gen. note 15.
5201.00.60	Cotton, not carded or combed, having a staple length of 34.925 mm or more, quota described in chapter 52 add'l U.S. note 8.
5201.00.80	Cotton, not carded or combed, having a staple length of 34.925 mm or more, nesoi.
5202.10.00	Cotton yarn waste (including thread waste).
5202.91.00	Cotton garnetted stock.
5202.99.05	Cotton card strips made from cotton waste having staple length under 30.1625 mm & lap, sliver & roving waste described in gen. nte 15.
5202.99.10	Cotton card strips made from cotton waste w/staple length under 30.1625 mm & lap, sliver & roving waste, quota dscrbd in ch 52 add U.S. note 9.
5202.99.30	Cotton card strips made from cotton waste having staple length under 30.1625 mm & lap, sliver & roving waste, nesoi.
5202.99.50	Cotton waste, other than yarn waste and garnetted stock, nesoi.
5203.00.05	Cotton fibers, carded or combed, of cotton fiber processed but not spun, described in gen. note 15.
5203.00.10	Cotton fibers, carded or combed, of cotton fiber processed but not spun, quota described in chapter 52 add'l U.S. note 10.
5203.00.30	Cotton fibers, carded or combed, of cotton fiber processed, but not spun, nesoi.
5203.00.50	Cotton carded or combed, excluding fibers of cotton processed but not spun.
5204.11.00	Cotton sewing thread, containing 85 percent or more by weight of cotton, not put up for retail sale.
5204.19.00	Cotton sewing thread, containing less than 85 percent by weight of cotton, not put up for retail sale.
5204.20.00	Cotton sewing thread, put up for retail sale.
5205.11.10	Single cotton yarn, 85% or more cotton by weight, of uncombed fibers, not over 14 nm, unbleached, not mercerized, not put up for retail sale.
5205.11.20	Single cotton yarn, 85% or more cotton by weight, of uncombed fibers, n/o 14 nm, bleached or mercerized.
5205.12.10	Single cotton yarn, 85% or more cotton, of uncombed fibers, over 14 but n/o 43 nm, unbleached, not mercerized, not put up for retail sale.
5205.12.20	Single cotton yarn, 85% or more cotton by weight, of uncombed fibers, over 14 nm but n/o 43 nm, bleached or mercerized.

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HTSUS subheading	Product description
5205.13.10	Single cotton yarn, 85% or more cotton, of uncombed fibers, over 43 but n/o 52 nm, unbleached, not mercerized, not put up for retail sale.
5205.13.20	Single cotton yarn, 85% or more cotton, of uncombed fibers, over 43 nm but n/o 52 mm, bleached or mercerized.
5205.14.10	Single cotton yarn, 85% or more cotton, of uncombed fibers, over 52 but n/o 80 nm, unbleached, not mercerized, not put up for retail sale.
5205.14.20	Single cotton yarn, 85% or more cotton by weight, of uncombed fibers, over 52 but n/o 80 nm, bleached or mercerized.
5205.15.10	Single cotton yarn, 85% or more cotton, of uncombed fibers, over 80 nm, unbleached, not mercerized, not put up for retail sale.
5205.15.20	Single cotton yarn, 85% or more cotton, of uncombed fibers, over 80 nm, bleached or mercerized, not put up for retail sale, nesoi.
5205.21.00	Single cotton yarn, 85% or more cotton by weight, of combed fibers, not over 14 nm, not put up for retail sale.
5205.22.00	Single cotton yarn, 85% or more cotton by weight, of combed fibers, over 14 but n/o 43 nm, not put up for retail sale.
5205.23.00	Single cotton yarn, 85% or more cotton by weight, of combed fibers, over 43 but n/o 52 nm, not put up for retail sale.
5205.24.00	Single cotton yarn, 85% or more cotton by weight, of combed fibers, over 52 but n/o 80 nm, not put up for retail sale.
5205.26.00	Single cotton yarn, 85% or > cotton by wt, of combed fiber, meas. <125 but not <106.38 decitex, >80nm but not >94nm, not put up for retail sale.
5205.27.00	Single cotton yarn, 85% or > cotton by wt,of combed fiber,meas. <106.38 but not <83.33 decitex, >94nm but not >120nm, not put up for retail sale.
5205.28.00	Single cotton yarn, 85% or > cotton by wt, of combed fibers, meas. <83.33 decitex, >120 nm, not put up for retail sale.
5205.31.00	Multiple or cabled cotton yarn, 85% or more cotton by weight, of uncombed fibers, n/o 14 nm per single yarn, not put up for retail sale.
5205.32.00	Multiple or cabled cotton yarn, 85% or more cotton by weight, of uncombed fibers, yarn over 14 but n/o 43 nm, not put up for retail sale.
5205.33.00	Multiple or cabled cotton yarn, 85% or more cotton by weight, of uncombed fibers, yarn over 43 but n/o 52 nm, not put up for retail sale.
5205.34.00	Multiple or cabled cotton yarn, 85% or more cotton by weight, of uncombed fibers, yarn over 52 but n/o 80 nm, not put up for retail sale.
5205.35.00	Multiple or cabled cotton yarn, 85% or more cotton by weight, of uncombed fibers, over 80 nm per single yarn, not put up for retail sale.
5205.41.00	Multiple or cabled cotton yarn, 85% or more cotton by weight, of combed fibers, not over 14 nm per single yarn, not put up for retail sale.
5205.42.00	Multiple or cabled cotton yarn, 85% or more cotton by weight, of combed fibers, yarn over 14 but n/o 43 nm, not put up for retail sale.
5205.43.00	Multiple or cabled cotton yarn, 85% or more cotton by weight, of combed fibers, yarn over 43 but n/o 52 nm, not put up for retail sale.
5205.44.00	Multiple or cabled cotton yarn, 85% or more cotton by weight, of combed fibers, yarn over 52 but n/o 80 nm, not put up for retail sale.
5205.46.00	Multiple or cabled cotton yarn, 85% or > cotton by wt, of combed fibers, >80 nm but not >94 nm/single yarn, not put up for retail sale.
5205.47.00	Multiple or cabled cotton yarn, 85% or > cotton by wt, of combed fibers, >94 nm but not >120 nm/single yarn, not put up for retail sale.
5205.48.00	Multiple or cabled cotton yarn, 85% or > cotton by wt, of combed fibers, >120 nm per single yarn, not put up for retail sale.
5206.11.00	Single cotton yarn, less than 85 percent cotton by weight, of uncombed fibers, not over 14 nm, not put up for retail sale.
5206.12.00	Single cotton yarn, less than 85 percent cotton by weight, of uncombed fibers, over 14 but n/o 43 nm, not put up for retail sale.
5206.13.00	Single cotton yarn, less than 85 percent cotton by weight, of uncombed fibers, over 43 but n/o 52 nm, not put up for retail sale.
5206.14.00	Single cotton yarn, less than 85 percent cotton by weight, of uncombed fibers, over 52 but n/o 80 nm, not put up for retail sale.
5206.15.00	Single cotton yarn, less than 85 percent cotton by weight, of uncombed fibers, over 80 nm, not put up for retail sale.
5206.21.00	Single cotton yarn, less than 85 percent cotton by weight, of combed fibers, not over 14 nm, not put up for retail sale.
5206.22.00	Single cotton yarn, less than 85 percent cotton by weight, of combed fibers, over 14 but n/o 43 nm, not put up for retail sale.
5206.23.00	Single cotton yarn, less than 85 percent cotton by weight, of combed fibers, over 43 but n/o 52 nm, not put up for retail sale.
5206.24.00	Single cotton yarn, less than 85 percent cotton by weight, of combed fibers, over 52 but n/o 80 nm, not put up for retail sale.
5206.25.00	Single cotton yarn, less than 85 percent cotton by weight, of combed fibers, over 80 nm, not put up for retail sale.

ANNEX—Continued

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HTSUS subheading	Product description
5206.31.00	Multiple or cabled cotton yarn, <85% cotton by weight, of uncombed fibers, not over 14 nm per single yarn, not put up for retail sale.
5206.32.00	Multiple or cabled cotton yarn, <85% cotton by weight, of uncombed fibers, over 14 but n/o 43 nm/single yarn, not put up for retail sale.
5206.33.00	Multiple or cabled cotton yarn, <85% cotton by weight, of uncombed fibers, over 43 but n/o 52 nm/single yarn, not put up for retail sale.
5206.34.00	Multiple or cabled cotton yarn, <85% cotton by weight, of uncombed fibers, over 52 but n/o 80 nm/single yarn, not put up for retail sale.
5206.35.00	Multiple or cabled cotton yarn, <85% cotton by weight, of uncombed fibers, over 80 nm per single yarn, not put up for retail sale.
5206.41.00	Multiple or cabled cotton yarn, <85% cotton by weight, of combed fibers, n/o 14 nm per single yarn, not put up for retail sale.
5206.42.00	Multiple or cabled cotton yarn, <85% cotton by weight, of combed fibers, over 14 but n/o 43 nm per single yarn, not put up for retail sale.
5206.43.00	Multiple or cabled cotton yarn, <85% cotton by weight, of combed fibers, over 43 but n/o 52 nm per single yarn, not put up for retail sale.
5206.44.00	Multiple or cabled cotton yarn, <85% cotton by weight, of combed fibers, over 52 but n/o 80 nm per single yarn, not put up for retail sale.
5206.45.00	Multiple or cabled cotton yarn, <85% cotton by weight, of combed fibers, over 80 nm per single yarn, not put up for retail sale.
5207.10.00	Cotton yarn, other than sewing thread, containing 85 percent or more cotton by weight, put up for retail sale.
5207.90.00	Cotton yarn, other than sewing thread, containing less than 85 percent cotton by weight, put up for retail sale.
5208.11.20	Woven cotton fabric, 85% or more cotton by weight, plain weave, weight not over 100 g/m2, unbleached, of number 42 or lower.
5208.11.40	Woven cotton fabric, 85% or more cotton by weight, plain weave, weight not over 100 g/m2, unbleached, of numbers 43–68.
5208.11.60	Woven cotton fabric, 85% or more cotton by weight, plain weave, wt n/o 100 g/m2, unbleached, of number 69 or over, for typewriter ribbon.
5208.11.80	Woven cotton fabric, 85% or more cotton by weight, plain weave, weight not over 100 g/m2, unbleached, of number 69 or over, nesoi.
5208.12.40	Woven cotton fabric, 85% or more cotton by weight, plain weave, weight over 100 but n/o 200 g/m2, unbleached, of numbers 42 or lower.
5208.12.60	Woven cotton fabric, 85% or more cotton by weight, plain weave, weight over 100 but n/o 200 g/m2, unbleached, of numbers 43–68.
5208.12.80	Woven cotton fabric, 85% or more cotton by weight, plain weave, weight over 100 but n/o 200 g/m2, unbleached, of number 69 or over.
5208.13.00	Unbleached 3- or 4-thread twill fabrics of cotton, incl. cross twill, containing 85% or more of cotton by weight, weighing not over 200 g/m2.
5208.19.20	Unbleached satin or twill weave fabrics of cotton, containing 85% or more cotton by weight, weighing not more than 200 g/m2, nesoi.
5208.19.40	Unbleached woven fabrics of cotton, nesoi, 85% or more of cotton by weight, weighing not more than 200 g/m2, of number 42 or lower.
5208.19.60	Unbleached woven fabrics of cotton, nesoi, 85% or more of cotton by weight, weighing not more than 200 g/m2, of numbers 43–68.
5208.19.80	Unbleached woven fabrics of cotton, nesoi, 85% or more of cotton by weight, weighing not more than 200 g/m2, of number 69 or higher.
5208.21.20	Woven cotton fabric, 85 percent or more cotton by weight, plain weave, not over 100 g/m2, bleached, of number 42 or lower.
5208.21.40	Woven cotton fabric, 85% or more cotton by weight, plain weave, not over 100 g/m2, bleached, of numbers 43–68.
5208.21.60	Woven cotton fabric, 85% or more cotton by weight, plain weave, not over 100 g/m2, bleached, of number 69 or higher.
5208.22.40	Woven cotton fabric, 85% or more cotton by weight, plain weave, over 100 but n/o 200 g/m2, bleached, of number 42 or lower.
5208.22.60	Woven cotton fabric, 85% or more cotton by weight, plain weave, over 100 but n/o 200 g/m2, bleached, of numbers 43–68.
5208.22.80	Woven cotton fabric, 85% or more cotton by weight, plain weave, over 100 but n/o 200 g/m2, bleached, of number 69 or higher.
5208.23.00	Woven cotton fabric, >= 85% by wt. cotton, <= 200 g/m2, bleached, exc. plain weave, 3- or 4-thread twill.
5208.29.20	Bleached satin or twill weave fabrics, containing 85% or more cotton by weight, weighing not more than 200 g/m2, nesoi.
5208.29.40	Bleached woven fabrics of cotton, nesoi, 85% or more cotton by weight, weighing not more than 200 g/m2, of number 42 or lower.
5208.29.60	Bleached woven fabrics of cotton, nesoi, containing 85% or more cotton by weight, weighing not more than 200 g/m2, of numbers 43–68.
5208.29.80	Bleached woven fabrics of cotton, nesoi, containing 85% or more cotton by weight, weighing not more than 200 g/m2, of number 69 or higher.

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HTSUS subheading	Product description
5208.31.20	Dyed plain weave certified hand-loomed fabrics of cotton, containing 85% or more cotton by weight, weighing not more than 100 g/m2.
5208.31.40	Dyed plain weave fabrics of cotton, containing 85% or more cotton by weight, weighing not more than 100 g/m2, of number 42 or lower, nesoi.
5208.31.60	Dyed plain weave fabrics of cotton, containing 85% or more cotton by weight, weighing not more than 100 g/m2, of numbers 43–68, nesoi.
5208.31.80	Dyed plain weave fabrics of cotton, containing 85% or more cotton by weight, weighing not more than 100 g/m2, of number 69 or higher, nesoi.
5208.32.10	Dyed plain weave certified hand-loomed fabrics of cotton, cont. 85% or more cotton by weight, weighing over 100 g/m2 but not over 200 g/m2.
5208.32.30	Dyed plain weave fabrics of cotton, nesoi, 85% or more cotton by weight, over 100 g/m2 but not more than 200 g/m2, of number 42 or lower.
5208.32.40	Dyed plain weave fabrics of cotton, nesoi, 85% or more cotton by weight, over 100 g/m2 but not more than 200 g/m2, of numbers 43–68.
5208.32.50	Dyed plain weave fabrics of cotton, nesoi, 85% or more cotton by weight, over 100 g/m2 but not more than 200 g/m2, of number 69 or higher.
5208.33.00	Dyed 3- or 4-thread twill fabrics of cotton, including cross twill, 85% or more cotton by weight, weighing not more than 200 g/m2.
5208.39.20	Dyed satin or twill weave fabrics of cotton, containing 85% or more cotton by weight, weighing not more than 200 g/m2, nesoi.
5208.39.40	Dyed woven fabrics of cotton, nesoi, containing 85% or more cotton by weight, weighing not more than 200 g/m2, of number 42 or lower.
5208.39.60	Dyed woven fabrics of cotton, nesoi, containing 85% or more cotton by weight, weighing not more than 200 g/m2, of numbers 43–68.
5208.39.80	Dyed woven fabrics of cotton, nesoi, containing 85% or more cotton by weight, weighing not more than 200 g/m2, of number 69 or higher.
5208.41.20	Plain weave certified hand-loomed fabrics of cotton, 85% or more cotton by weight, weighing not over 100 g/m2, of yarns of different colors.
5208.41.40	Plain weave fabrics of cotton, 85% or more cotton by weight, weighing not over 100 g/m2, number 42 or lower, of yarns of different colors.
5208.41.60	Plain weave fabrics of cotton, 85% or more cotton by weight, weighing not over 100 g/m2, of numbers 43–68, of yarns of different colors.
5208.41.80	Plain weave fabrics of cotton, 85% or more cotton by weight, weighing not over 100 g/m2, of number 69 or higher, of yarn of different colors.
5208.42.10	Plain weave certified hand-loomed fabrics of cotton, 85% or more cotton by weight, over 100 but n/o 200 g/m2, of yarns of different colors.
5208.42.30	Plain weave fabrics of cotton, 85% or more cotton by weight, over 100 but n/o 200 g/m2, of numbers 42 or lower, of yarns of different colors.
5208.42.40	Plain weave fabrics of cotton, 85% or more cotton by weight, over 100 but n/o 200 g/m2, of numbers 43–68, of yarns of different colors.
5208.42.50	Plain weave fabrics of cotton, 85% or more cotton by weight, over 100 but n/o 200 g/m2, number 69 or higher, of yarns of different colors.
5208.43.00	3- or 4-thread twill fabrics of cotton, including cross twill, 85% or more cotton by weight, not over 200 g/m2, of yarns of different colors.
5208.49.20	Satin or twill weave fabrics of cotton, cont. 85% or more cotton by weight, weighing not over 200 g/m2, of yarns of different colors, nesoi.
5208.49.40	Woven fabrics of cotton, nesoi, 85% or more cotton by weight, wt. not more than 200 g/m2, of number 42 or lower, of yarns of different colors.
5208.49.60	Woven fabrics of cotton, nesoi, 85% or more cotton by weight, wt. not over 200 g/m2, of numbers 43–68, of yarns of different colors.
5208.49.80	Woven fabrics of cotton, nesoi, 85% or more cotton by weight, wt. not over 200 g/m2, of number 69 or higher, of yarns of different colors.
5208.51.20	Printed certified hand-loomed plain weave fabrics of cotton, 85% or more cotton by weight, weighing not over 100 g/m2.
5208.51.40	Printed plain weave fabrics of cotton, containing 85% or more cotton by weight, weighing not over 100 g/m2, of number 42 or lower.
5208.51.60	Printed plain weave fabrics of cotton, containing 85% or more cotton by weight, weighing not over 100 g/m2, of numbers 43–68.
5208.51.80	Printed plain weave fabrics of cotton, containing 85% or more cotton by weight, weighing not over 100 g/m2, of number 69 or higher.
5208.52.10	Printed certified hand-loomed plain weave fabrics of cotton, 85% or more cotton by weight, wt. more than 100 g/m2 but not more than 200 g/m2.
5208.52.30	Printed plain weave fabrics of cotton, 85% or more cotton by weight, weighing over 100 g/m2 but not more than 200 g/m2, of number 42 or lower.
5208.52.40	Printed plain weave fabrics of cotton, 85% or more cotton by weight, weighing over 100 g/m2 but not more than 200 g/m2, of numbers 43–68.

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HTSUS subheading	Product description
5208.52.50	Printed plain weave fabrics of cotton, 85% or more cotton by weight, weighing over 100 g/m2 but not more than 200 g/m2, of number 69 or higher.
5208.59.10	Printed 3- or 4-thread twill fabrics of cotton, including cross twill, 85% or more cotton by weight, weighing not more than 200 g/m2.
5208.59.20	Printed satin or twill weave fabrics of cotton, containing 85% or more cotton by weight, weighing not more than 200 g/m2, nesoi.
5208.59.40	Printed woven fabrics of cotton, nesoi, containing 85% or more cotton by weight, weighing not more than 200 g/m2, of number 42 or lower.
5208.59.60	Printed woven fabrics of cotton, nesoi, containing 85% or more cotton by weight, weighing not more than 200 g/m2, of numbers 43–68.
5208.59.80	Printed woven fabrics of cotton, nesoi, containing 85% or more cotton by weight, weighing not more than 200 g/m2, of number 69 or higher.
5209.11.00	Unbleached plain weave fabrics of cotton, 85 percent or more cotton by weight, weight more than 200 g/m2.
5209.12.00	Unbleached 3- or 4-thread twill fabrics of cotton, including cross twill, 85 percent or more cotton by weight, weighing more than 200 g/m2.
5209.19.00	Unbleached woven fabrics of cotton, nesoi, containing 85% or more cotton by weight, weighing more than 200g/m2.
5209.21.00	Bleached plain weave fabrics of cotton, 85% or more cotton by weight, weighing more than 200 g/m2.
5209.22.00	Bleached 3- or 4-thread twill fabrics of cotton, including cross twill, 85 percent or more cotton by weight, weighing more than 200 g/m2.
5209.29.00	Bleached woven fabrics of cotton, nesoi, containing 85% or more cotton by weight, weighing more than 200 g/m2.
5209.31.30	Dyed, plain weave certified hand-loomed fabrics of cotton, containing 85% or more cotton by weight, weighing more than 200 g/m2.
5209.31.60	Dyed, plain weave fabrics of cotton, containing 85% or more cotton by weight, weighing more than 200 g/m2, nesoi.
5209.32.00	Dyed 3- or 4-thread twill fabrics of cotton, including cross twill, containing 85% or more cotton by weight, weighing more than 200 g/m2.
5209.39.00	Dyed woven fabrics of cotton, nesoi, containing 85% or more cotton by weight, weighing more than 200 g/m2.
5209.41.30	Plain weave certified hand-loomed fabrics of cotton, cont. 85% or more cotton by weight, weighing over 200 g/m2, of yarns of different colors.
5209.41.60	Plain weave fabrics of cotton, nesoi, containing 85% or more cotton by weight, weighing more than 200 g/m2, of yarns of different colors.
5209.42.00	Denim containing 85% or more cotton by weight, weighing more than 200 g/m2, of yarns of different colors.
5209.43.00	3- or 4-thread twill fabrics of cotton, incl. cross twill, nesoi, 85% or more cotton by wt. weighing ov. 200 g/m2, of yarns of different colors.
5209.49.00	Woven fabrics of cotton, nesoi, containing 85% or more cotton by weight, weighing more than 200 g/m2, of yarns of different colors.
5209.51.30	Printed plain weave certified hand-loomed fabrics of cotton, containing 85% or more cotton by weight, weighing more than 200 g/m2.
5209.51.60	Printed plain weave fabrics of cotton, nesoi, containing 85% or more cotton by weight, weighing more than 200 g/m2.
5209.52.00	Printed 3- or 4-thread twill fabrics of cotton, including cross twill, containing 85% or more cotton by weight, weighing more than 200 g/m2.
5209.59.00	Printed woven fabrics of cotton, nesoi, containing 85% or more cotton by weight, weighing more than 200 g/m2.
5210.11.40	Unbleached plain weave fabrics of cotton, <85% cotton, mixed mainly/solely with man-made fibers, wt. <200 g/m2, of number 42 or lower.
5210.11.60	Unbleached plain weave fabrics of cotton, <85% cotton, mixed mainly/solely with man-made fibers, wt. <200 g/m2, of numbers 43–68.
5210.11.80	Unbleached plain weave fabrics of cotton, <85% cotton, mixed mainly/solely with man-made fibers, wt. <200 g/m2, of number 69 or higher.
5210.19.10	Unbleached 3- or 4-thread twill fabrics of cotton, incl. cross twill, <85% cotton by wt., mixed mainly/solely with mm fibers, n/o 200 g/m2.
5210.19.20	Unbleached satin or twill weave fabrics of cotton, <85% cotton by wt., mixed mainly/solely with man-made fibers, not more than 200 g/m2.
5210.19.40	Unbleached woven fabrics of cotton, nesoi, <85% cotton by wt., mixed mainly/solely with man-made fibers, n/o 200 g/m2, of number 42 or lower.
5210.19.60	Unbleached woven fabrics of cotton, nesoi, <85% cotton by wt., mixed mainly/solely with man-made fibers, n/o 200 g/m2, of numbers 43–68.
5210.19.80	Unbleached woven fabrics of cotton, nesoi, <85% cotton by wt., mixed mainly/solely w/man-made fibers, n/o 200 g/m2, of number 69 or higher.
5210.21.40	Bleached plain weave fabrics of cotton, <85% cotton by wt., mixed mainly/solely with man-made fibers, n/o 200 g/m2, of number 42 or lower.
5210.21.60	Bleached plain weave fabrics of cotton, <85% cotton by wt., mixed mainly/solely with man-made fibers, not over 200 g/m2, of numbers 43–68.
5210.21.80	Bleached plain weave fabrics of cotton, <85% cotton by wt., mixed mainly/solely with man-made fibers, n/o 200 g/m2, of number 69 or higher.

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HTSUS subheading	Product description
5210.29.10	Bleached 3- or 4-thread twill fabrics of cotton, incl. cross twill, <85% cotton by wt., mixed mainly/solely w/man-made fibers, n/o 200 g/m2.
5210.29.20	Bleached satin or twill weave fabrics of cotton, <85% cotton by weight, mixed mainly/solely with man-made fibers, not more than 200 g/m2.
5210.29.40	Bleached woven fabrics of cotton, nesoi, <85% cotton by weight, mixed mainly/solely w/man-made fibers, n/o 200 g/m2, of number 42 or lower.
5210.29.60	Bleached woven fabrics of cotton, nesoi, <85% cotton by weight, mixed mainly/solely with man-made fibers, n/o 200 g/m2, of numbers 43–68.
5210.29.80	Bleached woven fabrics of cotton, nesoi, <85% cotton by wt., mixed mainly/solely with man-made fibers, n/o 200 g/m2, of number 69 or higher.
5210.31.40	Dyed plain weave fabrics of cotton, <85% cotton by wt., mixed mainly/solely with man-made fibers, not over 200 g/m2, of number 42 or lower.
5210.31.60	Dyed plain weave fabrics of cotton, <85% cotton by wt., mixed mainly/solely with man-made fibers, not over 200 g/m2, of numbers 43–68.
5210.31.80	Dyed plain weave cotton fabrics, <85% cotton by wt., mixed mainly/solely with man-made fibers, not over 200 g/m2, of number 69 or higher.
5210.32.00	Dyed 3 or 4-thread twill fabrics of cotton, incl. cross twill, <85% cotton by wt., mixed mainly/solely with man-made fibers, wt. n/o 200 g/m2.
5210.39.20	Dyed satin or twill weave fabrics of cotton, <85% cotton by wt., mixed mainly/solely with man-made fibers, weighing not more than 200 g/m2.
5210.39.40	Dyed woven fabrics of cotton, nesoi, <85% cotton by weight, mixed mainly/solely w/man-made fibers, not over 200 g/m2, of number 42 or lower.
5210.39.60	Dyed woven fabrics of cotton, nesoi, <85% cotton by weight, mixed mainly/solely w/man-made fibers, not over 200 g/m2, of numbers 43–68.
5210.39.80	Dyed woven fabrics of cotton, nesoi, <85% cotton by wt., mixed mainly/solely w/man-made fibers, not over 200 g/m2, of number 69 or higher.
5210.41.40	Plain weave cotton fabrics, <85% cotton by wt., mixed mainly/solely w/mm fibers, n/o 200 g/m2, of number 42 or lower, of yarn of diff colors.
5210.41.60	Plain weave cotton fabrics, <85% cotton by wt, mixed mainly/solely w/mm fibers, n/o 200 g/m2, of numbers 43–68, of yarn of different colors.
5210.41.80	Plain weave cotton fabrics, <85% cotton by wt, mixed mainly/solely w/mm fibers, n/o 200 g/m2, number 69 or higher, of yarn of diff colors.
5210.49.10	3- or 4-thread twill fabrics of cotton, incl. cross twill, <85% cotton by wt., mixed mainly/solely w/mm fibers, n/o 200 g/m2, of yarn diff colors.
5210.49.20	Satin or twill weave fabrics of cotton, <85% cotton by wt., mixed mainly/solely w/mm fibers, wt. n/o 200 g/m2, of yarn of different colors, nesoi.
5210.49.40	Woven fabrics of cotton, nesoi, <85% cotton by wt., mixed mainly/solely w/mm fibers, n/o 200 g/m2, of number 42 or lower, of yarn of diff colors.
5210.49.60	Woven fabrics of cotton, nesoi, <85% cotton by wt., mixed mainly/solely w/man-made fibers, n/o 200 g/m2, numbers 43–68, of yarn of diff colors.
5210.49.80	Woven fabrics of cotton, nesoi, <85% cotton by wt., mixed mainly with m-m fibers, n/o 200 g/m2, number 69 or higher, of yarn of diff colors.
5210.51.40	Printed plain weave cotton fabrics, <85% cotton by wt., mixed mainly/solely with man-made fibers, n/o 200 g/m2, of number 42 or lower.
5210.51.60	Printed plain weave cotton fabrics, <85% cotton by wt., mixed mainly/solely with man-made fibers, n/o 200 g/m2, of numbers 43–68.
5210.51.80	Printed plain weave cotton fabrics, <85% cotton by weight, mixed mainly/solely with man-made fibers, n/o 200 g/m2, of number 69 or higher.
5210.59.10	Printed 3- or 4-thread twill fabrics of cotton, incl. cross twill, <85% cotton by wt., mixed mainly/solely w/man-made fibers, n/o 200 g/m2.
5210.59.20	Printed satin or twill weave cotton fabrics, nesoi, <85% cotton by wt., mixed mainly/solely with man-made fibers, weighing n/o 200 g/m2.
5210.59.40	Printed woven fabrics of cotton, nesoi, <85% cotton by wt., mixed mainly/solely with man-made fibers, wt. n/o 200 g/m2, of number 42 or lower.
5210.59.60	Printed woven fabrics of cotton, nesoi, <85% cotton by wt., mixed mainly/solely with man-made fibers, weighing n/o 200 g/m2, of numbers 43–68.
5210.59.80	Printed woven fabrics of cotton, nesoi, <85% cotton by wt., mixed mainly/solely w/man-made fibers, weighing n/o 200 g/m2, number 69 or higher.
5211.11.00	Unbleached plain weave fabrics of cotton, <85% cotton by wt., mixed mainly/solely with man-made fibers, over 200 g/m2.
5211.12.00	Unbleached 3- or 4-thread twill fabrics of cotton, incl. cross twill, <85% cotton by wt., mixed mainly/solely w/man-made fiber, ov. 200 g/m2.
5211.19.00	Unbleached woven fabrics of cotton, nesoi, containing <85% cotton by weight, mixed mainly/solely with man-made fibers, more than 200 g/m2.
5211.20.21	Bleached plain weave fabrics of cotton, <85% cotton by weight, mixed mainly/solely with man-made fibers, over 200 g/m2.

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HTSUS subheading	Product description
5211.20.22	Bleached 3- or 4-thread twill fabrics of cotton, incl. cross twill, <85% cotton by wt., mixed mainly/solely w/man-made fibers, over 200 g/m2.
5211.20.29	Bleached woven fabrics of cotton, nesoi, containing <85% cotton by weight, mixed mainly/solely with man-made fibers, more than 200g/m2.
5211.31.00	Dyed plain weave fabrics of cotton, containing <85% cotton by weight, mixed mainly/solely with man-made fibers, more than 200 g/m2.
5211.32.00	Dyed 3- or 4-thread twill fabrics of cotton, incl. cross twill, <85% cotton by wt., mixed mainly/solely w/man-made fibers, more than 200 g/m2.
5211.39.00	Dyed woven fabrics of cotton, nesoi, <85% cotton by weight, mixed mainly/solely with man-made fibers, weighing more than 200 g/m2.
5211.41.00	Plain weave fabrics of cotton, <85% cotton by weight, mixed mainly/solely with man-made fibers, over 200g/m2, of yarns of different colors.
5211.42.00	Denim containing <85% cotton by wt., mixed mainly/solely w/man-made fibers, weighing >200 g/m2, of yarns of different colors.
5211.43.00	3- or 4-thread twill fab. of cotton, incl cross twill, nesoi, <85% cotton wt., mixed mainly/solely w/mm fibers, ov. 200 g/m2, of yarn of diff colors.
5211.49.00	Woven fabrics of cotton, nesoi, <85% cotton by weight, mixed mainly/solely w/man-made fibers, over 200 g/m2, of yarns of different colors.
5211.51.00	Printed plain weave fabrics of cotton, <85% cotton by wt., mixed mainly/solely with man-made fibers, weighing more than 200 g/m2.
5211.52.00	Printed 3- or 4-thread twill fabrics of cotton, incl cross twill, <85% cotton by wt., mixed mainly/solely with man-made fibers, over 200 g/m2.
5211.59.00	Printed woven fabrics of cotton, nesoi, <85% cotton by weight, mixed mainly/solely with man-made fibers, weighing more than 200 g/m2.
5212.11.10	Other woven fabrics of cotton, containing 36% or more by weight of wool or fine hair, weighing not more than 200 g/m2, unbleached.
5212.11.60	Other woven fabrics of cotton, nesoi, weighing not more than 200 g/m2, unbleached.
5212.12.10	Other woven fabrics of cotton, containing 36% or more by weight of wool or fine hair, weighing not more than 200 g/m2, bleached.
5212.12.60	Other woven fabrics of cotton, nesoi, weighing not more than 200 g/m2, bleached.
5212.13.10	Other woven fabrics of cotton, containing 36% or more by weight of wool or fine hair, weighing not more than 200 g/m2, dyed.
5212.13.60	Other woven fabrics of cotton, nesoi, weighing not more than 200 g/m2, dyed.
5212.14.10	Other woven fabrics of cotton, containing 36% or more of wool or fine hair, weighing not more than 200 g/m2, of yarns of different colors.
5212.14.60	Other woven fabrics of cotton, nesoi, weighing not more than 200 g/m2, of yarns of different colors.
5212.15.10	Other woven fabrics of cotton, containing 36% or more by weight of wool or fine hair, weighing not more than 200 g/m2, printed.
5212.15.60	Other woven fabrics of cotton, nesoi, weighing not more than 200 g/m2, printed.
5212.21.10	Other woven fabrics of cotton, containing 36% or more by weight of wool or fine hair, weighing more than 200 g/m2, unbleached.
5212.21.60	Other woven fabrics of cotton, nesoi, weighing more than 200 g/m2, unbleached.
5212.22.10	Other woven fabrics of cotton, containing 36% or more by weight of wool or fine hair, weighing more than 200 g/m2, bleached.
5212.22.60	Other woven fabrics of cotton, nesoi, weighing more than 200 g/m2, bleached.
5212.23.10	Other woven fabrics of cotton, containing 36% or more by weight of wool or fine hair, weighing more than 200 g/m2, dyed.
5212.23.60	Other woven fabrics of cotton, nesoi, weighing more than 200 g/m2, dyed.
5212.24.10	Other woven fabrics of cotton, containing 36% or more by weight of wool or fine hair, weighing more than 200 g/m2, of yarns of different colors.
5212.24.60	Other woven fabrics of cotton, nesoi, weighing more than 200 g/m2, of yarns of different colors.
5212.25.10	Other woven fabrics of cotton, containing 36% or more by weight of wool or fine hair, weighing more than 200 g/m2, printed.
5212.25.60	Other woven fabrics of cotton, nesoi, weighing more than 200 g/m2, printed.
5301.10.00	Flax, raw or retted.
5301.21.00	Flax, broken or scutched.
5301.29.00	Flax, hackled or otherwise processed, except broken or scutched but not spun.
5301.30.00	Flax tow and waste (including yarn waste and garnetted stock).
5302.10.00	True hemp, raw or retted.
5302.90.00	True hemp, processed but not spun; tow and waste of true hemp (including yarn waste and garnetted stock).
5303.10.00	Jute and other textile bast fibers (excluding flax, true hemp and ramie), raw or retted.
5303.90.00	Jute and other textile bast fibers (excluding flax, true hemp and ramie), processed but not spun; tow and waste of these fibers.
5305.00.00	Coconut, abaca, ramie, other veg. fibers, nesoi, raw or processed, not spun; tow noils and their wastes (incl. yarn waste and garnetted stock.
5306.10.00	Flax yarn, single.
5306.20.00	Flax yarn, multiple (folded) or cabled.

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HTSUS subheading	Product description
5307.10.00	Yarn of jute or other textile bast fibers (excluding flax, true hemp, and ramie), single.
5307.20.00	Yarn of jute or other textile bast fibers (excluding flax, true hemp, and ramie), multiple (folded) or cabled.
5308.10.00	Coir yarn.
5308.20.00	True hemp yarn.
5308.90.10	Paper yarn.
5308.90.90	Yarn of other vegetable textile fibers, nesoi.
5309.11.00	Woven fabrics of flax, containing 85 percent or more by weight of flax, unbleached or bleached.
5309.19.00	Woven fabrics of flax, containing 85 percent or more by weight of flax, other than unbleached or bleached.
5309.21.20	Woven fabrics of flax, containing less than 85% by weight of flax, containing over 17% of wool or fine animal hair, unbleached or bleached.
5309.21.30	Woven fabrics of flax, <85% by wt of flax, unbleached or bleached, containing <17% by wt of wool and containing cotton and manmade fibers.
5309.21.40	Woven fabrics of flax, containing less than 85 percent by weight of flax, unbleached or bleached, nesoi.
5309.29.20	Woven fabrics of flax, containing <85% by wt of flax, contain over 17% by wt of wool or fine animal hair, other than unbleached or bleached.
5309.29.30	Woven fabrics of flax, less than 85% by wt of flax, containing less than 17% by wt of wool and containing cotton and manmade fibers, nesoi.
5309.29.40	Woven fabrics of flax, containing less than 85 percent by weight of flax, other than unbleached or bleached, nesoi.
5310.10.00	Unbleached woven fabrics of jute or of other textile bast fibers of heading 5303.
5310.90.00	Woven fabrics of jute or of other textile bast fibers of heading 5303, other than unbleached.
5311.00.20	Woven fabrics of other vegetable textile fibers, containing more than 17% by weight of wool or fine animal hair.
5311.00.30	Woven fabrics of other vegetable textile fibers, containing cotton and manmade fibers, nesoi.
5311.00.40	Woven fabrics of other vegetable textile fibers, nesoi.
5311.00.60	Woven fabrics of paper yarn.
5401.10.00	Sewing thread of synthetic filaments, whether or not put up for retail sale.
5401.20.00	Sewing thread of artificial filaments, whether or not put up for retail sale.
5402.11.30	Single high tenacity yarn of aramids, not put up for retail sale.
5402.11.60	Multiple (folded) or cabled high tenacity yarn (except sewing thread) of aramids, not put up for retail sale.
5402.19.30	Single high tenacity yarn of nylon or polyamides (except aramids), not put up for retail sale.
5402.19.60	Multiple (folded) or cabled high tenacity yarn (except sewing thread) of nylon or other polyamides (except aramids), not put up for retail sale.
5402.20.30	Single high tenacity yarn of polyesters, not put up for retail sale.
5402.20.60	Multiple (folded) or cabled high tenacity yarn (except sewing thread) of polyesters, not put up for retail sale.
5402.31.30	Single textured yarn, of nylon or other polyamides, measuring not more than 500 decitex, not put up for retail sale.
5402.31.60	Multiple or cabled textured yarn (except sewing thread), of polyamides, single yarn not more than 500 decitex, not put up for retail sale.
5402.32.30	Single textured yarn, of nylon or other polyamides, measuring more than 500 decitex, not put up for retail sale.
5402.32.60	Multiple or cabled textured yarn (except sewing thread), of polyamides, single yarn more than 500 decitex, not put up for retail sale.
5402.33.30	Single textured yarn of polyesters, not put up for retail sale.
5402.33.60	Multiple or cabled textured yarn (except sewing thread), of polyesters, not put up for retail sale.
5402.34.30	Single textured polypropylene yarn, not put up for retail sale.
5402.34.60	Multiple or cabled textured polypropylene yarn (except sewing thread), not put up for retail sale.
5402.39.31	Single textured yarn, nesoi, not put up for retail sale.
5402.39.61	Multiple or cabled textured yarn (except sewing thread), nesoi, not put up for retail sale.
5402.44.00	Single elastomeric yarns, monofil, untwisted or with a twist not exceeding 50 turns per meter, not for retail sale.
5402.45.10	Synth filament yarn, for doll wigs, of colored multifil, untwisted/with twist <5 turns/meter, of nylon or other polyamide, not retail sale.
5402.45.90	Syn filament yarn (not for doll wigs), of colored multifil, untwisted/with twist <5 turns/meter, of nylon or o/polyamides, not retail sale.
5402.46.00	Non-textured yarn of polyesters, partially oriented, single, untwisted or with a twist not exceeding 50 turns/m, not put up for retail sale.
5402.47.10	Single yarn, twist of 0–50 turns/m, wholly polyester, 75–80 decitex, 24 filaments, nesoi, not put up for retail sale.
5402.47.90	Single yarn, twist of 0–50 turns/m, other than wholly of polyester, nesoi, not put up for retail sale.
5402.48.00	Non-textured polypropylene yarns, monofil, untwisted or with a twist not exceeding 50 turns per meter, not for retail sale.
5402.49.11	Colored multifilament yarn to be used to make wigs for dolls, of modacrylic, untwisted or twisted, <5 turns per meter, not for retail sale.
5402.49.91	Other yarns, monofil; multifil, untwisted or twisted > or = to 5, not exceeding 50 turns per meter of other synthetic, not for retail sale.
5402.51.00	Nylon or other polyamide yarns, single, with a twist exceeding 50 turns/m, not put up for retail sale.
5402.52.10	Single yarn, twist exceeding 50 turns/m, wholly polyester, 75–80 decitex, 24 filaments, nesoi, not put up for retail sale.
5402.52.90	Single yarn, twist exceeding 50 turns/m, other than wholly of polyester, nesoi, not put up for retail sale.

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HTSUS subheading	Product description
5402.53.00	Synthetic filament yarn of polypropylene: single other twisted yarns exc nylon/polyester, >50 turns/M, not put up for retail sale.
5402.59.01	Synthetic filament yarn nesoi: single other twisted yarns exc nylon/polyester, >50 turns/M, not put up for retail sale.
5402.61.00	Nylon or other polyamide yarn, multiple (folded) or cabled, (except sewing thread), not put up for retail sale.
5402.62.00	Polyester yarn, multiple (folded) or cabled, (except sewing thread), not put up for retail sale.
5402.63.00	Synthetic filament yarn exc sewing thread of polypropylene, not for retail sale inc monofilament <67 decitex: other yarn multiple (folded) or cabled.
5402.69.01	Synthetic filament yarn exc sewing thread nesoi, not for retail sale inc monofilament <67 decitex: other yarn multiple (folded) or cabled.
5403.10.30	Single high tenacity yarn of viscose rayon, not put up for retail sale.
5403.10.60	Multiple (folded) or cabled high tenacity yarn of viscose rayon (except sewing thread), not put up for retail sale.
5403.31.00	Single yarn of viscose rayon (not high ten. or sewing thread), untwisted or with a twist not over 120 turns/m, not put up for retail sale.
5403.32.00	Single yarn of viscose rayon (not high ten. or sewing thread), with twist exceeding 120 turns/m, not put up for retail sale.
5403.33.00	Single yarn of cellulose acetate (not high ten. or sewing thread), not put up for retail sale.
5403.39.10	Single textured artificial filament yarn (other than sewing thread), not put up for retail sale.
5403.39.90	Artificial filament yarn nesoi, single, not put up for retail sale.
5403.41.00	Viscose rayon yarn (except sewing thread), multiple (folded) or cabled, not put up for retail sale.
5403.42.00	Yarn of cellulose acetate (except sewing thread) multiple (folded) or cabled, not put up for retail sale.
5403.49.10	Multiple (folded) or cabled textured artificial filament yarn (other than sewing thread), not put up for retail sale.
5403.49.90	Multiple (folded) or cabled non-textured artificial filament yarn (other than sewing thread), not put up for retail sale.
5404.11.00	Synthetic monofilament (exc. polypropylene), elastomeric, of 67 decitex or more and with no cross-sectional dimension >1 mm, nesoi.
5404.12.10	Polypropylene monofilament of 67 decitex or more (not racket strings), and with no cross-sectional dim. >1 mm, not over 254 mm in length.
5404.12.90	Polypropylene monofilament of 67 decitex or more (not racket strings), and with no cross-sectional dim. >1 mm, over 254 mm in length.
5404.19.10	Racket strings of synthetic monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm.
5404.19.80	Synthetic monofilament (exc. polypropylene), of 67 decitex or more and with no cross-sectional dimension >1 mm, nesoi.
5404.90.00	Strip and the like of synthetic textile materials of an apparent width not exceeding 5 mm.
5405.00.30	Artificial monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm.
5405.00.60	Strip and the like of artificial textile materials of an apparent width not exceeding 5 mm.
5406.00.10	Synthetic filament yarn (except sewing thread), put up for retail sale.
5406.00.20	Artificial filament yarn (except sewing thread), put up for retail sale.
5407.10.00	Woven fabrics obtained from high tenacity yarn of nylon or other polyamides or of polyesters.
5407.20.00	Woven fabrics obtained from strip or the like of synthetic textile materials.
5407.30.10	Woven fabrics specified in note 9 to section XI, of synthetic filament yarn, over 60 percent by weight of plastics.
5407.30.90	Woven fabrics specified in note 9 to section XI, of synthetic filament yarn, nesoi.
5407.41.00	Woven fabrics, containing 85 percent or more by weight of filaments of nylon or other polyamides, unbleached or bleached.
5407.42.00	Woven fabrics, containing 85 percent or more by weight of filaments of nylon or other polyamides, dyed.
5407.43.10	Woven fabrics, over 85% by wt fil. of nylon/other polyamides, of diff colored yarns, thread count over 69–142/cm warp, over 31–71/cm filling.
5407.43.20	Woven fabrics, containing 85 percent or more by weight of filaments of nylon or other polyamides, of yarns of different colors, nesoi.
5407.44.00	Woven fabrics, containing 85 percent or more by weight of filaments of nylon or other polyamides, printed.
5407.51.00	Woven fabrics, containing 85 percent or more by weight of textured polyester filaments, unbleached or bleached.
5407.52.05	Woven fabrics, over 85 percent textured polyester filaments, dyed, less than 77 cm in width, thread count 69–142/cm warp, 31–71/cm filling.
5407.52.20	Woven fabrics, over 85 percent textured polyester filaments, dyed, nesoi.
5407.53.10	Woven fabrics, over 85% textured polyester filaments, of different colored yarns, thread count 69–142/cm warp and 31–71/cm filling.
5407.53.20	Woven fabrics, containing 85 percent or more by weight of textured polyester filaments, of yarns of different colors, nesoi.
5407.54.00	Woven fabrics, containing 85 percent or more by weight of textured polyester filaments, printed.
5407.61.11	Woven fab, dyed, 100% polyester, <77 cm wide, >69–142 warp >31–71 filling, of non-tex singles yarn, 75–80 dtx, 24 fil/yn, twist 900+ turns/m.
5407.61.19	Woven fab, dyed, 85%+ non-tex poly. fil., <77 cm wide, >69–142 warp >31–71 filling (not 100% poly. sin. yarn, 75–80 dtx, 24 fil/yn & 900+ turns/m).
5407.61.21	Woven fab, yn diff colors, <77 cm wide, >69–142 warp, >31–71 filling, 100% poly.non-tex sin. yarn of 75–80 dtx., 24 fil/yn & twist 900+ turns/m.

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HTSUS subheading	Product description
5407.61.29	Woven fab, 85%+ non-tex poly, yn diff colors, <77 cm wide, >69–142 warp, >31–71 filling (not 100% poly sin yarn, 75–80 dtx,24 fil/yn & 900+ turns/m).
5407.61.91	Woven fab, 85%+ non-tex poly fil, wholly of polyester, of single yarns 75–80 decitex, 24 fil/yarn & a twist of 900 or more turns/m.
5407.61.99	Woven fab, of 85%+ non-text. polyester filaments, nesoi (not wholly polyester single yarns, 75–80 dtx, 24 fil/yarn & twist 900+ turns/m).
5407.69.10	Woven fab, containing 85%+ by wt of polyester filaments nesoi, unbleached or bleached.
5407.69.20	Woven fab, containing 85%+ by wt of polyester filaments nesoi, dyed.
5407.69.30	Woven fab, cont. 85%+ by wt polyester filaments nesoi, thread count >69–142/cm in warp & >31–71/cm filling, of yarns of diff. colors.
5407.69.40	Woven fab, containing 85%+ by wt polyester filaments nesoi, of yarns of different colors, nesoi.
5407.69.90	Woven fab, containing 85%+ by wt polyester filaments nesoi, printed.
5407.71.00	Woven fabrics, containing 85 percent or more by weight of synthetic filaments, unbleached or bleached.
5407.72.00	Woven fabrics, containing 85 percent or more by weight of synthetic filaments, dyed.
5407.73.10	Woven fabrics, cont. 85% or more syn. filaments by weight, thread count >69–142/cm warp and >31–71/cm filling, of different colored yarns.
5407.73.20	Woven fabrics, containing 85% or more by weight of synthetic filaments, of yarns of different colors, nesoi.
5407.74.00	Woven fabrics, containing 85 percent or more by weight of synthetic filaments, printed.
5407.81.00	Woven fabrics, containing less than 85% by weight of synthetic filaments, mixed mainly or solely with cotton, unbleached or bleached.
5407.82.00	Woven fabrics, containing less than 85 percent by weight of synthetic filaments, mixed mainly or solely with cotton, dyed.
5407.83.00	Woven fabrics, less than 85 percent by weight of synthetic filaments, mixed mainly or solely with cotton, of yarns of different colors.
5407.84.00	Woven fabrics, containing less than 85 percent by weight of synthetic filaments, mixed mainly or solely with cotton, printed.
5407.91.05	Woven fabrics of synthetic filament yarn nesoi, containing 36 percent or more by weight of wool or fine animal hair, unbleached or bleached.
5407.91.10	Woven fabrics of synthetic filament yarn nesoi, mixed mainly or solely with wool or fine animal hair, unbleached or bleached, nesoi.
5407.91.20	Woven fabrics of synthetic filament yarn nesoi, unbleached or bleached, nesoi.
5407.92.05	Woven fabrics of synthetic filament yarn nesoi, containing 36 percent or more by weight of wool or fine animal hair, dyed.
5407.92.10	Woven fabrics of synthetic filament yarn nesoi, mixed mainly or solely with wool or fine animal hair, cont. <36% wool/fine animal hair, dyed.
5407.92.20	Woven fabrics of synthetic filament yarn nesoi, dyed, nesoi.
5407.93.05	Woven fabrics of synthetic filament yarn nesoi, containing 36% or more by weight of wool or fine animal hair, of yarns of different colors.
5407.93.10	Woven fabrics of synthetic filament yarn nesoi, mixed mainly or solely with wool or fine animal hair, of yarns of different colors, nesoi.
5407.93.15	Woven fabrics, cont. 85% or more of man-made filaments, thread count >69–142/cm warp and >31–71/cm filling, of different colored yarns.
5407.93.20	Woven fabrics of synthetic filament yarn nesoi, of yarns of different colors, nesoi.
5407.94.05	Woven fabrics of synthetic filament yarn nesoi, containing 36 percent or more by weight of wool or fine animal hair, printed.
5407.94.10	Woven fabrics of synthetic filament yarn nesoi, mixed mainly/solely with wool/fine animal hair, contain <36% wool/fine animal hair, printed.
5407.94.20	Woven fabrics of synthetic filament yarn nesoi, printed, nesoi.
5408.10.00	Woven fabrics obtained from high tenacity yarn, of viscose rayon.
5408.21.00	Woven fabrics, containing 85 percent or more by weight of artificial filament or strip or the like, unbleached or bleached.
5408.22.10	Woven fabric, 85%+ artificial filament or strip or the like, dyed, of cuprammonium rayon.
5408.22.90	Woven fabric, 85%+ artificial filament or strip or the like, dyed, not of cuprammonium rayon, nesoi.
5408.23.11	Woven fabric, 85%+ artificial filament/strip, of yarns of different colors, >69–142 warp & >31–71 filling yarns, of cupra/rayon, nesoi.
5408.23.19	Woven fabric, 85%+ artificial filament/strip, of yarns of different colors, >69–142 warp & >31–71 filling yarns, not of cupra/rayon, nesoi.
5408.23.21	Woven fabric, 85%+ artificial filament/strip, of yarns of different colors, not 69–142 warp & 31–71 filling yarns, of cupra/rayon, nesoi.
5408.23.29	Woven fabric, 85%+ artificial filament/strip, of yarns of different colors, not 69–142 warp & 31–71 filling yarns, not of cupra/rayon, nesoi.
5408.24.10	Woven fabric, 85%+ artificial filament/strip, printed, of cuprammonium rayon, nesoi.
5408.24.90	Woven fabric, 85%+ artificial filament/strip, printed, not of cuprammonium rayon, nesoi.
5408.31.05	Woven fabrics of artificial filament yarn nesoi, containing 36 percent or more by wt of wool or fine animal hair, unbleached or bleached.
5408.31.10	Woven fabrics of artificial filament yarn nesoi, mixed mainly or solely with wool or fine animal hair, unbleached or bleached, nesoi.

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HTSUS subheading	Product description
5408.31.20	Woven fabrics of artificial filament yarn nesoi, unbleached or bleached, nesoi.
5408.32.05	Woven fabrics of artificial filament yarn nesoi, containing 36 percent or more by wt of wool or fine animal hair, dyed.
5408.32.10	Woven fabrics of artificial filament yarn nesoi, mixed mainly or solely with wool or fine animal hair, dyed, nesoi.
5408.32.30	Woven fabrics of artificial filament yarn nesoi, dyed, 30 percent or more by wt of silk or silk waste, valued over $33/kg.
5408.32.90	Woven fabrics of artificial filament yarn nesoi, dyed, nesoi.
5408.33.05	Woven fabrics of artificial filament yarn nesoi, containing 36% or more by wt of wool or fine animal hair, of yarns of different colors.
5408.33.10	Woven fabrics of artificial filament yarn nesoi, mixed mainly or solely with wool or fine animal hair, of yarns of different colors, nesoi.
5408.33.15	Woven fabrics cont. 85% or more mm filaments nesoi, thread count >69–142/cm warp and >31–71/cm filling, of different colored yarns.
5408.33.30	Woven fabrics of artificial filament yarn nesoi, of yarns of different colors, 30 percent or more of silk or silk waste, valued over $33/kg.
5408.33.90	Woven fabrics of artificial filament yarn nesoi, of yarns of different colors, nesoi.
5408.34.05	Woven fabrics of artificial filament yarn nesoi, containing 36 percent or more by weight of wool or fine animal hair, printed.
5408.34.10	Woven fabrics of artificial filament yarn nesoi, mixed mainly or solely with wool or fine animal hair, printed, nesoi.
5408.34.30	Woven fabrics of artificial filament yarn nesoi, printed, 30 percent or more by weight of silk or silk waste, valued over $33/kg.
5408.34.90	Woven fabrics of artificial filament yarn nesoi, printed, nesoi.
5501.10.00	Synthetic filament tow of nylon or other polyamides.
5501.20.00	Synthetic filament tow of polyesters.
5501.30.00	Synthetic filament tow of acrylic or modacrylic.
5501.40.00	Synthetic filament tow, of polypropylene.
5501.90.01	Synthetic filament tow, nesoi.
5502.10.00	Artificial filament tow of cellulose acetate.
5502.90.00	Artificial filament tow other than of cellulose acetate.
5503.11.00	Synthetic staple fibers, n/carded, combed or otherwise processed for spinning, of aramids.
5503.19.10	Synthetic staple fibers, n/carded, combed or otherwise processed for spinning, of nylon/other polyamides (except aramids), cont 10% or more.
5503.19.90	Synthetic staple fibers, n/carded, combed or otherwise processed for spinning, of nylon or other polyamides (except aramids), nesoi.
5503.20.00	Synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters.
5503.30.00	Synthetic (acrylic or modacrylic) staple fibers, not carded, combed or otherwise processed for spinning.
5503.40.00	Synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polypropylene.
5503.90.10	Synthetic staple fibers, not carded, combed or otherwise processed for spinning, of vinyon.
5503.90.90	Synthetic staple fibers, not carded, combed or otherwise processed for spinning, nesoi.
5504.10.00	Artificial staple fibers, not carded, combed or otherwise processed for spinning, of viscose rayon.
5504.90.00	Artificial staple fibers, not carded, combed or otherwise processed for spinning, other than of viscose rayon.
5505.10.00	Waste (including noils, yarn waste and garnetted stock) of synthetic fibers.
5505.20.00	Waste (including noils, yarn waste and garnetted stock) of artificial fibers.
5506.10.00	Synthetic staple fibers, carded, combed or otherwise processed for spinning, of nylon or other polyamides.
5506.20.00	Synthetic staple fibers, carded, combed or otherwise processed for spinning, of polyesters.
5506.30.00	Synthetic (acrylic or modacrylic) staple fibers, carded, combed or otherwise processed for spinning.
5506.40.00	Synthetic staple fibers of polypropylene, carded, combed or otherwise processed for spinning.
5506.90.01	Other Synthetic staple fibers nesoi, carded, combed or otherwise processed for spinning.
5507.00.00	Artificial staple fibers, carded, combed or otherwise processed for spinning.
5508.10.00	Sewing thread of synthetic staple fibers, whether or not put up for retail sale.
5508.20.00	Sewing thread of artificial staple fibers, whether or not put up for retail sale.
5509.11.00	Yarn (other than sewing thread) containing 85% or more by weight of nylon/polyamide staple fibers, singles, not put up for retail sale.
5509.12.00	Yarn (other than sewing thread) cont. 85% or more by weight of nylon/polyamide staple fibers, multiple or cabled, not put up for retail sale.
5509.21.00	Yarn (other than sewing thread) containing 85% or more by weight of polyester staple fibers, singles, not put up for retail sale.
5509.22.00	Yarn (other than sewing thread) cont. 85% or more by weight of polyester staple fibers, multiple or cabled, not put up for retail sale.
5509.31.00	Yarn (not sewing thread) cont. 85% or more by weight of acrylic or modacrylic staple fibers, singles, not put up for retail sale.
5509.32.00	Yarn (not sewing thread) cont. 85% or more by wt. of acrylic or modacrylic staple fibers,multiple or cabled,not put up for retail sale.
5509.41.00	Yarn (other than sewing thread) containing 85% or more by weight of synthetic staple fibers nesoi, singles, not put up for retail sale.
5509.42.00	Yarn (other than sewing thread) cont. 85% or more by weight of synthetic staple fibers nesoi, multiple or cabled, not put up for retail sale.

ANNEX—Continued

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HTSUS subheading	Product description
5509.51.30	Yarn (not sewing thread) of polyester staple fibers mixed mainly/solely with artificial staple fibers, single, not put up for retail sale.
5509.51.60	Yarn (not sewing thread) of polyester staple fibers mixed mainly/solely with artificial staple fibers, multiple, not put up for retail sale.
5509.52.00	Yarn (other than sewing thread) of polyester staple fibers mixed mainly/solely with wool or fine animal hair, not put up for retail sale.
5509.53.00	Yarn (other than sewing thread) of polyester staple fibers mixed mainly or solely with cotton, not put up for retail sale.
5509.59.00	Yarn (other than sewing thread) of polyester staple fibers nesoi, not put up for retail sale.
5509.61.00	Yarn (other than sewing thread) of acrylic or modacrylic staple fibers mixed with wool or fine animal hair, not put up for retail sale.
5509.62.00	Yarn (other than sewing thread) of acrylic or modacrylic staple fibers mixed mainly or solely with cotton, not put up for retail sale.
5509.69.20	Yarn (not sew thread) of acrylic/modacrylic staple fibers mixed mainly/solely w/artificial staple fibers, singles, not for retail sale.
5509.69.40	Yarn (not sewing thread) of acrylic/modacrylic staple fiber mixed mainly/solely w/artificial staple fiber, multiple or cabled, not retail sale.
5509.69.60	Yarn (other than sewing thread) of acrylic or modacrylic staple fibers nesoi, not put up for retail sale.
5509.91.00	Yarn (other than sewing thread) of synthetic staple fibers mixed mainly or solely with wool or fine animal hair, not put up for retail sale.
5509.92.00	Yarn (other than sewing thread) of synthetic staple fibers mixed mainly or solely with cotton, not put up for retail sale.
5509.99.20	Yarn (not sewing thread) of synthetic staple fibers nesoi, mixed mainly/solely w/artificial staple fibers, singles, not for retail sale.
5509.99.40	Yarn (not sewing thread) of synthetic staple fibers nesoi, mixed mainly/solely w/artificial staple fibers, multiple, not for retail sale.
5509.99.60	Yarn (other than sewing thread) of synthetic staple fibers nesoi, not put up for retail sale.
5510.11.00	Yarn (other than sewing thread) containing 85% or more by weight of artificial staple fibers, singles, not put up for retail sale.
5510.12.00	Yarn (other than sewing thread) cont. 85% or more by weight of artificial staple fibers, multiple or cabled, not put up for retail sale.
5510.20.00	Yarn (other than sewing thread) of artificial staple fibers mixed mainly or solely with wool or fine animal hair, not put up for retail sale.
5510.30.00	Yarn (other than sewing thread) of artificial staple fibers mixed mainly or solely with cotton, not put up for retail sale.
5510.90.20	Yarn (other than sewing thread) of artificial staple fibers mixed mainly/solely with synthetic staple fibers, singles, not for retail sale.
5510.90.40	Yarn (other than sewing thread) of artificial staple fibers mixed mainly/solely with synthetic staple fibers, multiple, not for retail sale.
5510.90.60	Yarn (other than sewing thread) of artificial staple fibers nesoi, not put up for retail sale.
5511.10.00	Yarn (other than sewing thread) of synthetic staple fibers, containing 85% or more by weight of such fibers, put up for retail sale.
5511.20.00	Yarn (other than sewing thread) of synthetic staple fibers, containing less than 85% by weight of such fibers, put up for retail sale.
5511.30.00	Yarn (other than sewing thread) of artificial staple fibers, put up for retail sale.
5512.11.00	Woven fabrics containing 85% or more by weight of polyester staple fibers, unbleached or bleached.
5512.19.00	Woven fabrics containing 85% or more by weight of polyester staple fibers, other than unbleached or bleached.
5512.21.00	Woven fabrics containing 85% or more by weight of acrylic or modacrylic staple fibers, unbleached or bleached.
5512.29.00	Woven fabrics containing 85% or more by weight of acrylic or modacrylic staple fibers, other than unbleached or bleached.
5512.91.00	Woven fabrics, containing 85% or more by weight of synthetic fibers nesoi, unbleached or bleached.
5512.99.00	Woven fabrics, containing 85% or more by weight of synthetic fibers nesoi, other than unbleached or bleached.
5513.11.00	Woven fabric of poly staple fiber, <85% wt. poly staple fibers, mixed mainly/solely w/cotton, wt n/o 170 g/m2, plain weave, unbleached/bleached.
5513.12.00	Woven 3-or 4-thread twill fabric of poly staple fib, <85% poly staple fiber, mixed mainly/solely w/cotton, wt n/o 170 g/m2, unbleached/bleached.
5513.13.00	Woven fabrics of polyester staple fibers, <85% polyester staple fibers, mixed mainly/solely w/cotton, n/o 170 g/m2,unbleached/bleached, nesoi.
5513.19.00	Woven fabrics of synthetic staple fibers nesoi, <85% by weight of such fibers, mixed with cotton, n/o 170g/m2, unbleached or bleached.
5513.21.00	Woven fabrics of polyester staple fibers, <85% polyester staple fibers, mixed mainly/solely w/cotton, not over 170 g/m2, plain weave, dyed.
5513.23.01	Woven fabrics of polyester staple fibers, <85% by wt polyester staple fibers, mixed mainly/solely w/cotton, not over 170 g/m2, dyed, nesoi.
5513.29.00	Woven fabrics of synthetic staple fibers nesoi, <85% by wt of such fibers, mixed mainly/solely w/cotton, weighing n/o 170g/m2, dyed, nesoi.

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HTSUS subheading	Product description
5513.31.00	Woven fabrics of poly staple fib, <85% polyester staple fibers, mixed mainly/solely w/cotton, n/o 170 g/m2, plain weave, of yarns of dif. colors.
5513.39.01	Woven fabrics of synthetic staple fibers nesoi, <85% by wt of such fibers, mixed mainly/solely w/cotton, n/o 170g/m2, of dif. colored yarns.
5513.41.00	Printed plain weave fabrics of poly staple fib, <85% by weight polyester staple fibers, mixed mainly/solely with cotton, n/o 170g/m2.
5513.49.10	Printed 3-or 4-thread twill fabric of poly staple fib, incl cross twill, <85% wt poly staple fibers, mixed mainly/solely w/cotton, n/o 170g/m2.
5513.49.20	Printed woven fabrics of polyester staple fibers, <85% by wt polyester staple fibers, mixed mainly/solely with cotton, weighing n/o 170g/m2.
5513.49.90	Printed woven fabrics of synthetic staple fibers nesoi, <85% by weight of such fibers, mixed mainly or solely with cotton, n/o 170g/m2.
5514.11.00	Plain weave fabrics of poly staple fiber, <85% wt polyester staple fibers, mixed mainly/solely w/cotton, wt ov 170 g/m2, unbleached/bleached.
5514.12.00	Wov 3-or 4-thread twill fabric of poly staple fib, <85% polyester staple fiber, mixed mainly/solely w/cotton, ov 170 g/m2, unbleached/bleached.
5514.19.10	Woven fabric of polyester staple fiber, <85% wt polyester, mixed mainly/solely w/cotton, over 170 g/m2, unbleached/bleached.
5514.19.90	Unbleached or bleached woven fabric of synthetic staple fibers nesoi, <85% by wt of such fibers, mixed mainly/solely w/cotton, over 170g/m2.
5514.21.00	Plain weave fabrics of polyester staple fiber, <85% by wt polyester staple fibers, mixed mainly/solely with cotton, over 170 g/m2, dyed.
5514.22.00	Wov 3-or 4-thread twill fabric of poly staple fib, incl cross twill, <85% poly staple fibers, mixed mainly/solely w/cotton, ov 170 g/m2, dyed.
5514.23.00	Woven fabrics of polyester staple fib, <85% by wt polyester staple fibers, mixed mainly/solely w/cotton, over 170 g/m2, dyed, nesoi.
5514.29.00	Dyed woven fabrics of synthetic staple fibers nesoi, <85% by weight of such fibers, mixed mainly or solely with cotton, over 170g/m2.
5514.30.31	Plain weave fabrics of poly staple fiber, <85% polyester staple fibers, mixed mainly/solely with cotton, ov 170 g/m2,of yarns of dif. colors.
5514.30.32	Woven 3-or 4-thread twill fabric of poly staple fib, <85% poly staple fibers, mixed mainly/solely w/cotton, ov 170 g/m2, of yarn of dif. colors.
5514.30.33	Woven fabrics of poly staple fiber, <85% polyester staple fibers, mixed mainly/solely w/cotton, ov 170 g/m2, of yarns of different colors, nesoi.
5514.30.39	Woven fabrics of synthetic staple fibers nesoi, <85% by wt of such fibers, mixed mainly/solely w/cotton, ov 170g/m2, of dif. colored yarns.
5514.41.00	Printed plain weave fabrics of polyester staple fiber, <85% by wt polyester staple fibers, mixed mainly or solely with cotton, over 170g/m2.
5514.42.00	Printed 3-or 4-thread twill fab of poly staple fib, incl cross twill, <85% by wt poly staple fibers, mixed mainly/solely w/cotton, ov 170g/m.
5514.43.00	Printed woven fabrics of polyester staple fiber, <85% by wt polyester staple fibers, mixed mainly/solely with cotton, over 170g/m2, nesoi.
5514.49.00	Printed woven fabrics of synthetic staple fibers nesoi, <85% by weight of such fibers, mixed mainly or solely with cotton, over 170g/m2.
5515.11.00	Woven fabrics of polyester staple fibers, mixed mainly or solely with viscose rayon staple fibers, nesoi.
5515.12.00	Woven fabrics of polyester staple fibers, mixed mainly or solely with man-made filaments, nesoi.
5515.13.05	Woven fabrics of polyester staple fibers, containing 36 percent or more by weight of wool or fine animal hair, nesoi.
5515.13.10	Woven fabrics of polyester staple fibers, mixed mainly or solely with wool or fine animal hair, nesoi.
5515.19.00	Woven fabrics of polyester staple fibers, nesoi.
5515.21.00	Woven fabrics of acrylic or modacrylic staple fibers, mixed mainly or solely with man-made filaments, nesoi.
5515.22.05	Woven fabrics of acrylic or modacrylic staple fibers, containing 36% or more by weight of wool or fine animal hair, nesoi.
5515.22.10	Woven fabrics of acrylic or modacrylic staple fibers, mixed mainly or solely with wool or fine animal hair, nesoi.
5515.29.00	Woven fabrics of acrylic or modacrylic staple fibers, nesoi.
5515.91.00	Woven fabrics of synthetic staple fibers (not polyester/acrylic or modacrylic staple fiber) mixed mainly/solely w/man-made filaments, nesoi.
5515.99.05	Woven fabrics of synthetic staple fibers (not polyester/acrylic or modacrylic staple fiber) contain 36% or more wool/fine animal hair, nesoi.
5515.99.10	Woven fabrics of synthetic staple fibers (not polyester/acrylic/modacrylic staple fiber) mixed mainly/solely w/wool/fine animal hair, nesoi.
5515.99.90	Woven fabrics of synthetic staple fibers (not of polyester, acrylic or modacrylic staple fibers), nesoi.
5516.11.00	Woven fabrics of artificial staple fibers, containing 85% or more by weight of such fibers, unbleached or bleached.
5516.12.00	Woven fabrics of artificial staple fibers, containing 85% or more by weight of such fibers, dyed.
5516.13.00	Woven fabrics of artificial staple fibers, containing 85% or more by weight of such fibers, of yarns of different colors.
5516.14.00	Woven fabrics of artificial staple fibers, containing 85% or more by weight of such fibers, printed.

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HTSUS subheading	Product description
5516.21.00	Woven fabrics of artificial staple fibers, <85% by weight of such fibers, mixed mainly/solely with man-made filaments, unbleached/bleached.
5516.22.00	Woven fabrics of artificial staple fibers, <85% by weight of such fibers, mixed mainly/solely with man-made filaments, dyed.
5516.23.00	Woven fabrics of artificial staple fibers, <85% by wt of such fibers, mixed mainly/solely w/man-made filaments, of different colored yarns.
5516.24.00	Woven fabrics of artificial staple fibers, <85% by weight of such fibers, mixed mainly or solely with man-made filaments, printed.
5516.31.05	Woven fabrics of artificial staple fibers, <85% of such fibers, containing 36% or more of wool or fine animal hair,unbleached or bleached.
5516.31.10	Woven fabrics of artificial staple fibers, <85% of such fibers, mixed mainly/solely w/wool or fine animal hair, unbleached/bleached, nesoi.
5516.32.05	Woven fabrics of artificial staple fibers, <85% of such fibers, containing 36% or more of wool or fine animal hair, dyed.
5516.32.10	Woven fabrics of artificial staple fibers, <85% by weight of such fibers, mixed mainly/solely with wool or fine animal hair, dyed, nesoi.
5516.33.05	Woven fabrics of artificial staple fibers, <85% such fibers, containing 36% or more of wool or fine animal hair, of different colored yarns.
5516.33.10	Woven fabrics of artificial staple fibers, <85% of such fiber, mixed mainly/solely w/wool or fine animal hair, of dif. colored yarns, nesoi.
5516.34.05	Woven fabrics of artificial staple fibers, <85% of such fibers, containing 36% or more of wool or fine animal hair, printed.
5516.34.10	Woven fabrics of artificial staple fibers, <85% of such fibers, mixed mainly or solely with wool or fine animal hair, printed, nesoi.
5516.41.00	Woven fabrics of artificial staple fibers, <85% by weight of such fibers, mixed mainly or solely with cotton, unbleached or bleached.
5516.42.00	Woven fabrics of artificial staple fibers, less than 85% by weight of such fibers, mixed mainly or solely with cotton, dyed.
5516.43.00	Woven fabrics of artificial staple fibers, <85% by wt. of such fibers, mixed mainly or solely with cotton, of yarns of different colors.
5516.44.00	Woven fabrics of artificial staple fibers, less than 85% by weight of such fibers, mixed mainly or solely with cotton, printed.
5516.91.00	Woven fabrics of artificial staple fibers nesoi, unbleached or bleached, nesoi.
5516.92.00	Woven fabrics of artificial staple fibers nesoi, dyed, nesoi.
5516.93.00	Woven fabrics of artificial staple fibers nesoi, of yarns of different colors, nesoi.
5516.94.00	Woven fabrics of artificial staple fibers nesoi, printed, nesoi.
5601.21.00	Wadding of cotton and other articles of cotton wadding nesoi.
5601.22.00	Wadding of man-made fibers and other articles of such wadding nesoi.
5601.29.00	Wadding of textile materials (excluding cotton and man-made fibers) and articles thereof, nesoi.
5601.30.00	Textile flock, not exceeding 5 mm in length, and textile dust and mill neps.
5602.10.10	Laminated fabrics of needleloom felt or stitch-bonded fiber fabrics.
5602.10.90	Needleloom felt and stitch-bonded fabrics, whether or not impregnated, coated or covered, nesoi.
5602.21.00	Felt, excluding needleloom felt and stitch-bonded fiber fabrics, not impregnated, coated, covered or laminated, of wool or fine animal hair.
5602.29.00	Felt, excluding needleloom felt and stitch-bonded fiber fabrics, not impregnated, coated, covered or laminated, of textile materials nesoi.
5602.90.30	Laminated fabrics of felt, nesoi.
5602.90.60	Felt, impregnated, coated or covered, of man-made fibers, nesoi.
5602.90.90	Felt, impregnated, coated or covered, nesoi.
5603.11.00	Nonwovens, of man-made filaments, weighing not >25 g/square m, whether or not impregnated, coated, covered or laminated.
5603.12.00	Nonwovens, of man-made filaments, weighing >25 but not >70 g/square m, whether or not impregnated, coated, covered or laminated.
5603.13.00	Nonwovens, of man-made filaments, weighing >70 but not >150 g/square m, whether or not impregnated, coated, covered or laminated.
5603.14.30	Laminated nonwoven fabs, of man-made filaments, weighing >150 g/square m.
5603.14.90	Nonwovens (except laminated), of man-made filaments, weighing >150 g/square m, whether or not impregnated, coated, or covered.
5603.91.00	Nonwovens (not of man-made filaments), weighing not >25 g/square m, whether or not impregnated, coated, covered or laminated.
5603.92.00	Nonwovens (not of man-made filaments), weighing >25 but not >70 g/square m, whether or not impregnated, coated, covered or laminated.
5603.93.00	Nonwovens (not of man-made filaments), weighing >70 but not >150 g/square m, whether or not impregnated, coated, covered or laminated.
5603.94.10	Nonwoven floor covering underlays (not of man-made filaments), weighing >150 g/square m, whether or not impreg, coated, cov or laminated.
5603.94.30	Laminated nonwovens nesoi (not of man-made filaments), weighing >150 g/square m.

