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Contents

Federal Register

Vol. 84, No. 192

Thursday, October 3, 2019

Agriculture Department

See Commodity Credit Corporation

See Farm Service Agency

See Food and Nutrition Service

See Rural Housing Service

See Rural Utilities Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 52868

Children and Families Administration

NOTICES

Intent to Award Three OPDIV-Initiated Supplements for Grantees under the Direct Services for Survivors of Torture Program, 52884–52885

Civil Rights Commission

NOTICES

Meetings:
California Advisory Committee, 52870–52871

Coast Guard

RULES

Safety Zones:

Humboldt Bay Bar and Entrance Channel, Eureka, CA,
Noyo River Entrance Channel, Ft. Bragg, CA, and
Crescent City Harbor Entrance Channel, Crescent
City, CA, 52763–52765

PROPOSED RULES

Safety Zones:

Hurricanes, Tropical Storms and Other Disasters in South
Florida, 52835–52838

Commerce Department

See National Institute of Standards and Technology

See National Oceanic and Atmospheric Administration

Commodity Credit Corporation

NOTICES

Environmental Assessments; Availability, etc.:

Farm Service Agency's Conservation Reserve Program,
52868–52869

Education Department

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:

Application for Grants under the Native American—
Serving Nontribal Institutions Program, 52878
Institute of Education Sciences Research Training
Program Surveys, 52877

Privacy Act; Systems of Records, 52873–52877

Energy Department

See Federal Energy Regulatory Commission

PROPOSED RULES

Assistance to Foreign Atomic Energy Activities, 52819–
52826

Energy Conservation Program:

Energy Conservation Standards for Residential Clothes
Washers; Reopening of Public Comment Period,
52818–52819

Test Procedures for Clothes Dryers; Extension of Public
Comment Period, 52817–52818

NOTICES

Orders Issued under Section 3 of the Natural Gas Act:

Cannat Energy, Inc.; Certarus (USA), Ltd.; Seven
Generations Energy (US) Corp.; et al., 52878–52879

Environmental Protection Agency

RULES

Air Quality State Implementation Plans; Approvals and
Promulgations:

Arizona; Pinal County; Determination of Attainment by
the Attainment Date; 2006 24-Hour Fine Particulate
Matter National Ambient Air Quality Standard,
52766–52771

Final Approval of State Underground Storage Tank Program
Revisions, Codification, and Incorporation by
Reference:

Maine, 52783–52791

Pesticide Tolerances:

Furilazole, 52771–52774

Tolerance Exemption:

Nicotinamide, 52775–52778

Poly(oxy-1,2-ethanediyl), a-(3-(1,3,3,3-tetramethyl-1-
((trimethylsilyl) oxy) disiloxanyl) propyl)- w-
hydroxy-, 52778–52783

PROPOSED RULES

Air Quality State Implementation Plans; Approvals and
Promulgations:

Arizona: Phoenix-Mesa 2008 8-Hour Ozone
Nonattainment Area Requirements, 52838–52850

Final Approval of State Underground Storage Tank Program
Revisions, Codification, and Incorporation by
Reference:

Maine, 52852

Receipt of Several Pesticide Petitions Filed for Residues of
Pesticide Chemicals in or on Various Commodities
(August 2019), 52850–52852

Farm Credit Administration

NOTICES

Meetings; Sunshine Act, 52883–52884

Farm Service Agency

NOTICES

Environmental Assessments; Availability, etc.:

Farm Service Agency's Conservation Reserve Program,
52868–52869

Federal Aviation Administration

RULES

Airspace Designations:

Incorporation by Reference Amendments, 52757–52763

Airworthiness Directives:

The Boeing Company Airplanes, 52754–52757

Federal Contract Compliance Programs Office

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 52897–52899

Federal Deposit Insurance Corporation**PROPOSED RULES**

Assessments, 52826–52827

Removal of Transferred OTS Regulation Regarding Deposits, 52834–52835

Removal of Transferred OTS Regulations Regarding Accounting Requirements for State Savings Associations, 52827–52834

Federal Energy Regulatory Commission**NOTICES**

Combined Filings, 52879–52883

Complaint:

EnVen Energy Ventures, LLC; Fieldwood Energy, LLC; M21K, LLC; W and T Offshore, Inc. v. Stingray Pipeline Co., LLC, 52879

Environmental Impact Statements; Availability, etc.:

Magnolia LNG, LLC; Proposed Magnolia LNG Production Capacity Amendment, 52881–52882

Environmental Review:

Pacific Connector Gas Pipeline, LP and Jordan Cove Energy Project, LP; Jordan Cove Energy Project, 52883

Federal Railroad Administration**NOTICES**

Petition for Waiver of Compliance, 52929

Federal Reserve System**RULES**

Extensions of Credit by Federal Reserve Banks (Regulation A), 52752–52753

Reserve Requirements of Depository Institutions (Regulation D), 52753–52754

NOTICES

Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 52884

Federal Transit Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 52929–52932

Fish and Wildlife Service**RULES**

Endangered and Threatened Wildlife and Plants:

Removal of the Monito Gecko (*Sphaerodactylus micropithecus*) from the Federal List of Endangered and Threatened Wildlife, 52791–52800**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Injurious Wildlife; Importation Certification for Live Fish and Fish Eggs, 52892–52894

Food and Drug Administration**NOTICES**

Guidance:

Further Testing of Donations that are Reactive on a Licensed Donor Screening Test for Antibodies to Hepatitis C Virus, 52885–52886

Investigational Enzyme Replacement Therapy Products: Nonclinical Assessment, 52886–52887

Teva Pharmaceuticals USA, Inc., et al.; Withdrawal of Approval of Five Abbreviated New Drug Applications for Pemoline Products; Correction, 52887–52888

Food and Nutrition Service**PROPOSED RULES**

Supplemental Nutrition Assistance Program:

Standardization of State Heating and Cooling Standard Utility Allowances, 52809–52815

Geological Survey**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Economic Contribution of Federal Investments in Restoration of Degraded, Damaged, or Destroyed Ecosystems, 52894

Health and Human Services Department*See* Children and Families Administration*See* Food and Drug Administration*See* National Institutes of Health**Homeland Security Department***See* Coast Guard*See* U.S. Customs and Border Protection**Interior Department***See* Fish and Wildlife Service*See* Geological Survey*See* Land Management Bureau*See* National Park Service**Internal Revenue Service****PROPOSED RULES**

Guidance on Passive Foreign Investment Companies:

Hearing, 52835

International Trade Commission**NOTICES**

Investigations; Determinations, Modifications, and Rulings, etc.:

Certain Collapsible and Portable Furniture, 52896–52897

Certain Welded Large Diameter Line Pipe from Japan, 52896

Uncovered Innerspring Units from China, South Africa, and Vietnam, 52896

Labor Department*See* Federal Contract Compliance Programs Office**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

CW-1 Application for Temporary Employment Certification, 52899–52900

Vacancy Posting for a Member of the Administrative Review Board, 52900

Land Management Bureau**NOTICES**

Temporary Closure of Public Land:

Clark County, NV, 52895

Millennium Challenge Corporation**NOTICES**

Meetings:

Advisory Council, 52900

National Aeronautics and Space Administration**NOTICES**

Meetings:

Astrophysics Advisory Committee, 52900–52901

National Institute of Standards and Technology**NOTICES**

Meetings:

Visiting Committee on Advanced Technology, 52871–52872

National Institutes of Health**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Autism Spectrum Disorder Research Portfolio Analysis, National Institute of Mental Health, 52888

Meetings:

National Institute on Aging, 52889

National Institute on Drug Abuse, 52889

Prospective Grant of an Exclusive Patent License:

Compositions, Devices and Processes for Production and Delivery of Cell Grafts, etc., 52889–52890

Development and Commercialization of Cell Therapies for Cancer, 52890–52891

National Oceanic and Atmospheric Administration**RULES**

Atlantic Highly Migratory Species:

Atlantic Bluefin Tuna Fisheries, 52806–52808

Pacific Halibut Fisheries; Revisions to Catch Sharing Plan and Domestic Management Measures in Alaska, 52800–52806

PROPOSED RULES

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:

Coastal Migratory Pelagics Resources in the Gulf of Mexico and Atlantic Region; Framework Amendment 7, 52864–52867

Fisheries of the Exclusive Economic Zone off Alaska:

Authorize the Retention of Halibut in Pot Gear in the Bering Sea and Aleutian Islands; Amendment 118, 52852–52863

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Western Alaska Community Development Quota Program, 52872–52873

Atlantic Highly Migratory Species:

2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan; Three-Year Review of Individual Bluefin Quota Program, 52872

National Park Service**NOTICES**

National Register of Historic Places; Pending Nominations and Related Actions, 52895–52896

Nuclear Regulatory Commission**RULES**

List of Approved Spent Fuel Storage Casks:

Holtec International HI-STORM 100 Multipurpose Canister Cask System, Certificate of Compliance No. 1014, Amendment No. 14, 52747–52751

PROPOSED RULES

List of Approved Spent Fuel Storage Casks:

Holtec International HI-STORM 100 Multipurpose Canister Cask System, Certificate of Compliance No. 1014, Amendment No. 14, 52815–52817

NOTICES

Use of Listserv for Fuel Cycle Facilities Correspondence, 52901

Presidential Documents**PROCLAMATIONS**

Special Observances:

National Breast Cancer Awareness Month (Proc. 9936), 52981–52984

National Cybersecurity Awareness Month (Proc. 9937), 52985–52986

National Disability Employment Awareness Month (Proc. 9938), 52987–52988

National Energy Awareness Month (Proc. 9939), 52989–52990

National Substance Abuse Prevention Month (Proc. 9940), 52991–52992

Rural Housing Service**NOTICES**

Community Facilities Guaranteed Loan Program Guarantee Fee Rate, etc, 52869–52870

Rural Utilities Service**NOTICES**

Community Facilities Guaranteed Loan Program Guarantee Fee Rate, etc, 52869–52870

Securities and Exchange Commission**PROPOSED RULES**

Update of Statistical Disclosures for Bank and Savings and Loan Registrants, 52936–52980

NOTICES

Applications:

Deregistration under Section 8(f) of the Investment Company Act, 52915–52917

Joint Industry Plan:

National Market System Plan Governing the Consolidated Audit Trail by Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., et al., 52905–52915

Meetings; Sunshine Act, 52921–52922

Self-Regulatory Organizations; Proposed Rule Changes:

Cboe BYX Exchange, Inc., 52917–52920

Cboe BZX Exchange, Inc., 52902–52905

Cboe EDGA Exchange, Inc., 52922–52925

Cboe EDGX Exchange, Inc., 52925–52929

NYSE Arca, Inc., 52920–52921

State Department**NOTICES**

Culturally Significant Objects Imported for Exhibition:

A Wonder to Behold: Craftsmanship and the Creation of Babylon's Ishtar Gate, 52929

Transportation Department

See Federal Aviation Administration

See Federal Railroad Administration

See Federal Transit Administration

Treasury Department

See Internal Revenue Service

U.S. Customs and Border Protection**NOTICES**

Commercial Gaugers and Laboratories; Accreditation and Approval:

Chemical and Petrochemical Inspections (Groves, TX), 52891–52892

Product Quality Management, LLC (Pasadena, TX), 52892

Veterans Affairs Department**NOTICES**

VA Standards for Quality, 52932–52933

Separate Parts In This Issue**Part II**

Securities and Exchange Commission, 52936–52980

Part IIIPresidential Documents, 52981–52992

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR**Proclamations:**

9936.....	52983
9937.....	52985
9938.....	52987
9939.....	52989
9940.....	52991

7 CFR**Proposed Rules:**

273.....	52809
----------	-------

10 CFR

72.....	52747
---------	-------

Proposed Rules:

72.....	52815
429.....	52817
430 (2 documents)	52817,
	52818
810.....	52819

12 CFR

201.....	52752
204.....	52753

Proposed Rules:

327.....	52826
390 (2 documents)	52827,
	52834

14 CFR

39.....	52754
71.....	52757

17 CFR**Proposed Rules:**

210.....	52936
229.....	52936
249.....	52936

26 CFR**Proposed Rules:**

1.....	52835
--------	-------

33 CFR

165.....	52763
----------	-------

Proposed Rules:

165.....	52835
----------	-------

40 CFR

52.....	52766
180 (3 documents)	52771,
	52875, 52878
282.....	52783

Proposed Rules:

52.....	52838
180.....	52850
282.....	52852

50 CFR

17.....	52791
300.....	52800
635.....	52806

Proposed Rules:

300.....	52852
600.....	52852
622.....	52864
679.....	52852

Rules and Regulations

Federal Register

Vol. 84, No. 192

Thursday, October 3, 2019

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

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC-2019-0160]

RIN 3150-AK36

List of Approved Spent Fuel Storage Casks: Holtec International HI-STORM 100 Multipurpose Canister Cask System, Certificate of Compliance No. 1014, Amendment No. 14

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the Holtec International HI-STORM 100 Multipurpose Canister Cask System listing within the “List of approved spent fuel storage casks” to include Amendment No. 14 to Certificate of Compliance No. 1014. Amendment No. 14 revises the technical specifications to add new heat loading patterns, reduce the minimum cooling time, allow use of a damaged fuel isolator for storing damaged fuel, and modify the description of vents in overpack. Amendment No. 14 also makes other administrative changes to the technical specifications. These revisions are discussed in more detail in the “Discussion of Changes” section of this document.

DATES: This direct final rule is effective December 17, 2019, unless significant adverse comments are received by November 4, 2019. If this direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Comments received on this direct final rule will also be considered to be

comments on a companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

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

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2019-0160. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: Carol.Gallagher@nrc.gov. For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Email comments to:* Rulemaking.Comments@nrc.gov. If you do not receive an automatic email reply confirming receipt, then contact us at 301-415-1677.

- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301-415-1677.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Yen-Ju Chen, Office of Nuclear Material Safety and Safeguards; telephone: 301-415-1018; email: Yen-Ju.Chen@nrc.gov or Torre Taylor, Office of Nuclear Material Safety and Safeguards; telephone: 301-415-7900; email: Torre.Taylor@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Obtaining Information and Submitting Comments
- II. Rulemaking Procedure
- III. Background
- IV. Discussion of Changes
- V. Voluntary Consensus Standards
- VI. Agreement State Compatibility
- VII. Plain Writing
- VIII. Environmental Assessment and Finding of No Significant Environmental Impact

- IX. Paperwork Reduction Act Statement
- X. Regulatory Flexibility Certification
- XI. Regulatory Analysis
- XII. Backfitting and Issue Finality
- XIII. Congressional Review Act
- XIV. Availability of Documents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2019-0160 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2019-0160.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the “Availability of Documents” section.

- *NRC's PDR:* 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-2019-0160 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission.

Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Rulemaking Procedure

This direct final rule is limited to the changes contained in Amendment No. 14 to Certificate of Compliance No. 1014 and does not include other aspects of the Holtec International HI-STORM 100 Multipurpose Canister Cask System (HI-STORM 100 Cask System) design. The NRC is using the direct final rule procedure to issue this amendment because it represents a limited and routine change to an existing certificate of compliance that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on December 17, 2019. However, if the NRC receives significant adverse comments on this direct final rule by November 4, 2019, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to

the rule, certificate of compliance, or technical specifications.

For detailed instructions on filing comments, please see the companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, requires that “[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.” Section 133 of the Nuclear Waste Policy Act states, in part, that “[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.”

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled “General License for Storage of Spent Fuel at Power Reactor Sites” (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled “Approval of Spent Fuel Storage Casks,” which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on May 1, 2000, that approved the HI-STORM 100 Cask System design and added it to the list of NRC-approved cask designs in 10 CFR 72.214 as Certificate of Compliance No. 1014 (65 FR 25241).

IV. Discussion of Changes

On October 31, 2018, as supplemented on November 6, 2018, February 28, 2019, April 5, 2019, April 23, 2019, May 13, 2019, and August 8, 2019, Holtec International submitted a request to amend Certificate of Compliance No. 1014 for the HI-STORM 100 Cask System. Amendment No. 14 revises the technical specifications to: (1) Add three new regionalized Quarter Symmetric Heat Load loading patterns for the multipurpose canister (MPC)-68M; (2)

reduce the minimum cooling time to 1 year for all fuel types for storage in the MPC-68M; (3) use a damaged fuel isolator for damaged fuel stored in the MPC-68M; and (4) modify the description of the vents in the overpack in the certificate of compliance and remove the word “four” from Section 1.b describing the air inlet and outlet vents. Amendment No. 14 also makes other administrative changes to the technical specifications. The revised certificate of compliance and technical specifications are identified and evaluated in the preliminary safety evaluation report.

As documented in that preliminary safety evaluation report, the NRC performed a safety evaluation of the proposed certificate of compliance amendment request. There are no significant changes to cask design requirements in the proposed amendment.

Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of containment, shielding, and criticality control in the event of an accident. The amendment does not reflect a significant change in design or fabrication of the cask. In addition, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 14 would remain well within the limits specified by 10 CFR part 20, “Standards for Protection Against Radiation.” There will be no significant change in the types or amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for, or consequences from, radiological accidents.

The amended Holtec International HI-STORM 100 Cask System design, when used under the conditions specified in the certificate of compliance, technical specifications, and the NRC's regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be ensured. When this direct final rule becomes effective, persons who hold a general license under § 72.210 may, consistent with the license conditions under § 72.212, load spent nuclear fuel into those HI-STORM 100 Cask System casks that meet the criteria of Amendment No. 14 to Certificate of Compliance No. 1014.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104-113) requires that Federal agencies use technical standards that are

developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the Holtec International HI-STORM 100 Cask System design listed in § 72.214. This action does not constitute the establishment of a standard that contains generally applicable requirements.

VI. Agreement State Compatibility

Under the “Policy Statement on Adequacy and Compatibility of Agreement State Programs” approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category “NRC.” Compatibility is not required for Category “NRC” regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR chapter I. Although an Agreement State may not adopt program elements reserved to the NRC, and the Category “NRC” does not confer regulatory authority on the State, the State may wish to inform its licensees of certain requirements by means consistent with the particular State’s administrative procedure laws.

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31885).

VIII. Environmental Assessment and Finding of No Significant Impact

Under the National Environmental Policy Act of 1969, as amended, and the NRC’s regulations in subpart A of 10 CFR part 51, “Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,” the NRC has determined that this direct final rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has made a finding of no significant impact on the basis of this environmental assessment.

A. The Action

The action is to amend § 72.214 to revise the Holtec International HI-

STORM 100 Cask System listing within the “List of approved spent fuel storage casks” to include Amendment No. 14 to Certificate of Compliance No. 1014.

B. The Need for the Action

This direct final rule amends the certificate of compliance for the Holtec International HI-STORM 100 Cask System design within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. Specifically, Amendment No. 14 updates the certificate of compliance to: (1) Add three new regionalized Quarter Symmetric Heat Load loading patterns for the MPC–68M; (2) reduce the minimum cooling time to 1 year for all fuel types for storage in the MPC–68M; (3) use a damaged fuel isolator for damaged fuel stored in the MPC–68M; and (4) modify the description of the vents in the overpack in the certificate of compliance and remove the word “four” from Section 1.b describing the air inlet and outlet vents. Amendment No. 14 also makes other administrative changes to the technical specifications.

C. Environmental Impacts of the Action

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impact of using NRC-approved storage casks was initially analyzed in the environmental assessment for the 1990 final rule. The environmental assessment for this Amendment No. 14 tiers off of the environmental assessment for the July 18, 1990 final rule. Tiering on past environmental assessments is a standard process under the National Environmental Policy Act of 1969, as amended.

Holtec International HI-STORM 100 Cask Systems are designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an independent spent fuel storage installation, the type of facility at which a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, include tornado winds and tornado-generated missiles, a design basis earthquake, a design basis flood, an accidental cask drop, lightning effects, fire, explosions, and other incidents.

Considering the specific design requirements for each accident

condition, the design of the cask would prevent loss of confinement, shielding, and criticality control in the event of an accident. If there is no loss of confinement, shielding, or criticality control, the environmental impacts resulting from an accident would be insignificant. This amendment does not reflect a significant change in design or fabrication of the cask. Because there are no significant design or process changes, any resulting occupational exposure or offsite dose rates from the implementation of Amendment No. 14 would remain well within 10 CFR part 20 limits. Therefore, the proposed certificate of compliance changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or significant revisions in the amounts of any effluent released, no significant increase in the individual or cumulative radiation exposures, and no significant increase in the potential for, or consequences of, radiological accidents.

The NRC documented its safety findings in a preliminary safety evaluation report.

D. Alternative to the Action

The alternative to this action is to deny approval of Amendment No. 14 and not issue the direct final rule. Consequently, any 10 CFR part 72 general licensee that seeks to load spent nuclear fuel into the Holtec International HI-STORM 100 Cask System in accordance with the changes described in proposed Amendment No. 14 would have to request an exemption from the requirements of §§ 72.212 and 72.214. Under this alternative, interested licensees would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee. The environmental impacts would be the same as the proposed action.

E. Alternative Use of Resources

Approval of Amendment No. 14 to Certificate of Compliance No. 1014 would result in no irreversible commitment of resources.

F. Agencies and Persons Contacted

No agencies or persons outside the NRC were contacted in connection with the preparation of this environmental assessment.

G. Finding of No Significant Impact

The environmental impacts of the action have been reviewed under the requirements in the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51. Based on the foregoing environmental assessment, the NRC concludes that this direct final rule entitled "List of Approved Spent Fuel Storage Casks: Holtec International HI-STORM 100 Multipurpose Canister Cask System, Certificate of Compliance No. 1014, Amendment No. 14," will not have a significant effect on the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this direct final rule.

IX. Paperwork Reduction Act Statement

This direct final rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information were approved by the Office of Management and Budget, approval number 3150-0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid Office of Management and Budget control number.

X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this direct final rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and Holtec International. These entities do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810).

XI. Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of

spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's certificate of compliance, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On May 1, 2000 (65 FR 25241), the NRC issued an amendment to 10 CFR part 72 that approved the HI-STORM 100 Cask System design by adding it to the list of NRC-approved cask designs in § 72.214.

On October 31, 2018, and as supplemented on November 6, 2018, February 28, 2019, April 5, 2019, April 23, 2019, May 13, 2019, and August 8, 2019, Holtec International submitted an application to amend the Holtec International HI-STORM 100 Multipurpose Canister Cask System as described in Section IV, "Discussion of Changes," of this document.

The alternative to this action is to withhold approval of Amendment No. 14 and to require any 10 CFR part 72 general licensee seeking to load spent nuclear fuel into the Holtec International HI-STORM 100 Cask System under the changes described in Amendment No. 14 to request an exemption from the requirements of §§ 72.212 and 72.214. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of this direct final rule is consistent with previous NRC actions. Further, as documented in the preliminary safety evaluation report and environmental assessment, this direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of this direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other

available alternative is believed to be as satisfactory, and therefore, this action is recommended.

XII. Backfitting and Issue Finality

The NRC has determined that the backfit rule (§ 72.62) does not apply to this direct final rule. Therefore, a backfit analysis is not required. This direct final rule revises Certificate of Compliance No. 1014 for the Holtec International HI-STORM 100 Cask System, as currently listed in § 72.214. The amendment consists of the changes in Amendment No. 14 previously described, as set forth in the revised certificate of compliance and technical specifications.

Amendment No. 14 to Certificate of Compliance No. 1014 for the Holtec International HI-STORM 100 Cask System was initiated by Holtec International and was not submitted in response to new NRC requirements, or an NRC request for amendment. Amendment No. 14 applies only to new casks fabricated and used under Amendment No. 14. These changes do not affect existing users of the Holtec International HI-STORM 100 Cask System, and previous amendments continue to be effective for existing users. While current certificate of compliance users may comply with the new requirements in Amendment No. 14, this would be a voluntary decision on the part of current users.

For these reasons, Amendment No. 14 to Certificate of Compliance No. 1014 does not constitute backfitting under § 72.62 or § 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. Accordingly, the NRC staff has not prepared a backfit analysis for this rulemaking.