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HTSUS subheading	Product description
5603.94.90	Nonwovens nesoi (not of man-made filaments), weighing >150 g/square m, whether or not impregnated, coated, covered but not laminated.
5604.10.00	Rubber thread and cord, textile covered.
5604.90.20	High tenacity yarn of polyesters, of nylon or other polyamides or of viscose rayon, impregnated or coated.
5604.90.90	Textile yarn and strip and the like of heading 5404 or 5405, impregnated, coated, covered or sheathed with rubber or plastics, nesoi.
5605.00.10	Metal coated or metal laminated man-made monofilament or strip or the like, ungimped & untwisted or w/twist of less than 5 turns per meter.
5605.00.90	Metalized textile yarn nesoi, of man-made monofilament or strip or the like, other than ungimped or w/twist of <5 turns per meter.
5606.00.00	Gimped yarn, and strip and the like of man-made monofilament; chenille yarn; loop wale-yarn.
5607.21.00	Binder or baler twine, of sisal or other textile fibers of genus Agave.
5607.29.00	Twine (except binder or baler twine), cordage, rope and cables of sisal or other textile fibers of genus Agave.
5607.41.10	Binder or baler twine of wide nonfibrillated strip, of polyethylene or polypropylene.
5607.41.30	Binder or baler twine, of polyethylene or polypropylene, nesoi.
5607.49.10	Twine (other than binder or baler twine), cordage, rope and cables of wide nonfibrillated strip, of polyethylene or polypropylene.
5607.49.15	Twine (ex binder/baler twine), cordage, rope and cables, of polyethylene or polypropylene, not braided or plaited, less than 4.8 mm in diam.
5607.49.25	Twine (except binder or baler twine), cordage, rope and cables, of polyethylene or polypropylene, not braided or plaited, nesoi.
5607.49.30	Twine (except binder or baler twine), cordage, rope and cables, of polyethylene or polypropylene, nesoi.
5607.50.25	3- or 4-ply multicolor twine of synthetic fibers nesoi at least 10% cotton, having "S" twist, <3.5 mm diameter, not braided or plaited.
5607.50.35	Twine nesoi, cordage, rope and cables of synthetic fibers, other than of polyethylene or polypropylene, not braided or plaited.
5607.50.40	Twine, cordage, rope and cables of synthetic fibers, other than of polyethylene or polypropylene, nesoi.
5607.90.10	Twine, cordage, rope and cables, of coir.
5607.90.15	Twine, cordage, rope and cables, of jute or other textile bast fibers (excluding flax, true hemp and ramie).
5607.90.25	Twine, cordage, rope and cables of abaca or other hard (leaf) fibers, of stranded construction measuring 1.88 cm or over in diameter.
5607.90.35	Twine, cordage, rope & cables of abaca or other hard (leaf) fibers, other than stranded construction or stranded n/o 1.88 cm in diameter.
5607.90.90	Twine, cordage, rope and cables, of materials nesoi.
5608.11.00	Made-up fishing nets, of man-made textile materials.
5608.19.10	Fish netting (other than made-up fishing nets) of man-made textile materials.
5608.19.20	Knotted netting of twine, cordage or rope (excluding fish netting or made-up fishing nets) of man-made textile materials.
5608.90.10	Fish netting and fishing nets, of textile materials other than man-made materials.
5608.90.23	Hammocks, of cotton.
5608.90.27	Netting or nets, of cotton, other than hammocks or netting or nets for fishing.
5608.90.30	Knotted netting of twine, cordage or rope or other made-up nets (not fish netting and nets) of textile materials (not cotton/man-made mat.).
5609.00.10	Articles of yarn, strip, twine, cordage, rope or cables nesoi, of cotton.
5609.00.20	Articles of yarn, strip, twine, cordage, rope or cables nesoi, of vegetable fibers except cotton.
5609.00.30	Articles of yarn, strip, twine, cordage, rope or cables nesoi, of man-made fibers.
5609.00.40	Articles of yarn, strip or the like of man-made monofilaments, twine, cordage, rope or cables, nesoi.
5701.10.13	Carpet & other textile floor covering, hand-knotted/hand-inserted, w/ov 50% wt pile of fine animal hair, foregoing cert. hand-loomed & folklore.
5701.10.16	Carpets & other textile floor coverings, hand-knotted or hand-inserted, w/ov 50% by weight of the pile of fine animal hair, nesoi.
5701.10.40	Carpets and other textile floor coverings, of wool or fine animal hair, hand-hooked (tufts were inserted and knotted by hand or hand tool).
5701.10.90	Carpets and other textile floor coverings, of wool or fine animal hair, not hand-hooked, not hand knotted during weaving.
5701.90.10	Carpet and oth textile floor covering, knotted,of text. materials (not wool/hair) nesoi, pile inserted & knotted during weaving or knitting.
5701.90.20	Carpet & oth textile floor covering, knotted, of text materials (not wool/hair) nesoi, not w/pile inserted & knotted during weaving/knitting.
5702.10.10	Certified hand-loomed and folklore products being "Kelem", "Schumacks", "Karamanie" and similar hand-woven rugs.
5702.10.90	"Kelem", "Schumacks", "Karamanie" and similar hand-woven rugs, other than certified hand-loomed and folklore products.
5702.20.10	Floor coverings of coconut fibers (coir), woven, not tufted or flocked, with pile.
5702.20.20	Floor coverings of coconut fibers (coir), woven, not tufted or flocked, other than with pile.
5702.31.10	Wilton, velvet and like floor coverings of pile construction, woven, not tufted or flocked, not made up, of wool or fine animal hair.

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HTSUS subheading	Product description
5702.31.20	Carpets and other textile floor coverings of pile construction, woven, not tufted or flocked, not made up, of wool/fine animal hair, nesoi.
5702.32.10	Wilton, velvet and like floor coverings of pile construction, woven, not tufted or flocked, not made up, of man-made textile materials.
5702.32.20	Carpets & other textile floor coverings of pile construction, woven, not tufted or flocked, not made up, of man-made textile materials, nesoi.
5702.39.10	Carpets and other textile floor coverings of pile construction, woven, not tufted or flocked, not made up, of jute.
5702.39.20	Carpets and other textile floor coverings of pile construction, woven, not tufted or flocked, not made up, of other textile materials nesoi.
5702.41.10	Wilton, velvet and like floor coverings of pile construction, woven, not tufted or flocked, made up, of wool or fine animal hair.
5702.41.20	Carpets and other textile floor coverings of pile construction, woven, not tufted or flocked, made up, of wool or fine animal hair, nesoi.
5702.42.10	Wilton, velvet and like floor coverings of pile construction, woven, not tufted or flocked, made up, of man-made textile materials.
5702.42.20	Carpets and other textile floor coverings, of pile construction, woven, not tufted or flocked, made up, of man-made textile materials, nesoi.
5702.49.10	Carpets not other textile floor coverings of pile construction, woven, not tufted or flocked, made up, of cotton.
5702.49.15	Carpets and other textile floor coverings of pile construction, woven, not tufted or flocked, made up, of jute.
5702.49.20	Carpets & other textile floor coverings of pile construction, woven, not tufted or flocked, made up, of other textile materials nesoi.
5702.50.20	Carpets & other textile floor coverings, not of pile construction, woven but not on a power-driven loom, not made up, of wool/fine animal hair.
5702.50.40	Carpets & other textile floor coverings, not of pile construction, woven, not made up, of wool or fine animal hair, nesoi.
5702.50.52	Carpets & other textile floor coverings, not of pile construction, woven, not made up, of man-made textile materials.
5702.50.56	Carpets & other textile floor coverings, not of pile construction, woven, not made up, of cotton.
5702.50.59	Carpets & other textile floor coverings, not of pile construction, woven, not made up, of other textile materials nesoi.
5702.91.20	Certified hand-loomed & folklore floor covering, woven not on power-driven loom, not of pile construction, made up, of wool or fine animal hair.
5702.91.30	Floor coverings, not of pile construction, woven not on power-driven loom, made up, of wool or fine animal hair, nesoi.
5702.91.40	Carpets & other textile floor coverings, not of pile construction, woven nesoi, made up, of wool or fine animal hair, nesoi.
5702.92.10	Hand-loomed carpet & other textile floor coverings, not of pile construction, woven, made up, of man-made textile materials, nesoi.
5702.92.90	Carpet & other textile floor coverings, not of pile construction, woven, made up, of man-made textile materials, nesoi.
5702.99.05	Hand-loomed carpets and other textile floor coverings, not of pile construction, woven, made up, of cotton.
5702.99.15	Carpets and other textile floor coverings, not of pile construction, woven, made up, of cotton, nesoi.
5702.99.20	Carpets & other textile floor coverings, not of pile construction, woven, made up, of other textile materials nesoi.
5703.10.20	Hand-hooked carpets and other textile floor coverings, tufted, whether or not made up, of wool or fine animal hair.
5703.10.80	Carpets and other textile floor coverings, tufted, whether or not made up, of wool or fine animal hair, nesoi.
5703.20.10	Carpets and other textile floor coverings, tufted, whether or not made up, of nylon or other polyamides, hand-hooked.
5703.20.20	Carpets and other textile floor coverings, tufted, whether or not made up, of nylon or other polyamides, nesoi.
5703.30.20	Hand-hookded carpets & other textile floor coverings, tufted, whether or not made up, of man-made materials (not nylon/other polyamides).
5703.30.80	Carpets & other textile floor coverings, tufted, whether or not made up, of man-made textile materials (not nylon/other polyamides), nesoi.
5703.90.00	Carpets and other textile floor coverings, tufted, whether or not made up, of other textile materials nesoi.
5704.10.00	Carpet tiles of felt, not tufted or flocked, whether or not made up, having a maximum surface area of 0.3 m2.
5704.20.00	Carpet tiles of felt, not tufted or flocked, whether or not made up, having a maximum surface area exceeding 0.3 m2 but not exceeding 1 m2.
5704.90.01	Carpets and other textile floor coverings of felt, not tufted or flocked, whether or not made up, other surface area.
5705.00.10	Carpets and other textile floor coverings, whether or not made up, of coir, nesoi.
5705.00.20	Carpets and other textile floor coverings, whether or not made up, nesoi.
5801.10.00	Woven pile fabrics and chenille fabrics, other than fabrics of heading 5802 or 5806, of wool or fine animal hair.
5801.21.00	Uncut weft pile fabrics of cotton, other than fabrics of heading 5802 or 5806.
5801.22.10	Cut corduroy woven pile fabrics of cotton, greater than 7.5 wales per cm, other than fabrics of heading 5802 or 5806.
5801.22.90	Cut corduroy woven pile fabrics of cotton, less than 7.5 wales per cm, other than fabrics of heading 5802 or 5806.
5801.23.00	Weft pile fabrics, cut, of cotton, other than fabrics of heading 5802 or 5806, nesoi.

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HTSUS subheading	Product description
5801.26.00	Chenille fabrics of cotton, other than fabrics of heading 5802 or 5806.
5801.27.10	Warp pile fabrics, epingle (uncut), of cotton, other than fabrics of heading 5802 or 5806.
5801.27.50	Warp pile fabrics, cut, of cotton, other than fabrics of heading 5802 or 5806.
5801.31.00	Uncut weft pile fabrics of man-made fibers, other than fabrics of heading 5802 or 5806.
5801.32.00	Cut corduroy of man-made fibers, other than fabrics of heading 5802 or 5806.
5801.33.00	Weft pile fabrics of man-made fibers, cut, other than fabrics of heading 5802 or 5806, nesoi.
5801.36.00	Chenille fabrics of man-made fibers, other than fabrics of heading 5802 or 5806.
5801.37.10	Warp pile fabrics, epingle (uncut), of man-made fibers, other than fabrics of heading 5802 or 5806.
5801.37.50	Warp pile fabrics, cut, of man-made fibers, other than fabrics of heading 5802 or 5806.
5801.90.10	Woven pile fabrics and chenille fabrics of vegetable fibers except cotton, other than fabrics of heading 5802 or 5806.
5801.90.20	Woven pile fabrics and chenille fabrics of textile materials nesoi, other than fabrics of heading 5802 or 5806.
5802.11.00	Terry toweling and similar woven terry fabrics (other than narrow fabrics of heading 5806) of cotton, unbleached.
5802.19.00	Terry toweling and similar woven terry fabrics (other than narrow fabrics of heading 5806) of cotton, other than unbleached.
5802.20.00	Terry toweling and similar woven terry fabrics (other than narrow fabrics of heading 5806) of textile materials other than cotton.
5802.30.00	Tufted textile fabrics, other than products of heading 5703.
5803.00.10	Gauze (other than narrow fabrics of heading 5806) of cotton.
5803.00.20	Gauze (other than narrow fabrics of heading 5806) tapestry and upholstery fabrics, of wool or fine animal hair, weighing not over 140 g/m2.
5803.00.30	Gauze (not narrow fabrics of heading 5806), except tapestry and upholstery fabrics, of wool or fine animal hair, weighing n/o 140 g/m2.
5803.00.40	Gauze (other than narrow fabrics of heading 5806) of vegetable fibers except cotton.
5803.00.50	Gauze (other than narrow fabrics of heading 5806) of man-made fibers.
5803.00.90	Gauze (other than narrow fabrics of heading 5806) of other textile materials nesoi.
5804.10.10	Tulles and other net fabrics (not including woven, knitted or crocheted fabrics) of cotton or man-made fibers.
5804.10.90	Tulles and other net fabrics (not including woven, knitted or crocheted fabrics) of textile fibers except cotton or man-made.
5804.21.00	Mechanically made lace, in the piece, in strips or in motifs (not fabric of heading 6002), of man-made fibers.
5804.29.10	Mechanically made lace, in the piece, in strips or in motifs (not fabric of heading 6002), of cotton.
5804.29.90	Mechanically made lace, in the piece, in strips or in motifs (not fabric of heading 6002), of textile materials (not cotton or mm fibers).
5804.30.00	Hand-made lace, in the piece, in strips or in motifs (other than fabrics of heading 6002).
5805.00.10	Hand-woven tapestries of the type Gobelins, Flanders, Aubusson, Beauvais and the like, used only as wall hangings, valued over $215/m2.
5805.00.20	Certified hand-loomed and folklore hand-woven tapestries nesoi and needle-worked tapestries, of wool or fine animal hair.
5805.00.25	Hand-woven tapestries nesoi and needle-worked tapestries, of wool or fine animal hair.
5805.00.30	Hand-woven tapestries nesoi and needle-worked tapestries, of cotton.
5805.00.40	Hand-woven tapestries nesoi and needle-worked tapestries, other than of cotton, wool or fine animal hair.
5806.10.10	Narrow woven pile fabrics (including terry toweling and the like) and chenille fabrics (other than goods of heading 5807) of cotton.
5806.10.24	Narrow woven pile fastener fabric tapes (other than goods of heading 5807) of man-made fibers.
5806.10.28	Narrow woven pile fabrics, incl terry toweling/chenille fabric (excl fastener fabric tape) (other than goods of heading 5807) of m-m fibers.
5806.10.30	Narrow woven pile fabrics (including terry toweling/the like) & chenille fabrics, except of cotton or of m-m fibers (not goods of head 5807).
5806.20.00	Narrow woven fabrics (not goods of heading 5807), not pile, containing by weight 5 percent or more of elastomeric yarn or rubber thread.
5806.31.00	Narrow woven fabrics (other than goods of heading 5807), not pile, not cont by wt 5% or more of elastomeric yarn or rubber, of cotton, nesoi.
5806.32.10	Woven ribbons of man-made fibers, not pile, not cont by wt 5% or more of elastomeric yarn or rubber.
5806.32.20	Narrow woven fabrics (other than ribbons), not pile, of man-made fibers, not cont by wt 5% or more of elastomeric yarn or rubber.
5806.39.10	Narrow woven fabrics (not goods of heading 5807), not pile, of wool/fine animal hair, not cont by wt 5% or more elastomeric yarn or rubber.
5806.39.20	Narrow woven fabric (not good of heading 5807), not pile, of vegetable fibers except cotton, not cont by wt 5% or more elastomer yarn/rubber.
5806.39.30	Narrow woven fabrics (not goods of heading 5807), not pile, of textile materials nesoi, not cont by wt 5% or more elastomeric yarn or rubber.
5806.40.00	Narrow fabrics consisting of warp without weft assembled by means of an adhesive (bolducs).
5807.10.05	Labels, in the piece, in strips or cut to shape or size, woven, not embroidered, of cotton or man-made fibers.
5807.10.15	Labels, in the piece, in strips or cut to shape or size, woven, not embroidered, of textile materials other than cotton or man-made fibers.
5807.10.20	Woven badges and similar articles of textile materials (except labels), in the piece, in strips or cut to shape or size, not embroidered.

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HTSUS subheading	Product description
5807.90.05	Labels, in the piece, in strips or cut to shape or size, nonwoven, not embroidered, of cotton or man-made fibers.
5807.90.15	Labels, in the piece, in strips or cut to shape or size, nonwoven, not embroidered, of textile materials other than cotton or man-made fiber.
5807.90.20	Badges & similar articles (except labels) of textile materials, not woven, not embroidered, in the piece, in strips or cut to shape or size.
5808.10.10	Braids, in the piece, of abaca or ramie, suitable for making or ornamenting headwear.
5808.10.40	Braids in the piece, suitable for making or ornamenting headwear, of cotton or man-made fibers.
5808.10.50	Braids in the piece, suitable for making or ornamenting headwear, of textile materials other than cotton or man-made fibers.
5808.10.70	Braids in the piece, not suitable for making or ornamenting headwear, of cotton or man-made fibers.
5808.10.90	Braids in the piece, not suitable for making or ornamenting headwear, of textile materials other than cotton or man-made fibers.
5808.90.00	Ornamental trimmings in the piece, without embroidery, other than knitted or crocheted; tassels, pompons and similar articles.
5809.00.00	Woven fabrics of metal thread & woven fabrics of metallized yarn of heading 5605, used in apparel, as furnishing fabrics or the like, nesoi.
5810.10.00	Embroidery in the piece, in strips or in motifs, without visible ground.
5810.91.00	Embroidery of cotton, in the piece, in strips or in motifs, other than without visible ground.
5810.92.10	Badges, emblems, and motifs of man-made fibers, embroidered, in the piece or in strips, other than without visible ground.
5810.92.90	Embroidery in the piece or in strips (excluding badges, emblems and motifs), of man-made fibers, other than without visible ground.
5810.99.10	Embroidery in the piece, in strips or in motifs, of wool or fine animal hair, other than without visible ground.
5810.99.90	Embroidery in piece/strips/motifs,of textile material except cotton, man-made fiber, wool or fine animal hair, other than w/o visible ground.
5811.00.10	Quilted textile products in the piece (excluding embroidery), of one or more layers assembled with padding, of wool or fine animal hair.
5811.00.20	Quilted textile products in the piece (excluding embroidery), of one or more layers assembled with padding, of cotton.
5811.00.30	Quilted textile products in the piece (excluding embroidery), of one or more layers assembled with padding, of man-made fibers.
5811.00.40	Quilted textile products in the piece (excluding embroidery), of one or more layers assembled with padding, of textile materials nesoi.
5901.10.10	Textile fabrics coated with gum or amylaceous substances, of a kind used for outer covers of books or the like, of man-made fibers.
5901.10.20	Textile fabrics coated with gum or amylaceous substances, of a kind used for outer covers of books or the like, other than man-made fibers.
5901.90.20	Tracing cloth, prepared painting canvas, buckram and similar stiffened textile fabrics used in hat foundations, of man-made fibers.
5901.90.40	Tracing cloth, prepared painting canvas, buckram and similar stiffened textile fabrics used in hat foundations, except of man-made fibers.
5902.10.00	Tire cord fabric of high tenacity yarn of nylon or other polyamides.
5902.20.00	Tire cord fabric of high tenacity yarn of polyesters.
5902.90.00	Tire cord fabric of high tenacity yarns of viscose rayon.
5903.10.10	Textile fabrics of cotton, impregnated, coated, covered or laminated with polyvinyl chloride.
5903.10.15	Textile fabric spec in note 9 to sect XI, of man-made fibers, impreg, coated, covered or laminated w/polyvinyl chloride, over 60% plastics.
5903.10.18	Textile fabrics spec in note 9 to section XI, of man-made fibers, impregnated, coated, covered or laminated with polyvinyl chloride, nesoi.
5903.10.20	Textile fabrics nesoi,of man-made fibers, impregnated, coated, covered or laminated with polyvinyl chloride, over 70% wt. rubber or plastics.
5903.10.25	Textile fabrics nesoi,of man-made fibers, impregnated, coated, covered or laminated with polyvinyl chloride, n/o 70% by wt. rubber or plastics.
5903.10.30	Textile fabrics nesoi, impregnated, coated, covered or laminated with polyvinyl chloride, other than those of heading 5902.
5903.20.10	Textile fabrics of cotton, impregnated, coated, covered or laminated with polyurethane.
5903.20.15	Textile fabrics spec in note 9 to section XI, of man-made fibers, impreg, coated, covered or laminated with polyurethane, over 60% plastics.
5903.20.18	Textile fabrics specified in note 9 to section XI, of man-made fibers, impregnated, coated, covered or laminated with polyurethane, nesoi.
5903.20.20	Textile fabrics of man-made fibers, impregnated, coated, covered or laminated with polyurethane, over 70% weight rubber or plastics.
5903.20.25	Textile fabrics of man-made fibers, impregnated, coated, covered or laminated with polyurethane, n/o 70% by weight rubber or plastics.
5903.20.30	Textile fabrics nesoi, impregnated, coated, covered or laminated with polyurethane.
5903.90.10	Textile fabrics of cotton, impregnated, coated, covered or laminated with plastics nesoi, other than those of heading 5902.

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HTSUS subheading	Product description
5903.90.15	Textile fabrics spec in note 9 to section XI, of man-made fibers, impreg, coated, covered or laminated w/plastics, nesoi, over 60% plastics.
5903.90.18	Textile fabrics specified in note 9 to section XI, of man-made fabrics, impregnated, coated, covered or laminated with plastics, nesoi.
5903.90.20	Textile fabrics of man-made fibers, impregnated, coated, covered or laminated with plastics, nesoi, over 70% weight rubber or plastics.
5903.90.25	Textile fabrics of man-made fibers, impregnated, coated, covered or laminated with plastics, nesoi, n/o 70% by weight rubber or plastics.
5903.90.30	Textile fabrics nesoi, impreg, coated, covered or laminated w/plastics other than vinyl chloride or polyurethane, other than those head 5902.
5904.10.00	Linoleum, whether or not cut to shape.
5904.90.10	Floor coverings consisting of a coating or covering applied on a textile backing, with a base consisting of needleloom felt or nonwovens.
5904.90.90	Floor coverings consisting of a coating or covering applied on textile backing, with textile base other than of needleloom felt or nonwovens.
5905.00.10	Textile wall coverings backed with permanently affixed paper.
5905.00.90	Textile wall coverings, nesoi.
5906.10.00	Rubberized textile fabric adhesive tape of a width not exceeding 20 cm (other than fabric of heading 5902).
5906.91.10	Rubberized textile fabrics of cotton, knitted or crocheted (other than fabric of heading 5902.
5906.91.20	Rubberized textile fabrics (other than of heading 5902) nesoi, knitted or crocheted, of man-made fibers, ov 70% by wt of rubber or plastics.
5906.91.25	Rubberized textile fabrics (other than of head 5902), nesoi, knitted or crocheted, of man-made fibers, n/o 70% by wt of rubber or plastics.
5906.91.30	Rubberized textile fabrics (other than of heading 5902) nesoi, knitted or crocheted, other than of cotton or man-made fibers.
5906.99.10	Rubberized textile fabrics not knitted or crocheted, of cotton, other than fabrics of heading 5902.
5906.99.20	Rubberized textile fabrics (other than of head 5902), nesoi, not knitted or crocheted, of man-made fibers, ov 70% by wt of rubber/plastics.
5906.99.25	Rubberized textile fabrics (other than of head 5902), nesoi, not knitted or crocheted, of man-made fibers, n/o 70% by wt of rubber/plastics.
5906.99.30	Rubberized textile fabrics, not knitted or crocheted, other than those of heading 5902, nesoi.
5907.00.05	Laminated fabrics specified in note 9 to sect. XI of HTS, of m-m fiber, for theatrical, ballet, & operatic scenery & properties, incl sets.
5907.00.15	Laminated fabrics spec in note 9 to sect XI of HTS, of m-m fiber, other than theatrical, ballet, & operatic scenery & properties, incl sets.
5907.00.25	Lam fabs specified in nte 9 to sect. XI of HTS, of tx mats except m-m fiber, for theatrical, ballet, & opera scenery & properties, incl sets.
5907.00.35	Lam fabs specified in nte 9 to sect. XI of HTS, of tx mats except m-m fiber, other than theatrical, ballet, & oper scenery & prop, incl sets.
5907.00.60	Other fabric, impregnated, coated or covered, and painted canvas being theatrical scenery, back-cloths or the like, of man-made fibers.
5907.00.80	Other fabric, impregnated, coated or covered, & painted canvas being theatrical scenery, back-cloths or the like, other than man-made fibers.
5908.00.00	Textile wicks, woven, plaited or knitted, for lamps, stoves, candles and the like; gas mantles and tubular knitted gas mantle fabric.
5909.00.10	Textile hosepiping and similar textile tubing of vegetable fibers, with or without lining, armor or accessories of other materials.
5909.00.20	Textile hosepiping and similar textile tubing nesoi, with or without lining, armor or accessories of other materials.
5910.00.10	Transmission or conveyor belts or belting of man-made fibers.
5910.00.90	Transmission or conveyor belts or belting of textile materials, other than man-made fibers.
5911.10.10	Printers' rubberized blankets of textile fabrics.
5911.10.20	Textile fabrics, felt and felt-lined woven fabrics, combined with layer(s) of rubber, leather or other material, for technical uses, nesoi.
5911.20.10	Bolting cloth fabrics principally used for stenciling purposes in screen-process printing, whether or not made up.
5911.20.20	Bolting cloth nesoi, of silk, whether or not made up.
5911.20.30	Bolting cloth, whether or not made up, nesoi.
5911.31.00	Textile fabrics and felts, endless or fitted with linking devices, used for papermaking or similar machines, weighing less than 650 g/m2.
5911.32.00	Textile fabrics and felts, endless or fitted with linking devices, used for papermaking or similar machines, weighing 650 g/m2 or more.
5911.40.00	Straining cloth of a kind used in oil presses or the like, of textile material or of human hair.
5911.90.00	Textile products and articles, of a kind used in machinery or plants for technical uses, specified in note 7 to chapter 59, nesoi.
6001.10.20	Knitted or crocheted "long pile" fabrics of man-made fibers.
6001.10.60	Knitted or crocheted "long pile" fabrics, other than of man-made fibers.
6001.21.00	Knitted or crocheted looped pile fabrics of cotton.
6001.22.00	Knitted or crocheted looped pile fabrics of man-made fibers.

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HTSUS subheading	Product description
6001.29.00	Knitted or crocheted looped pile fabrics of textile materials, other than of cotton or man-made fibers.
6001.91.00	Knitted or crocheted pile fabrics (other than "long pile" or looped pile) of cotton.
6001.92.00	Knitted or crocheted pile fabrics (other than "long pile" or looped pile) of man-made fibers.
6001.99.10	Knitted or crocheted pile fabrics (except long or looped pile), of tex mats other than cotton or mmf, containing 85% or more by wt of silk.
6001.99.90	Knitted or crocheted pile fabrics (except long or looped pile), of tex mats other than cotton or mmf, cont less than 85% by wt of silk,.
6002.40.40	Knitted or crocheted fabrics nesoi, width not exceeding 30 cm, containing 5% or more elastomeric yarn but no rubber thread, of cotton.
6002.40.80	Knitted or crocheted fabrics nesoi, width n/o 30 cm, containing 5% or more elastomeric yarn but no rubber thread, other than of cotton.
6002.90.40	Knitted or crocheted fabrics nesoi, width not exceeding 30 cm, containing 5% or more elastomeric yarn or rubber thread nesoi, of cotton.
6002.90.80	Knitted or crocheted fabrics nesoi, width n/o 30 cm, containing 5% or more elastomeric yarn or rubber thread nesoi, other than of cotton.
6003.10.10	Warp knit open-worked fabrics of wool or fine animal hair, width not exceeding 30 cm, other than those of heading 6001 or 6002.
6003.10.90	Knitted or crocheted fabrics of wool or fine animal hair nesoi, width not exceeding 30 cm, other than those of heading 6001 or 6002.
6003.20.10	Warp knit open-worked fabrics of cotton, width not exceeding 30 cm, other than those of heading 6001 or 6002.
6003.20.30	Knitted or crocheted fabrics of cotton (other than warp knit open-worked), width not exceed 30 cm, other than those of heading 6001 or 6002.
6003.30.10	Warp knit open-worked fabrics of synthetic fibers, width not exceeding 30 cm, other than those of heading 6001 or 6002.
6003.30.60	Knitted or crocheted fabrics of synthetic fibers nesoi, width not over 30 cm, other than those of heading 6001 or 6002.
6003.40.10	Warp knit open-worked fabrics of artificial fibers, width not exceeding 30 cm, other than those of heading 6001 or 6002.
6003.40.60	Knitted or crocheted fabrics of artifical fibers nesoi, width not over 30 cm, other than those of heading 6001 or 6002.
6003.90.10	Warp knit open-worked fabrics nesoi, width not exceeding 30 cm, other than those of heading 6001 or 6002.
6003.90.90	Knitted or crocheted fabrics nesoi, width not exceeding 30 cm, other than those of heading 6001 or 6002.
6004.10.00	Knitted or crocheted fabrics, width exceeding 30 cm, containing 5% or more of elastomeric yarn but no rubber thread, not of heading 6001.
6004.90.20	Knitted or crocheted fabrics, width exceeding 30 cm, containing 5% or more of elastomeric yarn and rubber thread, other than of heading 6001.
6004.90.90	Knitted or crocheted fabrics, width exceeding 30 cm, containing 5% or more of rubber thread, other than those of heading 6001.
6005.21.00	Unbleached or bleached warp knit fabrics (including those made on galloon knitting machines) of cotton, other than of headings 6001 to 6004.
6005.22.00	Dyed warp knit fabrics (including those made on galloon knitting machines) of cotton, other than those of headings 6001 to 6004.
6005.23.00	Warp knit fabrics of yarns of different colors (including made on galloon knitting machines) of cotton, other than headings 6001 to 6004.
6005.24.00	Printed warp knit fabrics (including those made on galloon knitting machines) of cotton, other than those of headings 6001 to 6004.
6005.35.00	Wrap knit fabrics of synthetic fibers, specified in subheading note 1 to this chapter excluding headings 6001 to 6004.
6005.36.00	Other wrap knit fabrics of synthetic fibers, bleached or unbleached, but not dyed and not specified in subheading note 1 to this chapter.
6005.37.00	Other wrap knit fabrics of synthetic fibers, dyed, not specified in subheading note 1 to this chapter.
6005.38.00	Other wrap knit fabrics of synthetic fibers, of yarns of different colors, not specified in subheading note 1 to this chapter.
6005.39.00	Other wrap knit fabrics of synthetic fibers, printed, not specified in subheading note 1 to this chapter.
6005.41.00	Unbleached or bleached warp knit fabrics (including made on galloon knitting machines) of artificial fiber, other than headings 6001 to 6004.
6005.42.00	Dyed warp knit fabrics (including those made on galloon knitting machines) of artificial fibers, other than those of headings 6001 to 6004.
6005.43.00	Warp knit fabrics of yarn of different color (including made on galloon knitting machine) of artificial fiber, other than headings 6001–6004.
6005.44.00	Printed warp knit fabrics (including those made on galloon knitting machine) of artificial fibers, other than those of headings 6001 to 6004.
6005.90.10	Warp knit fabrics (including those made on galloon knitting machines) of wool or fine animal hair, other than those of headings 6001 to 6004.
6005.90.90	Warp knit fabric (including made on galloon knit machine), not of wool/fine animal hair, cotton or manmade fiber, not of headings 6001–6004.
6006.10.00	Knitted or crocheted fabrics of wool or fine animal hair, nesoi.

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HTSUS subheading	Product description
6006.21.10	Unbleached or bleached circular knit fabric, wholly of cotton yarns over 100 metric number per single yarn, nesoi.
6006.21.90	Unbleached or bleached knitted or crocheted fabrics of cotton, nesoi.
6006.22.10	Dyed circular knit fabric, wholly of cotton yarns over 100 metric number per single yarn, nesoi.
6006.22.90	Dyed knitted or crocheted fabrics of cotton, nesoi.
6006.23.10	Circular knit fabric, of yarns of different colors, wholly of cotton yarns over 100 metric number per single yarn, nesoi.
6006.23.90	Knitted or crocheted fabrics of cotton, of yarns of different colors, nesoi.
6006.24.10	Printed circular knit fabric, wholly of cotton yarns over 100 metric number per single yarn, nesoi.
6006.24.90	Printed knitted or crocheted fabrics of cotton, nesoi.
6006.31.00	Unbleached or bleached knitted or crocheted fabrics of synthetic fibers, nesoi.
6006.32.00	Dyed knitted or crocheted fabrics of synthetic fibers, nesoi.
6006.33.00	Knitted or crocheted fabrics of synthetic fibers, of yarns of different colors, nesoi.
6006.34.00	Printed knitted or crocheted fabrics of synthetic fibers, nesoi.
6006.41.00	Unbleached or bleached knitted or crocheted fabrics of artificial fibers, nesoi.
6006.42.00	Dyed knitted or crocheted fabrics of artificial fibers, nesoi.
6006.43.00	Knitted or crocheted fabrics of artificial fibers, of yarns of different colors, nesoi.
6006.44.00	Printed knitted or crocheted fabrics of artificial fibers, nesoi.
6006.90.10	Other knitted or crocheted fabrics nesoi, containing 85 percent or more by weight of silk or silk waste.
6006.90.90	Other knitted or crocheted fabrics nesoi, other than of wool, cotton or manmade fibers & containing <85% by wt of silk/silk waste.
6501.00.30	Hat forms, hat bodies and hoods, not blocked to shape or with made brims; plateaux & manchons; all of fur felt, for men or boys.
6501.00.60	Hat forms, hat bodies and hoods, not blocked to shape or with made brims; plateaux & manchons; all of fur felt, not for men or boys.
6501.00.90	Hat forms, hat bodies and hoods, not blocked to shape or with made brims; plateaux & manchons; all of felt, other than fur felt.
6502.00.20	Hat shapes, plaited or assembled from strips, not blocked/lined/trimmed & w/o made brims, of veg. fibers or materls, or paper yarn, sewed.
6502.00.40	Hat shapes, plaited or asmbld from strips, n/blocked/lined/trimmed & w/o made brims, of veg. fibers or materls, not sewed/bleached/colored.
6502.00.60	Hat shapes, plaited or asmbld from strips, n/blocked/lined/trimmed & w/o made brims, of veg. fibers or materls, not sewed but bleachd/colord.
6502.00.90	Hat shapes, plaited or assembled from strips, not blocked/lined/trimmed & w/o made brims, not veg. fibers/veg. materials/paper yarn, nesoi.
6504.00.30	Hats and headgear, plaited or assembled from strips of veg. fibers or unspun fibrous veg. materials and/or paper yarn, sewed.
6504.00.60	Hats and headgear, plaited or assembled from strips of veg. fibers or unspun fibrous veg. materials and/or paper yarn, not sewed.
6504.00.90	Hats and headgear, plaited or assembled from strips of any material (o/than veg. fibers/unspun fibrous veg. materials and/or paper yarn).
6505.00.01	Hair-nets of any material, whether or not lined or trimmed.
6505.00.04	Hats and headgear of fur felt made from hat forms and hat bodies of 6501.
6505.00.08	Hats and headgear made from hat forms and hat bodies of 6501, except of fur felt.
6505.00.15	Hats and headgear, of cotton and/or flax, knitted.
6505.00.20	Headwear, of cotton, not knitted; certified hand-loomed and folklore hats & headgear, of cotton or flax, not knitted.
6505.00.25	Hats and headgear, of cotton or flax, not knitted, not certified hand-loomed folklore goods.
6505.00.30	Hats and headgear, of wool, knitted or crocheted or made up from knitted or crocheted fabric.
6505.00.40	Hats and headgear, of wool, made up from felt or of textile material, not knitted or crocheted or made up from knitted or crocheted fabric.
6505.00.50	Hats and headgear, of man-made fibers, knitted or crocheted or made up from knitted or crocheted fabric, wholly or in part of braid.
6505.00.60	Hats and headgear, of man-made fibers, knitted or crocheted or made up from knitted or crocheted fabrics, not in part of braid.
6505.00.70	Hats and headgear, of man-made fibers, made up from felt or of textile material, not knitted or crocheted, wholly or in part braid.
6505.00.80	Hats and headgear, of man-made fibers, made up from felt or of textile material, not knitted or crocheted, not in part of braid.
6505.00.90	Hats and headgear, of textile materials (other than of cotton, flax, wool or man-made fibers), nesoi.
6506.10.30	Safety headgear of reinforced or laminated plastics, whether or not lined or trimmed.
6506.10.60	Safety headgear, other than of reinforced or laminated plastics, whether or not lined or trimmed.
6506.91.00	Headgear (other than safety headgear), nesoi, of rubber or plastics, whether or not lined or trimmed.
6506.99.30	Headgear, nesoi, of furskin, whether or not lined or trimmed.
6506.99.60	Headgear (other than safety headgear), nesoi, of materials other than rubber, plastics, or furskins, whether or not lined or trimmed.
6507.00.00	Headbands, linings, covers, hat foundations, hat frames, peaks (visors) and chinstraps, for headgear.

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HTSUS subheading	Product description
6701.00.30	Articles of feathers or down (other than articles & apparel filled or stuffed with feathers/down and worked quills & scapes).
6701.00.60	Skins and o/parts of birds w/their feathers or down, feathers, pts of feathers/down, nesoi.
6801.00.00	Setts, curbstones and flagstones, of natural stone (except slate).
6802.10.00	Tiles/cubes/similar arts. of natural stone, enclosable in a sq. w/a side less than 7 cm; artificially colored granules, chippings & powder.
6802.21.10	Monumental or building stone & arts. thereof, of travertine, simply cut/sawn, w/flat or even surface.
6802.21.50	Monumental or building stone & arts. thereof, of marble & alabaster, simply cut/sawn, w/flat or even surface.
6802.23.00	Monumental or building stone & arts. thereof, of granite, simply cut/sawn, w/flat or even surface.
6802.29.10	Monumental or building stone & arts. thereof, of calcareous stone, nesoi, simply cut/sawn, w/flat or even surface.
6802.29.90	Monumental or building stone & arts. thereof, of stone, nesoi, simply cut/sawn, w/flat or even surface.
6802.91.05	Marble slabs, further worked than simply cut/sawn.
6802.91.15	Monumental or building stone & arts. thereof (o/than slabs), of marble, further worked than simply cut/sawn, nesoi.
6802.91.20	Monumental or building stone & arts. thereof, of travertine, dressed or polished but not further worked, nesoi.
6802.91.25	Monumental or building stone & arts. thereof, of travertine, further worked than dressed or polished, nesoi.
6802.91.30	Monumental or building stone & arts. thereof, of alabaster, further worked than simply cut/sawn, nesoi.
6802.92.00	Monumental or building stone & arts. thereof, of calcareous stone, nesoi, further worked than simply cut/sawn, nesoi.
6802.93.00	Monumental or building stone & arts. thereof, of granite, further worked than simply cut/sawn, nesoi.
6802.99.00	Monumental or building stone & arts. thereof, nesoi, further worked than simply cut/sawn, nesoi.
6803.00.10	Roofing slate.
6803.00.50	Worked slate (other than roofing slate) and articles of slate or agglomerated slate.
6804.10.00	Millstones and grindstones for milling, grinding or pulping.
6804.21.00	Millstones, grindstones, grinding wheels and the like, nesoi, of agglomerated synthetic or natural diamond.
6804.22.10	Millstones, grindstones, grinding wheels and the like, nesoi, of agglomerated abrasives nesoi, or ceramics, bonded with synthetic resins.
6804.22.40	Abrasive wheels of agglomerated abrasives nesoi, or ceramics, not bonded with synthetic resins.
6804.22.60	Millstones, grindstones, grinding wheels and the like, nesoi, of agglomerated abrasives nesoi, or ceramics, not bonded w/synthetic resins.
6804.23.00	Millstones, grindstones, grinding wheels and the like, nesoi, of natural stone.
6804.30.00	Hand sharpening or polishing stones.
6805.10.00	Natural or artificial abrasive powder or grain on a base of woven textile fabric only.
6805.20.00	Natural or artificial abrasive powder or grain on a base of paper or paperboard only.
6805.30.10	Articles wholly or partly coated natural or artificial abrasive powder or grain, on a base of materials nesoi, in sheets, strips, disks,etc..
6805.30.50	Natural or artificial abrasive powder or grain on a base of materials nesoi, in forms nesoi.
6806.10.00	Slag wool, rock wool and similar mineral wools, in bulk, sheets or rolls.
6806.20.00	Exfoliated vermiculite, expanded clays, foamed slag and similar expanded mineral materials.
6806.90.00	Mixtures and articles of heat-insulating, sound-insulating or sound-absorbing mineral materials, nesoi.
6807.10.00	Articles of asphalt or of similar material, in rolls.
6807.90.00	Articles of asphalt or of similar material, not in rolls.
6808.00.00	Panels, boards, tiles and similar articles of vegetable fiber, straw or wood wastes, agglomerated with cement, plaster or o/mineral binders.
6809.11.00	Panels, boards, sheets, tiles and similar articles of plaster or comp. plaster, n/ornamented, faced or reinforced w/ paper or paperboard only.
6809.19.00	Panels, boards, sheets, tiles and similar articles of plaster or comp. plaster, not ornamented, nesoi.
6809.90.00	Articles (other than panels, boards, sheets, tiles, etc.) of plaster or of compositions based on plaster, nesoi.
6810.11.00	Building blocks and bricks, of cement, concrete or artificial stone, whether or not reinforced.
6810.19.12	Floor and wall tiles, of stone agglomerated with binders other than cement.
6810.19.14	Floor and wall tiles, of cement, concrete, or of artificial stone (except stone agglom. w/binders other than cement).
6810.19.50	Tiles, flagstones, and similar articles, nesoi, of cement, concrete or artificial stone, whether or not reinforced.
6810.91.00	Prefabricated structural components for building or civil engineering, of cement, concrete or artificial stone, nesoi.
6810.99.00	Articles of cement (other than tiles, flagstones, bricks and similar arts.), of concrete or artificial stone, nesoi.
6811.40.00	Articles of asbestos-cement.
6811.81.00	Corrugated sheets, of cellulose fiber-cement or the like (not containing asbestos).
6811.82.00	Sheets (other than corrugated), panels, tiles and similar articles of cellulose-fiber cement or the like (not containing asbestos).
6811.89.10	Tubes, pipes and tube or pipe fittings, of cellulose fiber-cement or the like (not containing asbestos).
6811.89.90	Articles of cellulose fiber-cement or the like (not containing asbestos), nesoi.
6812.80.10	Footwear of crocidolite.
6812.80.90	Articles or mixtures of crocidolite, nesoi.
6812.91.10	Footwear of asbestos other than crocidolite.
6812.91.90	Clothing, accessories, and headgear of asbestos other than crocidolite.
6812.92.00	Paper, millboard and felt of asbestos other than crocidolite.
6812.93.00	Compressed asbestos (other than crocidolite) fiber jointing, in sheets.

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HTSUS subheading	Product description
6812.99.00	Articles nesoi, of asbestos other than crocidolite or mixtures with a basis of asbestos other than crocidolite.
6813.20.00	Friction material & articles thereof, containing asbestos.
6813.81.00	Brake linings and pads not containing asbestos.
6813.89.00	Friction material & articles thereof with a basis of mineral substances (other than asbestos) or of cellulose, nesoi.
6814.10.00	Agglomerated or reconstituted mica, in plates, sheets and strips, whether or not on a support.
6814.90.00	Worked mica and articles of mica, nesoi, whether or not on a support of paper, paperboard or other materials.
6815.10.01	Nonelectrical articles of graphite or other carbon.
6815.20.00	Articles of peat, nesoi.
6815.91.00	Articles containing magnesoite, dolomite or chromite, nesoi.
6815.99.20	Talc, steatite and soapstone, cut or sawn, or in blanks, crayons, cubes, disks or other forms.
6815.99.40	Articles of stone or of other mineral substances (including carbon fibers & articles thereof), nesoi.
6901.00.00	Siliceous fossil meal or earth bricks, blocks, tiles and other ceramic goods.
6902.10.10	Refractory bricks of magnesoite, containing by weight o/50% MgO.
6902.10.50	Refractory bricks, blocks, tiles and similar goods containing by weight o/50% MgO, CaO, or Cr2O3.
6902.20.10	Refractory bricks containing by weight o/50% alumina (Al2O2) or silica (SiO2) or mixtures or compounds thereof.
6902.20.50	Refractory blocks, tiles & similar goods (o/than bricks), cont. by wt. o/50% alumina (Al2O2) or silica (SiO2) or mixtures thereof.
6902.90.10	Refractory bricks, nesoi.
6902.90.50	Refractory blocks, tiles & similar goods (other than bricks), nesoi.
6903.10.00	Refractory ceramic goods (o/than of siliceous fossil meals or earths), nesoi, cont. by wt. o/50% graphite or o/forms or mix. of carbon.
6903.20.00	Refractory ceramic goods (o/than of siliceous fossil meals or earths), nesoi, cont. by wt. o/50% alumina or mix. or comp. of Al2O3 & SiO3.
6903.90.00	Refractory ceramic goods (o/than of siliceous fossil meals or earths), nesoi.
6904.10.00	Ceramic building bricks (o/than refractory bricks).
6904.90.00	Ceramic flooring blocks, support or filler tiles and the like (other than bricks).
6905.10.00	Ceramic roofing tiles.
6905.90.00	Ceramic chimney pots, cowls, chimney liners, architectural ornaments and other construction goods.
6906.00.00	Ceramic pipes, conduits, guttering and pipe fittings.
6907.21.10	Unglazed ceramic tiles, other than those of subheading 6907.30 and 6907.40, of H2O absorp coeff by wt <=0.5%.
6907.21.20	Glazed ceramic tiles having <=3229 tiles per m2, surf area in sq w/side <7cm, H2O absorp coeff by wt <=0.5%.
6907.21.30	Glazed ceramic tiles having surface area <38.7cm2, surf area in sq w/side <7cm, of H2O absorp coeff by wt <=0.5%.
6907.21.40	Glazed ceramic tiles having surface area >=38.7cm2, , surf area in sq w/side <7cm, of a H2O absorp coeff by wt <=0.5%.
6907.21.90	Glazed ceramic tiles nesoi, of a H2O absorp coeff by wt <=0.5%.
6907.22.10	Unglazed ceramic tiles, other than those of subheading 6907.30 and 6907.40, of H2O absorp coeff by wt exceeding 0.5% but not exceeding 10%.
6907.22.20	Glazed ceramic tiles having <=3229 tiles per m2, surf area in sq w/side <7 cm, H2O absorp coeff by wt exceeding 0.5% but not exceeding 10%.
6907.22.30	Glazed ceramic tiles having surface area <38.7 cm2, surf area in sq w/side <7 cm, of H2O absorp coeff by wt exceeding 0.5% but not exceeding 10%.
6907.22.40	Glazed ceramic tiles having surface area >=38.7 cm2, , surf area in sq w/side <7 cm, of a H2O absorp coeff by wt exceeding 0.5% but not exceeding 10%.
6907.22.90	Glazed ceramic tiles nesoi, of a H2O absorp coeff by wt exceeding 0.5% but not exceeding 10%.
6907.23.10	Unglazed ceramic tiles, other than those of subheading 6907.30 and 6907.40, of H2O absorp coeff by wt >10%.
6907.23.20	Glazed ceramic tiles having <=3229 tiles per m2, surf area in sq w/side <7 cm, H2O absorp coeff by wt >10%.
6907.23.30	Glazed ceramic tiles having surface area <38.7 cm2, surf area in sq w/side <7 cm, of H2O absorp coeff by wt >10%.
6907.23.40	Glazed ceramic tiles having surface area >=38.7 cm2, surf area in sq w/side <7 cm, of a H2O absorp coeff by wt >10%.
6907.23.90	Glazed ceramic tiles nesoi, of a H2O absorp coeff by wt >10%.
6907.30.10	Unglazed ceramic mosaic cubes, o/t subheading 6907.40.
6907.30.20	Glazed ceramic mosaic cubes having <=3229 tiles per m2, surf area in sq w/side <7 cm.
6907.30.30	Glazed ceramic mosaic cubes having surface area <38.7 cm2, surf area in sq w/side <7 cm.
6907.30.40	Glazed ceramic mosaic cubes having surface area >=38.7 cm2, surf area in sq w/side <7 cm.
6907.30.90	Glazed ceramic mosaic cubes nesoi, o/t subheading 6907.40.
6907.40.10	Unglazed finishing ceramics.
6907.40.20	Glazed finishing ceramics having <=3229 tiles per m2, surf area in sq w/side <7 cm.
6907.40.30	Glazed finishing ceramics having surface area <38.7 cm2, surf area in sq w/side <7 cm.
6907.40.40	Glazed finishing ceramics having surface area >=38.7 cm2, surf area in sq w/side <7 cm.
6907.40.90	Glazed finishing ceramics nesoi.
6909.11.20	Porcelain or china ceramic machinery parts.
6909.11.40	Porcelain or china ceramic wares for laboratory, chemical or other technical uses (other than machinery parts), nesoi.

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HTSUS subheading	Product description
6909.12.00	Ceramic wares (o/than of porcelain or china) for laboratory, chemical or technical uses, w/hardness equivalent to 9 or more on Mohs scale.
6909.19.10	Ceramic ferrite core memories.
6909.19.50	Ceramic wares for laboratory, chemical or other technical uses (o/than of porcelain or china), nesoi.
6909.90.00	Ceramic troughs, tubes & siml. receptacles for agriculture; ceramic pots, jars, & siml. arts. for conveyance or packing of goods.
6914.10.40	Porcelain or china ceramic ferrules, n/o 3 mm diam or 25 mm long, w/fiber channel open. and/or ceramic mating sleeves of Al2O3 or zirconia.
6914.10.80	Porcelain or china arts. (o/than tableware/kitchenware/household & ornament. arts), nesoi.
6914.90.41	Ceramic (o/porcelain or china) ferrules, n/o 3 mm or 25 mm long, w/fiber channel open. and/or ceramic mating of sleeves of Al2O3 or zirconia.
6914.90.80	Ceramic (o/than porcelain or china) arts. (o/than tableware/kitchenware/household & ornament. arts), nesoi.
7001.00.10	Glass in the mass of fused quartz or other fused silica.
7001.00.20	Glass in the mass (other than of fused quartz or other fused silica).
7001.00.50	Cullet and other waste and scrap of glass.
7002.10.10	Glass in balls (o/than microspheres of heading 7018), unworked, n/o 6 mm in diameter.
7002.10.20	Glass in balls (o/than microspheres of heading 7018), unworked, over 6 mm in diameter.
7002.20.50	Glass rods (o/than of fused quartz or other fused silica), unworked.
7002.31.00	Glass tubes of fused quartz or other fused silica, unworked.
7002.32.00	Glass tubes (o/than fused quartz/silica), w/linear coefficient of expansion n/o 5x10–6 per Kelvin in range of 0–300 degrees C, unworked.
7002.39.00	Glass tubes (o/than fused quartz/silica), nesoi, unworked.
7003.12.00	Cast or rolled glass, in nonwired sheets, colored thru the mass, opacified, flashed or w/absorbent, reflect. or non-reflect.layer, not wkd.
7003.19.00	Cast or rolled glass, in nonwired sheets, n/colored thru the mass, opacified, flashed, etc. & not further worked.
7003.20.00	Cast or rolled glass, in wired sheets.
7003.30.00	Cast or rolled glass profiles.
7004.20.10	Drawn or blown glass, in sheets, w/absorbent, reflecting or non-reflecting layer, n/furth. wkd.
7004.20.20	Drawn or blown glass, in rect. sheets, colored thru the mass, etc., w/o absorbent, reflecting or non-reflect. layer, n/furth wkd.
7004.20.50	Drawn or blown glass, in sheets (o/than rect.), colored thru the mass, opacified, flashed, w/o absorbent, etc. layer, n/furth. wkd.
7004.90.05	Drawn or blown glass, nesoi, in rectangular sheets, w/thick. n/o 1.5 mm & n/o 0.26 m2 in area, n/further wkd.
7004.90.10	Drawn or blown glass, nesoi, in rectangular sheets, w/thick. n/o 1.5 mm & over 0.26 m2 in area, n/further wkd.
7004.90.15	Drawn or blown glass, nesoi, in rectangular sheets, w/thick. over 1.5 but n/o 2 mm & n/o 0.26 m2 in area, n/further wkd.
7004.90.20	Drawn or blown glass, nesoi, in rectangular sheets, w/thick. over 1.5 but n/o 2 mm & over 0.26 m2 in area, n/further wkd.
7004.90.25	Drawn or blown glass, nesoi, in rectangular sheets, w/thick. over 2 but n/o 3.5 mm, not further wkd.
7004.90.30	Drawn or blown glass, nesoi, in rectangular sheets, w/thick. over 3.5 mm & n/o 0.65 m2 in area, not further wkd.
7004.90.40	Drawn or blown glass, nesoi, in rectangular sheets, w/thick. over 3.5 mm & over 0.65 m2 in area, not further wkd.
7004.90.50	Drawn or blown glass, nesoi, in sheets (other than rectangular), nesoi.
7005.10.40	Surface ground or polished glass, w/absorb. or reflect. layer, n/o 1.2 mm thick & n/o 0.8 M2 in area, suitable for use in LCD's.
7005.10.80	Float glass & surface ground or polished glass, nonwired, in sheets, w/absorb. or reflect. layer, nesoi, not worked.
7005.21.10	Float glass & surface ground or polished glass, nonwired, in sheets, colored thru mass, opacified, flashed, under 10 mm thick, not worked.
7005.21.20	Float glass & surface ground or polished glass, nonwired, in sheets, colored thru mass, opacified, flashed, 10 mm or more thick, not worked.
7005.29.04	Float glass & surface ground or polished glass, in sheets, less than 10 mm thick, w/area n/o 0.65 M2 & for liquid crystal displays.
7005.29.08	Float glass & surface ground or polished glass, nonwired, in sheets, less than 10 mm thick, w/area n/o 0.65 M2 & not for LCD's.
7005.29.14	Float glass & surface ground or polished glass, in sheets, less than 10 mm thick, w/area o/0.65 M2 & for liquid crystal displays.
7005.29.18	Float glass & surface ground or polished glass, nonwired, in sheets, less than 10 mm thick, w/area over 0.65 M2 & not for LCD's.
7005.29.25	Float glass & surface ground or polished glass, nonwired, in sheets, 10 mm or more in thickness.
7005.30.00	Float glass & surface ground or polished glass, wired, in sheets.
7006.00.10	Glass of heading 7003–7005 in strips n/o 15.2 cm wide & o/2 mm thick, w/longitudinal edges ground or smoothed.
7006.00.20	Drawn or blown glass, not containing wire netting & not surface ground or polished, but bent, edged or otherwise worked but not framed.
7006.00.40	Glass of heading 7003–7005, bent, edgeworked, engraved, drilled, enameled or otherwise worked, but not framed or fitted, nesoi.
7007.11.00	Toughened (tempered) safety glass, of size and shape suitable for incorporation in vehicles, aircraft, spacecraft or vessels.

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HTSUS subheading	Product description
7007.19.00	Toughened (tempered) safety glass, not of size or shape suitable for incorporation in vehicles, aircraft, spacecraft or vessels.
7007.21.10	Laminated safety glass, windshields, of size and shape suitable for incorporation in vehicles, aircraft, spacecraft or vessels.
7007.21.50	Laminated safety glass (o/than windshields), of size and shape suitable for incorporation in vehicles, aircraft, spacecraft or vessels.
7007.29.00	Laminated safety glass, not of size or shape suitable for incorporation in vehicles, aircraft, spacecraft or vessels.
7008.00.00	Glass multiple-walled insulating units.
7009.10.00	Glass rearview mirrors for vehicles.
7009.91.10	Glass mirrors (o/than rearview mirrors), unframed, n/o 929 cm2 in reflecting area.
7009.91.50	Glass mirrors (o/than rearview mirrors), unframed, over 929 cm2 in reflecting area.
7009.92.10	Glass mirrors (o/than rearview mirrors), framed, n/o 929 cm2 in reflecting area.
7009.92.50	Glass mirrors (o/than rearview mirrors), framed, over 929 cm2 in reflecting area.
7010.10.00	Glass ampoules used for the conveyance or packing of goods.
7010.20.20	Glass stoppers, lids and other closures produced by automatic machine.
7010.20.30	Glass stoppers, lids and other closures not produced by automatic machine.
7010.90.05	Glass serum bottles, vials and other pharmaceutical containers.
7010.90.20	Glass containers for conveyance/packing perfume/toilet preps & containers with/designed for ground glass stopper, made by automatic machine.
7010.90.30	Glass containers for convey/pack perfume/toilet preps & containers with/designed for ground glass stopper, not made by automatic machine.
7010.90.50	Glass carboys, bottles, jars, pots, flasks, & other containers for conveyance/packing of goods (w/wo closures) & preserving jars, nesoi.
7011.10.10	Glass bulbs (w/o fittings) for electric incandescent lamps.
7011.10.50	Glass envelopes, open, & glass parts thereof, for electric lighting (other than bulbs for incandescent lamps), without fittings.
7011.20.10	Glass cones (w/o fittings) for cathode-ray tubes.
7011.20.45	Monochrome glass envelopes (open & w/o fittings), certified by importer for actual use in computer or graphic display CRTs.
7011.20.85	Glass envelopes (open & w/o fittings) & glass parts thereof, nesoi, for cathode-ray tubes.
7011.90.00	Glass envelopes (open & w/o fittings) & glass parts thereof (o/than for electric lighting or cathode-ray tubes.
7014.00.10	Glass lens blanks (other than for spectacles), not optically worked.
7014.00.20	Glass optical elements (other than lens blanks), not optically worked.
7014.00.30	Glass lenses and filters (other than optical elements) and parts thereof, for signaling purposes, not optically worked.
7014.00.50	Signaling glassware, nesoi, not optically worked.
7016.10.00	Glass cubes and other glass smallwares, whether or not on a backing, for mosaics or similar decorative purposes.
7016.90.10	Paving blocks, slabs, bricks, squares, tiles & other arts. of pressed or molded glass, for building or construction purposes.
7016.90.50	Leaded glass windows & the like; multicellular or foam glass in blocks, panels, plates, shells or similar forms.
7017.10.30	Fused quartz reactor tubes and holders designed for insertion into diffusion and oxidation furnaces for semiconductor wafer production.
7017.10.60	Laboratory, hygienic or pharmaceutical glassware, whether or not calibrated or graduated, of fused quartz or other fused silica, nesoi.
7017.20.00	Laboratory, hygienic or pharmaceutical glassware, whether or not calibrated or graduated, of glass w/low coefficient of heat expansion.
7017.90.10	Glass microscope slides and micro cover glasses.
7017.90.50	Laboratory, hygienic or pharmaceutical glassware, whether or not calibrated, nesoi, of glass, nesoi.
7018.10.10	Glass imitation pearls and pearl beads of all shapes and colors, whether or not drilled, not strung and not set.
7018.10.20	Glass imitation precious or semiprecious stones (except beads).
7018.10.50	Glass beads (o/than imitat. pearls) & similar glass smallwares, nesoi.
7018.20.00	Glass microspheres not exceeding 1 mm in diameter.
7018.90.50	Articles (o/than imitation jewellry) of glass beads, pearls and imitation stones and statuettes & ornaments of lamp-worked glass.
7019.11.00	Glass fiber chopped strands of a length not more than 50 mm.
7019.12.00	Glass fiber rovings.
7019.19.05	Fiberglass rubber reinforcing yarn, not color, of electrically nonconductive continuous filament 9 to 11 microns diam & impreg for adhesion to.
7019.19.15	Glass fiber yarns, not colored, other than fiberglass rubber reinforcing yarn.
7019.19.24	Fiberglass rubber reinforce yarn, color, of electrically nonconduct. continuous filament 9 to 11 microns diam & impreg for adhesion to polym.
7019.19.28	Glass fiber yarns, colored, other than fiberglass rubber reinforcing yarn.
7019.19.30	Glass fiber chopped strands of a length more than 50 mm.
7019.19.70	Fiberglass rubber reinforce cord, of electrically nonconduct. contin. filament 9 to 11 microns diam & impreg for adhesion to polymeric comp.
7019.19.90	Glass fiber slivers.

ANNEX—Continued

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HTSUS subheading	Product description
7019.31.00	Nonwoven glass fiber mats.
7019.32.00	Nonwoven glass fiber in thin sheets (voiles).
7019.39.10	Nonwoven glass wool insulation products.
7019.39.50	Nonwoven glass fiber webs, mattresses, boards and similar articles of nonwoven glass fibers, nesoi.
7019.40.05	Woven fiberglass tire cord fabric of rovings, n/o 30 cm wide, of elect. nonconductive cont. filament 9–11 micron diam & impreg for adhesion.
7019.40.15	Woven glass fiber fabric of rovings, n/o 30 cm in width, other than fiberglass tire cord fabric.
7019.40.30	Woven fiberglass tire cord fabric of roving, o/30 cm wide, n/color, of elect. nonconduct. contin. fil. 9–11 micron diam & impreg for adhesion.
7019.40.40	Woven glass fiber fabric of rovings, o/30 cm wide, not colored, other than fiberglass tire cord fabric.
7019.40.70	Woven fiberglass tire cord fabric of roving, o/30 cm wide, color, of elect nonconduct. cont. filament 9–11 micron diam & impreg for adhesion.
7019.40.90	Woven glass fiber fabrics of rovings, o/30 cm wide, colored, other than fiberglass tire cord fabric.
7019.51.10	Woven fiberglass tire cord fabric, n/roving, n/o 30 cm wide, of electrical nonconduct. contin. filament 9–11 micron diam & impreg for adhesion.
7019.51.90	Woven glass fiber fabric, not of rovings, n/o 30 cm wide, other than fiberglass tire cord fabric.
7019.52.30	Woven fiberglass tire cord fabric, n/rov, pl. weave, o/30 cm wide & less than 250 g/m2, w/no single yarn o/136 tex, n/colrd, of elect nonconduct.
7019.52.40	Woven glass fiber woven fabric, not colored, not of rovings, plain weave, o/30 cm wide, less than 250 g/m2, w/no single yarn o/136 tex, nesoi.
7019.52.70	Woven fiberglass tire cord fabric, n/rov, color, pl. weave, o/30 cm wide & less thna 250 g/m2, w/no single yarn o/136 tex, of elect nonconduct.
7019.52.90	Woven glass fiber fabric, not colored, not rovings, plain weave, o/30 cm wide & less than 250 g/m2, w/no single yarn not more than 136 tex, nesoi.
7019.59.30	Woven fiberglass tire cord fabric, n/colored, nesoi, o/30 cm wide, of elect. noncond contin filament 9–11 micron diam and impreg for adhesion.
7019.59.40	Woven glass fiber woven fabrics, not colored, nesoi, o/30 cm wide, nesoi.
7019.59.70	Woven fiberglass tire cord fabric, colored, nesoi, o/30 cm wide, of elect. nonconduct contin filaments 9–11 micron diam & impreg for adhesion.
7019.59.90	Woven glass fiber woven fabrics, colored, nesoi, o/30 cm wide, nesoi.
7019.90.10	Woven glass fiber articles (other than fabrics), nesoi.
7019.90.50	Glass fibers (including glass wool), nesoi, and articles thereof, nesoi.
7020.00.30	Quartz reactor tubes and holders designed for insertion into diffusion and oxidation furnaces for semiconductor wafer production, nesoi.
7020.00.40	Glass inners for vacuum flasks or for other vacuum vessels.
7020.00.60	Articles of glass, not elsewhere specified or included.
7102.21.10	Miners' diamonds, unworked or simply sawn, cleaved or bruted.
7102.21.30	Industrial diamonds (other than miners' diamonds), simply sawn, cleaved or bruted.
7102.21.40	Industrial diamonds (other than miners' diamonds), unworked.
7102.29.00	Industrial diamonds, worked, but not mounted or set.
7105.10.00	Diamond dust and powder.
7105.90.00	Natural or synthetic precious (except diamond) or semiprecious stone dust and powder.
7106.10.00	Silver powder.
7106.91.10	Silver bullion and dore.
7106.91.50	Silver, unwrought (o/than bullion and dore).
7106.92.10	Silver (incl. silver plate w gold/platinum), semimanufacture, rectangular/near rectangular shape, 99.5% or > pure, marked only by wgt/identity.
7106.92.50	Silver (including silver plated with gold or platinum), in semimanufactured form, nesoi.
7107.00.00	Base metals clad with silver, not further worked than semimanufactured.
7108.11.00	Gold powder.
7108.12.10	Gold, nonmonetary, bullion and dore.
7108.12.50	Gold, nonmonetary, unwrought (o/than gold bullion and dore).
7108.13.10	Gold leaf.
7108.13.55	Gold (incl. gold plated w platinum), not money, semimanufacture, rectangle/near rectangular shape, 99.5% or > pure, marked only by wgt/identity.
7108.13.70	Gold (including gold plated with platinum), nonmonetary, in semimanufactured forms (except gold leaf), nesoi.
7108.20.00	Gold, monetary, in unwrought, semimanufactured or powder form.
7109.00.00	Base metals or silver clad with gold, but not further worked than semimanufactured.
7110.11.00	Platinum, unwrought or in powder form.
7110.19.00	Platinum, in semimanufactured forms.
7110.21.00	Palladium, unwrought or in powder form.
7110.29.00	Palladium, in semimanufactured forms.
7110.31.00	Rhodium, unwrought or in powder form.
7110.39.00	Rhodium, in semimanufactured forms.
7110.41.00	Iridium, osmium and ruthenium, unwrought or in powder form.
7110.49.00	Iridium, osmium and ruthenium, in semimanufactured forms.
7111.00.00	Base metals, silver or gold clad with platinum, not further worked than semimanufactured.

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HTSUS subheading	Product description
7112.30.00	Ash containing precious metals or precious metal compounds.
7112.91.00	Gold waste and scrap, including metal clad with gold but excluding sweepings containing other precious metals.
7112.92.00	Platinum waste and scrap, including metal clad with platinum but excluding sweepings containing other precious metals.
7112.99.00	Precious metal (other than of gold or platinum) waste and scrap, including metal clad with precious metals, nesoi.
7114.11.10	Knives with handles of silver, whether or not plated or clad with other precious metal.
7114.11.20	Forks with handles of silver, whether or not plated or clad with other precious metal.
7114.11.30	Spoons and ladles with handles of sterling silver.
7114.11.40	Spoons and ladles (o/than w/sterling silver handles) of silver, whether or not plated or clad w/other precious metal.
7114.11.45	Sets of two or more knives or forks w/silver handles or spoons and ladles of silver, whether or not clad or plated w/prec.metal.
7114.11.50	Tableware, nesoi, of sterling silver.
7114.11.60	Articles of silver nesoi, for household, table or kitchen use, toilet and sanitary wares, including parts thereof.
7114.11.70	Silversmiths' wares (other than for household/table/kitchen use & toilet and sanitary wares) of silver, nesoi.
7114.19.00	Precious metal (o/than silver) articles, nesoi, whether or not plated or clad with other precious metal, nesoi.
7114.20.00	Goldsmiths' or silversmiths' wares of base metal clad with precious metal.
7115.10.00	Platinum catalysts in the form of wire cloth or grill.
7115.90.05	Precious metal articles, incl. metal clad w/precious metal,rectangle/near rectangle shape,99.5%/or pure,marked only by wgt/identity.
7115.90.30	Gold (including metal clad with gold) articles (o/than jewellry or goldsmiths' wares), nesoi.
7115.90.40	Silver (including metal clad with silver) articles (o/than jewellry or silversmiths' wares), nesoi.
7115.90.60	Articles of precious metal (o/than gold or silver), including metal clad with precious metal, nesoi.
7201.10.00	Nonalloy pig iron containing by weight 0.5 percent or less of phosphorus.
7201.20.00	Nonalloy pig iron containing by weight more than 0.5 percent of phosphorus.
7201.50.30	Alloy pig iron in blocks or other primary forms.
7201.50.60	Spiegeleisen in blocks or other primary forms.
7202.11.10	Ferromanganese containing by weight more than 2 percent but not more than 4 percent of carbon.
7202.11.50	Ferromanganese containing by weight more than 4 percent of carbon.
7202.19.10	Ferromanganese containing by weight not more than 1 percent of carbon.
7202.19.50	Ferromanganese containing by weight more than 1 percent but not more than 2 percent of carbon.
7202.21.10	Ferrosilicon containing by weight more than 55% but not more than 80% of silicon and more than 3% of calcium.
7202.21.50	Ferrosilicon containing by weight more than 55% but not more than 80% of silicon, nesoi.
7202.21.75	Ferrosilicon containing by weight more than 80% but not more than 90% of silicon.
7202.21.90	Ferrosilicon containing by weight more than 90% of silicon.
7202.29.00	Ferrosilicon containing by weight 55% or less of silicon.
7202.30.00	Ferrosilicon manganese.
7202.41.00	Ferrochromium containing by weight more than 4 percent of carbon.
7202.49.10	Ferrochromium containing by weight more than 3 percent but not more than 4 percent of carbon.
7202.49.50	Ferrochromium containing by weight 3 percent or less of carbon.
7202.50.00	Ferrosilicon chromium.
7202.60.00	Ferronickel.
7202.70.00	Ferromolybdenum.
7202.80.00	Ferrotungsten and ferrosilicon tungsten.
7202.91.00	Ferrotitanium and ferrosilicon titanium.
7202.92.00	Ferrovanadium.
7202.93.40	Ferroniobium containing by weight less than 0.02 percent of phosphorus or sulfur or less than 0.4 percent of silicon.
7202.93.80	Ferroniobium, nesoi.
7202.99.10	Ferrozirconium.
7202.99.20	Calcium silicon ferroalloys.
7202.99.80	Ferroalloys nesoi.
7203.10.00	Ferrous products obtained by direct reduction of iron ore.
7203.90.00	Spongy ferrous products, in lumps, pellets or like forms; iron of a minimum purity by weight of 99.94% in lumps, pellets or like forms.
7204.10.00	Cast iron waste and scrap.
7204.21.00	Stainless steel waste and scrap.
7204.29.00	Alloy steel (o/than stainless) waste and scrap.
7204.30.00	Tinned iron or steel waste and scrap.
7204.41.00	Ferrous turnings, shavings, chips, milling wastes, sawdust, fillings, trimmings and stampings, whether or not in bundles.
7204.49.00	Ferrous waste and scrap nesoi.
7204.50.00	Iron or steel remelting scrap ingots.
7205.10.00	Pig iron, spiegeleisen, and iron or steel granules.
7205.21.00	Alloy steel powders.
7205.29.00	Pig iron, spiegeleisen, and iron or steel (o/than alloy steel) powders.

ANNEX—Continued

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HTSUS subheading	Product description
7216.61.00	Iron/nonalloy steel, angles, shapes & sections nesoi, not further worked than cold-formed or cold-finished, from flat-rolled products.
7216.69.00	Iron/nonalloy steel, angles, shapes & sections nesoi, not further worked than cold-formed or cold-finished, not from flat-rolled products.
7216.91.00	Iron/nonalloy steel, angle, shapes & sections nesoi, cold-formed/cold-finished from flat-rolled prod. & furth wkd th/cold-formed/cold-finish.
7301.20.10	Iron or nonalloy steel, angles, shapes and sections, welded.
7301.20.50	Alloy steel, angles, shapes and sections of alloy steel, welded.
7302.30.00	Iron or steel, switch blades, crossing frogs, point rods and other crossing pieces, for jointing or fixing rails.
7303.00.00	Cast iron, tubes, pipes and hollow profiles.
7307.11.00	Cast nonmalleable iron, fittings for tubes or pipes.
7307.19.30	Cast ductile iron or steel, fittings for tubes or pipes.
7307.19.90	Cast iron or steel, fittings for tubes or pipes, nesoi.
7307.21.10	Stainless steel, flanges for tubes/pipes, forged, not machined, not tooled and not otherwise processed after forging.
7307.21.50	Stainless steel, not cast, flanges for tubes/pipes, not forged or forged and machined, tooled and otherwise processed after forging.
7307.22.10	Stainless steel, not cast, threaded sleeves (couplings) for tubes/pipes.
7307.22.50	Stainless steel, not cast, threaded elbow and bends for tubes/pipes.
7307.23.00	Stainless steel, not cast, butt welding fittings for tubes/pipes.
7307.29.00	Stainless steel, not cast, fittings for tubes/pipes, nesoi.
7307.91.10	Iron or nonalloy steel, flanges for tubes/pipes, forged, not machined, not tooled and not otherwise processed after forging.
7307.91.30	Alloy steel (o/than stainless), not cast, flanges for tubes/pipes, forged, not machined/tooled and not otherwise processed after forging.
7307.91.50	Iron or steel (o/than stainless), not cast, flanges for tubes/pipes, not forged or forged and machined, tooled & processed after forging.
7307.92.30	Iron or steel (o/than stainless), not cast, threaded sleeves (couplings) for tubes/pipes.
7307.92.90	Iron or steel (o/than stainless), not cast, threaded elbow and bends for tubes/pipes.
7307.93.30	Iron or nonalloy steel, not cast, butt welding fittings for tubes/pipes, w/inside diam. less than 360 mm.
7307.93.60	Alloy steel (o/than stainless), not cast, butt welding fittings for tubes/pipes, w/inside diam. less than 360 mm.
7307.93.90	Iron or alloy steel (o/than stainless), not cast, butt welding fittings for tubes/pipes, w/inside diam. 360 mm or more.
7307.99.10	Iron or nonalloy steel, fittings for tubes/pipes, nesoi, forged, not machined, not tooled and not otherwise processed after forging.
7307.99.30	Alloy steel (o/than stainless), fittings for tubes/pipes, nesoi, forged, not machined/tooled and not otherwise processed after forging.
7307.99.50	Iron/steel (o/than stainless), n/cast, fittings for tubes/pipes, nesoi, not forged or forged and machined, tooled & processed after forging.
7308.30.10	Stainless steel, doors, windows and their frames, and thresholds for doors.
7308.30.50	Iron or steel (o/than stainless), doors, windows and their frames, and thresholds for doors.
7308.40.00	Iron or steel, props and similar equipment for scaffolding, shuttering or pit-propping.
7309.00.00	Iron/steel, reservoirs, tanks, vats, siml. contain., for any material (o/than compress./liq.gas), w/capacity o/300 l, n/fit. w/mech/thermal.
7310.10.00	Iron/steel, tanks, casks, drums, cans, boxes & siml. cont. for any material (o/than compress./liq.gas), w/cap. of 50+ l but n/o 300 l.
7310.21.00	Iron/steel, cans for any material (o/compressed/liq. gas), closed by soldering or crimping, w/cap. less than 50 l.
7310.29.00	Iron/steel, cans for any material (o/compressed/liq. gas), n/closed by soldering or crimping, w/cap. less than 50 l.
7311.00.00	Iron/steel, containers for compressed or liquefied gas.
7312.10.05	Stainless steel, stranded wire, not elect. insulated, fitted with fittings or made up into articles.
7312.10.10	Stainless steel, stranded wire, not elect. insulated, not fitted with fittings or made up into articles.
7312.10.20	Iron or steel (o/than stainless), stranded wire, not elect. insul., fitted with fittings or made up into articles.
7312.10.30	Iron or steel (o/than stainless), stranded wire, not elect. insul., not fitted with fittings or made up into articles.
7312.10.50	Stainless steel, ropes, cables and cordage (o/than stranded wire), not elect. insul., fitted with fittings or made up into articles.
7312.10.60	Stainless steel, ropes, cables and cordage (o/than stranded wire), not elect. insul., not fitted with fittings or made up into articles.
7312.10.70	Iron/steel (o/stainless), ropes, cables & cordage (o/than stranded wire), n/elect. insul., fitted with fittings or made up into articles.
7312.10.80	Iron/steel (o/stainless), ropes, cables & cordage, of brass plated wire (o/than stranded wire), n/elect. insul., w/o fittings or arts.
7312.10.90	Iron/steel (o/stainless), ropes, cables & cordage, o/th of brass plate wire (o/than stranded wire), n/elect. insul., w/o fittings etc.
7312.90.00	Iron/steel (o/stainless), plaited bands, slings and the like, not electrically insulated.
7313.00.00	Iron/steel, barbed wire; iron/steel, twisted hoop or single flat wire and loosely twisted double wire, of a kind used for fencing.

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HTSUS subheading	Product description
7314.12.10	Stainless steel, woven cloth endless bands for machinery, w/meshes not finer than 12 wires to the lineal cm in warp or filling.
7314.12.20	Stainless steel, woven cloth endless bands for machinery, w/meshes finer than 12 but n/finer than 36 wires to the lineal cm warp or filling.
7314.12.30	Stainless steel, Fourdrinier wires for papermaking machines w/94 or more wires to the lineal cm in warp or filling.
7314.12.60	Stainless steel, Fourdrinier wires for papermaking machines w/36 to 93 wires to the lineal cm in warp or filling.
7314.12.90	Stainless steel, woven cloth endless bands for machinery, nesoi, w/meshes finer than 36 wires to the lineal cm in warp or filling.
7314.14.10	Stainless steel, woven cloth (o/than endless bands for machinery), w/meshes not finer than 12 wires to the lineal cm in warp or filling.
7314.14.20	Stainless steel, woven cloth (o/than endless bands for machinery), w/meshes finer 12 but n/finer 36 wires to the lineal cm warp/filling.
7314.14.30	Stainless steel, Fourdrinier wires (o/than endless bands) for papermaking machines,w/meshes 94 or more wire to lineal cm warp/filling.
7314.14.60	Stainless steel, Fourdrinier wires (o/than endless bands) for papermaking machines, w/meshes 36 to 93 wires to the lineal cm warp/filling.
7314.14.90	Stainless steel woven cloth (other than endless band for machinery), nesoi, w/meshes finer than 36 wires to the lineal cm in warp or filling.
7314.19.01	Iron or steel (o/than stainless), woven cloth.
7314.20.00	Iron/steel, grill, netting & fencing, of wire w/maximum x-sect. dimension 3 mm or more, welded at intersection, w/ mesh size 100 cm2 or more.
7314.31.10	Iron/steel, fencing, of wire, welded at the intersection, plated or coated with zinc, whether or not covered w/plastic material.
7314.31.50	Iron/steel, grill and netting, of wire, welded at the intersection, plated or coated with zinc, nesoi.
7314.39.00	Iron/steel, grill, netting and fencing, of wire, welded at the intersection, not plated or coated with zinc.
7314.41.00	Iron/steel, grill, netting and fencing, of wire, not welded at the intersection, plated or coated with zinc.
7314.42.00	Iron/steel, grill, netting and fencing, of wire, not welded at the intersection, coated with plastics.
7314.49.30	Iron/steel, grill, netting and fencing, of wire, not welded at the intersection, not cut to shape.
7314.49.60	Iron/steel, grill, netting and fencing, of wire, not welded at the intersection, cut to shape.
7314.50.00	Iron or steel, expanded metal.
7315.11.00	Iron or steel, roller chain.
7315.12.00	Iron or steel, articulated link chain (other than roller chain).
7315.19.00	Iron or steel, parts of articulated link chain.
7315.20.10	Iron or steel, skid chain, not over 8 mm in diameter.
7315.20.50	Iron or steel, skid chain, over 8 mm in diameter.
7315.81.00	Iron or steel, stud link chain.
7315.82.10	Alloy steel, welded link chain, not over 10 mm in diameter.
7315.82.30	Alloy steel, welded link chain, over 10 mm in diameter.
7315.82.50	Iron or nonalloy steel, welded link chain, not over 10 mm in diameter.
7315.82.70	Iron or nonalloy steel, welded link chain, over 10 mm in diameter.
7315.89.10	Iron or steel, chain nesoi, with links of essentially round cross section, not over 8 mm in diameter.
7315.89.30	Iron or steel, chain nesoi, with links of essentially round cross sections, over 8 mm in diameter.
7315.89.50	Iron or steel, chain nesoi.
7315.90.00	Iron or steel, parts of chain (other than articulated link chain).
7316.00.00	Iron or steel, anchors, grapnels and parts thereof.
7317.00.20	Iron or steel, nails, tacks, corrugated nails, staples & similar arts., not threaded, suitable for use in powder-actuated hand tools.
7317.00.30	Iron or steel, nails, tacks, corrugated nails, staples & similar arts., threaded, suitable for use in powder-actuated hand tools.
7317.00.55	Iron or steel, nails, tacks, corrugated nails, staples & similar arts., of one piece construction, made of round wire, nesoi.
7317.00.65	Iron or steel, nails, tacks, corrugated nails, staples & similar arts., of one piece construction, not made of round wire, nesoi.
7317.00.75	Iron or steel, nails, tacks, corrugated nails, staples & similar arts., of two or more pieces, nesoi.
7318.11.00	Iron or steel, coach screws.
7318.12.00	Iron or steel, wood screws (o/than coach screws).
7318.13.00	Iron or steel, screw hooks and screw rings.
7318.14.10	Iron or steel, self-tapping screws, w/shanks or threads less than 6 mm in diameter.
7318.14.50	Iron or steel, self-tapping screws, w/shanks or threads 6 mm or more in diameter.
7318.15.20	Iron or steel, bolts and bolts & their nuts or washers, imported in the same shipment.
7318.15.40	Iron or steel, machine screws (o/than cap screws), 9.5 mm or more in length and 3.2 mm in diameter.
7318.15.50	Iron or steel, threaded studs.
7318.15.60	Iron or steel, screws and bolts, nesoi, having shanks or threads less than 6 mm in diameter.
7318.15.80	Iron or steel, screws and bolts, nesoi, having shanks or threads 6 mm or more in diameter.
7318.19.00	Iron or steel, threaded articles similar to screws, bolts, nuts, coach screws & screw hooks, nesoi.
7318.21.00	Iron or steel, spring washers and other lock washers.
7318.22.00	Iron or steel, washers (o/than spring washers and other lock washers).

ANNEX—Continued

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HTSUS subheading	Product description
7318.23.00	Iron or steel, rivets.
7318.24.00	Iron or steel, cotters and cotter pins.
7318.29.00	Iron or steel, nonthreaded articles similar to rivets, cotters, cotter pins, washers and spring washers.
7320.10.30	Iron or steel, leaf springs & leaves therefore, to be used in motor vehicles having a G.V.W. not exceeding 4 metric tons.
7320.10.60	Iron or steel, leaf springs & leaves therefore, suitable for motor vehicle suspension (o/than for motor vehicles w/a G.V.W. o/4 metric tons).
7320.10.90	Iron or steel, leaf springs & leaves therefore, not suitable for motor vehicle suspension.
7320.90.10	Iron or steel, hairsprings.
7320.90.50	Iron or steel, springs (o/than leaf springs, helical springs or hairsprings).
7321.11.10	Iron or steel, portable non-electric domestic cooking appliances and plate warmers, for gas fuel or for both gas and other fuels.
7321.11.30	Iron or steel, nonportable non-electric domestic stoves or ranges, for gas fuel or for both gas and other fuels.
7321.11.60	Iron or steel, nonportable non-electric domestic cook. appl. (o/th stoves or ranges) & plate warmers, for gas fuel or both gas & other fuels.
7321.90.10	Iron/steel, cooking chambers for nonportable non-electric domestic stoves or ranges, for gas or for gas and other fuels.
7321.90.20	Iron/steel, top surface panels w/or w/o burners/controls for nonportable non-elect. domest. stoves or ranges, for gas or gas & other fuels.
7321.90.40	Iron/steel, door assmbly w/more than one of inner panel, out. panel, window, insul., for non-elect. stoves or ranges, for gas or gas & other.
7321.90.50	Iron/steel, parts of nonportable non-electric domestic stoves or ranges, nesoi, for gas fuel or for both gas and other fuels.
7321.90.60	Iron/steel, parts, of nonelectric domestic cooking and warming appliances, nesoi.
7322.11.00	Cast iron, non-electrically heated radiators and parts thereof, for central heating.
7322.19.00	Iron (o/than cast) or steel, non-electrically heated radiators and parts thereof, for central heating.
7322.90.00	Iron or steel, non-electrically heated air heaters and hot air distributors w/motor driven fan or blower and parts thereof.
7323.10.00	Iron or steel wool; iron or steel pot scourers and scouring or polishing pads, gloves and the like.
7323.99.90	Iron (o/th cast)/steel (o/th tinplate or stainless), table, kitchen (o/th cooking.) or o/household arts & part, n/coated/plated w/prec. metal.
7324.10.00	Stainless steel, sinks and wash basins.
7324.21.10	Cast iron, baths (whether or not enameled), coated or plated with precious metal.
7324.21.50	Cast iron, baths (whether or not enameled), not coated or plated with precious metal.
7324.90.00	Iron or steel, sanitary ware (o/than baths or stainless steel sinks and wash basins) and parts thereof.
7325.10.00	Nonmalleable cast iron, articles, nesoi.
7325.91.00	Iron or steel, cast grinding balls and similar articles for mills.
7325.99.10	Cast iron (o/than nonmalleable cast iron), articles nesoi.
7325.99.50	Steel, cast articles nesoi.
7326.11.00	Iron or steel, forged or stamped grinding balls and similar articles for mills.
7326.19.00	Iron or steel, articles forged or stamped but n/further worked, nesoi.
7326.20.00	Iron or steel, articles of wire, nesoi.
7326.90.10	Tinplate, articles nesoi.
7326.90.25	Iron or steel, cable or inner wire for caliper and cantilever brakes and casing therefore, whether or not cut to length.
7326.90.35	Iron or steel, containers of a kind normally carried on the person, in the pocket or in the handbag, nesoi.
7326.90.45	Iron or steel, horse and mule shoes.
7326.90.60	Iron or steel, articles nesoi, coated or plated with precious metal.
7326.90.86	Iron or steel, articles, nesoi.
7401.00.00	Copper mattes; cement copper (precipitated copper).
7402.00.00	Unrefined copper; copper anodes for electrolytic refining.
7403.11.00	Refined copper cathodes and sections of cathodes.
7403.12.00	Refined copper, wire bars.
7403.13.00	Refined copper, billets.
7403.19.00	Refined copper, unwrought articles nesoi.
7403.21.00	Copper-zinc base alloys (brass), unwrought nesoi.
7403.22.00	Copper-tin base alloys (bronze), unwrought nesoi.
7403.29.01	Copper alloys (o/than copper-zinc, copper-tin alloys), unwrought nesoi.
7404.00.30	Copper spent anodes; copper waste & scrap containing less than 94% by weight of copper.
7404.00.60	Copper, waste and scrap containing 94% or more by weight of copper.
7405.00.10	Copper master alloys, containing 5% or more but n/more than 15% by weight of phosphorus.
7405.00.60	Copper master alloys, not containing 5% or more but n/more than 15% by weight of phosphorus.
7406.10.00	Copper, powders of non-lamellar structure.
7406.20.00	Copper, powders of lamellar structure; copper flakes.
7407.10.15	Refined copper, hollow profiles.
7407.10.30	Refined copper, profiles (o/than hollow profiles).
7407.10.50	Refined copper, bars and rods.

ANNEX—Continued

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HTSUS subheading	Product description
7407.21.15	Copper-zinc base alloys (brass), hollow profiles.
7407.21.30	Copper-zinc base alloys (brass), profiles (o/than hollow profiles).
7407.21.50	Copper-zinc base alloys (brass), low fuming brazing rods.
7407.21.70	Copper-zinc base alloys (brass), bars & rods nesoi, having a rectangular cross section.
7407.21.90	Copper-zinc base alloys (brass), bars & rods nesoi, not having a rectangular cross section.
7407.29.16	Copper alloys , hollow profiles.
7407.29.34	Copper-nickel base alloys (cupro-nickel) or copper-nickel-zinc base alloys (nickel silver), profiles (o/than hollow profiles).
7407.29.38	Copper alloys (o/than cupro-nickel or nickel silver), profiles (o/than hollow profiles).
7407.29.40	Copper-nickel base alloys (cupro-nickel) or copper-nickel-zinc base alloys (nickel silver), bars & rods.
7407.29.50	Copper alloys (o/than brass, cupro-nickel or nickel silver), bars and rods.
7408.11.30	Refined copper, wire, w/maximum cross-sectional dimension over 9.5 mm.
7408.11.60	Refined copper, wire, w/maximum cross-sectional dimension over 6 mm but not over 9.5 mm.
7408.19.00	Refined copper, wire, w/maximum cross-sectional dimension of 6 mm or less.
7408.21.00	Copper-zinc base alloys (brass), wire.
7408.22.10	Copper-nickel base alloys (cupro-nickel) or copper-nickel-zinc base alloys (nickel silver), wire, coated or plated with metal.
7408.22.50	Copper-nickel base alloys (cupro-nickel) or copper-nickel-zinc base alloys (nickel silver), wire, not coated or plated w/metal.
7408.29.10	Copper alloys (o/than brass, cupro-nickel or nickel-silver), wire, coated or plated with metal.
7408.29.50	Copper alloys (o/than brass, cupro-nickel or nickel-silver), wire, not coated or plated with metal.
7409.11.10	Refined copper, plates, sheets and strip, in coils, with a thickness of 5 mm or more.
7409.11.50	Refined copper, plates, sheets and strip, in coils, with a thickness over 0.15mm but less than 5 mm.
7409.19.10	Refined copper, plates, sheets and strip, not in coils, with a thickness of 5 mm or more.
7409.19.50	Refined copper, plates, sheets and strip, not in coils, with a thickness o/0.15mm but less than 5 mm & a width of 500 mm or more.
7409.19.90	Refined copper, plates, sheets and strip, not in coils, with a thickness o/0.15mm but less than 5 mm & a width of less than 500 mm.
7409.21.00	Copper-zinc base alloys (brass), plates, sheets and strip, in coils.
7409.29.00	Copper-zinc base alloys (brass), plates, sheets and strip, not in coils.
7409.31.10	Copper-tin base alloys (bronze), plates, sheets and strip, in coils. with a thickness of 5 mm or more.
7409.31.50	Copper-tin base alloys (bronze), plates, sheets and strip, in coils, with a thickness o/0.15mm but less than 5mm & a width of 500mm or more.
7409.31.90	Copper-tin base alloys (bronze), plates, sheets and strip, in coils, w/thickness o/0.15mm but less than 5mm & a width of less than 500mm.
7409.39.10	Copper-tin base alloys (bronze), plates, sheets and strip, with a thickness of 5 mm or more.
7409.39.50	Copper-tin base alloys (bronze), plates, sheets and strip, with a thickness o/0.15 but less than 5 mm & of a width of 500 mm or more.
7409.39.90	Copper-tin base alloys (bronze), plates, sheets and strip, with a thickness o/0.15 but less than 5 mm & of a width of less than 500 mm.
7409.40.00	Copper-nickel base alloys (cupro-nickel) or copper-nickel-zinc base alloys (nickel silver), plates, sheets and strip, w/thickness o/0.15mm.
7409.90.10	Copper alloys (o/than brass/bronze/cupro-nickel/nickel silver), plates, sheets & strip, with thickness of 5 mm or more.
7409.90.50	Copper alloys (o/than brass/bronze/cupro-nickel/nickel silver), plates, sheets & strip, w/thick. o/0.15mm but less th/5mm & width 500mm+.
7409.90.90	Copper alloys (o/than brass/bronze/cupro-nickel/nickel silver), plates, sheets & strip, w/thick. o/0.15mm but less th/5mm & width less 500mm.
7410.11.00	Refined copper, foil, w/thickness of 0.15 mm or less, not backed.
7410.12.00	Copper alloys, foil, w/thickness of 0.15 mm or less, not backed.
7410.21.30	Refined copper, clad laminates, w/thickness of 0.15 mm or less, backed.
7410.21.60	Refined copper, foil, w/thickness of 0.15 mm or less, backed.
7410.22.00	Copper alloys, foil, w/thickness of 0.15 mm or less, backed.
7411.10.10	Refined copper, tubes and pipes, seamless.
7411.10.50	Refined copper, tubes and pipes, other than seamless.
7411.21.10	Copper-zinc base alloys (brass), tubes and pipes, seamless.
7411.21.50	Copper-zinc base alloys (brass), tubes and pipes, other than seamless.
7411.22.00	Copper-nickel base alloys (cupro-nickel) or copper-nickel-zinc base alloys (nickel-silver), tubes and pipes.
7411.29.10	Copper alloys (o/than brass/cupro-nickel/nickel-silver), pipes and tubes, seamless.
7411.29.50	Copper alloys (o/than brass/cupro-nickel/nickel-silver), pipes and tubes, other than seamless.
7412.10.00	Refined copper, fittings for tubes and pipes.
7412.20.00	Copper alloys, fittings for tubes and pipes.
7413.00.10	Copper, stranded wire, not electrically insulated, not fitted with fittings and not made up into articles.
7413.00.50	Copper, cables, plaited bands and the like, not fitted with fittings and not made up into articles.
7413.00.90	Copper, stranded wire, cables, plaited bands and the like, not electrically insulated, fitted with fittings or made up into articles.
7415.10.00	Copper or iron/steel w/heads of copper, nails and tacks, drawing pins, staples and similar articles.

ANNEX—Continued

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HTSUS subheading	Product description
7415.21.00	Copper, washers (including spring washers).
7415.29.00	Copper, rivets, cotters, cotter pins and similar non-threaded articles (o/than washers).
7415.33.05	Copper screws for wood.
7415.33.10	Muntz or yellow metal copper bolts.
7415.33.80	Screws (other than wood screws), bolts (other than Muntz or yellow metal) and nuts, of copper, threaded, nesoi.
7415.39.00	Copper, screw hooks and other threaded articles, nesoi.
7418.20.10	Copper-zinc base alloys (brass), sanitary ware and parts thereof.
7418.20.50	Copper (o/than brass), sanitary ware and parts thereof.
7419.10.00	Copper, chain and parts thereof.
7419.91.00	Copper, articles nesoi, cast, molded, stamped, or forged but not further worked.
7419.99.03	Copper, Fourdrinier wires, for use in papermaking machines, w/94 or more wires to the lineal cm.
7419.99.06	Copper cloth, nesoi.
7419.99.09	Copper, wire grill and netting; expanded metal of copper.
7419.99.15	Copper, containers a kind normally carried on the person, in the pocket or in the handbag.
7419.99.16	Copper, springs.
7419.99.30	Copper, articles nesoi, coated or plated with precious metal.
7419.99.50	Copper, articles nesoi, not coated or plated with precious metal.
7501.10.00	Nickel mattes.
7501.20.00	Nickel oxide sinters and other intermediate products of nickel metallurgy.
7502.10.00	Nickel (o/than alloy), unwrought.
7502.20.00	Nickel alloys, unwrought.
7503.00.00	Nickel, waste and scrap.
7504.00.00	Nickel, powders and flakes.
7505.11.10	Nickel (o/than alloy), bars and rods, cold formed.
7505.11.30	Nickel (o/than alloy), bars and rods, not cold formed.
7505.11.50	Nickel (o/than alloy), profiles.
7505.12.10	Nickel alloy, bars and rods, cold formed.
7505.12.30	Nickel alloy, bars and rods, not cold formed.
7505.12.50	Nickel alloy, profiles.
7505.21.10	Nickel (o/than alloy), wire, cold formed.
7505.21.50	Nickel (o/than alloy), wire, not cold formed.
7505.22.10	Nickel alloy, wire, cold formed.
7505.22.50	Nickel alloy, wire, not cold formed.
7506.10.05	Nickel, foil, w/thickness not over 0.15 mm.
7506.10.10	Nickel (o/than alloy), plates, sheets and strip, cold formed.
7506.10.30	Nickel (o/than alloy), plates, sheets and strip, not cold formed.
7506.20.05	Nickel alloy, foil, w/thickness not over 0.15 mm.
7506.20.10	Nickel alloy, plates, sheets and strip, cold formed.
7506.20.30	Nickel alloy, plates, sheets and strip, not cold formed.
7507.11.00	Nickel (o/than alloy), tubes and pipes.
7507.12.00	Nickel alloy, tubes and pipes.
7507.20.00	Nickel, fittings for tubes and pipes.
7508.10.00	Nickel, wire cloth, grill and netting.
7508.90.10	Nickel, stranded wire.
7508.90.50	Nickel, articles of nesoi.
7602.00.00	Aluminum, waste and scrap.
7603.10.00	Aluminum, powders of non-lamellar structure.
7603.20.00	Aluminum, powders of lamellar structure; aluminum flakes.
7610.90.00	Aluminum, structures and parts of structures, nesoi; aluminum plates, rods, profiles, tubes and the like prepared for use in structures.
7611.00.00	Aluminum, reservoirs, tanks, vats & like containers for any material (o/than compressed or liq. gas), w/capacity o/300 l, not fitted w/
7612.10.00	Aluminum, collapsible tubular containers, w/capacity of 300 l or less.
7612.90.10	Aluminum, casks, drums & like containers, for any material (o/than compressed or liq. gas), w/cap. n/o 20 l, n/fitted w/mech/thermal.
7612.90.50	Aluminum, casks, drums & like containers, for any material (o/thna compressed or liq. gas), w/cap. o/20 but n/o 300 l, n/fitted w/mech.
7613.00.00	Aluminum, containers for compressed or liquefied gas.
7614.10.50	Aluminum, stranded wire, cables & the like w/steel core, not electrically insulated, fitted with fittings or made up into articles.
7614.90.40	Aluminum, stranded wire, cables, & the like (o/than elect. conduct or w/steel core), n/elect. insulated, n/fitted w/fittings or articles.
7614.90.50	Aluminum, stranded wire, cables and the like (o/than w/steel core), not electrically insulated, fitted w/fittings or made up into articles.
7615.20.00	Aluminum, sanitary ware and parts thereof.
7616.10.10	Aluminum, nails, tacks and staples.
7616.10.30	Aluminum, rivets.

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HTSUS subheading	Product description
7616.10.50	Aluminum, cotters and cotter pins.
7616.10.70	Aluminum, screws, bolts, nuts, screw hooks, washers and similar articles w/shanks, threads, or holes o/6 mm in diameter.
7616.10.90	Aluminum, screws, bolts, nuts, screw hooks, washers and similar articles w/shanks, threads or holes 6 mm or less in diameter.
7616.91.00	Aluminum, wire cloth, grill, netting and fencing.
7616.99.10	Aluminum, luggage frames.
7616.99.51	Aluminum, articles, nesoi.
7801.10.00	Refined lead, unwrought.
7801.91.00	Lead (o/than refined lead), containing by weight antimony as the principal other element, unwrought.
7801.99.30	Lead (o/than refined lead), bullion.
7801.99.90	Lead (o/than refined lead), unwrought nesoi.
7802.00.00	Lead, waste and scrap.
7804.11.00	Lead, sheets, strip and foil, w/thickness n/o 0.2 mm, excluding any backing.
7804.19.00	Lead, plates & sheets, strip and foil w/thickness o/0.2mm, nesoi.
7804.20.00	Lead, powders and flakes.
7806.00.03	Lead, bars, rods, profiles and wire.
7806.00.05	Lead, tubes or pipes and fittings for tubes or pipes.
7806.00.80	Lead, articles, nesoi.
7901.11.00	Zinc (o/than alloy), unwrought, containing o/99.99% by weight of zinc.
7901.12.10	Zinc (o/than alloy), unwrought, casting-grade zinc, containing at least 97.5% but less than 99.99% by weight of zinc.
7901.12.50	Zinc (o/than alloy), unwrought, o/than casting-grade zinc, containing at least 97.5% but less than 99.99% by wt. of zinc.
7901.20.00	Zinc alloy, unwrought.
7902.00.00	Zinc, waste and scrap.
7903.10.00	Zinc, dust.
7903.90.30	Zinc, powders.
7903.90.60	Zinc, flakes.
7904.00.00	Zinc, bars, rods, profiles and wire.
7905.00.00	Zinc, plates, sheets, strip and foil.
7907.00.10	Zinc, household, table or kitchen use articles; zinc toilet and sanitary wares; zinc parts of all the foregoing.
7907.00.20	Zinc, tubes or pipes and fittings for tubes or pipes.
7907.00.60	Zinc, articles (o/than for household, table or kitchen use), nesoi.
8001.10.00	Tin (o/than alloy), unwrought.
8001.20.00	Tin alloy, unwrought.
8002.00.00	Tin, waste and scrap.
8003.00.00	Tin, bars, rods, profiles and wire.
8007.00.10	Tin, household, table or kitchen use articles; tin toilet and sanitary wares; all the foregoing, n/coated or plated w/ prec. metal.
8007.00.20	Tin, plates, sheets and strip, of a thickness exceeding 0.20 mm.
8007.00.31	Tin. foil, w/thickness (excluding any backing) n/o 0.2 mm.
8007.00.32	Tin, powders and flakes.
8007.00.40	Tin, tubes or pipes and fittings for tubes or pipes.
8007.00.50	Tin, articles nesoi.
8101.10.00	Tungsten, powders.
8101.94.00	Tungsten, unwrought (including bars and rods obtained simply by sintering).
8101.96.00	Tungsten wire.
8101.97.00	Tungsten waste and scrap.
8101.99.10	Tungsten bars and rods (o/than those obtained simply by sintering), profiles, plates, sheets, strip and foil.
8101.99.80	Tungsten, articles nesoi.
8102.10.00	Molybdenum, powders.
8102.94.00	Molybdenum, unwrought (including bars and rods obtained simply by sintering).
8102.95.30	Molybdenum bars and rods (o/than those obtained simply by sintering).
8102.95.60	Molybdenum profiles, plates, sheets, strip and foil.
8102.96.00	Molybdenum wire.
8102.97.00	Molybdenum waste and scrap.
8102.99.00	Molybdenum, articles nesoi.
8103.20.00	Tantalum, unwrought (including bars and rods obtained simply by sintering); tantalum powders.
8103.30.00	Tantalum waste and scrap.
8103.90.00	Tantalum, articles nesoi.
8104.11.00	Magnesoium, unwrought, containing at least 99.8 percent by weight of magnesoium.
8104.19.00	Magnesoium, unwrought, nesoi.
8104.20.00	Magnesoium, waste and scrap.
8104.30.00	Magnesoium, raspings, turnings and granules graded according to size; magnesoium powders.
8104.90.00	Magnesoium, articles nesoi.
8105.20.30	Cobalt alloys, unwrought.

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HTSUS subheading	Product description
8105.20.60	Cobalt (other than alloys), unwrought.
8105.20.90	Cobalt, mattes and other intermediate products of cobalt metallurgy; cobalt powders.
8105.30.00	Cobalt waste and scrap.
8105.90.00	Cobalt, articles thereof nesoi.
8106.00.00	Bismuth (including waste & scrap) and articles thereof, nesoi.
8107.20.00	Cadmium, unwrought; cadmium powders.
8107.30.00	Cadmium waste and scrap.
8107.90.00	Cadmium, articles thereof nesoi.
8108.20.00	Titanium, unwrought; titanium powders.
8108.30.00	Titanium waste and scrap.
8108.90.30	Titanium, articles nesoi.
8108.90.60	Titanium, wrought nesoi.
8109.20.00	Zirconium, unwrought; zirconium powders.
8109.30.00	Zirconium waste and scrap.
8109.90.00	Zirconium, articles, nesoi.
8110.10.00	Antimony, unwrought; antimony powders.
8110.20.00	Antimony waste and scrap.
8110.90.00	Articles of antimony, nesoi.
8111.00.30	Manganese, waste and scrap.
8111.00.47	UNWROUGHT MANGANESE FLAKE CONTAINING AT LEAST 99.5 PERCENT BY WEIGHT MANGANESE.
8111.00.49	UNWROUGHT MANGANESE, nesoi.
8111.00.60	Manganese (o/than waste and scrap, unwrought) and articles thereof, nesoi.
8112.12.00	Beryllium, unwrought; beryllium powders.
8112.13.00	Beryllium waste and scrap.
8112.19.00	Beryllium, articles nesoi.
8112.21.00	Chromium, unwrought; chromium powders.
8112.22.00	Chromium waste and scrap.
8112.29.00	Articles of chromium, nesoi.
8112.51.00	Thallium, unwrought; thallium powders.
8112.52.00	Thallium waste and scrap.
8112.59.00	Articles of thallium, nesoi.
8112.92.06	Waste and scrap of gallium, germanium, hafnium, indium, niobium, rhenium, or vanadium.
8112.92.10	Gallium, unwrought; gallium powders.
8112.92.20	Hafnium, unwrought; hafnium powders.
8112.92.30	Indium, unwrought; indium powders.
8112.92.40	Niobium (columbium), unwrought; niobium powders.
8112.92.50	Rhenium, unwrought; rhenium powders.
8112.92.60	Germanium, unwrought.
8112.92.65	Germanium powder, wrought.
8112.92.70	Vanadium, unwrought and powders.
8112.99.10	Germanium nesoi and articles thereof.
8112.99.20	Vanadium, nesoi, and articles thereof.
8112.99.90	Articles of gallium, hafnium, indium, niobium or rhenium, nesoi.
8113.00.00	Cermets (including waste & scrap) and articles thereof.
8201.10.00	Spades and shovels and base metal parts thereof.
8201.30.00	Mattocks, picks, hoes and rakes and base metal parts thereof.
8201.40.30	Machetes, and base metal parts thereof.
8201.40.60	Axes, bill hooks and similar hewing tools (o/than machetes), and base metal parts thereof.
8201.50.00	One-handed secateurs, pruners and shears (including poultry shears), and base metal parts thereof.
8201.60.00	Hedge shears, two-handed pruning shears and similar two-handed shears, and base metal parts thereof.
8201.90.30	Grass shears, and base metal parts thereof.
8201.90.40	Forks (hand tools) and base metal parts thereof.
8201.90.60	Base metal hand tools of a kind used in agriculture, horticulture or forestry nesoi, and base metal parts thereof.
8202.10.00	Hand saws, and base metal parts thereof (except blades).
8202.20.00	Band saw blades.
8202.31.00	Circular saw blades (including slitting or slotting saw blades), w/working part of steel.
8202.39.00	Circular saw blades (including slitting or slotting saw blades), with working part of o/than steel, & base metal parts thereof.
8202.40.30	Chain saw blades & base metal parts thereof, w/cutting parts cont. o/0.2% of Cr, Mo or W, or o/0.1% of V.
8202.40.60	Chain saw blades and base metal parts thereof, nesoi.
8202.91.30	Hacksaw blades for working metal.
8202.91.60	Straight saw blades for working metal (o/than hacksaw blades), and base metal parts thereof.
8202.99.00	Saw blades nesoi, and base metal parts thereof.
8203.10.30	Files, rasps and similar tools, n/o 11 cm in length.
8203.10.60	Files, rasps and similar tools, o/11 cm but n/o 17 cm in length.
8203.10.90	Files, rasps and similar tools, o/17 cm in length.
8203.20.20	Base metal tweezers.

ANNEX—Continued

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HTSUS subheading	Product description
8203.20.40	Slip joint pliers.
8203.20.60	Pliers (including cutting pliers but not slip joint pliers), pincers and similar tools.
8203.20.80	Base metal parts of pliers (including cutting pliers), pincers, tweezers and similar tools.
8203.30.00	Metal cutting shears and similar tools, and base metal parts thereof.
8203.40.30	Pipe cutters, bolt cutters, perf. punches & similar tools, w/cutting parts o/0.2% Cr, Mo or W, or o/0.1% V & base metal pts.
8203.40.60	Pipe cutters, bolt cutters, perforating punches and similar tools, nesoi, and base metal parts thereof.
8204.11.00	Hand-operated non-adjustable spanners and wrenches, and base metal parts thereof.
8204.12.00	Hand-operated adjustable spanners and wrenches, and base metal parts thereof.
8204.20.00	Socket wrenches, with or without handles, drives and extensions, and base metal parts thereof.
8205.10.00	Drilling, threading or tapping tools, and base metal parts thereof.
8205.20.30	Hammers and sledge hammers, with heads not over 1.5 kg each, and base metal parts thereof.
8205.20.60	Hammers and sledge hammers, with heads over 1.5 kg each, and base metal parts thereof.
8205.30.30	Planes, chisels, gouges etc. for working wood, over 0.2% chromium, molybdenum or tungsten, or over 0.1% vanadium, base metal parts thereof.
8205.30.60	Planes, chisels, gouges and similar cutting tools for working wood, nesoi, and base metal parts thereof.
8205.40.00	Screwdrivers and base metal parts thereof.
8205.51.15	Carving and butcher steels, of iron or steel, with or without their handles.
8205.51.30	Iron or steel household handtools (o/than carving & butcher steels), and base metal parts thereof.
8205.51.45	Copper household handtools, and base metal parts thereof.
8205.51.60	Aluminum household handtools, and base metal parts thereof.
8205.51.75	Base metal, nesoi, household handtools, and base metal parts thereof.
8205.59.10	Pipe tools and base metal parts thereof.
8205.59.20	Powder-actuated hand tools and base metal parts thereof.
8205.59.30	Crowbars, track tools and wedges, and base metal parts thereof.
8205.59.45	Caulking guns of iron or steel, and base metal parts thereof.
8205.59.55	Iron or steel handtools (o/than household, o/than caulking guns) nesoi, and base metal parts thereof.
8205.59.60	Copper handtools (o/than household) nesoi, and base metal parts thereof.
8205.59.70	Aluminum handtools (o/than household) nesoi, and base metal parts thereof.
8205.59.80	Base metal, nesoi, handtools (o/than household), and base metal parts thereof.
8205.60.00	Blow torches and similar self-contained torches, and base metal parts thereof.
8205.70.00	Vises, clamps and the like, and base metal parts thereof.
8205.90.10	Anvils, portable forges, hand- or pedal-operated grinding wheels with frameworks and base metal parts thereof.
8205.90.60	Sets of articles (handtools and other specified tools) of two or more foregoing subheadings.
8206.00.00	Tools of two or more of headings 8202 to 8205 put up in sets for retail sale.
8207.13.00	Interchangeable tools for rock drilling or earth boring tools, w/working part of cermets.
8207.19.30	Interchangeable tools for rock drilling or earth boring tools, w/cutting part o/0.2% Cr, Mo or W, or o/0.1% V by wt., & base metal parts.
8207.19.60	Interchangeable tools for rock drilling or earth boring tools, w/working part nesoi, and base metal parts thereof.
8207.20.00	Interchangeable dies for drawing or extruding metal, and base metal parts thereof.
8207.30.30	Interchangeable tools for pressing, stamping or punching, suitable for cutting metal, and base metal parts thereof.
8207.30.60	Interchangeable tools for pressing, stamping or punching, not suitable for cutting metal, and base metal parts thereof.
8207.40.30	Interchangeable tools for tapping or threading, w/cutting pts ov 0.2% by wt of Cr, Mo, W, or ov 0.1% V, & base metal pts thereof.
8207.40.60	Interchangeable tools for tapping or threading, nesoi, and base metal parts thereof.
8207.50.20	Interchangeable tools for drilling (o/than rock drilling) w/cutting part ov 0.2% Cr, Mo or W, or ov 0.1% V & base metal parts thereof.
8207.50.40	Interchangeable tools for drilling (o/than rock drilling), nesoi, suitable for cutting metal, and base metal parts thereof.
8207.50.60	Interchangeable tools for handtools, for drilling (o/than rock drilling), nesoi, n/suitable for cutting metal, & base metal parts thereof.
8207.50.80	Interchangeable tools (o/than for handtools) for drilling (o/than rock drilling), nesoi, not suitable for cutting metal, & base metal parts.
8207.60.00	Interchangeable tools for boring or broaching, and base metal parts thereof.
8207.70.30	Interchangeable tools for milling, w/cutting part ov 0.2% by wt of Cr, Mo or W, or ov 0.1% by wt of V & base metal parts thereof.
8207.70.60	Interchangeable tools for milling, nesoi, and base metal parts thereof.
8207.80.30	Interchangeable tools for turning, w/cutting part ov 0.2% by wt of Cr, Mo or W, or ov 0.1% by wt of V & base metal parts thereof.
8207.80.60	Interchangeable tools for turning, nesoi, and base metal parts thereof.
8207.90.15	Interchangeable files and rasps, including rotary files and rasps, and base metal parts thereof.
8207.90.30	Interchangeable cutting tools, nesoi, w/cutting part ov 0.2% by wt of Cr, Mo or W, or ov 0.1% by wt of V, and base metal parts thereof.
8207.90.45	Interchangeable tools, nesoi, suitable for cutting metal, nesoi and base metal parts thereof.
8207.90.60	Interchangeable tools for handtools, nesoi, not suitable for cutting metal, nesoi and base metal parts thereof.

ANNEX—Continued

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HTSUS subheading	Product description
8207.90.75	Interchangeable tools (o/than for handtools) nesoi, not suitable for cutting metal, nesoi and base metal parts thereof.
8208.10.00	Knives and cutting blades for metal working machines or mechanical appliances, and base metal parts thereof.
8208.20.00	Knives and cutting blades for wood working machines or mechanical appliances, and base metal parts thereof.
8208.30.00	Knives and cutting blades for kitchen appliances or for machines used by the food industry, and base metal parts thereof.
8208.40.30	Lawnmower blades for agricultural, horticultural or forestry machines.
8208.40.60	Knives and cutting blades (o/than lawnmower blades) for agricultural, horticultural or forestry machines, and base metal parts thereof.
8208.90.30	Knives and cutting blades for shoe machinery, and base metal parts thereof.
8208.90.60	Knives and cutting blades, nesoi for machines or for mechanical appliances nesoi, and base metal parts thereof.
8209.00.00	Cermet plates, sticks, tips and the like for tools, unmounted.
8210.00.00	Hand-operated mechanical appliances weighing 10 kg or less, used in preparation, conditioning, serving food or drink & base metal pts.
8211.93.00	Knives having other than fixed blades.
8211.94.10	Base metal blades for knives having fixed blades.
8211.94.50	Base metal blades for knives having other than fixed blades.
8211.95.10	Base metal handles for table knives w/fixed blades.
8211.95.50	Base metal handles for knives (o/than table knivies) w/fixed blades.
8211.95.90	Base metal handles for knives having other than fixed blades.
8215.20.00	Sets of assted. base metal spoons, forks, ladles, etc. & similar kitchen or tableware, w/no articles plated with precious metal.
8215.99.05	Base metal forks, w/stainless steel handles cont. Ni or o/10% by wt of Mn, nesoi.
8301.20.00	Base metal locks, of a kind used on motor vehicles.
8302.10.60	Iron or steel, aluminum, or zinc hinges and base metal parts thereof, not designed for motor vehicles.
8302.10.90	Base metal (o/than iron/steel/aluminum/zinc) hinges and base metal parts thereof.
8302.20.00	Base metal castors and base metal parts thereof.
8302.30.30	Iron or steel, aluminum or zinc mountings, fittings and similar articles nesoi, suitable for motor vehicles, and base metal parts thereof.
8302.30.60	Base metal (o/than iron/steel/aluminum/zinc) mountings, fittings & similar articles, suitable for motor vehicles, & base metal pts thereof.
8302.41.30	Base metal door closers (except automatic door closers) suitable for buildings, and base metal parts thereof.
8302.41.60	Iron or steel, aluminum or zinc mountings, fittings & similar articles, nesoi, suitable for buildings, & base metal pts thereof.
8302.41.90	Base metal (o/than iron/steel/aluminum/zinc) mountings, fittings and similar arts, nesoi, suitable for buildings & base metal parts thereof.
8302.49.20	Base metal harness, saddlery or riding-bridle hardware coated or plated w/prec. metal, and base metal parts thereof.
8302.49.40	Base metal harness, saddlery or riding-bridle hardware, not coated or plated w/prec. metal, and base metal parts thereof.
8302.49.60	Iron or steel, aluminum, or zinc, mountings, fittings & similar articles nesoi, and base metal parts thereof.
8302.49.80	Base metal (o/than iron/steel/aluminum/zinc) mountings, fittings & similar articles nesoi, and base metal parts thereof.
8302.50.00	Base metal hat-racks, hat pegs, brackets and similar fixtures, and base metal parts thereof.
8302.60.30	Base metal automatic door closers.
8302.60.90	Base metal parts of automatic door closers.
8303.00.00	Base metal armored or reinforced safes/strong-boxes & doors & safe deposit lockers for strong rooms/cash & deed boxes etc., & base metal pts.
8306.30.00	Base metal photograph, picture or similar frames; base metal mirrors; base metal parts thereof.
8307.10.30	Iron or steel flexible tubing, with fittings.
8307.10.60	Iron or steel flexible tubing, without fittings.
8307.90.30	Base metal (o/than iron or steel) flexible tubing, with fittings.
8307.90.60	Base metal (o/than iron or steel) flexible tubing, without fittings.
8308.10.00	Base metal hooks, eyes, and eyelets, of a kind used for clothing, footwear, awnings, handbags, travel goods, or other made up articles.
8308.20.30	Iron or steel bifurcated rivets, not brightened, not lathed and not machined.
8308.20.60	Base metal tubular or bifurcated rivets (o/than of iron or steel).
8308.90.30	Base metal beads and spangles.
8308.90.60	Base metal buckles and buckle clasps, and base metal parts thereof.
8308.90.90	Base metal clasps, frames with clasps not incorporating a lock, and like articles, and base metal parts thereof.
8309.10.00	Base metal crown corks (including crown seals and caps), and base metal parts thereof.
8309.90.00	Base metal stoppers, caps and lids (o/than crown corks), threaded bungs, bung covers, seals, other packing accessories and parts.
8310.00.00	Base metal sign plates, name plates, address plates, numbers, letters and other symbols (o/than of 9405), and base metal parts thereof.
8311.10.00	Coated base metal electrodes for electric arc-welding.
8311.20.00	Base metal cored wire for electric arc-welding.

ANNEX—Continued

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HTSUS subheading	Product description
8311.30.30	Coated rod or cored wire lead-tin solders.
8311.30.60	Coated rods and cored wire of base metal (o/than lead-tin solders), for soldering, brazing or welding by flame.
8311.90.00	Wire & rods of agglom. base metal powder for metal spray; metal carbide wire, rods, tubes, electrodes, coated/cored w/flux, for welding etc.
8404.10.00	Auxiliary plant for use with boilers of heading 8402 or 8403.
8406.81.10	Steam turbines other than for marine propulsion, of an output exceeding 40 MW.
8406.90.20	Parts of steam turbines, rotors, finished for final assembly.
8406.90.30	Parts of steam turbines, rotors, not further worked than cleaned or machined for removal of fins, etc., or certain other working.
8406.90.40	Parts of steam turbines, blades, rotating or stationary.
8406.90.45	Parts of steam turbines, other.
8406.90.50	Parts of vapor turbines other than steam turbines, rotors, finished for final assembly.
8406.90.60	Parts of vapor turbines other than steam turbines, rotors, not further worked than cleaned or machined for removal of fins, etc., or other.
8406.90.70	Parts of vapor turbines other than steam turbines, blades, rotating or stationary.
8406.90.75	Parts of vapor turbines other than steam turbines, other.
8407.31.00	Spark-ignition reciprocating piston engines used for propulsion of vehicles of chapter 87, of a cylinder capacity not exceeding 50cc.
8407.32.10	Spark-ignition reciprocating piston engines used in tractors suitable for agricultural use, of a cylinder capacity over 50cc but n/o 250cc.
8407.32.20	Spark-ignition reciprocating piston engines used in vehicles of heading 8701.20, 8702–8704, cylinder capacity over 50cc but n/o 250cc.
8407.32.90	Spark-ignition reciprocating piston engines used for vehicles, of chap. 87 nesoi, of a cylinder capacity over 50 but not over 250cc.
8407.33.10	Spark-ignition reciprocating piston engines used in tractors for agricultural use, of a cylinder capacity over 250cc but not over 1000cc.
8407.33.30	Spark-ignition reciprocating piston engines, for certain spec. veh. of 8701.20, 8702, 8703 or 8704, cylinder cap. >250 cc > or = 1, 000 cc.
8407.33.60	Spark-ignition reciprocating piston engines, for other veh. of 8701.20, 8702, 8703 or 8704, cylinder cap. >250 cc > or = 1, 000 cc, nesoi.
8407.33.90	Spark-ignition reciprocating piston engines for vehicles of chap. 87 nesoi, of a cylinder capacity over 250cc but not over 1000cc.
8407.34.14	Spark-ignition reciprocating piston engines for vehicles of 8701.20 or 8702–8704, cylinder cap. over 1000 cc to 2000 cc, used or rebuilt.
8407.34.18	Spark-ignition reciprocating piston engines for vehicles of 8701.20 or 8702–8704, cylinder cap. over 1000 cc to 2000 cc, new.
8407.34.25	Spark-ignition reciprocating piston engines for other vehicles of chap. 87, of a cylinder capacity over 1000 cc to 2000 cc.
8407.34.44	Spark-ignition reciprocating piston engines for vehicles of 8701.20 or 8702–8704, cylinder capacity over 2000 cc, used or rebuilt.
8407.34.48	Spark-ignition reciprocating piston engines for vehicles of 8701.20 or 8702–8704, cylinder capacity over 2000 cc, new.
8407.34.55	Spark-ignition reciprocating piston engines for other vehicles of chap. 87 nesoi, of a cylinder capacity exceeding 2000 cc.
8408.20.20	Compression-ignition internal-combustion piston engines to be installed in vehicles of heading 8701.20, 8702, 8703, or 8704.
8408.20.90	Compression-ignition internal-combustion piston engines used for propulsion of vehicles of chapter 87, nesoi.
8409.91.10	Cast-iron parts used solely or principally with spark-ignition internal-combustion piston engines of heading 8407.
8409.91.30	Aluminum cylinder heads for spark-ignition internal combustion piston engines for vehicles of 8701.20 or 8702–8704.
8409.91.50	Parts nesoi, used solely or principally with spark-ignition internal-combustion piston engines for vehicles of head 8701.20, 8702–8704.
8409.91.92	Parts nesoi, used solely or principally with spark-ignition internal-combustion piston engines for marine propulsion.
8409.91.99	Parts nesoi, used solely or principally with spark-ignition internal-combustion piston engines of heading 8407, nesoi.
8409.99.10	Cast iron parts not advanced beyond cleaning & machined only for removal of fins, gates, etc. or to permit location in machinery.
8409.99.91	Parts nesoi, used solely or principally with the engines of heading 8408, for vehicles of heading 8701.20, 8702, 8703, 8704.
8409.99.92	Parts nesoi, used solely or principally with compression-ignition internal-combustion piston engines for marine propulsion.
8409.99.99	Parts nesoi, used solely or principally with compression-ignition internal-combustion piston engines of heading 8407 or 8408, nesoi.
8412.90.90	Parts for engines of heading 8412 other than hydrojet engines for marine propulsion.
8413.11.00	Pumps fitted or designed to be fitted with a measuring device, used for dispensing fuel or lubricants, of the type used in filling-stations.

ANNEX—Continued

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HTSUS subheading	Product description
8413.20.00	Hand pumps other than those of subheading 8413.11 or 8413.19, not fitted with a measuring device.
8413.30.10	Fuel-injection pumps for compression-ignition engines, not fitted with a measuring device.
8413.30.90	Fuel, lubricating or cooling medium pumps for internal-combustion piston engines, not fitted with a measuring device, nesoi.
8413.92.00	Parts of liquid elevators.
8414.10.00	Vacuum pumps.
8414.20.00	Hand-operated or foot-operated air pumps.
8414.40.00	Air compressors mounted on a wheeled chassis for towing.
8414.59.10	Blowers for pipe organs.
8414.59.15	Fans used for cooling microprocessors, telecommunications equipment, or computers.
8414.59.65	Other fans, nesoi.
8414.60.00	Ventilating or recycling hoods incorporating a fan, having a maximum horizontal side not exceeding 120 cm.
8414.80.16	Air compressors, nesoi.
8414.80.90	Air or gas pumps, compressors and fans, nesoi.
8414.90.10	Parts of fans (including blowers) and ventilating or recycling hoods.
8415.10.30	Window or wall type air conditioning machines, self-contained.
8415.10.60	Window or wall type air conditioning machines, "split-system", incorporating a refrigerating unit & valve for reversal of cooling/heat cycle.
8415.10.90	Window or wall type air conditioning machines, "split-system", nesoi.
8415.20.00	Air conditioning machines of a kind used for persons, in motor vehicles.
8415.81.01	Air conditioning machines incorporating a refrigerating unit and valve for reversal of cooling/heat cycle, nesoi.
8415.82.01	Air conditioning machines incorporating a refrigerating unit, nesoi.
8415.83.00	Air conditioning machines not incorporating a refrigerating unit.
8416.30.00	Mechanical stokers, including their mechanical grates, mechanical ash dischargers and similar appliances.
8418.10.00	Combined refrigerator-freezers, fitted with separate external doors, electric or other.
8418.21.00	Refrigerators, household compression-type, electric or other, other than those of subheading 8418.10.
8418.29.10	Refrigerators, household absorption-type, electrical, other than those of subheading 8418.10.
8418.29.20	Refrigerators, household type, electric or other, other than those of subheading 8418.10, nesoi.
8418.30.00	Freezers of the chest type, not exceeding 800 liters capacity, electric or other.
8418.40.00	Freezers of the upright type, not exceeding 900 liters capacity, electric or other.
8418.50.00	Refrigerating or freezing display counters, cabinets, showcases and similar refrigerating or freezing furniture.
8418.61.01	Heat pumps, other than the air-conditioning machines of heading 8415.
8418.91.00	Furniture designed to receive refrigerating or freezing equipment.
8418.99.40	Certain door assemblies for refrigerators, freezers and other refrigerating or freezing equipment.
8418.99.80	Parts for refrigerators, freezers and other refrigerating or freezing equipment, electric or other, nesoi; parts for heat pumps, nesoi.
8421.11.00	Cream separators.
8421.23.00	Oil or fuel filters for internal combustion engines.
8421.31.00	Intake air filters for internal combustion engines.
8422.90.04	Door assemblies for the dishwashing machines of subheading 8422.11.
8423.81.00	Weighing machinery having a maximum weighing capacity not exceeding 30 kg.
8424.20.10	Simple piston pump sprays and powder bellows.
8424.20.90	Spray guns and similar appliances other than simple piston pump sprays and powder bellows.
8424.30.10	Sand blasting machines.
8424.30.90	Steam blasting machines and similar jet projecting machines, other than sand blasting machines; nesoi.
8424.41.10	Portable sprayers excl self-contained sprayers having a capacity >=20 liters.
8424.41.90	Portable sprayers self-contained having a capacity >=20 liters.
8424.49.00	Sprayers, not portable, nesoi.
8424.90.90	Parts of mechanical appliances for projecting, dispersing or spraying liquids or powders, fire extinguishers and similar machines, nesoi.
8425.19.00	Pulley tackle and hoists other than skip hoists or hoists used for raising vehicles, not powered by electric motor.
8425.31.01	Winches nesoi, and capstans, powered by electric motor.
8425.41.00	Built-in jacking systems of a type used in garages.
8425.42.00	Hydraulic jacks and hoists, nesoi.
8425.49.00	Jacks and hoists of a kind used for raising vehicles, other than hydraulic, nesoi.
8426.19.00	Transporter cranes, gantry cranes and bridge cranes.
8426.30.00	Portal or pedestal jib cranes.
8426.91.00	Derricks, cranes and other lifting machinery nesoi, designed for mounting on road vehicles.
8427.90.00	Trucks, fitted with lifting or handling equipment, nesoi.
8428.40.00	Escalators and moving walkways.
8430.49.40	Offshore oil and natural gas drilling and production platforms.
8430.50.10	Self-propelled peat excavators.
8432.41.00	Manure spreaders.
8433.90.10	Parts of mowers for lawns, parks or sports grounds.
8441.10.00	Cutting machines of all kinds used for making up paper pulp, paper or paperboard.
8442.50.10	Printing plates.
8443.15.00	Letterpress printing machinery, excluding flexographic printing, other than reel-fed.

ANNEX—Continued

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HTSUS subheading	Product description
8443.16.00	Flexographic printing machinery.
8443.39.20	Electrostatic photocopying apparatus, operating by reproducing the original image via an intermediate onto the copy (indirect process).
8443.39.30	Photocopying apparatus, other than electrostatic, incorporating an optical system.
8443.39.40	Photocopying apparatus, other than electrostatic, of the contact type.
8443.39.50	Thermocopying apparatus.
8443.99.10	Accessory & auxiliary machines intended for attachment to an electrostatic photocopier & which do not operate independent of such copier.
8443.99.30	Parts of facsimile machines specified in additional U.S. note 3 to this chapter.
8443.99.35	Parts and accessories of facsimile machines, nesoi.
8446.30.50	Shuttleless type weaving machines (looms), for weaving fabrics of a width exceeding 30 cm, nesoi.
8448.51.20	Spring-beard needles for knitting machines.
8451.10.00	Dry-cleaning machines.
8451.21.00	Drying machines, each of a dry linen capacity not exceeding 10 kg.
8451.29.00	Drying machines for yarns, fabrics or made up textile articles, each of a dry linen capacity exceeding 10 kg.
8451.30.00	Ironing machines and presses (including fusing presses) for textile fabrics or made up textile articles.
8451.40.00	Washing, bleaching or dyeing machines for textile yarns, fabrics or made up textile articles.
8451.50.00	Machines for reeling, unreeling, folding, cutting or pinking textile fabrics.
8451.80.00	Machinery for the handling of textile yarns, fabrics or made up textile articles, nesoi.
8451.90.30	Drying chambers for the drying machines of subheading 8451.21 or 8451.29, and other parts of drying machines incorporating drying chambers.
8451.90.60	Furniture designed to receive the drying machines of subheading 8451.21 or 8451.29.
8451.90.90	Parts of machines for the handling of textile yarns, fabrics or made up textile articles, nesoi.
8452.29.90	Sewing machines, other than automatic, nesoi.
8454.20.00	Ingot molds and ladles, of a kind used in metallurgy or in metal foundries.
8459.29.00	Drilling machines, other than numerically controlled, nesoi.
8459.59.00	Milling machines, knee type, other than numerically controlled, nesoi.
8460.39.00	Sharpening (tool or cutter grinding) machines for working metal or cermets, other than numerically controlled.
8461.50.80	Sawing or cutting-off machines for working by removing metal or cermets, other than numerically controlled.
8465.20.10	Machine centers for sawing, planing, milling, molding, grinding, sanding, polishing, drilling or mortising.
8465.20.50	Machine centers for bending or assembling.
8465.20.80	Machine centers, nesoi.
8465.91.00	Sawing machines for working wood, cork, bone, hard rubber, hard plastics or similar hard materials.
8466.91.10	Cast iron parts not advanced beyond cleaning and specifically machined, for machines of heading 8464.
8466.93.15	Certain specified cast-iron parts not advanced beyond cleaning and specifically machined, for metalworking machine tools for cutting, etc.
8467.19.50	Tools for working in the hand, pneumatic, other than rotary type, other than suitable for metal working.
8467.99.01	Parts of tools for working in the hand, hydraulic or with self-contained nonelectric or electric motor, other than chain saws.
8468.20.10	Gas-operated machinery, apparatus and appliances, hand-directed or -controlled, used for soldering, brazing, welding or tempering, nesoi.
8468.80.10	Machinery and apparatus, hand-directed or -controlled, used for soldering, brazing or welding, not gas-operated.
8468.90.10	Parts of hand-directed or -controlled machinery, apparatus and appliances used for soldering, brazing, welding or tempering.
8468.90.50	Parts for machinery, apparatus or appliances, not hand-directed or -controlled, used for soldering, brazing, welding or tempering.
8470.10.00	Electronic calculator operate w/o external electric power & pocket-size data recording/reproducing/displaying machine w/calculating function.
8470.21.00	Electronic calculating machines, incorporating a printing device, nesoi.
8470.29.00	Electronic calculating machines, not incorporating a printing device, nesoi.
8470.30.00	Calculating machines nesoi, other than electronic.
8470.90.01	Postage-franking, ticket-issuing and similar machines nesoi, incorporating a calculating device; accounting machines.
8471.50.01	Processing units other than those of subheading 8471.41 and 8471.49, nesoi.
8471.60.10	Combined input/output units for automatic data processing machines not entered with the rest of a system.
8471.60.70	Input or output units suitable for physical incorporation into ADP machine or unit thereof, nesoi, not entered with the rest of a system.
8471.60.90	Other input or output units of digital ADP machines, nesoi, not entered with the rest of a system.
8471.70.10	ADP magnetic disk drive storage units, disk dia. ov 21 cm, w/o read-write unit; read-write units; all not entered with the rest of a system.
8471.70.20	ADP magnetic disk drive storage units, disk dia. ov 21 cm: for incorp. into ADP machines or units, not entered with the rest of a system.
8471.70.50	ADP magnetic disk drive storage units, disk dia. n/ov 21 cm, nesoi, not entered with the rest of a system.
8471.80.10	Control or adapter units for automatic data processing machines not entered with rest of a system.
8471.80.40	Unit suitable for physical incorporation into automatic data processing machine or unit thereof, not entered with the rest of a system, nesoi.
8471.80.90	Other units of automatic data processing machines, not entered with the rest of a system, nesoi.

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HTSUS subheading	Product description
8471.90.00	Magnetic or optical readers, nesoi; machines for transcribing data on data media in coded form and machines for processing such data, nesoi.
8472.10.00	Hectographic or stencil duplicating machines.
8472.30.00	Machines for sorting, folding, opening, closing or sealing mail, and postage stamp affixing or canceling machines.
8472.90.05	Addressing machines and address plate embossing machines.
8472.90.10	Automatic teller machines.
8472.90.60	Numbering, dating and check-writing machines.
8472.90.90	Other office machines, nesoi.
8473.21.00	Parts and accessories of the electronic calculating machines of subheading 8470.10, 8470.21 or 8470.29.
8473.29.00	Parts and accessories of machines of heading 8470, nesoi.
8473.30.11	Printed circuit assemblies, not incorporating a cathode ray tube, of the machines of 8471.
8473.30.51	Parts and accessories of the ADP machines of heading 8471, not incorporating a CRT, nesoi.
8473.30.91	Parts and accessories of the ADP machines of heading 8471, incorporating a CRT, nesoi.
8473.40.21	Printed circuit assemblies of word processing machines of 8472.90.50.
8473.40.41	Other parts and accessories of the machines of 8472.90.50.
8476.21.00	Automatic beverage-vending machines incorporating heating or refrigerating devices.
8476.29.00	Automatic beverage-vending machines other than machines that incorporate heating or refrigerating devices.
8476.81.00	Automatic goods-vending machines (other than beverage-vending) incorporating heating or refrigerating devices.
8476.90.00	Parts for automatic goods-vending and money-changing machines.
8477.59.01	Machinery for molding or otherwise forming rubber or plastics other than for molding or retreading pneumatic tires, nesoi.
8479.60.00	Evaporative air coolers.
8479.71.00	Passenger boarding bridges of a kind used in airports.
8479.89.10	Air humidifiers or dehumidifiers with self-contained electric motor, other than for domestic purposes.
8479.89.20	Floor polishers with self-contained electric motor, other than for domestic purposes.
8479.89.70	Carpet sweepers, not electromechanical having self-contained electric motor.
8479.89.94	Other machines and mechanical appliances having individual functions, not specified or included elsewhere in chapter 84, nesoi.
8480.10.00	Molding boxes for metal foundry.
8480.79.10	Molds for rubber or plastics, other than injection or compression types, for shoe machinery.
8480.79.90	Molds for rubber or plastics, other than injection or compression types, other than for shoe machinery.
8481.30.10	Check valves of copper for pipes, boiler shells, tanks, vats or the like.
8481.80.10	Taps, cocks, valves & similar appliances for pipes, boiler shells, tanks, vats or the like, hand operated, of copper, nesoi.
8481.80.30	Taps, cocks, valves & similar appliances for pipes, boiler shells, tanks, vats or the like, hand operated, of iron or steel, nesoi.
8481.80.50	Taps, cocks, valves & similar appliances for pipes, boiler shells, tanks, vats or the like, hand operated, not copper, iron or steel, nesoi.
8481.80.90	Taps, cocks, valves & similar appliances for pipes, boiler shells, tanks, vats or the like, other than hand operated, nesoi.
8481.90.10	Parts of hand operated and check appliances for pipes, boiler shells, tanks, vats or the like, of copper.
8481.90.30	Parts of hand operated and check appliances for pipes, boiler shells, tanks, vats or the like, of iron or steel.
8481.90.50	Parts of hand operated and check appliances for pipes, boiler shells, tanks, vats or the like, other than of copper or iron or steel.
8482.10.10	Ball bearings with integral shafts.
8483.10.10	Camshafts and crankshafts for use solely or principally with spark-ignition internal-combustion piston or rotary engines.
8483.10.30	Camshafts and crankshafts nesoi.
8483.10.50	Transmission shafts and cranks other than camshafts and crankshafts.
8483.20.40	Housed bearings of the flange, take-up, cartridge and hanger unit type (incorporating ball or roller bearings).
8483.20.80	Housed bearings (incorporating ball or roller bearings), nesoi.
8483.40.50	Fixed, multiple and variable ratio speed changers, not imported for use with machines for making cellulosic pulp, paper or paperboard.
8483.40.70	Speed changers other than fixed, multiple and variable ratio speed changers.
8483.50.40	Gray-iron awning or tackle pulleys, not over 6.4 cm in wheel diameter.
8483.60.80	Shaft couplings (other than universal joints).
8483.90.50	Parts of gearing, gear boxes and other speed changers.
8501.40.20	AC motors nesoi, single-phase, exceeding 37.5 W but not exceeding 74.6 W.
8501.40.40	AC motors, nesoi, single-phase, exceeding 74.6 W but not exceeding 735 W.
8501.40.50	AC motors, nesoi, single-phase, exceeding 735 W but under 746 W.
8501.40.60	AC motors nesoi, single-phase, of 746 W or more.
8501.61.00	AC generators (alternators) of an output not exceeding 75 kVA.
8502.20.00	Electric generating sets with spark-ignition internal-combustion piston engines.
8504.10.00	Ballasts for discharge lamps or tubes.
8504.31.20	Unrated electrical transformers other than liquid dielectric, having a power handling capacity not exceeding 1 kVA.
8504.31.40	Electrical transformers other than liquid dielectric, having a power handling capacity less than 1 kVA.

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HTSUS subheading	Product description
8504.31.60	Electrical transformers other than liquid dielectric, having a power handling capacity of l kVA.
8504.40.60	Power supplies suitable for physical incorporation into automatic data processing machines or units thereof of heading 8471.
8504.40.70	Power supplies for automatic data processing machines or units thereof of heading 8471, nesoi.
8504.40.85	Static converters (for example, rectifiers) for telecommunication apparatus.
8504.40.95	Static converters (for example, rectifiers), nesoi.
8504.50.40	Other inductors for power supplies for ADP machines and units of heading 8471 or for telecommunication apparatus.
8504.50.80	Other inductors, nesoi.
8504.90.20	Printed circuit assemblies of power supplies for automatic data processing machines or units thereof of heading 8471.
8505.11.00	Permanent magnets and articles intended to become permanent magnets after magnetization, of metal.
8505.19.20	Composite goods containing flexible permanent magnets, other than of metal.
8505.19.30	Permanent magnets and articles intended to become permanent magnets after magnetization, other than of metal, nesoi.
8506.10.00	Manganese dioxide primary cells and primary batteries.
8506.30.10	Mercuric oxide primary cells and primary batteries having an external volume not exceeding 300 cubic cm.
8506.30.50	Mercuric oxide primary cells and primary batteries having an external volume exceeding 300 cubic cm.
8506.80.00	Primary cells and primary batteries, nesoi.
8507.10.00	Lead-acid storage batteries of a kind used for starting piston engines.
8507.20.40	Lead-acid storage batteries of a kind used as the primary source of electrical power for electrically powered vehicles of 8703.90.
8507.20.80	Lead-acid storage batteries other than of a kind used for starting piston engines or as the primary source of power for electric vehicles.
8507.30.40	Nickel-cadmium storage batteries, of a kind used as the primary source of electrical power for electrically powered vehicles of 8703.90.
8507.40.40	Nickel-iron storage batteries, of a kind used as the primary source of electrical power for electrically powered vehicles of 8703.90.
8507.40.80	Nickel-iron storage batteries, other than of a kind used as the primary source of power for electric vehicles.
8507.50.00	Nickel-metal hydride batteries.
8508.11.00	Vacuum cleaners with self-contained electric motor, of a power not exceeding 1,500 W and having a dust bag or other receptacle capacity not.
8508.19.00	Vacuum cleaners with self-contained electric motor, other than of a power not exceeding 1,500 W and having a dust bag or other receptacle ca.
8508.60.00	Vacuum cleaners with other than a self-contained electric motor.
8508.70.00	Parts of vacuum cleaners.
8509.80.20	Electromechanical kitchen waste disposers (disposals), with self-contained electric motor, for domestic uses.
8509.90.25	Parts of electromechanical domestic floor polishers, housings.
8509.90.35	Parts of electromechanical domestic floor polishers, other than housings.
8509.90.45	Parts of electromechanical domestic appliances nesoi, housings.
8509.90.55	Parts of electromechanical domestic appliances nesoi, other than housings.
8510.20.10	Hair clippers to be used for agricultural or horticultual purposes, with self-contained electric motor.
8510.20.90	Hair clippers other than to be used for agricultural or horticultural purposes, with self-contained electric motor.
8510.90.10	Blades and cutting heads of shavers with self-contained electric motor.
8510.90.20	Parts of shavers with self-contained electric motor, other than blades and cutting heads.
8510.90.30	Parts of hair clippers with self-contained electric motor.
8510.90.40	Parts of hair clippers, nesoi, with self-contained electric motor.
8510.90.55	Parts of hair-removing appliances of subheading 8510.30.
8511.10.00	Spark plugs.
8511.20.00	Ignition magnetos, magneto-dynamos and magnetic flywheels.
8511.30.00	Distributors and ignition coils.
8511.40.00	Starter motors and dual purpose starter-generators.
8511.50.00	Generators nesoi, of a kind used in conjunction with spark-ignition or compression-ignition internal-combustion engines.
8511.80.60	Electrical ignition or starting equipment of a kind used for spark-ignition internal-combustion or compression-ignition engines, nesoi.
8511.90.60	Parts nesoi of electrical ignition or starting equipment or generators used for spark- or compression-ignition internal-combustion engines.
8512.10.20	Electrical lighting equipment of a kind used on bicycles.
8512.10.40	Electrical visual signaling equipment of a kind used on bicycles.
8512.20.20	Electrical lighting equipment of a kind used for motor vehicles or cycles other than bicycles.
8512.20.40	Electrical visual signaling equipment of a kind used for motor vehicles or cycles other than bicycles.
8512.30.00	Electrical sound signaling equipment of a kind used for cycles or motor vehicles.
8512.40.20	Defrosters and demisters of a kind used for cycles or motor vehicles.
8512.40.40	Windshield wipers of a kind used for cycles or motor vehicles.
8512.90.20	Parts of electrical signaling equipment of a kind used for cycles or motor vehicles.
8512.90.40	Parts of electrical lighting equipment of a kind used on bicycles.

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HTSUS subheading	Product description
8512.90.60	Parts of electrical lighting equipment of a kind used for motor vehicles or cycles other than bicycles.
8512.90.70	Parts of defrosters and demisters of a kind used for cycles or motor vehicles.
8512.90.90	Parts of windshield wipers of a kind used for motor vehicles or cycles.
8513.90.20	Parts of flashlights.
8513.90.40	Parts of portable electric lamps designed to function by their own source of energy, other than flashlights.
8514.20.40	Industrial or laboratory microwave ovens for making hot drinks or for cooking or heating food.
8514.90.40	Parts of industrial or laboratory microwaves.
8516.21.00	Electric storage heating radiators.
8516.29.00	Electric space heating apparatus and electric soil heating apparatus, other than storage heating radiators.
8516.60.40	Electrothermic cooking stoves, ranges and ovens (excluding microwave ovens) of a kind used for domestic purposes.
8516.80.40	Electric heating resistors assembled only with simple insulated former and electrical connectors, used for anti-icing or de-icing.
8516.80.80	Electric heating resistors, nesoi.
8516.90.05	Parts of electric heaters or heating apparatus of subheading 8516.10, 8516.21 or 8516.29.
8516.90.15	Housings for hand-drying apparatus of subheading 8516.33.
8516.90.25	Housings and steel bases for electric flat irons of subheading 8516.40.
8516.90.35	Parts of domestic microwave ovens, assemblies, having more than one of: cooking chamber; structural supporting chassis; door; outer case.
8516.90.45	Parts of domestic microwave ovens, printed circuit assemblies.
8516.90.50	Parts of domestic microwave ovens, other nesoi.
8516.90.55	Parts of domestic electrothermic cooking stoves, ranges and ovens of subheading 8516.60.40, cooking chambers whether or not assembled.
8516.90.65	Parts of domestic electrothermic cooking stoves, ranges and ovens of subheading 8516.60.40, top surface panels w/orw/o elements or controls.
8516.90.75	Parts of domestic electrothermic cooking stoves, ranges and ovens of subheading 8516.60.40, door assemblies.
8516.90.80	Parts of domestic electrothermic cooking stoves, ranges and ovens of subheading 8516.60.40, other nesoi.
8516.90.85	Housings for domestic electrothermic toasters.
8516.90.90	Parts of electric instantaneous or storage water heaters and immersion heaters and other domestic electrothermic appliance, nesoi.
8517.62.00	Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing appa.
8517.69.00	Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless n.
8518.10.40	Microphones having a frequency range of 300Hz–3.4kHz with diameter not over 10 mm and height not over 3 mm, for telecommunication.
8518.40.10	Audio-frequency electric amplifiers for use as repeaters in line telephony.
8518.40.20	Audio-frequency electric amplifiers, other than for use as repeaters in line telephony.
8518.50.00	Electric sound amplifier sets.
8518.90.20	Printed circuit assemblies of line telephone handsets; parts of repeaters.
8518.90.41	Other parts of telephone handsets other than printed circuit assemblies.
8518.90.60	Printed circuit assemblies of the microphones of subheading 8518.10.40 or the loudspeakers of subheading 8518.29.40.
8518.90.81	Other parts of microphones & stands, loudspeakers, headphones & earphones nesoi, electric amplifiers, & electric sound amplifier sets, nesoi.
8519.81.30	Sound reproducing apparatus nesoi, not incorporating a sound recording device.
8522.10.00	Pick-up cartridges for use with apparatus of heading 8519 to 8521.
8522.90.25	Assemblies & subassemblies of articles of 8520.90, consisting of 2 or more pieces fastened together, printed circuit assemblies.
8522.90.36	Other assemblies & subassemblies of articles of 8520.90, consisting of 2 or more pieces fastened together, other than printed circuit assemblies.
8522.90.45	Other parts of telephone answering machines, printed circuit assemblies.
8522.90.58	Other parts of telephone answering machines, other than printed circuit assemblies.
8522.90.65	Parts and accessories of apparatus of headings 8519 to 8521, nesoi, printed circuit assemblies.
8522.90.80	Parts and accessories of apparatus of headings 8519 to 8521, nesoi, other than printed circuit assemblies.
8523.21.00	Cards incorporating a magnetic stripe.
8523.49.40	Recorded optical media,for reproducing representations of instructions, data, sound, & image, recorded machine readable binary form, for ADP.
8523.52.00	Semiconductor media, ''smart cards''.
8523.59.00	Semiconductor media, nesoi.
8525.50.30	Transmission apparatus for television, nesoi.
8525.80.30	Television cameras, nesoi.
8525.80.50	Television cameras, digital cameras and video camera recorders, nesoi.
8527.21.15	Radio-tape player combinations capable of receiving & decoding digital radio signals.
8527.21.25	Other radio-tape player combinations.
8527.21.40	Radiobroadcast receivers not operable w/o external power source, for motor veh., combined with sound recording/reproducing apparatus, nesoi.