XIII. Congressional Review Act

This direct final rule is not a rule as defined in the Congressional Review Act.

XIV. Availability of Documents

The documents identified in the following table are available to interested persons through the following methods.

Document	ADAMS accession No.
Letter from Holtec International Transmitting Request for Amendment No. 14 to Certificate of Compliance No. 1014, October 31, 2018.	ML18331A052
Attachment 1: Summary of Request for Amendment No. 14 to Certificate of Compliance No. 1014, October 31, 2018	ML18331A043
Attachment 2: Proposed Amendment No. 14 to Certificate of Compliance No. 1014, October 31, 2018	ML18331A046
Attachment 3: Proposed Amendment No. 14 to Certificate of Compliance No. 1014, Appendix A, October 31, 2018	ML18331A047
Attachment 4: Proposed Amendment No. 14 to Certificate of Compliance No. 1014, Appendix B, October 31, 2018	ML18331A048

Document	ADAMS accession No.
Attachment 5: Final Safety Analysis Report Proposed Changes, October 31, 2018	ML18331A049
Letter from Holtec International Transmitting Supplement to Amendment Request, November 6, 2018	ML18324A577
Letter from Holtec International Transmitting Responses to NRC's 1st Round of Requests for Additional Information for Amendment No. 14, February 28, 2019	ML19065A053
Attachment 2: Requests for Additional Information, Combined Responses, Non-Proprietary, February 28, 2019	ML19065A027
Attachment 3: Final Safety Analysis Report Proposed Changes, Non-Proprietary, February 28, 2019	ML19065A029
Attachment 4: Summary of Proposed Changes, Non-Proprietary, February 28, 2019	ML19065A030
Letter from Holtec International Transmitting Responses to Clarification Questions, April 5, 2019	ML19101A339
Attachment 1: Responses to Clarification Questions, April 5, 2019	ML19101A337
Attachment 2: Final Safety Analysis Report (Proposed Revision 16B), April 5, 2019	ML19114A289
Letter from Holtec International, Submittal of Responses to Clarification Questions, April 23, 2019	ML19121A280
Final Safety Analysis Report (Proposed Revision 16B), Chapter 2, Changed Pages, April 5, 2019	ML19121A279
Letter from Holtec International, Submittal of Responses to Clarification Questions, dated May 13, 2019	ML19140A278
Final Safety Analysis Report (Proposed Revision 16B), Chapter 2, Changed Pages, May 13, 2019	ML19140A277
Proposed Certificate of Compliance No. 1014 Amendment No. 14, Certificate of Compliance for Spent Fuel Storage Casks	ML19120A058
Proposed Certificate of Compliance No. 1014 Amendment No. 14, Technical Specifications, Appendix A	ML19120A059
Proposed Certificate of Compliance No. 1014 Amendment No. 14, Technical Specifications, Appendix B	ML19120A061
Proposed Certificate of Compliance No. 1014 Amendment No. 14, Technical Specifications, Appendix A-100U	ML19120A062
Proposed Certificate of Compliance No. 1014 Amendment No. 14, Technical Specifications, Appendix B-100U	ML19120A063
Certificate of Compliance No. 1014 Amendment No. 14, Preliminary Safety Evaluation Report	ML19120A064
Email from J. Tomlinson, Holtec, regarding administrative change to HI-Storm 100 Amendment 14 CoC, Appendix B, August 8, 2019.	ML19224A393

The NRC may post materials related to this document, including public comments, on the Federal Rulemaking website at <https://www.regulations.gov> under Docket ID NRC-2019-0160. The Federal Rulemaking website allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC-2019-0160); (2) click the "Sign up for Email Alerts" link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, Certificate of Compliance No. 1014 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1014.
Initial Certificate Effective Date: May 31, 2000.

Amendment Number 1 Effective Date: July 15, 2002.

Amendment Number 2 Effective Date: June 7, 2005.

Amendment Number 3 Effective Date: May 29, 2007.

Amendment Number 4 Effective Date: January 8, 2008.

Amendment Number 5 Effective Date: July 14, 2008.

Amendment Number 6 Effective Date: August 17, 2009.

Amendment Number 7 Effective Date: December 28, 2009.

Amendment Number 8 Effective Date: May 2, 2012, as corrected on November 16, 2012 (ADAMS Accession No. ML12213A170); superseded by Amendment 8, Revision 1

Effective Date: February 16, 2016.

Amendment Number 8, Revision 1 Effective Date: February 16, 2016.

Amendment Number 9 Effective Date: March 11, 2014, superseded by Amendment Number 9, Revision 1, on March 21, 2016.

Amendment Number 9, Revision 1, Effective Date: March 21, 2016, as corrected (ADAMS Accession No. ML17236A451).

Amendment Number 10 Effective Date: May 31, 2016, as corrected (ADAMS Accession No. ML17236A452).

Amendment Number 11 Effective Date: February 25, 2019.

Amendment Number 12 Effective Date: February 25, 2019, as corrected (ADAMS Accession No. ML19109A111).

Amendment Number 13 Effective Date: May 13, 2019, as corrected (ADAMS Accession No. ML19109A122).

Amendment Number 14 Effective Date: December 17, 2019

Safety Analysis Report (SAR) Submitted by: Holtec International.

SAR Title: Final Safety Analysis Report for the HI-STORM 100 Cask System.

Docket Number: 72-1014.

Certificate Expiration Date: May 31, 2020.

Model Number: HI-STORM 100.

* * * * *

Dated at Rockville, Maryland, this 17th day of September, 2019.

For the Nuclear Regulatory Commission.

Daniel H. Dorman,

Acting Executive Director for Operations.

[FR Doc. 2019-21209 Filed 10-2-19; 8:45 am]

BILLING CODE 7590-01-P

FEDERAL RESERVE SYSTEM**12 CFR Part 201****[Docket No. R-1674]****RIN 7100-AF 57****Regulation A: Extensions of Credit by Federal Reserve Banks****AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (“Board”) has adopted final amendments to its Regulation A to reflect the Board’s approval of a decrease in the rate for primary credit at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically decreased by formula as a result of the Board’s primary credit rate action.

DATES:

Effective date: The amendments to part 201 (Regulation A) are effective October 3, 2019.

Applicability date: The rate changes for primary and secondary credit were applicable on September 19, 2019.

FOR FURTHER INFORMATION CONTACT:

Sophia H. Allison, Senior Special Counsel (202-452-3565), Legal Division, or Lyle Kumasaka, Lead Financial Institution & Policy Analyst (202-452-2382), or Laura Lipscomb, Assistant Director (202-912-7964), Division of Monetary Affairs; for users of Telecommunications Device for the Deaf (TDD) only, contact 202-263-4869; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Federal Reserve Banks make primary and secondary credit available to depository institutions as a backup source of funding on a short-term basis, usually overnight. The primary and secondary credit rates are the interest rates that the twelve Federal Reserve Banks charge for extensions of credit under these programs. In accordance with the Federal Reserve Act, the primary and secondary credit rates are established by the boards of directors of the Federal Reserve Banks, subject to the review and determination of the Board.

On September 18, 2019, the Board voted to approve a ¼ percentage point decrease in the primary credit rate in effect at each of the twelve Federal Reserve Banks, thereby decreasing from 2.75 percent to 2.50 percent the rate that each Reserve Bank charges for extensions of primary credit. In addition, the Board had previously

approved the renewal of the secondary credit rate formula, the primary credit rate plus 50 basis points. Under the formula, the secondary credit rate in effect at each of the twelve Federal Reserve Banks decreased by ¼ percentage point as a result of the Board’s primary credit rate action, thereby decreasing from 3.25 percent to 3.00 percent the rate that each Reserve Bank charges for extensions of secondary credit. The amendments to Regulation A reflect these rate changes.

The ¼ percentage point decrease in the primary credit rate was associated with a decrease in the target range for the federal funds rate (from a target range of 2 to 2¼ percent to a target range of 1¾ to 2 percent) announced by the Federal Open Market Committee on September 18, 2019, as described in the Board’s amendment of its Regulation D published elsewhere in today’s **Federal Register**.

Administrative Procedure Act

In general, the Administrative Procedure Act (“APA”) ¹ imposes three principal requirements when an agency promulgates legislative rules (rules made pursuant to Congressionally-delegated authority): (1) Publication with adequate notice of a proposed rule; (2) followed by a meaningful opportunity for the public to comment on the rule’s content; and (3) publication of the final rule not less than 30 days before its effective date. The APA provides that notice and comment procedures do not apply if the agency for good cause finds them to be “unnecessary, impracticable, or contrary to the public interest.” ² Section 553(d) of the APA also provides that publication at least 30 days prior to a rule’s effective date is not required for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) a rule for which the agency finds good cause for shortened notice and publishes its reasoning with the rule. ³ The APA further provides that the notice, public comment, and delayed effective date requirements of 5 U.S.C. 553 do not apply “to the extent that there is involved . . . a matter relating to agency management or personnel or to public property, *loans*, grants, benefits, or contracts.” ⁴

Regulation A establishes the interest rates that the twelve Reserve Banks charge for extensions of primary credit

and secondary credit. The Board has determined that the notice, public comment, and delayed effective date requirements of the APA do not apply to these final amendments to Regulation A. The amendments involve a matter relating to loans and are therefore exempt under the terms of the APA. Furthermore, because delay would undermine the Board’s action in responding to economic data and conditions, the Board has determined that “good cause” exists within the meaning of the APA to dispense with the notice, public comment, and delayed effective date procedures of the APA with respect to the final amendments to Regulation A.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (“RFA”) does not apply to a rulemaking where a general notice of proposed rulemaking is not required. ⁵ As noted previously, a general notice of proposed rulemaking is not required if the final rule involves a matter relating to loans. Furthermore, the Board has determined that it is unnecessary and contrary to the public interest to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA’s requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (“PRA”) of 1995, ⁶ the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains no requirements subject to the PRA.

12 CFR Chapter II**List of Subjects in 12 CFR Part 201**

Banks, Banking, Federal Reserve System, Reporting and recordkeeping.

Authority and Issuance

For the reasons set forth in the preamble, the Board is amending 12 CFR chapter II to read as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

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

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.*, 347a, 347b, 347c, 348 *et seq.*, 357, 374, 374a, and 461.

⁵ 5 U.S.C. 603, 604.

⁶ 44 U.S.C. 3506; see 5 CFR part 1320, appendix A.1.

¹ 5 U.S.C. 551 *et seq.*

² 5 U.S.C. 553(b)(3)(A).

³ 5 U.S.C. 553(d).

⁴ 5 U.S.C. 553(a)(2) (emphasis added).

■ 2. In § 201.51, paragraphs (a) and (b) are revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.³

(a) *Primary credit.* The interest rate at each Federal Reserve Bank for primary credit provided to depository institutions under § 201.4(a) is 2.50 percent.

(b) *Secondary credit.* The interest rate at each Federal Reserve Bank for secondary credit provided to depository institutions under § 201.4(b) is 3.00 percent.

* * * * *

By order of the Board of Governors of the Federal Reserve System, September 25, 2019.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019-21344 Filed 10-2-19; 8:45 am]

BILLING CODE 6210-02-P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Docket No. R-1675]

RIN 7100-AF 58

Regulation D: Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (“Board”) is amending Regulation D (Reserve Requirements of Depository Institutions) to revise the rate of interest paid on balances maintained to satisfy reserve balance requirements (“IORR”) and the rate of interest paid on excess balances (“IOER”) maintained at Federal Reserve Banks by or on behalf of eligible institutions. The final amendments specify that IORR is 1.80 percent and IOER is 1.80 percent, a 0.30 percentage point decrease from their prior levels. The amendments are intended to enhance the role of such rates of interest in moving the Federal funds rate into the target range established by the Federal Open Market Committee (“FOMC” or “Committee”).

DATES:

Effective date: The amendments to part 204 (Regulation D) are effective October 3, 2019.

³ The primary, secondary, and seasonal credit rates described in this section apply to both advances and discounts made under the primary, secondary, and seasonal credit programs, respectively.

Applicability date: The IORR and IOER rate changes were applicable on September 19, 2019.

FOR FURTHER INFORMATION CONTACT:

Sophia H. Allison, Senior Special Counsel (202-452-3565), Legal Division, or Francis Martinez, Senior Financial Institution & Policy Analyst (202-245-4217), or Laura Lipscomb, Assistant Director (202-912-7964), Division of Monetary Affairs; for users of Telecommunications Device for the Deaf (TDD) only, contact 202-263-4869; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

For monetary policy purposes, section 19 of the Federal Reserve Act (“the Act”) imposes reserve requirements on certain types of deposits and other liabilities of depository institutions.¹ Regulation D, which implements section 19 of the Act, requires that a depository institution meet reserve requirements by holding cash in its vault, or if vault cash is insufficient, by maintaining a balance in an account at a Federal Reserve Bank (“Reserve Bank”).² Section 19 also provides that balances maintained by or on behalf of certain institutions in an account at a Reserve Bank may receive earnings to be paid by the Reserve Bank at least once each quarter, at a rate or rates not to exceed the general level of short-term interest rates.³ Institutions that are eligible to receive earnings on their balances held at Reserve Banks (“eligible institutions”) include depository institutions and certain other institutions.⁴ Section 19 also provides that the Board may prescribe regulations concerning the payment of earnings on balances at a Reserve Bank.⁵ Prior to these amendments, Regulation D specified a rate of 2.10 percent for both IORR and IOER.⁶

II. Amendments to IORR and IOER

The Board is amending § 204.10(b)(5) of Regulation D to specify that IORR is 1.80 percent and IOER is 1.80 percent. This 0.30 percentage point decrease in each rate was associated with a decrease in the target range for the federal funds rate, from a target range of 2 to 2¼ percent to a target range of 1¾ to 2 percent, announced by the FOMC on September 18, 2019, with an effective

date of September 19, 2019. The FOMC’s press release on the same day as the announcement noted that:

Information received since the Federal Open Market Committee met in July indicates that the labor market remains strong and that economic activity has been rising at a moderate rate. Job gains have been solid, on average, in recent months, and the unemployment rate has remained low. Although household spending has been rising at a strong pace, business fixed investment and exports have weakened. On a 12-month basis, overall inflation and inflation for items other than food and energy are running below 2 percent. Market-based measures of inflation compensation remain low; survey-based measures of longer-term inflation expectations are little changed.

Consistent with its statutory mandate, the Committee seeks to foster maximum employment and price stability. In light of the implications of global developments for the economic outlook as well as muted inflation pressures, the Committee decided to lower the target range for the federal funds rate to 1¾ to 2 percent. This action supports the Committee’s view that sustained expansion of economic activity, strong labor market conditions, and inflation near the Committee’s symmetric 2 percent objective are the most likely outcomes, but uncertainties about this outlook remain. As the Committee contemplates the future path of the target range for the federal funds rate, it will continue to monitor the implications of incoming information for the economic outlook and will act as appropriate to sustain the expansion, with a strong labor market and inflation near its symmetric 2 percent objective.

A Federal Reserve Implementation note released simultaneously with the announcement stated:

The Board of Governors of the Federal Reserve System voted unanimously to lower the interest rate paid on required and excess reserve balances to 1.80 percent, effective September 19, 2019. Setting the interest rate paid on required and excess reserve balances 20 basis points below the top of the target range for the federal funds rate is intended to foster trading in the federal funds market at rates well within the FOMC’s target range.

As a result, the Board is amending § 204.10(b)(5) of Regulation D to change IORR to 1.80 percent and IOER to 1.80 percent.

III. Administrative Procedure Act

In general, the Administrative Procedure Act (“APA”) ⁷ imposes three principal requirements when an agency promulgates legislative rules (rules made pursuant to Congressionally-delegated authority): (1) Publication with adequate notice of a proposed rule; (2) followed by a meaningful opportunity for the public to comment on the rule’s content; and (3)

¹ 12 U.S.C. 461(b).

² 12 CFR 204.5(a)(1).

³ 12 U.S.C. 461(b)(1)(A) & (b)(12)(A).

⁴ See 12 U.S.C. 461(b)(1)(A) & (b)(12)(C); see also 12 CFR 204.2(y).

⁵ See 12 U.S.C. 461(b)(12)(B).

⁶ See 12 CFR 204.10(b)(5).

⁷ 5 U.S.C. 551 *et seq.*

publication of the final rule not less than 30 days before its effective date.

The APA provides that notice and comment procedures do not apply if the agency for good cause finds them to be “unnecessary, impracticable, or contrary to the public interest.”⁸ Section 553(d) of the APA also provides that publication at least 30 days prior to a rule’s effective date is not required for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) a rule for which the agency finds good cause for shortened notice and publishes its reasoning with the rule.⁹

The Board has determined that good cause exists for finding that the notice, public comment, and delayed effective date provisions of the APA are unnecessary, impracticable, or contrary to the public interest with respect to these final amendments to Regulation D. The rate changes for IORR and IOER that are reflected in the final amendments to Regulation D were made with a view towards accommodating commerce and business and with regard to their bearing upon the general credit situation of the country.

Notice and public comment would prevent the Board’s action from being effective as promptly as necessary in the public interest and would not otherwise serve any useful purpose. Notice, public comment, and a delayed effective date would create uncertainty about the finality and effectiveness of the Board’s action and undermine the effectiveness of that action.

Accordingly, the Board has determined that good cause exists to dispense with the notice, public comment, and delayed effective date procedures of the APA with respect to these final amendments to Regulation D.

IV. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (“RFA”) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.¹⁰ As noted previously, the Board has determined that it is unnecessary and contrary to the public interest to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA’s requirements relating to an initial and final regulatory flexibility analysis do not apply.

⁸ 5 U.S.C. 553(b)(3)(A).

⁹ 5 U.S.C. 553(d).

¹⁰ 5 U.S.C. 603, 604.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (“PRA”) of 1995,¹¹ the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains no requirements subject to the PRA.

List of Subjects in 12 CFR Part 204

Banks, Banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board amends 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

- 1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 461, 601, 611, and 3105.

- 2. Section 204.10 is amended by revising paragraph (b)(5) to read as follows:

§ 204.10 Payment of interest on balances.

* * * * *

(b) * * *

(5) The rates for IORR and IOER are:

TABLE 1 TO PARAGRAPH (b)(5)

	Rate (percent)
IORR	1.80
IOER	1.80

* * * * *

By order of the Board of Governors of the Federal Reserve System, September 25, 2019.

Ann Misback,
Secretary of the Board.

[FR Doc. 2019–21346 Filed 10–2–19; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0711; Product Identifier 2019–NM–167–AD; Amendment 39–19755; AD 2019–20–02]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. This AD requires repetitive inspections for cracking of the left and right hand side outboard chords of frame fittings and failsafe straps at a certain station, and repair if any cracking is found. This AD was prompted by reports of cracking discovered in this area. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 3, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 3, 2019.

The FAA must receive comments on this AD by November 18, 2019.

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 final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet <https://www.myboeingfleet.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. It is also available on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2019–0711.

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–2019–0711; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule,

¹¹ 44 U.S.C. 3506; see 5 CFR part 1320, appendix A.1.

the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800-647-5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Greg Rutar, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206-231-3529; email: Greg.Rutar@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

In September 2019, the FAA received reports of cracking discovered in the left and right hand side outboard chords of the station (STA) 663.75 frame fittings and failsafe straps adjacent to the stringer S-18A straps on multiple Boeing Model 737-800 airplanes during a passenger-to-freighter conversion. The affected airplanes had accumulated between 35,578 and 37,329 total flight cycles. Cracking in the STA 663.75 frame fitting outboard chords and failsafe straps adjacent to the stringer S-18A straps, if not addressed, could result in failure of a Principal Structural Element (PSE) to sustain limit load. This condition could adversely affect the structural integrity of the airplane and result in loss of control of the airplane.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Multi-Operator Message MOM-MOM-19-0536-01B, dated September 30, 2019. This service information describes procedures for a detailed inspection for cracking of the left and right hand side outboard chords of the STA 663.75 frame fittings and failsafe straps adjacent to the stringer S-18A straps. This service information also provides procedures for reporting inspection results to Boeing. 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

The FAA is issuing this AD because the agency evaluated all the relevant information and determined the unsafe

condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires repetitive inspections for cracking of the left and right hand side outboard chords of the STA 663.75 frame fittings and failsafe straps adjacent to the stringer S-18A straps. This AD also requires repair of all cracking using a method approved by the FAA or The Boeing Company Organization Designation Authorization (ODA). This AD also requires sending a report of all results of the initial inspection to Boeing.

Interim Action

The FAA considers this AD interim action. The inspection reports that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the cracking, and eventually to develop final action to address the unsafe condition. Once final action has been identified, the FAA might consider further rulemaking.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because cracking in the STA 663.75 frame fitting outboard chords and failsafe straps adjacent to the stringer S-18A straps could result in failure of a PSE to sustain limit load. This condition could adversely affect the structural integrity of the airplane and result in

loss of control of the airplane. The compliance time for the required action is shorter than the time necessary for the public to comment and for publication of the final rule.

Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the reasons stated above, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, the FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA-2019-0711 and Product Identifier 2019-NM-167-AD at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

The FAA will post all comments the agency receives, without change, to <http://www.regulations.gov>, including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact the agency receives about this final rule.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 1,911 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	1 work-hour × \$85 per hour = \$85 per inspection cycle.	\$0	\$85 per inspection cycle	\$162,435 per inspection cycle.
Reporting	1 work-hour × \$85 per hour = \$85	\$0	\$85	\$162,435.

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition actions specified in this AD.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to 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 current valid OMB control number. The control number for the collection of information required by this AD is 2120-0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW, Washington, DC 20591. ATTN: Information Collection Clearance Officer, AES-200.

Authority for This Rulemaking

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

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

This 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

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

For the reasons discussed above, I certify that this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866, and
- (2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019-20-02 The Boeing Company:
Amendment 39-19755; Docket No. FAA-2019-0711; Product Identifier 2019-NM-167-AD.

(a) Effective Date

This AD is effective October 3, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 737-600, -700, -700C, -800, -900, and -900ER series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of cracking discovered in the left and right hand side outboard chords of the station (STA) 663.75 frame fittings and failsafe straps adjacent to the stringer S-18A straps. The FAA is issuing this AD to address cracking in the STA 663.75 frame fitting outboard

chords and failsafe straps adjacent to the stringer S-18A straps, which could result in failure of a Principal Structural Element (PSE) to sustain limit load. This condition could adversely affect the structural integrity of the airplane and result in loss of control of the airplane.

(f) Compliance

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

(g) Inspection and Corrective Action

At the earlier of the times specified in paragraphs (g)(1) and (2) of this AD: Do a detailed inspection for cracking of the left and right hand side outboard chords of the STA 663.75 frame fittings and failsafe straps adjacent to the stringer S-18A straps, in accordance with Boeing Multi-Operator Message MOM-MOM-19-0536-01B, dated September 30, 2019. If any crack is found, repair before further flight using a method approved in accordance with the procedures specified in paragraph (k) of this AD. Repeat the inspection thereafter at intervals not to exceed 3,500 flight cycles.

(1) Prior to the accumulation of 30,000 total flight cycles, or within 7 days after the effective date of this AD, whichever occurs later.

(2) Prior to the accumulation of 22,600 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later.

(h) Report

At the applicable time specified in paragraph (h)(1) or (2) of this AD, submit a report of all findings, positive and negative, of the initial inspection required by paragraph (g) of this AD. Submit the report in accordance with Boeing Multi-Operator Message MOM-MOM-19-0536-01B, dated September 30, 2019.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 3 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 3 days after the effective date of this AD.

(i) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the airplane can be repaired if any crack is found, provided the Manager, Seattle ACO Branch, FAA, concurs with issuance of the special flight permit. Send requests for concurrence by email to 9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.

(j) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not 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 current valid OMB Control Number. The OMB Control Number for this information collection is 2120-0056. Public

reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW, Washington, DC 20591, Attn: Information Collection Clearance Officer, AES-200.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: 9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(l) Related Information

For more information about this AD, contact Greg Rutar, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206-231-3529; email: Greg.Rutar@faa.gov.