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HTSUS subheading	Product description
8527.29.40	Radiobroadcast receivers, not operating w/o external power, for motor vehicles, w/o sound recording or reproducing apparatus, FM or AM/FM.
8527.29.80	Radiobroadcast receivers, not operating w/o external power, for motor vehicles, w/o sound recording or reproducing apparatus, other.
8528.42.00	Cathode-ray tube monitors capable of directly connecting to and designed for use with an automatic data processing machine of heading 8471.
8528.49.15	Non-high definition color video monitors, nonprojection type, w/CRT, video display diagonal not over 34.29 cm, incorporating VCR or player.
8528.49.20	Non-high definition color video monitors, nonprojection, w/CRT, video display diag. ov 34.29 cm but n/ov 35.56 cm, incorp. VCR or player.
8528.49.35	Non-high definition color video monitors, nonprojection type, w/CRT, video display diagonal over 35.56 cm, incorporating VCR or player.
8528.49.45	Non-high definition color video monitors, projection type, with cathode-ray tube, incorporating VCR or player.
8528.49.60	High definition color video monitors, nonprojection type, with cathode-ray tube, incorporating VCR or player.
8528.49.80	Black and white or other monochrome video monitors, with cathode-ray tube.
8528.59.05	Incomplete or unfinished color video monitors, w/o cathode-ray tube, flat panel screen or similar display device, incorp. VCR or player.
8528.59.10	Incomplete or unfinished color video monitors, w/o cathode-ray tube, flat panel screen or similar display device, not incorp. VCR or player.
8528.69.05	Incomplete or unfinished color video projectors, w/o cathode-ray tube, flat panel screen or similar display device, incorp. VCR or player.
8528.69.10	Incomplete or unfinished color video projectors, w/o cathode-ray tube, flat panel screen or similar display, not incorp. VCR or player.
8528.69.20	Non-high definition color video projectors, with a cathode-ray tube, not incorporating VCR or player.
8528.69.30	High definition color video projectors, with a cathode-ray tube, not incorporating VCR or player.
8528.72.04	Incomplete or unfinished color tv reception apparatus, presented w/o a display device, incorp. VCR or player.
8528.72.12	Non-high definition color television reception apparatus, nonprojection, w/CRT, video display diag. not ov 34.29 cm, incorp. a VCR or player.
8528.72.20	Non-high def. color television reception app., nonprojection, w/CRT, video display diag. not ov 34.29 cm, not incorporating VCR or player.
8528.72.24	Non-high def. color television reception app., nonprojection, w/CRT, display diag. ov 34.29 cm but n/ov 35.56 cm, n/incorp. VCR or player.
8528.72.28	Non-high definition color television reception app., nonprojection, w/CRT, video display diag. ov 35.56 cm, incorporating a VCR or player.
8528.72.36	Non-high definition color television reception apparatus, projection type, with a cathode-ray tube, incorporating a VCR or player.
8528.72.40	Non-high definition color television reception apparatus, projection type, with a cathode-ray tube, not incorporating a VCR or player.
8528.72.44	High definition color television reception apparatus, nonprojection, with cathode-ray tube, incorporating a VCR or player.
8528.73.00	Black and white or other monochrome television reception apparatus.
8529.10.21	Television antennas and antenna reflectors, and parts suitable for use therewith.
8529.90.04	Tuners (printed circuit assemblies).
8529.90.13	Printed circuit assemblies for television apparatus, nesoi.
8529.90.36	Subassies w/2 or more PCBs or ceramic substrates, as spec'd in add. U.S. note 9 ch. 85, for color TV, not w/ components in add. U.S. note 4, ch. 85.
8529.90.39	Parts of television receivers specified in U.S. note 9 to chapter 85, other than printed circuit assemblies, nesoi.
8529.90.43	PCBs and ceramic substrates and subassemblies thereof for color TV, w/components listed in add. U.S. note 4, chap. 85.
8529.90.49	Combinations of parts of television receivers specified in U.S. note 10 to chapter 85, other than printed circuit assemblies, nesoi.
8529.90.54	Flat panel screen assemblies for TV reception apparatus, color video monitors and video projectors.
8529.90.75	Parts of printed circuit assemblies (including face plates and lock latches) for other apparatus of headings 8525 to 8528, nesoi.
8529.90.86	Parts suitable for use solely or principally with the apparatus of 8525 and 8527 (except television apparatus or cellular phones), nesoi.
8529.90.88	Subassies w/2 or more PCBs or ceramic substrates, exc. tuners or converg. ass'ies, for color TV, w/components in add. U.S. note 4, ch. 85.
8531.10.00	Electric burglar or fire alarms and similar apparatus.
8531.20.00	Indicator panels incorporating liquid crystal devices (LCD's) or light emitting diodes (LED's).
8531.90.15	Printed circuit assemblies of the panels of subheading 8531.20.
8531.90.30	Printed circuit assemblies of electric sound or visual signaling apparatus, nesoi.
8531.90.75	Parts of the panels of subheading 8531.20, other than printed circuit assemblies.
8531.90.90	Parts of electric sound or visual signaling apparatus, nesoi.
8533.39.00	Electrical wirewound variable resistors, including rheostats and potentiometers, for a power handling capacity exceeding 20 W.
8534.00.00	Printed circuits, without elements (other than connecting elements) fitted thereon.

ANNEX—Continued

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HTSUS subheading	Product description
8535.40.00	Lightning arrestors, voltage limiters and surge suppressors, for a voltage exceeding 1,000 V.
8536.61.00	Lampholders for a voltage not exceeding 1,000 V.
8536.69.80	Plugs and sockets for making connections to or in electrical circuits, for a voltage not exceeding 1,000 V, nesoi.
8537.10.91	Other boards, panels, consoles, desks, cabinets, etc., equipped with apparatus for electric control, for a voltage not exceeding 1,000, nesoi.
8538.90.10	Printed circuit assemblies of an article of heading 8537 for one of the articles described in additional U.S. note 12 to chapter 85.
8538.90.30	Printed circuit assemblies, suitable for use solely or principally with the apparatus of heading 8535, 8536 or 8537, nesoi.
8539.10.00	Sealed beam lamp units.
8539.21.20	Tungsten halogen electrical filament lamps, designed for a voltage not exceeding 100 V.
8539.21.40	Tungsten halogen electrical filament lamps, designed for a voltage exceeding 100 V.
8539.31.00	Fluorescent, hot cathode discharge lamps, other than untraviolet lamps.
8539.32.00	Mercury or sodium vapor discharge lamps or metal halide discharge lamps (other than ultraviolet lamps).
8539.39.10	CCFLS for backlighting of flat planel displays.
8539.39.90	Other electrical discharge lamps, other than fluorescent (hot cathode), mercury or sodium vapor, metal halide or ultraviolet lamps.
8539.49.00	Ultraviolet or infrared lamps.
8540.11.10	Cathode-ray television picture tubes incl. video monitor, color, non-high definition, non-projection, display >35.56 cm.
8540.11.24	Cathode-ray TV & video monitor tubes, color, non-high definition, non-projection, video display diagonal < or = 34.29 cm.
8540.11.28	Cathode-ray TV & video monitor tubes, color, non-high definition, non-projection, video display diagonal >34.29 cm & < or = 35.56 cm.
8540.11.30	Cathode-ray television picture tubes incl. video monitor, color, high definition, display diagonal >35.56 cm.
8540.11.44	Cathode-ray TV & video monitor tubes, color, high definition, having video display display diagonal < or = 34.29 cm.
8540.11.48	Cathode-ray TV & video monitor tubes, color, high definition, video display diagonal video display diagonal >34.29 cm & < or = 35.56 cm.
8540.11.50	Cathode-ray television picture tubes incl. video monitor, color, non-high definition, projection type.
8540.12.10	Cathode-ray television picture tubes incl. video monitor, monochrome, non-high definition, w/faceplate diagonal >29 cm and < or = 42 cm.
8540.12.20	Cathode-ray television picture tubes incl. video monitor, monochrome, high definition, w/faceplate diagonal >29 cm and < or = 42 cm.
8540.12.50	Cathode-ray television picture tubes incl. video monitor, monochrome, non-high definition, nesoi.
8540.12.70	Cathode-ray television picture tubes incl. video monitor, monochrome, high definition, nesoi.
8540.20.20	Cathode-ray television camera tubes.
8540.20.40	Television camera tubes, image converters and intensifiers, and other photocathode tubes, other than cathode-ray tubes.
8540.40.10	Data/grphic display tubes, monochrome; data/graphic display tubes, color, with a phosphor dot screen pitch smaller than 0.4 mm.
8540.60.00	Cathode-ray tubes nesoi.
8540.71.20	Magnetron tubes, modified for use as parts of microwave ovens.
8540.71.40	Magnetron tubes nesoi.
8540.81.00	Receiver or amplifier tubes.
8540.91.15	Front panel assemblies for cathode-ray tubes.
8540.91.20	Deflection coils for cathode-ray tubes.
8540.91.50	Parts of cathode-ray tubes other than deflection coils or front panel assemblies.
8540.99.40	Electron guns; radio frequency (RF) interaction structures for microwave tubes of subheadings 8540.71 through 8540.79, inclusive.
8540.99.80	Parts of thermionic, cold cathode or photocathode tubes, other than parts of cathode-ray tubes, electron guns, etc., nesoi.
8543.70.71	Electric luminescent lamps.
8543.70.85	Electrical machines and apparatus for electrical nerve stimulation.
8543.70.91	Digital signal processing apparatus capable of connecting to a wired or wireless network for sound mixing.
8543.90.85	Parts, nesoi, of flat panel displays other than for reception apparatus for television of heading 8528.
8543.90.88	Parts (other than printed circuit assemblies) of electrical machines and apparatus, having individual functions, nesoi.
8544.20.00	Insulated (including enameled or anodized) coaxial cable and other coaxial conductors.
8544.42.10	Insulated electric conductors nesoi, for a voltage not exceeding 1,000 V, fitted with modular telephone connectors.
8544.42.20	Insulated electric conductors nesoi, used for telecommuncations, for a voltage not exceeding 1,000 V, fitted with connectors.
8544.42.90	Insulated electric conductors nesoi, for a voltage not exceeding 1,000 V, fitted with connectors, nesoi.
8545.11.00	Carbon electrodes of a kind used for furnaces.
8545.19.20	Carbon electrodes of a kind used for electrolytic purposes.

ANNEX—Continued

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HTSUS subheading	Product description
8545.19.40	Carbon electrodes of a kind used for electrical purposes, other than those used for furnaces or for electrolytic purposes.
8545.20.00	Carbon brushes of a kind used for electrical purposes.
8545.90.20	Arc light carbons of a kind used for electrical purposes.
8545.90.40	Lamp carbons, battery carbons and articles of graphite or other carbon nesoi, of a kind used for electrical purposes.
8546.10.00	Electrical insulators of glass.
8546.20.00	Electrical insulators of ceramics.
8546.90.00	Electrical insulators of any material, other than glass or ceramics.
8547.10.40	Ceramic insulators to be used in the production of spark plugs for natural gas fueled, stationary, internal-combustion engines.
8547.10.80	Insulating fittings for electrical machines, appliances or equipment, of ceramics nesoi.
8547.20.00	Insulating fittings for electrical machines, appliances or equipment, of plastics.
8547.90.00	Electrical conduit tubing and joints therefor, of base metal lined with insulating material; insulating fittings for electrical goods nesoi.
8548.90.01	Electrical parts of machinery or apparatus not specified or included elsewhere in chapter 85.
8602.90.00	Rail locomotives (o/than diesel-electric), non-electric; locomotive tenders.
8706.00.03	Chassis fitted w/engines, for mtr. vehicles for transport of goods of 8704.21 or 8704.31.
8706.00.05	Chassis fitted w/engines, for mtr. vehicles of 8701.20, 8702, & 8704 (except 8704.21 or 8704.31).
8706.00.15	Chassis fitted w/engines, for mtr. vehicles for transport of persons of 8703.
8706.00.50	Chassis fitted w/engines, for tractors (o/than for agric. use) and other motor vehicles nesoi.
8707.10.00	Bodies (including cabs), for mtr. vehicles for transport of persons of heading 8703.
8707.90.10	Bodies (including cabs), for tractors suitable for agricultural use.
8707.90.50	Bodies (including cabs), for mtr. vehicles (o/than tract. for agri. use) of headings 8701–8705 (except 8703).
8708.10.30	Pts. & access. for mtr. vehicles of headings 8701 to 8705, bumpers.
8708.10.60	Pts. & access. of mtr. vehicles of headings 8701 to 8705, parts of bumpers.
8708.21.00	Pts. & access. of bodies for mtr. vehicles of headings 8701 to 8705, safety seat belts.
8708.29.15	Pts. & access. of bodies for mtr. vehicles of headings 8701 to 8705, door assemblies.
8708.29.21	Body stampings for tractors suitable for agriculture.
8708.29.25	Body stampings of motor vehicles, nesoi.
8708.29.50	Pts. & access. of bodies for mtr. vehicles of headings 8701 to 8705, nesoi.
8708.30.10	Pts. & access. of tractors suit. for agric. use, brakes and servo-brakes & pts thereof.
8708.30.50	Pts. & access. of mtr. vehicles of 8701, nesoi, and 8702–8705, brakes and servo-brakes & pts thereof.
8708.40.11	Pts. & access. of mtr. vehic. of 8701.20, 8702, 8703 or 8704, gear boxes.
8708.40.30	Pts. & access. of tractors suitable for agricultural use, gear boxes.
8708.40.50	Pts. & access. of mtr. vehic. of 8701, nesoi, and of 8705, gear boxes.
8708.40.60	Pts. & access. of tractors suitable for agricultural use, pts. for gear boxes.
8708.40.65	Pts. & access. of tractors (o/than road tractors or for agricultural use), pts. for gear boxes.
8708.40.70	Parts of gear boxes of the motor vehicles of 8701–8705, of cast iron.
8708.40.75	Pts. & access. of motor vehicles of 8701, nesoi, and 8702–8705, pts. for gear boxes, nesoi.
8708.50.11	Pts. & access. of tractors suitable for agricultural use, drive axles w/differential (whether or not w/other transm. components).
8708.50.31	Pts. & access. of tractors, other than road tractors or for agricultural use, drive axles w/differential (whether or not w/other transm. components).
8708.50.51	Pts. & access. of motor vehicles of 8703, drive axles w/differential (whether or not w/other transm. components).
8708.50.61	Pts. & access. of mtr. vehic. of 8701, nesoi, 8702, and 8704–8705, drive axles w/different. (wheth or not w/oth transm components).
8708.50.65	Pts. & access. of mtr. vehic. of 8701, nesoi, of 8702, and of 8704–8705, non-driving axles.
8708.50.70	Pts. & access. of tractors suitable for agricultural use, parts of drive axles w/different. (wheth or not w/oth transm components).
8708.50.75	Pts. & access. of tractors, other than road tractors or for agricultural use, parts of drive axles w/different. (wheth or not w/oth transm components).
8708.50.79	Pts. & access. of mtr. vehic. for transp. of persons of 8703, parts of non-driving axles.
8708.50.81	Pts. & access. of motor vehicles of 8703, of cast iron nesoi.
8708.50.85	Pts. & access. of motor vehicles of 8703, half-shafts.
8708.50.89	Pts. & access. of motor vehicles of 8703, parts, nesoi, of drive axles w/different. (wheth or not w/oth transm components).
8708.50.91	Pts. & access. of mtr. vehic. of 8701, nesoi, 8702 and 8704–8705, parts of non-driving axles.
8708.50.93	Pts. & access. of mtr. vehic. of 8701, nesoi, 8702 and 8704–8705, of cast iron nesoi.
8708.50.95	Pts. & access. of mtr. vehic. of 8701, nesoi, 8702 and 8704–8705, half-shafts.
8708.50.99	Pts. & access. of mtr. vehic. of 8701, nesoi, 8702 and 8704–8705, parts, nesoi, of drive axles w/different. (wheth or not w/oth transm components).
8708.70.05	Pts. & access. of tractors suitable for agricultural use, road wheels.
8708.70.15	Pts. & access. of tractors suitable for agricultural use, pts. & access. for road wheels.
8708.70.25	Pts. & access. of tractors (o/than road tractors or for agric. use), road wheels.
8708.70.35	Pts. & access. of tractors (o/than road tractors or for agric. use), pts. & access. for road wheels.
8708.70.45	Pts. & access. of mtr. vehic. of 8701, nesoi, and of 8702–8705, road wheels.

ANNEX—Continued

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HTSUS subheading	Product description
8708.70.60	Pts. & access. of mtr. vehic. of 8701, nesoi, and of 8702–8705, pts. & access. for road wheels.
8708.80.03	Pts. & access. of tractors suitable for agricultural use, McPherson struts.
8708.80.05	Pts. & access. of tractors suitable for agricultural use, suspension shock absorbers (o/than McPherson struts).
8708.80.13	Pts. & access. of mtr. vehic. of 8701, nesoi, and of 8702–8705, McPherson struts.
8708.80.16	Pts. & access. of mtr. vehic. of 8701, nesoi, and of 8702–8705, suspension shock absorbers (o/than McPherson struts).
8708.80.51	Pts. & access. of tractors suitable for agricultural use, pts. for suspension systems nesoi.
8708.80.55	Pts. & access. of tractors (o/than road tractors or for agricultural use), pts. for suspension systems nesoi.
8708.80.60	Parts of suspension systems of the motor vehicles of 8701–8705, of cast iron.
8708.80.65	Pts. & access. of motor vehicles of 8701, nesoi, and 8702–8705, pts. for suspension systems nesoi.
8708.91.10	Pts. & access. of tractors suitable for agricultural use, radiators.
8708.91.50	Pts. & access. of mtr. vehic. of 8701, nesoi, and 8702–8705, radiators.
8708.91.60	Pts. & access., nesoi, of tractors suitable for agricultural use, parts of radiators.
8708.91.65	Pts. & access., nesoi, of tractors (o/than road tractors or suitable for agricultural use), parts of radiators.
8708.91.70	Pts. & access. of motor vehicles of 8701, nesoi, and 8702–8705, parts of radiators, of cast iron nesoi.
8708.91.75	Pts. & access., nesoi, of motor vehicles of 8701, nesoi, and 8702–8705, parts of radiators, nesoi.
8708.92.10	Pts. & access. of tractors suitable for agricultural use, mufflers & exhaust pipes.
8708.92.50	Pts. & access. of mtr. vehic. of 8701, nesoi, and 8702–8705, mufflers & exhaust pipes.
8708.92.60	Pts. & access., nesoi, of tractors suitable for agricultural use, parts of mufflers.
8708.92.65	Pts. & access., nesoi, of tractors (o/than road tractors or suitable for agricultural use), parts of mufflers.
8708.92.70	Pts. & access. of motor vehicles of 8701, nesoi, and 8702–8705, parts of mufflers, of cast iron nesoi.
8708.92.75	Pts. & access., nesoi, of motor vehicles of 8701, nesoi, and 8702–8705, parts of mufflers, nesoi.
8708.93.15	Pts. & access. of tractors suitable for agricultural use, clutches.
8708.93.30	Pts. & access. of tractors suitable for agricultural use, pts. of clutches.
8708.93.60	Pts. & access. of mtr. vehic. of 8701, nesoi, and 8702–8705, clutches.
8708.93.75	Pts. & access. of mtr. vehic. of 8701, nesoi, and 8702–8705, pts. of clutches.
8708.94.10	Pts. & access. of tractors suitable for agricultural use, steering wheels, steering columns and steering boxes.
8708.94.50	Pts. & access. of mtr. vehic. of 8701, nesoi, and 8702–8705, steering wheels, steering columns and steering boxes.
8708.94.60	Pts. & access., nesoi, of tractors suitable for agricultural use, parts of steering wheels/columns/boxes.
8708.94.65	Pts. & access., nesoi, of tractors (o/than road tractors or suitable for agricultural use), parts of steering wheels/columns/boxes.
8708.94.70	Pts. & access. of motor vehicles of 8701, nesoi, and 8702–8705, parts of steering wheels/columns/boxes, of cast iron nesoi.
8708.94.75	Pts. & access., nesoi, of motor vehicles of 8701, nesoi, and 8702–8705, parts of steering wheels/columns/boxes, nesoi.
8708.95.05	Pts. & access. of bodies for mtr. vehicles of headings 8701 to 8705, inflators & modules for airbags.
8708.95.10	Pts. & access., nesoi, of tractors suitable for agricultural use, parts of safety airbags with inflater system.
8708.95.15	Pts. & access., nesoi, of tractors (o/than road tractors or suitable for agricultural use), parts of safety airbags with inflater system.
8708.95.20	Pts. & access. of motor vehicles of 8701, nesoi, and 8702–8705, parts of safety airbags with inflater system.
8708.99.03	Pts. & access. of tractors suitable for agricultural use, vibration control goods containing rubber.
8708.99.06	Pts. & access. of tractors suitable for agricultural use, double flanged wheel hub units w/ball bearings.
8708.99.16	Pts. & access. of tractors suitable for agricultural use, pts. for power trains nesoi.
8708.99.23	Pts. & access., nesoi, of tractors suitable for agricultural use.
8708.99.27	Pts. & access. of tractors (o/than road tractors or for agricultural use), vibration control goods containing rubber.
8708.99.31	Pts. & access. of tractors (o/than road tractors or for agricultural use), double flanged wheel hub units w/ball bearings.
8708.99.41	Pts. & access. of tractors (o/than road tractors or for agricultural use), pts. for power trains nesoi.
8708.99.48	Pts. & access., nesoi, of tractors (o/than road tractors or suitable for agricultural use).
8708.99.53	Parts & accessories of motor vehicles of 8701–8705, nesoi, of cast iron.
8708.99.55	Pts. & access. of motor vehicles of 8701, nesoi, and 8702–8705, vibration control goods containing rubber.
8708.99.58	Pts. & access. of motor vehicles of 8701, nesoi, and 8702–8705, double flanged wheel hub units w/ball bearings.
8708.99.68	Pts. & access. of motor vehicles of 8701, nesoi, and 8702–8705, pts. for power trains nesoi.
8708.99.81	Pts. & access., nesoi, of motor vehicles of 8701, nesoi, and 8702–8705.
8712.00.15	Bicycles, not motorized, w/both wheels not over 63.5 cm in diameter.
8712.00.25	Bicycles, not motorized, w/both wheels o/63.5 cm in diam., weighing under 16.3 kg & not design. for tires w/x-sect. diam. o/4.13 cm.
8712.00.35	Bicycles, not motorized, w/both wheels o/63.5 cm in diam., weighing 16.3 kg or more, and/or for use w/tires w/x-sect. diam. o/4.13 cm.
8712.00.44	Bicycles, n/motor., w/front wheel diam. o/55 cm but n/o 63.5 cm & rear wheel diam. o/63.5 cm in diam., & wt <16.3 kg w/o acces., value $200+.
8712.00.48	Bicycles, n/motor., w/front wheel w/diameter different than rear wheel diam., nesoi.
8712.00.50	Cycles (o/than bicycles) (including delivery tricycles), not motorized.
8714.91.20	Pts. & access. for bicycles & o/cycles, frames, valued over $600 each.
8714.91.30	Pts. & access. for bicycles & o/cycles, frames, valued at $600 or less each.

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HTSUS subheading	Product description
8714.91.50	Pts. & access. for bicycles, sets of steel tubing cut to exact length for the assembly (w/other pts) into the frame & fork of one bicycle.
8714.91.90	Pts. & access. for bicycles & o/cycles, forks, nesoi and pts of frames, nesoi and pts. of forks.
8714.92.10	Pts. & access. for bicycles & o/cycles, wheel rims.
8714.92.50	Pts. & access. for bicycles & o/cycles, wheel spokes.
8714.93.05	Pts. & access. for bicycles & o/cycles, aluminum alloy hubs, w/hollow axle and lever-operated quick release mechanism.
8714.93.15	Pts. & access. for bicycles & o/cycles, 3-speed hubs nesoi.
8714.93.24	Pts. & access. for bicycles & o/cycles, 2-speed hubs, w/internal gear changing mechanisms, nesoi.
8714.93.28	Pts. & access. for bicycles & o/cycles, variable speed hubs, w/internal gear changing mechanisms, nesoi.
8714.93.35	Pts. & access. for bicycles & o/cycles, non-variable speed hubs, nesoi.
8714.93.70	Pts. & access. for bicycles & o/cycles, free-wheel sprocket-wheels.
8714.94.30	Pts. & access. for bicycles & o/cycles, brakes (o/than hub brakes) and parts thereof.
8714.94.90	Pts. & access. for bicycles & o/cycles, brakes and parts thereof, nesoi.
8714.95.00	Pts. & access. for bicycles & o/cycles, saddles.
8714.96.10	Pts. & access. for bicycles & o/cycles, pedals and parts thereof.
8714.96.50	Pts. & access. for bicycles & o/cycles, cotterless-type crank sets and parts thereof.
8714.96.90	Pts. & access. for bicycles & o/cycles, crank-gear nesoi and parts thereof.
8716.10.00	Trailers & semi-trailers, not mech. propelled, for housing or camping.
8716.20.00	Self-loading or self-unloading trailers and semi-trailers, not mech. propelled, for agricultural purposes.
8716.31.00	Tanker trailers and tanker semi-trailers, not mech. propelled, for the transport of goods.
8716.39.00	Trailers and semi-trailers, not mech. propelled, nesoi, for the transport of goods.
8716.40.00	Trailers and semi-trailers, not mechanically propelled, nesoi.
8716.80.10	Farm wagons and carts, not mechanically propelled.
8716.80.50	Vehicles, not mechanically propelled, nesoi.
8716.90.10	Parts of farm wagons and carts.
8716.90.30	Parts of vehicles, not mechanically propelled, castors (o/than castors of heading 8302).
8716.90.50	Parts of trailers and semi-trailers and vehicles, not mechanically propelled, nesoi.
8804.00.00	Parachutes (including dirigible parachutes) and rotochutes; parts & access. thereof.
8903.10.00	Vessels, inflatable, for pleasure or sports.
8903.91.00	Vessels, sailboats, with or without auxiliary motor, for pleasure or sports.
8903.92.00	Vessels, motorboats (o/than outboard motorboats), for pleasure or sports.
8903.99.05	Vessels, canoes, not of a type designed to be principally used with motor or sails.
8903.99.15	Vessels, row boats, not of a type to be principally used with motors or sails.
8903.99.20	Vessels, outboard motorboats, for pleasure or sports.
8903.99.90	Vessels, yachts and other vessels for pleasure or sports, nesoi.
8907.10.00	Inflatable rafts (o/than used for pleasure or sports of 8901.10).
9001.90.40	Lenses nesoi, unmounted.
9001.90.50	Prisms, unmounted.
9001.90.60	Mirrors, unmounted.
9001.90.80	Half-tone screens designed for use in engraving or photographic processes, unmounted.
9001.90.90	Optical elements nesoi, unmounted.
9002.11.40	Projection lenses, mounted, and parts and accessories therefor, for cameras, projectors or photographic enlargers or reducers.
9002.11.60	Mounted objective lenses for use in closed circuit television cameras, seperately imported, w/or w/o attached elec. connectors or motors.
9002.11.90	Objective lenses and parts & access. thereof, for cameras, projectors, or photographic enlargers or reducers, except projection, nesoi.
9002.19.00	Objective lenses, mounted, and parts and accessories therefor, other than for cameras, projectors or photographic enlargers or reducers.
9002.20.40	Photographic filters, mounted, and parts and accessories therefor.
9002.20.80	Filters, mounted, and parts and accessories therefor, for optical uses other than photographic.
9002.90.85	Mounted lenses, n/obj., for use in closed circuit television cameras, seperately imported, w/or w/o attached elec. connectors or motors.
9006.30.00	Photographic cameras for underwater, aerial, medical, surgical, forensic or criminological purposes, not cinematographic.
9007.10.00	Cinematographic cameras.
9007.20.20	Cinematographic projectors for film <16 mm, w/sound recording and reproducing systems and those for projecting only sound motion pictures.
9007.20.40	Cinematographic projectors for film of less than 16 mm, nesoi.
9007.20.60	Cinematographic projectors for film = or >16 mm, w/sound recording & reproducing systems & those for projecting only sound motion pictures.
9007.20.80	Cinematographic projectors for film of 16 mm or greater, nesoi.
9007.92.00	Parts and accessories for cinematographic projectors.
9008.50.50	Photographic (other than cinematographic) enlargers and reducers.
9008.90.40	Parts and accessories of image projectors, other than cinematographic.
9008.90.80	Parts and accessories of photographic (other than cinematographic) enlargers and reducers.

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HTSUS subheading	Product description
9010.10.00	Apparatus & equipment for auto. developing photographic film/paper in rolls or exposing developed film to rolls of photographic paper.
9010.50.10	Contact printers for photographic laboratories.
9010.50.20	Developing tanks for photographic laboratories.
9010.50.30	Editors and combination editor-splicers, for cinematographic film, containing an optical lens or designed to contain such a lens.
9010.50.40	Photographic film viewers, titlers, splicers and editors, and combinations thereof, containing or designed to contain an optical lens, nesoi.
9010.50.50	Photographic film viewers, titlers, splicers and editors, and combinations thereof, not containing or designed to contain an optical lens.
9010.50.60	Apparatus and equipment for photographic (including cinematographic) laboratories, nesoi; negatoscopes.
9010.60.00	Projection screens.
9010.90.85	Parts and accessories of articles of subheading 9010.50 & 9010.60.
9010.90.95	Other parts & accessories for apparatus & equipment for photographic (incl. cinematographic) labs, nesoi, negatoscopes, & projection screens.
9011.20.80	Microscopes for microphotography, microcinematography or microprojection, not provided with a means for photographing the image.
9011.80.00	Compound optical microscopes other than stereoscopic or those for microphotography, microcinematography or microprojection.
9013.10.30	Telescopic sights for rifles designed for use with infrared light.
9013.80.20	Hand magnifiers, magnifying glasses, loupes, thread counters and similar apparatus nesoi.
9013.80.40	Door viewers (door eyes).
9013.80.90	Liquid crystal devices nesoi, and optical appliances and instruments, nesoi.
9013.90.50	Parts and accessories of flat panel displays other than for articles of heading 8528.
9013.90.70	Parts and accessories other than for telescopic sights for fitting to arms or for periscopes.
9013.90.80	Parts and accessories of liquid crystal devices nesoi, and optical appliances and instruments, nesoi.
9014.10.10	Optical direction finding compasses.
9015.10.40	Electrical rangefinders.
9015.30.40	Electrical levels.
9015.30.80	Levels, other than electrical.
9015.90.01	Parts and accessories of 9015.
9016.00.20	Electrical balances of a sensitivity of 5 cg or better, with or without weights, and parts and accessories thereof.
9016.00.40	Jewelers' balances (nonelectrical) of a sensitivity of 5 cg or better, with or without weights, and parts and accessories thereof.
9016.00.60	Balances (nonelectrical) of a sensitivity of 5 cg or better, other than jewelers', balances, and parts and accessories thereof.
9017.10.40	Drafting plotters, whether or not automatic.
9017.10.80	Drafting tables and machines, whether or not automatic, nesoi.
9017.20.40	Disc calculators, slide rules and other mathematical calculating instruments.
9017.20.70	Other drawing, marking-out or mathematical plotters, nesoi.
9017.20.80	Other drawing, marking-out or mathematical calculating instruments, nesoi.
9017.30.40	Micrometers and calipers, for use in the hand.
9017.30.80	Gauges for measuring length, for use in the hand.
9017.80.00	Instruments for measuring length, for use in the hand, nesoi (for example, measuring rods and tapes).
9017.90.01	Parts and accessories for drawing, marking-out or mathematical calculating instruments, and for hand-held instruments for measuring length.
9023.00.00	Instruments, apparatus and models, designed for demonstrational purposes, unsuitable for other uses, and parts and accessories thereof.
9025.80.20	Hydrometers and similar floating instruments, whether or not incorporating a thermometer, non-recording, other than electrical.
9025.90.06	Other parts & accessories of hydrometers & like floating instruments, thermometers, pyrometers, barometers, hygrometers, psychrometers & combinations.
9026.80.40	Nonelectrical heat meters incorporating liquid supply meters, and anemometers.
9027.10.40	Nonelectrical optical instruments and apparatus for gas or smoke analysis.
9027.10.60	Nonelectrical gas or smoke analysis apparatus, other than optical instruments and apparatus.
9027.90.68	Parts and accessories of nonelectrical optical instruments and apparatus of heading 9027, nesoi.
9029.10.40	Taximeters.
9029.10.80	Revolution counters, production counters, odometers, pedometers and the like, other than taximeters.
9029.20.20	Bicycle speedometers.
9029.20.60	Stroboscopes.
9029.90.20	Parts and accessories of taximeters.
9029.90.40	Parts and accessories of bicycle speedometers.
9030.20.10	Oscilloscopes and oscillographs, nesoi.
9031.90.45	Bases and frames for the optical coordinate-measuring machines of subheading 9031.49.40.
9104.00.05	Instrument panel clocks for vehicles, air/spacecraft, vessels, clock movement over 50 mm wide, opto-electronic display only, n/o $10 each.

ANNEX—Continued

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HTSUS subheading	Product description
9104.00.10	Instrument panel clocks for veh., air/spacecraft, vessels, clock mvmt over 50 mm wide, electric, nt optoelectronic display, n/o $10 each.
9104.00.20	Instrument panel clocks for vehicles, air/spacecraft, vessels, w/clock movement over 50 mm wide, valued n/o $10 each, nonelectric.
9104.00.25	Instrument panel clocks for vehicles, air/spacecraft, vessels, w/clock movement ov 50 mm wide, opto-electronic display only, ov $10 each.
9104.00.30	Instrument panel clocks for vehicles, air/spacecraft, vessels, w/clock mvmt ov 50 mm wide, electric, nt optoelectronic display, ov $10 each.
9104.00.40	Instrument panel clocks for vehicles, air/spacecraft, vessels, w/clock movement ov 50 mm wide, valued ov $10 each, non-electric.
9104.00.45	Instrument panel clocks for vehicles, air/spacecraft, vessels, w/watch or clock movement <50 mm wide, opto-electronic display only.
9104.00.50	Instrument panel clocks for vehicles, air/spacecraft, vessels, w/watch or clock movement <50 mm wide, electric, not opto-electronic display.
9106.10.00	Time registers; time recorders.
9106.90.20	Parking meters.
9106.90.40	Time locks valued over $10 each.
9106.90.55	Apparatus for meas., recording or indicating time intervals, w/watch or clock mvmt., battery powered, w/opto-electronic display only.
9106.90.65	Other apparatus for meas., recording or otherwise indicating time intervals, w/watch or clock mvmt., battery powered, nesoi.
9106.90.75	Apparatus for meas., recording or indicating time intervals, w/watch or clock mvmt., AC powered, w/opto-electronic display only.
9106.90.85	Time of day recording apparatus & apparatus for measuring, detecting, recording or otherwise indicating intervals of time nesoi.
9107.00.40	Time switches with clock or watch movements or with synchronous motor, valued not over $5 each.
9107.00.80	Time switches with clock or watch movements or with synchronous motor, valued over $5 each.
9401.20.00	Seats, of a kind used for motor vehicles.
9401.30.40	Seats nesoi, swivel w/variable height adjustment & w/wooden frame (o/than of heading 9402).
9401.30.80	Seats nesoi, swivel w/variable height adjustment & other than w/wooden frame (o/than of heading 9402).
9401.40.00	Seats nesoi, convertible into beds (o/than garden seats or camping equip.).
9401.52.00	Bamboo seats.
9401.53.00	Rattan seats.
9401.59.00	Seats nesoi, of cane, osier, similar materials o/than bamboo or rattan.
9401.61.20	Chairs nesoi, w/teak frames, upholstered.
9401.61.40	Chairs nesoi, w/wooden frames (o/than teak), upholstered.
9401.61.60	Seats (o/than chairs) nesoi, w/wooden frames, upholstered.
9401.69.20	Seats nesoi, of bent-wood.
9401.69.40	Chairs nesoi, w/teak frames, not upholstered.
9401.69.60	Chairs nesoi, w/wooden frames (o/than teak), not upholstered.
9401.69.80	Seats (o/than chairs) nesoi, w/wooden frames, not upholstered.
9401.71.00	Seats nesoi, w/metal frame (o/than of heading 9402), upholstered.
9401.79.00	Seats nesoi, w/metal frame (o/than of heading 9402), not upholstered.
9401.80.20	Seats nesoi, of reinforced or laminated plastics (o/than of heading 9402).
9401.80.40	Seats nesoi, of rubber or plastics (o/than of reinforced or laminated plastics & o/than of heading 9402).
9401.80.60	Seats nesoi, o/than of wood, or w/metal frame or of rubber or plastics (o/than of heading 9402).
9401.90.35	Parts of seats (o/than of 9402) nesoi, of rubber or plastics (o/than of heading 9402).
9401.90.40	Parts of seats (o/than of 9402) nesoi, of wood.
9401.90.50	Parts of seats (o/than of 9402) nesoi, o/than of cane etc, rubber or plastics or of wood.
9403.10.00	Furniture (o/than seats) of metal nesoi, of a kind used in offices.
9403.20.00	Furniture (o/than seats) of metal nesoi, o/than of a kind used in offices.
9403.30.40	Furniture (o/than seats) of bentwood nesoi, of a kind used in offices.
9403.30.80	Furniture (o/than seats) of wood (o/than bentwood) nesoi, of a kind used in offices.
9403.40.40	Furniture (o/than seats) of bent-wood nesoi, of a kind used in the kitchen.
9403.40.60	Furniture (o/than seats) of wood (o/than bentwood) nesoi, of a kind used in the kitchen & design. for motor vehicle use.
9403.40.90	Furniture (o/than seats) of wood (o/than bentwood) nesoi, of a kind used in the kitchen & not design. for motor vehicl. use.
9403.50.40	Furniture (o/than seats) of bentwood nesoi, of a kind used in the bedroom.
9403.50.60	Furniture (o/than seats) of wood (o/than bentwood), of a kind used in the bedroom & designed for motor vehicle use.
9403.50.90	Furniture (o/than seats) of wood (o/than bentwood), of a kind used in the bedroom & not designed for motor vehicle use.
9403.60.40	Furniture (o/than seats & o/than of 9402) of bentwood nesoi.
9403.60.80	Furniture (o/than seats & o/than of 9402) of wooden (o/than bentwood) nesoi.
9403.70.40	Furniture (o/than seats & o/than of 9402) of reinforced or laminated plastics nesoi.
9403.70.80	Furniture (o/than seats & o/than of 9402) of plastics (o/than reinforced or laminated) nesoi.

ANNEX—Continued

Note: All products that are classified in the 8-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS) that are listed in this Annex are covered by the proposed supplemental action. The product descriptions that are contained in this Annex are provided for informational purposes only, and are not intended to delimit in any way the scope of the proposed action. Any questions regarding the scope of particular HTSUS subheadings should be referred to U.S. Customs and Border Protection. In the product descriptions, the abbreviation ''nesoi'' means ''not elsewhere specified or included''.

HTSUS subheading	Product description
9403.82.00	Bamboo furniture and parts.
9403.83.00	Rattan furniture and parts.
9403.89.30	Furniture (o/than seats) of cane, osier, or similar materials o/than bamboo or rattan.
9403.89.60	Furniture (o/than seats & o/than of 9402) of materials nesoi.
9403.90.10	Parts of furniture (o/than seats), for furniture of a kind used for motor vehicles.
9403.90.25	Parts of furniture (o/than seats), of cane, osier, bamboo or similar materials.
9403.90.40	Parts of furniture (o/than seats or o/than of 9402), of reinforced or laminated plastics.
9403.90.50	Parts of furniture (o/than seats or o/than of 9402), of rubber or plastics (o/than reinforced or laminated plastics).
9403.90.60	Parts of furniture (o/than seats or o/than of 9402), of textile material (o/than cotton).
9403.90.70	Parts of furniture (o/than seats or o/than of 9402), of wood.
9403.90.80	Parts of furniture (o/than seats or o/than of 9402) nesoi.
9404.10.00	Mattress supports.
9404.21.00	Mattresses, of cellular rubber or plastics, whether or not covered.
9404.29.10	Mattresses, of cotton.
9404.29.90	Mattresses (o/than of cellular rubber or plastics or of cotton).
9405.10.40	Chandeliers and other electric ceiling or wall lighting fittings (o/than used for public spaces), of brass.
9405.10.60	Chandeliers and other electric ceiling or wall lighting fixtures (o/than used for public spaces), of base metal (o/than brass).
9405.10.80	Chandeliers and other electric ceiling or wall lighting fixtures (o/than used for public spaces), not of base metal.
9405.20.40	Electric table, desk, bedside or floor-standing lamps, of brass.
9405.20.60	Electric table, desk, bedside or floor-standing lamps, of base metal (o/than brass).
9405.20.80	Electric table, desk, bedside or floor-standing lamps, not of base metal.
9405.30.00	Lighting sets of a kind used for Christmas trees.
9405.40.40	Electric lamps and lighting fixtures nesoi, of brass.
9405.40.60	Electric lamps and lighting fixtures nesoi, of base metal (o/than brass).
9405.40.82	LEDs for backlighting of LCDs.
9405.40.84	Electric lamps and lighting fixtures nesoi, not of base metal.
9405.50.20	Non-electrical incandescent lamps designed to be operated by propane or other gas, or by compressed air and kerosene or gasoline.
9405.50.30	Non-electrical lamps and lighting fixtures nesoi, of brass.
9405.50.40	Non-electrical lamps and lighting fixtures nesoi, not of brass.
9405.60.20	Illuminated signs, illuminated name plates and the like, of brass.
9405.60.40	Illuminated signs, illuminated name plates and the like, of base metal (o/than brass).
9405.60.60	Illuminated signs, illuminated name plates and the like, not of base metal.
9405.91.10	Parts of lamps, lighting fittings, illuminated signs & the like, globes and shades, of lead crystal glass.
9405.91.30	Parts of lamps, lighting fittings, illuminated signs & the like, globes and shades, of glass (o/than lead crystal).
9405.91.40	Parts of lamps, lighting fittings, illuminated signs & the like, chimneys, of glass.
9405.91.60	Parts of lamps, lighting fixtures, illuminated signs & the like, of glass nesoi.
9405.92.00	Parts of lamps, lighting fixtures, illuminated signs & the like, of plastics.
9405.99.20	Parts of lamps, lighting fixtures, illuminated signs & the like, of brass.
9405.99.40	Parts of lamps, lighting fixtures, illuminated signs & the like, not of glass, plastics or brass.
9406.10.00	Prefabricated buildings of wood.
9406.90.00	Prefabricated buildings not of wood.
9606.10.40	Press-fasteners, snap-fasteners and press-studs and pts thereof, valued n/o 20 cents/dozen pieces or parts.
9606.10.80	Press-fasteners, snap-fasteners and press-studs and pts thereof, valued o/20 cents/dozen pieces or parts.
9606.21.20	Buttons, of casein, not covered with textile material.
9606.21.40	Buttons, of acrylic resin or polyester resin, or both resins, not covered with textile material.
9606.21.60	Buttons, of plastics (o/than casein, acrylic or polyester resins), not covered with textile materials.
9606.22.00	Buttons, of base metal, not covered with textile material.
9606.29.20	Buttons, of acrylic resin or polyester resin, or both resins, covered with textile material.
9606.29.40	Buttons, of pearl or shell.
9606.29.60	Buttons, nesoi.
9606.30.40	Button blanks, of casein.
9606.30.80	Button molds & parts of buttons; button blanks (o/than casein).
9607.11.00	Slide fasteners, fitted with chain scoops of base metal.
9607.19.00	Slide fasteners, not fitted with chain scoops of base metal.
9607.20.00	Parts of slide fasteners.
9620.00.10	Monopods, bipods, tripods and similar articles, accessories of heading 8519 or 8521.
9620.00.15	Monopods, bipods, tripods and similar articles, accessories of heading 9005.
9620.00.20	Monopods, bipods, tripods and similar articles, accessories of heading 9006, other than cinematographic.
9620.00.25	Monopods, bipods, tripods and similar articles, accessories of heading 9007.
9620.00.30	Monopods, bipods, tripods and similar articles, accessories of heading 9015, including rangefinders.
9620.00.50	Monopods, bipods, tripods and similar articles of plastics, nesoi.
9620.00.55	Monopods, bipods, tripods and similar articles of wood, nesoi.
9620.00.60	Monopods, bipods, tripods and similar articles of graphite and other carbon, nesoi.
9620.00.65	Monopods, bipods, tripods and similar articles of iron and steel, nesoi.
9620.00.70	Monopods, bipods, tripods and similar articles of aluminum, nesoi.

ANNEX—Continued

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HTSUS subheading	Product description
9701.10.00	Paintings, drawings (o/than of 4906) and pastels, executed entirely by hand, whether or not framed.
9701.90.00	Collages and similar decorative plaques, executed entirely by hand, whether or not framed.
9702.00.00	Original engravings, prints and lithographs, whether or not framed.
9703.00.00	Original sculptures and statuary, in any material.
9704.00.00	Postage or revenue stamps, stamp-postmarks, first-day covers, postal stationery, and the like, used or unused, other than heading 4907.
9705.00.00	Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological etc. interest.
9706.00.00	Antiques of an age exceeding one hundred years.

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Part V

Environmental Protection Agency

40 CFR Part 52

Air Plan Approval; Kentucky; 2008 Ozone NAAQS Interstate Transport SIP Requirements; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0142; FRL–9980–57—Region 4]

Air Plan Approval; Kentucky; 2008 Ozone NAAQS Interstate Transport SIP Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to Kentucky's State Implementation Plan (SIP) pertaining to the "good neighbor" provision of the Clean Air Act (CAA or Act) for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS). Kentucky submitted a draft version of this SIP revision for parallel processing by EPA on February 28, 2018, and submitted a final version that contained no substantive changes on May 10, 2018. The good neighbor provision requires each state's implementation plan to address the interstate transport of air pollution in amounts that contribute significantly to nonattainment, or interfere with maintenance, of a NAAQS in any other state. In this action, EPA is approving Kentucky's submission demonstrating that no additional emission reductions are necessary to address the good neighbor provision for the 2008 ozone NAAQS beyond those required by the Cross-State Air Pollution Rule Update (CSAPR Update) federal implementation plan (FIP). Accordingly, EPA is approving Kentucky's submission because it partially addresses the requirements of the good neighbor provision for the 2008 ozone NAAQS, and it resolves any obligation remaining under the good neighbor provision after promulgation of the CSAPR Update FIP. The approval of Kentucky's SIP submission and the CSAPR Update FIP, together, fully address the requirements of the good neighbor provision for the 2008 ozone NAAQS for Kentucky. EPA is approving this action because it is consistent with the CAA.

DATES: This rule is effective August 16, 2018.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2018–0142. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ashten Bailey, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Bailey can be reached by telephone at (404) 562–9164 or via electronic mail at *bailey.ashten@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 27, 2008 (73 FR 16436), EPA promulgated an ozone NAAQS that revised the levels of the primary and secondary 8-hour ozone standards from 0.08 parts per million (ppm) to 0.075 ppm or 75 parts per billion (ppb). Pursuant to CAA section 110(a)(1), within three years after promulgation of a new or revised NAAQS (or shorter, if EPA prescribes), states must submit SIPs that meet the applicable requirements of section 110(a)(2). EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. One of the structural requirements of section 110(a)(2) is section 110(a)(2)(D)(i), also known as the "good neighbor" provision, which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on downwind states due to interstate transport of air pollution. There are four sub-elements, or "prongs," within section 110(a)(2)(D)(i) of the CAA. CAA section 110(a)(2)(D)(i)(I), addressing two of these four prongs, requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. The two provisions of this section are referred to as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance). This action addresses only prongs 1 and 2 of section 110(a)(2)(D)(i).[1]

On July 17, 2012, Kentucky submitted a SIP submission to EPA, addressing a number of the CAA requirements for the 2008 8-hour ozone NAAQS infrastructure SIPs. With respect to the interstate transport requirements of 110(a)(2)(D)(i)(I), EPA disapproved the submission (78 FR 14681 (March 7, 2013), effective April 8, 2013) because the SIP had relied on Kentucky's participation in the Clean Air Interstate Rule (CAIR), which did not address the 2008 ozone NAAQS and had been remanded by the D.C. Circuit. In October 2016, EPA promulgated the CSAPR Update to address the requirements of CAA section 110(a)(2)(D)(i)(I) concerning interstate transport of air pollution for the 2008 ozone NAAQS. *See* 81 FR 74504 (October 26, 2016). In the CSAPR Update rulemaking, EPA determined that air pollution transported from Kentucky would unlawfully affect other states' ability to attain or maintain the 2008 8-hour ozone NAAQS. EPA's analysis projected that in 2017, Kentucky would be linked to downwind nonattainment or maintenance problems at four monitors, or receptors. Accordingly, EPA established an ozone season nitrogen oxides (NO_X) budget for Kentucky's electricity generating units (EGUs) and promulgated a FIP requiring affected EGUs to participate in an allowance trading program to implement the budget.[2] At the time it finalized the CSAPR Update, EPA determined that, after implementation of the rule, many downwind air quality problems would persist in 2017, including at two of the four receptors to which Kentucky was linked. EPA therefore found that the CSAPR Update FIPs for Kentucky and 20 other states may not fully address the good neighbor requirements as to the 2008 8-hour ozone NAAQS. EPA explained that further analysis of air quality in a potential future compliance year and potential control strategies would be needed to determine whether any

[1] All other infrastructure SIP elements for Kentucky for the 2008 8-hour ozone NAAQS were addressed in separate rulemakings. *See* 78 FR 14681 (March 7, 2013) and 79 FR 65143 (November 3, 2014).

[2] CSAPR Update, 81 FR at 74507–08.

further emission reductions from these states would be necessary to fully address the good neighbor obligations.

On October 27, 2017, EPA issued a memorandum (October 2017 Transport Memo) [3] that provided technical information and related analyses to assist states with developing SIPs to address any remaining section 110(a)(2)(D)(i)(I) requirements for the 2008 8-hour ozone NAAQS. EPA's updated modeling data, released with the October 2017 Transport Memo, indicate that for the 2023 future base case emissions scenario there are no monitoring sites, outside of California, that are projected to have nonattainment or maintenance problems with respect to the 2008 ozone NAAQS in 2023.

II. This Action

On February 28, 2018, Kentucky submitted a draft SIP revision to EPA for parallel processing that reviewed air quality modeling and data files that EPA disseminated in the October 2017 Transport Memo. The draft SIP revision indicated that the air quality problems at monitors to which Kentucky remained linked after implementation of the CSAPR Update would be resolved by 2023. Kentucky's draft SIP submission agreed with the October 2017 Transport Memo's preliminary projections and provided information intended to demonstrate that reliance on the modeling to evaluate its remaining good neighbor obligation is appropriate. The draft submission also contained air quality modeling conducted by Alpine Geophysics, LLC (Alpine) that concluded that none of the nonattainment and maintenance receptors identified in the CSAPR Update are predicted to be in nonattainment or have issues with maintenance of the 2008 ozone NAAQS in 2023. Additionally, Kentucky cited information related to emissions trends—such as reductions in ozone precursor emissions and controls on Kentucky sources—as further evidence that, after implementation of all on-the-books measures, including those promulgated in the CSAPR Update FIPs, emissions from the Commonwealth will no longer contribute significantly to nonattainment or interfere with maintenance of the 2008 8-hour ozone NAAQS in any other state.

In a notice of proposed rulemaking (NPRM) published on April 18, 2018 (83 FR 17123), EPA proposed to approve Kentucky's February 28, 2018 draft SIP submission. In the NPRM, EPA explained that it was basing its proposal to approve Kentucky's February 28, 2018 draft SIP submission on a finding that 2023 is a reasonable analytic year for evaluating ozone transport problems with respect to the 2008 ozone NAAQS and that interstate ozone transport air quality modeling projections for 2023 indicate that Kentucky is not expected to significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states. As described in more detail in the NPRM, EPA based its evaluation on a four-step analytic framework by:

(1) Identifying downwind air quality problems relative to the 2008 ozone NAAQS considering air quality modeling projections to a future compliance year;

(2) Determining which upwind states are ''linked'' to these identified downwind air quality problems and thereby warrant further analysis to determine whether their emissions violate the good neighbor provision;

(3) For states linked to downwind air quality problems, identifying upwind emissions on a statewide basis that significantly contribute to nonattainment or interfere with maintenance of a standard; and

(4) For states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind, implementing the necessary emission reductions within the state.

EPA explained that its selection of 2023 was a reasonable analytic year for evaluating downwind air quality at step one of the framework, supported by an assessment of attainment dates for the 2008 ozone NAAQS and feasibility of implementing potential control strategies at both EGUs and non-EGUs to reduce NO_X in CSAPR Update states, including Kentucky. First, EPA considered the upcoming 2021 and 2027 attainment dates for the 2008 ozone NAAQS, consistent with the holding of the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *North Carolina* v. *EPA,* 531 F.3d 896, 911–12 (2008). Next, EPA assessed the amount of time necessary to implement new NO_X controls at EGUs and non-EGUs across the CSAPR Update region, finding that, fleetwide, sources would require four years to implement additional, substantial NO_X emission reductions. EPA therefore proposed to find that 2023 is an appropriate future analytic year because it is the first ozone season for which significant new post-combustion controls to reduce NO_X could be feasibly installed across the CSAPR Update region, and thus represents the timeframe that is as expeditious as practicable for upwind states to implement additional emission reductions. EPA then described its modeling analysis at step one of the four-step framework for the 2023 analytic year, which indicates that there are no expected nonattainment or maintenance receptors for the 2008 ozone NAAQS in the eastern U.S. in this future year. Please refer to the April 18, 2018 NPRM for additional information on the basis for the proposed approval.

Based on these proposed findings and the information provided in Kentucky's February 28, 2018 SIP submittal, EPA proposed to determine that Kentucky's draft SIP submission demonstrates that emission activities from the Commonwealth will not contribute significantly to nonattainment or interfere with maintenance of the 2008 8-hour ozone NAAQS in any other state after implementation of all on-the-books measures, including the CSAPR Update. Comments on the NPRM were due on or before May 18, 2018. EPA received adverse comments on the proposed rulemaking, which are discussed below. Because Kentucky submitted the draft SIP revision for parallel processing, EPA's April 18, 2018 proposed rulemaking was contingent upon Kentucky providing a final SIP revision that was substantively the same as the draft SIP revision. *See* 83 FR 17123. Kentucky submitted the final version of its SIP revision on May 10, 2018.[4] The May 10, 2018 SIP submission had no substantive changes from the February 28, 2018 draft SIP submission.

After considering the comments received on the NPRM, for the reasons described in the NPRM and in this action,[5] EPA is now taking final action to approve Kentucky's May 10, 2018, final SIP submission and find that Kentucky is not required to make any further reductions, beyond those required by the CSAPR Update, to address its statutory obligation under CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. EPA's final approval of Kentucky's submission means that Kentucky's obligations under 110(a)(2)(D)(i)(I) are fully addressed through the combination of the 2016 CSAPR Update FIP and the 2018 SIP demonstration showing that no

[3] Memorandum, Stephen D. Page, Supplemental Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Action Section 110(a)(2)(D)(i)(I).

[4] Both the draft and final SIP revisions are provided in the docket for this action.

[5] EPA notes that to the extent there are any conflicts between the rationale provided in the NPRM for the proposed approval and the rationale provided in this action, statements made in this document should be treated as the controlling basis for EPA's final action approving Kentucky's SIP submission.

further reductions are necessary. As a result, EPA is also amending the regulatory text at 40 CFR 52.940(b)(2) to reflect that the CSAPR Update represents a full remedy with respect to Kentucky's transport obligation for the 2008 ozone NAAQS.

III. Response to Comments

The Regional Administrator signed the proposed rule on April 9, 2018, and on April 12, 2018, EPA made a prepublication version of the proposal available on its website. The 30-day public comment period on the proposed rulemaking began on April 18, 2018, the day of publication of the proposal in the **Federal Register**, and closed on May 18, 2018. EPA received 15 comments on the proposed action, 10 of which are relevant to the proposal. The relevant comments were submitted by the Connecticut Department of Energy and Environmental Protection, Delaware Department of Natural Resources & Environmental Control, Maryland Department of the Environment, Midwest Ozone Group, New Jersey Department of Environmental Protection, New York State Department of Environmental Conservation (NYDEC), New York State Office of the Attorney General, Sierra Club and Chesapeake Bay Foundation, and Utility Air Regulatory Group. The remaining comments were outside the scope of the proposed action. This section contains summaries of the relevant comments and EPA's responses to those comments.

Comment: One commenter states that existing measures, including volatile organic compounds (VOC) and NO_X requirements for EGUs, industrial sources, and mobile sources within Kentucky, have brought Kentucky into attainment of both the 2008 and 2015 ozone NAAQS. The commenter states that the issue being addressed in the proposed SIP is whether these existing measures also satisfy Kentucky's ''good neighbor'' requirements for the 2008 ozone NAAQS. The commenter states that 2023 is the appropriate analytic year for evaluation of ozone transport issues related to the 2008 ozone NAAQS. The commenter points to the October 2017 Transport Memo and its modeling results as demonstrating that there is no need to conduct any further analysis of EPA's four-step transport framework. The commenter states its support of both EPA and Alpine modeling showing no downwind air quality problems related to the 2008 ozone NAAQS and cites a report prepared for the commenter by Alpine indicating that all sites identified in the final CSAPR Update will have design values below the 2008 ozone NAAQS by 2023 and that therefore no states are required to estimate their contributions to these monitors. The commenter states in conclusion that recent modeling performed by EPA as well as by Alpine indicate that implementation of the CSAPR Update, in addition to other on-the-books controls, are all that are needed to satisfy requirements related to the 2008 ozone NAAQS, and indicates commenter's support for Kentucky's request that EPA approve its ''good neighbor'' SIP.

An additional commenter expresses support for EPA to finalize approval of Kentucky's section 110(a)(2)(D)(i)(I) SIP submission and further states its support for Kentucky's reliance on EPA's modeling analysis. The commenter states that the EPA analysis released in the October 2017 Transport Memo was consistent with the four-step framework, and that it was not necessary to complete all four steps because no receptor in the eastern United States is expected to have problems attaining or maintaining the 2008 ozone NAAQS in 2023. The commenter states that 2023 is the modeling year used in EPA's modeling because that is the earliest year by which it is feasible to install controls across the CSAPR Update region and states its support of EPA's decision to evaluate the feasibility of installing controls on a regional basis rather than on a state-by-state or unit-by-unit basis. The commenter further states that EPA properly considered upcoming attainment dates and the need to consider future effects of local, state, and federal emission reduction requirements in order to avoid unlawfully mandating over-control. The commenter concludes that EPA's modeling analysis is reasonable and that EPA's approval is proper even without additional information from Kentucky. In support of its assertion that EPA should finalize its approval, the commenter notes that Kentucky also provides state-specific information to further demonstrate that reliance on EPA's modeling is appropriate in the context of this SIP and modeling performed by Alpine that is consistent with EPA's results.

Response: EPA agrees with the commenters' assertions as to the appropriateness of 2023 as an analytic year and other specifics of EPA's analysis as documented in the October 2017 Transport Memo. EPA acknowledges receipt of the Alpine report and recognizes that it demonstrates similar 2023 design values to those projected by EPA's modeling.

Comment: One commenter states that, although it appreciates the emissions reductions made thus far by Kentucky, EPA must disapprove Kentucky's proposed SIP as it does not fulfill the CAA's good neighbor obligations. Another commenter states that, while New York will continue to control air pollution, it does not have the authority to control sources in upwind states and that EPA must disapprove the Kentucky submission. Additional commenters state opposition to EPA's proposed approval, and assert that EPA should disapprove Kentucky's SIP submission.

Response: EPA disagrees with the commenters' contentions that EPA should disapprove Kentucky's submittal because it does not fulfill the CAA's good neighbor obligations. As explained in the proposed rulemaking and further in this action, based on EPA's modeling and with implementation of the CSAPR Update and other measures, Kentucky is not expected to significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states in 2023. Kentucky provided information showing that the use of the modeling is appropriate in this context, and also included additional modeling that showed results consistent with EPA's modeling. Thus, Kentucky's draft submission is approvable because it demonstrated that emission activity from the State will not contribute significantly to nonattainment or interfere with maintenance of the 2008 8-hour ozone NAAQS in any other state after implementation of all on-the-books measures, including the CSAPR Update.

To the extent that these comments are general statements stating opposition to EPA's action and are intended to incorporate other, specific comments made by commenters, EPA has addressed the specific concerns later in this preamble.

Comment: One commenter states that EPA's determination of significant contribution should be based upon current data, and to base the determination on 2023 modeling ignores New York's 2021 attainment deadline and adds too much uncertainty and speculation to the determination of whether Kentucky significantly contributes to nonattainment or interferes with maintenance in New York and other states.

Response: EPA does not agree that it is inappropriate to rely on modeled projections for a future year, rather than current data, to analyze ozone concentrations in downwind states. Consistent with historical practice, Kentucky and EPA have focused their analysis in this action on a future year in light of the forward-looking nature of the good neighbor obligation in section

110(a)(2)(D)(i)(I). Specifically, the statute requires that states prohibit emissions that ''will'' significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state. EPA reasonably interprets this language as permitting states and EPA in implementing the good neighbor provision to evaluate downwind air quality problems, and the need for further upwind emission reductions, prospectively. In EPA's prior regional transport rulemakings, the Agency generally evaluated whether upwind states ''will'' significantly contribute to nonattainment or interfere with maintenance based on projections of air quality in the future year in which any emission reductions would be expected to go into effect. *See, e.g.,* NO_X SIP Call, 63 FR 57377 (using the anticipated 2007 compliance year for its analysis); CAIR, 70 FR 25241 (using the years 2009 and 2010, the anticipated compliance years for the ozone and fine particulate matter ($PM_{2.5}$) NAAQS, respectively); CSAPR, 76 FR 48211 (using the 2012 compliance year); CSAPR Update, 81 FR 74537 (using the 2017 compliance year). The D.C. Circuit affirmed EPA's interpretation of ''will,'' finding EPA's consideration of future projected air quality (in addition to current measured data) to be a reasonable interpretation of an ambiguous term. *North Carolina,* 531 F.3d at 913–14. Thus, consistent with this precedent, it is reasonable for EPA to analyze air quality in an appropriate future compliance year to evaluate any remaining obligation for the 2008 ozone NAAQS.

EPA also does not agree that the 2023 modeling is too uncertain or speculative as compared to current data. As discussed in more detail later, courts' rulings have deferred to EPA's reasonable reliance on modeling to inform its policy choices, notwithstanding that no model is perfect and there may be some level of discrepancy between modeled predictions what eventually occurs. Comments regarding the relationship between the future analytic year and the attainment date are also addressed later in this preamble.

Comment: One commenter states that the plain meaning of section 110(a)(2)(D) requires Kentucky to prohibit contributing emissions prior to the 2008 ozone attainment dates set for downwind states, *i.e.,* by 2018 for moderate nonattainment areas. The commenter contends that the D.C. Circuit adopted this plain reading, finding the statute unambiguously requires compliance with NAAQS attainment deadlines in *North Carolina,* 531 F.3d at 911–12. The court based its conclusion on the requirement that implementing provisions be consistent with Title I of the CAA, finding the plan must be consistent with both the substantive and procedural requirements of NAAQS compliance. *Id.* at 911. The commenter states that the court also held that compliance must be achieved in time for attainment determinations for downwind states expected to be close to the NAAQS so as not to ''interfere with maintenance.'' *Id.* at 908–09.

The commenter further states that the CAA establishes attainment dates for the 2008 ozone NAAQS ''as expeditiously as practicable'' but no later than 3, 6, 9, 15, or 20 years—depending on area classification—after the designation. The commenter contends that, in *NRDC* v. *EPA,* 777 F.3d 456 (D.C. Cir. 2014), the court rejected EPA's attempt to extend the 2008 ozone NAAQS compliance deadlines by several months, holding that the CAA requires attainment dates be set at the statutorily fixed term of time from the date of designations.

The commenter therefore asserts that section 110(a)(2)(D)(i)(I) does not allow Kentucky to wait until 2023 nor does it grant EPA discretion to extend compliance deadlines. The commenter contends that, by 2023, the harms the good neighbor provisions were intended to avoid will have already befallen downwind states. Accordingly, the commenter states that Kentucky must take immediate steps to offset past over-pollution. In a footnote, the commenter notes that prior legal precedent indicates that attainment dates are ''central to the regulatory scheme,'' *Sierra Club* v. *EPA,* 294 F.3d 155, 161 (D.C. Cir. 2002), and ''leave no room for claims of technological or economic feasibility,'' *NRDC,* 777 F.3d at 468.

Another commenter points to 2015–2017 design values at monitors in the NJ-NY-CT nonattainment area that are above the standard at 83 ppb (the Stratford monitor) and 82 ppb (the Westport monitor). The commenter states that design values indicate that the area can expect to be reclassified as ''serious'' with an attainment deadline of July 2021, based on a 2020 design value. The commenter contends that the Kentucky SIP is deficient because it relies on a future year that does not adequately reflect the appropriate attainment year of the impacted nonattainment area. Because the moderate attainment deadline has passed, the commenter states that modeling for the next attainment date of July 2021 (based on 2020 design values) should be conducted.

The commenter asserts that downwind states significantly impacted by ozone pollution will be unable to meet attainment deadlines if good neighbor SIPs are not done prior to the attainment deadline of the downwind nonattainment areas. The commenter asserts the CAA recognizes this since the good neighbor provision is required to be addressed ahead of the attainment demonstration requirements for nonattainment areas. The commenter notes that Kentucky's significant contributions for the 2008 ozone NAAQS therefore should have been addressed by March 2011. The commenter states that 2023 is an inappropriate future year for modeling because it falls after both the July 2018 moderate classification deadline and the July 2021 serious classification deadline.

One commenter states that the tri-state New York City metropolitan area struggles to attain the 2008 ozone NAAQS, with 2017 design values up to 83 ppb, due in significant part to interstate transport of ozone precursors from upwind states like Kentucky. The commenter notes that NYDEC requested a reclassification of the area to ''serious'' nonattainment due to the inevitability of missing the moderate area attainment deadline. The commenter therefore asserts that the 2023 modeling year relied upon by EPA and Kentucky is well beyond—and fails to take into account—the attainment deadline for ''serious'' nonattainment areas.

The commenter further states that had EPA met its 2015 FIP deadline for Kentucky, it could have mandated controls that would be installed and operating in time to benefit New York's ''serious'' nonattainment deadline.

One commenter contends that EPA's proposed approval fails to account for New York's upcoming attainment deadlines for the 2008 ozone NAAQS. The commenter asserts that the New York metropolitan area has struggled to attain the 2008 ozone NAAQS, with 2017 design values of up to 83 ppb. The commenter asserts that EPA admitted the CSAPR Update was only a partial remedy for downwind states such as New York, and that additional reductions may be required from upwind states, including Kentucky. CSAPR Update modeling projected that New York would remain in nonattainment past its July 20, 2018 statutory attainment deadline. On November 10, 2017, NYDEC requested a reclassification to ''serious'' nonattainment, due to the inevitability of missing the July 20, 2018 moderate area attainment deadline, which the state attributed in large part to transported emissions from upwind states such as Kentucky. The reclassification carries an attainment deadline of July 20, 2021, based on 2018–2020 monitoring data.

The commenter asserts that 2023 modeling analysis takes no account of New York's current and likely new attainment deadlines, in direct conflict with settled law under the Act. To be fully compliant, the commenter believes a good neighbor SIP must eliminate significant contribution to downwind nonattainment or interference with maintenance by the deadlines for downwind areas to attain the NAAQS. EPA's proposed approval only discusses this deadline in its conclusion that emission reductions will not be achieved in time to meet it. The commenter asserts that EPA cannot approve a SIP that delays eliminating emissions that presently contribute to downwind nonattainment past New York's attainment deadlines.

One commenter challenges the future year selection of 2023 and states that it perpetuates Connecticut citizens' health and economic burdens. The commenter states that Connecticut faces a reclassification to serious nonattainment, has previously been reclassified to moderate, and has not met attainment due to ''overwhelming'' transport from upwind areas, including Kentucky.

Response: EPA disagrees that it has failed to consider the appropriate attainment dates in relying on the 2023 modeling results to approve Kentucky's SIP submission.

First, to the extent the commenters suggest that the current measured design values may preclude EPA's reliance on modeled projections, EPA does not agree. As explained earlier in this action, EPA has reasonably interpreted the term ''will'' in the good neighbor provision as permitting states and EPA in implementing the good neighbor provision to evaluate downwind air quality problems, and the need for further upwind emission reductions, prospectively and coordinated with anticipated compliance timeframes. *See North Carolina,* 531 F.3d at 913–14.

EPA further disagrees that the D.C. Circuit's *North Carolina* decision constrains EPA to choosing the next relevant attainment date as its future analytic year. The *North Carolina* decision faulted EPA for not giving *any* consideration to upcoming attainment dates in downwind states when setting compliance deadlines for upwind emissions; there, EPA had evaluated *only* the feasibility of implementing upwind controls. *Id.* at 911–12. But the court did not hold that the CAA imposes strict deadlines for the implementation of good neighbor emission reductions. Nor did the court opine that EPA would never be justified in setting compliance dates that post-date downwind attainment dates or consider the feasibility of implementing upwind emission reductions. Indeed, in remanding the rule, the D.C. Circuit acknowledged that upwind compliance dates may, in some circumstances, follow attainment dates. *Id.* at 930 (instructing EPA to ''decide what date, whether 2015 or earlier, is as expeditious as practicable for states to eliminate their significant contributions to downwind nonattainment'').[6]

While the commenters suggest that the court's reference to the phrase ''consistent with the provisions of this subchapter''—*i.e.,* CAA Title I—imports downwind attainment dates from section 181 into the good neighbor provision, CAA section 181 itself does not impose inflexible deadlines for attainment. The general timeframes provided in the section 181(a)(1) table may be (and often are) modified pursuant to other provisions in section 181, considering factors such as measured ozone concentrations and the feasibility of implementing additional emission reductions. For example, the six-year timeframe for attainment of the 2008 ozone NAAQS in moderate areas could be extended by up to two years (to 2020), pursuant to section 181(a)(5). And pursuant to section 181(b)(2), when downwind areas are unable to implement sufficient reductions via feasible control technologies by one attainment date, those areas will be ''bumped up'' in classification and given a new attainment date with additional time to attain. With ''bump-ups'' like this, the date for an area to attain the 2008 ozone NAAQS could be extended to 2021, 2027, and 2032, and each of these deadlines could be subject to further extensions of up to two years pursuant to section 181(a)(5). *See also Whitman* v. *Am. Trucking Ass'ns, Inc.,* 531 U.S. 457, 493–94 (2001) (Breyer concurring) (considerations of costs and technological feasibility may affect deadlines selected by EPA). Thus, the commenters' premise that all upwind emission reductions must occur before the earliest downwind attainment date, feasible or not, is inconsistent with the framework of section 181 as it applies to downwind states.

Similarly, the D.C. Circuit's decision in *NRDC,* 777 F.3d at 468, does not stand for the proposition that EPA should ignore the feasibility of implementing emission reductions when addressing the good neighbor provision, or that such emission reductions are strictly required to be in place by a date certain. There, EPA had set 2008 ozone standard attainment dates in December 2015 so that downwind states could use data from the 2015 ozone season to demonstrate attainment. *Id.* at 465. The *NRDC* court simply held that section 181(a)(1) did not allow EPA this type of flexibility. The court's holding in *NRDC* did not speak to state planning or implementation requirements that apply for areas subject to those dates, or the various ways in which the date may be legally extended under the CAA. *NRDC* is therefore inapposite as to how the good neighbor provision should be harmonized with CAA statutory or regulatory dates for downwind states.