(m) Material Incorporated by Reference

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

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

(i) Boeing Multi-Operator Message MOM-MOM-19-0536-01B, dated September 30, 2019.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; internet <https://www.myboeingfleet.com>.

(4) 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.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Des Moines, Washington, on September 30, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019-21672 Filed 10-2-19; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2019-0627; Amendment No. 71-51]

RIN 2120-AA66

Airspace Designations; Incorporation by Reference Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, administrative correction.

SUMMARY: This action incorporates certain airspace designation amendments into FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, for incorporation by reference.

DATES: Effective date 0901 UTC October 3, 2019. The Director of the Federal Register approves this incorporation by reference action under Title 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at <http://www.faa.gov/airtraffic/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 7400.11D at NARA, email: fedreg.legal@nara.gov or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

FOR FURTHER INFORMATION CONTACT: Sarah A. Combs, Airspace Policy Group,

Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it makes the necessary updates for airspace areas within the National Airspace System.

History

Federal Aviation Administration Airspace Order 7400.11, Airspace Designations and Reporting Points, incorporated by reference in 14 CFR 71.1, is published yearly. Amendments referred to as "effective date straddling amendments" were published under Order 7400.11C (dated August 13, 2018, and effective September 15, 2018), but became effective under Order 7400.11D (dated August 8, 2019, and effective September 15, 2019). This action incorporates these rules into the current FAA Order 7400.11D.

Accordingly, as this is an administrative correction to update final rule amendments into FAA Order 7400.11D, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Also, to bring these rules and legal descriptions current, I find that good cause exists, under 5 U.S.C. 553(d), for making this amendment effective in less than 30 days.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

FAA Order 7400.11, Airspace Designations and Reporting Points, is

published yearly and effective on September 15.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by incorporating certain final rules into the current FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, which are depicted on aeronautical charts.

Regulatory Notices and Analyses

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

Corrections

1. For Docket No. FAA–2018–0250; Airspace Docket No. 17–AGL–3 (84 FR 8414; March 8, 2019)

Correction

a. On page 8414, column 2, line 17, and line 30, under **ADDRESSES**, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

b. On page 8414, column 3, line 32, and line 34, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

c. On page 8414, column 3, line 28, under History, “. . . FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019 . . .”.

d. On page 8414, column 3, line 28, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and

Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

§ 71.1 [Corrected]

■ e. On page 8415, column 1, line 40, under Amendatory Instruction 2, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

2. For Docket No. FAA–2019–0035; Airspace Docket No. 19–ASW–2 (84 FR 20257, May 9, 2019).

Correction

a. On page 20257, column 2, line 49, and line 3, under **ADDRESSES**, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

b. On page 20257, column 3, line 61, and line 63, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

c. On page 20257, column 3, line 47, under History, “. . . FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019 . . .”.

d. On page 20257, column 3, line 57, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

§ 71.1 [Corrected]

■ e. On page 20258, column 2, line 12, under Amendatory Instruction 2, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

3. For Docket No. FAA–2019–0107; Airspace Docket No. 19–ASW–4 (84 FR 22701, May 20, 2019).

Correction

a. On page 22701, column 1, line 27, and line 10, under **ADDRESSES**, “. . . FAA Order 7400.11C . . .” is corrected

to read “. . . FAA Order 7400.11D . . .”.

b. On page 22701, column 2, line 42, and line 44, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

c. On page 22701, column 2, line 28, under History, “. . . FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019 . . .”.

d. On page 22701, column 2, line 38, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

§ 71.1 [Corrected]

■ e. On page 22701, column 3, line 45, under Amendatory Instruction 2 “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

4. For Docket No. FAA–2018–0985; Airspace Docket No. 18–AWP–19 (84 FR 34051, July 17, 2019).

Correction

a. On page 34051, column 1, line 45, and column 2, line 3, under **ADDRESSES**, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

b. On page 34051, column 3, line 8, and line 10, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

c. On page 34051, column 2, line 53, under History, “. . . FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019 . . .”.

d. On page 34051, column 3, line 4, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order

7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

§ 71.1 [Corrected]

■ e. On page 34052, column 3, line 16, under Amendatory Instruction 2, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

5. For Docket No. FAA–2018–1026; Airspace Docket No. 18–AEA–20 (84 FR 34054, July 17, 2019).

Correction

a. On page 34054, column 3, line 40, and line 53, under **ADDRESSES**, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

b. On page 34055, column 1, line 58, and line 60, under Availability and Summary of Documents for Incorporation by Reference “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

c. On page 34055, column 1, line 44, under History, “. . . FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, . . .”.

d. On page 34055, column 1, line 54, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

§ 71.1 [Corrected]

■ e. On page 34055, column 3, line 29, under Amendatory Instruction 2, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

6. For Docket No. FAA–2018–0816; Airspace Docket No. 18–AWP–7 (84 FR 34055, July 17, 2019).

Correction

a. On page 34056, column 1, line 16, under **ADDRESSES**, “. . . FAA Order

7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

b. On page 34056, column 2, line 29, and line 31, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

c. On page 34056, column 2, line 15, under History, “. . . FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, . . .”.

d. On page 34056, column 2, line 25, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

§ 71.1 [Corrected]

■ e. On page 34056, column 3, line 38, under Amendatory Instruction 2, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

7. For Docket No. FAA–2019–0347; Airspace Docket No. 19–AEA–6 (84 FR 35290, July 23, 2019).

Correction

a. On page 35291, column 1, line 4, and line 17, under **ADDRESSES**, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

b. On page 35291, column 2, line 38, and line 40, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

c. On page 35291, column 2, line 24, under History, “. . . FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, . . .”.

d. On page 35291, column 2, line 34, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order

7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

§ 71.1 [Corrected]

■ e. On page 35291, column 3, line 49, under Amendatory Instruction 2, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

8. For Docket No. FAA–2018–0713; Airspace Docket No. 18–AWP–10 (84 FR 35292, July 23, 2019).

Correction

a. On page 35292, column 2, line 11, and line 24, under **ADDRESSES**, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

b. On page 35292, column 3, line 15, and line 17, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

c. On page 35293, column 1, line 26, under The Rule, “. . . FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, . . .”.

d. On page 35292, column 3, line 11, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

§ 71.1 [Corrected]

■ e. On page 35293, column 2, line 40, under Amendatory Instruction 2, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

9. For Docket No. FAA–2019–0060; Airspace Docket No. 18–ASO–20 (84 FR 35538, July 24, 2019).

Correction

a. On page 35538, column 2, line 28, and line 41, under **ADDRESSES**, “. . . FAA Order 7400.11C . . .” is corrected

to read “. . . FAA Order 7400.11D . . .”.

b. On page 35538, column 3, line 41, and line 43, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

c. On page 35538, column 3, line 27, under History, “. . . FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, . . .”.

d. On page 35538, column 3, line 37, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

§ 71.1 [Corrected]

■ e. On page 35539, column 2, line 12, under Amendatory Instruction 2, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

10. For Docket No. FAA–2019–0222; Airspace Docket No. 19–ASW–5 (84 FR 35819, July 25, 2019).

Correction

a. On page 35819, column 1, line 30, and line 43, under **ADDRESSES**, “. . . FAA Order 7400.11C. . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

b. On page 35819, column 2, line 41, and line 43, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

c. On page 39587, column 2, line 37, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

§ 71.1 [Corrected]

■ d. On page 35819, column 3, line 49, under Amendatory Instruction 2, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D,

Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

11. For Docket No. FAA–2019–0273; Airspace Docket No. 19–AGL–10 (84 FR 36466, July 29, 2019).

Correction

a. On page 36466, column 2, line 17, and line 30, under **ADDRESSES**, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

b. On page 36466, column 3, line 29, and line 32, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

c. On page 36466, column 3, line 16, under History, “. . . FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, . . .”.

d. On page 36466, column 3, line 26, under Availability and Summary of Documents for Incorporation by Reference “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

§ 71.1 [Corrected]

■ e. On page 36467, column 1, line 36, under Amendatory Instruction 2, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

12. For Docket No. FAA–2018–1022; Airspace Docket No. 18–ANE–8 (84 FR 36467, July 29, 2019).

Correction

a. On page 36467, column 1, line 9, under **ADDRESSES**, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

b. On page 36467, column 3, line 45, and line 47, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

c. On page 36467, column 3, line 31, under History, “. . . FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order

7400.11D, dated August 8, 2019, and effective September 15, 2019, . . .”.

d. On page 36467, column 3, line 41, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

§ 71.1 [Corrected]

■ e. On page 36468, column 2, line 37, under Amendatory Instruction 2, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

13. For Docket No. FAA–2019–0310; Airspace Docket No. 19–ACE–7 (84 FR 37961, August 5, 2019).

a. On page 37961, column 2, line 33, and line 46, under **ADDRESSES**, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

b. On page 37961, column 3, line 51, and line 53, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

c. On page 37961, column 3, line 37, under History, “. . . FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, . . .”.

d. On page 37961, column 3, line 47, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

§ 71.1 [Corrected]

■ e. On page 37962 column 2, line 3, under Amendatory Instruction 2, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

14. For Docket No. FAA–2019–0277; Airspace Docket No. 19–ACE–4 (84 FR 38865, August 8, 2019).

a. On page 38865, column 1, line 29, and line 54, under **ADDRESSES**, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

b. On page 38865, column 2, line 46, and line 49, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

c. On page 38865, column 2, line 33, under History, “. . . FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, . . .”.

d. On page 38865, column 2, line 43, under Availability and Summary of Documents for Incorporation by Reference “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

§ 71.1 [Corrected]

■ e. On page 38865, column 3, line 56, under Amendatory Instruction 2, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

15. For Docket No. FAA–2018–0816; Airspace Docket No. 18–AWP–7 (84 FR 39177, August 9, 2019).

Correction

a. On page 39178, column 1, line 5, and line 18, under **ADDRESSES**, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

b. On page 39178, column 2, line 32, and line 35, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

c. On page 39178, column 1, line 37, under History, “. . . FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, . . .”.

d. On page 39178, column 2, line 28, under Availability and Summary of

Documents for Incorporation by Reference, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

16. For Docket No. FAA–2019–0358; Airspace Docket No. 19–AEA–7 (84 FR 40227, August 14, 2019).

Correction

a. On page 40227, column 2, line 42, and line 55, under **ADDRESSES**, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

b. On page 40227, column 2, line 63, and line 65, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

c. On page 40227, column 3, line 49, under History, “. . . FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, . . .”.

d. On page 40227, column 3, line 59, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

§ 71.1 [Corrected]

■ e. On page 40228, column 2, line 6, under Amendatory Instruction 2, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

17. For Docket No. FAA–2019–0336; Airspace Docket No. 19–AGL–11 (84 FR 41908, August 16, 2019).

Correction

a. On page 41908, column 1, line 42, and line 55, under **ADDRESSES**, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

b. On page 41908, column 2, line 61, and line 63, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA

Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

c. On page 41908, column 2, line 57, under History, “. . . FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, . . .”.

d. On page 44908, column 2, line 57, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

§ 71.1 [Corrected]

■ e. On page 41909, column 1, line 12, under Amendatory Instruction 2, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

18. For Docket No. FAA–2019–0355; Airspace Docket No. 19–AGL–15 (84 FR 43042, August 20, 2019).

Correction

a. On page 43042, column 1, line 41, and line 54, under **ADDRESSES**, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

b. On page 43042, column 2, line 58, and line 60, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

c. On page 43042, column 2, line 44, under History, “. . . FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, . . .”.

d. On page 43042, column 2, line 54, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

§ 71.1 [Corrected]

■ e. On page 43043, column 1, line 12, under Amendatory Instruction 2, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

19. For Docket No. FAA–2019–0347; Airspace Docket No. 19–AEA–6 (84 FR 46438, September 4, 2019).

Correction

a. On page 46438, column 2, line 3, and line 5, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

b. On page 46438, column 1, line 49, under History, “. . . FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019 . . .”.

c. On page 46438, column 1, line 60, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

20. For Docket No. FAA–2019–0390; Airspace Docket No. 19–ANM–9 (84 FR 46877, September 6, 2019).

Correction

a. On page 46877, column 3, line 29, and line 43, under **ADDRESSES**, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

b. On page 46878, column 1, line 45, and line 47, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

c. On page 46878, column 1, line 31, under History, “. . . FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019. . .”.

d. On page 46878, column 1, line 41, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and

effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

§ 71.1 [Corrected]

■ e. On page 46878, column 2, line 56, under Amendatory Instruction 2, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

21. For Docket No. FAA–2017–0890; Airspace Docket No. 16–ACE–10 (84 FR 47413, September 10, 2019).

Correction

a. On page 47413, column 3, line 27, and line 40, under **ADDRESSES**, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

b. On page 47414, column 1, line 46, and line 49, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

c. On page 47414, column 1, line 32, under History, “. . . FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019. . .”.

d. On page 47414, column 1, line 43, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

§ 71.1 [Corrected]

■ e. On page 47414, column 3, line 12, under Amendatory Instruction 2, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

22. For Docket No. FAA–2019–0450; Airspace Docket No. 19–ASO–12 (84 FR 47415, September 10, 2019).

Correction

a. On page 47415, column 1, line 31, and line 44, under **ADDRESSES**, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

b. On page 47415, column 2, line 49, and line 51, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

c. On page 47415 column 2, line 35, under History, “. . . FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019. . .”.

d. On page 47415, column 2, line 45, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

§ 71.1 [Corrected]

■ e. On page 47416, column 1, line 6, under Amendatory Instruction 2, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

23. For Docket No. FAA–2019–0344; Airspace Docket No. 19–ASW–7 (84 FR 48052, September 12, 2019).

Correction

a. On page 48053, column 1, line 5, and line 18, under **ADDRESSES**, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

b. On page 48053, column 2, line 15, and line 18, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order 7400.11C . . .” is corrected to read “. . . FAA Order 7400.11D . . .”.

c. On page 48053, column 2, line 2, under History, “. . . FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019. . .”.

d. On page 48053, column 2, line 12, under Availability and Summary of

Documents for Incorporation by Reference, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

§ 71.1 [Corrected]

■ e. On page 48053, column 3, line 34, under Amendatory Instruction 2, “. . . FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, . . .” is corrected to read “. . . FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, . . .”.

Issued in Washington, DC, on September 25, 2019.

Rodger A. Dean, Jr.,
Manager, Airspace Policy Group.

[FR Doc. 2019–21364 Filed 10–2–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2019–0813]

RIN 1625–AA00

Safety Zones; Humboldt Bay Bar and Entrance Channel, Eureka, CA, Noyo River Entrance Channel, Ft. Bragg, CA, and Crescent City Harbor Entrance Channel, Crescent City, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing three temporary safety zones in the navigable waters of the Humboldt Bay Bar and Entrance Channel, of Eureka, CA; Noyo River Entrance Channel, of Fort Bragg, CA; and Crescent City Harbor Entrance Channel, of Crescent City, CA to safeguard navigation during extreme environmental conditions. These safety zones are established to protect the safety of vessels transiting the areas from the dangers associated with extreme breaking surf and high wind conditions occurring in the Humboldt Bay Bar and Entrance Channel, Noyo River Entrance Channel, and Crescent City Harbor Entrance Channel. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety

zones without permission of the Captain of the Port San Francisco or a designated representative.

DATES: This rule is effective without actual notice from October 3, 2019 through December 31, 2019. For purposes of enforcement, actual notice will be used from September 25, 2019 until October 3, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2019–0813 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Jennae Cotton, Waterways Management, U.S. Coast Guard; telephone (415) 399–3585, email at SFWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port San Francisco
DHS Department of Homeland Security
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final 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 with respect to this rule because it is impracticable.

On September 21, 2019, the Coast Guard was informed of forecasted extreme environmental conditions occurring near three respective locations of California likely to exceed the maximum environmental limits of the 47-foot Motor Lifeboat employed by the Coast Guard as the primary rescue asset in each area. These three locations are: The Humboldt Bay Bar and Entrance Channel, near Eureka, CA; the Noyo River Entrance Channel, near Fort Bragg, CA; and the Crescent City Harbor Entrance Channel, near Crescent City, CA. The National Oceanic and Atmospheric Administration’s National Weather Service forecasts up to 19-foot

breaking seas in the area from 25 September, 2019 through 26 September, 2019. This area is subject to extreme weather annually, but this year’s forecast of extreme weather starting in September is earlier than is typical. Last year’s comparable forecast of 24-foot breaking seas occurred in November, which is typically the month when the Coast Guard has historically established temporary safety zones in the navigable waters of the Humboldt Bay Bar and Entrance Channel, of Eureka, CA, Noyo River Entrance Channel, of Fort Bragg, CA, and Crescent City Harbor Entrance Channel, of Crescent City, CA. Due to the consistency of extreme environmental conditions typically observed between the months of November and March each winter, the Coast Guard is in the process of establishing a permanent regulation to account for intermittent periods of hazardous conditions, such as high wind or breaking surf. That regulation is expected to begin the notice and comment phase of public rulemaking shortly. Between now and the implementation of the permanent regulation, if enacted, these three safety zones are necessary to provide for the safety of mariners transiting the area due to the dangers posed by these extreme environmental conditions and the resulting limited availability of rescue assets. The Coast Guard learned of the extreme weather forecast on 21 September 2019, and must establish the three safety zones before 25 September 2019, and so lacks sufficient time to provide a reasonable comment period and to consider comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause also exists for making this rule effective less than 30 days after publication in the **Federal Register**. For similar reasons as stated above, notice and comment procedures would be impracticable in this instance because the hazardous conditions associated with the extreme environmental conditions precipitating the rulemaking will occur before the full rulemaking process could be completed.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 46 U.S.C. 70034 (previously 33 U.S.C. 1231). Notable hazards associated with the extreme environmental conditions have been observed in the Humboldt Bay Bar and Entrance Channel near Eureka, CA; the Noyo River Entrance Channel, near Fort Bragg, CA; and the Crescent City Harbor Entrance Channel, of Crescent City, CA. These safety zones establish temporary restricted areas on the navigable waters

of the Humboldt Bay Bar and Entrance Channel near Eureka, CA; the Noyo River Entrance Channel, near Fort Bragg, CA; and the Crescent City Harbor Entrance Channel, of Crescent City, CA. Because extreme environmental conditions are predicted for September 25, 2019 which is outside of the typical season between November and March when dangerous sea state conditions have historically been observed, these restricted areas are necessary to mitigate the risks associated with vessels transiting the area while extreme environmental conditions exist on scene.

IV. Discussion of the Rule

The Coast Guard will enforce, independent of each other, three respective safety zones in the navigable waters of the Humboldt Bay Bar and Entrance Channel near Eureka, CA; the Noyo River Entrance Channel, near Fort Bragg, CA; and the Crescent City Harbor Entrance Channel, of Crescent City, CA, when the COTP determines that the on scene conditions are hazardous and unsafe for vessel transits, typically expected to be 20-foot breaking seas at each location. Enforcement will be announced via Broadcast Notice to Mariners. These safety zones are effective from September 25, 2019, through December 31, 2019. These safety zones will be enforced with actual notice until this rulemaking is published in the **Federal Register**, and with constructive notice thereafter.

The effect of the temporary safety zones is to restrict navigation in the vicinity of the Humboldt Bay Bar and Entrance Channel; Noyo River Entrance Channel; and Crescent City Harbor Entrance Channel while the hazardous conditions associated with extreme environmental conditions exist, and until the Coast Guard deems the safety zone is no longer needed. Except for persons or vessels authorized by the COTP or the COTP's designated representative, no person or vessel may enter or remain in the restricted areas during times of enforcement. As used in the rule, "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or at a Coast Guard unit or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zones. These three regulated areas are needed to keep vessels away from the immediate vicinity of the hazardous conditions associated with the forecasted extreme weather to ensure the safety of transiting vessels in each respective area.

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 limited duration and narrowly tailored geographic area of the safety zones. Although this rule restricts access to the waters encompassed by the safety zones, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zones will result in minimum impact, and because the rule will be enforced only during dangerous conditions caused by extreme weather. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

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.

This rule may affect the following entities, some of which may be small entities: Owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing, if these facilities or vessels are in the

vicinity of the safety zones at times when the zones are being enforced. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) This rule will encompass only a small portion of the waterway for a limited period of time while hazardous conditions exist, and (ii) the maritime public will be advised in advance of this safety zones via Broadcast Notice to Mariners.

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 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 U.S. Coast Guard Environmental Planning Policy, COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves three safety zones which will be implemented during periods of extreme environmental conditions in Humboldt Bay Bar and Entrance Channel near Eureka, CA; the Noyo River Entrance Channel, near Fort Bragg, CA; and the Crescent City Harbor Entrance Channel, of Crescent City, CA. It is categorically excluded from further review under paragraph L60(a) in Table 3–1 of Department of Homeland Security Directive 023–01. 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 recordkeeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–998 to read as follows:

§ 165.T11–998 Safety zones; Humboldt Bay Bar and Entrance, Noyo River Entrance, and Crescent City Harbor Entrance Channel Closures, Humboldt Bay, Eureka, CA.

(a) *Location.* The following areas are safety zones:

(1) All navigable waters, from surface to bottom, of the Humboldt Bay Bar Channel and the Humboldt Bay Entrance Channel, of Humboldt Bay, CA;

(2) All navigable waters, from surface to bottom, of the Noyo River Entrance Channel as defined by the Area contained seaward of the Line of Demarcation with northern boundary of the line originating in approximate position 39°25'41" N, 123°48'37" W and extending 1200 yards at bearing 290° T, and southern boundary of the line originating in approximate position 39°25'38" N, 123°48'36" W and extending 1200 yards at 281° T, in Fort Bragg, CA; and

(3) All navigable waters, from surface to bottom, of the Crescent City Harbor Entrance Channel, as defined by the area contained seaward of the line originating in approximate position 41°44'36" N, 124°11'18" W bearing 237° T and extending out to 1 NM from the Line of Demarcation in Crescent City, CA.

(b) *Definitions.* As used in this section, “designated representative” means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or at a Coast Guard unit or a Federal, State, or local officer designated by or assisting the Captain of the Port San Francisco

(COTP) in the enforcement of the safety zones.

(c) *Regulations.* (1) Under the general regulations in subpart C of this part, entering into, transiting through, or anchoring within these safety zones are prohibited unless authorized by the COTP or the COTP’s designated representative.

(2) The safety zones are closed to all vessel traffic, except as may be permitted by the COTP or the COTP’s designated representative.

(3) Vessel operators desiring to enter or operate within the Humboldt Bay Entrance Channel or Crescent City Harbor Entrance Channel safety zones during times of enforcement shall contact Station Humboldt Bay on VHF–FM channel 16 or at (707) 443–2213 if contacting between 6:30 a.m. and 10 p.m., or Sector Humboldt Bay on VHF–FM channel 16 or at (707) 839–6113 if contacting between 10 p.m. and 6:30 a.m. Vessel operators desiring to enter or operate within the Noyo River Entrance Channel safety zone during times of enforcement shall contact Station Noyo River on VHF–FM channel 16 or at (707) 964–6611 if contacting between 6:30 a.m. and 10 p.m., or Sector Humboldt Bay on VHF–FM channel 16 or at (707) 839–6113 if contacting between 10 p.m. and 6:30 a.m. Vessel operators given permission to enter or operate in the safety zones must comply with all directions given to them by the COTP or the COTP’s designated representative.

(d) *Enforcement period.* The zones described in paragraph (a) of this section will be effective without actual notice from October 3, 2019 through December 31, 2019. For purposes of enforcement, actual notice will be used from September 25, 2019 until October 3, 2019. This section will be enforced when the COTP determines that the on scene conditions are hazardous and unsafe for vessel transits due to extreme weather conditions.

(e) *Information broadcasts.* The COTP or the COTP’s designated representative will notify the maritime community of periods during which this zone will be enforced in accordance with § 165.7.

Dated: September 24, 2019.

Marie B. Byrd,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco.

[FR Doc. 2019–21281 Filed 10–2–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2019-0068; FRL-10000-53-Region 9]

Determination of Attainment by the Attainment Date; 2006 24-Hour Fine Particulate Matter National Ambient Air Quality Standard; Pinal County, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to determine that the West Central Pinal County nonattainment area attained the 2006 24-hour national ambient air quality standard (NAAQS) for particulate matter with a diameter of 2.5 micrometers or smaller (PM_{2.5} or “fine particulate matter”) by December 31, 2017, the statutory attainment date for the area. This final action is based on the three-year average of annual 98th percentile 24-hour concentrations for the 2015–2017 period, using complete, quality-assured, and certified PM_{2.5} monitoring data.

DATES: This rule will be effective on November 4, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2019-0068. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Jerry Wamsley, EPA Region IX, (415) 947-4111, wamsley.jerry@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

Table of Contents

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

I. Summary of the Proposed Action

On April 25, 2019, the EPA proposed to determine that the West Central Pinal County nonattainment area attained the 2006 24-hour PM_{2.5} NAAQS by December 31, 2017, the statutory attainment date for the area.¹ Our proposed action is based on the three-year average of annual 98th percentile 24-hour concentrations for the 2015–2017 period, using complete, quality-assured, and certified PM_{2.5} monitoring data.

For an area classified as Moderate under the Clean Air Act (CAA), such as the West Central Pinal County PM_{2.5} nonattainment area, section 188(c) provides that the statutory attainment date is “as expeditiously as practicable but no later than the end of the sixth calendar year after the area’s designation as nonattainment.” Therefore, the applicable attainment date for West Central Pinal County, designated nonattainment in 2011 and classified as Moderate in 2014, is attainment as expeditiously as practicable, but no later than December 31, 2017.² Section 188(b)(2) of the CAA requires that the Administrator determine whether the state has attained the NAAQS in a nonattainment area by the applicable attainment date. Consequently, the EPA’s proposed determination of attainment is pursuant to the Agency’s statutory obligation, under CAA section 188(b)(2), to determine whether the West Central Pinal County nonattainment area has attained the 2006 24-hour PM_{2.5} NAAQS by no later than December 31, 2017. Given this attainment date and the form of the 2006 24-hour PM_{2.5} NAAQS, the applicable 3-year data review period is calendar years 2015 to 2017.

Under 40 CFR part 50, § 50.13 and in accordance with appendix N, a nonattainment area meets the 2006 24-hour PM_{2.5} NAAQS when the area’s design value is less than or equal to 35 micrograms per cubic meter (µg/m³). As discussed in detail in Section III of our proposal, the determination of whether an area’s air quality meets the 2006 24-hour PM_{2.5} NAAQS is generally based upon three years of complete, quality-assured data gathered at established state and local air monitoring stations (SLAMS) in a nonattainment area and entered into the EPA’s Air Quality System (AQS) database.³ Because we are determining attainment of the PM_{2.5} NAAQS as of December 31, 2017, the applicable 3-year data review period is

2015–2017. Ambient air quality data must generally meet data completeness or substitution requirements for each year under evaluation. The data completeness requirements are met when at least 75 percent of the scheduled sampling days for each quarter have valid data.⁴ The state must submit data from ambient air monitors operated by state or local agencies in compliance with the EPA monitoring requirements to AQS. Monitoring agencies certify annually that these data are accurate to the best of their knowledge. Accordingly, the EPA relies primarily on data in AQS when determining the attainment status of areas.

The PM_{2.5} ambient air quality monitoring data collected within the West Central Pinal County nonattainment area for the 2015–2017 period must meet data completeness or substitution criteria according to 40 CFR part 50, appendix N. The ambient air quality monitoring data completeness requirements are met when quarterly data capture rates for all four quarters in a calendar year are at least 75 percent.⁵ For the purposes of our proposal, we reviewed the data for the 2015–2017 period for completeness and determined that the PM_{2.5} data collected by Pinal County met the completeness criterion for all 12 quarters at PM_{2.5} monitoring sites in the West Central Pinal County nonattainment area. The 2015 Cowtown data were complete, and the 2016 and 2017 Hidden Valley data, the relocated Cowtown monitoring site, were complete.⁶

The EPA’s proposed determination as to whether the West Central Pinal County area has attained the PM_{2.5} NAAQS pursuant to CAA section 188(b)(2) was based on monitored ambient air quality data. The validity of this determination depends in part on whether the monitoring network adequately measures ambient PM_{2.5} levels in the nonattainment area. Pinal County, the local agency responsible for collecting PM_{2.5} data in the nonattainment area, submits annual monitoring network plans to the EPA. These plans describe the status of the air monitoring network, including monitor siting, as required under 40 CFR part 58. The EPA reviews these annual network plans for compliance with the applicable monitoring requirements in 40 CFR 58.10. With respect to PM_{2.5}, we have found that the annual network

⁴ 40 CFR part 50, appendix N, section 4.2(b).

⁵ 40 CFR part 50, appendix N, section 4.2(b)(2).

⁶ AQS Database, Combined Site Sample Values Report, dated March 28, 2019, included in our docket.

¹ 84 FR 17368, (April 25, 2019).

² 79 FR 31566, 31569, fn 5.

³ AQS is the EPA’s national repository of ambient air quality data.

plans submitted by Pinal County meet the applicable requirements under 40 CFR part 58.⁷ Furthermore, we concluded in our “Technical Systems Audit Report” of Pinal County’s ambient air quality monitoring program that the ambient air monitoring network currently meets or exceeds the requirements for the minimum number of monitoring sites designated as SLAMS for PM_{2.5} in the West Central Pinal County nonattainment area.⁸ Pinal County certifies annually that the data it submits to AQS are quality-assured and has done so for each year relevant to this determination of attainment, 2015–2017.⁹

Our proposal also discussed the EPA’s review and approval of Pinal County’s January 2016 relocation of the PM_{2.5} SLAMS monitoring site from the Cowtown location to a new location at Hidden Valley.¹⁰ Beginning in late 2013 and through 2015, Pinal County and the EPA engaged in a cooperative multi-year process to review alternative locations and relocate the Cowtown PM_{2.5} SLAMS monitoring site. Over the course of 2014 and 2015, Pinal County operated temporary monitors at two other potential replacement monitoring site locations (*i.e.*, Hidden Valley; and White and Parker). This allowed Pinal County and the EPA to assess the data from each location and to determine if either of the proposed monitoring site locations met the applicable system modification requirements in 40 CFR 58.14 for monitoring site relocation. Based on an assessment of PM_{2.5} concentrations, land use, and nearby sources, the EPA approved the relocation of the Cowtown PM_{2.5} SLAMS monitoring site to the new Hidden Valley location.¹¹ The EPA

stated in its Relocation Approval Letter that the data from the old and new monitoring site locations would be combined to form one continuous data record for design value calculations.¹² Consequently, the 2015–2017 design value is a composite data record consisting of 2015 data from the Cowtown monitoring site and 2016 and 2017 data from the relocated Cowtown site, now operating at Hidden Valley.

In summary, the EPA’s evaluation of whether the West Central Pinal County nonattainment area has met the 2006 PM_{2.5} 24-hour NAAQS is based on our review of the monitoring data, the adequacy of the PM_{2.5} monitoring network in the nonattainment area, and the reliability of the data collected by the network, as discussed in detail in our proposal for this action. The data indicate that the 24-hour design value for the 2015–2017 period, 32 µg/m³, was less than or equal to 35 µg/m³, the 2006 PM_{2.5} 24-hour NAAQS. Therefore, the EPA proposed to determine, based upon three years of complete, quality-assured and certified data from 2015–2017, that the West Central Pinal County nonattainment area attained the 2006 24-hour PM_{2.5} NAAQS by the applicable outermost attainment date, December 31, 2017.

II. Public Comments and EPA Responses

The public comment period on the proposed rule opened on April 25, 2019, the date of its publication in the **Federal Register**, and closed on May 28, 2019. During this period, the EPA received one comment letter submitted by the Center for Biological Diversity (CBD). The CBD’s comments are addressed below. A copy of their comment letter is included in the docket for this final action.

Comment #1: The EPA did not follow Federal regulations and erred in determining attainment of the 24-hour PM_{2.5} NAAQS over the 2015–2017 timeframe for two reasons. First, three years of annual data is needed at “each eligible monitoring site” to determine a design value. The Cowtown and Hidden Valley monitors constitute separate monitoring sites, and the EPA did not have three years of annual data at either site. Second, for a combined site data record, the monitoring sites must be collocated.¹³ Cowtown and Hidden

Valley, however, are not collocated monitoring sites as defined by Federal regulations. Therefore, the EPA’s calculated 2015–2017 design value was calculated incorrectly and is inconsistent with Federal regulations for developing design values from two separate monitoring sites.

Response #1: The EPA disagrees with the commenter’s contention that combining the data from the two sites is not permitted under the Act and applicable Federal regulations. The EPA’s monitoring regulations addressing “[s]ystem modification” contain a specific provision that allows for relocating an air quality monitoring site: “[a] SLAMS monitor not eligible for removal under any of the criteria in paragraphs (c)(1) through (c)(5) of this section may be moved to a nearby location with the same scale of representation if logistical problems beyond the State’s control make it impossible to continue operation at its current site.”¹⁴ By referring to “mov[ing]” a monitor, as opposed to “remov[ing]” it,¹⁵ the monitoring regulations allow for such monitors to be treated as a single site for design value calculation purposes.

As discussed in our proposal, in 2013 logistical problems beyond the State’s control made it impossible for Pinal County to continue operation of the Cowtown monitor. From late 2013 through 2015, Pinal County and the EPA engaged in a cooperative multi-year process to review and evaluate alternative locations and to relocate the Cowtown PM_{2.5} SLAMS monitoring site, ultimately to the Hidden Valley monitoring site. Because Pinal County moved the Cowtown monitor in accordance with the appropriate EPA regulations and guidance, including a notice and opportunity for public comment, and the EPA approved the site relocation, it is appropriate to combine the data from before and after the relocation for the purpose of calculating valid design values. We review this monitor relocation effort in more detail below.

In 2013, the private landowners of the Cowtown monitoring site notified Pinal County that they would no longer allow the County’s long-term use of their property for the monitoring site. In response, Pinal County negotiated a two-year lease extension to allow for continued data collection at the site while the County and the EPA worked to relocate the monitor appropriately

⁷ We have included in our docket the correspondence transmitting our annual network reviews, *e.g.*, correspondence dated October 30, 2017, from Gwen Yoshimura, Manager, Air Quality Analysis Office, EPA Region IX, to Michael Sundblom, Director, Pinal County Air Quality Control District.

⁸ We have included in our docket the correspondence concerning our audit, *e.g.*, correspondence dated September 28, 2016, from Elizabeth Adams, Acting Division Director, Air Division, EPA Region IX, to Michael Sundblom, Director, Pinal County Air Quality Control District.

⁹ We have included in our docket Pinal County’s annual data certifications for 2015, 2016 and 2017, *e.g.*, correspondence dated April 30, 2018, from Josh DeZeeuw, Air Quality Manager, Pinal County Air Quality Control District, to Elizabeth Adams, Acting Division Director, Air Division, EPA Region IX. Annual data certification requirements can be found at 40 CFR 58.15.

¹⁰ The site identification numbers are as follows: Cowtown (AQS ID: 04–021–3013); and, Hidden Valley (AQS ID: 04–021–3015).

¹¹ For a complete discussion of the EPA’s review and approval of the Cowtown monitoring site relocation, refer to correspondence dated October 22, 2015, from Meredith Kurpius, EPA Region IX,

to Michael Sundblom, Pinal County Air Quality Control District (“Relocation Approval Letter”), in the docket for this rulemaking.

¹² *Id.*

¹³ The CBD comment letter used the term “collocated.” We believe this term is incorrect given that the reference CBD cited was for the definition

of “collocated,” per 40 CFR part 50, appendix N, 1.0(c).

¹⁴ 40 CFR 58.14(c)(6).

¹⁵ See *id.*

according to Federal regulations and EPA guidance. Generally, the EPA interprets “nearby location with same scale of representation” to mean a nearby location that measures similar pollutant concentrations from similar emissions sources. In 2014, Pinal County initiated a special study to evaluate locations throughout the West Central Pinal County PM_{2.5} nonattainment area that would meet the EPA’s monitor siting and relocation requirements, *i.e.*, nearby locations with the same scale of representation.

Viable long-term monitoring locations in the immediate vicinity of the Cowtown monitor were not available. As a result, from June 2014 to June 2015, Pinal County conducted parallel ambient monitoring at two nearby locations with a similar source mix and proximity to sources as the Cowtown monitor: Hidden Valley; and White and Parker. The monitoring at the three different sites revealed that with respect to the 98th percentile PM_{2.5} value, the key value for 24-hour NAAQS design value calculations, the Cowtown monitors and the Hidden Valley monitor tracked closely (28.5 and 29.0 µg/m³ for the two Cowtown monitors, compared to 30.6 µg/m³ for the Hidden Valley monitor). The other candidate location, White and Parker, did not track as closely (with a value of 24.9 µg/m³), even though it was closer to the Cowtown monitors.¹⁶ The concurrent monitoring over a year at multiple monitoring sites demonstrates that the County was able to find another very similar site less than ten miles from the original site, thus satisfying the regulatory requirements for an air quality monitor relocation.

To conclude our review of this multi-year relocation effort, at Pinal County’s request, the EPA evaluated the collected data and approved the relocation of the Cowtown monitoring site to the current Hidden Valley monitoring site location. The EPA determined that Pinal County met all applicable requirements of 40 CFR 58.14(c)(6) and specifically stated in our October 22, 2015 approval letter that “[a]s this is a relocation, the data from the old and new sites will be combined to form one continuous data record for design value calculations.”¹⁷

¹⁶ Moving the monitor to the nearest available site is not necessarily optimal, because the nearest available site may involve shifts in the most proximate land uses, may not be downwind from predominate sources, and may potentially underestimate concentration values. Instead, the EPA and the County had to balance proximity to the Cowtown site with keeping the site near a similar mix of land uses and local PM_{2.5} sources.

¹⁷ For a complete discussion of the EPA’s review and approval of the Cowtown monitoring site relocation, refer to correspondence dated October

The EPA notes that Pinal County’s analysis and the EPA’s approval letter were subject to public comment as part of Pinal County’s 2017 annual network plan submission and that the County received no adverse comments.¹⁸ Because the transition from the Cowtown monitor to the Hidden Valley monitor constituted a relocation and was subject to the EPA’s approval under 40 CFR 58.14(c)(6), it was appropriate for the EPA to use the old and new monitoring sites in calculating a design value for the West Central Pinal County nonattainment area.¹⁹

The combination of data from two monitoring sites to calculate a valid design value following an approved relocation has been a longstanding and common EPA practice. The EPA’s 2017 Design Value Report for PM_{2.5} shows 18 PM_{2.5} monitoring sites nationwide for which pre- and post-relocation monitors are linked for design value calculation purposes.²⁰ The design value reports for other pollutants show even more linked monitors.²¹

The EPA’s longstanding practice of combining data from two monitoring sites when calculating a design value was explained in the recent 2015 Ozone (O₃) NAAQS revision. In that rulemaking, the EPA specifically codified the existing convention in 40 CFR part 50, appendix U, and explained that “although data handling appendices for previous O₃ standards do not explicitly mention site combinations, the EPA has approved over 100 site combinations since the promulgation of the first 8-hour O₃

NAAQS in 1997.”²² The EPA explained, “the EPA’s intention in proposing this addition was merely to codify an existing convention, and to improve transparency by implementing site combinations in AQS design value calculations.”²³ The final rulemaking also noted that “[p]ublic commenters unanimously supported” the change in regulatory text and further clarified that “[s]ince this provision has already been used in practice under previous O₃ standards, site combinations will be applied to AQS design value calculations for both the revised O₃ standards and previous O₃ standards.”²⁴ The EPA’s preamble in the proposed rule for the 2015 Ozone NAAQS revision further expands on the EPA’s rationale concerning site combinations and states that “[s]ite combinations may be approved by the Regional Administrator, after he or she has determined that the measured air quality concentrations do not differ substantially between the two sites.”²⁵ Although this specific rulemaking was for the 2015 ozone NAAQS, the EPA has used the same longstanding convention for PM_{2.5} site combinations, as described above. As with the ozone NAAQS design value calculations in advance of the 2015 ozone NAAQS final rule, the fact that the EPA has not at this point expressly codified this practice in regulatory provisions for PM_{2.5} does not prevent the EPA from combining PM_{2.5} data for relocated monitors in line with its longstanding practice and as allowed under 40 CFR 58.14(c)(6).

To summarize our response to the commenter’s first point challenging our use of data from relocated monitors, in order to locate a site that constituted a “nearby location with the same scale of representation” under § 58.14(c)(6), Pinal County and the EPA engaged in a cooperative multi-year process to review alternative locations and relocate the Cowtown PM_{2.5} SLAMS monitoring site due to logistical problems beyond the control of the State or the District. Pinal County and the EPA analyzed the data from candidate locations to determine if the proposed monitoring site locations met the applicable system modification requirements in 40 CFR 58.14 for monitoring site relocation. Specifically, based on an assessment of PM_{2.5} concentrations (which concurrent ambient monitoring demonstrated to track closely), land use, and nearby sources, the EPA approved the relocation of the Cowtown PM_{2.5}

22, 2015, from Meredith Kurpius, EPA Region IX, to Michael Sundblom, Pinal County Air Quality Control District (“Relocation Approval Letter”), in the docket for this rulemaking.

¹⁸ Pinal County Air Quality Control District posted the draft 2017 Ambient Monitoring Network Plan and 2016 Data Summary, containing the EPA’s approval of the site relocation on the department’s website, and made the document available in the District’s offices for a public comment period from May 19, 2017 through June 19, 2017.

¹⁹ The fact that, as the commenter points out, the two locations are assigned separate AQS ID numbers is not determinative of whether data from the two locations are appropriate for combination. In the Relocation Approval Letter, the EPA stated “As this is a relocation, the data from the old and new sites will be combined to form one continuous data record for design value calculations. *Please note this in the AQS comment field for both the old and the new AQS site . . .*” (emphasis added). Accordingly, the fact that the two locations were organized separately for data entry purposes does not mean that the data may not be combined for design value calculation purposes.

²⁰ https://www.epa.gov/sites/production/files/2018-07/pm25_designvalues_20152017_final_07_24_18.xlsx.

²¹ The 2017 Design Value Report for ozone shows 27 relocated sites linked for design value calculation purposes. https://www.epa.gov/sites/production/files/2018-07/ozone_designvalues_20152017_final_07_24_18.xlsx.

²² 80 FR 65292, 65411 (October 26, 2015).

²³ *Id.*

²⁴ *Id.*

²⁵ 79 FR 75234, 75352 (December 17, 2014).

SLAMS monitoring site to the new Hidden Valley location. As noted in the EPA's Relocation Approval Letter, the data from the Cowtown and Hidden Valley monitoring site locations are suitable for combination to form one continuous data record for design value calculations. This approach is both authorized by the EPA's monitoring regulations, and consistent with the EPA's longstanding practice. Consequently, the 2015–2017 design value the EPA used for this determination of attainment is consistent with Federal regulations concerning monitor relocations and the EPA's past policy and precedent for combining monitoring site data when computing a design value in such circumstances.

The commenter's second argument, that “[f]or a combined site data record, monitors have to be [collocated],” is inapposite. The definition of “combined site data record,” given in 40 CFR part 50, appendix N, section 1.0(c) is “the data set used for performing calculations in appendix N. It represents data for the primary monitors augmented with data from collocated monitors” Although this provision makes clear that data from collocated monitors may be used to augment data from primary monitors, it does not prohibit the combination of data from a primary monitor, before and after it is relocated. Accordingly, the EPA does not agree that the regulation defining “combined site data record” indicates that the proposed determination of attainment was inappropriate.

Comment #2: The CBD writes that the 98th percentile value for the 2016–2018 period is above the NAAQS. The CBD suggests that this indicates three things: First, compared to the 2016–2018 Hidden Valley monitor's annual concentration, the 2015 Cowtown monitor's annual concentration is so low as to suggest that it is not representative of the Cowtown monitoring site;²⁶ second, the area has a PM_{2.5} pollution problem, as evidenced by the fact that it is violating the NAAQS based on 2018 data; and third, over 2016–2018, the Hidden Valley

monitoring site concentration values are trending upward.

Response #2: In this notice, the EPA is acting pursuant to its statutory obligation to “[w]ithin 6 months following the applicable attainment date for a PM₁₀ [or PM_{2.5}] nonattainment area . . . determine whether the area attained the standard by that date.”²⁷ As explained above, and in our proposal, the attainment date for the West Central Pinal County PM_{2.5} nonattainment area is December 31, 2017.²⁸ The statutory requirement to determine whether the area has attained “by that date” sets the timeframe for the EPA's analysis. The Act requires the EPA to determine whether the West Central Pinal County PM_{2.5} nonattainment area attained the standard by December 31, 2017. Accordingly, to the extent that CBD's comment suggests that the EPA must evaluate monitoring data that was collected subsequent to the applicable attainment date, the EPA disagrees. The EPA will continue to review data for 2018 and subsequent years, but these data are outside the scope of the present action.

The CBD's comment regarding whether the Cowtown site is “representative” is unclear. To the extent that CBD's comment argues that the 2018 data from Hidden Valley site indicates that the 2015 data from the Cowtown site is not representative of the Cowtown site and ambient air quality at that site, this statement is unsubstantiated. The fact that the 2015 Cowtown design value is lower than the 2016, 2017, and 2018 measurements at Hidden Valley does not mean that the 2015 Cowtown data is not representative of the Cowtown site and ambient air quality at that location, as measured in 2015. The State and the EPA evaluated the respective monitor locations in 2015 and 2018 as part of the annual monitoring network review process, and both were consistent with applicable regulatory siting requirements.²⁹ Some annual variation

in monitor data is not particularly unusual for a 24-hour NAAQS and does not automatically call into question the validity of a monitor location. Absent some indication of a technical problem with the Cowtown monitor, which the commenter does not suggest, the 2015 data collected at the Cowtown site is representative of the ambient PM_{2.5} concentrations at the Cowtown site in 2015.

To the extent that CBD's comment argues that the 2018 data and CBD's calculated 2016–2018 design value indicate that the Cowtown site is not representative of the Hidden Valley site, or vice versa, in our response to Comment #1, we discussed our rationale for approving the relocation of the Cowtown monitoring site and determining a design value using data from both the Cowtown and Hidden Valley monitors. The EPA concluded through that process, involving more than two years of cooperation with the District and substantial concurrent monitoring at the Cowtown and Hidden Valley sites, followed by a public notice and comment period, that the Hidden Valley site was a “nearby location with the same scale of representation” as the Cowtown site.³⁰ That analysis demonstrated, based on almost a year of concurrent sampling, from June 2014 to June 2015, that the 98th percentile PM_{2.5} concentration between the two sites tracked closely.³¹ Moreover, the EPA's relocation analysis included an investigation of the land use, and nearby sources surrounding the two sites, and concluded that they were similar.³² In light of the substantial concurrent monitoring data and additional analysis completed by the EPA, the commenter's suggestion that a cross-year comparison of data streams from different locations shows that one monitoring site is either not representative of the other, or not representative of ambient PM_{2.5} concentrations at the time they were observed, is not persuasive. In general, pollution levels can exhibit annual variation, with particulate matter pollution in arid regions showing a strong dependency on variable factors such as variations in levels of local and/or regional anthropogenic emissions, the

²⁷ 42 U.S.C. 7513(b)(2).

²⁸ For an area classified as Moderate under the Clean Air Act (CAA), such as the West Central Pinal County PM_{2.5} nonattainment area, section 188(c) states that the statutory attainment date is “as expeditiously as practicable, but no later than the end of the sixth calendar year after the area's designation as nonattainment.” Therefore, the applicable attainment date for West Central Pinal County, designated nonattainment in 2011 and classified as Moderate in 2014, is December 31, 2017. 79 FR 31566, 31569, fn 5.