Here, EPA has considered the downwind attainment dates for the 2008 ozone NAAQS, consistent with the court's holding in *North Carolina.* As the commenters note, areas classified as moderate nonattainment areas currently have attainment dates of July 20, 2018, but the 2017 ozone season was the last full season from which data could be used to determine attainment of the NAAQS by that date. Given that the 2017 ozone season has now passed, it is not possible to achieve additional emission reductions by the moderate area attainment date. It is therefore necessary to consider what subsequent attainment dates should inform EPA's analysis. The next attainment dates for the 2008 ozone NAAQS will be July 20, 2021, for nonattainment areas classified as serious, and July 20, 2027, for nonattainment areas classified as severe.[7] Because the various attainment

[6] EPA also disagrees with the commenters' contention that the *North Carolina* decision explicitly requires emission reductions, 531 F.3d at 911–912, necessary to address the ''interfere with maintenance clause'' of the good neighbor provision to be aligned with downwind attainment dates. The commenters are conflating the court's holding that EPA should consider downwind attainment dates when setting compliance schedules for upwind state emission reductions with the court's separate holding that EPA must give independent significance to the ''interfere with maintenance'' clause when identifying downwind air quality problems. *id.* at 910–911. The court did not explicitly indicate whether EPA was required to align emission reductions associated with maintenance receptors with downwind attainment dates, indicating only that EPA must ''provide a sufficient level of protection to downwind states projected to be in *nonattainment* as of'' the future analytic year. *Id.* at 912 (emphasis added).

[7] While there are no areas (outside of California) that are currently designated as serious or severe for the 2008 ozone NAAQS, the CAA requires that EPA reclassify to serious any moderate nonattainment areas that fail to attain by their attainment date of July 20, 2018. Similarly, if any area fails to attain by the serious area attainment date, the CAA requires that EPA reclassify the area to severe.

deadlines are in July, which is in the middle of the ozone monitoring season for all states, data from the calendar year immediately prior to the attainment date (*e.g.,* data from 2020 for the 2021 attainment date and from 2026 for the 2027 attainment date) are the last data that can be used to demonstrate attainment with the NAAQS by the relevant attainment date.

As discussed in the NPRM and later in this action, EPA has also considered the timeframes that would likely be required for implementing further emissions reductions as expeditiously as practicable and concluded that additional control strategies at EGUs and non-EGUs could not be implemented by the July 2021 serious area attainment date, and certainly not by the 2020 ozone season immediately preceding that attainment date. This consideration of feasibility is consistent with the considerations affecting the statutory timeframes imposed on downwind nonattainment areas under section 181. Therefore, because new emissions controls for sources in upwind states cannot be implemented feasibly for several years, and at that later point in time air quality will likely be cleaner due to continued phase-in of existing regulatory programs, changing market conditions, and fleet turnover, it is reasonable for EPA to evaluate air quality (at step one of the four-step framework) in a future year that is aligned with feasible control installation timing in order to ensure that the upwind states continue to be linked to downwind air quality problems when any potential emissions reductions would be implemented and to ensure that such reductions do not over-control relative to the identified ozone problem.

Comment: One commenter notes that Delaware's Sussex County is a standalone nonattainment area and New Castle County is part of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment area (Philadelphia NAA), with an attainment date of July 20, 2015. The CAA requires states to attain the ozone standards as expeditiously as practicable, but states significantly impacted by ozone pollution from upwind states will be unable to do so if good neighbor SIPs are not submitted with adequate remedies implemented prior to downwind attainment dates. Such SIPs are required to be addressed prior to the submission of attainment demonstrations by nonattainment areas, such that Kentucky should have addressed its significant contribution for the 2008 ozone NAAQS by March 2011. The commenter notes that states, including Kentucky, failed to submit SIPs and EPA failed to issue FIPs until the CSAPR Update was issued on October 26, 2016, well after the attainment dates for many areas, including Delaware.

The commenter contends that EPA should have acted in a timely manner when states failed to adopt good neighbor provisions, and contends that Kentucky should have tied its analysis of significant contribution to the air quality at the time designations were made. The commenter asserts that EPA should have coupled its analysis and remedy with marginal attainment dates, as the first deadline for which nonattainment areas had to attain the standard. The commenter notes that EPA aligned its modeling analysis and implementation of the CSAPR Update with the moderate area attainment dates in 2018. While the commenter acknowledges that EPA could not have tied implementation of the CSAPR Update to the 2015 marginal area attainment date which had already passed, the commenter contends EPA should have addressed the need for good neighbor reductions relative to marginal nonattainment by aligning contribution modeling analysis for those states to some timeframe prior to the marginal attainment deadline. Instead, EPA's process takes place after the attainment dates, at which point EPA concludes that Delaware and all other areas outside of California do not need reductions to attain and maintain the NAAQS.

Response: As explained earlier in this action, EPA has reasonably interpreted the term ''will'' in the good neighbor provision as permitting states and EPA in implementing the good neighbor provision to evaluate downwind air quality problems, and the need for further upwind emission reductions, prospectively and coordinated with anticipated compliance timeframes. *See North Carolina,* 531 F.3d at 913–14. Accordingly, EPA does not agree that Kentucky should tie its analysis to either the date when designations were made or the marginal area attainment date, both of which have now passed. Were EPA to have evaluated good neighbor obligations based on a retrospective analysis of downwind air quality, the Agency could not have ensured that any emission reductions that may have been required would actually be necessary to address downwind air quality problems at the time they were implemented, which could result in impermissible over-control under the Supreme Court's holding in *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584, 1608 (2014) (*EME Homer City*). Whether Kentucky or EPA acted in a timely manner to develop a SIP or promulgate a FIP, respectively, does not lessen the obligation to comply the Supreme Court's holding in the present action.

Comment: One commenter alleges that EPA's decision to untether its action from statutory nonattainment dates and instead focus on 2023 is arbitrary and capricious, as the ''agency has relied on factors which Congress has not intended it to consider'' and ''entirely failed to consider an important aspect of the problem.'' *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 43 (1983). The commenter suggests that EPA takes a novel approach of selecting an analytic year five years in the future based on concerns that by the time any controls can be implemented, they may no longer be needed. The commenter cites both CSAPR and the CSAPR Update as examples of how EPA analyzed projected emissions in the upcoming year. The commenter states that EPA's logic is almost tantamount to urging upwind states to wait because downwind states will take care of the problem themselves.

The commenter states that technical feasibility has been specifically rejected as a basis for ignoring attainment deadlines in *North Carolina,* and over-control is at best a secondary factor which does not justify complete departure from the plain text and controlling precedent. The commenter states that EPA's emphasis on over-control is contrary to *EME Homer City,* stating that when the Supreme Court upheld the consideration of cost-effectiveness in CSAPR and upheld EPA's immediate issuance of a FIP after disapproving a SIP, the Court clearly indicated that the key statutory mandate of the good neighbor provision is to expeditiously ''maximize achievement of attainment downwind.'' 134 S. Ct. at 1590. The Court made concern about over-control secondary to that goal. *Id.* at 1609.

The commenter further asserts that reliance on feasibility of implementing controls to justify delaying action or analysis until 2023 is foreclosed by *North Carolina,* which specifically rejected the compliance deadlines in CAIR that were based on feasibility restraints but were not consistent with compliance deadlines for downwind states. When EPA has considered feasibility in analyzing ozone related good neighbor obligations since *North Carolina,* it has not been in the context of selecting an analytic year, but in allocating emission budgets. The commenter states that EPA's argument regarding feasibility also includes the need for additional time for planning and coordination between EPA and states, but asserts that the courts have rejected claims that additional time is necessary to improve the quality or soundness of regulations. *Sierra Club* v. *Johnson,* 444 F. Supp. 2d 46, 53 (D.D.C. 2006).

One commenter states that EPA should focus on achieving available emission reductions on or before the 2020 ozone season (the next applicable attainment date), rather than looking ahead to 2023. The commenter states that by focusing on the timeframes to install new controls, EPA has not conducted an analysis of reductions available in the near term to see if there are additional NO_X reduction strategies that are available prior to 2023. The commenter identified optimization of previously installed post-combustion controls as a potential NO_X reduction strategy with reductions available immediately and at low cost. The commenter stated that EPA's concern with over-control must be evaluated relative to the attainment deadlines for the standard. Therefore, relying on EPA's 2023 modeling is inconsistent with the intent of the CAA to achieve standards as expeditiously as practicable.

Another commenter states that EPA's rationale for use of a 2023 modeling year rests on a speculative guess of the time required for two categories of cost-effective controls to be installed, starting from the date of its approval. The commenter contends that EPA cannot rely on the cost-effectiveness of EGU controls as the exclusive consideration in justifying a further five-year delay when a full remedy for Kentucky has already been unlawfully delayed for years. Even if EPA has a general duty to avoid over-control of upwind emissions, it cannot point to this duty to justify a strategy that postpones necessary controls. Rather, EPA should require these controls now, and then reevaluate them in a few years at the point when the purported over-control may actually occur.

Response: EPA disagrees with the commenters' assertion that EPA has inappropriately weighted concerns about over-control of upwind state emissions. The Supreme Court and the D.C. Circuit have both held that EPA may not require emissions reductions (at step three of the framework) that are greater than necessary to achieve attainment and maintenance of the NAAQS in downwind areas. *EME Homer City,* 134 S. Ct. at 1608; *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118, 127 (D.C. Cir. 2012) (*EME Homer City II*). While the Supreme Court indicated that ''EPA must have leeway'' to balance the possibilities of under-control and over-control and that ''some amount of over-control . . . would not be surprising,'' the Court did not indicate that such over-control was required. 134 S. Ct. at 1609. Rather, the Court held, ''If EPA requires an upwind State to reduce emissions by more than the amount necessary to achieve attainment in every downwind State to which it is linked, the Agency will have overstepped its authority, under the Good Neighbor Provision.'' *Id.* at 1608. On remand in *EME Homer City II,* the D.C. Circuit gave that holding further meaning when it determined that the CSAPR phase 2 ozone season NO_X budgets for 10 states were invalid because EPA's modeling showed that the downwind air quality problems to which these states were linked when EPA evaluated air quality projections in 2012 would be entirely resolved by 2014, when the phase 2 budgets were scheduled to be implemented. 795 F.3d at 129–30. Thus, the Court did not find that over-control was a secondary consideration, but rather that it was a constraint on EPA's authority.

To the extent that the commenters note that EPA chose an earlier analytic year in prior rulemakings, EPA notes that it has not done so in all rulemakings. In the NO_X SIP Call, EPA evaluated air quality in 2007, nine years after the rule was promulgated. 63 FR 57377 (October 27, 1998). In CAIR, which was promulgated in 2005, EPA evaluated air quality in 2009 and 2010, for the ozone and $PM_{2.5}$ NAAQS, respectively. 70 FR 25241 (May 12, 2005). Thus, EPA's approach in this action is not inconsistent with these prior actions. Although EPA evaluated relatively more near-term air quality in CSAPR and CSAPR Update, EPA expected that certain cost-effective emission reductions could be implemented in the near-term in those actions. Here, EPA has already analyzed and implemented those cost-effective control strategies that could be implemented quickly (including the optimization of existing post-combustion controls) to address the 2008 ozone NAAQS through the CSAPR Update FIPs. Accordingly, any further emission reductions that may be required to address the 2008 ozone NAAQS would necessarily be implemented through control strategies that cannot be implemented in the near term and require a longer period for implementation. In addition, NO_X emissions levels are expected to decline in the future through the combination of the implementation of existing local, state, and federal emissions reduction programs and changing market conditions for generation technologies and fuels.[8] Therefore, were EPA to evaluate downwind ozone concentrations and upwind state linkages in a future year that precedes the date when actual compliance is anticipated (*i.e.,* the timeframe within which additional control strategies can feasibly be implemented), EPA could not ensure that the emission reductions will be ''*necessary* to achieve attainment'' in any downwind area by the time they were implemented. Such an approach would only replicate the circumstances the D.C. Circuit found impermissible in CSAPR.

The commenter's citation to *Sierra Club* v. *Johnson* is inapposite. In that case, EPA sought more time to promulgate regulations under the CAA after failing to perform the mandatory duties within the statutorily prescribed timeframe. 444 F. Supp. 2d at 52. Therefore, the court's reference to the Agency's need for ''additional time'' is in reference to the time required to conduct the rulemaking process. *Id.* at 53. The court was not interpreting the requirements of the good neighbor provision or any other provision regarding the time required for states or sources to implement controls under the CAA.

Finally, the commenters misunderstand EPA's evaluation to the extent they suggest that EPA relied on the cost-effectiveness of controls for this action. EPA evaluated the feasibility of implementing various control options, without regard to cost, that had not previously been included in EPA's analysis of cost-effective controls in the CSAPR Update. EPA concluded that additional controls on either EGUs or non-EGUs—when considering multiple projects across multiple states and allowing for planning and permitting—would generally require four years or more to implement, which would lead to an implementation timeframe associated with the 2023 ozone season. Because the air quality modeling results for 2023 showed that air quality problems in the eastern U.S. would be resolved by 2023, EPA did not further evaluate the cost-effectiveness of the control options considered for the feasibility analysis.

Comment: One commenter contends that EPA's insistence on fleetwide compliance is based on a circular argument wherein such a scheme would

[8] Annual Energy Outlook 2018. *Electricity Supply, Disposition, Prices, and Emissions.* Reference Case. Department of Energy, Energy Information Administration.

cause labor and material shortages that would, in turn, require four years to implement, at which point they will be unnecessary. The commenter points out that this means there will be no labor shortage. The commenter notes that this is contrary to EPA's prior approaches in CSAPR where the agency segregated controls based on feasibility, including multiple phases, and conducted emissions analyses for both phases.

One commenter states that EPA cannot rely on its analysis of alleged labor and materials shortages relating to installation of new controls at a ‘‘fleet’’ level. While EPA may prefer a regional approach, Congress did not establish a regional implementation plan requirement or mechanism, and EPA is not considering whether to approve a regional transport rule, nor a group of SIPs or FIPs. EPA is proposing to approve a single SIP from a single state and has not undertaken a study of the labor or materials market in Kentucky. Therefore, EPA's justification for allowing the delay of EGU controls for up to 48 months based on its speculative estimate of the time needed to install these controls on all sources within some unidentified region is arbitrary and capricious.

One commenter states EPA's approach to evaluating potential NO_X controls on a regional, rather than state-specific, basis ‘‘undermines the intent of the CAA’’ and causes Connecticut to be required to spend more to attempt to comply with the CAA than states that emit and contribute more to Connecticut's ozone problem.’’ The commenter states as an example that it recently promulgated a reasonably available control technology (RACT) rule with a minimum control cost of $13,000 per ton. The commenter states that EPA's under controlling of emissions has led to delays in attainment and added cost for Connecticut despite ozone exceedances being overwhelmingly due to transported emissions.

One commenter states that guidance provided in an informational memorandum issued by EPA in January 2015 [9] specifically references upwind state responsibilities in determining the states' good neighbor SIP transport obligations. EPA further states in its proposal that it believes the most appropriate approach to evaluating potential upwind obligations for Kentucky (where several other states are also linked to the Harford County receptor) is to evaluate potential NO_X control strategies on a regional, rather than state-specific basis. The commenter asserts that this is inconsistent with the scope of EPA's SIP approval authority under CAA section 110, which involves intra-state, rather than regional, plans to attain the NAAQS. The commenter also contends that EPA's position is contrary to its previous positions in denying Maryland's request for a super-regional nonattainment area under CAA section 107, and in denying Maryland's section 176A petition requesting expansion of the Ozone Transport Region (OTR). To the contrary, EPA stated in those actions that CAA sections 110 and 126 were more appropriate mechanisms for controlling interstate pollution transport.

Response: EPA disagrees with the commenters that it is inappropriate to evaluate the feasibility of implementing NO_X controls on a regional or fleetwide basis. EPA's analysis of the feasibility of NO_X control strategies reflects the time needed to plan for, install, test, and place into operation new EGU and non-EGU NO_X reduction strategies regionally—*i.e.,* across multiple states. This regional analytic approach is consistent with the regional nature of interstate ozone pollution transport. The Agency adopted this approach based on previous interstate ozone transport analyses showing that where eastern downwind ozone problems are identified, multiple upwind states typically are linked to these problems. *See* 81 FR at 74538 (October 26, 2016). Specifically of relevance to this action, EPA's assessment in the CSAPR Update found that 21 states would continue to contribute greater than or equal to 1 percent of the 2008 ozone NAAQS to identified downwind nonattainment or maintenance receptors in multiple downwind states in 2017, even after implementation of the CSAPR Update FIPs. Thus, to reasonably address these ozone transport problems, EPA must identify and apportion emission reduction responsibility across multiple upwind states. In other words, EPA's analysis should necessarily be regional, rather than focused on individual linkages. Where such an analysis is needed for multiple states, the inquiry into the availability and feasibility of control options is necessarily considerably more complicated than for a single state or sector.

EPA further disagrees that this approach is inconsistent with EPA's prior rulemakings, like CSAPR, where the Agency implemented controls in multiple phases. In CSAPR, EPA evaluated downwind air quality and upwind state linkages based on 2012 air quality and contribution modeling. The commenter is correct that EPA then implemented two phases of emission budgets, with a first phase of reductions implemented beginning in 2012 and a second phase of reductions implemented beginning in 2014. However, in subsequent litigation, a number of the phase 2 ozone season NO_X emission budgets were remanded because EPA's modeling showed that there would no longer be downwind air quality problems in many areas in 2014. *See EME Homer City II,* 795 F.3d at 129–30. Thus, EPA cannot require additional emission reductions in a future year if EPA's data show that there will no longer be downwind air quality problems in that year. Here, EPA implemented a first phase of post-CSAPR emission reductions in 2017 via the CSAPR Update. In this action, Kentucky and EPA have evaluated whether a second phase of post-CSAPR emission reductions is necessary and authorized by the good neighbor provision and determined that it is not because downwind air quality problems identified in 2017 with respect to the 2008 ozone NAAQS will be resolved by 2023.

EPA does not agree that this approach is inconsistent with the scope of EPA's authority under section 110. The fact that EPA is, in this action, acting on a single SIP does not alter the regional nature of ozone pollution transport. As the Supreme Court noted, the good neighbor provision presents a ‘‘thorny causation problem’’ with respect to ozone pollution transport in light of the ‘‘collective and interwoven contributions of multiple upwind States,’’ *EME Homer City,* 134 S. Ct. at 1604. The Court affirmed EPA's consideration of the problem on a regional rather than localized scale. *Id.* at 1606–07 (affirming EPA's use of cost to apportion upwind state emission reduction responsibility). The Court did not indicate that this endorsement of a regional assessment was appropriate only when EPA is taking a regional action. Rather, it is reasonable for EPA to interpret the implementation of the good neighbor provision for a particular NAAQS consistently regardless of the scope of the action. Consistent with this opinion, it is therefore also reasonable for EPA to view an individual state's implementation plan through a regional lens.

EPA also does not agree that the Agency's approach to evaluating interstate ozone transport under section

[9] Memorandum from Stephen D. Page to Regional Air Division Directors, ‘‘Information on the Interstate Transport ‘Good Neighbor’ Provision for the 2008 Ozone National Ambient Air Quality Standards (NAAQS) under Clean Air Act (CAA) Section 110(a)(2)(D)(i)(I)’’ (January 22, 2015) (January 2015 Transport Memo), *available at https://www.epa.gov/sites/production/files/2015-11/documents/goodneighborprovision2008naaqs.pdf.*

110 is inconsistent with its recent action on a section 176A petition to expand the OTR or EPA's designations under section 107. EPA denied the section 176A petition because it concluded that any remaining interstate transport problems could be better addressed via the good neighbor provision, which EPA and the states can use to make decisions regarding which precursor pollutants to address, which sources to regulate, and what amount of emission reductions to require, flexibilities that are not available with respect to control requirements applicable to sources in the OTR. *See* 82 FR 51244–46 (November 3, 2017). EPA did not deny the petition because it concluded that ozone transport was not regional; on the contrary, EPA explicitly acknowledged the regional nature of ozone transport in its action. *See* 82 FR 6511 (January 19, 2017).

With respect to the request for a super-regional nonattainment area under section 107, EPA has consistently explained that such an approach is not consistent with the statutory language.[10] CAA section 107(d)(1) provides that areas designated nonattainment should include any ''nearby'' area contributing to a violation of the NAAQS. EPA has repeatedly explained that the proposal for broad super-regional nonattainment areas go beyond this statutory definition by including areas that are not necessarily ''nearby'' but contribute to nonattainment through long-range transport, an issue that other sections of the CAA, like the good neighbor provision, are designed to address. Thus, rather than contradict EPA's analysis of ozone transport regionwide, EPA's prior actions regarding requests for a super-regional nonattainment area support EPA's view that such an approach is appropriately applied under the good neighbor provision.

Finally, EPA does not agree that its conclusion that no additional emission reductions would be required of upwind states undermines its fleetwide analysis of labor and material shortages. EPA's analysis was based on the assumption that *if* additional controls would be required of upwind states, they would be required on a region-wide basis. This was a reasonable assumption in light of the complex, regional nature of ozone pollution transport. Had EPA identified remaining downwind air quality problems in the future analytic year, it would have been reasonable to assume that multiple upwind states would contribute to any remaining air quality problem consistent with EPA's previous ozone transport analyses and thus multiple upwind states could be required to concurrently implement emission reductions. As explained earlier, while EPA has phased-in application of controls in some circumstances, those phases were implemented based on consistent, region-wide compliance deadlines. The commenters do not explain how EPA could set different compliance dates for different states in the CSAPR Update region to require additional emission reductions while also insuring that states' obligations were addressed in a consistent, non-arbitrary manner that did not lead to over- or under-control.

Comment: One commenter states that EPA's argument that extensive planning is required to install controls is uncompelling because EPA has had ample time to plan. The CSAPR Update repeatedly emphasizes that states, including Kentucky, were expected to have remaining obligations after the implementation of the CSAPR Update. Moreover, EPA has been on notice that it would be required to take action on Kentucky by June 2018 as required by court order.

Response: The commenter misunderstands EPA's reference to the planning required to implement additional controls. The individual sources, not EPA, must engage in appropriate planning anytime they install new control devices. As discussed in more detail later, installing new selective catalytic reduction (SCR) or selective non-catalytic reduction (SNCR) controls for EGUs or non-EGUs generally involves the following steps: Conducting an engineering review of the facility; advertising and awarding a procurement contract; obtaining a construction permit; installing the control technology; testing the control technology; and obtaining or modifying an operating permit.[11] Scheduled curtailment, or planned outage, for pollution control installation would be necessary to complete either SCR or SNCR projects. Given that peak demand for EGUs and rule compliance would both fall in the ozone season, such sources would likely try to schedule installation projects for the ''shoulder'' seasons (*i.e.,* the spring and/or fall seasons), when electricity demand is lower than in the summer, reserves are higher, and ozone season compliance requirements are not in effect. In addition to the coordination of scheduled curtailment, an appropriate compliance timeframe would need to accommodate the additional coordination of labor and material supply necessary for any fleet-wide mitigation efforts. More details regarding these considerations are outlined later in this preamble.

Many of these materials, installation, and labor concerns are also relevant for non-EGU control technologies. Thus, the implementation of new EGU and non-EGU NO_X reduction strategies, especially when implemented across a broad region of states, requires extensive time and planning by the affected sources.

Moreover, while EPA indicated that the CSAPR Update *may* not fully address states' good neighbor obligations, the Agency did not definitively conclude that more emission reductions would necessarily be required. Nor did the Agency indicate what sources would likely be controlled, in which states, or via what control strategies *if* additional emission reductions were in fact required. Thus, EPA does not agree with the commenter's suggestion that it was reasonable for any particular sources to begin planning for the implementation of new controls before EPA or the states completed further analysis and promulgated requirements actually requiring additional emission reductions.

Comment: One commenter states that EPA's finding that implementation of control strategies is not feasible until during or after the 2022 ozone season is false and contradicted by the evidence EPA presents. The commenter contends that EPA's conclusion that 48 months may be necessary to implement emission reductions is contrary to EPA's own experience of pollution control and belied by EPA's own finding that Kentucky will likely outperform its CSAPR Update obligations. Both CSAPR and CSAPR Update were implemented on much shorter timescales, with immediate reductions available in both cases in under one year, and post-combustion controls being required within three years under CSAPR.

Response: EPA has evaluated the feasibility of implementing controls on a region-wide basis, considering markets for labor and materials necessary for implementing controls across multiple sources in multiple states. Thus, examples where individual sources might have installed controls more

[10] *See, e.g.,* Responses to Significant Comments on the State and Tribal Designation Recommendations for the 2008 Ozone National Ambient Air Quality Standards (NAAQS), EPA–HQ–OAR–2008–0476–0675, Section 3.1.2 (April 2012); New York-Northern New Jersey, Long-Island, NY-NJ-CT Nonattainment Area, Final Area Designations for the 2015 Ozone National Ambient Air Quality Standards Technical Support Document, at 28–29.

[11] Final Report: Engineering and Economic Factors Affecting the Installation of Control Technologies for Multipollutant Strategies, EPA–600/R–02/073 (October 2002), *available at https://nepis.epa.gov/Adobe/PDF/P1001G0O.pdf.*

quickly do not speak to what is reasonable to require across a state or a region, and therefore do not contradict EPA's analysis.

Moreover, EPA's projections of EGU emission levels in Kentucky in 2023 also do not contradict EPA's conclusion that 48 months should be provided for the region-wide implementation of new NO_X post-combustion controls. Kentucky's CSAPR Update budget is not an emissions floor. It represents emission reductions reflecting control strategies determined to be cost-effective and feasible to implement by the first compliance year in 2017 (*e.g.,* SCR optimization). However, market conditions that did not influence quantification of the budgets can also drive further emission reductions in future years, including variables such as low natural gas prices and new, lower-cost competitor generation in downwind states, and can lead to utility decisions to retire aging assets. In addition, sources may install new controls after the 2017 ozone season that would not have been considered when EPA calculated the budgets.[12] These factors can and do lead to state-emission levels often being significantly lower than its emission budget in future compliance years. EPA's projected emissions level in 2023 captures these types of recently announced and known infrastructure changes and fleet turnover and it is therefore reasonable that the 2023 projected EGU emissions would be below Kentucky's CSAPR Update budget established for a first compliance year of 2017.

While CSAPR and CSAPR Update were implemented more quickly than the four years considered in this action, neither CSAPR nor CSAPR Update anticipated that sources would implement new post-combustion NO_X controls. *See* 76 FR 48302 (August 8, 2011); 81 FR 74541 (October 26, 2016). Rather, the ozone season emission budgets for both rules only considered the near-term emission reductions that could be achieved from implementation of control strategies other than new post-combustion controls, including the optimization of existing post-combustion controls and implementation of new combustion controls. *See* 76 FR 48256 (August 8, 2011); 81 FR 74541 (October 26, 2016). With respect to the 2008 ozone NAAQS, EPA already implemented the near-term emission reductions that were cost-effective in the CSAPR Update. Accordingly, EPA disagrees with the commenter's suggestion that there may be substantial immediate NO_X reductions available that could be implemented on a more immediate timeframe at this time.

EPA notes that it did evaluate post-combustion controls in CSAPR with respect to sulfur dioxide (SO_2) emission reductions necessary to address $PM_{2.5}$ and established emission budgets reflecting the possible implementation of scrubbers three years following rule promulgation. However, to the extent labor and supply markets were a consideration for installation timing requirements for scrubbers in CSAPR in 2011, those variables may have changed over the last seven years. Moreover, EPA established budgets for NO_X in CSAPR based on a cost threshold of $500 per ton, which was not anticipated to drive significant, labor- and resource-intensive SCR installation within that timeframe. *See* 76 FR 48302 (August 8, 2011).

Comment: One commenter asserts that EPA has not explained why it still lacks information on the potential for cost-effective emission reductions from non-EGUs, two years after the CSAPR Update was promulgated. EPA's analysis is lacking any analysis of actual cost-effectiveness numbers for non-EGU controls, relying instead on an ''implication'' from two-year old public comments that non-EGU controls would be relatively less cost-effective than EGU controls. EPA ignores its own framework, which calls for determining the availability and cost-effectiveness of non-EGU controls, despite identifying the need to do so in the CSAPR Update. In a footnote, the commenter notes that EPA represented to the court in a mandatory duty suit that it was taking steps to improve its data to evaluate NO_X reduction potential from non-EGUs, which it expected to complete by November 2017. EPA has not accounted for any of the stakeholder reviewed information on non-EGU emissions reductions and costs that it should have amassed in the last year and a half.

The commenter further contends that EPA has changed its regulatory position without reasonable explanation. In the CSAPR Update, EPA indicated that evaluating full interstate transport obligations is subject to an *evaluation* of the contribution to interstate transport from non-EGUs, but EPA has unexpectedly changed course and stated that no such evaluation is necessary. This is an unexplained, arbitrary and capricious change in policy.

One commenter states that with respect to non-EGU sources, EPA ''has documented multiple cost-effective controls that can be implemented within one year'' in the ''Assessment of Non-EGU NO_X Emissions Controls, Costs of Controls and Time for Compliance Final TSD'' dated August 2016 available in the docket for the final CSAPR Update Rule. The commenter notes that EPA has dismissed these potential benefits as ''uncertain'' and states that EPA ''cannot continue to invoke the prospect of an uncertain future to limit its responsibility to satisfy its statutory mandate.''

Response: EPA first notes that it is not relying on its lack of information with respect to the cost-effectiveness of non-EGUs to support this final action. EPA evaluated the feasibility of implementing various control options, without regard to cost, that had not previously been included in EPA's analysis of cost-effective controls in the CSAPR Update. EPA concluded that additional controls—on either EGUs or non-EGUs—would generally require four years to implement, which would lead to an implementation timeframe associated with the 2023 ozone season. Because the air quality modeling results for 2023 showed that air quality problems in the eastern U.S. would be resolved by 2023, EPA did not further evaluate the cost-effectiveness of the control options considered for the feasibility analysis. This approach is consistent with EPA's four-step framework, and does not rely on the relative cost-effectiveness of controls for non-EGUs.

Because EPA did not need to evaluate either the cost-effectiveness or NO_X reduction potential of either EGU or non-EGU sources, the commenter's concern with whether EPA has completed steps to improve its data on these issues is irrelevant. Nonetheless, EPA notes that the particular efforts outlined in the court filing referred to by the commenter were in support of EPA's request in a mandatory duty suit that the court permit the Agency several years to develop a rulemaking to address the good neighbor obligations with respect to the 2008 ozone NAAQS for Kentucky and 20 other states. In that filing, EPA outlined steps that the Agency believed would be necessary to promulgate a rulemaking *if* EPA's analysis demonstrated that additional emission reductions would be required from sources in upwind states, including what EPA viewed as necessary analysis regarding non-EGUs. EPA acknowledged in that same

[12] EPA notes that the only new post-combustion controls assumed in EPA's projection of 2023 EGU emissions in Kentucky were at Shawnee units 1 and 4. Both of these units were required to implement SCR as of December 31, 2017 pursuant to a compliance agreement with EPA finalized in 2011. *See* 76 FR 22095 (April 20, 2011) and *https://www.epa.gov/enforcement/tennessee-valley-authority-clean-air-act-settlement.*

declaration that one possible result of the litigation could be a determination that downwind air quality problems would be resolved, in which case a cost-effectiveness analysis would be unnecessary. *See* Decl. of Janet G. McCabe para. 98, *Sierra Club* v. *Pruitt,* No. 3:15–cv–04328–JD (N.D. Cal. Dec. 15, 2016). As EPA could not know the results of any future air quality modeling before it was performed, EPA's proposed timeline assumed that such an analysis could be required. *Id.* para. 170. Ultimately, the court disagreed with EPA's proposed timeline and provided only one year—until June 30, 2018—for promulgation of a rulemaking addressing Kentucky's good neighbor obligation, which was insufficient time to complete all of the steps outlined in EPA's declaration, thereby requiring EPA to prioritize certain steps and eliminate others, including the additional efforts intended to improve data regarding the cost-effectiveness of controls. Nonetheless, because the first step of EPA's analysis demonstrated that there would be no remaining air quality problems in 2023 in the eastern U.S., it was unnecessary for EPA to finalize the efforts to improve its data regarding the cost-effectiveness of controls before finalizing this action. Thus, the representations that EPA made to the court regarding the steps necessary to take this action no longer apply under the present circumstances.

Thus, EPA's analysis is not a change in policy. In the CSAPR Update, EPA only stated it could not conclude, at that time, that additional reductions from NO_X sources (including non-EGUs) would not be necessary to fully resolve these obligations. While EPA did indicate that it anticipated the need to evaluate non-EGUs to fully evaluate the full scope of upwind states' good neighbor obligations, the Agency has done so here. In selecting the appropriate future analytic year in which to evaluate air quality, contributions, and NO_X reduction potential, EPA considered the implementation timeframes for controls at EGUs as well as non-EGUs. As noted in the NPRM and explained further in this action, EPA's analysis showed that there would be no remaining air quality problems in 2023 in the eastern U.S., and thus EPA has concluded that no such additional reductions beyond those on-the-books or on-the-way are necessary, whether from non-EGUs or otherwise, to bring downwind areas into attainment of the 2008 ozone NAAQS.

Finally, the commenter is correct that EPA included preliminary estimates of installation times for some non-EGU NO_X control technologies in a technical support document for the CSAPR Update entitled Assessment of Non-EGU NO_X Emission Controls, Cost of Controls, and Time for Compliance Final Technical Support Document (Final Non-EGU TSD). These preliminary estimates were based on research from a variety of information sources, including:

- *Typical Installation Timelines for NO_X Emissions Control Technologies on Industrial Sources, Institute of Clean Air Companies,* December 2006 (all sources except cement kilns and reciprocating internal combustion engines (RICE)); [13]
- *Cement Kilns Technical Support Document for the NO_X FIP,* US EPA, January 2001; [14] and
- *Availability and Limitations of NO_X Emission Control Resources for Natural Gas-Fired Reciprocating Engine Prime Movers Used in the Interstate Natural Gas Transmission Industry,* Innovative Environmental Solutions Inc., July 2014 (prepared for the INGAA Foundation).[15]

EPA's analysis in the Final Non-EGU TSD focused on potential control technologies within the range of costs considered in the final CSAPR Update for EGUs, *i.e.,* those controls available at a marginal cost of $3,400 per ton (2011 dollars) of NO_X reduced or less. EPA's analysis did not evaluate implementation timeframes or potential emissions reductions available from controls at higher cost thresholds. *See* Final Non-EGU TSD at 18. This focus excluded some emissions source groups with emissions reduction potential at a marginal cost greater than $3,400 per ton, including: Industrial/commercial/institutional boilers using SCR and low-NO_X burners (LNB); and catalytic cracking units, process heaters, and coke ovens using LNB and flue gas recirculation. However, while the emissions reduction potential from these source groups is uncertain, the timeframe for these control technologies would be subject to similar considerations and limitations discussed in the following paragraphs.

Among the control technologies that were evaluated in the Final Non-EGU TSD, EPA identified six categories of common control technologies available for different non-EGU emissions source categories. *Id.* at 19. For four of the technology categories (SNCR, SCR, LNB, and mid-kiln firing), EPA preliminarily estimated that such controls could be installed in approximately one year or less in some unit-specific cases. Installation time estimates presented in the Final Non-EGU TSD begin with control technology bid evaluation (bids from vendors) and end with the startup of the control technology.[16] *See* Final Non-EGU TSD at 20. For the other two technology categories (biosolid injection technology (BSI) and OXY-firing) as well as one emissions source category (RICE), EPA had no installation time estimates or uncertain installation time estimates. For example, EPA found that the use of BSI is not widespread, and therefore EPA does not have reliable information regarding the time required to install the technology on cement kilns. The installation timing for OXY-firing is similarly uncertain because the control technology is installed only at the time of a furnace rebuild, and such rebuilds occur at infrequent intervals of a decade or more.

Moreover, for those categories for which preliminary estimates were available, as noted in the Final Non-EGU TSD, the single unit installation time estimates provided do not account for additional important considerations in assessing the full amount of time needed for installation of NO_X control measures at non-EGUs; those considerations include time, labor, and materials needed for programmatic adoption of measures and time required for installing controls on multiple sources in a few to several non-EGU sectors across the region. The preliminary estimates of installation time shown in the Final Non-EGU TSD are for installation at a single source and do not account for the time required for installing controls to achieve sector-wide compliance. When considering installation of control measures on sources regionally and across non-EGU sectors, the time for full sector-wide compliance is uncertain, but it is likely longer than the installation times shown

[13] Institute of Clean Air Companies, Typical Installation Timelines for NO_X Emissions Control Technologies on Industrial Sources, December 2006, *available at https://c.ymcdn.com/sites/icac.site-ym.com/resource/resmgr/ICAC_NO$_X$_Control_Installatio.pdf.*

[14] US EPA, Cement Kilns Technical Support Document for the NO_X FIP, January 2001, *available at https://www.regulations.gov/document?D=EPA-HQ-OAR-2015-0500-0094.*

[15] INGAA Foundation, Availability and Limitations of NO_X Emission Control Resources for Natural Gas-Fired Reciprocating Engine Prime Movers Used in the Interstate Natural Gas Transmission Industry, Innovative Environmental Solutions Inc., July 2014, *available at http://www.ingaa.org/Foundation/Foundation-Reports/NOX.aspx.*

[16] In the Final Non-EGU TSD, we present different installation time estimates for SCRs and non-EGUs than described in the NPRM and in this action for EGUs. These installation times are not inconsistent because: (i) The EGU time estimate of 39 months mentioned in the NPRM is based on multi-boiler installation and factors in a pre-vendor bid engineering study consideration, and (ii) the non-EGU SCR installation time estimates are based on single-unit installation and do not factor in pre-vendor bid evaluation.

for control measures as mentioned above for individual sources in the Final Non-EGU TSD. Regional, sector-wide compliance could be slowed down by limited vendor capacity, limited available skilled labor for manufacturers such as boilermakers (who produce steel fabrications, including those for pollution control equipment), availability of raw materials and equipment (*e.g.,* cranes) for control technology construction, and bottlenecks in delivery and installation of control technologies. Some of the difficulties with control technology installation as part of regional, sector-wide compliance at non-EGUs, such as availability of skilled labor and materials, could also have an impact on monitor installation at such sources. EPA currently has insufficient information on vendor capacity and limited experience with suppliers of control technologies and major engineering firms, which results in uncertainty in the installation time estimates for non-EGU sectors.

In summary, there is significant uncertainty regarding the implementation timeframes for various NO_X control technologies for non-EGUs. While EPA has developed preliminary estimates for some potential control technologies, these estimates do not account for additional considerations such as the impacts of sector- and region-wide compliance. For purposes of this analysis, EPA believes that it is reasonable to assume that it is likely that an expeditious timeframe for installing sector- or region-wide controls on non-EGU sources may collectively require four years or more.

Comment: One commenter adds that the CSAPR Update considered SCR to be optimized if the unit achieves a rate of 0.10 lbs/mmBtu, but EPA did not examine the particular rates that can be achieved by Kentucky's EGUs. The commenter states that EPA should require Kentucky's EGUs to achieve an optimized emissions rate at each EGU based on the past best demonstrated ozone season average rates at the unit. The commenter states that such optimized rates would be reflective of a unit's actual reported data and would be considered well controlled while still allowing for fluctuation in operating conditions, as it would encompass a whole ozone season's worth of reported emission data. The commenter states that its own analysis indicates that, even after CSAPR Update implementation, Kentucky's coal-fired EGUs could have reduced NO_X emissions by an additional 4,100 tons during the 2017 ozone season and could have reduced daily NO_X emissions by up to an additional 35 tons per day by optimizing existing controls at levels the EGUs had previously achieved. The commenter contends that optimization of existing controls is cost-effective and has already been shown to be achievable from past performance. The commenter further asserts that not requiring Kentucky's EGUs to optimize controls by this ozone season, at levels consistent with past best-demonstrated ozone season average rates at each EGU, goes against the intent of the CAA to reduce transported air pollution as expeditiously as practicable. The commenter provides suggested language that could be used to require specific coal-fired EGUs in Kentucky to optimize use of existing control technologies.

Another commenter states that EPA's argument regarding installation of control devices on uncontrolled EGUs being unworkable (based on potential for delays due to shortages in qualified labor and material) ignores the potential for immediate reductions that can be had by optimizing existing EGU controls.

Response: To the extent the commenters take issue with EPA's determination in the CSAPR Update that 0.10 lb/mmBtu was reasonable rate to reflect optimized existing SCR controls regionwide, EPA did not reopen that issue for comment in this rulemaking. EPA has already evaluated and implemented cost-effective NO_X emission reductions associated with the optimization of existing SCRs. In establishing the CSAPR Update EGU ozone season NO_X emissions budgets, the Agency quantified the emissions reductions achievable from all NO_X control strategies that were feasible to implement in less than one year and cost-effective at a marginal cost of $1,400 per ton of NO_X removed.[17] These EGU NO_X control strategies were: Optimizing NO_X removal by existing, operational SCR controls; turning on and optimizing existing idled SCR controls; installing state-of-the-art NO_X combustion controls; and shifting generation to existing units with lower-NO_X emissions rates within the same state. *See* 81 FR 74541 (October 26, 2016). Thus, for the purposes of this action, EPA considers the turning on and optimizing of existing SCR controls to be a NO_X control strategy that has already been evaluated and implemented in the final CSAPR Update. Any concerns regarding whether EPA appropriately considered these controls in the CSAPR Update are not within the scope of this action.

Moreover, the Agency believes that the resulting CSAPR Update emissions budgets are being appropriately implemented under the CSAPR NO_X Ozone Season Group 2 allowance trading program. Preliminary data for the 2017 ozone season, which is the first CSAPR Update compliance period, indicate that power plant ozone season NO_X emissions across the 22-state CSAPR Update region were reduced by 77,420 tons (or 21 percent) from 2016 to 2017.[18] As a result, total 2017 ozone season NO_X emissions from covered EGUs across the 22 CSAPR Update states were approximately 294,478 tons,[19] well below the sum of states' emissions budgets established in the CSAPR Update of 316,464 tons. At the state-level, preliminary 2017 ozone season data indicate power plant emissions within Kentucky were reduced 5,424 tons (also 21 percent) from 2016 to 2017. As a result, emissions were 19,978 tons, well below Kentucky's CSAPR Update budget of 21,115 tons. More specifically, emissions from non-optimized SCR-controlled units (*i.e.,* units with an emission rate greater than 0.10 lb/mmBtu) in the CSAPR Update region were 82,321 tons in 2016. EPA's 2023 emission estimate for these same units post-optimization was 40,590. Actual emissions in 2017 from these units was 41,706 tons, demonstrating that the CSAPR Update has successfully incentivized optimization of controls in Kentucky and across the CSAPR Update region.

To the extent that EPA's NPRM could be interpreted as having invited comment on this issue, EPA further notes that, in the CSAPR Update the Agency reviewed fleet-wide, SCR-controlled coal units from 2009 to 2015 and calculated an average ozone season NO_X emission rate across the fleet of coal-fired EGUs with SCR for each of these seven years, and used the third lowest average ozone season NO_X rate. As described in that rule, EPA determined that it was not prudent to use either the lowest or second-lowest ozone season NO_X rates to represent the optimization of controls because such a rate may reflect new SCR systems that have all new components (*e.g.,* new layers of catalyst). *See* 81 FR 74543 (October 26, 2016). EPA determined that data from these new systems are not representative of ongoing achievable NO_X rates considering broken-in

[17] The CSAPR Update was signed on September 7, 2016—approximately eight months before the beginning of the 2017 ozone season on May 1.

[18] *https://ampd.epa.gov/ampd/* (Data current as of March 1, 2018).

[19] *Id.*

components and routine maintenance schedules. Moreover, there are market conditions, maintenance, and outages (scheduled and unscheduled) that can impact the utilization rates. These factors can fluctuate yearly and provide another set of reasons to not universally assume that the lowest rate for a unit can repeat itself on a yearly basis going forward. EPA determined instead that the third lowest fleet-wide average coal-fired EGU NO_X rate for EGUs with SCR, or 0.10 lbs/mmBtu, would be representative of ongoing achievable emission rates. The commenter has not provided any information to contradict this conclusion.

EPA further notes that this rate was implemented as an upper limit, meaning that EPA did reflect units that had recently operated an a more efficient rate in the budget calculations. EPA considered the latest available data at the time of that rulemaking (*i.e.,* 2015) that captured each unit's operation and performance under the latest fleet and market conditions. EPA used 0.10 lb/mmBtu as a ceiling in its budget calculation to reflect optimization of existing controls that were not achieving that level in 2015. However, the Agency used a rate of less than 0.10 lb/mmBtu if the unit was operating at that level in 2015 and a rate of 0.075 lb/mmBtu for new SCRs. Thus, EPA's budget calculation and consequent emission reduction requirements did reflect the fact that some units can and do operate below 0.10 lb/mmBtu.

Comment: One commenter states that EPA's speculative examination of the timeline required to install and run new EGU controls based on a cost-effectiveness threshold of $1,400 is unreasonable where there are existing EGU controls that EPA admits could be run, only at a higher cost. EPA's focus on its estimated timeline for design and installation of new, cost-effective EGU controls such as SCRs and SNCRs puts cost-effectiveness above all else, and that EPA must take into account other statutory concerns and considerations (such as attainment deadlines for downwind states). The commenter contends that, while cost-effectiveness thresholds have been upheld as a reasonable consideration in prioritizing control of sources, these thresholds cannot conversely be used to justify unreasonable, protracted delay in requiring upwind emission reductions. If there are no EGU controls at a given cost threshold that can be installed in time to permit downwind states to meet their attainment deadlines, then EPA has set the cost-effectiveness threshold too low or has defined the type of controls too narrowly.

The commenter concludes that EPA's refusal to reconsider its cost-effectiveness threshold of $1,400 per ton of NO_X is arbitrary where EPA has concluded that idled SNCR controls are available for immediate emission reductions at a cost of $3,400 per ton. Moreover, EPA dismissed this control strategy without any analysis of whether SNCRs can be run at less than $3,400 per ton, which is arbitrary and capricious when downwind states such as New York are forced to reduce NO_X by implementing RACT controls at costs of more than $5,000 per ton.

One commenter states that the CSAPR Update failed to look at any short-term fixes, such as the operation of idled SNCR, that could now be benefiting downwind areas. The commenter notes that the CSAPR Update also ruled out restarting idled SNCR based on the conclusion that $3,400 per ton was not cost effective, despite the fact that New York and other downwind states commonly apply RACT at a cost threshold of $5,000 per ton and greater.

Another commenter states that the control costs of $1,400 per ton considered in the Kentucky SIP are too low and that EPA should require Kentucky to analyze all options available. The commenter states that Kentucky should not limit its control costs to those in the CSAPR Update since ''EPA considered this rule a partial remedy.'' The commenter provides as an example that ''EPA identified an additional measure that could be undertaken immediately'' in turning on existing idled SNCRs. The commenter states that EPA should also consider evaluating cost effectiveness of controls on an ozone season day rather than an annual basis, in order to address the need to lower emissions on high ozone days.

Response: EPA first notes that the commenters misunderstand EPA's evaluation in this action to the extent they suggest that Kentucky or EPA relied on the cost-effectiveness of controls in order to select an appropriate future analytic year. As explained earlier, EPA evaluated the feasibility of implementing, without regard to cost, various control options that had not previously been included in EPA's analysis of cost-effective controls in the CSAPR Update. EPA concluded that additional controls on either EGUs or non-EGUs would generally require four years to implement, which would lead to an implementation timeframe associated with the 2023 ozone season. Had EPA identified downwind air quality problems to which upwind states continued to be linked in 2023, EPA would have proceeded to the next steps in its four-step analytic framework and evaluated the cost-effectiveness of all available controls, considering the achievable emission reductions and anticipated improvements in downwind air quality at all cost thresholds. However, EPA did not further evaluate the cost-effectiveness of the control options considered for the feasibility analysis because EPA lacks authority to require additional emission reductions in 2023 in light of the modeling results showing that air quality problems in the eastern U.S. would be resolved by that time. *See EME Homer City II,* 795 F.3d at 129–30 (finding emissions budgets for 10 states were invalid because EPA's modeling showed that the downwind air quality problems to which these states were linked when EPA evaluated projected air quality in 2012 would be entirely resolved by 2014).

Similarly, to the extent the commenter suggests cost-effectiveness should be evaluated on particular days, rather than over the ozone season, this comment is not material to this action because EPA's analysis has concluded at step one of the four-step framework.

EPA did not reevaluate the feasibility of near-term control strategies in order to inform the selection of a future analytic year for this action because both the feasibility and cost-effectiveness of those control strategies were already fully evaluated in the CSAPR Update. Thus, EPA acknowledges that the operation of idled SNCR controls could physically be implemented more quickly than four years, but EPA already evaluated whether this control was cost-effective to implement relative to other near-term control strategies in the CSAPR Update and concluded that it was not.[20] In the CSAPR Update, EPA identified a marginal cost of $3,400 per ton as the level of uniform control stringency that represents turning on and fully

[20] EPA notes that this conclusion that the feasibility of implementing SNCR should not inform the potential compliance timeframe and analytic year would not have precluded EPA from considering whether the operation of SNCR would be cost-effective relative to the installation of post-combustion controls. Had EPA, at step one of the four-step framework, identified continued downwind air quality problems in 2023, EPA could have considered in subsequent steps whether to require emission reductions consistent with operation of existing SNCR in addition to considering whether to require emission reductions consistent with implementation of new post-combustion controls. However, because EPA has already concluded that operation of existing SNCR is not cost-effective in the near-term, it would not be reasonable for EPA to select an earlier analytic year that would only be consistent with the timeframe for implementing that non-cost-effective near-term compliance strategy.

operating idled SNCR controls.[21] Ultimately, the CSAPR Update finalized emissions budgets using $1,400 per ton control stringency, finding that this level of stringency represented the control level at which incremental EGU NO_X reductions and corresponding downwind ozone air quality improvements were maximized with respect to marginal cost. In finding that use of the $1,400 control cost level was appropriate, EPA established that the more stringent emissions budget level reflecting $3,400 per ton (representing turning on idled SNCR controls) yielded fewer additional emissions reductions and fewer air quality improvements relative to the increase in control costs. Specifically, EPA's analysis showed that the additional reductions from the operation of idling SNCRs in Kentucky would only result in a 0.5 percent decrease in the Commonwealth's emission budget (from 21,115 to 21,007 tons). *See* 81 FR 74548 (October 26, 2016). In other words, based on the CSAPR Update analysis, establishing emissions budgets at $3,400 per ton, and therefore developing budgets based on operation of idled SNCR controls, was determined not to be cost-effective for addressing downwind air quality problems under the good neighbor provision obligations for the 2008 ozone NAAQS. *See* 81 FR 74550 (October 26, 2016). EPA believes that the strategy of turning on and fully operating idled SNCR controls was appropriately evaluated in the CSAPR Update with respect to addressing interstate ozone pollution transport for the 2008 ozone NAAQS. Accordingly, EPA is not further assessing this control strategy for purposes of identifying an appropriate future analytic year. EPA did not reopen that issue for comment in this rulemaking, and the comments are therefore not within the scope of this action. To the extent that the commenter believes that EPA's analysis of SNCR controls in the CSAPR Update was flawed, the time to contest that analysis was during that rulemaking.

To the extent the commenters suggest that EPA must select a higher cost threshold in order to ''permit downwind states to meet their attainment deadlines,'' the commenters misconstrue the requirements of the good neighbor provision and the applicable legal precedent. The good neighbor provision does not require upwind states to bring that downwind areas into attainment with the NAAQS. Rather, states are required to reduce emissions that ''contribute significantly'' to nonattainment in downwind areas. Once a state has eliminated its significant contribution to downwind nonattainment, it has met the requirements of the good neighbor provision, regardless of whether the downwind area has actually attained. *See, e.g.,* 76 FR 48258–59 (August 8, 2011) (determining in CSAPR that SO_2 emission reductions available at $2,300 per ton represented good neighbor obligation even though some downwind air quality problems would persist). This is distinct from the obligations imposed on downwind states containing designated nonattainment areas, which are directly obligated to demonstrate attainment of the NAAQS. *See, e.g.,* CAA section 182(c)(2)(A) (requiring the state submit a demonstration that the plan will provided for attainment of the ozone NAAQS by the applicable attainment date). Because the statutory obligations imposed on upwind and downwind states with respect to attainment differs, it is also reasonable that the costs of controls implemented in upwind states may also differ from those implemented in downwind states. The Supreme Court has already affirmed EPA's approach to quantifying and apportioning upwind states' significant contribution on the basis of cost. *See EME Homer City,* 134 S. Ct. at 1607. While the Court stated that EPA was prohibited from requiring more emission reductions than necessary to bring downwind areas into attainment of the NAAQS, *id.* at 1608, the Court did not indicate that upwind states were specifically responsible for ensuring the downwind states achieve attainment in all instances. Thus, EPA does not agree that it must require additional emission reductions from upwind states, even if they are not cost-effective, simply because a downwind area has not yet attained the NAAQS.

Comment: One commenter states that EPA's contention that implementation of controls is not feasible until during or after the 2022 ozone season is unfounded for the following reasons:

- SCR installations are typically less time-consuming than 39 months, noting that one of the resources EPA cites indicates 21 months is reasonable.
- SNCR takes less time, 10–13 months, to implement.
- EPA tacitly admits some projects could be completed prior to 2022 when it claims that SCR and SNCR should be ''linked'' at the fleet-level.
- The original CSAPR allowed less than three years for compliance with SO_2 limits that were expected to require installation of flue gas desulfurization controls, which generally are expected to take longer than SCR to install.
- EPA's integrated planning model assumes SO_2 scrubbers can be installed in three years and SCR units in two years.
- Non-EGU controls are widely available on timeframes shorter than 48 months according to EPA's Final Non-EGU TSD. Although EPA insinuates this document questions the availability of non-EGU controls within 48 months, it lists many categories of non-EGU NO_X controls available in about 60 weeks that were also cost-effective.
- EPA did not exhaust readily available EGU control options. Kentucky could require 100 percent operation of already-installed control equipment or insist on optimized performance. Kentucky could discontinue use of ''banked allowances'' in the CSAPR Update. And CSAPR did not require any re-dispatch or shifting power generation from higher-emitting to lower-emitting plants, which is also feasible in the short term.
- EPA's arguments regarding the availability of steel and cranes are tenuous. EPA cites only two documents to support its assertion about crane shortages, only one of which even mentions a shortage. That article only indicates that developers need to book the cranes and operators several months in advance, which is not much of an obstacle.

Another commenter states that—based on its experience—EPA's estimated installation time frames for SCRs are too conservative (short), and provides a range of 28 to 60 months for installation of SCRs at one site.

Response: EPA first notes that responses to comments regarding the following issues are addressed earlier in this document: (1) Timeframes assumed for installation of post-combustion controls in CSAPR; (2) timeframes for installation of controls on non-EGUs; and (3) the optimization of existing post-combustion controls. EPA will address the remaining comments in the following paragraphs.

EPA disagrees that the timeframe for implementation of SNCR and SCR at an individual unit necessarily indicates that the feasibility analysis is flawed. As an initial matter, there are differences between these control technologies with respect to the potential viability of achieving cost-effective regional NO_X reductions from EGUs. SCR controls generally achieve greater EGU NO_X reduction efficiency (up to 90 percent) than SNCR controls (up to 25 percent). Resulting in part from this disparity in NO_X reduction efficiency, when

[21] *See* EGU NO_X Mitigation Strategies Final Rule TSD (docket ID EPA–HQ–OAR–2015–0500–0554, *available at www.regulations.gov* and *https://www.epa.gov/sites/production/files/2017-05/documents/egu_nox_mitigation_strategies_final_rule_tsd.pdf*) (NO_X Mitigation Strategies TSD).

considering both control costs and NO_X reduction potential in developing cost per ton analysis for the CSAPR Update, EPA found new SCR controls to be more cost-effective than SNCR at removing NO_X. Specifically, EPA found that new SCR controls could generally reduce EGU emissions for $5,000 per ton of NO_X removed whereas new SNCR controls could generally reduce EGU emissions at a higher cost of $6,400 per ton of NO_X removed.[22] In other words, the greater NO_X reduction efficiency for SCR controls translates into greater cost-effectiveness relative to SNCR controls. The general cost-effectiveness advantage is consistent with observed installation patterns where SCR controls (62 percent of coal-fired capacity) are more prevalent across the east relative to SNCR (12 percent of coal-fired capacity).[23] In light of the increased NO_X removal efficiency and the relative cost-effectiveness of SCR as compared to SNCR, EPA does not believe that is reasonable to focus its analysis on the implementation of the less-efficient control strategy (SNCR) at the expense of the greater emission reduction potential of SCR controls. Accordingly, EPA believes it is reasonable to select a potential compliance timeframe and therefore a future analytic year that would permit the region-wide installation of both new SCR and new SNCR.

Moreover, the estimated 39 months and 10 to 13 months for implementation of SCR and SNCR, respectively, at an individual unit do not account for factors that would influence this timeframe across the fleet. Installing new SCR or SNCR controls for EGUs generally involves the same steps: Conducting an engineering review of the facility; advertising and awarding a procurement contract; obtaining a construction permit; installing the control technology; testing the control technology; and obtaining or modifying an operating permit.[24]

Scheduled curtailment, or planned outage, for pollution control installation would be necessary to complete either SCR or SNCR projects. Given that peak demand and rule compliance would both fall in the ozone season, sources would likely try to schedule installation projects for the ‘‘shoulder’’ seasons (*i.e.,* the spring and/or fall seasons), when electricity demand is lower than in the summer, reserves are higher, and ozone-season compliance requirements are not in effect. If multiple units were under the same timeline to complete the retrofit projects as soon as feasible from an engineering perspective, this could lead to bottlenecks of scheduled outages as each unit attempts to start and finish its installation in roughly the same compressed time period. Thus, any compliance timeframe that would assume installation of new SCR or SNCR controls should encompass multiple shoulder seasons to accommodate scheduling of curtailment for control installation purposes and better accommodate the regional nature of the program.

In addition to the coordination of scheduled curtailment, an appropriate compliance timeframe should accommodate the additional coordination of labor and material supply necessary for any fleet-wide control installation efforts.[25] The total construction labor for an SCR system associated with a 500-megawatt (MW) EGU is in the range of 310,000 to 365,000 man-hours, with boilermakers accounting for approximately half of this time.[26] SNCR installations, while generally having shorter individual project timeframes of 10 to 13 months from bid solicitation to startup, share similar labor and material resources and the timing of SNCR installation planning is therefore linked to the timing of SCR installation planning. In recent industry surveys, one of the largest shortages of union craft workers was for boilermakers. This shortage of skilled boilermakers is expected to rise due to an anticipated nine percent increase in boilermaker labor demand growth by 2026, coupled with expected retirements and comparatively low numbers of apprentices joining the workforce.[27] The shortage of and demand for skilled labor, including other craft workers critical to pollution control installation, is pronounced in the manufacturing industry. The Association of Union Constructors conducted a survey of identified labor shortages and found that boilermakers were the second-most frequently reported skilled labor market with a labor shortage.[28] Moreover, recovery efforts from the natural disasters of Hurricanes Harvey and Irma and wildfires in 2017 are expected to further tighten the labor supply market in manufacturing in the near term.[29] EPA determined that these tight labor market conditions within the relevant manufacturing sectors, combined with fleet-level mitigation initiatives, would likely lead to some sequencing and staging of labor pool usage, rather than simultaneous construction across all efforts. This sector-wide trend supports SCR and SNCR installation timeframes for a fleet-wide program that exceed the demonstrated single-unit installation timeframe.

Moreover, NO_X post-combustion control projects also require materials and equipment such as steel and cranes. Sheet metal workers, necessary for steel production, are also reported as having well above an average supply-side shortage of labor.[30] This, coupled with growth in steel demand estimated at three percent in 2018, and simultaneous global economic growth, suggests that there may be a constricted supply of steel needed for installation of new post-combustion controls.[31] Similarly, cranes are critical for installation of SCRs, components of which must be lifted hundreds of feet in the air during construction. Cranes are also facing higher demand during this period of economic growth, with companies reporting a shortage in both equipment and manpower.[32] [33] The tightening markets in relevant skilled labor, materials, and equipment, combined with the large number of installations that could be required fleet-wide under a regional air pollution transport program, necessitate longer installation

[22] NO_X Mitigation Strategies TSD.

[23] National Electric Energy Data System (NEEDS) v6. EPA, *available at https://www.epa.gov/airmarkets/national-electric-energy-data-system-needs-v6.*

[24] Final Report: Engineering and Economic Factors Affecting the Installation of Control Technologies for Multipollutant Strategies, EPA–600/R–02/073 (October 2002), *available at https://nepis.epa.gov/Adobe/PDF/P1001G0O.pdf.*

[25] EPA considers these additional labor and supply requirements in the context of the already committed labor and supply requirements associated with projects already underway.

[26] *Id.*

[27] Occupational Outlook Handbook, Bureau of Labor Statistics, *available at https://www.bls.gov/ooh/construction-and-extraction/boilermakers.htm.*

[28] Union Craft Labor Supply Survey, The Association of Union Constructors, Exhibit 4–2 at page 29, *available at https://www.tauc.org/files/2017_TAUC_UNION_CRAFT_LABOR_SUPPLY_REVISEDBC_FINAL.pdf.*

[29] Skilled Wage Growth Less Robust, Worker Shortage Still an Issue, Industry Week, October 23, 2017, *available at http://www.industryweek.com/talent/skilled-wage-growth-less-robust-worker-shortage-still-issue.*

[30] Union Craft Labor Supply Survey, The Association of Union Constructors, Exhibit 4–2 at page 29, *available at https://www.tauc.org/files/2017_TAUC_UNION_CRAFT_LABOR_SUPPLY_REVISEDBC_FINAL.pdf.*

[31] Worldsteel Short Range Outlook, October 16, 2017, *available at https://www.worldsteel.org/media-centre/press-releases/2017/worldsteel-Short-Range-Outlook-2017-2018.html.*

[32] *See, e.g.,* Seattle Has Most Cranes in the Country for 2nd Year in a Row—and Lead is Growing, Seattle Times, July 11, 2017, *available at https://www.seattletimes.com/business/real-estate/seattle-has-most-cranes-in-the-country-for-2nd-year-in-a-row-and-lead-is-growing/.*

[33] *See* RLB Crane Index, January 2018, in the docket for this action.

time-tables relative to what has been historically demonstrated at the unit-level.

EPA disagrees with the commenter's assertion that these observations regarding crane and steel markets are tenuous and thus should not influence EPA's analysis. While this is not the sole reason for EPA's conclusion that 48 months would be necessary for region-wide control installation, EPA believes the market for labor and materials is a relevant factor to consider in light of reports from companies that supply the tower cranes that there is a shortage of both equipment and manpower. The crane index, along with quarterly construction costs reports, are metrics regularly used to evaluate construction activity by construction consultancies and can provide information useful to demonstrate the level of equipment demand.[34] Moreover, the commenter provides no evidence to contradict the EPA's finding that these equipment markets are facing periods of higher demand.

The time lag observed between the planning phase and in-service date of SCR and SNCR operations in certain cases also illustrates that site-specific conditions sometimes lead to installation times of four years or longer. For instance, SCR projects for units at Ottumwa Generating Station (Iowa), Columbia Energy Center (Wisconsin), and Oakley Generating Station (California) were all in the planning phase in 2014. However, these projects have estimated in-service dates ranging between 2018 and 2021.[35] Similarly, individual SNCR projects can exceed their estimated 10–13-month time frame. For example, projects such as SNCR installation at Jeffrey Energy Center (Kansas) were in the planning phase in 2013, but not in service until 2015.[36] Completed projects, when large in scale, also illustrate how timelines can extend beyond the bare minimum necessary for a single unit when the project is part of a larger air quality initiative involving more than one unit at a plant. For instance, the Big Bend Power Station in Florida completed a multi-faceted project that involved adding SCRs to all four units as well as converting furnaces, over-fire air changes, and making windbox modifications. The time from the initial planning stages to completion was a decade.[37]

While individual unit-level SCR and SNCR projects can average 39 and 10 months, respectively, from bid to startup, a comprehensive and regional emissions reduction effort also requires more time to accommodate the labor, materials, and outage coordination for these two types of control strategies. Because these post-combustion control strategies share similar resource inputs and are part of regional emissions reduction programs rather than unit-specific technology mandates, the timeframes for one type are inherently linked to the other type. This means that SNCR projects cannot be put on an early schedule in light of their reduced construction timing without impacting the availability of resources for the manufacture and installation of SCRs and thus the potential start dates of those projects.

In short, given the market and regulatory circumstances in which EPA evaluated this effort, we determined that four years would be an expeditious timeframe to coordinate the planning and completion of any mitigation efforts that might be necessary in this instance. In regard to the commenter who noted a range of 28 to 60 months for SCR installation, EPA notes that a period of 48 months falls reasonably within that range, and is consistent with the region-wide evaluation of control feasibility that EPA has conducted in this action.

EPA notes that the commenters' assertions about assumptions in IPM regarding control installation timeframes are unfounded. Post-combustion control installation times are an exogenous assumption in EPA's power sector modeling—*i.e.,* EPA determines the number of years for installation and provides that figure as an input to the model; the figure is not the product of a function that the model performs internally. EPA makes this installation determination independently for each model run. For instance, if EPA is using IPM to model a run year that is three years from a present date, it may choose to allow scrubber installation to occur in that first model run year if the volume of installations is expected to be small (consistent with the notion that some units may be able to install controls more quickly). However, if the volume of scrubber installations is expected to be larger, reflecting more region-wide resource coordination requirements and resource requirements, EPA may not allow the retrofit option in the model until after three years. Thus, the assumption can vary according to the policy context being considered.

Finally, EPA notes that the commenter is incorrect in asserting that the CSAPR Update failed to account for generation shifting. The CSAPR Update budgets accounted for generation shifting that was considered to be available at the $1,400 cost threshold and feasible to implement by the 2017 compliance timeframe. *See* 81 FR 74544–45 (October 26, 2016). The commenter does not otherwise explain whether or how any potential for additional generation shifting should influence EPA's analysis in this action.[38]

Comment: Several commenters advocate for the adoption of short-term NO_X emission rate limits for EGUs. The ozone NAAQS is based on an 8-hour standard and the allowance trading under the CSAPR Update is done over a multi-month ozone season. The commenters believe that the lack of federally enforceable short-term NO_X emission rates in Kentucky will facilitate the continued operation of EGUs with inadequate NO_X emission controls, to include units that have NO_X controls that are not always operated during the ozone season. While the CSAPR Update has encouraged improved utilization of SCR and SNCR controls during the 2017 ozone season, the commenter contends that there are additional cost-effective NO_X reductions that can be achieved by requiring optimization of these existing controls, every day of the ozone season, at coal-fired EGUs. The commenter therefore states that Kentucky should establish emission limits for its EGUs with appropriate magnitudes and averaging periods.

Another commenter also states that EPA should require Kentucky to adopt targeted strategies for reducing emissions on "high emitting days."

One commenter contends that compliance with a cap-and-trade program like the CSAPR Update is an

[34] Kalinoski, Gail, North American Construction Trends: RLB Reports, *available at https://www.cpexecutive.com/post/north-america-construction-trends-rlb-reports/.*

[35] 2014 EIA Form 860, Schedule 6, Environmental Control Equipment.

[36] 2013 EIA Form 860, Schedule 6, Environmental Control Equipment.

[37] Big Bend's Multi-Unit SCR Retrofit, Power Magazine, March 1, 2010, *available at http://www.powermag.com/big-bends-multi-unit-scr-retrofit/.*

[38] Because EPA did not evaluate additional generation shifting possibilities in this action, it does not at this time need to revisit the question whether it is within the EPA's authority or otherwise proper to consider generation shifting in implementing the good neighbor provision. The EPA is aware that this has been an issue of contention in the past. *See, e.g.,* 81 FR at 74545 (October 26, 2016) (responding to comments); CSAPR Update Rule—Response to Comment, at 534–50 (EPA–HQ–OAR–2015–0500–0572) (summarizing and responding to comments). The EPA may revisit this question in addressing good neighbor requirements for other NAAQS but is not revisiting this issue with regard to the 2008 ozone NAAQS.

inadequate mechanism to ensure permanent NO_X reductions on high ozone days that determine attainment or nonattainment of the NAAQS. The commenter states that its analysis shows that many coal-fired EGUs in Kentucky were not optimizing their controls in 2017 and failed to operate at rates assumed in EPA's 2023 modeling analysis. The commenter states that a cap and trade program allows emissions to fluctuate above the state-wide budgets if the owners or operators (1) have adequate banked allowances, or (2) can purchase allowances to cover excess emissions. Ozone is an air pollutant to which prevention of short-term exposure to excessive levels over an eight-hour period is critical to protect public health, and compliance with the NAAQS can be negatively impacted by inconsistent day-to-day operation of pollution controls. Allowing a plant to cycle back the efficiency or altogether turn off control equipment is an inappropriate control measure for ozone because this can result in excessive rates on high ozone days, when it is most important to ensure low emission rates.

Response: EPA first notes that it is unnecessary to evaluate what strategy would be appropriate for the implementation of additional emission reductions because EPA has determined that they are unnecessary and unauthorized in light of the modeling data showing that downwind air quality problems will be resolved by 2023, when additional control strategies could be feasibly implemented.

To the extent the commenter is raising concerns with the use of an allowance trading program to implement the emission reductions required by the CSAPR Update to address the 2008 ozone NAAQS, EPA considers it untimely for the commenter to raise such a challenge in this action. Those emission reductions were finalized in a separate rulemaking, and the appropriate venues to raise concerns over the adequacy for reduction implementation of the CSAPR allowance trading program, as compared to other measures such as short-term emission limits, were that rulemaking process and subsequent petitions for judicial review of that final rule. Thus, this issue is outside the scope of the present rulemaking. Similarly, as discussed earlier in this action, to the extent the commenter also disagrees with EPA's determinations regarding the optimization of SCR controls or the cost-effectiveness of SCNR controls in the CSAPR Update, those comments are also outside the scope of this action.

Nonetheless, EPA has examined the hourly NO_X emissions data reported to EPA and observed very few instances of units selectively turning down or turning off their emissions control equipment during hours with high generation.[39] SCR-controlled units generally operated with lower emissions rates on high generation hours, suggesting SCRs generally were in better operating condition—not worse, let alone idling—on those days/hours. In other words, EPA compared NO_X rates on hours with high demand and compared them with seasonal average NO_X rates and found very little difference. The data do not support the notion that units are reducing SCR operation on high demand days (when ozone concentrations often peak). In fact, EPA noticed that SCR performance rates—on average—were better on high demand days. EPA, therefore, concludes that increases in total emissions on days with high generation are a result of additional units coming online and units increasing hourly utilization, rather than units decreasing the functioning of control equipment. Moreover, SCR performance is not purely a matter of operational decisions of the control. EPA's review of hourly 2017 data suggests that SCR performance often decreases as hourly load levels drop below a particular level (*e.g.,* 30 percent of maximum rated hourly heat input rate).[40] [41] A drop in SCR performance at a lower load level is consistent with engineering-based performance challenges associated with minimum operating temperatures (among other factors) for the SCR system.[42] In other words, SCR systems with typical catalyst formulations are not effective at removing NO_X during low-load operations when the unit might not achieve sufficient temperatures to promote the necessary chemical reactions. Decreases in SCR removal efficiency at low load levels appear to be consistent with known engineering limitations. The 2017 data do not provide any indication of broad regional patterns of scaling back SCR operations during particular hours of an ozone season for reasons other than engineering limitations. Thus, EPA does not have any basis, at this time, to believe that short-term emission rates are necessary to address regional SCR operation patterns on high demand days in the context of this action.

Moreover, even if it were appropriate to assess the merits of particular remedies as part of this action, EPA does not agree that an allowance trading program would be an inadequate means of implementing any additional statewide emission reductions that may have been necessary under a scenario where more reductions were required to fully address the good neighbor provision. Implementation mechanisms based on seasonal NO_X requirements have demonstrated success at reducing peak ozone concentrations. For example, over the past decade, there has been significant improvement in ozone across the eastern U.S., in part due to season-long allowance trading programs such as the NO_X Budget Trading Program and the CSAPR NO_X ozone season allowance trading program. As a result, areas are now attaining the 1997 ozone NAAQS. Further, EPA notes that the standard is a 3-year average value of three individual seasonal values. Thus, a seasonal program is harmonious with the form of the standard.

Comment: One commenter states that EPA should require Kentucky to ensure all ''minimum control strategies'' identified in a recent Ozone Transport Commission (OTC) statement regarding ''good neighbor'' SIPs are adopted, along with other points noted in the document.

Another commenter states that other measures should be undertaken to reduce Kentucky's impact on other states, including NO_X RACT on EGUs and other large NO_X sources at the same stringent levels used within the OTR, along with controls on mobile sources (inspection and maintenance, and anti-idling).

One commenter recommends that any full remedy of a state's good neighbor obligations must require, at minimum, RACT on all major NO_X and VOC sources, best available control technology (BACT) on all existing EGUs and large industrial boilers, BACT on all sources with high ozone-day emissions, and regional measures such as those recommended by the OTR.

Response: EPA lacks authority to require control measures or emission reductions unless the Agency first identifies a downwind air quality problem to which an upwind state is contributing. *See EME Homer City,* 134 S. Ct. at 1608 (''If EPA requires an upwind State to reduce emissions by more than the amount necessary to achieve attainment in every downwind State to which it is linked, the Agency will have overstepped its authority, under the Good Neighbor Provision.'');

[39] *See* Discussion of Short-term Emission Limits, available in the docket for this action.

[40] *Id.*

[41] Maximum rated hourly heat input rate is the higher of the manufacturer's maximum rated hourly heat input rate or the highest observed hourly heat input rate.