²⁹ See Correspondence dated October 27, 2015, from Gretchen Busterud, EPA-Region IX, to Michael Sundblom, PCAQCD; and, correspondence dated October 30, 2018, from Gwen Yoshimura, Manager, Air Quality Analysis Office, EPA Region IX, to

Michael Sundblom, Director, Pinal County Air Quality Control District.

³⁰ See 40 CFR 58.14(c)(6), Relocation Approval Letter.

³¹ In fact, over the concurrent monitoring period, the 98th percentile value (the value used in design value calculations for the 24-hour NAAQS) for the Hidden Valley monitor was slightly higher than the value for the Cowtown monitor, suggesting that the change from the Cowtown site to the Hidden Valley site may lead to a higher design value for the 24-hour PM_{2.5} NAAQS.

³² Relocation Approval Letter.

²⁶ The comment states that “the Cowtown site, which had a 98th percentile in 2015 of 22.6 . . . is not representative of the Cowtown site.” The comment is unclear. The EPA infers that the commenter is indicating one of three things: (1) That the 22.6 Cowtown value in 2015 is not indicative of long-term conditions at the Cowtown site, (2) that the Cowtown site is not representative of the Hidden Valley site, or (3) that the Hidden Valley site is not representative of the Cowtown site.

effectiveness of existing local measures, and meteorology. Considering these varying factors, a simple cross-year comparison of the monitoring data at each location does not establish the comparability of the two sites and is not a useful means of determining that the different monitor locations are validly measuring ambient PM_{2.5} concentrations accurately. Accordingly, the EPA disagrees with the commenter that the 2018 monitoring data, and any design value calculations stemming from it, indicate that the 2015 Cowtown data are not representative of ambient PM_{2.5} concentrations in 2015, or that the Cowtown and Hidden Valley sites are not sufficiently representative of each other, and the ambient PM_{2.5} concentrations at these sites.

The CBD's remaining comments, that the 2018 data shows that the West Central Pinal County nonattainment area has a pollution problem and that it shows an upward trend over time, address issues that are outside the scope of the present action. As explained above, the statutory timeframe for the EPA's analysis in this determination of attainment ends at the applicable attainment date of December 31, 2017. Although the EPA may consider the more recent air quality monitoring data after this date in future actions, it does not bear on the EPA's statutory obligation under 42 U.S.C. 7513(b)(2) to determine whether the West Central Pinal County nonattainment area has attained the standard "by that date."³³ Accordingly, the EPA disagrees with the commenter that the EPA should determine that the West Central Pinal County nonattainment area did not attain the 2006 24-hour PM_{2.5} NAAQS by its December 31, 2017 attainment date because of monitoring data from 2018.

III. Final Action

For the reasons discussed in our proposed action and in this final rule, under section 188(b)(2) of the CAA, the EPA is taking final action to determine that the West Central Pinal County Moderate nonattainment area attained the 2006 24-hour PM_{2.5} NAAQS by its applicable attainment date, December 31, 2017. Our determination of attainment is based on complete, quality-assured and certified PM_{2.5} monitoring data for the appropriate three-year period, 2015–2017.

Once effective, this action satisfies the EPA's obligation pursuant to CAA section 188(b)(2) to determine whether this area attained the standards by the applicable attainment date. This

determination of attainment does not constitute a redesignation to attainment. Rather, redesignations require states to meet several statutory criteria in CAA section 107(d)(3), including EPA approval of a state plan demonstrating maintenance of the air quality standards for 10 years after redesignation.

IV. Statutory and Executive Order Reviews

This final action determines that West Central Pinal County has met the 2006 24-hour PM_{2.5} NAAQS as a statement of fact according to regulations and requirements discussed in this action and in the prior proposal. 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 expected to be an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant 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 Clean Air Act; and,
- Does not provide the 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).

This action does not have tribal implications as specified in Executive Order 13175. No tribal areas are located within the West Central Pinal County PM_{2.5} nonattainment area. The CAA and the Tribal Authority Rule establish the relationship of the Federal Government and tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Thus, Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to this action.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 2, 2019. 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, does not 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, Ammonia, Fine particulate matter, Incorporation by reference, Intergovernmental relations, Nitrogen dioxides, Reporting and recordkeeping requirements, Sulfur dioxides, Volatile organic compounds.

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

Dated: September 17, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

³³ 42 U.S.C. 7513(b)(2).

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 D—Arizona

■ 2. Section 52.131 is amended by adding paragraph (d) to read as follows:

§ 52.131 Control Strategy and regulations: Fine Particle Matter.

* * * * *

(d) *Determination of attainment.* Effective November 4, 2019, the EPA has determined that, based on 2015 to 2017 ambient air quality data, the West Central Pinal County, AZ PM_{2.5} nonattainment area has attained the 2006 24-hour PM_{2.5} NAAQS by the applicable attainment date of December 31, 2017. Therefore, the EPA has met the requirement pursuant to CAA section 188(b)(2) to determine whether the area attained the standard. The EPA also has determined that the West Central Pinal County, AZ nonattainment area will not be reclassified for failure to attain by its applicable attainment date under section 188(b)(2).

[FR Doc. 2019–21206 Filed 10–2–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2018–0243; FRL–10000–23]

Furilazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of furilazole in or on sweet corn commodities. The Monsanto Company submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA) requesting these tolerances.

DATES: This regulation is effective October 3, 2019. Objections and requests for hearings must be received on or before December 2, 2019, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the SUPPLEMENTARY INFORMATION).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0243, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs

Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: RDPRNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–

OPP–2018–0243 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before December 2, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2018–0243, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- **Mail:** OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of October 18, 2018 (83 FR 52787) (FRL–9984–21), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP IN–11139) by Monsanto, 1300 I Street NW, Washington, DC 20005. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of furilazole when used as an inert ingredient (safener) in pesticide formulations applied to corn, sweet, forage at 0.01 parts per million (ppm); corn, sweet, kernel plus cob with husks removed at 0.01 ppm; and corn, sweet, stover at 0.01 ppm. That document referenced a summary of the petition prepared by Monsanto, the registrant, which is available in the docket, <http://www.regulations.gov>.

Based upon review of the data supporting the petition, EPA is establishing the tolerances as requested.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is “safe.” Section 408(b)(2)(A)(ii) of FFDCA defines “safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .”

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for furilazole including exposure resulting from the tolerances established by this action. EPA’s assessment of exposures and risks associated with furilazole follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The toxicological profile of furilazole is discussed in the final tolerance rule found in the **Federal Register** of October 10, 2007 (72 FR 57489) (FRL–8145–2). Specific information on the studies received and the nature of the adverse effects caused by furilazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule published in Unit III.A. of that **Federal Register** document and in the supporting

documents for that rule. In addition, due to the similarities between that rule and this, EPA is incorporating the findings concerning the children’s safety factor and cumulative exposure into this rule because they also apply to this rulemaking. The summary of toxicological endpoints the Agency used to assess risk are discussed in the final tolerance rule found in the **Federal Register** of April 3, 2002 (67 FR 15727) (FRL–6828–4).

B. Exposure Assessment

1. *Dietary exposure (food and drinking water).* In evaluating dietary exposure to furilazole, EPA considered exposure under the proposed exemption from the requirement of a tolerance as well as the already established tolerances for furilazole.

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

No such effects were identified in the toxicological studies for the general population for furilazole; therefore, a quantitative acute dietary exposure assessment for the general population is unnecessary.

However, such effects were identified for furilazole for females 13 to 50 years old. In estimating acute dietary exposure, EPA used 2003–2008 food consumption information from the U.S. Department of Agriculture’s National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, EPA conducted an unrefined acute dietary exposure and risk assessment assuming 100 percent crop treated (PCT), default processing factors, and tolerance-level residues for all food commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used 2003–2008 food consumption data from the USDA’s NHANES/WWEIA. As to residue levels in food, EPA conducted an unrefined chronic dietary exposure and risk assessment assuming 100 PCT, default processing factors (when available), and tolerance level residues for all food commodities.

iii. *Cancer.* As indicated in the 2002 **Federal Register** document, EPA has concluded that furilazole should be classified as a possible human carcinogen and a linear approach has been used to quantify cancer risk since no mode of action data are available. The aggregate cancer risk assessment for adults takes into account exposure estimates from dietary consumption of

furilazole from food and drinking water sources. Dietary exposure assessments were quantified using the same estimates as discussed in Unit III.B.1.ii, Chronic Exposure.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for furilazole in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of furilazole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at <http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide>.

The estimated drinking water concentrations (EDWCs) of furilazole for acute exposures are estimated to be 1.2 parts per billion (ppb) for surface water and 0.02 ppb for ground water; for chronic exposures for non-cancer assessments are estimated to be 0.8 ppb for surface water and 0.02 ppb for ground water; and for chronic exposures for cancer assessments are estimated to be 0.22 ppb for surface water and 0.02 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the acute dietary risk assessment, a water concentration value of 1.2 ppb was used to assess the contribution to drinking water, for the chronic dietary risk assessment, the water concentration value of 0.8 ppb was used to assess the contribution to drinking water. For the cancer dietary risk assessment, the water concentration value of 0.22 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term “residential exposure” is used in this document to refer to non-occupational, non-dietary exposure (e.g., textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables). There are no residential uses of furilazole; therefore, a residential exposure assessment was not conducted.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider “available information” concerning the cumulative effects of a particular pesticide’s residues and “other substances that have a common mechanism of toxicity.”

Unlike other pesticides for which EPA has followed a cumulative risk approach

based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to furilazole and any other substances; furilazole does not appear to produce any other toxic metabolite produced by other substances. For the purposes of this action, therefore, EPA has not assumed that furilazole has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to furilazole will be less than 1% for females 13 to 49 years old, the only population group of concern.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to furilazole from food and water will utilize 13.3% of the cPAD for non-nursing infants, the population group receiving the greatest exposure. There are no expected residential uses and therefore chronic residential exposure to residues of furilazole is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because there are no proposed or registered residential uses of furilazole a short-term assessment was not performed. The chronic risk assessment is protective for any short-term exposures from food and drinking water.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because there are no proposed or registered residential uses of furilazole an intermediate-term assessment was not performed. The chronic risk assessment is protective for any

intermediate-term exposures from food and drinking water. Furilazole is not currently registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that intermediate-term aggregate exposure assessment is not necessary.

5. *Aggregate cancer risk for U.S. population.* A cancer aggregate assessment was conducted for furilazole since it is classified as a "Group C, Possible Human Carcinogen" with a Q^1 of $0.0274 \text{ (mg/kg/day)}^{-1}$ based upon hepatocellular adenomas and carcinomas in rats and mice, bronchioalveolar adenomas and carcinomas in female mice, testicular interstitial cell interstitial cell tumors in male rats, and stomach tumors in female mice. The cancer risk estimate for adults is 1.1×10^{-6} .

EPA generally considers cancer risks (expressed as the probability of an increased cancer case) in the range of 1 in 1 million (or 1×10^{-6}) or less to be negligible. The precision which can be assumed for cancer risk estimates is best described by rounding to the nearest integral order of magnitude on the logarithmic scale; for example, risks falling between 3×10^{-7} and 3×10^{-6} are expressed as risks in the range of 10^{-6} . Considering the precision with which cancer hazard can be estimated, the conservativeness of low-dose linear extrapolation, and the rounding procedure described above, cancer risk should generally not be assumed to exceed the benchmark level of concern of the range of 10^{-6} until the calculated risk exceeds approximately 3×10^{-6} . This is particularly the case where some conservatism is maintained in the exposure assessment. EPA has concluded the cancer risk for all existing furilazole uses and the uses associated with the tolerances established in this action fall within the range of 1×10^{-6} and are thus negligible.

EPA has concluded that using the nonlinear approach based on the chronic RfD will be protective of potential carcinogenicity.

Because the chronic risk is below the Agency's level of concern, EPA concludes there is no aggregate cancer risk from exposure to furilazole.

6. *Determination of safety.* Taking into consideration all available information on furilazole, EPA has determined that there is a reasonable certainty that no harm to any population subgroup will result from aggregate exposure to furilazole.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (capillary gas chromatography using electron capture detection) is available to enforce the tolerance exemption expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; email address: residuemethods@epa.gov.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established any MRLs for furilazole.

C. Response to Comments

Three comments were submitted to the docket for this action. One dealt with "relaxing" current EPA standards; another argued that inert ingredients should be regulated through tolerances. A third comment took issue with data submitted about the toxicity of "Florazole" (which EPA assumes is a typographical error and is meant to apply to furilazole).

This action establishes tolerances for an inert ingredient used as a safener in pesticide products; it is not relaxing EPA standards or ignoring the potential adverse effects of inert ingredients. Inert ingredients are evaluated under the same safety standard as active ingredients under the FFDCA. Under the existing legal framework provided by FFDCA section 408, EPA is authorized to establish pesticide chemical tolerances or exemptions where persons seeking such tolerances or exemptions have demonstrated that the pesticide chemical meets the safety standard imposed by the statute. EPA has evaluated the potential adverse

effects from exposure to this pesticide chemical, taking into consideration data on the potential for developmental toxicity and carcinogenicity. No new toxicity data were submitted in connection with the present petition. After evaluating the available data and other information, EPA has determined that the tolerances for this chemical are safe. The commenters have provided no other information for the Agency to consider in making its safety determination.

V. Conclusion

Based on available data, the Agency concludes that tolerances for residues of furilazole as discussed in this document are safe. Accordingly, the Agency is establishing tolerances for residues of furilazole in or on corn, sweet, forage; corn, sweet, kernel plus cob with husks removed; and corn, sweet, stover at 0.01 ppm. In addition, EPA is revising the tolerance expression to clarify that (1) as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of furilazole not specifically mentioned and (2) compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression. EPA has determined that it is reasonable to make this change final without prior proposal and opportunity for comment, because public comment is not necessary, in that the change has no substantive effect on the tolerance, but rather is merely intended to clarify the existing tolerance expression.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled “Regulatory Planning and Review” (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled “Reducing Regulations and Controlling Regulatory Costs” (82

FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal**

Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 17, 2019.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.471(a):

■ a. Revise the introductory text; and

■ b. Add alphabetically the entries “Corn, sweet, forage”; “Corn, sweet, kernel plus cob with husks removed”; and “Corn, sweet, stover” to the table.

The revision and additions read as follows:

§ 180.471 Furilazole; tolerances for residues.

(a) *General*. Tolerances are established for residues of furilazole, including its metabolites and degradates, when used as an inert ingredient (safener) in pesticide formulations applied to the following raw agricultural commodities. Compliance with the tolerance levels specified in the table in this paragraph (a) is to be determined by measuring only furilazole, 3-dichloroacetyl-5-(2-furanyl)-2, 2-dimethyloxazolidine (CAS Reg. No. 121776–33–8) in or on the commodity.

Commodity	Parts per million
* * * * *	
Corn, sweet, forage	0.01
Corn, sweet, kernel plus cob with husks removed	0.01
Corn, sweet, stover	0.01
* * * * *	

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[FR Doc. 2019–20874 Filed 10–2–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 180****[EPA-HQ-OPP-2017; FRL-9994-70]****Nicotinamide; Exemption From the Requirement of a Tolerance****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of nicotinamide (CAS Reg. No. 98-92-0) when used as an inert ingredient (corrosion inhibitor) on growing crops only and limited to 5.0% in a pesticide formulation. Dow AgroSciences LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an amendment to an existing requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of nicotinamide.

DATES: This regulation is effective October 3, 2019. Objections and requests for hearings must be received on or before December 2, 2019 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2017-0046, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Michael L. Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: RDfRNNotices@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information***A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Publishing Office's e-CFR site at http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2017-0046 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before December 2, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2017-0046, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online

instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- **Mail:** OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

II. Petition for Exemption

In the **Federal Register** of June 8, 2017 (82 FR 26641) (FRL-9961-14), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (IN-11012) by Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268. The petition requested that 40 CFR 180.920 be amended by establishing an exemption from the requirement of a tolerance for residues of nicotinamide (CAS Reg. No. 98-92-0) when used as an inert ingredient (corrosion inhibitor) in pesticide formulations applied to growing crops, limited to 5% in the pesticide formulation. That document referenced a summary of the petition prepared by Dow AgroSciences LLC, the petitioner, which is available in the docket, <http://www.regulations.gov>. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit V.B.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(c)(2)(B) requires EPA to take into account the considerations set forth in subparagraphs (C) and (D) of subsection (b)(2) when making this exemption safety determination. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for nicotinamide including exposure resulting from the exemption established by this action.

EPA's assessment of exposures and risks associated with nicotinamide follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by nicotinamide as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

Nicotinamide is a water-soluble B-complex vitamin which is present naturally in animal products, whole cereals and legumes. Together with nicotinic acid (niacin), nicotinamide belongs to vitamin B3 and is required as a nutrient to prevent niacin deficiency disorders such as pellagra. It functions as a coenzyme or co-substrate in many biological reduction and oxidation reactions required for energy metabolism in mammalian systems. It is used as a nutritional supplement, therapeutic agent, skin and hair conditioning agent in cosmetics and a constituent of consumer, household solvent and cleaning products.

As a nutritional supplement and vitamin, recommended daily dietary allowances and maximum daily doses have been established by the Institute of Medicine (US) Standing Committee on the Scientific Evaluation of Dietary Reference Intakes and its Panel on Folate, Other B Vitamins, and Choline. The committee also established the tolerance upper intake level at 35 mg/day based on flushing as a critical adverse effect. The level applies to all forms of niacin added to foods or taken as supplements, including nicotinamide. Although nicotinamide is not associated with flushing effects, a UL for nicotinic acid based on flushing is protective against the other effects seen in the available toxicity studies.

Nicotinamide exhibits low levels of acute toxicity. The rat acute oral lethal dose (LD₅₀) is 3,000–7,000 milligrams/kilogram (mg/kg). The acute dermal LD₅₀ for rabbits is > 2,000 mg/kg. Nicotinamide is negative for skin sensitization in the guinea pig. It is not irritating to rabbit skin. Nicotinamide is considered irritating to rabbit eyes.

In a 4-week oral toxicity via gavage, no adverse effects were observed in

female rats at dose levels below treated with 1,000 mg/kg/day of nicotinamide.

In a developmental toxicity study involving exposure to nicotinic acid, no effects in the dams (decreased body weight gains and significantly decreased placental weights) and fetuses (significantly lower body weights in male offspring) were observed at dose levels below 1,000 mg/kg/day. The NOAEL for maternal and developmental toxicity is 200 mg/kg/day (198 mg/kg/day for nicotinamide). This study is deemed relevant to the assessment of nicotinamide since nicotinamide converts to nicotinic acid in the gut.

Nicotinamide was negative in Ames tests, micronucleus tests, with and without metabolic activation. No chromosomal effects were reported in mammalian cells. Positive results were seen in a sister chromatid exchange induction study. However, it was noted that activity was only seen at excessively high concentrations. Based on the weight of evidence, nicotinamide is considered negative for mutagenicity.

Nicotinamide is not carcinogenic. No increased incidence of tumors was observed in a lifetime carcinogenicity study with Swiss mice receiving 1.0% (equivalent to 66.3 and 100 mg/kg/day in female and male rats, respectively) nicotinamide in the diet.

There were no data directly regarding the potential for neurotoxicity or immunotoxicity of nicotinamide. However, there is no evidence of potential neurotoxicity or immunotoxicity in the available data.

Metabolism of nicotinamide in humans is well understood. Nicotinamide is necessary for lipid metabolism, tissue respiration and glycogenolysis. It is readily absorbed in the gastrointestinal (g.i.) tract. *In vivo*, nicotinamide is formed from the conversion of nicotinic acid (niacin), while some dietary nicotinamide is oxidized to nicotinic acid and then to nicotinamide. Nicotinamide is incorporated into two coenzymes: Nicotinamide adenine dinucleotide (NAD) and nicotinamide adenine dinucleotide phosphate (NADP) which act as hydrogen-carrier molecules in glycogenolysis, tissue respiration and lipid metabolism. It can be incorporated into NADP either directly or after deamidation, or metabolized in the liver and excreted in the urine. The primary metabolites are N-methylnicotinamide and N-methyl-2-pyridone-5-carboxamide, though it may also be excreted unchanged.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which the NOAEL and the LOAEL are identified. Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see <http://www.epa.gov/pesticides/factsheets/riskassess.htm>.

The available toxicity studies indicate that nicotinamide has a very low overall toxicity. No effects are observed below 1,000 mg/kg/day, the limit dose. Since signs of toxicity were not observed below the limit dose an endpoint of concern for risk assessment purposes was not identified.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to nicotinamide, EPA considered exposure expected under the proposed exemption from the requirement of a tolerance as well as from the existing approved uses. EPA assessed dietary exposures from nicotinamide in food as follows:

Nicotinamide is already approved for use (synergist) on growing crops. The current request (for use as a corrosion inhibitor) increases dietary exposure (food and drinking water) to nicotinamide that can occur following ingestion of foods with residues from treated crops. In addition, dietary exposure to nicotinamide may also occur through foods that contain it naturally, such as grains, meat and milk; fortified foods, and dietary supplements. However, a quantitative dietary exposure assessment was not

conducted since a toxicological endpoint for risk assessment was not identified.

2. *Dietary exposure from drinking water.* Since a hazard endpoint of concern was not identified for the acute and chronic dietary assessment, a quantitative dietary exposure risk assessment for drinking water was not conducted, although exposures may be expected from use on food crops.

3. *From non-dietary exposure.* The term “residential exposure” is used in this document to refer to non-occupational, non-dietary exposure (e.g., textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

Nicotinamide may be used as an inert ingredient in pesticide products that are registered for specific uses that may result in residential exposure, such as pesticides used in and around the home, and in non-pesticide products such as household products, personal care products and cosmetics. However, based on the lack of a hazard endpoint of concern, a quantitative residential exposure assessment for nicotinamide was not conducted.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider “available information” concerning the cumulative effects of a particular pesticide's residues and “other substances that have a common mechanism of toxicity.”

EPA has not found nicotinamide to share a common mechanism of toxicity with any other substances, and nicotinamide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that nicotinamide does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at <http://www.epa.gov/pesticides/cumulative>.

D. Safety Factor for Infants and Children

Based on the lack of threshold effects, EPA has not identified any toxicological endpoints of concern and is conducting a qualitative assessment of nicotinamide. The qualitative assessment does not use safety factors for assessing risk, and no additional safety factor is needed for assessing risk

to infants and children. Based on an assessment of nicotinamide, EPA has concluded that there are no toxicological endpoints of concern for the U.S. population, including infants and children.

E. Aggregate Risks and Determination of Safety

Because no toxicological endpoints of concern were identified, EPA concludes that aggregate exposure to residues of nicotinamide will not pose a risk to the U.S. population, including infants and children, and that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to nicotinamide residues.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. Response to Comments

Two comments were received concerning the safety and impact of pesticides on food and human health. Although the Agency recognizes that some individuals believe that no residue of pesticides should be allowed in or on food, the existing legal framework provided by section 408 of the FFDCA authorizes the establishment of pesticide tolerances or exemptions where the Agency determines that tolerance or exemption meets the safety standard imposed by the statute. EPA has sufficient data to support a safety determination for the exemption from the requirement of a tolerance for nicotinamide. The commenters have provided no additional information supporting a determination that the exemption is not safe.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.920 for nicotinamide (CAS Reg. No. 98–92–0) when used as an inert ingredient (corrosion inhibitor) in pesticide formulations applied to growing crops, limited to 5.0% in a pesticide formulation.

VII. Statutory and Executive Order Reviews

This action establishes a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled

“Regulatory Planning and Review” (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001); Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997); or Executive Order 13771, entitled “Reducing Regulations and Controlling Regulatory Costs” (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does

this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will

submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 11, 2019.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.920, revise the inert ingredient “Nicotinamide (CAS Reg. No. 98–92–0)” in the table to read as follows:

§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * * *		
Nicotinamide (CAS Reg. No. 98–92–0).	Not to exceed 0.5% by weight of pesticide formulation as synergist; not to exceed 5% by weight of pesticide formulation as corrosion inhibitor.	Synergist, Corrosion Inhibitor
* * * * *		

[FR Doc. 2019–20528 Filed 10–2–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0138; FRL–9999–72]

Poly(oxy-1,2-ethanediyl), α-(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)-ω-hydroxy-; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of poly(oxy-1,2-ethanediyl), α-(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)-ω-hydroxy- (CAS Reg. No. 67674–67–3) when used as an inert ingredient (surfactant) applied to animals. Exponent, on behalf of L’Nouvel, Inc., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of poly(oxy-1,2-ethanediyl), α-(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl)

propyl)-ω-hydroxy- when used in accordance with the terms of the exemption in EPA regulations.