[42] Gray, Sterling; Jarvis, Jim; Donner Chad, and Estep John, SCR Performance, Power Engineering, March 9, 2017, *available at https://www.power-eng.com/articles/print/volume-121/issue-3/features/scr-performance.html.*

EME Homer City II, 795 F.3d at 129–30 (finding emissions budgets for 10 states were invalid because EPA's modeling showed that the downwind air quality problems to which these states were linked when EPA evaluated projected air quality in 2012 would be entirely resolved by 2014). With respect to the recommended control strategies, the commenters do not explain why they believe the control strategies applicable to the OTR, RACT, BACT, or other measures are necessary to achieve attainment or maintenance of the NAAQS in downwind states. While EPA determined that Kentucky would be linked to downwind air quality problems in 2017, EPA has also determined that those air quality problems would be resolved by 2023. Thus, EPA has no authority to require additional emission reductions—via the control strategies suggested by the commenters or otherwise—from Kentucky or other upwind states in 2023.

Comment: One commenter states that EPA's 2023 modeling is based on numerous flawed assumptions. EPA adjusted projected NO_X emissions for dozens of EGUs based on assumptions of new or optimized controls. However, the Kentucky SIP contains no enforceable mechanisms, schedules, or timetables for compliance to ensure the relied-upon assumptions are valid and will actually occur or remain in place in 2023. The commenter contends that EPA's demonstration or verification of enforceable commitments to support Kentucky's assumptions, as well as EPA's assumptions for all other states, are required by the CAA, citing section 110(a)(2)(A) and (C).

One commenter also contends that Kentucky's SIP fails to satisfy section 110(a)(2)(A) because, even if reliance on 2023 were valid, it lacks any proposed enforceable limitations or compliance timelines.

One commenter states that Kentucky has not shown that the EPA-modeled shutdowns of E.W. Brown Generating Station and Elmer Smith plant will occur in a federally enforceable manner, and that therefore, EPA should not approve Kentucky's SIP since the modeling includes such reductions.

One commenter states that although EPA and Alpine modeling indicate all areas outside California will achieve attainment with the 2008 ozone NAAQS by 2023, some Connecticut monitors will ''only barely'' comply. Commenter states that Kentucky's reliance on the 2023 modeling should be accompanied by enforceable regulations that ensure the lower, modeled 2023 emissions are achieved, including the decrease in EGU emissions.

One commenter includes a table summarizing adjusted projected NO_X emissions for Kentucky EGUs used in EPA's 2023 modeling based on assumptions of new or optimized controls. The commenter states that there are no enforceable commitments in Kentucky's SIP to support these assumptions, which the commenter asserts are required by EPA's own methodology, citing a March 2018 EPA memorandum. Without enforceable measures, the commenter asserts the modeling is not a proper basis for a good neighbor SIP.

One commenter contends that EPA's modeling relies on reductions that are not federally enforceable, and Kentucky failed to demonstrate that the emission reductions EPA relied on across the modeling domain are federally enforceable. The commenter contends that the upwind state good neighbor obligations cannot be deemed satisfied if large portions of their emissions inventory remain poorly controlled.

One commenter states that an approvable good neighbor SIP must include permanent and federally enforceable emissions reductions. The commenter contends that section 110 requires that a SIP (1) include enforceable emission limitations and other control measures, means, or techniques, (2) include a program to provide for the enforcement of the measures, and (3) provide adequate provisions prohibiting emissions activity within the state from emitting any air pollutant in amounts which will contribute significantly to nonattainment in or interfere with maintenance by any other state with respect to the NAAQS. EPA's four-step analysis also requires the adoption of ''permanent and enforceable measures.''

The commenter states that compliance with the rates reflected in the 2023 modeling are not permanent or federally enforceable under the CSAPR Update or any other federal rule, including the assumption that most units will emit at 2016 levels and that 25 units will take additional emission reduction actions, including unit retirement, increased use of post-combustion controls, or addition of new combustion controls. The commenter contends these actions are therefore speculative and cannot be properly considered when determining if a state met its good neighbor obligations. Downwind states cannot rely on speculative reduction, and without federally enforceable limits, there is no guarantee that Maryland will maintain the 2008 ozone NAAQS. The commenter notes that Maryland's section 126(b) petition proposed specific language and NO_X emission rates for EGUs with SCR and SNCR in Kentucky that EPA should consider making federally enforceable as a near-term NO_X reduction strategy. EPA should also modify operating permits for other units to require implementation of specific emission rates, fuel switches, and control installations for EGUs that are not equipped with controls, which were relied on in the modeling.

Response: EPA does not agree that Kentucky is required to adopt permanent and enforceable control measures to ensure that the projected emission levels used in the 2023 modeling will be maintained. Within EPA's four-step interstate transport framework, EPA only requires sources in upwind states to implement enforceable emission limitations if: (1) Downwind air quality problems are identified in at step one, (2) an upwind state is linked to a downwind air quality problem at step two, *and* (3) sources in the linked upwind state are identified at step three as having emissions that significantly contribute to nonattainment and interfere with maintenance of the NAAQS considering cost- and air-quality-based factors. If all three of these steps are not satisfied, then the state is not required to include provisions in its SIP prohibiting any level of reductions because the EPA has determined that the state will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind. For the reasons described in the following paragraphs, EPA believes this approach is a reasonable interpretation of the good neighbor provision.

The good neighbor provision instructs EPA and states to apply its requirements ''consistent with the provisions of'' title I of the CAA. EPA is therefore interpreting the requirements of the good neighbor provision, and the elements of its four-step interstate transport framework, to apply in a manner consistent with the designation and planning requirements in title I that apply in downwind states. *See North Carolina,* 531 F.3d at 912 (holding that the good neighbor provision's reference to title I requires consideration of both procedural and substantive provisions in title I). EPA notes that this consistency instruction follows the requirement that plans ''contain adequate provisions prohibiting'' certain emissions in the good neighbor provision. The following paragraphs will therefore explain how EPA's interpretation of the circumstances under which the good neighbor provision requires that plans ''prohibit'' emissions through enforceable measures is consistent with the circumstances under which downwind states are required to implement emissions control measures in nonattainment areas.

For purposes of this analysis, EPA notes specific aspects of the title I designations process and attainment planning requirements for the ozone NAAQS that provide particularly relevant context for evaluating the consistency of EPA's approach to the good neighbor provision in upwind states. EPA notes that this discussion is not intended to suggest that the specific requirements of designations and attainment planning apply to upwind states pursuant to the good neighbor provision, but rather to explain why EPA's approach to interpreting the good neighbor approach is reasonable in light of relevant, comparable provisions found elsewhere in title I. In particular, these provisions demonstrate that EPA's approach is consistent with other relevant provisions of title I with respect to what data is considered in EPA's analysis and when states are required to implement enforceable measures.

First, areas are initially designated attainment or nonattainment for the ozone NAAQS based on actual measured ozone concentrations. CAA section 107(d) (noting that an area shall be designated attainment where it ''meets'' the NAAQS and nonattainment where it ''does not meet'' the NAAQS). Therefore, a designation of nonattainment does not in the first instance depend on what specific factors have influenced the measured ozone concentrations or whether such levels are due to enforceable emissions limits. If an area measures a violation of the relevant ozone NAAQS, then the area is designated nonattainment. In cases where the nonattainment area is classified moderate or higher, the responsible state is required to develop an attainment plan, which generally includes the application of various enforceable control measures to sources of emissions located in the nonattainment area, consistent with the requirements in Part D of title I of the Act.[43] *See generally* CAA section 182, 42 U.S.C. 7511a. If, however, an area measures compliance with the ozone NAAQS, the area is designated attainment, and sources in that area generally are not subject to any new enforceable control measures under Part D.[44]

Similarly, in determining the boundaries of an ozone nonattainment area, the CAA requires EPA to consider whether ''nearby'' areas ''contribute'' to ambient air quality in the area that does not meet the NAAQS. *See* 42 U.S.C. 7407(d). For each monitor or group of monitors indicating a violation of the ozone NAAQS, EPA assesses information related to five factors, including current emissions and emissions-related data from the areas near the monitor(s), for the purpose of establishing the appropriate geographic boundaries for the designated ozone nonattainment areas. A nearby area may be included within the boundary of the ozone nonattainment area only after assessing area-specific information, including an assessment of whether current emissions from that area contribute to the air quality problem identified at the violating monitor.[45] If such a determination is made, sources in the nearby area are also subject to the applicable Part D control requirements. However, if EPA determines that the nearby area does not contribute to the measured nonattainment problem, then the nearby area is not part of the designated nonattainment area and sources in that area are not subject to such nonattainment control requirements.

EPA's historical approach to addressing the good neighbor provision via the four-step interstate transport framework, and the approach EPA continues to apply here, is consistent with these title I requirements. That is, in steps 1 and 2 of the framework, EPA evaluates whether there is a downwind air quality problem (either nonattainment or maintenance), and whether an upwind state impacts the downwind area such that it contributes to and is therefore ''linked'' to the area. EPA's determination at step one of the good neighbor analysis that it has not identified any downwind air quality problems to which an upwind state could contribute is analogous to EPA's determination in the designation analysis that an area should be designated attainment. Similarly, EPA's determination at step two of the good neighbor analysis that, while it has at step one identified downwind air quality problems, an upwind state does not sufficiently impact the downwind area such that the state is linked is analogous to EPA's determination in the designation analysis that a nearby area does not contribute to a NAAQS violation in another area. Thus, under the good neighbor provision, EPA determines at step one or two, as appropriate, that the upwind state will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in the downwind area. *See, e.g.,* 81 FR 74506 (October 26, 2016) (determining that emissions from 14 states whose contributions to downwind receptors are below the air quality threshold will not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS); 76 FR 48236 (August 8, 2011) (finding that states whose contributions to downwind receptors are below the air quality threshold will not significantly contribute to nonattainment or interfere with maintenance of the relevant NAAQS). Under such circumstances, sources in the upwind state are not obligated to implement any control measures under the good neighbor provision, which is consistent with the fact that sources located in attainment areas generally are not required to implement the control measures found in Part D of the Act. *Cf. EME Homer City II,* 795 F.3d at 130 (determining that CSAPR ozone season NO_X budgets for 10 states were invalid based on determination that modeling showed no future air quality problems); 81 FR 74523–24 (October 26, 2016) (removing three states from CSAPR ozone season NO_X program based on determination that states are not linked to any remaining air quality problems for the 1997 ozone NAAQS).

EPA acknowledges that one distinction between the good neighbor and designation analyses: The good neighbor analysis relies on future year projections of emissions to calculate ozone concentrations and upwind state contributions, compared to the designation analysis's use of *current* measured data. As described in more detail earlier, this approach is a reasonable interpretation of the term ''will'' in the good neighbor provision, *see North Carolina,* 531 F.3d at 913–14, and interpreting language specific to that provision does not create an

[43] Nonattainment areas classified as marginal are required to submit emissions inventories and implement a nonattainment new source review permitting program, but are not generally required to implement controls at existing sources. *See* CAA section 182(a), 42 U.S.C. 7511a(a).

[44] CAA section 184 contains the exception to this general rule: States that are part of the OTR are required to provide SIPs that include specific enforceable control measures, similar to those for nonattainment areas, that apply to the whole state, even for areas designated attainment for the ozone NAAQS. *See generally* 42 U.S.C. 7511c.

[45] *See* Memorandum from Robert J. Meyers, Principal Deputy Assistant Administrator, US EPA to Regional Administrators, *Area Designations for the 2008 Ozone National Ambient Air Quality Standards,* at Attachment 2, December 4, 2008, *available at https://archive.epa.gov/ozonedesignations/web/pdf/area_designations_for_the_2008_revised_ozone_naaqs.pdf.*

impermissible inconsistency with other provisions of title I. Moreover, EPA's use of future-year modeling in the good neighbor analysis to identify downwind air quality problems and linked states is consistent with its use of current measured data in the designations process. EPA's future year air quality projections are influenced by a variety of factors, including current emissions data, anticipated future control measures, economic market influences, and meteorology. Many of these same factors, *e.g.,* current control measures, economic market influences, and meteorology, can affect the NO_X emissions levels and consequent measured ozone concentrations that inform the designations process. Like the factors that affect measured ozone concentrations used in the designations process, not all of the factors influencing EPA's modeling projections are or can be enforceable limitations on emissions or ozone concentrations. However, EPA believes that consideration of these factors contributes to a reasonable estimate of anticipated future ozone concentrations. *See EME Homer City II,* 795 F.3d at 135 (declining to invalidate EPA's modeling projections ''solely because there might be discrepancies between those predictions and the real world''); *Chemical Manufacturers Association* v. *EPA,* 28 F.3d 1259, 1264 (D.C. Cir. 1994) (''a model is meant to simplify reality in order to make it tractable''). Thus, EPA believes that consideration of these factors in its future-year modeling projections used at steps 1 and 2 of the good neighbor analysis is reasonable and consistent with the use of measured data in the designations analysis.[46]

EPA notes that there is a further distinction between the section 107(d) designations provision and the good neighbor provision in that the latter provision uses different terms to describe the threshold for determining whether emissions in an upwind state should be regulated (''contribute significantly'') as compared to the standard for evaluating the impact of nearby areas in the designations process (''contribute'').

Thus, at step three of the good neighbor analysis EPA evaluates additional factors, including cost and air-quality considerations, to determine whether emissions from a linked upwind state would violate the good neighbor provision (*i.e.,* cost-effectiveness*).* Only if EPA at step three determines that the upwind state's emissions would violate the good neighbor provision will it proceed to step four, at which point emissions in the upwind state must be controlled so as to address the identified violation, analogous to the trigger for the application of Part D requirements to sources located in designated nonattainment areas. EPA interprets the good neighbor provision to not require the Agency or the upwind state to proceed to step four and implement any enforceable measures to ''prohibit'' emissions unless it identifies a violation of the provision at step three. *See, e.g.,* 76 FR 48262 (August 8, 2011) (finding at step three that the District of Columbia will not violate the good neighbor provision, and therefore will not at step four be subject to any control requirements in CSAPR, because no cost-effective emissions reductions were identified).

For these reasons, EPA also does not agree that either section 110(a)(2)(A) or section 110(a)(2)(C) requires the state to include measures to make the projected emission limitations enforceable in order to address the good neighbor provision. Section 110(a)(2)(A) states that a SIP should ''include enforceable emission limitations and other control measures, means, or techniques . . . *as may be necessary or appropriate* to meet the applicable requirements'' of the CAA (emphasis added). As just described, a finding at step one that there is no air quality problem supports a conclusion that a state simply will not contribute significantly or interfere with maintenance of the NAAQS in another state, and thus that the state need not prohibit any particular level of emissions under the good neighbor provision. Thus, under section 110(a)(2)(A), no emission limitations would be necessary or appropriate to meet the good neighbor provision. Section 110(a)(2)(C) similarly indicates that SIPs should provide for the enforcement of measures cited to support the requirements of section 110(a)(2)(A), but it does not independently require the imposition of additional control measures.

Comment: One commenter states that Kentucky proposes to rely on projections of future emissions based on a current regulatory framework that EPA is actively attempting to dismantle. Actions that the commenter contends EPA has not accounted for in the modeling include EPA's proposed repeal of glider rules, which if finalized would permit vehicles that emit significant amounts of NO_X. In its original rule, EPA estimated that unregulated glider vehicles would increase emissions from heavy-duty highway vehicles by approximately 300,000 tons annually in 2025. Conversely, the CSAPR Update only reduces annual NO_X emissions by 75,000 tons, meaning the proposed regulatory action would swamp multiple times over the emission reductions from the CSAPR Update and undercut the assumptions in EPA's estimates.

The commenter also cites efforts to weaken the Corporate Average Fuel Economy standards, which were anticipated to reduce annual light-duty highway vehicle emissions of NO_X by 904 tons in 2020 and 6,509 tons in 2030, and emissions of VOCs, another ozone precursor, by 11,712 and 123,070 tons in 2020 and 2030, respectively. EPA is also considering rescinding 2016 Control Techniques Guidelines (CTG) for oil and natural gas industry, estimated to reduce emissions by 80,000 tons annually.

The commenter contends that these actions, if finalized, would ensure that the exceedingly narrow compliance margins assumed by its modeling in 2023 are not achieved. To the extent Kentucky stakes good neighbor compliance entirely on an unenforced and actively undercut prediction, the commenter claims its reliance is arbitrary and capricious.

Another commenter states that EPA's 2023 modeling fails to account for potential federal rule repeals and delays, such as those for: ''glider'' vehicles and engines (proposed November 2017); oil and gas CTG guidelines (March 2018); and the NSPS for the oil and gas sector. The commenter also states that relaxation or elimination of control requirements will result in increased ozone concentrations and that the 2023 design values are therefore an underestimate of actual levels that will occur. The commenter states that given EPA predicts a maximum design value of 75.9 ppb in 2023 at the Westport, Connecticut monitor, coupled with the fact that ''Kentucky significantly contributes to this monitor,'' the ''unenforceable commitments'' in Kentucky's SIP, and federal rule repeals and relaxations that EPA ignores, nonattainment can be expected to result at this monitor.

One commenter asserts that the 2023 modeling fails to account for the proposed weakening, repeal, and/or delay of numerous federal rules that directly impact ozone levels, including for glider vehicles, CTGs for oil and gas,

[46] EPA also notes that the consideration of projected *actual* emissions in the future analytic year—as opposed to allowable levels—is also consistent with the statute's instruction that states (or EPA in the states' stead) prohibit emissions that ''will'' impermissibly impact downwind air quality. This term is reasonably interpreted to mean that EPA should evaluate anticipated emissions (what sources *will* emit) rather than potential emissions (what sources *could* emit).

and reconsideration of new source performance standards (NSPS) for the oil and gas sector, which will increase ozone concentrations near and downwind of affected sources. The commenter contends that the Westport, Connecticut monitor (part of the New York metropolitan area (NYMA)) is projected to have design value of 75.9 ppb in 2023, only 0.1 ppb below the standard (and above the 2015 ozone NAAQS), and Kentucky significantly contributes to this monitor. The inevitable increase of ozone levels from EPA's deregulatory activities will drive the Westport monitor above the 2008 ozone NAAQS.

Response: EPA disagrees that its 2023 projections are unreliable because of potential changes to other regulations. EPA first notes any potential regulatory changes to the ''glider'' regulations and the oil and gas CTG have not been finalized, nor have any relevant changes to the NSPS for the oil and gas sector been finalized. EPA's normal practice is to only include changes in emissions from final regulatory actions in its modeling because, until such rules are finalized, any potential changes in NO_X or VOC emissions are speculative. In addition, even if emissions were to change as a result of any such final rules, commenters have not indicated how and whether these additional emissions would affect downwind ozone concentrations. If circumstances change such that EPA's projections may be affected, commenters are free to submit an administrative petition to the Agency.

Comment: One commenter contends that EPA's modeling over-predicts actions taken in compliance with CSAPR. The commenter notes that the 2023 modeling TSD reveals assumptions that facilities that retrofit between 2016 and 2023 to install SCR will achieve an emission rate of 0.075 lb NO_X/mmBtu. The commenter asserts this is unrealistic given the CSAPR Update itself relies on the idea that SCR-equipped units will only achieve 0.10 lb/mmBtu NO_X emission rates. EPA itself considered the 0.075 lb/mmBtu rate to be unachievable fleetwide in the CSAPR Update.

Response: The commenter conflates EPA's assumptions in the CSAPR Update regarding emission rates achievable by units with *existing* SCR controls (*i.e.,* 0.10 lb/mmBtu) that are idled or not being optimized with its assumptions regarding *new* SCR retrofits (*i.e.,* 0.075 lb/mmBtu). As explained in the CSAPR Update, EPA selected a different rate for existing SCRs that were viewed as likely to ''optimize'' than it did for new SCR installations. This difference reflects both differences in historical data values for the two populations sets, and also the increased technology performance expected from more recent technology vintages.[47]

EPA's assumption of 0.075 lb/mmBtu for SCR retrofits is supported by historical data on emission rates for new SCR controlled units, is consistent with its prior engineering and technology assumptions, and is a conservative estimate of new SCR performance.

New SCR controlled units often perform equal to or better than older SCRs reflecting advancements in both technology and installation practices. New SCRs have regularly operated at or below EPA's assumed emission rate of 0.075 lb/mmbtu. For 12 coal units where SCR was installed and operating between 2014 and 2016, the average ozone season NO_X emission rate for 2017 was 0.059 lb/mmBtu. When this time horizon is extended to the 25 SCRs that came online between 2012 and 2016, the 23 that operated in 2017 ozone season operated at a rate of 0.060 lb/mmBtu. Either measure demonstrates that 0.075 lb/mmBtu is not only possible for newly controlled units, but regularly achieved and surpassed. This historical data strongly contradicts the commenters assertion that EPA's assumption that new units would operate at an emission rate of 0.075 lb/mmBtu is unrealistically low, but rather supports EPA performance capability assumption as both reasonable and conservative.

Additionally, the 0.075 lb/mmBtu emission rate assumption for new SCRs is consistent with EPA's historical levels of assumed performance in its power sector modeling and consistent with the engineering assessment by Sargent and Lundy underpinning those performance assumptions.[48]

Comment: One commenter asserts that the modeling predicts that existing units will either install new controls or operate controls at higher efficiencies following the CSAPR Update, despite limited incentives to do so. The commenter cites as an example the Paradise unit 3 in Kentucky that EPA assumed will optimize its SCR (0.10 lb/mmBtu) and reduce its NO_X output to about 1,000 tons per ozone season, but in 2017, the unit emitted over twice that amount (about 2,400 tons or 0.22 lb/mmBtu). Moreover, the Additional Updates to Emissions Inventories for the Version 6.3, 2011 Emissions Modeling Platform for the Year 2023 TSD generally assumes that facilities that emitted at a rate higher than 0.10 lb/mmBtu in 2016 will come down to 0.10 lb/mmBtu in 2023, which ignores the reality of emission trading under CSAPR. The commenter contends that this effectively assumes that the market for emissions credits will price those credits so highly that no emitter will choose to buy credits rather than reduce emissions, which is belied by purpose and experience of the CSAPR trading scheme.

Response: EPA's assumption of 0.010 lb/mmBtu for optimized SCR performance at units with existing SCRs is both reasonable and consistent with recent historical data.

As explained in the CSAPR Update, EPA evaluated SCR emission rates at existing units from 2009–2015 and found that the third lowest *fleet-wide* yearly ozone season average was an appropriate metric to use for SCR performance. *See* 81 FR 74543 (October 26, 2016). These emission rates were used to calculate states' emissions budgets in the CSAPR Update. In order to project emission levels representing CSAPR Update implementation in 2023, it is reasonable to use the same assumptions regarding the average, fleet-wide emissions rate for affected units, even if individual unit operation may vary. Thus, consistent with that assumption, EPA used a 0.10 lb/mmBtu to represent operation of existing SCRs its 2023 projections as well. While unit-level performance will vary relative to this fleet-wide assumption (with some SCR controlled units operating below and some above), using a fleet-wide average for each unit-level estimate captures aggregate emission impacts to the air shed and minimizes the net residuals between unit-level estimates and the eventual observed unit-level performance.

Data from 2017, the first year of ozone season data that would be influenced by the CSAPR Update compliance requirements, is consistent with this assumption on a fleet-wide level. EPA began its engineering analysis to project 2023 EGU emissions with 2016 monitored and reported data. For the units with existing SCRs that were operating above 0.10 lb/mmBtu in 2016 (totaling 82,321 tons of emissions in that year), EPA assumed that SCRs would be optimized under a CSAPR Update scenario to 0.10 lb/mmBtu on average for 2023. This results in 2023 emissions estimates for these units being adjusted

[47] *See* NO_X Mitigation Strategy TSD *available at https://www.epa.gov/sites/production/files/2017-05/documents/egu_nox_mitigation_strategies_final_rule_tsd.pdf.*

[48] Sargent & Lundy, IPM Model—Updates to Cost and Performance for APC Technologies, SCR Cost Development Methodology, Final, Project 12847–002 (March 2013), *available at https://www.epa.gov/sites/production/files/2015-08/documents/attachment_5-3_scr_cost_methodology.pdf.*

down to 40,590 tons for these units. In 2017, the very first year of CSAPR Update, collective emissions from these units were 41,706 tons. This 2017 value is already very close to the 2023 estimated value, and supports the assumed behavior of optimized SCR performance to 0.10 lb/mmBtu on average. Some of these units operated above 0.10 lb/mmBtu in 2017 (as the commenter points out), but many operated below 0.10 lb/mmBtu, as well. Relying on the fleet-wide average estimate was very consistent with the fleet-wide observed behavior in 2017.

EPA disagrees with the notion that EGU emissions will increase, rather than decrease, in future years of the CSAPR Update implementation, or that the market for allowances would have to price allowances much higher in order for emission reductions to continue. This is not borne out by historical precedent or any economic models. There are a variety of policy and market forces at work beyond CSAPR allowance prices that are anticipated to continue to drive generation to shift from higher emitting to lower emitting sources. As evidenced in prior EPA allowance trading programs, emissions from covered sources generally trend downwards (regardless of allowance price) as time extends further from the initial compliance year.[49] Both the Acid Rain Program and CSAPR SO_2 allowance banks grew in 2017 from their 2016 levels, indicating that sources are collectively adding to the bank (by emitting below state budgets) rather than drawing down the bank because of the availability of low cost allowances. This illustrates that there are multiple drivers affecting emissions, and it is reasonable for EPA to consider those, in addition to CSAPR update incentives, in its projection of 2023 ozone season NO_X levels for EGUs.

Comment: One commenter states that EPA's 2023 modeling contains aspects that ''deviate from past guidance and have not undergone peer review,'' including a new approach to coastal grid cells. The commenter states that the affected community needs to be afforded the opportunity for review and public comment on such approaches.

Response: EPA released 2023 projected ozone design value data for individual monitoring sites in October 2017.[50] These data include ozone design value projections for each site based on the methodology recommended in EPA's photochemical modeling guidance.[51] In addition, EPA provided a companion set of 2023 design values based on an alternative approach for coastal monitoring sites. The commenter had an opportunity to review and analyze the alternative coastal grid cell approach during the public comment period for this action, as well as when the data were released in October 2017. The commenter did not provide any substantive feedback on the alternative approach including reasons why the approach would not be appropriate. EPA also notes that both methods result in the same outcome that all monitoring sites outside of California are not expected to have problems attaining or maintaining the 2008 NAAQS by 2023.

Comment: One commenter contends that reliance on modeling that predicts future compliance by 0.1 ppb when inherent uncertainties are much larger is arbitrary and capricious. The commenter states that the October 2017 Transport Memo speculatively suggests ozone NAAQS attainment without performance of any sensitivity analyses and through incorporation of a series of dubious assumptions, projecting attainment by only 0.1 ppb. Prediction of near-nationwide compliance by 2023 is the product of thousands of inputs, assumptions, and simplifications related to emissions inventories, future power consumption, meteorological conditions, and chemical reactions. The commenter notes natural gas prices as an example of the huge degree of uncertainty in this prediction. The modeling is based on predictions of 2023 emissions, which is based on predictions of power plant fuel utilization based on a guess of future fuel prices in 2023. If gas prices are higher than predicted, the modeling will predict greater dependence on coal-fired generation, predicting higher NO_X emissions, and ultimately under-predict ozone formation.

Response: EPA's modeling results that show the site the commenter refers to, site 090019003 in Fairfield County, Connecticut, is projected to be in compliance of the 2008 NAAQS by three ppb (*i.e.,* 2023 projected average design value is 73.0 ppb). When considering the effects of meteorological variability this site is still projected to be below the level of the NAAQS (*i.e.,* projected maximum design value is 75.9 ppb). Additionally, continuing ozone reductions are expected in future years at all sites due to an estimated 19 percent reduction in ozone season NO_X emissions expected to occur between 2017 and 2023 in the aggregate for the states covered by the CSAPR Update. The commenter provides no data to substantiate their claim that EPA's projected design values are not technically sound and appropriate for use in this rulemaking.

EPA recognizes that there are inherent uncertainties in modeling the future, but EPA believes that the model platform and inputs selected are well-supported and reasonable. The commenter did not provide information to suggest that there is an overall bias in the modeling-based projections. As it has for every air quality modeling exercise, EPA performed a model evaluation, as described in the Air Quality Modeling Technical Support Document for the final CSAPR Update, which compared ozone predictions for 2011 from the modeling platform to actual measured data from that year, in order to test how well the model characterized reality. The model evaluation indicates that the model's predictions corresponded closely to actual measured concentrations in terms of the magnitude, temporal fluctuations, and spatial differences for 8-hour daily maximum ozone.[52] The commenter is correct that EPA's modeling predictions are the result of thousands of inputs, assumptions, and simplifications; this is by definition the exercise of modeling. Moreover, because of the complexity of air quality modeling, courts are deferential to EPA's with respect to those inputs, assumptions, and simplifications. The D.C. Circuit has declined to ''invalidate EPA's predictions solely because there might be discrepancies between those predictions and the real world.'' *EME Homer City II,* 795 F.3d at 135–36. The fact that a ''model does not fit every application perfectly is not criticism; a model is meant to simplify reality in order to make it tractable.'' *Chemical Manufacturers Association* v *EPA,* 28 F.3d 1259, 1264, 307 U.S. App. DC 392 (D.C. Cir. 1994). The court has held that ''it is only when the model bears no rational relationship to the characteristics of the data to which it is applied that we will hold that the use of the model was arbitrary and capricious.'' *Appalachian Power Co.* v. *EPA,* 135 F.3d 791, 802 (D.C. Cir. 1998).

[49] 2014 Program Progress, Clean Air Interstate Rule, Acid Rain Program, and Former NO_X Budget Trading Program. EPA, *available at https://www.epa.gov/sites/production/files/2017-09/documents/2014_full_report.pdf.*

[50] *https://www.epa.gov/airmarkets/october-2017-memo-and-supplemental-information-interstate-transport-sips-2008-ozone-naaqs.*

[51] Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze, U.S. Environmental Protection Agency, Research Triangle Park, NC, *available at http://www.epa.gov/ttn/scram/guidance/guide/Draft_O3-PM-RH_Modeling_Guidance-2014.pdf.*

[52] Air Quality Modeling TSD, *available at https://www.epa.gov/airmarkets/air-quality-modeling-technical-support-document-final-cross-state-air-pollution-rule.*

As demonstrated by EPA's model performance evaluation, the modeling platform used in this rulemaking and EPA's choices as to inputs and assumptions provide reasonable projections of expected future year ozone concentrations and contributions, and is thus an appropriate basis on which to base the findings made in this action.

EPA further disagrees with the commenter's assertion that EGU projections are too uncertain because natural gas fuel prices may be different than those underlying EPA's projections, resulting in greater coal-fired generation and consequently higher emissions. First, EPA notes that power plant emissions are a small portion (approximately 15 percent) of the 2023 eastern states total NO_X emission inventory used to inform the air quality modeling.[53] Relative to mobile sources and other emission categories, EGU emissions projections are a smaller segment of the inventory and just a portion of the impact on the Connecticut modeled attainment status.

Moreover, EPA believes its EGU projections are reasonable and conservative. In developing the 2023 EGU emissions projections, EPA relied on 2016 monitored and reported data and only made emissions adjustments to account for (1) control optimization expected in response to the CSAPR Update implementation beginning in 2017, and (2) any known (*e.g.,* planned and under construction) power plant infrastructure changes, including new builds, retirements, coal-to-gas switching, and SCR retrofit project underway and reported by the owner or operators to the Department of Energy's (DOE) Energy Information Administration (EIA) in EIA Form 860.[54] No adjustments were made for projected, but unannounced, fleet changes estimated to occur by 2023 in response to market conditions and an aging fleet. Because these projected fleet wide changes would have resulted in lower 2023 EGU emission estimates, the EGU emission projections EPA actually used in the modeling were conservative.

EPA also does not agree with the commenter that gas prices are likely to be higher in future years. Average annual natural gas prices ranged from $2.52/mmBtu to $4.37/mmBtu between 2009 and 2016.[55] EPA and other independent analysts expect future natural gas prices to remain low and within this 2009 to 2016 range due both to supply and distribution pipeline build-out. For example, the EIA's 2018 Annual Energy Outlook (AEO) natural gas price projections for Henry Hub spot price range from $3.06/mmBtu in 2018 to $3.83/mmBtu in 2023.[56] Moreover, the AEO short-term energy outlook and New York Mercantile Exchange futures further support the estimates of a continued low-cost natural gas supply.[57] These independent analyses of fuel price data and projections lead to EPA's expectation that fuel-market economics will continue to support natural gas consumption during future ozone seasons through at least 2023 in a manner similar to recent historical levels. These lower natural gas price outlooks suggest, if anything, lower emissions projections, not higher. Consistent with this outlook, industry has announced significant new waves of coal retirements since 2016—which is also consistent with a less emissions-intensive outlook than that captured by EPA's use of 2016 EGU data as its starting point for emissions inventory purposes in this action. EPA agrees that there is some uncertainty in fuel prices that consequently casts uncertainty on future emissions projections. However, for the reasons discussed herein, EPA believes its assumptions are both reasonable and conservative. Moreover, EPA notes that many of the assumptions factored into its 2023 projections are firm (*e.g.,* retirements) and therefore not sensitive to future fuel price changes.

The reasonableness, conservativeness, and feasibility of EPA assumptions are illustrated by the first year of CSAPR compliance emission levels in 2017. Emissions in 2017 dropped (in just one year) by 21 percent from 2016 levels and were 7 percent below the CSAPR budget for the 22 affected states. EPA 2023 projections for the same set of states were 10 percent below the CSAPR budget, meaning in just one-year states have already achieved the majority of the EGU reduction anticipated by EPA and are well above pace to be at or below that level by 2023. For Kentucky specifically, ozone season NO_X EGU emissions dropped from 25,402 tons in 2016 to 19,978 tons in 2017 for EGUs greater than 25 MW. This reflects a 21 percent reduction in just one year of the total 33 percent reduction assumed for the state by 2023.[58]

Comment: One commenter provided 2017, 2020, and 2023 projected design values based on air quality modeling by the Ozone Transport Commissions (OTC) using the Community Multi-scale Air Quality Model (CMAQ) and design values for 2023 using the Comprehensive Air Quality Model with Extensions (CAMx) in conjunction with emissions inventory projections from the Mid-Atlantic Regional Air Management Association (MARAMA). The commenter also included the 2023 projected design values based on EPA's CAMx modeling. The commenter includes a sample of the results and points to predicted 2023 design values based on CMAQ that are above the NAAQS at the Westport, Connecticut and Susan Wagner, New York monitors. The commenter states that the CMAQ results are ''considerably different'' from EPA's CAMx modeling.

Another commenter states that EPA's modeling as well as modeling conducted by Alpine produce overly optimistic projection of future year ozone levels. The commenter includes a table that the commenter characterizes as indicating 2017 measured design values considerably higher than those projected at all Connecticut monitoring sites as well as indicating Kentucky contributions of greater than 1 percent at two Connecticut monitors after contributions are scaled relative to 2017 measured air quality levels. The commenter states that Kentucky's proposed SIP fails to address the underprediction of the modeling.

Response: EPA does not agree that the modeling provided by commenters should affect EPA's reliance on its own 2023 modeling. The first commenter provided projected design values at 41 monitoring sites along the Northeast Corridor for each model run. Of these 41 sites, all but two had base year design values that exceeded the 2008 NAAQS. The modeling results show that the EPA and OTC CAMx-based 2023 design value projections are consistent on an individual site basis for all 41 sites. Both sets of CAMx modeling indicate that the 41 sites will be below the 2008 NAAQS by 2023.

In addition, the CMAQ 2023 design values are consistent with both sets of CAMx-based 2023 projections at nearly

[53] *Available at ftp://newftp.epa.gov/Air/emismod/2011/v3platform/reports/2011en_and_2023en/2023en_cb6v2_v6_11g_state_sector_totals.xlsx.*

[54] Additional Updates to Emissions Inventories for the Version 6.3, 2011 Emissions Modeling Platform for the Year 2023 Technical Support Document, EPA, October 2017, *available at https://www.epa.gov/sites/production/files/2017-11/documents/2011v6.3_2023en_update_emismod_tsd_oct2017.pdf.*

[55] *http://tonto.eia.gov/dnav/ng/hist/rngwhhda.htm.*

[56] In the 2018 reference case AEO released February 6, 2018, created by the U.S. EIA, natural gas prices for the power sector for 2018 through 2023. *Available at https://www.eia.gov/outlooks/aeo/data/browser/#/?id=13-AEO2018&cases=ref2018&sourcekey=0.*

[57] AEO short-term energy outlook, *available at https://www.eia.gov/outlooks/steo/report/natgas.php.*

[58] *See* Engineering Analysis—Unit File, *available at ftp://ftp.epa.gov/EmisInventory/2011v6/v3platform/reports/2011en_and_2023en/.*

all sites. That is, CMAQ modeling indicates that all but two of the 41 sites will be below the 2008 NAAQS by 2023. The two sites projected to exceed the 2008 NAAQS in 2023 with CMAQ, but not the OTC and EPA CAMx modeling, are the Westport site in Connecticut and the Susan Wagner High School site in New York.

The CMAQ projections for these two sites are not only inconsistent with the CAMx modeling, but they are also inconsistent with the CMAQ modeling for other nearby sites in Connecticut, New York, and New Jersey. For example, based on the CMAQ modeling, ozone at the Susan Wagner site is projected to decline by only five percent between 2011 and 2023, whereas at a site in nearby Bayonne, New Jersey, ozone is projected to decline by 13 percent over this same period. Similarly, ozone at the Westport site is projected to decline by only three percent between 2011 and 2023 with CMAQ, but at other sites along the Connecticut coastline (*i.e.,* sites in Greenwich, Stratford, and Madison) ozone is projected to decline by 10 to 19 percent. In addition, the CMAQ results for these two sites are inconsistent with ozone reductions predicted by CMAQ at other sites in the New York City area which range from 11 to 18 percent. While it is possible ozone levels in 2023 at the Westport and/or Susan Wagner sites may be higher than at other sites in the New York City area, the commenter fails to provide any explanation regarding the large difference in the CMAQ-based model response to emissions reductions at these two sites compared to nearby sites and to other sites in the New York area. Based on the complicated photochemistry in the New York City area, it is possible that ozone monitoring sites closest to the New York City NO_X emissions plume may be less responsive to NO_X controls compared to sites further downwind. Due to non-linear chemistry, sites very close to the city may experience increases in ozone or less reduction than other nearby sites on some days in response to local emissions reductions in NO_X. Thus, we might expect that monitoring sites in Connecticut that are closer to New York City would show less reduction in ozone than sites in Connecticut that are further downwind. However, as noted above, in the OTC CMAQ modeling, the closest downwind Connecticut site (Greenwich) has a 10-percent modeled ozone reduction, while the Westport site, which is further downwind, has only a 3-percent modeled ozone reduction. The commenter did not provide any information to explain why the OTC CMAQ modeling results for the Westport, Connecticut and Susan Wagner, New York monitoring sites are dissimilar to other near-by sites or why the CMAQ modeling provides a more representative ozone projection for these two sites compared to the EPA and OTC CAMx-based modeling results.

The second commenter contends that modeling by EPA and Alpine for 2023 is overly optimistic because EPA's modeled ozone design values for 2017 are higher than the preliminary 2017 design values for certain monitoring sites in Connecticut. The results of the air quality modeling performed by the OTC show that the results of the CAMx modeling by EPA and Alpine are consistent with the OTC's 2023 CAMx modeling results. Specifically, the EPA, Alpine, and OTC CAMx modeling all project that all sites identified by the commenter as having preliminary 2017 measured design values exceeding the 2008 NAAQS will be in compliance with that NAAQS by 2023. These CAMx results are also consistent with the OTC CMAQ modeling, except for one site in Westport, Connecticut, that CMAQ predicts will still violate the 2008 NAAQS in 2023. However, the CMAQ modeling for this site is inconsistent with other available modeling from EPA, the OTC, and Alpine, as described in the paragraph above.

In addition, the commenter compared the preliminary 2017 measured design values to EPA's projected 2017 average design values, but did not demonstrate that the modeling was generally biased. In particular, the commenter ignored EPA's projected maximum design values. The projected maximum design values are intended to represent future ozone concentrations when meteorological conditions are more favorable to ozone formation than the average. Comparing both the 2017 modeled average design values and maximum projected design values to the preliminary 2017 measured design values indicates that the projected maximum design values are, in most cases, closer in magnitude to the 2017 preliminary measured design values than the 2017 model-projected average design values listed in the comments.

Further, while the modeling-based projections may have understated observed design values at certain monitoring sites in Connecticut, this was not the case for other 2017 receptor sites in the Northeast Corridor. For example, at other receptor sites in the New York area in Suffolk and Richmond counties, New York, the measured 2017 design values were within 0.2 ppb of the model-predicted average design values. At the site in Philadelphia County, Pennsylvania the modeled 2017 maximum design value was 1.1 ppb lower than the corresponding measured value and at the site in Harford County, Maryland, the modeled value was higher, not lower, than the measured 2017 design value. It is not unreasonable that there may be some differences between the modeling-based projections for a future year in part because the meteorology of the future year cannot be known in advance. While EPA recognizes that there are uncertainties in the modeling, the results for the 2017 receptor sites in the Northeast do not, on balance, show a consistent bias.

Even though the preliminary 2017 measured design values at the eight sites identified by the commenter are still measuring violations of the 2008 NAAQS, it is entirely reasonable to project that these sites will be in attainment by 2023 as a result of the roughly 19 percent reduction in aggregate ozone season NO_X emissions that is expected to occur between 2017 and 2023 for the states covered by the CSAPR Update. As mentioned earlier, because of the high NO_X emissions in the New York City area and the non-linear chemistry associated with ozone formation, the benefits of NO_X emissions reductions may not have been fully realized to date at downwind sites in Connecticut. More notable reductions in ozone at these sites are expected as NO_X emissions decline further, in response to existing control programs and other factors influencing emissions. A large short-term reduction in ozone is not unprecedented at historically high ozone sites in other parts of the Northeast Corridor. Specifically, the measured design values at the Edgewood monitoring site in Harford County, Maryland, which is downwind of the Baltimore/Washington, DC urban area, declined by nearly 20 percent between 2012 and 2014 and have been below the level of the 2008 NAAQS since 2014, as shown by the data in the table below. Thus, EPA disagrees that the monitored data cited by the commenter indicates that the modeling projections are unreliable.

DESIGN VALUES (PPB) AT EDGEWOOD SITE IN HARFORD COUNTY, MD, 2007 THROUGH 2017

Year	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	Preliminary 2017
Design Value	94	91	87	89	92	93	85	75	71	73	75

Comment: One commenter asserts that the 2023 modeling provided by EPA does not provide a ‘‘full remedy’’ because it shows that Kentucky still significantly contributes to ozone levels (which the commenter contends is defined by a contribution greater than 1 percent of the NAAQS, or 0.75 ppb) across Delaware between 1.10 and 2.53 ppb in 2023. Although the modeling shows attainment in Delaware in 2023, the commenter contends that Kentucky should not presume Delaware or any other state will be attaining the 2008 ozone NAAQS in 2023. The commenter notes that monitors in Delaware are currently meeting the 2008 ozone NAAQS, but that other monitors in the Philadelphia nonattainment area are exceeding the NAAQS (noting the Bristol, Pennsylvania monitor with a 2014–2016 design value of 77 ppb), despite the fact that EPA officially declared the nonattainment area had attained.

Another commenter states that the CSAPR Update ‘‘clearly established’’ Kentucky’s significant contribution to the Richmond County monitor, and disagrees with EPA’s proposed amendment to reflect that the CSAPR Update provides a full remedy to Kentucky’s transport obligation because in EPA’s 2023 modeling ‘‘Kentucky is still shown to be significantly contributing to monitors’’ in the New York City metropolitan area, the area currently exceeds the NAAQS ‘‘by a significant margin,’’ and the area will likely continue to exceed the NAAQS in 2023 ‘‘once the issues with EPA’s projection modeling are addressed.

Response: EPA disagrees with the commenters’ assertion that an impact in a downwind area above the 1 percent threshold necessarily indicates that an upwind state significantly contributes to nonattainment or interferes with maintenance of the NAAQS in a downwind state. The good neighbor provision first requires the identification of a downwind nonattainment or maintenance problem before emission reductions may be required, regardless of the upwind state impact on downwind ozone concentrations. *See EME Homer City II,* 795 F.3d at 129–30 (finding emission budgets invalid where air quality modeling showed downwind nonattainment and maintenance problems would be resolved). As the commenter notes, EPA’s modeling shows that no areas in the East will have downwind air quality problems with respect to the 2008 ozone NAAQS in 2023, and thus EPA’s analysis is complete at step one of the four-step framework. As discussed earlier, although monitors may currently measure exceedances of the NAAQS, EPA interprets the term ‘‘will’’ in the good neighbor provision to permit consideration of projected air quality in an appropriate future year. *See North Carolina,* 531 F.3d at 913–14.

Moreover, even if a downwind air quality problem had been identified, the fact that an upwind state would contribute at or above the 1 percent threshold to downwind nonattainment and maintenance receptors in step two of EPA’s framework does not by itself indicate that the state would be considered to ‘‘contribute significantly’’ or ‘‘interfere with maintenance’’ of the NAAQS. The finding that a state’s downwind impact would meet or exceed this threshold only indicates that further analysis is appropriate to determine whether any of the upwind state’s emissions meet the statutory criteria of significantly contributing to nonattainment or interfering with maintenance. This further analysis in step three of EPA’s four-step framework considers cost, technical feasibility and air quality factors to determine whether any emissions deemed to contribute to the downwind air quality problem must be controlled pursuant to the good neighbor provision.

Thus, the commenter is incorrect to assert that EPA’s 2023 modeling shows that Kentucky significantly contributes to ozone levels in Delaware.

Comment: One commenter points to the 2023 modeling performed by Alpine indicating greater than a 1 percent contribution by Kentucky to New Jersey. The commenter points specifically to the Ocean County and Colliers Mill monitoring sites in New Jersey as receiving 1.48 ppb of ozone from Kentucky.

Response: There is only one ozone monitoring site in Ocean County New Jersey and that site is located in Colliers Mills.[59] This site is currently monitoring attainment of the 2008 ozone NAAQS based on a 2014–2016 design value of 73 ppb, and preliminary data indicates that the 2015–2017 design value remains at 73 ppb. This site is also projected to be in attainment of the 2008 ozone NAAQS in 2023. That is, this site is not expected to have a problem attaining or maintaining the 2008 NAAQS in 2023 that would warrant consideration of further upwind reductions in Kentucky.

Comment: One commenter states that EPA’s 2023 contribution assessment methodology, which uses average exceedance day ozone contribution, does not capture what happens on a daily basis for ozone formation and is inconsistent with how the states are required to use ‘‘peak’’ ozone days when they demonstrate attainment of the ozone standard. Ozone episodes are dependent on variation in daily weather patterns and energy generation dispatch.

The commenter notes that Maryland has recently conducted modeling that shows that certain meteorological regimes will show very large contribution while other meteorological regimes show lower contribution. The commenter states that the days when Kentucky’s contribution in the model is very high are generally the same type of days that Maryland expects will drive the attainment process, where peak days are used to calculate design values using measured, not modeled data. The commenter states that this can be resolved by requiring the largest emitters of ozone precursors, coal-fired EGUs with SCR and SNCR, to optimize those controls every day of the ozone season.

Response: EPA does not believe the methodology used to evaluate upwind state contributions to downwind air quality problems is relevant to this action, because, as noted in the NPRM and earlier this action, EPA’s modeling shows that there are projected to be no remaining air quality problems identified in the East in 2023. Accordingly, EPA’s analysis concludes at step one of the four-step framework, and as discussed earlier in this action, the level of Kentucky’s contribution to any downwind monitoring cites in 2023, which would not be addressed until step two of the four-step

[59] *See* Figure 4–5 in the 2016 New Jersey Air Quality Report, New Jersey Department of Environmental Protection, Bureau of Air Monitoring, December 7, 2017, *available at http://www.njaqinow.net/.*

framework, is therefore irrelevant. Moreover, to the extent the commenter refers to Kentucky's contribution to downwind air quality problems in EPA's 2017 modeling conducted for the CSAPR Update, EPA has already acknowledged that Kentucky was linked to the ozone monitoring site in Harford County, Maryland. Thus, whether or not Kentucky's contribution would have been higher in 2017 based on examining impacts on ''peak'' ozone days is also irrelevant because EPA already quantified and implemented emission reductions for Kentucky in the CSAPR Update based on this linkage.

Nonetheless, EPA disagrees that its method for calculating contribution from upwind states to downwind receptors is inconsistent with how the states are required to demonstrate attainment of the ozone NAAQS. EPA's modeling guidance recommends that states calculate future year ozone projections based on 5-year weighted *average* design values and on the *average* base year and future year concentrations across the highest base year concentration days.[60] Similarly, EPA's method for calculating the *average* contribution metric in the CSAPR Update was based on the *average* contribution across the days with the highest future year concentrations.

Comment: One commenter states that the CSAPR Update, by its own terms, does not fully satisfy section 110(a)(2)(D) for the 2008 ozone NAAQS. Rather than rely on the CSAPR Update, Kentucky's SIP revision must evaluate the Commonwealth's expected contribution to downwind nonattainment and include provisions to prevent those contributions in a timely fashion. The commenter cites *North Carolina's* conclusion that ''a complete remedy to section 110(a)(2)(D)(i)(I) . . . must do more than achieve something measurable; it must actually require elimination of emissions from sources that contribute significantly and interfere with maintenance in downwind nonattainment areas.'' 531 F.3d at 908.

The commenter notes that, in the final CSAPR Update, EPA explained that downwind air quality problems would remain after implementation, and that the rule was limited by EPA's focus on ''immediately available reductions'' that could be implemented by the 2017 ozone season. The commenter further states that EPA's October 2017 Transport Memo conceded that the CSAPR update only partially addressed the requirements of the good neighbor provision, noting in a footnote that the memo indicates continued nonattainment in Philadelphia, which is linked to Kentucky in the CSAPR Update.

The commenter contends that Kentucky has undertaken no independent analysis of whether any emission reductions that have occurred as a result of its implementation of the CSAPR Update have actually eliminated the Commonwealth's significant contribution to nonattainment or maintenance monitors in linked downwind states. Given Kentucky's largest downwind contribution was 10.8 ppb to ozone concentrations at a maintenance monitor in Ohio in 2017, the commenter asserts that it is highly improbable that the modest reductions in NO_X emissions from Kentucky plants that have occurred since the implementation of the CSAPR Update have eliminated this significant linkage. The commenter notes in a footnote that Kentucky reduced NO_X emissions during the ozone season by about a third in implementing the CSAPR Update, and accordingly retained a similar majority of its downwind impacts, well above the 0.75 ppb threshold of ''significant contributions.''

Response: While EPA indicated that the CSAPR Update FIPs ''*may* not be sufficient to fully address these states' [including Kentucky's] good neighbor obligations'' for the 2008 ozone NAAQS (emphasis added), EPA did not definitely determine that additional reductions were required. 81 FR 74521. Rather, EPA acknowledged that additional analysis would be required to determine the full extent of the good neighbor obligation. Kentucky's SIP submission and EPA's review in this action conduct this additional assessment by analyzing downwind ozone concentrations relative to the 2008 ozone NAAQS in a future analytic year, considering downwind attainment dates and anticipated compliance timeframes for potential, additional emission reductions. The results of this analysis show that the downwind air quality problems to which Kentucky was linked in 2017 are resolved by 2023, and thus concludes that the emission reductions required by the CSAPR Update provide a complete remedy under the good neighbor provision for the 2008 ozone NAAQS. EPA therefore disagrees that EPA's approval of Kentucky's SIP is inconsistent with the court's holding in *North Carolina,* because EPA has in fact required meaningful emission reductions from sources in Kentucky via the CSAPR Update FIP.

Moreover, as explained earlier in this action, an impact in a downwind area above the 1 percent threshold does not necessarily indicate that an upwind state significantly contributes to nonattainment or interferes with maintenance of the NAAQS in a downwind state. The good neighbor provision first requires the identification of a downwind nonattainment or maintenance problem before emission reductions may be required, regardless of the upwind state impact on downwind ozone concentrations. *See EME Homer City II,* 795 F.3d at 129–30 (finding emission budgets invalid where air quality modeling showed downwind nonattainment and maintenance problems would be resolved). Thus, although emissions from Kentucky may continue to impact air quality in other states in 2023, this impact is not impermissible under the good neighbor provision given EPA has projected that there will be no air quality problems that could trigger upwind control obligations.

Comment: One commenter contends that EPA takes two contradictory positions regarding its application of the four-step framework designed to assist states in determining good neighbor SIP obligations under the CAA, citing the January 2015 Transport Memo. The commenter notes that, based on 2017 modeling conducted for the CSAPR Update, EPA acknowledged that Kentucky is linked to Maryland's Harford County monitor, which will continue to have maintenance problems in the near future. However, instead of completing the analysis at steps 3 and 4 using 2017 as a baseline, EPA returned to step one, performed new modeling for 2023, and used that modeling to determine that there will be no remaining air quality problems outside of California.

The commenter further contends that reliance on 2023 modeling is inappropriate because the attainment deadline for Harford County is July 2018, and Maryland must continue to maintain thereafter. The commenter states that EPA should have completed all steps of the four-step framework using a consistent base year since EPA's own modeling identified Kentucky as currently linked to the Harford County receptor. EPA should have identified the emissions reductions necessary to prevent Kentucky from significantly contributing to nonattainment or interfering with maintenance in Maryland, and required Kentucky to

[60] Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze, U.S. Environmental Protection Agency, Research Triangle Park, NC, *available at http://www.epa.gov/ttn/scram/guidance/guide/Draft_O3-PM-RH_Modeling_Guidance-2014.pdf.*

adopt permanent and enforceable measures needed to achieve identified emission reductions as expeditiously as practicable. The commenter asserts that Kentucky's obligation to reduce its current contribution to Maryland's 2017 maintenance monitor cannot properly be offset based on projections about future air quality which may or may not occur in 2023.

Response: The commenter misunderstands EPA's analysis in this rule and the operation of the four-step framework. EPA agrees that Kentucky was linked to the Harford County receptor in step two of EPA's four-step framework based on the 2017 modeling conducted for the CSAPR Update. Based on that determination, EPA already evaluated and quantified, at step three, feasible and cost-effective emission reductions that were required to address Kentucky's good neighbor obligation with respect to that receptor in the CSAPR Update, and implemented those emission reductions at step four through the requirement that EGUs in Kentucky participate in the CSAPR NO_X Ozone Season Group 2 allowance trading program. Thus, EPA has completed steps 3 and 4 with respect to the 2017 modeling analysis.

However, as explained in the CSAPR Update, EPA could not conclude that the rule fully addressed CAA section 110(a)(2)(D)(i)(I) obligations for 21 of the 22 CSAPR Update states, including Kentucky. Specifically, EPA determined that downwind air quality problems would remain after implementation of the CSAPR Update, including at the Harford County monitor, and EPA could not conclude at that time whether additional EGU and non-EGU reductions implemented on a longer timeframe than 2017 would be feasible, necessary, and cost-effective to address states' good neighbor obligations for this NAAQS.

Given that any additional emission reductions, if necessary, would be implemented at some point after 2017, it is reasonable for Kentucky and EPA to evaluate air quality (at step one of the framework) in a future year that is aligned with feasible control installation timing in order to ensure that the upwind states continue to be linked to downwind air quality problems when any potential emissions reductions would be implemented and to ensure that such reductions do not over-control relative to the identified downwind ozone problem. *See EME Homer City,* 134 S. Ct. at 1608. Here, EPA has determined that the air quality problems identified at the Harford receptor with respect to the 2008 ozone NAAQS will be resolved by 2023. Accordingly, EPA does not have the authority to require additional emission reductions from sources in Kentucky in that year. *See EME Homer City II,* 795 F.3d at 130 (determining that CSAPR ozone season budgets for 10 states are invalid based on determination that modeling showed no future air quality problems).

Comment: One commenter asserts that the good neighbor provision does not permit a state to delay its elimination of significant downwind contribution indefinitely. EPA made nonattainment designations for areas where Kentucky is making a significant contribution and therefore EPA's proposal to delay enforcing Kentucky's good neighbor obligations for another five years violates the good neighbor provision. Kentucky's SIP fails to address Kentucky's present and ongoing significant contribution to nonattainment or interference with maintenance of the NAAQS in downwind areas including the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area in the NYMA.

The commenter states that the CSAPR Update established Kentucky's significant contribution to the Richmond County monitor in 2017, which is part of the NYMA that measured nonattainment for the 2008 ozone NAAQS during 2017. The commenter contends that EPA's proposed approval provides no modeling or monitoring data showing that Kentucky's significant contribution to NYMA nonattainment has presently ceased or that it will cease at any time prior to 2023. Therefore, the commenter opposes the modification of EPA regulations to reflect that the CSAPR Update fully addresses Kentucky's transport obligation.

The commenter states that Kentucky's significant contribution to nonattainment and/or maintenance problems for New York under the 2008 ozone NAAQS are present nearly 10 years after EPA promulgated the NAAQS, seven years after the SIP was due, and five years after EPA's FIP was due. Yet Kentucky's SIP looks out another five years before concluding it is feasible for Kentucky to comply with its good neighbor obligations. EPA's 2023 modeling is 15 years after promulgation of the NAAQS and delays compliance without statutory authority, effectively permitting Kentucky's continuing violation of the good neighbor provision.

Response: EPA disagrees that it has allowed Kentucky to delay addressing its good neighbor obligation indefinitely. Rather, EPA promulgated a FIP for the Kentucky in the CSAPR Update that has required EGUs in the Commonwealth to limit their collective emissions beginning 2017. As discussed earlier, EPA could not conclude whether or not the FIP was sufficient to address the state's good neighbor obligation for Kentucky without further analysis, and EPA therefore further disagrees with the commenter's assertion that Kentucky has continued to violate its obligation after implementation of the CSAPR Update. As discussed earlier, the fact that emissions from the Commonwealth may continue to impact air quality in other states does not conclude the question of whether that impact constitutes a significant contribution or interference with maintenance of the NAAQS under the good neighbor provision.

In order to determine whether Kentucky had any remaining emission reduction obligations with respect to the 2008 ozone NAAQS, additional analysis was necessary. EPA explained in the NPRM and earlier in this action why it was appropriate to evaluate air quality in a future analytic year to determine whether the Commonwealth would have any further emission reduction after implantation of the CSAPR Update and how the choice of a 2023 analytic year was consistent with legal precedent. Thus, EPA does not agree that its approval of Kentucky's SIP improperly delays compliance with the good neighbor provision for the 2008 ozone NAAQS.

Comment: One commenter states that EPA must issue a FIP for the Commonwealth of Kentucky consistent with the obligations of CAA section 110(a)(2)(D) as well as the court's order in *Sierra Club* v. *Pruitt,* No. 3:15–cv–04328–JD (N.D. Cal. May 23, 2017), directing EPA ''to promulgate the Kentucky FIP by June 30, 2018.''

Another commenter contends that EPA's proposed approval of the Kentucky SIP does not obviate its duty to issue a fully compliant FIP for Kentucky by the June 30, 2018 deadline in accordance with the court's order.

A further commenter states that states were required to submit SIPs addressing the good neighbor provision for the 2008 ozone NAAQS by March 2011, and that EPA disapproved Kentucky's SIP on March 4, 2013. This finding triggered EPA's mandatory duty under CAA section 110(c)(1) to promulgate a FIP for Kentucky within two years: By March 7, 2015. When EPA failed to act, Sierra Club and New York sued EPA in the United States District Court for the Northern District of California to require EPA to adopt a FIP addressing Kentucky's good neighbor obligations. The commenter notes that the Supreme

Court found that section 110(c)(1) ''impose[s] an absolute duty on EPA to issue [a] FIP within two years of Kentucky's failure to adopt an adequate state implementation plan,'' *EME Homer City,* 134 S. Ct. at 1600, and that EPA did not contest its liability to issue a FIP for Kentucky based on the SIP disapproval. The District Court ordered EPA ''to promulgate the Kentucky FIP by June 30, 2018.''

The commenter contends that the Kentucky SIP cannot be approved because it requires insufficient action to reduce Kentucky's significant contribution to nonattainment in the NY-NJ-CT multistate nonattainment area by the CAA's mandatory attainment deadlines of July 2018 (moderate areas) and July 2021 (serious areas). The commenter asserts that EPA's failure to propose a FIP by June 30, 2018, is another instance of EPA's failure to carry out its mandatory duty under section 110(c) with respect to Kentucky's transport obligations, and a clear violation of the District Court's order.

Response: EPA disagrees that this action fails to satisfy the requirements of the court's order in *Sierra Club* v. *Pruitt.* While the commenters are correct that section 110(c)(1)(B) requires the Administrator to promulgate a FIP within two years after the Administrator disapproves a SIP in whole or in part, the provision further qualifies this obligation. The Administrator is to promulgate a FIP ''*unless* the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such [FIP].'' Thus, once EPA has approved a SIP that EPA determines addresses the deficiency that was the subject of the prior SIP disapproval, the Administrator no longer has the authority (much less the obligation) to promulgate a FIP.

As to the requirements of the good neighbor provision for the 2008 ozone NAAQS, EPA has promulgated a FIP for Kentucky in the CSAPR Update. While EPA indicated that the CSAPR Update FIPs ''*may* not be sufficient to fully address these states' [including Kentucky's] good neighbor obligations'' for the 2008 ozone NAAQS (emphasis added), EPA did not definitely determine that additional reductions were required. *See* 81 FR 74521 (October 26, 2016). Rather, EPA acknowledged that additional analysis would be required to determine the full extent of the good neighbor obligation. Thus, the only remaining deficiency after promulgation of the CSAPR Update FIP was to determine what, if any remaining emission reduction obligation would apply to the states, including Kentucky. EPA has determined, in this SIP action, that no further emission reductions are required for the 2008 ozone NAAQS, and thus, that the CSAPR Update FIP fully addresses Kentucky's good neighbor obligation. Accordingly, EPA lacks authority to issue any further FIP since the CSAPR Update has fully addressed the deficiency identified in the initial SIP disapproval that triggered EPA's FIP obligation.

Moreover, to the extent the commenters contend that the court's citation to the Supreme Court's decision in *EME Homer City,* 134 S. Ct. at 1600, precludes EPA's use of a SIP approval to address the remaining deficiency, the commenters misrepresent the holding of the Court. Importantly, the Court was emphasizing the ''absolute'' nature of EPA's mandate in order to counter arguments from the respondents and the lower court that EPA's FIP authority was contingent on an obligation to take some action other than to find that the state has failed to submit an approvable SIP. While the Court did state that EPA has an absolute mandate to promulgate a FIP upon a SIP disapproval, the court also acknowledged, repeatedly, that the state could first ''correct the deficiency'' through submission of a SIP. *Id.* at 1600–01 (emphasizing twice that EPA's obligation to issue a FIP can be affected if the state ''correct[s] the deficiency'' on its own). That is precisely what has occurred here with respect to the portion of the good neighbor deficiency not already addressed by the CSAPR Update. Thus, EPA's action is consistent with section 110(c) and therefore consistent with the Northern District of California's order that EPA address its obligation under section 110(c) as it pertains to Kentucky's good neighbor obligation for the 2008 ozone NAAQS.

Comment: Several commenters contend that EPA is inappropriately parallel processing the Kentucky SIP in light of the ''significant number and scope'' of public comments raised during the state public comment process. The commenters state that Kentucky should have been required to address comments prior to EPA's proposed approval. One commenter contends that EPA's proposed approval of the Kentucky SIP on the condition that the final SIP contain no substantial changes removes any incentive for Kentucky to address the public comments by making necessary changes. The commenter further asserts that Kentucky's SIP is controversial and contested, and thus, parallel processing is inappropriate. To support this assertion, the commenter notes that EPA denied a petition brought under section 176A, which is currently subject to review in the D.C. Circuit, that involves claims of transported ozone pollution from Kentucky and other upwind states. The commenter further states that EPA's only apparent reason for parallel processing is the court-ordered deadline to promulgate a FIP by June 30, 2018, and that EPA's own inaction is no excuse for taking rushed, unreasonable, arbitrary and capricious action to approve a deficient SIP.

Response: EPA disagrees with the commenters' assertions that parallel processing is inappropriate in these circumstances. Parallel processing is a well-established procedure for acting on SIP submissions that is allowed under long-standing EPA regulations. Appendix V to 40 CFR part 51 (Appendix V) provides the criteria for determining the completeness of SIP submittals and the procedures for parallel processing. These procedures, set forth in paragraph 2.3 of Appendix V, allow a state to request parallel processing as the state is accepting comments and finalizing its SIP revision. Under parallel processing, the state submits a copy of a draft SIP submittal to EPA before conducting its public hearing. EPA reviews the draft submittal and, if EPA believes it is approvable, publishes an NPRM during the same timeframe that the state is holding its public hearing. The state and EPA then provide for concurrent public comment periods on both the state action and the federal action, respectively.

Although parallel processing expedites action on SIP submissions, it does not limit EPA's substantive review. EPA evaluates the draft submittal against the same approvability criteria as any other SIP submission, and the final submission must meet all of the necessary SIP completeness criteria, including the requirement that the submission contain a ''[c]ompilation of public comments and the State's response thereto.'' *See* Appendix V, paragraphs 2.1(h) and 2.3.2. Therefore, a state must respond to comments received during the state public comment period. Parallel processing does not remove the incentive for a state to revise its SIP submission in response to comments that raise valid approvability concerns because ultimately EPA cannot approve a submission that fails to meet all approvability criteria.

EPA is not taking a rushed, unreasonable, or arbitrary and capricious action by using parallel processing to act on Kentucky's SIP submission. Kentucky submitted a parallel processing request, as allowed under paragraph 2.3.1 of Appendix V, and EPA is following the criteria set forth in Appendix V to approve the Commonwealth's final submittal. These criteria do not exclude certain types of SIP submissions from parallel processing because all SIP submissions reviewed through this process must ultimately meet all completeness and approvability criteria regardless of the number of comments received or the degree of controversy. Furthermore, EPA provided the public with a full opportunity to comment on the draft submittal and has fully evaluated all of the submitted comments. If these comments had identified specific issues that would not allow EPA to approve the draft SIP submission, EPA could not have taken this final action.

Comment: One commenter suggests that a declaration filed in another pending lawsuit demonstrates that EPA has prejudged its approval of Kentucky's proposed SIP submission, by noting that the declaration states EPA has proposed an ''unconditional approval.'' This appears to be contrary to what was stated in EPA's proposed approval, wherein EPA stated that the approval is contingent on Kentucky addressing any comments in the state-level process. The declaration further states that ''EPA intends to finalize an appropriate action for Kentucky'' by the court-ordered deadline. The commenter contends that, because of the public notice and hearing requirements under CAA section 307(d), and because EPA has not yet proposed a FIP, the only action EPA has left itself is to approve Kentucky's deficient SIP regardless of any public comments it receives.

Response: The commenter misinterprets the reference to proposed ''unconditional approval'' of Kentucky's SIP made in the declaration of Reid Harvey filed in *New York* v. *Pruitt,* No. 18–cv–406 (S.D.N.Y.). Section 110(k)(4) permits the Administrator to issue a ''conditional'' approval of a SIP based on a commitment of a state to adopt specific measures within one year of the final action. If the state fails to meet this commitment, the conditional approval is treated as a disapproval. Mr. Harvey's declaration used the term ''unconditional approval'' to indicate that the proposed approval was *not* made pursuant to section 110(k)(4). The use of this term is unrelated to the contingencies associated with the parallel processing requirements, which are laid out in Appendix V to 40 CFR part 51 rather than in section 110.

Moreover, EPA does not agree that the Agency has been forced to approve a deficient SIP based on the court-ordered deadline and the procedural requirements for the promulgation of a FIP. For the reasons explained in the NRPM and in this action, EPA finds that Kentucky's SIP submission, together with the CSAPR Update, fully satisfies the requirements of the good neighbor provision with respect to the 2008 ozone NAAQS. However, had EPA determined that it could not finalize approval of Kentucky's SIP and would instead need to promulgate a FIP, EPA would have filed an appropriate motion with the district court requesting an extension of the court-ordered deadline.

Comment: One commenter contends that approving the Kentucky SIP and putting the October 2017 Transport Memo into effect will effectively foreclose any further good neighbor activities under the 2008 ozone NAAQS and EPA will have reversed its position in the CSAPR Update that more NO_X controls were necessary. EPA deferred action under section 176A of the CAA by indicating it would enforce good neighbor obligations through other mechanisms like the transport rule framework. The commenter asserts that EPA effectively shifts the burden onto downwind states to cope with upwind pollution sources while denying downwind state any means to enforce good neighbor obligations.

The commenter continues that EPA's failure is forcing downwind states to attempt to address Kentucky's and other upwind states' contributions to ozone concentrations via other, resource-intensive CAA mechanisms. The commenter cites a recent petition submitted by Maryland under CAA section 126 identifying three coal-fired units in Kentucky to which EPA has to date failed to respond. The commenter also cites a petition submitted pursuant to CAA section 176A to expand the OTR, which EPA denied. The commenter claims it is arbitrary and capricious for EPA to point to separate CAA provisions as an excuse for inaction on the ozone transport problem, and to reverse itself without confronting its prior position.

Another commenter states that New York's recent submittal of a section 126 petition to EPA buttresses Connecticut's claims and that notes that such petition names stationary sources in Kentucky as ''interfer[ing] with attainment'' of the New York-New Jersey-Connecticut nonattainment area. The commenter states that EPA has referred to section 126 petitions as one of the tools available to states seeking attainment with the ozone NAAQS, yet they would not be required if upwind states and EPA satisfied their obligations in a timely matter.

Response: EPA disagrees that it has changed its position in the CSAPR Update regarding the need for additional emission reductions. In that rulemaking, EPA only stated it could not conclude, without further analysis, whether additional reductions from NO_X sources would be necessary to fully resolve these obligations. This conclusion is not inconsistent with EPA's action on the section 176A petition seeking to expand the OTR. EPA denied the section 176A petition because it concluded that any remaining interstate transport problems could be better addressed via the good neighbor provision, which EPA and the states can use to make decisions regarding which precursor pollutants to address, which sources to regulate, and what amount of emission reductions to require, flexibilities that are not available with respect to control requirements applicable to sources in the OTR. *See* 82 FR 51244–46 (November 3, 2017). EPA has subsequently completed further analysis that shows that there will be no remaining air quality problems in 2023 in the eastern U.S., and thus EPA has concluded that no additional reductions from upwind states, beyond those required by the CSAPR Update and other on-the-books or on the way measures, are necessary to bring downwind areas into attainment of the 2008 ozone NAAQS. While downwind states may continue to have current planning obligations associated with designated nonattainment areas, EPA lacks the authority to require additional emissions reductions from upwind states under the good neighbor provision in a future year where EPA's analysis shows that current nonattainment problems will be resolved.

While EPA is concluding in this action that Kentucky has no remaining good neighbor obligation with respect to the 2008 ozone NAAQS after implementation of the CSAPR Update, EPA disagrees that this action necessarily forecloses all further good neighbor activities with respect to that NAAQS. This action does not address remaining good neighbor obligations for any other states, and EPA will address any such obligations in a separate rulemaking. Moreover, the commenters acknowledge and EPA agrees that section 126 provides a process for states to bring claims to the Agency if the petitioning state can present information demonstrating that sources in upwind states will have impacts on downwind air quality in violation of the good neighbor provision. However, the right to submit such petitions does not presuppose that any pending or future petitions will necessarily make the requisite demonstration. To the extent that the commenters invokes separate, pending section 126 petitions, EPA will address those claims in separate actions.

IV. Final Action

For the reasons discussed above, EPA is taking final action to approve Kentucky's May 10, 2018, SIP submission and find that Kentucky is not required to make any further reductions, beyond those required by the CSAPR Update, to address its statutory obligation under CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. EPA's final approval of Kentucky's submission means that Kentucky's obligations under 110(a)(2)(D)(i)(I) are fully addressed through the combination of the CSAPR Update FIP and the SIP demonstration showing that no further reductions are necessary. EPA is also amending the regulatory text at 40 CFR 52.940(b)(2) to reflect that the CSAPR Update represents a full remedy with respect to Kentucky's transport obligation for the 2008 ozone NAAQS.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 17, 2018. Under section 307(b)(2) of the Act, the requirements of this final action may not be challenged later in civil or criminal proceedings for enforcement.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: June 28, 2018.

Onis ''Trey'' Glenn, III,
Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart S—Kentucky

■ 2. Section 52.920(e) is amended by adding an entry for ''110(a)(2)(D)(i)(I) Infrastructure Requirement for the 2008 8-Hour Ozone National Ambient Air Quality Standards'' at the end of the table to read as follows:

§ 52.920 Identification of plan.

(e) * * *

EPA-APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanations
* *	*	*	*	* *
110(a)(2)(D)(i)(I) Infrastructure Requirement for the 2008 8-Hour Ozone National Ambient Air Quality Standards.	Commonwealth of Kentucky ..	05/10/2018	07/17/2018, [Insert **Federal Register** citation].	

■ 3. Section 52.940 is amended by revising paragraph (b)(2) to read as follows:

§ 52.940 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(2) The owner and operator of each source and each unit located in the State of Kentucky and for which requirements are set forth under the CSAPR NO_X Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Kentucky's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b), except to the extent the Administrator's approval is partial or conditional.