DATES: This regulation is effective October 3, 2019. Objections and requests for hearings must be received on or before December 2, 2019, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0138, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William

Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: RDfRNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Publishing Office's e-CFR site at http://www.ecfr.gov/cgi-bin/text-id?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0138 in the subject line on the first page of your submission. All objections and requests for a hearing

must be in writing and must be received by the Hearing Clerk on or before December 2, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2019–0138, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

II. Petition for Exemption

In the **Federal Register** of May 13, 2019 (84 FR 20843) (FRL–9991–91), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–11248) by Exponent, on behalf of LNouvel, Inc., 4657 Courtyard Trail, Plano, TX 75024–2114. The petition requested that 40 CFR 180.930 be amended by establishing an exemption from the requirement of a tolerance for residues of poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-(trimethylsilyl)oxy)disiloxanyl)propyl)- ω -hydroxy- (CAS Reg. No. 67674–67–3) when used as an inert ingredient in pesticide formulations applied to animals. That document referenced a summary of the petition prepared by Exponent, on behalf of LNouvel, Inc., the petitioner, which is available in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term “inert” is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is “safe.” Section 408(c)(2)(A)(ii) of FFDCA defines “safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(c)(2)(B) requires EPA to take into account the considerations set forth in section 408(b)(2)(C) and (D), when making this safety determination. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .”

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the

toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy- including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy- follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy- as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

Poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy exhibits low levels of acute toxicity. Acute studies in rats showed oral LD₅₀ of >1,600 mg/kg. The dermal LD₅₀ in rats was >3,200 mg/kg. No acute inhalation studies were available. Poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy- is considered to be an eye irritant and a mild skin irritant. However, it was not found to be a dermal sensitizer.

Repeat dose studies on poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy- are limited. In a combined repeated dose toxicity study with the reproduction/developmental toxicity screening test in rats, effects seen at 1,000 mg/kg/day, the highest dose tested (*i.e.*, 800 mg/kg/day to poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy-) included decreased body weight, body weight gain, and food consumption and reduced body temperature in males. No developmental/reproductive adverse effect attributed to the test substance were observed in the study.

There is no evidence that exposure to poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy- suppresses or otherwise harms immune function in humans. No signs of neurotoxicity were reported in acute or repeat-dose oral studies. There were also no signs of carcinogenicity in the database. Similarly, all tests were negative for genotoxicity and mutagenicity. The available data suggests that poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy- is not carcinogenic.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment.

PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk

assessment process, see <http://www.epa.gov/pesticides/factsheets/riskassess.htm>.

A summary of the toxicological endpoints for poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy- used for human risk assessment are described in this unit. The Point of Departure (POD) for all durations of oral, dermal, and inhalation exposure is based on the NOAEL of 300 mg/kg/day and the LOAEL of 1,000 mg/kg/day based on decreased body weight, body weight gain, and food consumption and reduced body temperature in males from the combined repeated dose toxicity study with the reproduction/developmental toxicity screening test. Once corrected for the percent inert ingredient in the test formulation, the NOAEL was 240 mg/kg/day and the LOAEL was 800 mg/kg/day poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy-.

A 100-fold uncertainty factor was used (10X interspecies extrapolation, 10X for intraspecies variability, and 1X FQPA safety factor (SF)). The FQPA SF is reduced to 1X because the reproductive and developmental toxicity database is complete and there is no evidence of increased risk to infants and children.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy-, EPA considered exposure under the proposed exemption from the requirement of a tolerance as well as the existing tolerance exemption for this chemical. Poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy- is currently approved as a food use inert ingredient under 40 CFR 180.910. EPA assessed dietary exposures from poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy- in food as follows:

Because no acute endpoint of concern was identified, a quantitative acute dietary exposure assessment is unnecessary. In conducting the chronic dietary exposure assessment using the Dietary Exposure Evaluation Model DEEM-FCID™, Version 3.16, EPA used food consumption information from the U.S. Department of Agriculture's National Health and Nutrition Examination Survey, What we eat in America, (NHANES/WWEIA). This dietary survey was conducted from 2003

to 2008. The Inert Dietary Exposure Evaluation Model (I-DEEM) is a highly conservative model with the assumption that the residue level of the inert ingredient would be no higher than the highest tolerance for a given commodity. Implicit in this assumption is that there would be similar rates of degradation between the active and inert ingredient (if any) and that the concentration of inert ingredient in the scenarios leading to these highest of tolerances would be no higher than the concentration of the active ingredient. The model assumes 100 percent crop treated (PCT) for all crops and that every food eaten by a person each day has tolerance-level residues. This model incorporates all current and proposed pesticidal food uses for this inert ingredient.

2. *Dietary exposure from drinking water.* For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy-, a conservative drinking water concentration value of 100 ppb based on screening level modeling was used to assess the contribution to drinking water for the chronic dietary risk assessments for parent compound. These values were directly entered into the dietary exposure model.

3. *From non-dietary exposure.* The term “residential exposure” is used in this document to refer to non-occupational, non-dietary exposure (e.g., textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables). A review of residential products containing this inert ingredient revealed that it is currently used in fungicides, herbicides, and insecticides applied to residential settings, mainly on lawns and turf. In an effort to assess exposure, the EPA has conducted a conservative screening-level assessment using high-end exposure scenarios for pesticidal use on lawns/turf. For each residential scenario, short-term exposure for both the handler (adult) and post-application exposure (adult and child) is expected. Based on the use pattern (e.g., pre- and post-harvest uses, use on lawns), intermediate-term and long-term pesticidal exposures from residential uses are not expected.

In addition to the proposed and current pesticidal uses of poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy-, poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl)

propyl)- ω -hydroxy- is also used in various non-pesticidal products; however, quantifiable exposure data are not available for these exposure scenarios.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCFA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider “available information” concerning the cumulative effects of a particular pesticide’s residues and “other substances that have a common mechanism of toxicity.”

EPA has not found poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy- to share a common mechanism of toxicity with any other substances, and poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy- does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy- does not have a common mechanism of toxicity with other substances. For information regarding EPA’s efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA’s website at <http://www.epa.gov/pesticides/cumulative>.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCFA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* A combined repeated dose toxicity study with a reproduction/developmental toxicity screening test showed no effect on reproductive parameters of fertility in the absence of maternal toxicity.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy- is complete.

ii. There is no indication that poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy- is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UF’s to account for neurotoxicity.

iii. There is no evidence that poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy- results in increased susceptibility in *in utero* rats in a combined repeated dose toxicity study with the reproduction/developmental toxicity screening test in rats.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% CT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy- in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy-.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking

water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy- is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy- from food and water will utilize 29.4% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy- is currently used as an inert ingredient in pesticide products that are registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy-.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 390 for adults and 175 for children 1 to 2 years old. Because EPA's level of concern for poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy- is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). A potential intermediate-term adverse effect was identified; however, poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy- is not currently used as an inert ingredient in pesticide products that are registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term

residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy-.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity, poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy- is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy-residues.

V. Other Considerations

Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.930 for poly(oxy-1,2-ethanediyl), α -(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)- ω -hydroxy- (CAS Reg. No. 67674-67-3) when used as an inert ingredient (surfactant) in pesticide formulations applied to animals.

VII. Statutory and Executive Order Reviews

This action establishes an exemption from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66

FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), nor is it considered a regulatory action for purposes of Executive Order 13771, entitled "Reducing Regulations and Controlling Regulatory Costs" (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and

other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection,
Administrative practice and procedure,
Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: September 13, 2019.

Donna Davis,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.930, add alphabetically the inert ingredient “Poly(oxy-1,2-ethanediyl), α-(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)-ω-hydroxy- (CAS Reg. No. 67674–67–3)” to the table to read as follows:

§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * * *	* * * * *	* * * * *
Poly(oxy-1,2-ethanediyl), α-(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl) oxy) disiloxanyl) propyl)-ω-hydroxy- (CAS Reg. No. 67674–67–3).		Surfactant.
* * * * *	* * * * *	* * * * *

[FR Doc. 2019–20524 Filed 10–2–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA–R01–UST–2019–0420; FRL–10000–57–Region 1]

Maine: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State of Maine’s Underground Storage Tank (UST) program submitted by the Maine Department of Environmental Protection (ME DEP). This action also codifies EPA’s approval of Maine’s State program and incorporates by reference those provisions of the State regulations that we have determined meet the requirements for approval. The provisions will be subject to EPA’s inspection and enforcement authorities under sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions.

DATES: This rule is effective December 2, 2019, unless EPA receives adverse comment by November 4, 2019. If EPA receives adverse comments, it will publish a timely withdrawal in the **Federal Register** informing the public

that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of December 2, 2019, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. *Email:* hanamoto.susan@epa.gov.

3. *Mail:* Susan Hanamoto, RCRA Waste Management, UST, and Pesticides Section; Land, Chemicals, and Redevelopment Division; EPA Region 1, 5 Post Office Square, Suite 100, (Mail Code 07–1), Boston, MA 02109–3912.

4. *Hand Delivery or Courier:* Deliver your comments to Susan Hanamoto, RCRA Waste Management, UST, and Pesticides Section; Land, Chemicals, and Redevelopment Division; EPA Region 1, 5 Post Office Square, Suite 100, (Mail Code 07–1), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office’s normal hours of operation.

Instructions: Direct your comments to Docket ID No. EPA–R01–UST–2019–0420. EPA’s policy is that all comments received will be included in the public docket without change and may be 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://](http://www.regulations.gov)

www.regulations.gov, or email. The Federal website, <http://www.regulations.gov>, 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, EPA recommends that you include your name and other contact information in the body of your comment and also 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 might not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, might be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy.

IBR and supporting material: You can view and copy the documents that form the basis for this codification and associated publicly available materials from 8:30 a.m. to 4:00 p.m. Monday

through Friday at the following location: EPA Region 1 Library, 5 Post Office Square, 1st Floor, Boston, MA 02109–3912; by appointment only; tel: (617) 918–1990. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT:
Susan Hanamoto, (617) 918–1219,
hanamoto.susan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to Maine's Underground Storage Tank Program

A. Why are revisions to State programs necessary?

States that have received final approval from the EPA under RCRA Section 9004(b) of RCRA, 42 U.S.C. 6991c(b), must maintain an underground storage tank program that is equivalent to, consistent with, and no less stringent than the Federal UST program. Either EPA or the approved state may initiate program revision. When EPA makes revisions to the regulations that govern the UST program, states must revise their programs to comply with the updated regulations and submit these revisions to the EPA for approval. Program revision may be necessary when the controlling Federal or state statutory or regulatory authority is modified or when responsibility for the state program is shifted to a new agency or agencies.

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

On October 12, 2018, in accordance with 40 CFR 281.51(a), Maine submitted a complete program revision application seeking the EPA approval for its UST program revisions (State Application). Maine's revisions correspond to the EPA final rule published on July 15, 2015 (80 FR 41566), which revised the 1988 UST regulations and the 1988 state program approval (SPA) regulations (2015 Federal Revisions). As required by 40 CFR 281.20, the State Application contains the following: A transmittal letter requesting approval, a description of the program and operating procedures, a demonstration of the State's procedures to ensure adequate enforcement, a Memorandum of Agreement outlining the roles and responsibilities of the EPA and the implementing agency, a statement of certification from the Attorney General, and copies of all relevant state statutes and regulations. We have reviewed the State Application and determined that the revisions to Maine's UST program are equivalent to, consistent with, and

no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281, and that the Maine program provides for adequate enforcement of compliance (40 CFR 281.11(b)).

The statement of certification from the Attorney General asserts that the State "possesses authority over UST activities on Indian lands in the State" pursuant to the Act to Implement the Maine Indian Claims Settlement ("Maine Implementing Act" or "MIA"), 30 M.R.S. Sections 6201 to 6214, and the Federal Maine Indian Claims Settlement Act ("MICA"), 1980 Public Law 96–420 (Oct. 10, 1980).

Under basic principles of Federal Indian law, states generally lack civil regulatory jurisdiction within Indian country as defined in 18 U.S.C. Section 202F;1151. *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 527 n.1 (1998). Thus, EPA cannot presume a state has authority to regulate in Indian country, including with regard to UST activities. Instead, a state must demonstrate its jurisdiction, and EPA must determine that the state has made the requisite demonstration and expressly determine that the state has authority, before a state can implement a program in Indian country.

Based on the unique jurisdictional framework established in MIA, MICA, and the two companion laws for the Aroostook Band of Micmacs¹ and Houlton Band of Maliseet Indians,² EPA has previously determined that the State of Maine has civil regulatory jurisdiction in Indian country in two contexts. In 2012, EPA determined that the State has jurisdiction to issue National Pollution Discharge Elimination System ("NPDES") permits under the Clean Water Act in the territories of the Penobscot Indian Nation and Passamaquoddy Tribe. 77 FR 23481, 23482 (April 19, 2012); *see also Maine v. Johnson*, 498 F.3d 37 (1st Cir. 2007); 78 FR 13339, 13349 ("EPA proposes to approve the state to implement its NPDES program in the territories of the Houlton Band of Maliseet Indians and the Aroostook Band of Micmacs. . . ."). In 2015, EPA determined that the State has authority to set water quality standards under the Clean Water for waters in Tribal lands. February 2, 2015, Letter from H. Curtis Spalding, EPA Regional Administrator, to Patricia W. Aho, Maine Department of Environmental Protection

¹ Aroostook Band of Micmacs Settlement Act (ABMSA), 1991 Public Law 102–171 (Nov. 26, 1991); Micmac Settlement 30 M.R.S. Sections 7210, *et seq.*

² 1980 Public Law 96–420; M.R.S. section 6205–A.

Commissioner, Re: Review and Decision on Water Quality Standards Revisions, available at https://www.epa.gov/sites/production/files/2016-04/documents/me_let_020215.pdf.

In recognition of the significant time and resources needed to address the State's assertion of authority to regulate UST activities on Tribal lands, the EPA is not making a determination on such authority as part of this decision. This approach allows EPA to move forward with approval of the State's program elsewhere in the State while it continues to work on the State's assertion in Tribal lands. EPA is committed to acting on the State's assertion of authority. It will do so following the necessary consultation with the federally recognized Indian tribes in Maine, consistent with Executive Order 13175 (Nov. 6, 2000) and EPA's Policy on Consultation and Coordination with Indian Tribes (May 4, 2011).

Therefore, the EPA grants Maine final approval to operate its UST program with the changes described in the State Application, and as outlined below in Section I.G of this document, except as it relates to USTs on Indian lands.

C. What is the effect of this approval decision?

This action does not impose additional requirements on the regulated community because the regulations being approved by this rule are already effective in Maine, and they are not changed by this action. This action merely approves the existing State regulations as meeting the Federal requirements and renders them federally enforceable.

D. Why is EPA using a direct final rule?

EPA is publishing this direct final rule concurrent with a proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. EPA is providing an opportunity for public comment now.

E. What happens if the EPA receives comments that oppose this action?

Along with this direct final, the EPA is publishing a separate document in the "Proposed Rules" Section of this issue of the **Federal Register** that serves as the proposal to approve the State's UST program revisions, providing opportunity for public comment. If EPA receives comments that oppose this approval, EPA will withdraw the direct final rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the approval of

the State program changes after considering all comments received during the comment period. EPA will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this approval, you must do so at this time.

F. For what has Maine previously been approved?

On June 11, 1992, the EPA finalized a rule approving the UST program, effective July 13, 1992, to operate in lieu of the Federal program. On February 21,

1996, effective April 22, 1996, the EPA codified the approved Maine program, incorporating by reference the State statutes and regulatory provisions that are subject to EPA's inspection and enforcement authorities under RCRA Sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions.

G. What changes are we approving with this action?

On October 12, 2018, in accordance with 40 CFR 281.51(a), Maine submitted a complete application for final

approval of its UST program revisions adopted on September 26, 2018. The EPA now makes an immediate final decision, subject to receipt of written comments that oppose this action, that Maine's UST program revisions satisfy all of the requirements necessary to qualify for final approval. Therefore, EPA grants Maine final approval, except as it relates to USTs on Indian lands, for the following program changes:

Required Federal element	Implementing state authority
40 CFR 281.30, New UST Systems and Notification	691(5)(B)(1), (4), (6), (6-A); (5)(C); (7)(B); (8)(B)(1), (4); (10)(B)(1), (3) and (10)(C).
40 CFR 281.31, Upgrading Existing UST Systems	691(5)(B)(1); (5)(C)(3), (4); (7)(D); and (10)(C).
40 CFR 281.32, General Operating Requirements	691(5)(B)(1)(b); (5)(D)(3), (4), (6)(a), (7)(f), (g), (12), (14), (16); (7)(C)(1), (4), (5), (6); (8)(B)(1)(f); (8)(C)(1), (3), (4); (10)(B)(1)(b); (10)(D)(1), (2), (9); Appendix A; Appendix M; and Appendix N.
40 CFR 281.33, Release Detection	691(5)(B)(2), (3), (7); (5)(C)(1), (2), (3); (5)(D)(1), (2), (7), (8), (9); (7)(B)(4); (7)(C)(2); (7)(D); (8)(B)(1)(e), (2), (3); (8)(C)(1), (3); (10)(A)(2); (10)(B)(2); (10)(C); (10)(D)(1); Appendix B; Appendix E(7); and Appendix E(9).
40 CFR 281.34, Release Reporting, Investigation, and Confirmation.	691(5)(D)(10), (11); (7)(C)(3); (8)(C)(1), (3); (10)(A)(2); and (12)(A)(2).
40 CFR 281.35, Release Response and Corrective Action.	691(12)(A)(6); (12)(B)(1); (12)(C)(1), (2); (12)(C)(4); and (12)(E).
40 CFR Section 281.36, Out-of-service Systems and Closure.	691(11)(A); (11)(B); and (11)(F).
40 CFR 281.37, Financial Responsibility for USTs Containing Petroleum.	691(5)(D)(15)(a), (b), (c), (d), (e), (f), (h), (i), (k), (o); (7)(C)(8); (8)(C)(1), (3); and (10)(A)(2).
40 CFR 281.40, Legal Authorities for Compliance Monitoring.	38 M.R.S. Section 342-B.
40 CFR 281.41, Legal Authorities for Enforcement Response.	Maine Rule of Civil Procedure 80K, Section 4 (O); 38 M.R.S. Section 348(1), (3); 38 M.R.S. Section 349(2), (6), (8); 38 M.R.S. Section 347-A(1), (3); 38 M.R.S. Section 565-A(1); and 38 M.R.S. Section 568(3).

The State also demonstrates that its program provides adequate enforcement of compliance as described in 40 CFR 281.11(b) and part 281, subpart D. The ME DEP has broad statutory authority with respect to USTs to regulate installation, operation, maintenance, closure, and UST releases, and to the issuance of orders. These statutory authorities are found in: Maine Revised Statutes Annotated, Title 4: Judiciary, Title 5: Administrative Procedures and Services, Title 14: Court Procedure—Civil, Title 17: Crimes, Title 38: Waters and Navigation.

H. Where are the revised rules different from the Federal rules?

Broader in Scope Provisions

The following statutory and regulatory provisions are considered broader in scope than the Federal program, and are therefore not enforceable as a matter of Federal law:

A facility owner or operator may use the Maine Ground and Surface Waters Cleanup and Response Fund in accordance with the eligibility requirements and financial assurance

limits of the *Oil Discharge Prevention and Pollution Control Law*, 38 M.R.S. Section 551 and the *Oil Storage Facilities Groundwater Protection Law*, 568-A, in combination with one or more of the other mechanisms to assure full coverage of third party damage liability in accordance with the minimum financial assurance requirements of Chapter 691, Rule for Underground Oil Storage Facilities, Sections 5(D)(15)(a) and (b) in meeting the State's and EPA's financial responsibility requirements for underground storage tanks containing petroleum.

The owner of a facility is responsible for ensuring that the entire facility is inspected annually for compliance. The facility owner shall submit annual inspection results to the Commissioner on each July 1st, unless the Department agrees to an alternate schedule for submittal that is no less frequent than once every 12 months. The inspection results must be recorded on a form provided by the Commissioner and must include a certification statement, signed by a Certified Underground Oil

Storage Tank Installer or Inspector. The statement must certify that the entire facility was inspected and any deficiencies discovered have been corrected.

A tank and its associated piping must be taken out of operation and properly abandoned upon the expiration date of the tank warranty. When the length of the tank warranty is either unknown or the tank was installed after January 1, 2008, the tank will be deemed to have a tank warranty of 30 years from the date of installation. An extension may be granted if the tank, its associated piping and other facility components pass integrity testing. Single walled waste oil tanks and their associated piping are required to be taken out of operation and properly abandoned by October 13, 2019. A deed notation is required for all tanks and piping abandoned in place. All abandoned facilities and tanks used for the storage of Class I liquids that require removal must be removed under the direct, on-site supervision of a certified underground storage tanks installer.

New or replacement tanks and piping at heating oil or process oil storage facilities used for consumption on the premises or by the owner or operator are required to be constructed of fiberglass, cathodically protected steel, or other noncorrosive material approved by the Commissioner. All tanks and piping must be secondarily contained with continuous interstitial space monitoring. Tanks with a capacity over 1,100 gallons must have spill and overfill prevention equipment.

Only a properly certified Underground Oil Storage Tank Installer with the appropriate class of certification and that has paid the required certification fee may install an underground oil storage facility. The Certified Installer shall be present and supervise all aspects of the underground storage tank facility installation, including the excavation and replacement of a concrete pad, backfill, or soil within ten feet of an underground oil storage tank or facility product piping. Within 30 days of installation completion, the Certified Installer is responsible for providing the Commissioner with a certification that the facility, materials, design, and installation are in compliance with all State requirements.

Tanks are prohibited from installation within one foot of bedrock. In sensitive geologic areas with known contamination, bedrock blasting during installation may not occur without the Department's approval.

For all new installations and replacements of tanks and piping the facility owner shall maintain a to-scale, as-built drawing of the facility at the facility or the owner's primary place of business. The drawing is to show the location of tanks, piping, dispensers and other major underground facility components to facilitate safe facility maintenance, repairs, replacement, and remediation. No permanent structures, underground utilities or other objects may be installed or constructed near a tank such that it would impede the tank's safe removal.

If a tank is replaced, all associated underground piping not meeting the design requirements of Chapter 691 shall be replaced. Underground piping meeting the requirements of Chapter 691 must be precision tested in accordance with Appendix B prior to continued use. If product piping is replaced and structural damage to the associated tank has occurred, impairing its physical integrity, the tank must also be replaced or repaired. Tanks that cannot be repaired must be abandoned in accordance with Chapter 691, Section 11.

Repairs of a galvanic cathodic protection system must be completed by a Maine Certified Underground Oil Storage Tank Installer (Certified Installer) within 180 days of a failed test. If anodes are added to a tank, the Certified Installer shall submit written documentation that all repairs were conducted in accordance with recommended practices of STI or NACE. Testing and recalibration of overfill and spill prevention alarms and shutoff systems must be conducted by a Certified Installer or Maine Certified Underground Oil Storage Tank Inspector (Certified Inspector) who is also certified by the manufacturer of the equipment if available. Repairs of automatic overfill and spill prevention alarm and shutoff systems must be done by a Certified Installer or for certain minor repairs a Certified Inspector within 30 days. Repairs, other than corrosion induced or product incompatibility caused leaks, to fiberglass, cathodically protected steel and other approved noncorrosive material tanks and piping must be properly conducted by a Certified Installer. The Certified Installer must also be certified by the tank or piping manufacturer, when available, to conduct a repair without a manufacturer representative, so as not to void the manufacturer warranty.

New and replacement underground waste oil facilities may not be located beneath a building or other permanent structure or within 25 feet of a classified body of surface water.

At least 60 days prior to new and replacement field constructed underground oil storage tank registration, design and installation plans must be submitted to the Commissioner for review and approval. The tank must be designed by a professional engineer in compliance with Maine's professional regulation statute, and constructed in accordance with UL Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks", and API Standard 650 "Welded Steel Tanks or Oil Storage". All phases of assembly and installation must be supervised by the professional engineer. Within 30 days of installation completion, the engineer shall submit a certification to the Commissioner stating that the facility materials, design, and installation meet all applicable State requirements. If a tank is replaced, all associated piping not meeting the design and installation requirements of Chapter 691, Rule for Underground Oil Storage Facilities, Section 8. (Chapter 691, Section 8.) must be replaced except if the piping is part of an airport hydrant piping system. Piping connected to field

constructed tanks must be designed and constructed in accordance with the requirements of Chapter 691, Rule for Underground Oil Storage Facilities, Sections 5., 6., 7., 9., or 10. depending on the type of facility and piping system proposed. If product piping attached to a field constructed tank is replaced and structural damage to the associated tank occurred impairing its physical integrity, the tank must also be replaced if not designed and installed in accordance with Chapter 691, Section 8.

New or replacement tanks at facilities storing heavy oils; oil that must be heated during storage, including but not limited to #5 and #6 oil; and #4 oil only when it must be heated during storage, must be installed in accordance with National Fire Protection Association Code 31 and the requirements of Chapter 691, Section 6(B)(4), (5), and (6), except that the installation of copper and PVC piping is prohibited and the heating system must be electrically isolated from the cathodic protection system if the tank is steel. All facility construction materials must be compatible with the temperature at which the product is to be stored. Fiberglass or plastic jacketed component may not be installed in facilities where the oil temperature will exceed 150 °F. Only a properly certified Class 2 underground storage tank installer may install an underground heavy oil storage facility. New and replacement fiberglass and plastic jacketed steel tanks must have continuous product temperature monitoring equipment which must be tested, and if necessary, calibrated at least annually. If a tank is replaced, all associated underground piping not meeting the design requirements of Chapter 691 must be replaced. Any replacement piping must be designed and installed in accordance with Chapter 691. If product piping is replaced and structural damage to the tank has occurred, the associated tank must also be replaced if not constructed of fiberglass, cathodically protected steel, or other noncorrosive material approved by the Commissioner. Repairs of damaged fiberglass, cathodically protected steel, and other Commissioner approved tanks may only be made if conducted in accordance with Chapter 691, Sections 5(D)(13) or (14). Tanks that cannot be repaired must be abandoned in accordance with Chapter 691, Section 11.

At least 60 days prior to new or replacement airport hydrant piping registration, installation plans must be submitted for Department review and approval. New and replacement airport hydrant piping must be designed by a professional engineer and constructed

in accordance with American National Standards Institute (ANSI) standard for “Chemical Plant and Petroleum Refinery Piping”, ANSI/ASME B 31.1. New and replacement airport hydrant piping must be installed according to good engineering practices using radiograph inspected welded joints and under the supervision of a professional engineer licensed in Maine or otherwise working in compliance with 32 M.R.S. Sections 1351–1362. Within 30 days of installation completion the professional engineer is required to submit to the Commissioner a certification that the materials, design, and installation meet the applicable Chapter 691 Rules for Underground Oil Storage Facilities requirements. Repairs of new, replacement and existing piping must in accordance with good engineering practice and under the surveillance of a Maine professional engineer. The repaired section must be tested for leaks and for proper operation of the cathodic protection system. A report describing the repairs made and test results must be submitted to the Commissioner for approval.

More Stringent Provisions

The following statutory and regulatory provisions are considered more stringent than the Federal program and are therefore enforceable as a matter of Federal law:

Tank registrations require additional information from the Federal notification requirements, such as depth to bedrock and water table (when known), proximity to sensitive areas, site drawing, manufacturer warranty date.

New and replacement spill buckets must be double walled.

If more than 25% of a piping run is replaced, the entire piping run must be replaced with piping that meets the current new piping standards.

Methods of leak detection for tanks and piping that are not allowed include: For tanks, manual tank gauging, groundwater monitoring and vapor monitoring and for piping, line tightness testing.

Walkthrough inspections are conducted weekly.

Sump testing and the correction of any deficiencies must be certified by a Maine Certified Underground Oil Storage Tank Installer or Inspector.

All new and replacement field constructed tanks must have secondary containment, continuous interstitial space monitoring, and overfill and spill prevention equipment. New or replacement field constructed tank piping must have secondary

containment regardless of the size of the field constructed tank.

New and replacement airport hydrant piping must have secondary containment and continuous interstitial space monitoring.

Wastewater treatment tank systems and aboveground oil storage tanks associated with field constructed tanks and airport hydrant systems are required to be registered and meet financial assurance for corrective action and third-party insurance for discharges.

II. Codification

A. What is codification?

Codification is the process of placing a state's statutes and regulations that comprise the state's approved UST program into the CFR. Section 9004(b) of RCRA, as amended, allows the EPA to approve State UST programs to operate in lieu of the Federal program. The EPA codifies its authorization of state programs in 40 CFR part 282 and incorporates by reference state statutes and regulations that the EPA will enforce under Sections 9005 and 9006 of RCRA and any other applicable state provisions. The incorporation by reference of state authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the approved state program and state requirements that can be federally enforced. This effort provides clear notice to the public of the scope of the approved program in each state.

B. What is the history of codification of Maine's UST program?

EPA incorporated by reference the Maine DEP approved UST program effective April 22, 1996 (61 FR 6555; February 21, 1996). In this document, EPA is revising 40 CFR 282.69 to include the approved revisions.

C. What codification decisions have we made in this rule?

Incorporation by reference: In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the Maine statutes and regulations described in the amendments to 40 CFR part 282 set forth below. The EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 1 office (see the **ADDRESSES** Section of this preamble for more information).

The purpose of this **Federal Register** document is to codify Maine's approved

UST program. The codification reflects the State program that would be in effect at the time EPA's approved revisions to the Maine UST program addressed in this direct final rule become final. The document incorporates by reference Maine's UST statutes and regulations and clarifies which of these provisions are included in the approved and federally enforceable program. By codifying the approved Maine program and by amending the CFR, the public will more easily be able to discern the status of the federally-approved requirements of the Maine program.

EPA is incorporating by reference the Maine approved UST program in 40 CFR 282.69. Section 282.69(d)(1)(i)(A) incorporates by reference for enforcement purposes the State's statutes and regulations, except as it relates to USTs on Indian lands.

Section 282.69 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the UST program under Subtitle I of RCRA. These documents are not incorporated by reference.

D. What is the effect of Maine's codification on enforcement?

The EPA retains the authority under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in approved states. With respect to these actions, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the state authorized analogues to these provisions. Therefore, the EPA is not incorporating by reference such particular, approved Maine procedural and enforcement authorities. Section 282.69(d)(1)(ii) of 40 CFR lists those approved Maine authorities that would fall into this category.

E. What State provisions are not part of the codification?

The public also needs to be aware that some provisions of the State's UST program are not part of the federally approved State program. Such provisions are not part of the RCRA Subtitle I program because they are “broader in scope” than Subtitle I of RCRA. Title 40 CFR 281.12(a)(3)(ii) states that where an approved state program has provisions that are broader in scope than the Federal program, those provisions are not a part of the

federally approved program. As a result, State provisions which are broader in scope than the Federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.69(d)(1)(iii) lists for reference and clarity the Maine statutory and regulatory provisions which are broader in scope than the Federal program and which are not, therefore, part of the approved program being codified in this document. Provisions that are broader in scope cannot be enforced by EPA; the State, however, will continue to implement and enforce such provisions under State law.

III. Statutory and Executive Order Reviews

This action only applies to Maine's UST Program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable Executive Orders (E.O.s) and statutory provisions as follows:

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

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action approves and codifies State requirements for the purpose of RCRA section 9004 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB.

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

This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as this final approval of Maine's revised underground storage tank program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

C. Unfunded Mandates Reform Act and Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Because this action approves and codifies pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or

significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). As discussed above, EPA is not acting on approval to operate the State's UST program as it applies to Tribal lands in the State. Therefore, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

D. Executive Order 13132: Federalism

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves and codifies State requirements as part of the State RCRA underground storage tank program without altering the relationship or the distribution of power and responsibilities established by RCRA.

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

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks.

F. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a "significant regulatory action" as defined under Executive Order 12866.

G. National Technology Transfer and Advancement Act

Under RCRA section 9004(b), EPA grants a State's application for approval as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State approval application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

H. Executive Order 12988: Civil Justice Reform

As required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

I. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

J. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). "Burden" is defined at 5 CFR 1320.3(b).

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule approves pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

L. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801–808, 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 document and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). However, this action will be effective December 2, 2019 because it is a direct final rule.

Authority: This rule is issued under the authority of Sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

List of Subjects in 40 CFR Part 282

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Incorporation by reference, Insurance, Intergovernmental relations, Penalties, Petroleum, Reporting and recordkeeping requirements, Surety bonds, Water supply.

Dated: September 13, 2019.

Dennis Deziel,

Regional Administrator, EPA Region 1.

For the reasons set forth in the preamble, EPA is amending 40 CFR part 282 as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

- 1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

- 2. Revise § 282.69 to read as follows:

§ 282.69 Maine State-Administered Program.

(a) The State of Maine is approved to administer and enforce an underground storage tank program in lieu of the Federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the Maine Department Environmental Protection (ME DEP), was approved by EPA pursuant to 42 U.S.C. 6991c and 40 CFR part 281. EPA approved the Maine program on June 11, 1992, which was effective on July 13, 1992.

(b) Maine has primary responsibility for administering and enforcing its federally approved underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under Sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, as well as

under any other applicable statutory and regulatory provisions.

(c) To retain program approval, Maine must revise its approved program to adopt new changes to the Federal Subtitle I program which makes it more stringent, in accordance with Section 9004 of RCRA, 42 U.S.C. 6991c and 40 CFR part 281, subpart E. If Maine obtains approval for the revised requirements pursuant to Section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notification of any change will be published in the **Federal Register**.

(d) Maine has final approval for the following elements of its program application originally submitted to EPA and approved effective July 13, 1992, and the program revision application approved by EPA, except as it relates to USTs on Indian lands, effective on December 2, 2019.

(1) *State statutes and regulations—(i) Incorporation by reference.* The material cited in this paragraph (d)(1)(i), and listed in appendix A to this part, is incorporated by reference as part of the underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* (See § 282.2 for incorporation by reference approval and inspection information.) You may obtain copies of the Maine regulations and statutes that are incorporated by reference in this paragraph (d)(1)(i) from the Staff to the Board of Underground Storage Tank Installers, Maine DEP, 17 SHS, Augusta, ME 04333-0017; Phone number: 207-287-7688; Hours: Monday–Friday, 8:00 a.m. to 5:00 p.m.; website for statutes and regulations: <https://www.maine.gov/dep/waste/ust/lawsrules.html>.

(A) “Maine Statutory and Regulatory Requirements Applicable to the Underground Storage Tank Program, September 2018.”

(B) [Reserved]

(ii) *Legal basis.* EPA evaluated the following statutes and regulations which are part of the approved program, but they are not being incorporated by reference for enforcement purposes, and do not replace Federal authorities:

(A) The statutory provisions include:

(1) *Maine Revised Statutes, Title 4: Judiciary; Chapter 5: District Court; Section 152. District court, Civil jurisdiction; 6–A N. All laws administered by the Department of Environmental Protection.*

(2) *Maine Revised Statutes, Title 14: Court Procedure—Civil, Chapter 711: Equity Proceedings.*

(3) *Maine Revised Statutes, Title 17: Crimes, Chapter 91: Nuisances, Section 2794. Dumping of oil.*

(4) *Maine Revised Statutes Annotated, Title 38. Waters and Navigation, Chapter 2. Department of Environmental Protection, Subchapter 1. Organization and Powers, Section 342.7. Representation in court, Section 342.11–B. Revoke or suspend licenses and permits, Section 346. Judicial appeals, Section 347–A. Violations, Section 348. Judicial enforcement, and Section 349. Penalties.*

(5) *Maine Revised Statutes Annotated, Title 38. Waters and Navigation, Chapter 3. Protection and Improvement of Waters, Subchapter 2–A. Oil Discharge Prevention and Pollution Control, Section 550. Enforcement, Penalties.*

(6) *Maine Revised Statutes Annotated, Title 38. Waters and Navigation, Chapter 3. Protection and Improvement of Waters, Subchapter 2–B. Oil Storage Facilities and Ground Water Protection, Section 565–A. Authority to prohibit product delivery; Section 568.3. Issuance of clean-up orders; Section 568.4. Enforcement, penalties, punitive damages, Section 570–C. Municipal ordinances, powers limited.*

(7) *Maine Revised Statutes Annotated, Title 38. Waters and Navigation, Chapter 13–D: Wellhead Protection, Section 1397. Enforcement.*

(B) The regulatory provisions include:

(1) *06–096, Maine Department of Environmental Protection, Chapter 691, Rule for Underground Oil Storage Facilities: 4.O. Registration of Underground Oil Storage Facilities; 5.D.(11)(e) Leak or discharge reporting requirements; 12.A.(3) Discharge and leak investigation, response and corrective action; 14. Severability.*

(2) *The Maine Rules of Civil Procedure, Rule 24. Intervention, Rule 80K. Land Use Violations.*

(iii) *Provisions not incorporated by reference.* The following specifically identified statutory and regulatory provisions applicable to the Maine's UST program are broader in scope than the Federal program, are not part of the approved program, and are not incorporated by reference herein for enforcement purposes:

(A) *Maine Revised Statutes Annotated, Title 38. Waters and Navigation, Chapter 3. Protection and Improvement of Waters, Subchapter 2–A. Oil Discharge Prevention and Pollution Control: Section 551. Maine Ground and Surface Waters Clean-up and Response Fund;*

(B) *Maine Revised Statutes Annotated, Title 38. Waters and Navigation, Chapter 3. Protection and Improvement of Waters, Subchapter 2–B. Oil Storage Facilities and Ground Water Protection: Section 563. 9.*

Annual compliance inspection.; Section 564. 5. Mandatory for replacement.; Section 565. Regulation of underground oil storage facilities used for consumption on the premises or by the owner or operator; Section 566–A. 5. Abandonment of underground oil storage facilities and tanks; Section 567. Certification of underground tank installers; Section 570–I. Budget approval;

(C) 06–096, *Maine Department of Environmental Protection, Chapter 691, Rule for Underground Oil Storage Facilities*; 5.B.(4)(a), (d), (g), (h), and (j) General facility installation requirements; 5.B.(5)(b) Installation requirements for new and replacement tanks; 5.D.(3)(f) Operation and Monitoring Requirements for Galvanic Cathodic Protection Systems; 5.D.(6)(b) Overfill and spill prevention; 5.D.(14)(c) Repairs other than relining; 5.D.(15)(f) (vii) Financial responsibility requirements; 5.D.(17) Annual compliance inspection requirements; 5.D.(19)(b) Safe excavation requirements; 5.F. Mandatory facility closure upon expiration of warranty; 6. Regulation of heating oil facilities used for consumption on the premises or by the owner or operator; 7.B.(7) Design and installation standards for new and replacement facilities; 8.B.(1)(d) and (e) Design and installation requirements for new and replacement tanks, 8.B.(4)(b), (d), and (e) General installation requirements, 9.B.(4) Installation requirements for new and replacement heavy oil facilities, 10.B.(1)(c) General design and construction requirements, 10.B.(3)(b), (f), and (h) General installation requirements, and 10.D.(2) Operation, maintenance, testing and inspection requirements for new, replacement and existing systems.

(2) *Statement of legal authority.* The Attorney General's Statements, signed by the Attorney General of Maine on December 5, 1991, and October 12, 2018, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The “Demonstration of Procedures for Adequate Enforcement” submitted as part of the original application on November 27, 1991, and as part of the program revision application for approval on October 13, 2018 though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted as part of the original application on November 27, 1991, and as part of the program revision application on October 13, 2018, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 1 and the Maine Department of Environmental Protection, signed by the EPA Regional Administrator on November 21, 2018 though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

■ 3. Appendix A to part 282 is amended by revising the entry for Maine to read as follows:

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

Maine

(a) The statutory provisions include:

Maine Revised Statutes Annotated, Title 38. Waters and Navigation

1. Chapter 2. *Department of Environmental Protection*, Subchapter 1. Organization and Powers

Section 341–A. Department of Environmental Protection, Section 341–H. Departmental rulemaking, Section 342–B. Liability of fiduciaries and lenders, Section 343–E. Voluntary response action program, Section 347–C. Right of inspection and entry.

2. Chapter 3. *Protection and Improvement of Waters*, Subchapter 2–A. Oil Discharge Prevention and Pollution Control

Section 541. Findings; purpose, Section 542. Definitions, Section 543. Pollution and corruption of waters and lands of the State prohibited, Section 548. Removal of prohibited discharges.

3. Chapter 3. *Protection and Improvement of Waters*, Subchapter 2–B. Oil Storage Facilities and Ground Water Protection.

Section 561. Findings, purpose, Section 562–A. Definitions, Section 563. Registration and inspection of underground oil storage tanks and piping, except 9., Section 563–A. Prohibition of nonconforming underground oil storage facilities and tanks, Section 563–B. Regulatory powers of department, Section 564. Regulation of underground oil storage facilities used to store motor fuels or used in the marketing and distribution of oil, except 5., Section 566–A. Abandonment of underground oil storage facilities and tanks, Section 567–A. Certifications, Section 568. Cleanup and removal of prohibited

discharges, except 3. and 4., Section 568–A. Fund coverage requirements, Section 568–B. Clean-up and Response Review Board created, Section 569–C. Limited exemption from liability for state or local governmental entities, Section 570. Liability, Section 570–F. Special provisions, Section 570–K. Aboveground oil storage facilities, Section, Section 570–N. Rules, wastewater treatment tank systems.

4. Chapter 13–D: Wellhead Protection.

Section 1391. Declaration of Policy, Section 1392. Definitions, Section 1393. Prohibition on installation of facilities in wellhead protection zones, Section 1394. Variances, Section 1398. Eligibility for Clean-up funds, Section 1399. Municipal authority, Section 1400. Rules.

(b) The regulatory provisions include:

1. 06–096, *Maine Department of Environmental Protection, Chapter 691, Rule for Underground Oil Storage Facilities*: (effective September 26, 2018).

Section 1. Legal Authority, Section 2. Preamble; Section 3. Definitions, Section 4. Registration of Underground Storage Facilities, except O; Section 5. Regulation of Underground Oil Storage Facilities Used to Store Motor Fuels or Used in the Marketing and Distribution of Oil, except B. (4)(a), (d), (g), (h), and (j); (5)(b); D. (3)(f); (6)(b); (11)(e); (14)(c); (15)(f)(vii); (17); (19)(b); and F.; Section 7. Regulation of Facilities for the Underground Storage of Waste Oil, except B. (7); Section 8. Regulation of Field Constructed Underground Oil Storage Tanks, except B. (1)(d) and (e) and (4)(b), (d), and (e); Section 9. Regulation of Facilities for the Underground Storage of Heavy Oils, except B.; Section 10. Regulation of Airport Hydrant Systems, except B. (1)(c); (3)(b), (f), and (h); and D. (2); Section 11. Regulations for Closure of Underground Oil Storage Facilities; Section 12. Discharge and Leak Investigation, Response and Corrective Action Requirements, except A. (3); Section 13. Regulation of Wastewater Treatment Tank Systems and Aboveground Oil Storage Tanks, APPENDIX A: Requirements for Cathodic Protection Monitoring, APPENDIX B: Requirements for Tank, Piping and Containments Sump Tightness Tests, APPENDIX C: Requirements for Pneumatic (Air) and other Pre installation Tightness Testing, APPENDIX D: Installation Requirements Applicable to New and Replacement Tanks, APPENDIX E: Installation Requirements for New and Replacement Piping, APPENDIX F: Specifications and Requirements for Vertical Ground Water Monitoring Wells at Existing Facilities, APPENDIX H: Procedures for Weekly Monitoring, Handling, and Obtaining Samples for Laboratory Analysis, APPENDIX I: Sample Daily Inventory Reporting Log, APPENDIX J: Requirements for Abandonment of Underground Oil Storage Tanks by Removal, APPENDIX K: Requirements for Abandonment of Underground Oil Storage Tanks by Filling in Place, APPENDIX L: Requirements for Underground Oil Storage Tank Processing Facilities, APPENDIX M: Cathodic Protection Tester Certification Requirements, APPENDIX N: Corrosion Expert Certification Requirements, APPENDIX P: Requirements

for Site Assessment at Facility Closure or Tank Abandonment, APPENDIX Q: Characterization and Notification Requirements, APPENDIX R: List of National Standards and Codes Cites, APPENDIX S: Department Approved Laboratory Analytical Methods and Performance Standards for Analysis of Oil and its Constituents in Water, Soil, Soil Gas and Indoor Air, APPENDIX T: Containment Sumps & Spill Bucket Integrity Testing Protocol & Management of Waste Fluids.

2. 06–096, Department of Environmental Protection; Chapter 693: Operator Training for Underground Oil, Hazardous Substance, and Field Constructed Underground Oil Storage Facilities, and Airport Hydrant Systems (effective September 26, 2018) only insofar as they pertain to the regulation of underground storage tanks in Maine and only insofar as they are incorporated by reference and are not broader in scope than the Federal requirements.

* * * * *

[FR Doc. 2019–21200 Filed 10–2–19; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2017–0082; FXES11130900000C2–178–FF09E42000]

RIN 1018–BB76

Endangered and Threatened Wildlife and Plants; Removal of the Monito Gecko (*Sphaerodactylus micropithecus*) From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are removing the Monito gecko (*Sphaerodactylus micropithecus*) from the Federal List of Endangered and Threatened Wildlife due to recovery. This determination is based on a thorough review of the best available scientific and commercial information, which indicates that this species has recovered and the threats to this species have been eliminated or reduced to the point that the species no longer meets the definition of an endangered species or a threatened species under the Endangered Species Act of 1973, as amended. Accordingly, the prohibitions and conservation measures provided by the Act will no longer apply to this species.

DATES: This rule is effective November 4, 2019.

ADDRESSES: The proposed and final rules, the post-delisting monitoring

plan, and the comments received on the proposed rule are available on the internet at <http://www.regulations.gov> in Docket No. FWS–R4–ES–2017–0082 or <https://ecos.fws.gov>. Comments and materials we received, as well as supporting documentation we used in preparing this rule, are also available for public inspection by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, Road 301, Km. 5.1, Boquerón, Puerto Rico 00622; P.O. Box 491, Boquerón, Puerto Rico 00622; or by telephone (787) 851–7297.

FOR FURTHER INFORMATION CONTACT:

Edwin Muñoz, Field Supervisor, U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office (see **ADDRESSES** above). If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of Regulatory Action

The purpose of this action is to remove the Monito gecko from the Federal List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations (50 CFR 17.11(h)) (*i.e.*, “delisting” it) based on its recovery.

Basis for Action

We may delist a species if the best scientific and commercial data indicate the species is neither a threatened species nor an endangered species for one or more of the following reasons: (1) The species is extinct; (2) the species has recovered; or (3) the original data used at the time the species was classified were in error (50 CFR 424.11). Here, we have determined that the species may be delisted based on recovery as follows:

- Rat predation, the threat suspected to be the main cause of an apparent population decline for the Monito gecko (factor C), was eliminated by August 1999 when the last rat eradication campaign was completed by the Puerto Rico Department of Natural and Environmental Resources (PRDNER). From August 1999 to May 2016, no rats or other potential exotic predators have been detected on Monito Island.