* * * * *

[FR Doc. 2018–15143 Filed 7–16–18; 8:45 am]

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Part VI

Department of Homeland Security

U.S. Immigration and Customs Enforcement

8 CFR Parts 103 and 214

Adjusting Program Fees for the Student and Exchange Visitor Program; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

8 CFR Parts 103 and 214

[DHS No. ICEB–2017–0003]

RIN 1653–AA74

Adjusting Program Fees for the Student and Exchange Visitor Program

AGENCY: U.S. Immigration and Customs Enforcement (ICE), Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security (DHS) proposes to adjust fees charged by the Student and Exchange Visitor Program (SEVP) to individuals and organizations. DHS proposes to raise the fee for Student and Exchange Visitor Information System (SEVIS) Form I–901, Fee Remittance for Certain F, J, and M Nonimmigrants, for nonimmigrants seeking to become academic (F visa) or vocational (M visa) students from $200 to $350. For most categories of individuals seeking to become exchange (J visa) visitors, DHS proposes to increase the fee from $180 to $220. For those seeking admission as J exchange visitors in the au pair, camp counselor, and summer work or travel program participant categories, DHS proposes to maintain the fee at $35. In addition to raising the student and exchange visitor fees, DHS proposes to increase the fee for submitting a school certification petition from $1,700 to $3,000. DHS proposes to maintain the fee for an initial school site visit at the current level of $655, but clarify that, with the effective date of the rule, DHS would exercise its current regulatory authority to charge the site visit fee not only when a certified school changes its physical location, but also when it adds a new physical location or campus. DHS proposes to establish and clarify two new fees: a $1,250 fee to submit a school recertification petition and a $675 fee to submit an appeal or motion following a denial or withdrawal of a school petition. Adjusting fees would ensure fee levels are sufficient to recover the full cost of activities of the program and would establish a fairer balance of the recovery of SEVP operational costs between beneficiary classes.

DATES: Send comments by September 17, 2018.

ADDRESSES: You may send comments, identified by Docket No. ICEB–2017–0003, to the Federal Docket Management System (FDMS), a government-wide, electronic docket management system, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for sending comments.
- *Mail:* Address all comments to Sharon Snyder, Unit Chief, Student and Exchange Visitor Program, U.S. Immigration and Customs Enforcement, Department of Homeland Security, 500 12th Street SW, Washington, DC 20536. DHS docket staff, who maintain and process ICE's official regulatory dockets, will scan the submission and post it to FDMS.

Collection of information. You must submit comments on the collection of information discussed in this notice of proposed rulemaking to both DHS's docket and the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA). OIRA submissions can be sent using any of the following methods.

- *Email (preferred): OIRA_submission@omb.eop.gov* (include the docket number and ''Attention: Desk Officer for U.S. Immigration and Customs Enforcement, DHS'' in the subject line of the email).
- *Fax:* 202–395–6566.
- *Mail:* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503; Attention: Desk Officer, U.S. Immigration and Customs Enforcement, DHS.

For additional instructions on sending comments, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Sharon Snyder, Unit Chief, Student and Exchange Visitor Program; U.S. Immigration and Customs Enforcement, Department of Homeland Security; 500 12th Street SW, Washington, DC 20536; 703–603–3400, *sevp@ice.dhs.gov.* This is not a toll-free number. Program information can be found at *http://www.ice.gov/sevis/.*

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I. Executive Summary

A. Purpose of Regulatory Action

DHS proposes to adjust its fee schedule for students and exchange visitors as well as for petitioning and certified schools. These fees are associated with SEVP and SEVIS. They were last adjusted in 2008. *See* 73 FR 55683 (Sept. 26, 2008).

SEVP, an ICE component, is funded entirely by fees charged to individual applicants and organizational petitioners. Fees collected from individuals and organizations are deposited into the Immigration Examinations Fee Account (IEFA) and used to fund the operational costs associated with SEVP and its management of SEVIS. *See* Immigration and Nationality Act (INA) section 286(m), as amended, 8 U.S.C. 1356(m), and Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, (IIRIRA) section 641(e), (g), 8 U.S.C. 1372(e), (g).

In accordance with the requirements and principles of the Chief Financial Officers Act of 1990, 31 U.S.C. 901–03 (CFO Act), and OMB Circular A–25, SEVP reviews its associated fees that are deposited into the IEFA biennially and, if necessary, proposes adjustments to ensure recovery of costs necessary to meet national security, customer service, and adjudicative processing goals. SEVP completed a biennial fee review for fiscal year (FY) 2016 and FY 2017 in 2017. The projected results indicate that current fee levels are insufficient to recover the full cost of current and planned program activities. Section 286(m) of the INA, 8 U.S.C. 1356(m), provides that DHS may set fees for adjudication and naturalization services at a level that would ensure recovery of the full costs of providing such services, including the costs of providing similar services without charge to asylum applicants and certain other immigrants. Additionally, section 641 of IIRIRA, 8 U.S.C. 1372, authorizes DHS to periodically revise fees that cover the cost of carrying out SEVP and maintenance of SEVIS. Pursuant to these laws, DHS proposes the adjustments contained in this rule.

SEVP calculates the totality of its fees to recover the full cost of its overall operations. Following its biennial fee review, SEVP anticipates that if it continues to operate at current fee levels, it will experience a shortfall of approximately $68.9 million beginning in 2019. At current fee levels, SEVP's current expenditures exceed current revenues, without any service upgrades. The deficit is covered by surplus revenue that was previously accumulated from 2009 to 2015. This surplus will be exhausted in FY 2019 even without any service upgrades. This projected shortfall poses a risk of degrading operations and services funded by fee revenue. The proposed fee increases would allow SEVP to cover the current deficit between revenue and expenditures plus make the necessary service upgrades. The proposed fee levels thus eliminate the risk of degrading operations, while also ensuring full cost recovery by providing fees for each specific benefit that will more adequately recover the cost associated with administering the benefit.

B. Summary of Major Provisions

The proposed rule would adjust, institute, and clarify the application of fees pertaining to services SEVP provides to reflect existing and projected operating costs, program requirements, and continued planned program improvements, in the following manner:

- Increase the two types of individual student and exchange visitor application fees, specifically the F and M I–901 SEVIS fee from $200 to $350 and the full J–1 I–901 SEVIS fee from $180 to $220;
- Increase the SEVP school certification petition fee for initial certification from $1,700 to $3,000;
- Institute a stand-alone fee of $1,250 when a school files a petition for recertification of its existing SEVP certification;
- Revise regulations to ensure collection of a $675 fee to accompany the filing of a Form I–290B, Notice of Appeal or Motion, when a school appeals or files a motion to reconsider or reopen a denial or withdrawal of its SEVP certification; and
- Maintain the $655 fee for a site visit at its current level, but clarify that, with the effective date of the rule, SEVP would exercise its current regulatory authority to charge the site visit fee when a certified school changes its physical location or adds a new physical location or campus on its Form I–17, ''Petition for Approval of School for Attendance by Nonimmigrant Student.''

In making these changes, the proposed rule would allow SEVP to fully fund activities and institute critical near-term program and system enhancements in a more equitable manner through a fairer balance of the recovery of SEVP operational costs between beneficiary classes. A summary of the current and future fee structures is provided in Table 1 below.

C. Costs and Benefits

SEVP proposes to adjust fees to the amounts listed in Table 1.

TABLE 1—CURRENT AND PROPOSED FEE AMOUNTS

Fee type	Current fee	Proposed fee	Incremental fee adjustment
I–901 F/M	$200	$350	$150
I–901 J-Full	180	220	40
I–901 J-Partial	35	35	0
I–17 Initial Certification	1,700	3,000	1,300
I–17 Recertification	0	1,250	1,250
Site Visit—initial	655	655	0
Site Visit—new location	0	655	655
Appeal Fee	0	675	675

SEVP expects to have a total annual increase in fees of $75.2 million in FY 2019 transferred from individuals and entities for the services they receive. Table 2 shows the summary of the total annual number of payments, incremental fee amounts, and total fees transferred in FY 2019. This increase in fees would allow SEVP to not only maintain its current level of service but also enhance SEVP's capability to support national security and counter immigration fraud through the continued development and implementation of critical system and programmatic enhancements. Enhancements to SEVIS, including the establishment of a student portal, will assist designated school officials (DSOs) in their regulatory obligation to provide accurate and timely information and will also rebalance this reporting requirement by providing students an automated means to update their information. Increased numbers of adjudication personnel will assist in reducing the processing times for initial petitions, updates, and recertifications, while enhanced vetting protocols will ensure that only those nonimmigrant students who are eligible to enter and remain in the country do so.

TABLE 2—ANNUAL PROPOSED INCREMENTAL FEE AMOUNTS, FY 2019

	Projected number of payments	Proposed incremental fee amounts	Annual fees transfer to government
I–901 F and M	418,393	$150	$62,758,950
I–901 J-Full	157,550	40	6,302,000
I–17 Initial Certification	426	1,300	553,800
I–17 Recertification	4,373	1,250	3,279,750
Site Visits—initial	426	0	0
Site Visits—new location	174	655	113,970
Appeals	54	675	36,450
Total			75,231,420

II. Abbreviations and Acronyms

ABC	Activity-Based Costing
ARO	alternate responsible officer
CBP	U.S. Customs and Border Protection
CEU	Compliance Enforcement Unit
CTCEU	Counterterrorism and Criminal Exploitation Unit
CFO	Chief Financial Officer
DHS	Department of Homeland Security
DoS	Department of State
DSO	designated school official
EBSVERA	Enhanced Border Security and Visa Entry Reform Act of 2002, Public Law 107–173; May 14, 2002
FASAB	Federal Accounting Standards Advisory Board
FY	Fiscal Year
HSPD–2	Homeland Security Presidential Directive–2
ICE	U.S. Immigration and Customs Enforcement
IEFA	Immigration Examinations Fee Account
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended
INA	Immigration and Nationality Act of 1952, as amended
INS	Immigration and Naturalization Service
IT	information technology
NAICS	North American Industry Classification System
OMB	Office of Management and Budget
PDSO	principal designated school official
RO	responsible officer
RFA	Regulatory Flexibility Act
RFE	request for evidence
SBA	Small Business Administration
SEVIS	Student and Exchange Visitor Information System
SEVP	Student and Exchange Visitor Program
SFFAS FASAB	Statement of Federal Financial Accounting Standard
SSA	Social Security Administration
TSA	Transportation Security Administration
UMRA	Unfunded Mandates Reform Act of 1995
USCIS	U.S. Citizenship and Immigration Services

III. Public Participation

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you provide unless you request that your personally identifiable information be redacted. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from this rulemaking action. See the **ADDRESSES** section for information on how to submit comments.

A. Submitting Comments

If you submit comments, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide reasons supporting each suggestion or recommendation. You may submit your comments and materials online or by mail, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. ICE will file all comments sent to our docket address, as well as items sent to the address or email address listed in the **FOR FURTHER INFORMATION CONTACT** section, in the public docket, except for comments containing marked confidential information. If you submit a comment, it will be considered received by ICE when it is received at the Docket Management Facility.

To submit your comments online, go to *http://www.regulations.gov* and insert the complete docket number starting with ''ICEB'' in the ''Search'' box. Click on the ''Comment Now!'' box and enter your comment in the text box provided. Click the ''Continue'' box, and if you are satisfied with your comment, follow the prompts to submit it. If you submit your comments by mail, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic scanning and filing. Mailed submissions may be on paper or CD–ROM. If you would like ICE to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard or envelope on which the docket number appears. We will stamp the date of receipt on the postcard and mail it to you.

We will consider all comments and materials received during the comment period and may change this proposed rule based on your comments. The docket is available for public inspection before and after the comment closing date.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and insert the complete docket number starting with ''ICEB'' in the ''Search'' box. Click on the ''Open Docket Folder'' and then click on ''View Comment'' or ''View All'' under the ''Comments'' section of the page. Individuals without internet access can make alternate arrangements for viewing comments and documents related to this rulemaking by contacting ICE through the **FOR FURTHER INFORMATION CONTACT** section previously listed. Note: Because the software used in computing these fees proposed in this rule is a commercial product licensed to ICE, it may be accessed on-site by appointment by calling the SEVP Response Center at (800) 892–4829.

C. Privacy Act

Anyone can search the electronic form of comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to DHS. DHS may withhold information from public viewing that it determines may affect the privacy of an individual or is offensive. For additional information, please read the Privacy and Security

Notice posted on *http://www.regulations.gov.*

IV. Program Background

A. SEVP Legal Authorities

IIRIRA (Pub. L. 104–208, div. C, 110 Stat. 3009–546 (1996)) established the requirement for the monitoring and reporting of the activities of foreign students and exchange visitors while they reside in the United States (U.S.). Section 641 of IIRIRA, 8 U.S.C. 1372, mandated that the Attorney General develop and conduct a program for the electronic collection of data by U.S.-approved (*i.e.,* certified) institutions of higher education, other approved educational institutions, and designated exchange visitor programs, to monitor nonimmigrants possessing or applying for F, M, and J class visas with a Certificate of Eligibility.[1]

In addition, President George W. Bush issued Homeland Security Presidential Directive 2 (HSPD–2) in October 2001, which requires DHS to conduct periodic, ongoing recertification of all schools certified to accept F or M students. Combating Terrorism Through Immigration Policies, Oct. 29, 2001, as amended by HSPD—5 (Management of Domestic Incidents, Feb. 28, 2003, Compilation of HSPDs (updated through Dec. 31, 2007), available at *http://www.gpo.gov/fdsys/pkg/CPRT-110HPRT39618/pdf/CPRT-110HPRT39618.pdf.*

The Homeland Security Act of 2002 created DHS, transferred a broad range of immigration authorities from the Attorney General and the Commissioner of Immigration and Naturalization to the Secretary of Homeland Security, and vested ICE with responsibility for administration of the electronic data collection system, also known as SEVIS. *See* Public Law 107–296, sec. 442(a)(4), 116 Stat. 2136, 2193–94 (codified at 6 U.S.C. 252(a)(4) (vesting SEVIS-related authority in ''Bureau of Border Security''); Reorganization Plan Modification for the Department of Homeland Security, H.R. Doc. No. 108–32, at 3–4 (2003) (set forth as a note to 6 U.S.C.A. 542 (West 2018)) (renaming ''Bureau of Border Security'' as ''Bureau of Immigration and Customs Enforcement''); DHS Delegation 7030.2(2)(Z) (2004) (affirming delegation of such authority from Secretary of Homeland Security to ICE). ICE assumed responsibility for SEVIS and established SEVP. DHS has issued regulations that address data collection requirements for SEVP certification, oversight, and recertification of schools authorized to enroll F or M students. 8 CFR 214.3, 214.4.

B. SEVP and Development of SEVIS

SEVP is responsible for developing, maintaining, and improving SEVIS, which is an internet-based application that facilitates timely electronic reporting and monitoring of nonimmigrant students, exchange visitors, and their dependents in the United States. SEVIS enables schools and program sponsors to transmit electronic information to DHS and the Department of State (DoS) throughout a student's or exchange visitor's program in the United States. SEVIS is intended to improve customer service by streamlining the application and adjudication processes. Through continuing modernization efforts, it addresses issues in student and school system processes by providing information technology (IT) solutions and modifying business processes.

Schools and exchange visitor programs have been required to enter F, M, and J nonimmigrant data into SEVIS since August 1, 2003. As of April 1, 2017, SEVIS contained 1.4 million active F, M, and J student and exchange visitor records. Approximately 8,700 schools are SEVP-certified and approximately 1,500 exchange visitor programs are DoS-designated.

SEVIS enables DHS and DoS to efficiently administer their approval (*i.e.,* certification and designation, respectively) and oversight processes of schools and programs that wish to benefit from enrolling nonimmigrants. SEVIS assists law enforcement agencies in tracking and monitoring F, M, and J nonimmigrant status and apprehending violators before they can potentially endanger the national security of the United States. SEVIS also assists other federal agencies such as DoS, and other DHS components such as U.S. Citizenship and Immigration Services (USCIS) and U.S. Customs and Border Protection (CBP) in better serving F, M, and J nonimmigrant applicants. Finally, SEVIS enables schools and exchange visitor programs to instantaneously transmit electronic information and changes in required information on F, M, and J nonimmigrants to ICE and DoS throughout their stays in the United States.[2] These include required notifications, reports, and updates to personal data. SEVIS allows schools to submit school certification applications, update certification information, submit updates to DHS that require adjudication, and also create and update F visa (academic) and M visa (vocational) student and dependent records. SEVP managers and adjudicators have the capability to adjudicate updates made to school records using SEVIS, and principal designated school officials (PDSOs) and designated school officials (DSOs) are notified through SEVIS of the adjudication results. SEVIS also allows program sponsors to submit designation forms for the J–1 visa program, create program designations, and update program designation information. DoS personnel have the capability to adjudicate information submitted by responsible officers (ROs) and alternate responsible officers (AROs). ROs and AROs are notified through SEVIS of any adjudication results.

SEVIS shares information with other agencies' and components' systems—DoS, USCIS, CBP, Transportation Security Administration (TSA), and others—to better monitor the status of student or exchange visitors throughout their stays in the United States. This allows DHS to meet the aims of the USA PATRIOT Act. *See* Public Law 107–56, sec. 416, 115 Stat. 272, 354–55 (2001). In addition, that Act mandates that the Secretary of Homeland Security,[3] in consultation with the Secretary of State, collect information on the date of entry and port of entry for each nonimmigrant for whom information is collected under IIRIRA section 641. *Id.* at sec. 416(b).

[1] Under INA section 101(a)(15)(F)(i), 8 U.S.C. 1101(a)(15)(F)(i), a foreign student may be admitted into the United States in nonimmigrant status to attend an academic or accredited language training school (F nonimmigrant students). Under INA section 101(a)(15)(M)(i), 8 U.S.C. 1101(a)(15)(M)(i), a foreign student may be admitted into the United States in nonimmigrant status to attend a vocational education school (M nonimmigrant students). An F or M nonimmigrant student may enroll in a particular school only if the Secretary of Homeland Security has certified the school for the attendance of such students. Under INA section 101(a)(15)(j), 8 U.S.C. 1101(a)(15)(j), a foreign citizen may be admitted into the United States in nonimmigrant status as an exchange visitor (J visa) in an exchange program sponsored by the Department of State (DoS).

[2] An individual seeking F or M nonimmigrant student status must apply to an SEVP-certified school and be accepted for enrollment. From the enrollment information provided by the nonimmigrant, the school enters student information into SEVIS and issues a Form I–20, ''Certificate of Eligibility for Nonimmigrant Student Status.'' The individual must submit a valid Form I–20 when applying for an F or M visa. Similarly, an individual seeking J–1 nonimmigrant status must apply to a DoS-designated exchange visitor program and be accepted for enrollment as a basis to apply for a J exchange visitor visa. From the information provided by the accepted individual, the exchange visitor program enters exchange visitor information into SEVIS and issues a Form DS–2019, ''Certificate of Eligibility for Exchange Visitor (J–1) Status.'' The applicant must submit a valid Form DS–2019 when applying for a J visa.

[3] The USA PATRIOT Act refers to the Attorney General, but the Homeland Security Act of 2002, as amended, transferred the functions of the Immigration and Naturalization Service (INS) to DHS. Public Law 107–296, tit. IV, subtits. D, E, F, 116 Stat. 2135, 2192 (Nov. 25, 2002), as amended.

C. Authority To Collect Fees

The Secretary is specifically authorized to collect fees for SEVP from prospective F and M students and J exchange visitors, subject to certain limits for certain J–1 nonimmigrants. 8 U.S.C. 1372(e)(1). The Secretary is authorized to periodically revise those fees, with certain exceptions, to take into account changes in the overall cost of carrying out the program. IIRIRA section 641(e)(4)(A), (g)(2), 8 U.S.C. 1372(e)(4)(A), (g)(2). Similarly, section 286(m) of the INA authorizes the Secretary to collect fees for adjudication and naturalization services at a level that would ensure recovery of the full costs of providing such services, including the costs of providing similar services without charge to asylum applicants and certain other immigrants. Additionally, pursuant to INA section 286(m), the level that is set may include recovery of any additional costs associated with the administration of the fees themselves. Under this authority, user fees are employed not only for the benefit of the payer of the fee and any collateral benefit resulting to the public, but also to provide a benefit to certain others.[4]

All fees collected under these authorities are deposited as offsetting receipts into the IEFA and are available to the Secretary until expended for authorized purposes. *See* IIRIRA section 641(e)(4)(B), 8 U.S.C. 1372(e)(4)(B); INA section 286(m), 8 U.S.C. 1356(m). DHS proposes the revised fee schedule contained in this rule in accordance with the above-referenced authorities.

As a general matter, in developing fees and fee rules, DHS looks to a range of governmental accounting provisions. OMB Circular A–25, *User Charges* (Revised), para. 6, 58 FR 38142 (July 15, 1993), defines ‘‘full cost’’ to include all direct and indirect costs to any part of the Federal government for providing a good, resource, or service. These costs include, but are not limited to, an appropriate share of the following: Direct and indirect personnel cost, physical overhead, consulting and other indirect cost, management and supervisory cost, enforcement, information collection and research, and establishment of standards and regulation, including any required environmental review.

Section 31.5 of OMB Circular A–11, Preparation, Submission and Execution of the Budget, July 1, 2016, directs agencies to develop user charge estimates based on the full cost recovery policy set forth in OMB Circular A–25, *User Charges* (budget formulation and execution policy regarding user fees).

The Federal Accounting Standards Advisory Board (FASAB) Statement of Federal Financial Accounting Standards (SFFAS) No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government, July 31, 1995, updated June 2017, provides the standards for managerial cost accounting and full cost. SFFAS No. 4 defines ‘‘full cost’’ to include ‘‘direct and indirect costs that contribute to the output, regardless of funding sources.’’[5] FASAB identifies various classifications of costs to be included and recommends various methods of cost assignment to identify full cost. Activity-based costing (ABC) is highlighted as a costing methodology useful to determine full cost within an agency.

The Chief Financial Officers Act of 1990, 31 U.S.C. 901–903, requires each agency’s Chief Financial Officer (CFO) to ‘‘review, on a biennial basis, the fees, royalties, rents and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect cost incurred by it in providing those services and things of value.’’ 31 U.S.C. 902(a)(8).

This proposed rule would eliminate the risk of a projected shortfall for SEVP operations and services funded by fee revenue. It proposes increased funding that supports continuing and new initiatives critical to improving the program and reflects the implementation of specific cost-allocation methods to segment program costs to the appropriate fee—F and M students, J exchange visitors, or schools.

D. Full Cost Recovery

Consistent with these authorities and sources, this proposed rule would ensure that SEVP recovers the full costs for the services it provides and maintains a projected level of service necessary to fulfill its mission. The proposed rule would do this in two ways. First, where possible, the proposed rule sets fees at levels sufficient to cover the full cost of the corresponding services and assigns these fees to those who are the primary beneficiaries. DHS works with OMB and generally follows OMB Circular A–25, which ‘‘establishes federal policy regarding fees assessed for Government services and for sale or use of Government goods or resources.’’ *See* OMB Circular A–25, *User Charges* (Revised), para. 6, 58 FR 38142 (July 15, 1993). A primary objective of OMB Circular A–25 is to ensure that federal agencies recover the full cost of providing specific services to users and associated costs.

This proposed rule would set fees at a level sufficient to fund the full cost of conducting the program and general operations for FY 2019. *See* INA sec. 286(m), 8 U.S.C. 1356(m). DHS has interpreted this statutory fee-setting authority, including the authorization for DHS to collect ‘‘full costs’’ for providing, in pertinent part, ‘‘adjudication . . . services,’’ as granting DHS broad discretion to charge fees at a level that will ensure recovery of all direct and indirect costs associated with providing pertinent immigration adjudication services. This approach is also consistent with the SEVP-specific fee authority referenced above, which authorizes DHS to set fees at a level that funds the full cost of conducting the program. *See* IIRIRA section 641(e), 8 U.S.C. 1372(e).

In following OMB Circular A–25 to the extent appropriate, including its direction that fees should be set to recover the costs of an agency’s services in their entirety and that full costs are determined based on the best available records of the agency, DHS accounts for the reality that costs of all SEVP operations cannot always be directly correlated to certain specific fees. DHS therefore applies the discretion provided in the above authorities, in taking the following actions: (1) Employing ABC to establish a model for assigning costs to specific benefit requests in a manner reasonably consistent with OMB Circular A–25; (2) distributing costs that are not attributed to or driven by specific adjudication services; and (3) making additional adjustments to effectuate specific policy objectives.

V. Proposed Adjustment of SEVP Fees

This proposed rule would amend the current fee structure governing the collection of fees from individuals by increasing the individual student and exchange visitor application fee (I–901 SEVIS fee). In addition, the rule proposes to amend the fee structure paid by schools by increasing the SEVP school certification petition costs for initial certification, instituting a fee to address school recertification costs for the ongoing recertification process, and

[4] The longstanding interpretation of DHS is that the ‘‘including’’ clause in section 286(m) does not constrain DHS’s fee authority under the statute. The ‘‘including’’’ clause offers only a non-exhaustive list of some of the costs that DHS may consider part of the full costs of providing adjudication and naturalization services. *See* 8 U.S.C. 1356(m); 81 FR 26903, 26906 n.10 (May 4, 2016).

[5] *See* FASAB, Statement of Federal Financial Accounting Standards 4: Managerial Cost Accounting Standards and Concepts 26 (June 2017), *available at http://files.fasab.gov/pdffiles/handbook_sffas_4.pdf* (last visited Feb. 20, 2018).

requiring a fee to accompany the filing of an appeal, a motion to reconsider, or a motion to reopen filed by a school organization. SEVP proposes no change to the current fee for site visits. The proposed fees for recertification petitions and appeals and motions would better recover a reasonable portion of related existing and projected operating costs, program requirements, and planned program improvements.

Fees were last adjusted in 2008. 73 FR 55683. Refined and expanded SEVP operations, SEVIS modifications, as well as inflation, have increased SEVP operating costs and are the basis for the proposed increases to the I–901 SEVIS fee and the school certification petition fee.

A. Activities Funded Under the 2008 Fee Rule

In the 2008 rulemaking that resulted in the most recent agency adjustment, ''Adjusting Program Fees and Establishing Procedures for Out-of-Cycle Review and Recertification of Schools Certified by the Student and Exchange Visitor Program To Enroll F and/or M Nonimmigrant Students'' (2008 Fee Rule), DHS outlined its rationale for a fee increase by identifying a set of organizational initiatives essential to its mission: Improving SEVIS functionality, improving oversight and enforcement, implementing recertification procedures, and developing school liaison activity. 73 FR 55683. SEVP, in accordance with its commitment to the goals prescribed in that rule, has implemented the following actions since then:

1. Improved SEVIS Functionality

SEVP's original plan to roll out a comprehensive overhaul of SEVIS (known as SEVIS II) was replaced by an approach that focused on a series of smaller and more targeted SEVIS enhancements—now termed SEVIS Modernization. New technologies have become available since the comprehensive SEVIS overhaul was first envisioned. The use of these technologies enables SEVP to apply many of the functionalities that were planned for SEVIS II to the current system. At the same time, this approach eliminates potential risks and complications that result from migrating mass quantities of critical data from one system to the next, which would have been necessary if the SEVIS II approach had been fully implemented. Building on the experience, knowledge, and stakeholder feedback acquired during the planning process, SEVP has launched hundreds of smaller-scale SEVIS enhancements. These efforts have addressed the majority of national security vulnerabilities previously identified, by improving critical system functionalities that support data integrity in SEVIS, including establishing system functions that support standardization of student and exchange visitor name and address data entry. The enhancements have also improved system performance for end users. With the introduction of more detailed SEVIS event history and new abilities for DSOs to create student data reports, these enhancements enable action on multiple student records simultaneously.

As an example, SEVP, in collaboration with CBP, developed and implemented an admissibility indicator tool that links to real-time SEVIS data to assist CBP officers at ports of entry in determining whether F, M, and J nonimmigrants may enter the United States based on their SEVIS record status. Prior to the availability of the admissibility indicator, first-line CBP officers relied on paper documentation that the nonimmigrant student or exchange visitor presented. Today, the admissibility indicator gives CBP officers a quick assessment of the most pertinent and current SEVIS data that are necessary in determining whether nonimmigrant students, exchange visitors, and their dependents are eligible to enter the United States or require further investigation. As a result, CBP officers are able to use the admissibility indicator at points of inspection to quickly verify the information contained on the paper documentation that is also required for entry. This assists in reducing long wait times, aids with detecting and preventing visa fraud, and otherwise enhances compliance efforts and national security.

2. Oversight and Enforcement

A dedicated compliance enforcement program that includes criminal investigative efforts is an integral part of ensuring the operational effectiveness of SEVP. By analyzing SEVIS data, SEVP identifies indicators of potential misuse or abuse of nonimmigrant status and provides leads to Counterterrorism and Criminal Exploitation Unit (CTCEU) law enforcement personnel for further investigation. At the time the 2008 Fee Rule was published, the Compliance Enforcement Unit (CEU), the predecessor of CTCEU, was not sufficiently staffed to address all leads generated from SEVIS. As a result, only the highest priority leads were investigated, which left open unaddressed vulnerabilities. With the increased I–901 SEVIS fee revenue, DHS has hired additional personnel and currently funds 234 Homeland Security Investigations (HSI) positions with primary responsibility for nonimmigrant violator investigations. The increased number of HSI personnel assigned to support CTCEU investigations has enabled more robust coordination between SEVP and CTCEU and has successfully reduced the exploitation of the laws and programs relating to nonimmigrant students and exchange visitors. An example of the result of such close and extensive cross-coordination was the conviction of the founder and president of Tri-Valley University (TVU) on 31 counts in March 2014, ranging from conspiracy to commit visa fraud and alien harboring to money laundering.[6] SEVP will continue to support cooperation and coordination with CTCEU to maintain the viability of F, M, and J student and exchange visitor programs within the United States.

3. Recertification

SEVP implemented the recertification procedure prescribed in the 2008 Fee Rule beginning with its first recertification cycle in 2010. Institutions that participated in the first cycle have been reviewed several times and will continue to undergo the recertification process every two years. Because there are thousands of schools, recertification is a rolling process allowing adjudicators to address issues with one school before moving on to the next.

Each school is notified 2 years to the month following the date of its last recertification or certification about its need to file for recertification in order to maintain its certification. From that date, the school has 180 days to file for recertification. 8 CFR 214.3(h)(2)(i). This cycle helps ensure that only schools that operate in accordance with the law remain certified by SEVP.

4. School Liaisons

SEVP deployed the first group of field representatives in April 2014, followed by three additional groups later in 2014 and 2015, bringing the national total to 60 field representatives distributed among three geographically determined units. The field representatives serve as liaisons between SEVP and SEVP-certified schools that enroll F and M

[6] *See* Sentencing Memorandum, Docket Item No. 195 (Oct. 24, 2014), *United States* v. *Su,* Case No.11-cr-00288 (N.D. Cal.), 2, 8, available at *https://www.courtlistener.com/docket/4178123/195/united-states-v-su/; see also* Jury Verdict, Docket Item No. 119 (Mar. 24, 2014), *United States* v. *Su, supra,* available at *https://www.courtlistener.com/docket/4178123/119/united-states-v-su/.*

nonimmigrant students and have conducted more than 32,500 school visits since the unit launch. Field representatives serve as a key resource for schools by providing individualized instruction on the SEVP certification and recertification processes. They also educate DSOs on Federal statutes, regulations, and guidance pertinent to F and M students studying in the United States. Because DSOs are responsible for entering F and M nonimmigrant data into SEVIS, the data integrity of the system depends heavily on the DSOs' understanding the importance of accurate and timely reporting of the required information. By providing individualized assistance to DSOs, the field representatives enhance national security by maintaining and improving the data integrity of SEVIS.

B. Continuing SEVP Activities Funded With Proposed Fees

In developing this proposed rule, SEVP reviewed its current and projected costs, identified goals for services, analyzed projected future workload, and allocated costs to specific services. In addition to the full SEVP operating costs described in the following sections, the proposed fees would fund the continuing efforts identified in the 2008 rule, now updated to reflect technological refinements and operational enhancements. These updated activities include SEVIS modernization and increases in adjudication support and investigatory and compliance personnel.

1. SEVIS Modernization

SEVIS is a web-based system that schools and program sponsors use to transmit information about their programs and participating F, M, and J nonimmigrants. It became fully operational in February of 2003, replacing a paper-based F, M, and J nonimmigrant process.

Since its inception, SEVIS has evolved well beyond its original purpose as a data collection tool. Today, approximately 35,000 officials from approved schools and program sponsors use SEVIS data to manage 1.4 million F, M, and J nonimmigrants and their dependents during their stays in the United States. SEVIS provides real-time administrative and enforcement information to DHS components, including CBP and USCIS, as well as DoS. SEVIS also receives information about F, M, and J nonimmigrant visa applications, entry and exit records, and benefit applications from these entities through various interfaces. This makes SEVIS a critical national security component and a primary resource for law enforcement and intelligence communities to extract the data necessary to conduct counterterrorism and counterintelligence threat analysis.

The threat of new forms of terrorism and other criminal activity exploiting the Nation's immigration laws continues to be a public safety and national security concern in the United States. As a result, there is an increasing need for sophisticated SEVIS data analysis to detect individuals who engage in immigration fraud or otherwise pose a risk to national security through willful misrepresentation. In addition, end users from schools and program sponsors have expressed concerns and provided feedback reflecting the necessity to create SEVIS functionalities that enable the accurate reporting of new and innovative educational program models. While SEVIS has been modified to meet the most critical needs through hundreds of upgrades and patches, including adding abilities for the system to preemptively address data input errors, system functionality concerns (due to time lags, system constraints, and other system design limitations) continue to affect all SEVIS users and necessitate continuous development of SEVIS design. In response, SEVP has begun an effort—known as SEVIS Modernization—that involves redesigning the entire system over time in prioritized increments. Continued Modernization will increase security by providing real-time, person-centric data. This data will reduce fraud and increase awareness by providing government officials with actionable intelligence with which to make decisions and initiate immigration actions. Informed decisions and efficient investigations allow for better management of F, M, and J nonimmigrant data and preventing high-risk individuals from entering the United States.

To address critical system limitations and improve the SEVIS user experience, SEVP has identified the following list of key SEVIS modernization priorities for continued funding through the increased I–901 SEVIS Fee revenue:

- *Student Portal.* F–1 students engaged in authorized optional practical training are required to report their contact and employer information to DHS. *See* 8 CFR 214.2(f)(12), (f)(17). At present, students report the required information to their DSOs, who then report the information in SEVIS. By regulation, students must report any new required information to their DSOs within 10 days of the change, and the DSOs must report such information in SEVIS within 21 days. 8 CFR 214.2(f)(17).

This external SEVIS student portal will enable students to directly add or edit the required contact and employer information so that their SEVIS record would be updated in real time. This will reduce processing redundancies and lessen the potential for data entry errors by eliminating the need for the student to first report such information to the DSO who will then enter the reported data into SEVIS. The portal will also consequently reduce the workload of DSOs and make the reported data available to DHS sooner. With future expansion, the portal will address SEVIS vulnerabilities related to accurate monitoring of F, M, and J nonimmigrant status and location of nonimmigrant students and exchange visitors by closing national security vulnerabilities related to person-centric, paperless, people-matching capabilities. In establishing a portal for student use in this manner, DHS will encourage students to assume responsibility for maintaining their immigration status, reduce the system's reliance on paper-driven processes, and reinforce the operational premise and security advantages of "one person, one record." Through use of a record-matching protocol, all SEVIS records will be collated and presented as a unified, person-centric statement of information and activity. These summaries will be available to all operational entities, including school officials, who will have access in the SEVIS record to the same up-to-date information, including all student history.

- *Support of the Adjudication Process.* As part of maintaining their SEVP certification, schools are required to update certain information in SEVIS about their operations and programs any time such information changes. *See* 8 CFR 214.3(g)(2). SEVP is required to adjudicate such changes. SEVP currently receives, on average, 350 weekly updates from schools; each update may contain several subparts, including school contact information changes and additions of new programs. At present, system constraints require SEVP adjudicators to adjudicate all parts of the update simultaneously and to deny the entire update if even one part of the update cannot be approved. This causes additional workload and delays for schools and adjudicators due to resubmissions of updates. The new SEVIS functionality that supports adjudication will provide SEVP and DoS with enhanced flexibility to adjudicate school certification and exchange visitor sponsor designation updates and applications and consequently enable SEVP and DoS to adjudicate updates and applications more efficiently.

- *Automated Data Tracking.* Currently, SEVP and DoS manually monitor SEVIS data for potential noncompliance indicators with regard to schools, students, and exchange visitor program participants and sponsors. In FY 2016, manual monitoring yielded 75 compliance investigations, which resulted in withdrawal of certification for 21 noncompliant schools. Automated SEVIS data tracking functionality would provide SEVP and DoS with enhanced abilities to track and monitor compliance. This additional capability would allow SEVP and DoS to more quickly detect data trends that are potential indicators of fraudulent activities. With the use of automation, SEVP anticipates a 100 percent increase in fraudulent activity flags (from 75 to 150 per year), which is estimated to significantly increase the detection rate of noncompliant schools and subsequent withdrawals of SEVP certification due to noncompliance. Such functionality would play an important role in ensuring the integrity of the Nation's immigration system.

SEVIS Access Approval Tracking System (SAATS). School officials (PDSOs and DSOs) and program officials (AROs and ROs) constitute the largest and most critical component of SEVIS users as they are responsible for entering the initial student and exchange visitor data into SEVIS. Their need to access the system is confirmed by petition through their sponsoring school or program. Once granted access, designated school and program officials confirm their ongoing need for access in a yearly validation exercise in which a delayed response or no response results in automatic system access denial.

Unlike government employees who need access to SEVIS to perform official functions, school and program officials have not had to meet uniform security requirements. Recently, SEVP began conducting national criminal background checks on designated school officials (DSOs). SEVP has vetted all DSOs at K–12 schools and, since May 2017, has vetted all newly designated DSOs, helping to ensure the safety of nonimmigrant students and exchange visitors and preserve the integrity of SEVIS data. SEVP is considering eventually extending this screening and security review to DSOs and ROs who were appointed prior to May 2017 and other school and program officials through regulatory action. SEVP will bear the upfront cost of this security review. When fully implemented, all individuals who require access to SEVIS will be vetted prior to being granted such access. DHS will complete the vetting adjudication for the RO or ARO and provide a copy of its decision to the DoS Bureau of Educational and Cultural Affairs.

This initiative will strengthen the mechanism for approving user access to SEVIS. DHS and DoS rely on PDSOs, DSOs, ROs, and AROs as key links in the process to mitigate potential threats to national security and ensure compliance with immigration law. DHS would require that anyone nominated to serve as a PDSO, DSO, RO, or ARO receive a favorable SEVIS Access Approval Process (SAAP) assessment prior to their appointment and subsequent approval for access to SEVIS.

- *Information Sharing.* SEVIS currently shares information and exchanges data with 11 intra-governmental interface partners. The modernized Information Sharing module will be capable of sharing data contained in modernized SEVIS data stores with existing interface partners. Other interfaces to support modernized capabilities in other modules, including paperless capabilities, are being considered to address SEVIS vulnerabilities. The centralization of all information-sharing capabilities in a single module will allow for efficiencies in development efforts, system performance, and sustainability.
- *Use of Cloud Technologies.* The cloud infrastructure effort supports the program by providing flexible, efficient, and cost-effective cloud services and infrastructure to facilitate and enable agile development and testing processes. While SEVIS actively mitigates known security threats, it lacks functionalities to proactively analyze end user data to detect potential misuse. The use of cloud technologies will permit increased analysis of SEVIS end user data and increase the efficiency and security of controlling and managing access to SEVIS by users not affiliated with DHS, both governmental and nongovernmental. In addition, it will enable more efficient management of user names and passwords and allow credentials to be safely passed among system components. Such analysis is necessary to create defined alerts about user activity that is indicative of risk factors to prompt timely criminal and compliance investigations. The cloud infrastructure module supports the program by providing flexible, efficient, and cost-effective cloud services and infrastructure to facilitate and enable agile development and testing processes.

This planned modernization effort, with implementation during FY 2018–2021, is expected to greatly enhance the capability of DHS to identify and reduce national security threats; reduce the possibility for reporting errors by prospective and approved F, M, and J nonimmigrants, as well as their schools and programs; and better provide updated, correct, real-time information to academic, law enforcement, and other government users. SEVP projects that the cost for developing and deploying these SEVIS modifications is $53.19 million. SEVP would incur $13.15 million of that cost in FY 2018, $13.75 million in FY 2019, $13.14 million in FY 2020, and $13.15 million in FY 2021.

2. Increased SEVP Adjudication Personnel

In 2008, DHS proposed to recertify all schools approved for attendance by F and M students every 2 years, pursuant to title V, section 502 of EBSVERA and HSPD–2, and established procedures for the review of each SEVP-certified school every 2 years, as well as out-of-cycle reviews whenever it determines that clarification or investigation of school performance or eligibility is necessary. Recertification is a determination of performance and compliance with required standards in the period since the previous certification. In this comprehensive review of an SEVP-certified school by an SEVP adjudicator, SEVP affirms that the school remains eligible and is complying with regulatory recordkeeping, retention, reporting, and other requirements.

Performance is monitored through SEVIS, DHS records, submissions from the school, and possible onsite reviews. If noncompliance is discovered, SEVP requires schools, as appropriate, to make corrections immediately. SEVP reviews the school's compliance with Federal law and regulations.

In recent years, the scope of work of SEVP adjudication has expanded to include administrative compliance enforcement, support of criminal investigations, and adjudication of school petitions, including certification petitions, recertification petitions, and updates to school information. As a result, SEVP adjudicators have experienced significant workload increases, which in turn have resulted in longer SEVP adjudication processing times of school petitions and student compliance issues.

Since initiating recertification, SEVP has determined that the current number of SEVP adjudication personnel is inadequate to meet the congressional requirement for recertifying or withdrawing all currently certified schools every 2 years. At present staffing levels, SEVP is able to process 1,939, or 44 percent, of the required annual projected 4,400 recertification cases.

3. Additional Investigatory Support

Investigations of violations of immigration status, as well as criminal investigations of F and M students and J exchange visitors, are primarily coordinated by CTCEU. Information is received, collated, and analyzed from a number of DHS and other information sources, including SEVIS, to generate national security leads for field personnel and prevent terrorists and other criminals from exploiting the Nation's immigration system through fraud. In its continuing support of compliance efforts, SEVP seeks to fund activities in two key areas: Support for and integration of technological advances and surge support for critical incidents.

New technologies have enabled sophisticated methods of extracting and analyzing data. To make best use of these technology force multipliers, personnel would use the available technologies to develop investigative packages based on SEVIS research and use of other designated government computer systems, open source websites, and other pertinent information sources related to individual students, exchange visitors, and SEVP-certified schools. To the extent that adequate resources are allocated and employed for this purpose, increased support levels would reduce the vulnerability of the United States to terrorist attacks and reduce the potential for exploitation of certified schools and designated exchange visitor programs.

Through the fee adjustments proposed in this rule, SEVP would continue ensuring funding to enable a surge for investigatory efforts, including increased contract overtime or surge staffing, in advance of planned critical overstay enforcement operations. SEVP would also fund the surge of continuous and extended analytic support to HSI field operations in the event of a terrorist attack or during imminent threat situations. This direct operational support to field elements during heightened threat situations or in the aftermath of an attack would enable CTCEU to quickly assess subjects of investigative interest and to share information to further investigations with its law enforcement partners, ICE legal counsel, and the U.S. Attorney's Office. Such surge support has been used successfully and has proven critical in furthering investigative efforts and providing investigative focus in recent threat situations and terrorist attacks, including attacks in San Bernardino, California; Orlando, Florida; Columbus, Ohio; Baltimore, Maryland; New York; New Jersey; and Fort Lauderdale, Florida.

C. Basis for Fee Schedule

As previously noted, the proposed amended fees comply with statutory and regulatory requirements that SEVP review its fee structure every 2 years to ensure that the cost of the services provided are fully captured by fees assessed on those receiving the services. The new fees are an estimate of the current and projected costs of funding needed to continue enhancing SEVP's capability to achieve programmatic goals associated with its statutory mandate—supporting national security and countering immigration fraud through the continued development and implementation of critical system and programmatic enhancements. This proposed rule would establish the following fee structure detailed in Table 3.

TABLE 3—PROPOSED FEE STRUCTURE

Fee type	Responsible party
I–901 SEVIS Fee	Student or exchange visitor issued an initial Form I–20 or DS–2019 seeking an F, M, or J visa.
I–17 Certification Fee	Institutions petitioning for SEVP certification to enroll international students.
Site Visit Fee	Institutions applying for initial certification or certified schools changing locations or adding a campus/location.
Recertification Fee	Certified institutions seeking recertification every 2 years.
Appeal or Motion Fee	Institutions that have had certification or recertification denied by SEVP, including denied I–17 updates, or that have had certification withdrawn, and which are filing an appeal or motion regarding the SEVP decision.

The current fee structure includes the I–901 SEVIS fee, I–17 certification fee, and the site visit fee. The proposed rule would allow SEVP to fully fund activities and institute critical near-term program and system enhancements in a more equitable manner. The proposed fee structure would also include the addition of a recertification fee and a fee for filing a motion or appeal.

With this rule SEVP proposes to impose a fee for a Form I–290B, *Notice of Appeal or Motion,* filed with SEVP at a level that is comparable to the fee for the Form I–290B when filed with USCIS. DHS proposes to eliminate regulations that currently state there is no fee required for an appeal by a school, to maintain consistency with this clarification in the motions context and to more fairly balance allocation of the recovery of SEVP operational costs between beneficiary classes. Under this proposal, SEVP would charge the fee for all appeals and motions.

The proposed rule would ensure the full recovery of SEVP operational costs in a manner that fairly allocates costs between beneficiary classes and would facilitate the development of activities designed to achieve defined program goals. For example, the proposed rule would continue funding for critical SEVIS modernization efforts and would incorporate the added cost of increased analytical support for investigative and enforcement operations into the I–901 SEVIS fee. The proposed fee schedule would also allow SEVP to fully fund additional SEVP adjudication personnel.

D. SEVP Baseline Costs and Fees

SEVP fees are paid by individuals and organizations. DHS certifies schools that enroll F and M students; recertifies schools with active certifications; conducts site visits; administers, maintains, and develops SEVIS; collects fees from prospective F and M students and J exchange visitors, as well as from schools; adjudicates motions and appeals in regard to certification petitions; undertakes investigatory initiatives; and provides overall guidance to schools about program enrollment and compliance, as well as the use of SEVIS. These activities are funded solely through the collection of fees.

The I–901 SEVIS fee, collected from students and exchange visitors, currently underwrites the operation of

SEVP; the cost of administering, maintaining, and developing SEVIS; the cost of school recertification; and all activities related to individual and organizational compliance issues within the jurisdiction of SEVP. These activities include the cost of investigating the compliance of schools participating in SEVP and exchange visitor programs, as well as investigations in which F, M, or J nonimmigrants are identified as potential threats to national security or where it is suspected that an immigration violation or fraud may be occurring.

The certification fee is paid by schools that petition for the authority to issue Certificates of Eligibility (COE), commonly referred to as Forms I–20, to prospective nonimmigrant students for the purpose of their applying for F or M visas and admission to the United States in those statuses. These monies fund the base internal cost for SEVP to process and adjudicate the initial school certification petition (Form I–17, ''Petition for Approval of School for Attendance by Nonimmigrant Student''). The proposed recertification fee paid by schools to remain certified would fund the cost of adjudicating the recertification petition.

If SEVP finds that a petitioning or certified school does not meet regulatory standards, it will deny the affected school's Form I–17 or withdraw its SEVP certification. 8 CFR 214.4. When SEVP sends a school a notice of denial or withdrawal, the notice also includes reasons for the unfavorable decision(s), an explanation of the school's rights, and the applicable appeal and motion filing information and deadlines. In many cases, a school may file an appeal or motion to reopen and/or reconsider unfavorable decisions issued by SEVP by filing the Form I–290B, ''Notice of Appeal or Motion,'' pursuant to the process set forth in 8 CFR 103.3(a) or 103.5(a).[7] A school may initiate a motion to reopen or reconsider to request that the original deciding body review the unfavorable decision, including an appeals decision, pursuant to requirements in 8 CFR 103.5(a). A school may also initiate an appeal in order to request review of the unfavorable Notice of Denial, Automatic Withdrawal, or Withdrawal on Notice by an authority independent of the original deciding body. Currently, DHS uses I–901 funds to offset the costs of SEVP appeals and motions. This offset is a result of the DHS determination in the 2008 final fee rule to state in regulations that no fee would be required for appeals relating to SEVP certification or recertification or a withdrawal of SEVP certification. *See* 8 CFR 214.4(a)(1), (h). DHS proposes to remove the SEVP-related exceptions to the payment of the I–290B fee and add regulatory text at proposed 8 CFR 103.7(b)(1)(ii)(O) providing for the fee of $675 when the Form I–290B is filed with SEVP. This fee would apply when schools or institutions file an appeal or motion with regard to a denied petition for initial certification or recertification or a withdrawal of certification.

In proposing these regulatory changes for the I–290B filing fee, DHS would more fairly balance allocation of the recovery of SEVP operational costs among beneficiary classes. To date, the cost of adjudicating appeals and motions has never been placed directly upon the beneficiaries of those adjudications—the schools seeking to obtain or maintain SEVP-certification. The fee for filing the Form I–290B with SEVP is being proposed at a level that requires those who file the Form I–290B to pay for at least a portion of the operating expenses for DHS to adjudicate the I–290B, while preventing the fee from becoming cost prohibitive.

The site visit fee is currently paid by schools that petition for certification to issue Forms I–20 or by a certified school when it physically moves to a new location. DHS established this fee in the 2008 Fee Rule and with that rule codified SEVP's authority to charge the fee when a school changes its physical location or adds a new physical location or campus. *See* 8 CFR 103.7(b)(3)(ii)(B), 8 CFR 214.3(h)(3)(i), (h)(3)(ii). Specifically, the 2008 Fee Rule imposed a site visit fee of $655 for each location listed on the Form I–17, and required the Form I–17 to include ''any physical location in which a nonimmigrant can attend classes through the school (*i.e.,* campus, extension campuses, satellite campuses, etc.).'' *See* 73 FR 55683, 55698–55699 (amending 8 CFR 103.7(b)(3)(ii)(B) and 214.3(a)(1), respectively). The 2008 Fee Rule also imposed a continuing duty on schools to update school locations as changes arise, *i.e.,* even after initial certification, a school must update SEVIS within 21 days of a change to a range of information types, including school location and campus location. *See* 73 FR 55683, 55700 (amending 8 CFR 214.3(g)(2), (h)(3)). Consistent with the aforementioned regulatory amendments, the preamble to the 2008 Fee Rule made clear that these provisions require the imposition of a site visit fee for each location listed on the initial SEVP certification, as well as each location added as part of an initial event, such as a SEVIS update requesting approval of a changed or new location or campus. 73 FR 55683, 55691.

But SEVP is not currently collecting the fee when a certified school adds a new physical location or campus. SEVP intends to begin imposing the fee following the effective date of any final rule. The site visit fee would apply when a certified school updates its Form I–17 in SEVIS to indicate, pursuant to 8 CFR 214.3(h)(3)(ii), it is changing its physical location or adding a new physical location or campus. This revenue would assist in recovering the costs DHS incurs for site visits of these locations, including collecting evidence on school eligibility for certification, reviewing the facilities, and interviewing personnel nominated on the petition to become DSOs, including the person nominated to be the PDSO.

E. Methodology

SEVP captured and allocated cost using an ABC approach to define full cost, outline the sources of SEVP cost, and define the fees. The ABC approach also provides detailed information on the cost and activities allocated to each fee.

1. ABC Approach

SEVP used CostPerform ABC modeling software, Version 9.3 (0147), to determine the full cost associated with updating and maintaining SEVIS to collect and maintain information on F, M, and J nonimmigrants; certifying schools; overseeing school compliance; recertifying schools; adjudicating appeals; investigating suspected violations of immigration law and other potential threats to national security by F, M, or J nonimmigrants; providing outreach and education to users; and performing regulatory and policy analysis. SEVP also used the model to identify management and overhead costs associated with the program.

ABC is a business management methodology that links inputs (cost) and outputs (products and services) by quantifying how work is performed in an organization (activities). The ABC methodology allows fee-funded organizations to trace service costs and to calculate an appropriate fee for the service, based on the cost of activities associated with the services for which the fee is levied.

Using the ABC methodology, SEVP identified and defined the activities needed to support SEVP functions to include current and future initiatives. SEVP captured the full cost of

[7] Form I–290B is managed by USCIS and not ICE. USCIS has agreed to the use of the form by ICE for SEVP appeals and the use has been approved by the Office of Management and Budget under control number 1615–0095.

operations and apportioned that full cost to the appropriate program activities. The full cost of each activity is then assigned to the appropriate fee category based on the nature of the activity, as described further below. By tracking costs to the various fee categories, SEVP was able to use forecasted payments to determine the appropriate fee amount for each fee type. SEVP examined historical data and performed statistical payment analysis to forecast payments in future years.

SEVP used an independent contractor and commercially available ABC software to compute the fees. The structure of the software was tailored to SEVP needs for continual and real-time fee review and cost management.

2. Full Cost

In building the ABC model, it was critical for SEVP to identify the sources and cost for all elements of the program. Consistent with instructive legislative and regulatory guidance, SEVP fees recoup the full cost of providing the agency's overall resources and services.[8]

To the extent applicable, SEVP used the cost accounting concepts and standards recommended in the FASAB Handbook, Version 15, ''Statement of Financial Accounting Standards Number 4, Managerial Cost Accounting Concepts and Standards for the Federal Government'' (2016). FASAB Standard Number 4 sets the following five standards as fundamental elements of managerial cost accounting: (1) Accumulate and report cost of activities on a regular basis for management information purposes; (2) establish responsibility segments and match the cost of each segment with its outputs; (3) determine the full cost of government goods and services;[9] (4) recognize the costs of goods and services provided among federal entities; and (5) use appropriate costing methodologies to accumulate and assign costs to outputs.

SEVP calculates projected fees using the full cost of operations, as defined by a regularly updated spend plan. The projected spend plans for FY 2019 and FY 2020 were used in calculation of SEVP's proposed fee structure. Tables 4 through 7 detail the full cost of SEVP operations, consistent with the spend plan, from various perspectives: By program category, by cost initiative, by fee type, and by activity.

3. Cost Basis for SEVP Fees Based on Current Services

The FY 2019 and FY 2020 budgets provide the cost basis for the fees. These budgets reflect the required revenue to sustain current initiatives. The revenue is also assessed to ensure a sufficient level of continued funding for program enhancements as discussed above, such as enhanced vetting and investigative analysis to support enforcement operations, SEVIS Modernization, and increased numbers of adjudication personnel. Finally, the past budgets provide the cost basis for adjusting annualized cost-of-living increases.

Determining the projected cost for continuation of current efforts involved routine budget projection processes. The budget establishes the current services of the program and projects the mandatory and cost-of-living adjustments necessary to maintain current services. The budget adjusts the services provided by SEVP to include enhancements that reflect program policy decisions. Table 4 reflects the FY 2017 final budget, the FY 2018 approved budget, and the FY 2019 and FY 2020 planned budget requests.

TABLE 4—STUDENT AND EXCHANGE VISITOR PROGRAM SUMMARY OF REQUIREMENTS BY ORGANIZATION AND PROGRAM CATEGORY

[Dollars in thousands]

SEVP expenses	2017 spend plan	2018 spend plan	2019 spend plan	2020 spend plan
SEVP Payroll				
Full-Time Equivalent Personnel	134	175	221	221
Executive Office	$1,735	$1,744	$2,048	$2,084
Fee Management Section	$1,350	$1,597	$1,775	$1,806
Field Representative Unit	$6,480	$6,958	$7,641	$7,776
Policy Section	$1,178	$969	$1,283	$1,325
Systems Management Unit	$1,258	$1,299	$1,391	$1,416
SEVP Response Center Section	$652	$652	$931	$941
School Certification Unit	$2,993	$2,966	$3,291	$3,349
SEVP Analysis and Operations Section	$1,070	$1,226	$1,402	$1,388
New Required Positions	....	$296	$2,357	$5,610
Office of the Principal Legal Advisor	$328	$517	$642	$659
SEVP Outside Positions	$1,444	$1,776	$2,545	$2,629
Total SEVP Payroll	$18,488	$20,000	$25,306	$28,983
Program Expenses				
Advisory and Assistance Services	$58,630	$58,108	$52,755	$50,977
SEVIS (Modernization and O&M) *	$8,237	$18,722	$22,241	$21,912
Interagency Agreements with other agencies	$8,046	$9,815	$8,360	$8,583
Travel	$1,474	$1,500	$1,100	$1,100
Service-wide Costs	$3,222	$4,015	$2,400	$2,400
Total Program Expenses	$79,609	$92,160	$86,856	$84,972

[8] These include but are not limited to: Direct and indirect personnel cost, including salaries and fringe benefits, such as medical insurance and retirement; retirement cost, including all (funded or unfunded) accrued cost not covered by employee contributions, as specified in OMB Circular A–11; overhead, consulting, and other indirect cost, including material and supply cost, utilities, insurance, travel, as well as rents or imputed rents on land, buildings, and equipment; management and supervisory cost; and cost of enforcement, collection, research, establishment of standards, and regulation.

[9] Full cost includes the costs associated with resources that directly or indirectly contribute to the output and supporting services within the entity and from other entities.

TABLE 4—STUDENT AND EXCHANGE VISITOR PROGRAM SUMMARY OF REQUIREMENTS BY ORGANIZATION AND PROGRAM CATEGORY—Continued

[Dollars in thousands]

SEVP expenses	2017 spend plan	2018 spend plan	2019 spend plan	2020 spend plan
CTCEU	$67,200	$74,450	$74,450	$74,450
Total, SEVP	$165,297	$186,610	$186,612	$188,405

* Includes costs for the SEVIS Modernization and SEVIS Operations and Maintenance.

F. Summary of the Full Cost Information

The total cost projection for FY 2019 is $186,612,000 and for FY 2020 is $188,405,000. Table 4 sets out the projected current services for SEVP and supporting CTCEU personnel in FY 2019 ($74.45 million) and FY 2020 ($74.45 million). These costs are direct extensions of the FY 2018 costs that are supported by the current fees. Table 5 summarizes the enhancements and other costs, which include investigative analysis to support enforcement operations, SEVIS Modernization, increased numbers of adjudication personnel, and annualized inflation.

TABLE 5—FY 2018, FY 2019 AND FY 2020 SEVP COST BY INITIATIVE

Program cost by initiative	FY 2018 budgeted cost (thousands)	FY 2019 budgeted cost (thousands)	FY 2020 budgeted cost (thousands)
Program Base:			
SEVP (Current operational costs)	$95,097	$94,497	$95,106
CTCEU (Current operational costs)	70,200	70,200	70,200
Subtotal	165,297	164,697	165,306
Enhancements and Other Costs:			
Investigative Analysis Support	4,250	4,250	4,250
SEVIS Modernization	13,150	13,750	13,141
Increased Personnel	1,100	1,100	3,500
Annualized Inflation	2,813	2,813	2,208
Subtotal	21,313	21,913	23,099
Total	186,610	186,610	188,405

1. Fee Allocation

The purpose of the ABC methodology is to trace costs to organizational elements, as well as identify all cost components associated with the services offered. For fee-based organizations such as SEVP, this allows the assignment of cost to one or more fees. SEVP defined five fee categories: The I–901 SEVIS fee, certification fee, recertification fee, fee for motions and appeals, and site visit fee.

Historically SEVP has only collected fees from students and exchange visitors—the I–901 fee—and from schools applying for certification, to include a separate site visit fee. In this analysis, SEVP considered the creation of additional fee categories for all the distinct services it provides in deciding how to apportion fees. For example, SEVP considered charging a separate I–901 SEVIS fee to F, M, and J dependents. SEVP also examined various tiered fee structures and considered assigning some specific costs to separate fees. The ABC fee model allowed SEVP to evaluate these scenarios. DHS opted for an updated fee structure that segments program cost to the appropriate fee—F and M students, J exchange visitors, or schools.

The proposed I–901 SEVIS fee would recover the systems cost for SEVIS, including the remainder of certification, recertification, site visits, as well as appeals and motions costs that are not covered by the respective proposed fees. The fee would be apportioned between three categories—full fee of $350 for F and M students, reduced fee of $220 for most J participants, and the further reduced fee of $35 for certain J program participants. Federal Government-sponsored J program participants are fee-exempt by law, so their costs will be funded by other fee payers. 8 U.S.C. 1372(e)(3).

The proposed school certification fee would recover a portion of the costs necessary to process initial school certifications. The proposed recertification fee would recover a portion of the cost to process school recertifications and a portion of SEVP administrative costs. The site visit fee would recover the full cost of performing the site visit for initial school certification and when a school changes its physical location or adds a new physical location or campus. The proposed fee for an appeal or motion would recover a portion of the cost to process an appeal or motion.

2. SEVP FY 2019 and FY 2020 Cost Model Results

Table 6 shows the summary of SEVP FY 2019 and FY 2020 cost by source of cost.

TABLE 6—TOTAL SEVP FY 2019 AND FY 2020 COST BY FEE CATEGORY

SEVP ABC model output category	FY 2019 budgeted cost (thousands)	FY 2020 budgeted cost (thousands)
I–901 SEVIS Fee	$159,835	$160,633
I–17 Certification Fee	1,909	1,992
I–17 Recertification Fee	22,522	23,189
Site Visit Fee	385	389
Appeals Fee	1,956	2,198
Total	186,607	188,401

Table 7 shows a more detailed cost breakdown. The numbers are shown in thousands, rather than millions, of dollars due to the level of detail. There are two levels for the costs: Process and activity. Costs are allocated from payroll, contracts, and other expenses to activities through activity surveys and volume based cost allocations. The full cost of operations from the spend plans is distributed to the activities that best describe the work being performed. Table 7 details these costs from an activity perspective. To simplify the presentation, the numbers are rounded to the nearest thousand. These numbers are not rounded in the cost model.

TABLE 7—DETAILED COST BREAKDOWN

[FY 19 + FY 20, dollars in thousands]

Process	Activity	I–901	I–17 certification	I–17 re-certification	I–17 site visit	Appeals
Certify Schools	A–01: Certify schools (initial certification)		$3,115			
	A–02: Recertify schools			$4,614		
	A–03: Notify students if school is withdrawn			129		
	A–04: Withdraw schools from SEVIS			1,102		
	A–05: Process appeals/motions					$3,420
	A–06: Process petition updates			3,036		
	A–07: Monitor school compliance			3,761		
	A–08: Monitor school risk			3,446		
Enforce Compliance with Regulations and Laws.	A–28: Conduct Student and Exchange Visitor (I–901) investigations.	$93,921		16,574		
	A–29: Conduct school and sponsor investigations	34,238		6,042		
	A–30: Operate CTCEU programs	4,130		729		
	A–31: Provide CTCEU liaison support	417		74		
	A–41: Perform I–515 operations duties	1,471				
	A–43: PDSO/DSO background checks	1,038		54		
Formulate Policy	A–16: Analyze and develop policy	3,170		600		
	A–17: Develop and review rules and regulations	2,476		469		
	A–18: Implement policy	1,501		284		
	A–19: Develop future policy strategy	816		154		
Provide Stakeholder Communications.	A–11: Develop and deliver SEVP communications	9,040	118	1,224	24	130
	A–12: Respond to stakeholders' policy and technical inquiries (including Tier III Help Desk).	8,218				
	A–13: Provide Field Representative support	13,731		2,598		
	A–14: Prepare and attend conferences/workshops related to the SEVIS community.	3,404	62	644	13	68
	A–15: Develop and conduct strategic communications.	2,699	49	511		
Provide Systems Program Management Support.	A–20: Modify and enhance functionality of SEVP mission systems (*e.g.,* SEVIS, SEVPAMS[10]).	24,816				
	A–21: Operate and maintain SEVP mission systems (*e.g.,* SEVIS, SEVPAMS).	28,491				
	A–22: Provide Tier I and Tier II Help Desk support	12,814				
	A–23: Conduct systems program management	5,291				
	A–24: Analyze and disseminate program data	3,510	46	475	9	50
	A–25: Operate and maintain SEVP inter-office systems.	1,735	32	328		
Support SEVP Operations.	A–26: Maintain SEVP systems security	2,867	37	388		
	A–27: Maintain SEVP physical security	223	4	42	1	4
	A–32: Provide Executive Leadership for SEVP	2,539	33	344	7	36
	A–33: Provide SEVP administrative support	1,599	21	217	4	23
	A–34: Develop strategic plan	1,612	29	305	6	32
	A–35: Manage financial resources	7,300	95	988	20	105
	A–36: Manage procurement	1,886	25	256	5	27
	A–37: Manage personnel resources	2,065	27	280	6	30
	A–38: Manage SEVP records	3,274	60	619	12	66
	A–39: Manage facility resources	1,782	23	241	5	25
	A–40: Manage I–901 payment system	7,766				
	A–42: Manage I–901 J program	15,966				
	A–44: Site Visits				638	
Train SEVP staff, other staff, and DSOs.	A–09: Develop and deliver SEVIS training	5,936	78	803	16	85
	A–10: Develop and deliver internal training	2,613	48	494	10	52
Total		314,355	3,902	51,827	775	4,155

3. Fee Calculations

The cost model provides detailed cost information by activity and a summary cost for each, giving the aggregate fee cost by category. Next, SEVP projected the total number of fee payments of each type for FY 2019 and FY 2020 and determined the fee-recoverable budget. SEVP selected a forecasting approach to determine the total number of expected fee payments for each fee.

a. I–901 SEVIS Fee

To calculate a fee amount for the I–901 SEVIS fee, SEVP estimated the number of fee payments expected in FY 2019 and FY 2020 for each of the three fee payment types: Reduced fee for J participants (excluding the additional cost for initial certification and recertification of SEVP-certified schools); full fee for J participants (excluding the additional cost for initial certification and recertification of SEVP-certified schools); and full fee for F and M students (including additional costs for certification, recertification, and appeals).

Calculations for each of the three fee payment types vary because each fee type is treated differently in federal statutes and regulations. Section 641 of IIRIRA exempts Federal Government-sponsored J–1 exchange visitors from the fee payment. All F and M nonimmigrant students are currently required to pay $200, and nonexempt J nonimmigrant exchange visitors currently must pay $180. 8 CFR 103.7(b)(1)(ii)(H); 214.13(a). Congress modified the statute in December of 2000 to establish a reduced fee of $35 for au pairs, camp counselors, or participants in a summer work travel program, demonstrating strong congressional intent that the fee remain at that level. Act of Dec. 21, 2000, Public Law 106–553, app. B, sec. 110, 114 Stat. 2762, 2762A–51, 2762A–68. IIRIRA also provided for revising the fee once the program to collect information was expanded to include information collection on all F, M, and J nonimmigrants. As a result, the I–901 fee was revised in 2008 under the provisions of IIRIRA to take into account the actual cost of carrying out the program. *See* 73 FR 55683. The I–901 fee is now being revised a second time, through this rule, due to an increase in the actual cost of carrying out the program.

SEVP determined the number of expected I–901 SEVIS fee payments in FY 2019 and FY 2020. SEVP calculated the I–901 SEVIS fee over a 2-year period to account for potential fluctuation in the forecast. SEVP used the change in the numbers of payments received to provide the trend data used to forecast I–901 SEVIS fee payments for each I–901 payment type separately. Table 8 reflects aggregate historical payment data for all three I–901 payment types.

TABLE 8—F, M, AND J VISA ISSUANCE 2007–2017

Fiscal year	Total	Growth rate*
2007	697,054	
2008	753,065	8.0
2009	644,912	−14.4
2010	699,983	8.5
2011	749,082	7.0
2012	744,027	−0.7
2013	767,805	3.2
2014	829,636	8.1
2015	885,728	6.8
2016	866,623	−2.2
2017	796,820	−8.1

*Growth rate rounded to nearest tenth of a percent.

As indicated in Table 8, the level of payments received varied greatly over the past 10 years. This high degree of variation in the historical data, combined with the variables affecting demand for visas, called for a forecasting methodology that would capture and account for deviations.

SEVP selected a statistical forecasting method that uses trends in historical data to forecast future payments. SEVP selected ARIMA, an autoregressive integrated moving average model to forecast payments. An ARIMA model is a statistical model that uses historical time series data to predict future trends and movements. A non-seasonal model incorporates two major components: Trend and moving average. The autoregressive portion of the model, or trend, states that past values have an effect on current or future values and that values are estimated based on the weighted sum of past values. The second component is moving average which helps to smooth out the time series to filter out extreme fluctuations or outliers. In some cases a third component is needed: Seasonality. Visa data from 2004 to the present shows extreme seasonality in the number of F, M, and J visas issued. Seasonality is factored into the model to account for the U.S. academic calendar.

SEVP evaluated alternative forecasting methods; however, SEVP rejected these methods due to inaccuracy and poor fit. SEVP's chosen model provided a conservative forecast that will allow SEVP to operate with stability. The fee payment forecast, reflected in Table 9, places a balanced mix of emphasis on recent and historical data and still contains sufficient data points to smooth out some variability in the underlying data.

TABLE 9—I–901 SEVIS FEE PAYMENT FORECAST FY 2019–FY 2020

I–901 Payment type	FY 2019	FY 2020
Full Payments, F/M	418,393	407,933
Full payment, J-Full	157,550	153,611
Subsidized, J-Partial	158,945	158,945
Total	734,888	720,490

b. Certification Cost

SEVP uses historical data from FY 2012 to FY 2016 to find a 3-year moving average to forecast annual new initial certifications. SEVP predicts demand of approximately 426 initial certifications each year. SEVP assumes that the proposed higher fee will not deter schools from applying for certification.

TABLE 10—THREE-YEAR MOVING AVERAGE OF THE NUMBER OF SCHOOL CERTIFICATION PAYMENTS RECEIVED

Fiscal year	Payments received	3-Year moving average
2012	457	
2013	382	

[10] SEVP Automated Management System.

TABLE 10—THREE-YEAR MOVING AVERAGE OF THE NUMBER OF SCHOOL CERTIFICATION PAYMENTS RECEIVED—Continued

Fiscal year	Payments received	3-Year moving average
2014	446	428
2015	469	432
2016	363	426

The total fee category budget is taken directly from the FY 2019 and FY 2020 SEVP ABC model, reflected in Table 11.

TABLE 11—FY 2019–FY 2020 CERTIFICATION FEE-RECOVERABLE BUDGET

Fiscal year	Certification payments expected	Fee-recoverable budget
2019	426	$1,909,680
2020	426	1,992,878
Total ...	852	3,902,558

School certification fees are calculated by dividing the fee-recoverable budget by the anticipated number of payments. This results in a fee-recoverable amount from schools of $4,580 each. To arrive at the proposed fee, rounding was applied to the result of the fee algorithm. This results in a certification fee of $4,600 per school. Setting the certification fee at the $4,600 figure, however, leads to an increase of the current school certification fee by $2,900, resulting in a certification fee over twice the current fee amount. School certification is integral to SEVP—F and M nonimmigrant students can only attend SEVP-certified schools. DHS is concerned that such an increase of the school certification fee would appear dramatic to schools seeking initial certification and could lead to fewer schools seeking initial certification, so DHS proposes to keep the fee increase at a level that will not discourage potential new schools from seeking certification. At the same time, DHS considers that initial certification bestows upon the school a valuable asset, the ability to enroll F and M nonimmigrant students, and an increased fee amount is reasonable as the initial certification process becomes more extensive through the SEVIS modernization and other technological developments. Weighing these concerns, DHS decided to subsidize the I–17 certification fee by increasing the payment by only $1,300 to $3,000. The remainder of the costs for I–17 certification is subsidized by the I–901 F and M SEVIS fee, which is addressed below.

c. Recertification Cost

To identify a fee level that would recover the full cost of recertification operations, SEVP determined the full cost of recertification (including level of effort and contract cost) and the approximate number of schools willing to recertify. Because schools are required to recertify every 2 years, SEVP anticipates that approximately one-half of its certified schools—roughly 4,373 schools per year, given the current certified school population of 8,746—would recertify.

TABLE 12—FY 2019–FY 2020 RECERTIFICATION FEE-RECOVERABLE BUDGET

Fiscal year	Recertification payments expected	Fee-recoverable budget
2019	4,373	$25,368,650
2020	4,373	26,457,896
Total ...	8,746	51,826,546

To calculate an anticipated school recertification fee, DHS divides the fee-recoverable budget by the anticipated number of payments. This results in a fee-recoverable amount from schools of $6,000 each. To arrive at the proposed fee, rounding was applied to the result of the fee algorithm. This would result in a recertification fee of $6,000 per school. DHS desires to institute a recertification fee to more accurately assign the costs of recertification adjudication to those stakeholders who are directly requesting the adjudication—the SEVP-certified schools—particularly since the costs of recertification continue to increase as the recertification process becomes more robust. DHS considers, however, that a recertification fee instituted in this rule for the first time should not be set at a level that could discourage schools from seeking recertification. DHS also considers that the recertification amount should be less than the initial certification amount so that schools are encouraged to seek recertification instead of allowing their SEVP certification to be withdrawn and applying for initial certification anew at some later date. Withdrawal of SEVP-certification not only leads to the school losing a valuable asset, but also leads to complications for F and M nonimmigrant students enrolled in the withdrawn school, who are then forced to transfer schools, leave the United States, or risk facing immigration law penalties for violating the terms of their nonimmigrant status. Weighing all these factors, DHS proposes that the I–17 recertification fee be $1,250. DHS proposes to eliminate regulations that state that no fee is required for the school recertification process in order to recover part of this cost, as part of an effort to establish a more equitable distribution of costs and more sustainable level of cost recovery relative to services provided. The costs for I–17 recertification not recovered by the proposed fee would be subsidized by the I–901 F and M SEVIS fee. The explanation for shifting responsibility of the fee adjustment to the I–901 fee is included below.

d. Site Visit Cost

Site visits consist of initial certification site visits, change of location visits, and new campus or location site visits. The anticipated workload for these site visits is 600 per year, or 1,200 visits over a 2-year period.

TABLE 13—FY 2019–FY 2020 SITE VISIT FEE-RECOVERABLE BUDGET

Fiscal year	Site visit payments expected	Fee-recoverable budget
2019	600	$385,674
2020	600	389,689
Total ...	1,200	775,363

The current fee amount is $655 as established in the 2008 Fee Rule that codified SEVP's authority to charge the fee when a school changes its physical location or adds new physical location or campus. Following this rule's effective date, SEVP will collect the fee when a school adds a new physical location or campus. The site visit fee would apply when a certified school updates its Form I–17 in SEVIS to indicate, pursuant to 8 CFR 214.3(h)(3)(ii), an added physical location or campus. The site visit fee is based on level of effort for both SEVP staff and contracts that cover the cost of operations.

e. Appeals and Motions Cost

Determining the full cost of processing an appeal is essential to improving the fee structure. The fee for filing a motion or appeal is calculated by determining the workload of appeals and motions over the FY 2019 and FY 2020 periods. Over the past 2 years, SEVP has processed 54 appeals and motions annually. To maintain conservative estimates, SEVP anticipates that number will remain constant over the FY 2019 and FY 2020 periods.

TABLE 14—FY 2019–FY 2020 APPEALS FEE-RECOVERABLE BUDGET

Fiscal year	Appeal and motion payments expected	Fee-recoverable budget
2019	54	$1,956,375
2020	54	2,198,825
Total ...	108	4,155,200

Fees for motions or appeals are calculated by dividing the fee-recoverable budget by the anticipated number of payments over the FY 2019 and FY 2020 periods. This results in a fee-recoverable amount of $38,474 for each appeal. To arrive at the proposed final cost, rounding was applied to the result of the fee algorithm. This results in a cost for a motion or appeal of $38,500. SEVP believes that this fee, while justified, is too high to impose on the affected schools as the first fee to be established and collected for the subject appeals and motions, and that some accommodation should be made to keep the fee at a more reasonable amount. Instead, DHS proposes adding $4.76 to the Form I–901 F and M fees to counterbalance the unfunded costs of adjudicating appeals and motions. This will better ensure that cost is not a significant obstacle in pursuing an administrative appeal or motion. The Form I–290B fee when filed with SEVP would be set at $675, which is currently the same amount charged when the form is filed with USCIS. *See* 8 CFR 103.7(b)(i)(S).[11] The Form I–290B, ''Notice of Appeal or Motion,'' filed with USCIS is the same form used for appeals or motions related to any denial of school certification or recertification or a withdrawal of such certification. Although the appeal fee would not be set at the amount necessary to recover the full costs of appeals and motions, by setting a fee of $675, schools that benefit from the appeal process would bear some of its costs, and DHS would more fairly balance allocation of the recovery of SEVP operational costs between beneficiary classes. As proposed, DHS would charge the fee for all such appeals and motions.

4. Proposed Fee Levels

Viewing the SEVP fee structure and affected parties comprehensively, DHS proposes to adjust each fee in its fee structure based not only on cost of services, but also on the desire to spread the impact of fee increases reasonably among the various beneficiaries of SEVP services. Despite the ABC calculations' determination of the actual cost of each service, which is represented by each fee, DHS has determined that using the I–901 revenue to subsidize the costs of the SEVP's other fees is an appropriate course of action for two reasons. First, the number of F and M students paying the I–901 fee is substantially larger than the number of entities paying each of the school certification-related fees, allowing for SEVP to lessen the impact of fee increases in the aggregate. Second, the subsidization is reasonable because individuals paying the I–901 fee necessarily benefit from the continued certification of schools for their enrollment and prompt and accurate adjudication of appeals.

DHS proposes to increase the I–901 SEVIS fee for F and M students from $200 to $350 and the full I–901 SEVIS fee for most J exchange visitors from $180 to $220. While these increases may seem large, these fees have been unchanged since 2008. 73 FR 55683 (Sept. 26, 2008). In 2008, the first time these fees had been updated since SEVP's inception in 2004, the I–901 SEVIS fee for F and M students increased from $100 to $200, and the full I–901 SEVIS fee for most J exchange visitors increased from $100 to $180. *See id.* The I–901 SEVIS fee for special J-visa categories (au pair, camp counselor, and summer work travel) would remain at the current $35 level, consistent with the levels set by Congress in 8 U.S.C. 1372(e)(4)(A). IIRIRA also exempts from the I–901 SEVIS fee J–1 exchange visitors who participate in Federal Government-sponsored J–1 exchange programs, consistent with 8 U.S.C. 1372(e)(3).

DHS proposes to increase the initial certification fee from $1,700 to $3,000. This fee was originally set at $230, effective in 2002, prior to the reorganization of the Immigration and Naturalization Service (INS) to become part of DHS. *See* 66 FR 65811 (Dec. 21, 2001). The fee was increased in 2008 to $1,700. *See* 73 FR 55683. This is the base fee for certification and does not include the site visit fee.

DHS proposes to establish a recertification fee at $1,250, maintain the site visit fee of $655, and set the I–290B fee at $675. The cost for SEVP recertification, site visits, and motions and appeals adjudication is determined by employing ABC principles, previously described in this document, balanced with SEVP's desire to prevent recertifications, site visits, appeals, and motions filings from becoming cost prohibitive. DHS is proposing a recertification fee and a Form I–290B fee for the first time, and SEVP believes that charging recertification and appeals fees sufficient to recover, on their own, the fee-recoverable amount for such services, may result in inordinately high fees from the perspective of entities who have regularly received the benefits of these SEVP services at no additional charge. Accordingly, DHS proposes to set these fees at amounts below the fee-recoverable cost. For the I–290B fee in particular, DHS proposes to set the amount at $675. DHS believes this amount is appropriate because it is less than both the fee for initial certification and the fee for recertification. Further, the amount $675 is already associated with the Form I–290B when filing it with USCIS. DHS believes $675 is a logical starting point, because this is the fee currently being charged by USCIS for motions and appeals. While the difference between the fee-recoverable amount (approximately $38,500) and the proposed fee of $675 is substantial, subsidizing this fee by driving the additional costs to the I–901 fee results in an increase of only $4.76 to F/M students paying that fee. The proposed program fee schedule for SEVP beginning in FY 2019 is shown in Table 15.

TABLE 15—PROPOSED FY 2019 SEVP FEES

Category	Amount
I–901 SEVIS Fees:	
• I–901 Primary F/M visa holders (Full)	$350
• I–901 Primary J visa holders (Full)	220
• I–901 Special J-visa categories (Subsidized payment)	35
I–17 School Fee:	

[11] Because the underlying rationale for the amount of the I–290B fee differs between SEVP and USCIS, the cost for appealing a claim or petition using the I–290B Form could eventually be different for SEVP and USCIS 8 CFR 103.7(b)(1)(i)(S).

TABLE 15—PROPOSED FY 2019 SEVP FEES—Continued

Category	Amount
• Certification Fee	3,000
• Recertification Fee	1,250
• Site visit fee for initial certification (base fee to be multiplied by number of locations cited on the Form I–17), and for new physical locations	655
Appeal or Motion Fee:	
• Appeal or Motion Fee	675

These proposed fee amounts, the cost model outputs, and cost reallocation amounts are shown in Table 16. The cost reallocation amounts are negative for the fees that are subsidized. The cost reallocation amounts that are positive are the amounts per fee that subsidize the other fee categories.

TABLE 16—PROPOSED FEE ADJUSTMENT AMOUNTS

Fee	Current fee	Activity based cost model output	Cost reallocation	Final fee	Change in fees	% Change in fee
	(a)	(b)	(c)	(d = b + c)	(e)	(f = (d/a) −1)
Appeal or Motion Fee: I–290B	N/A	$38,475	($37,800)	$675	$675	N/A
I–901 F/M	200	290	60	350	150	75
I–901 J-Full	180	123	97	220	30	22
I–901 J-Partial	35	123	(88)	35	0	0
I–17 Initial Certification	1,700	4,600	(1,600)	3,000	1,300	76
I–17 Recertification	N/A	6,000	(4,750)	1,250	1,250	N/A
Site Visit—initial	655	650	5	655	0	0
Site Visit—new location	0	650	5	655	655	N/A

Table 17 reflects the break-even analysis based on the proposed fee schedule and the proportional fee volumes (rounded) required to generate sufficient revenue to offset projected program costs.

TABLE 17—PROJECTED REVENUE—FY 2019 AND FY 2020

Fee category	Proposed fee amount	Forecasted volume	Forecasted revenue
I–901 F/M Full	$350	826,326	$289,214,144
I–901 J-Full	210	311,162	68,455,584
I–901 J-Partial	35	317,890	11,126,150
I–901 Subtotal:			
Certification Fee	3,000	852	2,556,000
Recertification Fee	1,250	8,746	10,932,500
Site Visit	655	1,200	786,000
I–17 Subtotal:			
Appeals	675	108	72,900
Total		1,466,284	383,143,278

VI. Statutory and Regulatory Requirements

A. Executive Orders 12866, 13563, and 13771: Regulatory Review

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, reducing costs, harmonizing rules, and 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.''

The Office of Management and Budget (OMB) has designated this rule a ''significant regulatory action,'' although not economically significant under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by OMB. This proposed rule would impose transfer payments between the public and the government. Thus, this proposed rule is not expected to be subject to the requirements of Executive Order 13771. An initial regulatory analysis follows.

1. Background and Purpose of the Proposed Rule

SEVP is a fee funded program within ICE that provides oversight of schools and nonimmigrant students in the F and M visa category. SEVP uses SEVIS to monitor and track certified schools and F, M, and J nonimmigrant students. DoS also uses SEVIS in the management of the Exchange Visitor Program for nonimmigrant exchange visitors in the J visa category. SEVIS is a web-based system administered by SEVP that retains data on international students and exchange visitors in the country. SEVP uses SEVIS to ensure accurate reporting and recordkeeping by schools and exchange visitor programs. SEVP also uses SEVIS to identify for enforcement action student and exchange visitors who are out of status.

The purpose of this proposed rule is to generate the necessary revenue to recover the full cost of the FY 2019 and FY 2020 budgets. SEVP is authorized to recover the full cost of all resources and services provided. The costs of SEVP activities have increased, and the fees collected no longer cover the costs. The fee increase is needed to meet long-term cash flow needs and achieve solvency.

SEVP projects an annual budget of $186.6 million in FY 2019 and $188.4 million in FY 2020. SEVP forecasts $121.6 million in revenue for FY 2019 and FY 2020 without a fee change. The implementation of this proposed rule would provide SEVP with additional fee revenue of $75.2 million in FY 2019 and $73.5 million in FY 2020. If DHS does not adjust the current fees to recover the costs of processing the enrollment of F and M students, certification and recertification of schools, processing relating to J exchange visitors, appeals, and site visits, it will be forced to make reductions in oversight, security, and service as compared to current projections.

To determine the full cost associated with SEVP and the management of SEVIS, SEVP used ABC methodology. ABC first identifies activities in an organization and then assigns the cost of each activity according to the resources they consume. SEVP identified the following as its primary activities: Collecting and retaining information on F, M, and J nonimmigrants; certifying schools; overseeing school compliance; recertifying schools; adjudicating appeals; investigating suspected violations of immigration law and other potential threats to national security by F, M, or J nonimmigrants; providing outreach and education to users; and performing regulatory and policy analysis. SEVP also recognizes management and overhead costs associated with the program.

SEVP proposes five fees paid by two source categories: Individuals will pay the I–901 SEVIS fee, and institutions will pay the I–17 certification fee, I–17 recertification fee, the fee for a motion or appeal, and the site visit fee. By tracing expenditures of the activities previously listed to the various fee categories, SEVP forecasted fee payments to determine the appropriate fee amount for each fee type proposed in this rule.

Table 18 presents an accounting statement summarizing the annualized transfer amounts and qualitative benefits of the proposed rule. This rule proposes that schools will pay a higher fee for initial SEVP certification and will incur a fee for recertification, a site visit when adding a new physical location or campus, and the filing of a motion or appeal. In addition, F and M students and J visitors will pay higher fees.

TABLE 18—ACCOUNTING STATEMENT FOR FY 2019

Category	Primary estimate
Qualitative Benefits	SEVP will be able to maintain the current level of service. This proposed rule will enhance SEVP's capability to support national security and counter immigration fraud through the continued development and implementation of critical system and programmatic enhancements. Enhancements to SEVIS, including the establishment of a student portal, will assist DSOs in their regulatory obligation to provide accurate and timely information and rebalance this reporting requirement by providing students an automated means to do so. Increased adjudication personnel will assist in reducing recertification processing times, while enhanced vetting protocols will ensure that only those eligible to enter and remain in the country do so
Transfers	7% Discount Rate $75,231,420 from schools and students to the government 3% Discount Rate $75,231,420 from schools and students to the government

Category	Effects	Source
Effects on State, local, and/or tribal government.	The proposed rule would increase and establish additional fees on state, local, and/or tribal government-funded educational institutions for support of SEVP operations. This rule proposes to increase the I–17 certification fee and creates the I–17 recertification fee and a fee for filing an appeal or motion. In addition, this rule announces that following completion of this rulemaking, SEVP will collect a site visit fee when an SEVP-certified school adds a campus/location.	NPRM, Executive Order 12866 analysis
Effects on small businesses	The proposed rule would increase and establish additional fees for educational institutions in support of SEVP operations. This proposed rule would increase the I–17 certification fee and create the I–17 recertification fee and a fee for filing an appeal or motion. In addition, this rule announces that following the completion of this rulemaking, SEVP will collect a site visit fee when a school certified by SEVP adds a campus/location.	Initial Regulatory Flexibility Analysis

2. Impacts of Regulatory Change

This proposed rule would amend the current fees for the individual student and exchange visitor application fee (I–901 SEVIS fee) and school certification petition for initial certification. It would maintain the current fee for site visits and extend it to any change of location or additional physical location or campus reported as an update by a certified school. It would also institute a new fee for school recertification petitions and the filing of appeals and motions by schools. The amended fee structure reflects existing and projected operating costs, program requirements, and planned program improvements.

The current I–901 SEVIS fees are based on a fee analysis performed when SEVP last increased the fees in 2008. *See* 73 FR 55683. Those cost calculations were established on the basis of projected workload. Since 2008, SEVP's program mission tasks have expanded significantly. The expansions of certification, recertification, and appeals costs and the subsidization of excess costs not recovered by fees have led to the need for the proposed fee increase. Additionally, SEVP now provides investigative analysis to support enforcement operations, has increased numbers of adjudication personnel, and is undergoing SEVIS Modernization. Concurrently, costs associated with these program tasks have been affected by increased costs due to inflation. This rule proposes fees that would result in recovery of the full cost of SEVP operations with fee-generated revenue; alignment of the fees with current and projected costs and processes that have been adjusted as the program has gained experience and sophistication; and the agency's adoption of more detailed and accurate data sources and improved management tools to align resources and workload.

a. I–901 F and M SEVIS Fee

F nonimmigrants, as defined in INA section 101(a)(15)(F), 8 U.S.C. 1101(a)(15)(F), are foreign students who come to the United States to pursue a full course of academic study in SEVP-approved schools and their dependents. M nonimmigrants, as defined in INA section 101(a)(15)(M), 8 U.S.C.1101(a)(15)(M), are foreign nationals pursuing a full course of study at an SEVP-certified vocational or other recognized nonacademic program (other than language training programs) in the United States and their dependents. International F and M nonimmigrant students seeking temporary admission into the United States to attend a U.S. educational institution must pay the I–901 F and M SEVIS fee. SEVP proposes to increase the I–901 F and M SEVIS fee from $200 to $350.

From 2007 through 2017, SEVP received an average of 450,581 I–901 F and M SEVIS payments per year. Table 19 shows the volume of I–901 F and M SEVIS fee payments received and the annual average number of fee payments from 2007 to 2017. As previously discussed, SEVP has forecasted 418,393 I–901 F and M payments in FY 2019 and 407,933 FY 2020, respectively.

TABLE 19—1–901 F AND M SEVIS FEE PAYMENTS FYS 2010–2017

Fiscal year	Fee payments
2007	358,666
2008	400,090
2009	348,815
2010	389,255
2011	431,180
2012	449,029
2013	469,986
2014	519,751
2015	574,158
2016	545,203
2017	470,261
Annual Average (2007–2017)	450,581
Forecasted 2019	
Forecasted 2020	418,393
	407,933

Table 20 illustrates the incremental increase DHS is proposing with this rule for the I–901 F and M fee. Individuals who submit a Form I–901 will pay an additional $150 under this proposed rule, which is a 75 percent increase.

TABLE 20—I–901 F AND M INCREMENTAL FEE INCREASE

Type	Current fee	Proposed fee	Difference (proposed − current)
I–901 F and M	$200	$350	$150

SEVP estimates that the fee increase would result in an annual increase of transfer payment from students who submit an I–901 form to the government of approximately $62 million per year ($150 increase × 418,393 FY 2019 number of applicants = $62,758,950; $150 increase × 407,933 FY2020 number of applicants = $61,189,950).

b. I–901 J-Full SEVIS Fee

DoS generally oversees the exchange visitor program, which includes nonimmigrants who are charged the full J SEVIS fee. J exchange visitors are nonimmigrant individuals approved to participate in an exchange visitor program in the United States and the spouse and dependents of the exchange visitors. This SEVIS fee is associated with J–1 nonimmigrants participating in a designated exchange visitor program. Certain other J–1 categories are subject to a reduced fee or are exempt from a fee in accordance with 8 U.S.C. 1372(e). SEVP and DoS have a memorandum of reimbursable agreement. DoS sends SEVP its actual expenditures, and SEVP reimburses them quarterly. Each year, SEVP and DoS review and update the memorandum. Table 21 displays the affected Exchange Visitor Program categories subject to the full SEVIS fee and the purpose of the visit.[12]

TABLE 21—J–1 EXCHANGE VISITOR PROGRAM CATEGORIES SUBJECT TO FULL SEVIS FEE

Exchange visitor program category	Purpose of visit
Short-term Scholar	Lecture, observe, consult, training, demonstrate special skills.
Professor and Research Scholar	Research Scholar: Research, observe, or consult in connection with a research project. Professor: Teach or lecture at university, observe, or consult.
Physician	Pursue graduate medical education or training at accredited schools of medicine or scientific institutions.
Intern	Structured internship program that is in the student's field of study.
Trainee	Structured training program that is in the trainee's professional field.
Specialist	Observing, consulting, or demonstrating special skills.
Teacher	Teach full-time in an accredited primary, including pre- kindergarten, or secondary (K–12) public or private school.

[12] *See* Department of State, Exchange Visitor Program Category Requirements (June 2016), *available at https://j1visa.state.gov/wp-content/uploads/2017/06/Exchange-Visitor-Program-Category-Requirements.pdf* (last visited Feb. 26, 2018).

TABLE 21—J–1 EXCHANGE VISITOR PROGRAM CATEGORIES SUBJECT TO FULL SEVIS FEE—Continued

Exchange visitor program category	Purpose of visit
Secondary School Student	Study in the U.S. at accredited public or private secondary schools for an academic semester or an academic year, while living with American host families.
College and University Student	Participate in a degree or nondegree program at an accredited postsecondary academic institution, or participate in a student internship program.
Government visitor (non-Federal)	Engage in observation tours, discussions, consultations, professional meetings, conferences, workshops and travel when selected by a state or local government agency.

SEVP receives an average of 151,958 I–901 Full J SEVIS payments per year (FYs 2007–2017). Table 22 displays the volume of Full I–901 J SEVIS fee payments received and the annual average number of fee payments. SEVP has forecasted 157,550 I–901 J-Full payments in FY 2019 and 153,611 in FY 2020.

TABLE 22—I–901 J-FULL SEVIS FEE PAYMENTS FYS 2010–2017

Fiscal year	Fee payments
2007	132,213
2008	137,173
2009	129,979
2010	139,534
2011	148,253
2012	155,008
2013	160,522
2014	172,530
2015	168,967
2016	164,401
2017	162,959
Average (2007–2017)	151,958
Forecasted 2019	157,550
Forecasted 2020	153,611

The difference between the proposed and current fees for the I–901 J-Full applicants is $40, an increase of approximately 22 percent, as shown in Table 23.

TABLE 23—I–901 J-FULL INCREMENTAL FEE

Type	Current fee	Proposed fee	Difference (proposed − current)
I–901 J-Full	$180	$220	$40

The total increase in transfer payments from I–901 J-Full applicants to the government is expected to be $12,446,440 ($40 increase in fee × 157,550 FY 2019 and 153,611 FY 2020 forecasted number of applicants). The increase in J fees is meant to recover the full cost of J program operations for SEVP, which includes the reimbursement to DoS, SEVIS costs, and other adjudication services for J exchange visitors. For the purposes of calculating fees, SEVP isolates the costs specifically incurred by operating the J visa program. As it stands, the J visa program operates at a greater cost than the revenue that J visa fees bring to the program; therefore, SEVP proposes an increase to the J-Full visa to cover the $39.4 million full cost of operating the J visa program on an annual basis.

c. I–17 Certification and Recertification Fee

For a U.S. school to enroll F and M nonimmigrant students, it is required to be certified by SEVP. A school petitions for SEVP certification to enroll these students by completing and submitting Form I–17, ''Petition for Approval of School for Attendance by Nonimmigrant Student,'' online through SEVIS.

All SEVP-certified schools are required to go through the recertification process every 2 years to ensure they remain qualified for certification and adhere to all requirements according to the regulations.

From FY 2012 to 2016, there has been an annual average of 423 schools applying for SEVP certification. As previously discussed, DHS calculated the 3-year moving average to minimize the variation in forecasting the population data. The I–17 Initial certifications from FYs 2012 through 2016 are shown in Table 24.

TABLE 24—FYS 2012–2016 I–17 INITIAL CERTIFICATIONS

Fiscal year	I–17 certification petitions	3-Year moving average
2012	457	
2013	382	
2014	446	428
2015	469	432
2016	363	426
Total	2,117	

SEVP uses the 3-year moving average to predict that there will be 426 initial certifications in both FY 2019 and FY 2020, respectively.

There are currently 8,746 SEVP-certified schools. DHS assumes that approximately half, or approximately 4,373 schools, will recertify each year, including the 1,728 schools with no active F or M students. DHS assumes that a school would prefer to recertify for a $1,250 fee instead of allowing certification to lapse and thereafter having to again pay the proposed initial certification fee of $3,000. The proposed initial certification fee is a 76 percent increase from the current fee.

The current fee to apply for initial certification is $1,700, which has not changed since 2008. SEVP does not currently charge a recertification fee; the proposed fee amount is $1,250. The I–17 initial certification and I–17 recertification incremental fees are shown in Table 25.

TABLE 25—I–17 INCREMENTAL FEES

Type	Proposed fee	Current fee	Difference (proposed – current)
I–17 Initial Certification Fee	$3,000	$1,700	$1,300
I–17 Recertification Fee	1,250	0	1,250

The annual increase in transfer payments from schools to the government from I–17 initial certifications is expected to be $553,800 ($1,300 increase in fee × 426 (FY 19 and FY 20 forecasted number of I–17 initial certifications)). The annual increase in transfer payments from schools to the government for I–17 recertification is expected to be $5,466,250 ($1,250 increase in fee × 4,373 (FY 2019 and FY 2020 forecasted number of recertifications)).

d. Fee for Motion or Appeal

When a school is denied certification or recertification, the school receives a denial letter through certified mail. The denial letter explains the reason for the denial and the steps to appeal. The school can appeal by completing the Form I–290B, ''Notice of Appeal or Motion,'' within 30 days of receipt. This rule proposes that SEVP impose a filing fee of $675, which is also the fee currently charged by USCIS upon submission of the Form I–290B.[13] SEVP does not currently collect a fee from a school that files a motion or appeal. DHS proposes to revise its regulations to institute this fee for a school filing a motion or an appeal in order to establish a more equitable distribution of costs, improve services by decreasing an appeals or motions throughput time and a more sustainable level of cost recovery relative to the services provided.

SEVP processed an average of 54 motions and appeals from schools annually from 2013 to 2016. DHS assumes that there will be the same number of appeals or motions filed in FY 2019 and FY 2020.

The total annual increase in transfer payments from schools to the government for filing a motion or appeal is expected to be $36,450 ($675 fee × 54 (FY 2019 and FY 2020 forecasted number of fee payments)).

e. Site Visit Fee

As noted above, current regulations provide authority for SEVP to charge a site visit fee to schools that apply for initial certification or report a change of physical location, or addition of a physical location or campus. The site visit allows SEVP an opportunity to gather evidence on the school's eligibility, review school facilities, and interview personnel listed on the I–17 petition as a PDSO or DSO. SEVP currently collects the $655 fee when a school files a petition for certification to issue Forms I–20 or by a certified school when it physically moves to a new location. This proposed rule notifies the public that following completion of this rulemaking, SEVP plans to also collect the fee from any certified school that adds a physical location or campus, by updating its Form I–17 in SEVIS, consistent with the above authorities and the agency's longstanding interpretation.

SEVP performs 600 site visits annually. Of these 600 visits, 426 will be at schools that apply for initial certification and currently pay the $655 site visit fee. The remaining 174 site visits may include visits when a school adds a new physical location or campus. DHS proposes that the site visit fee amount, $655, remain the same.

The annual increase in transfer payments from schools to the government due to site visits is expected to be $113,970 ($655 fee × 174 (FY 2019 and FY 2020 forecasted number of site visits)).

f. Conclusion

SEVP expects to have a total increase in fees of $68.7 million per year, discounted at 7 percent, transferred from individuals and entities for the services they receive, to the government. Table 26 shows the summary of the total annual number of payments, incremental fee amounts, and total fees transferred.

TABLE 26—ANNUAL PROPOSED INCREMENTAL FEE AMOUNTS, FY 2019

	Annual number of payments	Proposed incremental fee amounts	Annual fee transfer to government
I–901 F and M	418,393	$150	$62,758,950
I–901 J-Full	157,550	40	6,302,000
I–17 Initial Certification	426	1,300	553,800
I–17 Recertification	4,373	1,250	5,466,250
Site Visits—initial	426	0	0
Site Visits—new location	174	655	113,970
Appeals	54	675	36,450
Total	....	....	75,231,420

3. Alternatives

SEVP examined several alternatives to the proposed fee structure, including no increase to any fee, only increasing the I–901 SEVIS fee and I–17 fee, and the unsubsidized results of the ABC model.

Without an increase in fees, SEVP will be unable to maintain the level of service for students and schools that it currently provides as well as the compliance and national security activities discussed above. SEVP considered the alternative of maintaining fees at the current level but with reduced services and increased

[13] USCIS I–290B, ''Notice of Appeal or Motion,'' Filing Fee of $675, *https://www.uscis.gov/i-290b.*

processing times, but has decided that this would not be in the best interest of applicants and schools. SEVP seeks to minimize the impact on all parties, but in particular small entities. If SEVP followed this alternative scenario, there would be a shortfall of revenue of over $65.4 million in FY 2019 to cover expenses. SEVP rejected this alternative. SEVP must pay for the expenses of maintaining and improving SEVIS and adjudicating schools applying to be certified by SEVP in a timely manner.

SEVP also considered raising only the I–901 and I–17 certification fees instead of including a new proposed fee for recertification and for filing a motion or appeal. If SEVP followed this scenario, the I–901 F and M fee would increase to $350 to cover the shortfall in revenue, but the I–17 Initial Certification fee would also increase to $4,200. This would triple the existing certification fee while allowing schools with zero foreign students to remain active SEVP schools that require SEVP effort for recertification. SEVP rejected this fee structure as it would continue to add workload to SEVP's recertification branch. Without any disincentive to recertify, the list of schools recertifying would likely continue to grow. The proposed fees, however, would establish a more equitable distribution of costs and a more sustainable level of cost recovery relative to the services provided.

SEVP also considered the unsubsidized results of the ABC model as an alternative, which allocated the I–901 F and M fee, school certification fees, and the fee to file an appeal or motion as shown in Table 27.

TABLE 27—UNSUBSIDIZED FEE AMOUNTS

Fee type	Unsubsidized fee amounts
I–901 F and M	$290
I–901 J-Full	130
I–901 J-Partial	130
I–17 Initial Certification	4,600
I–17 Recertification	6,000
Appeal or Motion	38,475
Site Visit	650

SEVP rejected this alternative for several reasons. Most conspicuously, the fee to file a motion or appeal filed on the USCIS-managed Form I–290B has been set at $675. Since a fee of $38,475 would be significantly higher than any other SEVP fee it may improperly discourage schools from filing a motion or appeal. Similarly, SEVP rejected the alternative to set the recertification fee at the ABC model output amount of $6,000. A recertification fee higher than the initial certification fee would discourage schools from seeking recertification. SEVP instead proposes to set the recertification fee at a level is less than the initial certification fee. When schools can maintain their certification, F and M nonimmigrant students enrolled in the withdrawn school avoid complications such as being forced to transfer schools, leave the United States, or risk facing immigration law penalties for violating the terms of their nonimmigrant status.

SEVP also rejected the initial certification fee of $4,600 because it finds that an increase of almost three times the current fee of $1,700 is excessive. In the fee development, DHS balanced the challenge of minimizing the costs to schools and students while recovering funding to support SEVP services. The population of I–901 F and M students relative to the population of I–17 schools allows for a minimal fee adjustment to be spread over the student population to reduce the cost burden on individual institutions seeking recertification.

B. Regulatory Flexibility Act

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) at 5 U.S.C. 603 requires DHS to consider the economic impact its proposed rules will have on small entities. In accordance with the RFA, DHS has prepared an Initial Regulatory Flexibility Analysis (IRFA) that examines the impacts of the proposed rule on small entities. The term ‘‘small entities'' encompasses small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of fewer than 50,000.

DHS requests information and data from the public that would assist in better understanding the impact of this proposed rule on small entities. DHS also seeks alternatives that will accomplish the same objectives and minimize the proposed rule's economic impact on small entities.

1. A Description of the Reasons Why the Action by the Agency Is Being Considered

DHS proposes this rule to adjust current fees and introduce new fees to ensure that SEVP is able to recover the full costs of the management and support of its program activities. DHS's objectives and legal authority for this proposed rule are further discussed throughout this notice of proposed rulemaking (NPRM).

2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of the proposed rule is to prevent an anticipated funding deficit in operating the SEVP. More specifically, this proposed rule would increase the SEVP funding stream by adjusting the I–901 F and M fee, I–901 J-Full fee, and I–17 Certification fee and instituting the I–17 Recertification fee and a fee for filing a motion or appeal. This proposed rule would also announce the collection of a site visit fee when an SEVP-certified school adds a new physical location or campus, at which it provides educational services to nonimmigrant students. The funding supports continuing operations and new initiatives critical to SEVP oversight of schools and the monitoring of nonimmigrant students in the F, M, and J visa classifications for national security purposes.

The legal basis for this proposed rule increasing the SEVP funding stream is grounded in the Homeland Security Act of 2002, which created DHS and imparted upon DHS the responsibility for SEVIS. DHS uses SEVIS to meet the monitoring and verification requirements under EBSVERA, Public Law 107–173, secs. 501–502, 116 Stat. 543, 560–63 (2002) (codified at 8 U.S.C. 1761–1762), and to conduct a recertification of schools every 2 years following the date of EBSVERA's enactment. The Secretary of Homeland Security is authorized to collect fees for SEVP from prospective F and M students and J exchange visitors. IIRIRA section 641(e)(1), as amended, 8 U.S.C. 1372(e)(1). Initially, fees for most groups of F, M, and J classes of prospective nonimmigrants were statutorily limited to not exceed $100, except in the case of the fee for special J visa categories—au pairs, camp counselors, and participants in summer work travel programs—which was set at $35 pursuant to 8 U.S.C. 1372(e)(4)(A). This fee level has been maintained consistent with Congressional intent. The Secretary is authorized to revise nonimmigrant fees on a periodic basis to account for changes in the cost of executing SEVP. IIRIRA section 641(g)(2), 8 U.S.C. 1372(g)(2). In addition, INA section 286(m), 8 U.S.C. 1356(m), provides that DHS may set fees ‘‘at a level that will ensure recovery of the full costs of providing [adjudication] services.''

3. A Description—and, Where Feasible, an Estimate of the Number—of Small Entities to Which the Proposed Rule Will Apply

This analysis does not apply to increases in the I–901 F and M fees because these fees are paid by individuals who are not, for purposes of the RFA, within the definition of small entities established by 5 U.S.C. 601(6). DHS believes that J fees are also paid by individuals and requests comment on this assumption.

As of May 2017, there were a total of 8,746 SEVP-certified schools that would be subject to the I–17 recertification fee, site visit fee, and fee to file a motion or an appeal. New schools applying for SEVP certification would be subject to the proposed I–17 initial certification fee. Of the 8,746 SEVP-certified schools, 2,013 have identified as public schools on their I–17 form. The remaining 6,733 schools have identified themselves on the Form I–17 as private for-profit, private nonprofit, or private unspecified entities.[14]

Of the 2,013 SEVP-certified public schools, DHS conducted a random sample of 100 [15] schools to approximate the number of public schools in a governmental jurisdiction with a population of less than 50,000. Out of the 100 public schools, 62, or 62 percent, are located in a city with a population fewer than 50,000. DHS infers 1,248 SEVP-certified public schools are considered a small entity as defined by SBA.

DHS conservatively assumes that all 1,507 private nonprofit schools certified by SEVP are small entities because they are not dominant in their fields. DHS also assumes that the 4,755 schools that are private unspecified are small entities. DHS requests comments on these assumptions.

To determine which of the remaining 471 private for-profit schools are considered a small entity, DHS references the Small Business Administration (SBA) size standards represented by business average annual receipts. Receipts are generally defined as a firm's total income or gross income. SBA's Table of Small Business Size Standards is matched to the North American Industry Classification System (NAICS) for industries.[16] DHS matches information provided by the schools in SEVIS regarding what programs of study it is engaged in with an appropriate NAICS industry description. NAICS is the standard classification used to categorize business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. economy.

DHS finds that the revenue of 332 of the 471 private, for-profit schools meet the SBA size standard of a small business according to their industry. DHS estimates each private school's annual receipts by multiplying the approximate annual cost of room, board, and tuition by the average annual number of total students, based on data provided by the schools on their Forms I–17. Every 2 years, as part of the recertification process, a school submits the approximate annual cost of room, board, and tuition per student and the average annual number of total students, both domestic and international. DHS acknowledges that this method to estimate receipts may be an incomplete account of a school's income, which may also include contributions from private individuals or other endowments. Since these data reflect a snapshot of all SEVP-certified schools as of May 24, 2017, DHS acknowledges there may be day-to-day changes in the status of a school's certification and that a school's revenue may differ from actual revenue due to a 2-year lag in school self-reporting before a school is required to recertify.

Given these assumptions, DHS estimates that 7,842 schools meet the SBA definition of a small entity. This is approximately 90 percent of the 8,746 of SEVP-certified schools included in this analysis.

Table 28 shows a summary by school type of the number of SEVP-certified schools and estimated small entities.

TABLE 28—SEVP-CERTIFIED SCHOOLS BY SCHOOL TYPE

Description	Total	Small entities
Public Schools	2,013	1,248
Private, nonprofit schools	1,507	1,507
Private, unspecified schools	4,755	4,755
Private, for-profit schools	471	332
Total Number of SEVP-Certified Schools	8,746	7,842

Table 29 provides a summary of the SEVP-certified schools by industry. The table also shows the NAICS industry description, the NAICS code, and the number of small and large schools by industry. Note that the number of small schools includes all nonprofits and unspecified private schools. Most industries with SEVP-certified schools consist of a majority of small schools.

[14] Prior to October 1, 2016, schools had two options in SEVIS to select their school type: Public or private unspecified. With the recent SEVIS update, schools can only choose one of three options: Public, private for-profit, or private nonprofit.

[15] The random sample helps ensure an accurate representation of the population with each school having an equal chance of being included. In determining the sample size DHS utilized a 90 percent confidence level (z-score), 10 percent margin of error (e), and a 50 percent population proportion (π) used as an unknown input and to maximize the estimate to overestimate sample size. The sample size equation used $n = z^2\pi(1-\pi)/e^2$ provided inputs $1.65^2(.5)(.5)/.01 = 69$ and rounded up to 100 to over sample. DHS identified geographic population data matched to the school's city address provided in SEVIS, sourced from U.S. Census Bureau 2010–2016 Cities and Towns (Incorporated Places and Minor Civil Divisions) at *https://www.census.gov/data/tables/2016/demo/popest/total-cities-and-towns.html.*

[16] U.S. Small Business Administration, Tables of Small Business Size Standards Matched to NAICS Codes (Oct. 1, 2017), available at *https://www.sba.gov/sites/default/files/files/Size_Standards_Table_2017.xlsx.*

TABLE 29—NUMBER OF SEVP-CERTIFIED SCHOOLS BY INDUSTRY

School industry	NAICS industry description	NAICS codes	Number of small schools	Number of non-small schools	Total SEVP-certified schools	Percent small schools
Elementary and Secondary Schools.	Industry primarily engaged in providing academic courses and related course work that contain a basic preparatory education. A basic preparatory education generally starts kindergarten through 12th grade.	611110	3,472	18	3,490	99
Junior Colleges	Industry primarily engaged in providing academic or technical courses and granting associate degrees, certificates, or diplomas below the baccalaureate level.	611210	11	2	13	85
Colleges, Universities, and Professional Schools.	Industry primarily engaged in providing academic courses and granting degrees at baccalaureate or graduate levels. The requirement for admission is at least a high school diploma or equivalent general academic training.	611310	2,150	57	2,207	97
Computer Training	Industry primarily engaged in providing computer training (except computer repair), such as computer programming, software packages, computerized business systems, computer electronics technology, computer operations, and local area network management.	611420	13	0	13	100
Professional and Management Development Training.	Industry primarily engaged in providing a collection of short interval courses and sessions for management and professional development. Training for career development may be provided directly to individuals or through employers' training programs, and courses may be customized or modified to meet the special needs of customers.	611430	18	0	18	100
Cosmetology and Barber Schools.	Industry primarily engaged in providing training in hair styling, barbering, or cosmetic arts, such as makeup or skin care.	611511	91	3	94	97
Flight Training	Industry primarily engaged in providing aviation and flight training.	611512	199	1	200	100
Apprenticeship Training ..	Industry primarily engaged in providing apprenticeship training programs.	611513	39	1	40	98
Other Technical and Trade Schools.	Industry primarily engaged in providing job or career vocational or technical courses (except cosmetology and barber training, aviation and flight training, and apprenticeship training).	611519	183	6	189	97
Fine Arts Schools	Establishments primarily engaged in offering instruction in the arts, including dance, art, drama, and music.	611610	79	3	82	96
Sports and Recreation Instruction.	Industry primarily contains institutions such as camps and schools, primarily engaged in providing instruction in athletic activities to groups of individuals.	611620	10	0	10	100
Language Schools	Industry primarily engaged in providing foreign language instruction (including sign language).	611630	286	44	330	87
Exam Preparation and Tutoring.	Industry primarily engaged in providing training for standardized examinations and/or educational tutoring services.	611691	8	4	12	67
All Other Misc. Schools and Instruction.	Industry primarily engaged in providing instruction (except academic schools, colleges and universities, business, computer, management, technical, trade, fine arts, athletic, language instruction, tutoring, and automobile driving instruction).	611699	32	0	32	100
Educational Support Services.	Industry primarily engaged in providing non-instructional services that support educational processes or systems.	611710	2	0	2	100
Public Schools (Elementary, Secondary, and High School).	Industry primarily engaged in providing academic courses and related course work that contain a basic public education.	N/A	1,248	765	2,013	62
Total	....	....	7,842	904	8,746	90

Table 30 presents the type of schools with active F and M students and the percent of students enrolled in small schools. Most F and M students are enrolled at small schools. Of the 8,746 SEVP-certified schools, DHS identified 1,728 with no active F or M students and determined that 1,296 of these are considered small entities as defined by SBA. Note that although there are two SEVP-certified schools in the education support services industry (shown in Table 29), there are no active F and M students in these schools. DHS applies the results of the sample of SEVP-certified public schools to the number of students in SEVP-certified public schools (619,295) to estimate that the number of students in small SEVP-certified public schools is 383,963.

TABLE 30—TOTAL NUMBER OF ACTIVE F AND M STUDENTS BY INDUSTRY

School industry	Total active F and M students in small schools	Total active F and M students	Percent of students at small schools
Elementary and Secondary Schools	60,990	63,491	96
Junior Colleges	409	418	98
Colleges, Universities, and Professional Schools	419,593	429,784	98
Computer Training	404	404	100
Professional and Management Development Training	217	217	100
Cosmetology and Barber Schools	91	93	98
Flight Training	6,598	6,605	100
Apprenticeship Training	71	75	95
Other Technical and Trade Schools	1,108	1,111	100
Fine Arts Schools	1,736	2,030	86
Sports and Recreation Instruction	13	13	100
Language Schools	33,500	41,867	80
Exam Preparation and Tutoring	1,469	1,984	74
All Other Miscellaneous Schools and Instruction	218	218	100
Educational Support Services	....	....	0
Public Schools	383,963	619,295	62

DHS estimated SEVP-certified public schools' revenue to examine the impact of the proposed fee adjustments on small public schools. The tuition provided by public schools in SEVIS may not represent a public school's total revenue because most of the U.S. students would generally not pay the tuition provided to attend public schools. Instead, DHS assumes that a public school's county or city's tax revenue is the best revenue source against which to assess the impact of the proposed fee adjustments. DHS collected local government revenue, expenditure, debt, and assets from the U.S. Census Bureau 2015 State and Local Government Survey[17] to examine the impact of the increased fees on the public schools included in the sample. A county or city's revenue may be an overestimation of a public school's capability to pay the fees related to SEVP-certification, appeals, or site visits for new locations. This revenue approximation may minimize the impact of the fee adjustments for public schools. DHS requests comments on these assumptions.

Table 31 displays the range of annual revenue by each school industry and for public schools, from the small school with the lowest revenue to the median revenue of all the small schools to the small school with the largest revenue. It also shows the average revenue of all the small schools in that industry. The Colleges, Universities, and Professional Schools industry has the widest range from maximum to minimum revenue due to the assumption that all private, unspecified schools are small entities, while the Educational Support Services industry that only has two schools included has the smallest range of maximum to minimum revenue for any one industry.

TABLE 31—RANGE OF ANNUAL REVENUE BY SCHOOL INDUSTRY

School industry	Lowest annual revenue	Median annual revenue	Largest annual revenue	Average annual revenue
Elementary and Secondary Schools	$28,800	$5,116,550	$1,680,000,000	$13,194,355
Junior Colleges	44,400	2,560,000	15,255,000	4,271,901
Colleges, Universities, and Professional Schools	26,400	28,432,500	5,002,524,120	96,761,518
Computer Training	425,000	3,000,000	14,000,000	3,881,631
Professional and Management Development Training	129,600	717,500	2,904,625	1,000,423
Cosmetology and Barber Schools	70,000	2,183,000	66,907,200	4,092,673
Flight Training	36,000	3,000,000	60,000,000	5,959,154
Apprenticeship Training	132,000	10,265,875	106,080,000	21,004,563
Other Technical and Trade Schools	64,000	2,800,000	82,800,000	7,570,939
Fine Arts Schools	66,000	2,895,000	130,000,000	9,425,304
Sports and Recreation Instruction	276,800	1,165,000	9,312,500	2,626,805
Language Schools	118,500	5,725,000	108,000,000	7,514,433
Exam Preparation and Tutoring	3,150,000	5,043,189	27,000,000	6,983,297
All Other Miscellaneous Schools and Instruction	83,250	845,000	469,050,000	18,359,767
Educational Support Services	340,000	521,750	703,500	521,750
Public Schools	4,389,000	192,353,500	17,833,251,000	1,315,830,548

[17] Available at *https://www.census.gov/govs/local/.*

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Types of Professional Skills Necessary for Preparation of the Report or Record

The proposed rule would increase and establish additional fees for educational institutions in support of SEVP operations. DHS estimates the annual impact to small schools based on the school cost of compliance as represented as a percentage of their annual revenue. Table 32 displays the proposed fees, the current fees, and the difference in these amounts. This analysis examines the impact that the proposed incremental fee for the Form I–17 certification and the proposed fees for recertification, site visits to add a new physical location or campus, and the filing of a motion or an appeal would have on small SEVP-certified schools.

TABLE 32—PROPOSED SCHOOL FEES BY TYPE

Fee type	Proposed fee	Current fee	Difference (proposed − current)	Percent increase
I–17 Certification Fee	$3,000	$1,700	$1,300	76
I–17 Recertification Fee	1,250	0	1,250	N/A
Site Visit Fee—initial	655	655	0	0
Site Visit Fee—new location	655	0	655	N/A
Motion or Appeal Fee	675	0	675	N/A

I–17 Certification Fee

A school files a petition and pays a certification fee to become eligible to issue the Form I–20, ‘‘Certificate of Eligibility for Nonimmigrant Student Status,’’ to prospective international students after admitting them for a course of study. Certification also authorizes the school to enroll international students after they enter the country on an F or M student visa. Schools must initially go through the vetting process for authorization by DHS to enroll F and/or M nonimmigrant students and pay the I–17 certification fee, which is currently $1,700 and proposed to increase to $3,000. The incremental fee is the difference between the proposed fee ($3,000) and current fee ($1,700), or $1,300. From 2012 to 2016, DHS processed 2,117 I–17 petitions and payments. Out of the 2,117 schools, 1,151, or 54 percent, were identified as meeting the SBA definition of a small school, or estimated to be a small public school based on the sample conducted, as illustrated in Table 33.

TABLE 33—I–17 INITIAL CERTIFICATIONS FYS 2012–2016

Fiscal year	Total I–17 initial certifications	Small school I–17 initial certifications	Percent of small school I–17 initial certifications
2012	457	236	52
2013	382	218	57
2014	446	270	60
2015	469	260	55
2016	363	167	46
Total	2,117	1,151	54
2014–2016 3-year annual average	426	232	55

SEVP forecasted the total I–17 initial certifications in FY 2019 and FY 2020 to be 426 using the 3-year annual average of FY 2014 through 2016 initial certifications. Using that same methodology, 232 small schools applied for initial I–17 certification on average each year. DHS assumes the growth of small schools per industry seeking SEVP certification will remain constant in the future. DHS multiplied the annual average number of small schools applying for initial certification by the percent of small schools in each industry, as presented in Table 29. This calculation yields the number of small schools expected to petition for initial I–17 certification by industry. The results are presented in Table 34.

TABLE 34—EXPECTED ANNUAL NUMBER OF SMALL SCHOOLS TO INITIALLY CERTIFY BY SCHOOL INDUSTRY

School industry	Annual number of small schools applying for initial certification
Elementary and Secondary Schools	103
Junior Colleges	0
Colleges, Universities, and Professional Schools	64
Computer Training	0
Professional and Management Development Training	1

TABLE 34—EXPECTED ANNUAL NUMBER OF SMALL SCHOOLS TO INITIALLY CERTIFY BY SCHOOL INDUSTRY—Continued

School industry	Annual number of small schools applying for initial certification
Cosmetology and Barber Schools	3
Flight Training	6
Apprenticeship Training	1
Other Technical and Trade Schools	5
Fine Arts Schools	2
Sports and Recreation Instruction	0
Language Schools	8
Exam Preparation and Tutoring	0
All Other Miscellaneous Schools and Instruction	1
Educational Support Services	0
Public Schools	37
Total Small Schools	232

This analysis examines the impact the $1,300 incremental fee has on small schools that might seek initial certification after the final rule is effective. DHS assumes that the range of revenue of the small schools that will apply for certification is similar to the range of revenue of current SEVP-certified small schools and uses this range to show the potential impacts. Table 35 shows the impact as a percentage for the schools with the lowest annual revenue, median annual revenue, and largest annual revenue, as well as the average annual revenue for all schools in that industry. From these results, DHS does not expect the I–17 certification incremental fee to have an impact greater than 1 percent on the average small school annual revenue. However, there is an expected impact greater than 1 percent for some small schools with the lowest annual revenue in their industry. On average the estimated 194 small schools that apply for initial I–17 certification annually and pay an incremental fee of $1,300 will experience an impact of less than 1 percent of their estimated annual revenue.

TABLE 35—INITIAL CERTIFICATION FEE IMPACT FOR SMALL SCHOOLS BY TYPE OF SCHOOL

Type of school	I–17 initial certification incremental fee impact on the school with the lowest revenue (percent)	I–17 initial certification incremental fee impact on the school with the median revenue (percent)	I–17 initial certification incremental fee impact on the school with the largest revenue (percent)	I–17 initial certification incremental fee impact on the average school revenue (percent)
Elementary and Secondary Schools	4.5	0.0	0.0	0.01
Junior Colleges	2.9	0.1	0.0	0.03
Colleges, Universities, and Professional Schools	4.9	0.0	0.0	0.00
Computer Training	0.3	0.0	0.0	0.03
Professional and Management Development Training	1.0	0.2	0.0	0.13
Cosmetology and Barber Schools	1.9	0.1	0.0	0.03
Flight Training	3.6	0.0	0.0	0.02
Apprenticeship Training	1.0	0.0	0.0	0.01
Other Technical and Trade Schools	2.0	0.0	0.0	0.02
Fine Arts Schools	2.0	0.0	0.0	0.01
Sports and Recreation Instruction	0.5	0.1	0.0	0.05
Language Schools	1.1	0.0	0.0	0.02
Exam Preparation and Tutoring	0.0	0.0	0.0	0.02
All Other Miscellaneous Schools and Instruction	1.6	0.2	0.0	0.01
Educational Support Services	0.4	0.2	0.2	0.25
Public Schools	0.0	0.0	0.0	0.0

I–17 Recertification Fee

SEVP-certified schools are required to file for recertification every 2 years to demonstrate that they have complied with all recordkeeping, retention, reporting, and other requirements when registering F and M students. There is currently no fee charged to schools for recertification, but this proposed rule establishes a new fee for that process.

To measure the impact on small schools, DHS first estimated the number of small schools that will recertify. DHS assumes 50 percent (4,373) of the total number of schools in this analysis (8,746) will recertify each year. DHS multiplies the recertification rate of 50 percent by the total number of small schools to generate the estimation that 3,921 [18] small schools will recertify annually. DHS examined all 7,842 small SEVP-certified schools to determine the impact of the recertification fee, as it is assumed that a significant number of the schools will pursue recertification within the next 2 years.

[18] 7,842 × 50 percent = 3,921 small schools recertifying each year.

DHS assumes that the total number of SEVP-certified schools will remain static as new schools become certified and other schools withdraw certification. DHS therefore assumes that the annual increase of total recertifications will be zero.

As previously discussed, DHS identified 1,296 SBA-defined small schools with no active F or M international students. DHS included these schools in this analysis and assumes they will opt to pay the recertification fee of $1,250 rather than reapplying for initial certification with a proposed fee of $3,000 at such time in the future that they enroll F or M students.

Table 36 illustrates the number of small schools that will recertify by industry and the I–17 recertification incremental fee impact as a percent of the small school's annual revenue. From these findings, of the 7,842 small schools expected to apply for recertification and pay the proposed fee of $1,250, 50 schools, or 0.6 percent, will experience an impact greater than 1 percent but less than 3 percent of the school's annual revenue. For the remaining schools, DHS does not expect the incremental fee to have an impact of greater than 1 percent.

TABLE 36—RECERTIFICATION FEE IMPACT FOR SMALL SCHOOLS BY TYPE OF SCHOOL

School industry	0%<Impact≤1%	1%<Impact≤2%	2%<Impact<3%	Total
Elementary and Secondary Schools	3,458	7	7	3,472
Junior Colleges	10	0	1	11
Colleges, Universities, and Professional Schools	2,135	12	4	2,150
Computer Training	13	0	0	13
Professional and Management Development Training	18	0	0	18
Cosmetology and Barber Schools	89	2	0	91
Flight Training	196	1	2	199
Apprenticeship Training	39	0	0	39
Other Technical and Trade Schools	175	8	0	183
Fine Arts Schools	76	3	0	79
Sports and Recreation Instruction	10	0	0	10
Language Schools	285	1	0	286
Exam Preparation and Tutoring	8	0	0	8
All Other Miscellaneous Schools and Instruction	30	2	0	32
Educational Support Services	2	0	0	2
Public Schools	1,248	0	0	1,248
Total Small Schools	7,792	36	14	7,842

Site Visit Fee

Current regulations provide authority for SEVP to charge a site visit fee to schools that apply for initial certification or add a new physical location or campus. The site visit allows SEVP an opportunity to gather evidence on the school's eligibility, review school facilities, and interview personnel listed on the I–17 petition as a PDSO or DSO. SEVP currently collects the $655 fee when a school files a petition for certification to issue Forms I–20 or by a certified school when it physically moves to a new location. This proposed rule notifies the public that SEVP plans to collect the fee from any certified school that adds a new campus or physical location by updating its Form I–17 in SEVIS, consistent with 8 CFR 214.3(h)(3) and the agency's description when it established the fee in 2008 that such a fee could apply to such an initial event. 73 FR 55683, 55691.

SEVP performs 600 site visits annually. Of these site visits, 426 would be performed as part of the forecasted initial certifications, leaving the capacity for 174 site visits to be performed when a school adds a campus. In order to estimate the impact on a school's revenue of the proposed charging of the site visit fee for a new instructional campus, DHS assumes that any of the currently SEVP-certified schools could add a campus and require a site visit. Table 37 shows the proposed site visit fee impact on estimated annual revenue for all 7,842 small schools certified by SEVP and the type of school. Of the total 7,842 small schools, 7,827, or 99.8 percent, would have a site visit fee impact of less than or equal to 1 percent of their annual revenue. Twelve small schools, or 0.2 percent of small schools, would have an impact of greater than 1 percent but less than or equal to 2 percent of their annual revenue. Three small schools would have a site visit fee impact greater than 2 percent but less than 3 percent of their annual revenue.

TABLE 37—SITE VISIT FEE IMPACT ON ESTIMATED ANNUAL REVENUE

Type of school	0%<Impact≤1%	1%<Impact≤2%	2%<Impact<3%	Total
Elementary and Secondary Schools	3,465	5	2	3,472
Junior Colleges	10	1	0	11
Colleges, Universities, and Professional Schools	2,146	3	1	2,150
Computer Training	13	0	0	13
Professional and Management Development Training	18	0	0	18
Cosmetology and Barber Schools	91	0	0	91
Flight Training	197	2	0	199
Apprenticeship Training	39	0	0	39
Other Technical and Trade Schools	182	1	0	183
Fine Arts Schools	79	0	0	79
Sports and Recreation Instruction	10	0	0	10
Language Schools	286	0	0	286
Exam Preparation and Tutoring	8	0	0	8

TABLE 37—SITE VISIT FEE IMPACT ON ESTIMATED ANNUAL REVENUE—Continued

Type of school	0%<Impact≤1%	1%<Impact≤2%	2%<Impact<3%	Total
All Other Miscellaneous Schools and Instruction	32	0	0	32
Educational Support Services	2	0	0	2
Public Schools	1,248	0	0	1,248
Total Small Schools	7,827	12	3	7,842

Fee To File an Appeal or Motion

When a school is denied certification or recertification, the school receives a denial letter through certified mail. The denial letter explains the reason for the denial and the steps to appeal. The school can appeal by completing the Form I–290B, ''Notice of Appeal or Motion,'' within 30 days of receipt. This rule proposes that SEVP impose a $675 filing fee for submission of the Form I–290B.[19] Currently no fee is imposed when a school submits the Form I–290B for a motion or appeal.

DHS processed 215 motions and appeals from schools from 2013 to 2016. Out of the 215 school motions and appeals, DHS determined that 74, or 34.4 percent, were filed by small schools. Among the 74 small schools, 4 had 2 appeals within the same year or over the 4-year period. During the 4-year period, there was an average of 19 appeals and motions filed by small schools annually.

DHS examined all 7,842 small schools to estimate the impact of the proposed appeal and motion fee on estimated annual revenue. The impact is calculated by dividing the fee to file a motion or appeal by the school's estimated annual revenue. Of the 7,842 SEVP-certified small schools, 7,826, or 99.8 percent, would experience an impact less than or equal to 1 percent of their estimated annual revenue were the school to file an appeal or motion. DHS estimates 13 small schools, or 0.2 percent, would realize an impact between 1 percent and 2 percent of their estimated annual revenue. In addition, three small schools, or 0.04 percent, would experience an impact greater than 2 percent but less than 3 percent of estimated annual revenue. Table 38 shows the number of small schools within the range of impact to each school's estimated annual revenue.

TABLE 38—APPEAL AND MOTION FEE IMPACT ON ESTIMATED ANNUAL REVENUE

Type of school	0%<Impact≤1%	1%<Impact≤2%	2%<Impact<3%	Total
Elementary and Secondary Schools	3,465	5	2	3,472
Junior Colleges	10	1	0	11
Colleges, Universities, and Professional Schools	2,146	3	1	2,150
Computer Training	13	0	0	13
Professional and Management Development Training	18	0	0	18
Cosmetology and Barber Schools	91	0	0	91
Flight Training	197	2	0	199
Apprenticeship Training	39	0	0	39
Other Technical and Trade Schools	182	1	0	183
Fine Arts Schools	78	1	0	79
Sports and Recreation Instruction	10	0	0	10
Language Schools	286	0	0	286
Exam Preparation and Tutoring	8	0	0	8
All Other Miscellaneous Schools and Instruction	32	0	0	32
Educational Support Services	2	0	0	2
Public Schools	1,248	0	0	1,248
Total Small Schools	7,826	13	3	7,842

The potential total impact on small entities in any year can be determined by examining scenarios in which a school may pay more than one of the proposed adjustments in fees in the same year. DHS examines the following scenarios and determines that the impact on any small school's revenue is less than three percent on any school industry type: (1) A school appeals an initial certification or (2) a school appeals a recertification and adds a new location requiring a site visit.

A school may pay the initial certification fee and then it may appeal the results of the initial certification within the same year. DHS proposes that this would be an increase of $1,975 ($1,300 incremental fee for I–17 initial certification plus $675 fee for an appeal). More than 98 percent of schools would be impacted less than one percent in this scenario, as shown in Table 39. The impacts of this scenario would be greater than the impacts of scenario where a school appeals a recertification, which would add to $1,925 in increased fees ($1,250 I–17 recertification fee plus $675 for an appeal).

TABLE 39—IMPACT OF INITIAL CERTIFICATION FEE INCREASE PLUS AN APPEAL FEE

Type of school	0%<Impact≤1%	1%<Impact≤2%	2%<Impact<3%	Total
Elementary and Secondary Schools	3,440	21	11	3,472

[19] USCIS, I–290B, Notice of Appeal or Motion, Filing Fee, *https://www.uscis.gov/i-290b.*

TABLE 39—IMPACT OF INITIAL CERTIFICATION FEE INCREASE PLUS AN APPEAL FEE—Continued

Type of school	0%<Impact≤1%	1%<Impact≤2%	2%<Impact<3%	Total
Junior Colleges	10	0	1	11
Colleges, Universities, and Professional Schools	2,126	15	10	2,151
Computer Training	13	0	0	13
Professional and Management Development Training	15	3	0	18
Cosmetology and Barber Schools	89	1	1	91
Flight Training	192	4	3	199
Apprenticeship Training	37	2	0	39
Other Technical and Trade Schools	171	9	3	183
Fine Arts Schools	74	2	3	79
Sports and Recreation Instruction	10	0	0	10
Language Schools	282	4	0	286
Exam Preparation and Tutoring	8	0	0	8
All Other Miscellaneous Schools and Instruction	26	4	2	32
Educational Support Services	2	0	0	2
Public Schools	1,248	0	0	1,248
Total Small Schools	7,743	64	35	7,842

A school may seek recertification in the same year it adds a new physical location or campus that requires a site visit and then it may appeal the findings of a recertification. A recertification fee would not include a site visit to a new location. DHS proposes that this would be an increase of $2,580 ($1,250 I–17 recertification fee plus $655 for a site visit at a new location plus $675 for an appeal). Under this scenario, the impact on small schools' revenue would be less than one percent for all but 139 small schools. The impact on these 139 schools' revenues would be less than three percent as shown in Table 40.

TABLE 40—IMPACT OF RECERTIFICATION FEE PLUS A SITE VISIT—NEW LOCATION FEE PLUS AN APPEAL FEE

Type of school	0%<Impact≤1%	1%<Impact≤2%	2%<Impact<3%	Total
Elementary and Secondary Schools	3,426	28	18	3,472
Junior Colleges	10	0	1	11
Colleges, Universities, and Professional Schools	2,110	24	17	2,151
Computer Training	13	0	0	13
Professional and Management Development Training	15	3	0	18
Cosmetology and Barber Schools	87	2	2	91
Flight Training	191	5	3	199
Apprenticeship Training	37	2	0	39
Other Technical and Trade Schools	167	8	8	183
Fine Arts Schools	74	2	3	79
Sports and Recreation Instruction	10	0	0	10
Language Schools	279	6	1	286
Exam Preparation and Tutoring	8	0	0	8
All Other Miscellaneous Schools and Instruction	26	4	2	32
Educational Support Services	2	0	0	2
Public Schools	1,248	0	0	1,248
Total Small Schools	7,703	84	55	7,842

5. An Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

DHS is unaware of any relevant Federal fee rule that may duplicate, overlap, or conflict with the proposed rule.

6. A Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

SEVP examined several alternatives to the proposed fee structure, including no increase to any fee, only increasing the I–901 SEVIS fee and I–17 fee, and not subsidizing the school fees with the I–901 F and M fees.

Without an increase in fees, SEVP will be unable to maintain the level of service for students and schools that it currently provides as well as the compliance and national security activities discussed above. SEVP considered the alternative of maintaining fees at the current level but with reduced services and increased processing times, but has decided that this would not be in the best interest of applicants and schools. SEVP seeks to minimize the impact on all parties, but in particular small entities. SEVP must pay for the expenses of maintaining and improving SEVIS and adjudicating schools in a timely manner. If SEVP followed this alternative scenario, there would be a shortfall of revenue to cover the expenses of over $65.4 million in FY 2019. SEVP rejected this alternative, as SEVP must pay for the expenses of maintaining and improving SEVIS and certifying and recertifying schools in a timely manner.

SEVP also considered only raising the I–901 and I–17 certification fees instead of including new proposed fees for recertification and for filing a motion or appeal. If SEVP followed this scenario, the I–901 F and M fee would increase to $350 to cover the shortfall in revenue, but the I–17 Initial Certification fee would also increase to $4,200. This would triple the existing certification fee while continuing to allow schools with no foreign students to remain active SEVP schools that require SEVP effort for recertification. SEVP rejected this fee structure as it would continue to add workload to SEVP's recertification branch. Without a disincentive to not recertify, the list of schools recertifying would never stop growing. SEVP rejected this alternative because the proposed fees would establish a more equitable distribution of costs and a more sustainable level of cost recovery relative to the services provided as compared to this alternative.

SEVP also considered the results of the ABC model as an alternative, which allocated the I–901 F and M fee, school certification fees, and the fee to file an appeal or motion as shown in Table 41.

TABLE 41—UNSUBSIDIZED FEE AMOUNTS

Fee type	Unsubsidized fee amounts
I–901 F and M	$290
I–901 J-Full	130
I–901 J-Partial	130
I–17 Initial Certification	4,600
I–17 Recertification	6,000
Appeal or Motion	38,475
Site Visit	650

SEVP rejected this alternative for several reasons. Setting the fee at $38,475 may discourage schools from filing a motion or appeal.

Similarly, SEVP rejected the alternative of setting the recertification fee at $6,000. A recertification fee higher than the initial certification fee would discourage schools from seeking recertification.

SEVP instead proposes to set the recertification fee at a level is less than the initial certification fee. When schools can maintain their certification, F and M nonimmigrant students enrolled in the withdrawn school avoid complications such as being forced to transfer schools, leave the United States, or risk facing immigration law penalties for violating the terms of their nonimmigrant status.

SEVP also rejected the initial certification fee of $4,600 because it finds that an increase of almost three times the current fee of $1,700 is excessive. In the fee development, DHS balanced the challenge of minimizing the costs to schools and students while recovering funding to support SEVP services. The population of I–901 F and M students relative to the population of I–17 schools allows for a minimal fee adjustment to be spread over the student population to reduce the cost burden on individual institutions seeking recertification. DHS requests comment on the impacts on small entities of the unsubsidized fee amounts, impacts on small entities of the proposed fee amounts, and other ways in which DHS could modify the proposed rule to reduce burdens for small entities or better ensure that the burdens on small entities, individuals, and others subject to the rule are appropriately distributed.

C. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, 109 Stat. 48 (codified at 2 U.S.C. 1501 *et seq.*), requires federal agencies to assess the effects of their discretionary regulatory actions. In particular, UMRA addresses actions that may result in the expenditure by a State, local, or tribal government in the aggregate or by the private sector of $100 million (adjusted for inflation) or more in any 1 year. 2 U.S.C. 1532(a). Though this rule would not result in such an expenditure, DHS does discuss the effects of this rule elsewhere in this preamble. In addition, DHS maintains that this rulemaking is not a ''Federal mandate,'' as defined for UMRA purposes, 2 U.S.C. 658(6), as the payment of an SEVP certification fee by individuals, local governments, or other private sector entities is (to the extent it could be termed an enforceable duty) one that arises from participation in a voluntary Federal program (*i.e.,* applying for status as F–1, F–3, M–1, or M–3 students or as a J–1 exchange visitor in the United States or seeking approval from the United States for attendance by certain aliens seeking status as F–1, F–3, or M–1 students). 2 U.S.C. 658(7)(A)(ii). For these reasons, no additional actions were deemed necessary under the provisions of the UMRA.

D. Congressional Review Act

This rulemaking is not a major rule, as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking pursuant to the Congressional Review Act, Public Law 104–121, sec. 251, 110 Stat. 868, 873 (codified at 5 U.S.C. 804). This rulemaking would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets. If implemented as proposed, DHS will submit to Congress and the Comptroller General of the United States a report about the issuance of the final rule prior to its effective date, as required by 5 U.S.C. 801(a)(1).

E. Small Business Regulatory Enforcement Fairness Act of 1996

Pursuant to Section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, 110 Stat. 847, 858–59, DHS wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult ICE using the contact information provided in the **FOR FURTHER INFORMATION CONTACT** section.

F. Executive Order 13132: Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. DHS has analyzed this proposed rule under that Order and has determined that it does not have implications for federalism.

G. Executive Order 12988: Civil Justice Reform

This proposed rule meets the applicable standards set forth in 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

H. Energy Effects

DHS has analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. DHS has determined that it is not a ''significant energy action'' under that order because it is a ''significant regulatory action'' under Executive Order 12866 but is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. Environment

The U.S. Department of Homeland Security Management Directive (MD) 023–01 Rev. 01 establishes procedures that DHS and its Components use to comply with the National Environmental Policy Act of 1969 (NEPA), Public Law 91–190, 83 Stat. 852 (codified at 42 U.S.C. 4321–4375), and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508. CEQ regulations allow federal agencies to establish categories of actions that do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment or Environmental Impact Statement. 40 CFR 1508.4. The MD 023–01 Rev. 01 lists the Categorical Exclusions that DHS has found to have no such effect. MD 023–01 Rev. 01, Appendix A, Table 1.

For an action to be categorically excluded, MD 023–01 Rev. 01 requires the action to satisfy each of the following three conditions:

(1) The entire action clearly fits within one or more of the Categorical Exclusions.

(2) The action is not a piece of a larger action.

(3) No extraordinary circumstances exist that create the potential for a significant environmental effect. MD 023–01 Rev. 01 section V.B(1)–(3).

Where it may be unclear whether the action meets these conditions, MD 023–01 Rev. 01 requires the administrative record to reflect consideration of these conditions. MD 023–01 Rev. 01 section V.B.

DHS has analyzed this proposed rule under MD 023–01 Rev. 01. DHS has made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule clearly fits within the Categorical Exclusion found in MD 023–01 Rev. 01, Appendix A, Table 1, number A3(a): ‘‘Promulgation of rules . . . of a strictly administrative or procedural nature’’; and A3(d): ‘‘Promulgation of rules . . . that interpret or amend an existing regulation without changing its environmental effect.’’ This proposed rule is not part of a larger action. This proposed rule presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this proposed rule is categorically excluded from further NEPA review.

J. Paperwork Reduction Act

All Departments are required to submit to OMB for review and approval any reporting or recordkeeping requirements inherent in a rule under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (codified at 44 U.S.C. 3501 *et seq.*). Schools use SEVIS to petition for recertification. The recertification process requires schools to input data in SEVIS, print the Form I–17, and sign the form. The electronic data captured for the Form I–17 have been previously approved for use by OMB as one component of the data that are captured in SEVIS. The OMB Control Number for this collection is 1653–0038 (previously 1615–0066 before being transferred from USCIS to ICE). With the regulatory implementation of SEVIS (67 FR 60107, Sept. 25, 2002), most schools enrolled in SEVIS were petitioning for DHS recertification, rather than initial certification (*i.e.,* enrolling F or M nonimmigrant students for the first time). The workload for both certification and recertification was included under OMB 1615–0066.

The changes to the certification and recertification fees, as well as the I–901 fees, would require changes to SEVIS and the I–901 software to reflect the updated fee amounts, as these systems generate the pertinent petition and application forms. DHS would submit a revision to OMB with respect to any changes to existing information collection approvals.

DHS's institution of the fee for a motion or appeal with regard to a denial of school certification or recertification, or a withdrawal of such certification, would not require a form amendment to reflect the charging of the fee. The instructions associated with the Form I–290B, which schools can currently use for such motions and appeals, contain information regarding the use associated with Form I–17 decisions and the $675 fee.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of Information, Immigration, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

The Proposed Amendments

For the reasons set forth in the preamble, the Department of Homeland Security proposes to amend 8 CFR parts 103 and 214 of Chapter I of Title 8 of the Code of Federal Regulations as follows:

PART 103—IMMIGRATION BENEFITS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1365b; 31 U.S.C. 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2; Pub. L. 112–54.

■ 2. Amend § 103.7 by revising paragraphs (b)(1)(ii)(B) and (H) and adding paragraph (b)(1)(ii)(O) to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) Petition for Approval of School for Attendance by Nonimmigrant Student (*Form I–17*). For filing a petition for school certification: $3,000, plus:

(*1*) A site visit fee of $655 for each location required to be listed on the form,, and

(*2*) For filing a petition for school recertification: $1,250.

* * * * *

(H) Fee Remittance for Certain F, J, and M Nonimmigrants (*Form I–901*). The fee for Form I–901 is:

(1) For F and M students: $350.

(2) For J–1 au pairs, camp counselors, and participants in a summer work or travel program: $35.

(3) For all other J exchange visitors (except those participating in a program sponsored by the Federal Government): $220.

(4) There is no Form I–901 fee for J exchange visitors in federally funded programs with a program identifier designation prefix that begins with G–1, G–2, G–3, or G–7.

* * * * *

(O) *Notice of Appeal or Motion (Form I–290B) filed with ICE SEVP.* For a Form I–290B ‘‘Notice of Appeal or Motion,’’ filed with the Student and Exchange Visitor Program (SEVP): $675.

* * * * *

PART 214—NONIMMIGRANT CLASSES

■ 3. The authority citation for part 214 is revised to read as follows:

Authority: 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305, and 1372; section 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively, 48 U.S.C. 1806; 8 CFR part 2.

■ 4. Amend § 214.3 by revising paragraph (h)(2) to read as follows:

§ 214.3 Approval of schools for enrollment of F and M nonimmigrants.

* * * * *

(h) * * *

(1) * * *

(2) *Recertification.* Schools are required to file a completed petition for SEVP recertification before the school's certification expiration date, which is 2 years from the date of their previous SEVP certification or recertification expiration date. The school must submit the proper nonrefundable recertification petition fee as provided in 8 CFR 103.7(b)(1)(ii)(B). SEVP will review a petitioning school's compliance with the recordkeeping, retention, and reporting, and other requirements of paragraphs (f), (g), (j), (k), and (l) of this section, as well as continued eligibility for certification, pursuant to paragraph (a)(3) of this section.

■ 5. Amend § 214.4 by revising the heading and paragraphs (a)(1) and (h) to read as follows:

§ 214.4 Denial of certification, denial of recertification, or withdrawal of SEVP certification.

(a) *General*—(1*) Denial of certification.* The petitioning school will be notified of the reasons and its appeal rights if a petition for certification is denied, in accordance with the provisions of 8 CFR 103.3(a)(1)(iii). A petitioning school denied certification may file a new petition for certification at any time.

* * * * *

(h) *Appeals.* A school may file an appeal of a denial or withdrawal no later than 15 days after the service of the decision by ICE. The appeal must state the reasons and grounds for contesting the denial or withdrawal of the approval. The appeal must be accompanied by the fee as provided in 8 CFR 103.7(b)(1)(ii)(O).

* * * * *

■ 6. Amend § 214.13 by revising paragraph (a) to read as follows:

§ 214.13 SEVIS fee for certain F, J, and M nonimmigrants.

(a) *Applicability.* The following aliens are required to submit a payment in the amount indicated for their status to the Student and Exchange Visitor Program (SEVP) in advance of obtaining nonimmigrant status as an F or M student or J exchange visitor, in addition to any other applicable fees, except as otherwise provided for in this section:

(1) An alien who applies for F–1 or F–3 status in order to enroll in a program of study at an SEVP-certified institution of higher education, as defined in section 101(a) of the Higher Education Act of 1965, as amended, or in a program of study at any other SEVP-certified academic or language training institution, including private elementary and secondary schools and public secondary schools, the amount of $350;

(2) An alien who applies for J–1 status in order to commence participation in an exchange visitor program designated by the Department of State (DoS), the amount of $210, with a reduced fee for certain exchange visitor categories as provided in paragraphs (b)(1) and (c) of this section; and

(3) An alien who applies for M–1 or M–3 status in order to enroll in a program of study at an SEVP-certified vocational educational institution, including a flight school, in the amount of $350.

* * * * *

Claire M. Grady,

Deputy Secretary (Acting).

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