- The species’ apparent small population size (factor E), noted as a threat at the time of listing, may have been an artifact of bias as surveys were conducted under conditions when the species was not easily detectable. The Monito gecko is currently considered

abundant and widely distributed on Monito Island.

- The Monito gecko and its habitat have been and will continue to be protected under Commonwealth laws and regulations (factor D). These existing regulatory mechanisms are adequate to protect the Monito gecko now and in the future.

Despite potential climate change effects from a gradual warming trend for Puerto Rico, we expect the population to persist into the foreseeable future, especially with the current absence of other potential threats (*e.g.*, habitat loss, disease, predation).

Previous Federal Actions

On October 15, 1982, we published a final rule in the **Federal Register** (47 FR 46090) listing the Monito gecko as an endangered species and designating the entire island of Monito as critical habitat. On March 27, 1986, we published the Monito Gecko Recovery Plan (USFWS 1986, 18 pp.). The 5-year review, which was completed on August 8, 2016 (USFWS 2016, 25 pp.), recommended delisting the species due to recovery. On January 10, 2018 (83 FR 1223), we published a proposed rule to delist the Monito gecko.

For additional details on previous Federal actions, see discussion under the Recovery section below. Also see <http://www.fws.gov/endangered/species/us-species.html> for the species profile for this reptile.

Summary of Comments and Recommendations

In the proposed delisting rule and draft post-delisting monitoring (PDM) plan published on January 10, 2018 (83 FR 1223), we requested that all interested parties submit written comments on the proposal and plan by March 12, 2018. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. A newspaper notice inviting general public comments was published in *Primera Hora* (major local newspaper) and also announced using online and social media sources. We did not receive any requests for a public hearing.

Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), and the Office of Management and Budget’s Final Information Quality Bulletin for Peer Review, dated December 16, 2004, we solicited the expert opinions from five appropriate and independent

specialists regarding the science in the proposed rule and the draft PDM plan. The purpose of such review is to ensure that we base our decisions on scientifically sound data, assumptions, and analyses. We sent peer reviewers copies of the proposed rule and the draft PDM plan immediately following publication of the proposed rule in the **Federal Register**. We invited peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed delisting rule and draft PDM plan. We received responses from one of the peer reviewers.

We reviewed all comments received from the peer reviewer for substantive issues and new information regarding the delisting rule and PDM plan for the Monito gecko. The peer reviewer generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final delisting rule. Peer reviewer comments are summarized below and incorporated into the final rule as appropriate.

(1) *Comment:* The peer reviewer mentions that the evidence for the success of the Monito rat eradications is strong, but not compelling. The reviewer specified that, given the multiple trips to Monito Island with uniformly negative results, eradication success is the most likely explanation, but longer term monitoring would elevate confidence in this conclusion.

Our response: Since the rat eradication campaign in 1999, no rats have been detected on Monito Island. Based on the information available and consistent with the peer reviewer's interpretation of the evidence, is it highly unlikely there are still rats on Monito, unless there has been a reinvasion after May 2016, which is also unlikely. In addition, if rats had been present during our 2014 and 2016 trips we would likely have detected them, given the number of persons out at night searching for geckos, the relatively small size of the island, the rat detection devices used, and the scraps of food left out on purpose in the camp area. None of these methods produced even a suspicion of rats being present. Based on the best available information, the Service and its partners concluded that eradication was successful in 1998–1999.

(2) *Comment:* The peer reviewer mentioned that the gecko abundance estimate is based on a model that is reasonable but that has not been validated for this population. Several other commenters questioned the validity of the model used for the population estimate. They stated that

the model was inaccurate and the estimated abundance was extremely biased and does not meet the assumptions of the model specified. Specifically, the model is intended for multi-temporal replication. Commenters explained that the Service is relying on just a single visit survey in its erroneous estimates that have overly broad confidence limits and high statistical error.

Our response: The Service used abundance modeling based on repeated surveys across multiple days across multiple sites. Specifically, we observed 84 geckos during 96 surveys among 40 plots across two nights. The high numbers of geckos detected (84) during the 96 surveys during the 2016 site visit was the first systematic attempt to survey the Monito gecko population. Recommendations for future survey efforts have been noted; for example, marking plots more visibly (Island Conservation 2016). During the development of the model and survey methods, the Service wanted methods and models that can be replicated in order to adjust and improve the abundance estimates accordingly over time (*i.e.*, validate). Per our Post-Delisting Monitoring Plan, we recommend conducting surveys every other year for the next 5 years.

For a complete review of the methods and results, a copy of Island Conservation (2016) report is available at <http://www.regulations.gov> in Docket No. FWS–R4–ES–2017–0082. In addition, the methods and a reproducible code set are freely available online at: <https://github.com/nangeli1/Contracts>.

Public Comments

(1) *Comment:* One commenter asked the Service to explain the process for finding independent specialists when soliciting expert opinion for peer review.

Our response: In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270) and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of seven reviewers. We are required by our peer review policy to find at least three peer reviewers, and we often choose more than three if they are available. In doing so, the Service looked for experts in the species, including its life history, habitat and threats that it may face. The experts cannot have been involved in the production of the draft rule.

(2) *Comment:* The peer reviewer stated that the Service does not have a

population trajectory for this species, but rather only a single snapshot in time. Several other commenters also recommended that more surveys are needed to assess population trends before delisting, as well as more ecological studies.

Our response: Gecko detections during 2014 and the 2016 survey provide substantial evidence that the species is consistently abundant and widespread across the island. Further, our analysis of the listing factors shows how the Service determined that the Monito gecko should be delisted, and survey information is just one of the parameters used to make that determination. Ultimately, there is no indication that any of the threats are operating on the population at levels that meet an endangered or threatened species as defined under the Act. In addition, conducting ecological studies was considered in the species Recovery Plan (1986). However, based on the most recent observations, achievement of the most critical recovery actions (*i.e.*, rat eradication and survey), and our 5-factor analysis, we have determined that no additional ecological studies are needed to determine the listing status for this species. Future needs for studies, status evaluations, and recommendations will be addressed with the Post-Delisting Monitoring Plan and its primary goal of monitoring to ensure the status of the species does not deteriorate and, if a substantial decline in the species population size or an increase in threats is identified, to enact measures to halt and reverse unfavorable trends.

(3) *Comment:* Several commenters specified that there is evidence-based support that climate change will impact *S. micropithecus* and provided scientific articles to support their claim.

Our response: In our proposed rule, we analyzed the potential effects of climate-related sea-level rise on the Monito gecko and determined that it was not a threat to the species because the topography of Monito Island will insulate the species from the effects of sea-level rise. We asked the public to provide any data or new information particularly on the possible effects of climate change to the Monito gecko. Based on the comments and information received, we evaluated new information and conducted a thorough review of the relevant literature. We continue to conclude that climate change does not constitute a threat to the species to the extent that it is endangered or threatened throughout all or a significant portion of its range (Refer to Factor E, below, for a discussion of the

potential implications of climate change on the Monito gecko).

(4) *Comment:* One commenter opined that lack of genetic analysis hinders the Service's ability to assess effective population size, inbreeding rates, deleterious alleles, and any proactive genetic rescue plans.

Our response: The Service recognizes that this determination does not include a genetic analysis of the Monito gecko population but has determined that one is not needed. The fact that the species is found throughout Monito Island in the thousands, and that juveniles and gravid females were found (past and most current surveys), all demonstrate a large well-represented population with abilities to recover and adapt from disturbances. Thus, there do not seem to be any perceptible indications that a lack of genetic representation is causing species mortality or limiting the species' ability to adapt or reproduce. Still, any potential genetic rescue plan would need to consider that the Monito gecko population is endemic, closed to immigration from other *Sphaerodactylus* species, and has been isolated for millions of years.

(5) *Comment:* Several commenters request the Service recognize the severe vulnerability of Monito Island and its inhabitants to catastrophic events such as hurricanes and fires.

Our response: Catastrophic events such as fires or hurricanes were discussed under Factors A and E, respectively. Neither of these factors were found to be operating currently, or are expected to be found in the foreseeable future, on the Monito gecko population to require its continued listing under the Act. In addition, even though several hurricanes have potentially affected Monito Island in the past, the species remains abundant and widespread throughout the island. The recent Hurricane Maria (Sept. 2017), which caused extensive damage in Puerto Rico, did not cause significant damage to Monito Island.

Species Information

Biology and Life History

The Monito gecko, *Sphaerodactylus micropithecus*, (Schwartz 1977, entire) is a small lizard (approximately 36 millimeters (1.42 inches) snout-vent length) with an overall pale-tan body and dark-brown mottling on the dorsal surface. It is closely related to the *Sphaerodactylus macrolepis* complex of the Puerto Rican Bank, but variation in dorsal pattern and scale counts confirm the distinctiveness of the species; probably resulting from a single invasion to Monito Island and its

subsequent isolation (Schwartz 1977, p. 990, Dodd and Ortiz 1984, p. 768). Little is known about the biology of this species, including its diet, reproduction, or potential predators. Other more common *Sphaerodactylus* species in Puerto Rico eat a diverse content of small invertebrates, such as mites, springtails, and spiders (Thomas and Gaa Kessler 1996, pp. 347–362). Out of the 18 individuals counted by Dodd and Ortiz (1983, p. 120), they found juveniles and gravid females suggesting that the species was reproducing. Dodd and Ortiz (1983, p. 121) suspected reproduction occurs from at least March through November as suggested by the egg found by Campbell in May 1974, by the gravid females found by Dodd and Ortiz (1982, p. 121) in August 1982, and the fact that Monito gecko eggs take 2 to 3 months to hatch (Rivero 1998, p. 89). During a plot survey in May 2016, two gravid females and several juveniles were found (USFWS 2016, p. 13). Potential natural predators of the Monito gecko may include the other native lizard *Anolis monensis* and/or the Monito skink (*Spondylurus monitae*).

Distribution and Habitat

The Monito gecko is restricted to Monito Island, an isolated island located in the Mona Passage, about 68 km (42.3 mi) west of the island of Puerto Rico, 60 km (37.3 mi) east of Hispaniola and about 5 km (3.1 mi) northwest of Mona Island (USFWS 1986, p. 2). Monito Island is a flat plateau surrounded by vertical cliffs rising about 66 m (217 ft) with no beach and is considered the most inaccessible island within the Puerto Rican archipelago (Garcia et al. 2002, p. 116). With an approximate area of 40 acres (c.a. 16 hectares) (Woodbury et al. 1977, p. 1), Monito Island is part of the Mona Island Reserve, managed for conservation by the PRDNER (no date, p. 2). The remoteness and difficulty of access to Monito Island make studying the Monito gecko difficult (Dodd 1985, p. 2).

The only life zone present on Monito Island is subtropical dry forest (Ewel and Whitmore 1973, p. 10). In this life zone, the Monito gecko has been found in areas characterized by loose rock sheets or small piles of rocks, exposed to the sun, and with little or no vegetation cover. Vegetation may or may not be associated with these areas. On Monito Island, such areas include small groves of *Guapira discolor* (barrehorno), *Pithecellobium unguis-cati* (escambrn colorado), or *Capparis flexuosa* (palo de burro) where some leaf litter is present; areas with loose rocks on the ground; or

rock sheets that provide shady refuges, and numerous regions where large pieces of metal (remnant ordnance) lay on the ground (Ortiz 1982, p. 2). Being a small, ground-dwelling lizard, the Monito gecko, like other members of its genus, is usually found under rocks, logs, leaf litter, and trash (Rivero 1998, p. 89).

Population Size and Trends

When the species' recovery plan was completed in 1986, only two island-wide surveys had been completed (Dodd and Ortiz 1983, entire; Hammerson 1984, entire), with the higher count from Dodd and Ortiz (1983, p. 120) reporting a total of 18 geckos during a 2-day survey. During both of these surveys, all geckos were found during the day and under rocks. Subsequent surveys of variable length and area covered detected from 0 to 13 geckos during the day as well (PRDNER 1993, pp. 3–4; USFWS 2016, p. 9).

These previous attempts to survey for the Monito gecko are considered underestimates, because the surveys were done during the day when the species is more difficult to detect: It seems to be less active and mostly hiding under rocks, debris, crevices, or other substrates. Although geckos in the *Sphaerodactylinae* group are considered mostly diurnal or crepuscular (Rivero, p. 89; Pianka and Vitt 2003, p. 185), we suspect that the Monito gecko is more active at night and thus easier to detect during night surveys. This nocturnal behavior was confirmed during a May 2014 rapid assessment and a May 2016 systematic survey. During the May 2014 rapid assessment, at least one gecko was seen during each of the three nights of the trip; some encounters were opportunistic, and others occurred while actively searching for the species (USFWS 2016, p. 9). In fact, no geckos were seen during daylight hours. Geckos were seen on exposed substrates and not hidden under rocks or litter, although some were seen within leaf litter mixed with rocks under a *Ficus citrifolia* tree. Geckos were observed escaping into the cracks and solution holes of the limestone rock.

The May 2016 systematic gecko survey involved setting up of 40 random plots on Monito Island (USFWS 2016, p. 10). Each plot was 20 m × 20 m (400 m²), so that the survey covered a total of 16,000 m² or approximately 11 percent of Monito Island. Four two-person teams visited 10 plots each. Each observer surveyed each plot independently. All sites were surveyed at least twice, and all took place during the night. A total of 84 geckos were observed during 96 surveys among the

40 plots, most on exposed rock. Only 8 out of the 84 counted were found under a rock or other substrate; all others were out during the night. Only two geckos were opportunistically found during the day while observers were turning rocks and dry logs.

Gecko occupancy and abundance were estimated using a standard mathematical population model accounting for the abundance and detection bias that allows individuals to go unseen during surveys (Island Conservation (IC) 2016, p. 5). Occupancy of the geckos on Monito Island was determined to be 27.8 percent (confidence interval 11.3–68.6 percent). The mean number of geckos per plot was 73.3 (Range: 1–101). The abundance model indicates a total of 1,112 geckos present within the surveyed plots (95 percent confidence interval: 362–2,281). Extrapolated across the entire island, Monito Island hosts approximately 7,661 geckos (50 percent confidence interval: 5,344–10,590).

Recovery and Recovery Plan Implementation

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of threatened and endangered species unless we determine that such a plan will not promote the conservation of the species. Recovery plans are not regulatory documents and are instead intended to establish goals for long-term conservation of a listed species, define criteria that are designed to indicate when the threats facing a species have been removed or reduced to such an extent that the species may no longer need the protections of the Act, and provide guidance to our Federal, State, and other governmental and nongovernmental partners on methods to minimize threats to listed species. There are many paths to accomplishing recovery of a species, and recovery may be achieved without all recovery criteria being fully met. For example, one or more criteria may have been exceeded while other criteria may not have been accomplished or become obsolete, yet the Service may judge that, overall, the threats have been minimized sufficiently, and the species is robust enough, to reclassify the species from endangered to threatened or perhaps delist the species. In other cases, recovery opportunities may have been recognized that were not known at the time the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan.

Likewise, information on the species may subsequently become available that

was not known at the time the recovery plan was finalized. The new information may change the extent that criteria need to be met for recognizing recovery of the species. Recovery of species is a dynamic process requiring adaptive management that may, or may not, fully follow the guidance provided in a recovery plan.

The following discussion provides a brief review of recovery planning and implementation for the Monito gecko, as well as an analysis of the recovery criteria and goals as they relate to evaluating the status of the taxon.

The Monito Gecko Recovery Plan (Plan) was approved on March 27, 1986 (USFWS 1986, entire). The objective of the Plan was to conduct a systematic status survey and ecological study of the species, and to reevaluate the species' status and formulate a quantitative recovery level and specific recovery actions (USFWS 1986, p. 7). This Plan is considered outdated and does not contain recovery criteria that could lead to delisting the Monito gecko. However, the Plan does provide recovery objectives that, when accomplished, would aid in developing such criteria. No quantitative recovery level was defined due to the lack of data on historical population levels, population trends, and apparent historical population size. The objectives were accomplished as follows:

Recovery Actions

The Plan identifies five primary recovery actions:

- (1) Determine the status of the present population;
- (2) Conduct basic ecological studies;
- (3) Determine extent, if any, of predation and competition by rats and other native lizards (see Factor C);
- (4) Update the Plan; and
- (5) Continue protection of the present population.

The following discussion provides specific details for each of these actions.

Recovery action 1: Determine the status of the species.

From 1982 to 1993, several Monito gecko surveys were conducted (USFWS 2016, p. 9). However, some of these surveys were either done before the Plan was completed (USFWS 1986) or did not provide enough information to answer the population objectives of the Plan, and current information (see Population Size and Trends above) suggests that surveys underestimated the number of geckos. Data from the 2014 rapid assessment and the 2016 systematic plot survey show that, overall, the Monito gecko is abundant across the whole island and numbers in the thousands, indicating a large healthy

population, as specified in the Species Information section above.

Recovery action 2: Conduct basic ecological studies.

Besides the population survey efforts, no basic ecological studies have been conducted for the Monito gecko. Conducting ecological studies, as described in the Plan (USFWS 1986, pp. 7–8), is not crucial to further assess the species' listing status. There is no indication that ecological factors such as habitat preferences (species occurs throughout the island) and fluctuations in reproductive biology or activity patterns (both unknown), are critical for the species' listing status. The adjustment of surveys from diurnal to nocturnal was a key factor for researchers to discover in order to obtain reliable data and provide optimal population information. We will further discuss any possible needs of ecological evaluations in relation to post-delisting monitoring with our partners, but we will likely not need detailed research on the gecko's ecology based on the status of threats in its native habitat on Monito Island.

Recovery action 3: Determine the extent, if any, of predation and competition by rats and native reptiles.

At the time of listing, the presence of rats on Monito Island was identified as the main threat to the Monito gecko. This threat was suspected to be the main cause of an apparent population decline for the Monito gecko, since rats are effective predators and are known to feed on both lizards and lizard eggs (Dodd and Ortiz 1983, p. 120; Case and Bolger 1991, pp. 273–278). However, the net effect, if any, of the potential rat predation on the geckos is debatable. For example, in comments quoted in the final listing rule (47 FR 46091, October 15, 1982), Dr. H. Campbell indicated that the scarcity of the Monito geckos was an artifact of the intense predation by black rats (*Rattus rattus*), while Dr. A. Schwartz expressed doubts that rats could have any effect on the gecko or its eggs. Dodd and Ortiz (1983, p. 121) also explained that, during their surveys, predator pressure on the gecko could not be proven and that more studies were needed to determine if rats or other predators do affect the Monito gecko. The potential effect of rats on two other relatively common small geckos (*Sphaerodactylus monensis* and *Sphaerodactylus levinsi*) on nearby Mona and Desecheo Islands (respectively) is also unknown. Nevertheless, there is ample evidence that the Monito gecko would fare better without rats (Case and Bolger 1991, entire; Towns et al. 2006, entire; Jones

et al. 2016, entire; Thibault et al. 2017, entire).

In October 1992, the PRDNER began a black rat eradication and survey project on Monito Island to benefit native and endemic species on that Island (García et al. 2002, p. 116). The eradication campaign continued in March 1993 with poisoning (rodenticide) and snap traps to assess changes in the rat population. A second eradication campaign started in October 1998, with three eradication events at 4-month intervals, and again using, in addition to snap traps, chew blocks (*i.e.*, soft wood pieces soaked in canola oil) as a monitoring tool.

García et al. (2002, pp. 117–118) evaluated the status of the rat population seven times during the first campaign and five times during the second campaign. Since the completion of the second eradication campaign (August 1999), no rats have been detected on Monito Island. García et al. (2002, p. 118) concluded that in order to be certain that eradication had been achieved, it was essential to continue an appropriate rat monitoring program on the island, and recommended using chew blocks. However, no systematic rat monitoring has been implemented on the island since September 1999. Nonetheless, during a seabird blood sampling trip in August 2000, Anderson and Steeves (2000, p. 1) reported not seeing any rats on Monito Island, as did subsequent PRDNER bird survey trips in 2003.

On May 2014, the Service organized an expedition to Monito Island with the PRDNER in order to confirm the eradication of black rats from the island, and to evaluate the status of and threats to the Monito gecko. The Service and the PRDNER placed 27 snap traps and 70 chew blocks distributed along transects covering 870 meters in length (USFWS 2016, p. 7). In addition, some food items (*i.e.*, watermelon, left-over canned food) were intentionally left exposed and available for rats. No signs of rats were detected on these available sources during this 4-day/3-night trip. During surveys conducted in May 2016, the Service and the PRDNER also placed 80 chew blocks, two within each gecko sampling plot (USFWS 2016, p. 10). No rats were seen or detected with the chew blocks during this 5-day/4-night trip. This is a marked contrast from when the species was listed in 1982, when rats were observed island-wide at all times during a 2-day expedition (47 FR 46090, October 15, 1982).

In short, although it cannot be ascertained when the last rat died, Monito Island appears to have been rat free since August–September 1999.

Thus, the suspected main threat to the species has not been present for at least the past 18 years.

Other lizards (*i.e.*, *Anolis monensis* and *Spondilurus monitae*, formerly *Mabuya mabouya sloani*) that naturally occur on the Island may also prey on the Monito gecko. These other species are considered diurnal (active during the day), while the Monito gecko is considered nocturnal (active during the night). Determining the extent of these potential predator-prey interactions would be challenging. However, this should no longer be necessary, as the species has persisted despite potential predatory threats.

Recovery action 4: Update Recovery Plan.

Because of the information on threats and recovery progress that is provided in the Monito gecko 5-year review (USFWS 2016) and this final rule, the Monito gecko no longer meets the definition of an endangered or threatened species. Therefore, a formal update of the 1986 Plan is not needed.

Recovery action 5: Continue protection of the present population.

Monito Island has been protected by the PRDNER as a nature reserve since 1986 (PRDNER, no date, p. 2). There are no permanent human residents on Monito Island and access is allowed only under special permits issued by the PRDNER, which also maintains a ranger detachment and biologist on nearby Mona Island. Monito Island is also visited by illegal immigrants. The frequency of these events varies from year to year, and illegal immigrants are evacuated fairly quickly by the U.S. Coast Guard. Furthermore, the impacts of these visitations seem to be minimal (see discussion below).

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing, reclassifying, or removing species from the Federal List of Endangered and Threatened Species. “Species” is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). Once the species is determined, we then evaluate whether that species may be an endangered species or a threatened species because of any of one or a combination of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

We must consider these same five factors in reclassifying or delisting a species. In other words, for species that are already listed as endangered or threatened, the analysis for a delisting due to recovery must include an evaluation of the threats that existed at the time of listing, the threats currently facing the species, and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal of the Act’s protections.

The following discussion examines the factors that were believed to affect the Monito gecko at the time of its listing, are currently affecting it, or are likely to affect the Monito gecko within the foreseeable future.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

At the time of listing (47 FR 46090, October 15, 1982), the destruction, modification, or curtailment of its habitat was not considered a threat to the Monito gecko. In 1940, the U.S. Government acquired Monito Island, and the entire island was used by the Air Corps/U.S. Air Force as a high-level radar bombing and gunnery range (Parsons Corp. 2010, pp. 2–5). In 1961, Monito Island was declared surplus and was returned to the Commonwealth of Puerto Rico in September 1965 (Parsons Corp. 2010, pp. 2–5). Monito Island is managed by the PRDNER for conservation as part of the Mona Island Reserve (PRDNER, no date, p. 2). The final listing rule indicated that there were no plans to continue to use Monito Island for bombing practices at the time, and any major alteration of the island could be detrimental to the continued survival of the Monito gecko. In fact, the large amount of scattered debris on Monito Island suggests significant historical habitat modification from bombing activities (USFWS 1986, p. 5).

A Monito Island site inspection was conducted in August 2009 (Parsons Corp. 2010, entire). A qualitative reconnaissance and munitions constituents sampling was performed to confirm the range location and to evaluate the potential presence of munitions and explosives of concern (Parsons Corp. 2010, p. ES–1). Although unexploded ordnance (UXO) and munitions debris was found on Monito

Island, immediate munitions removal actions were not warranted.

The potential for future UXO detonation activities may have an effect on the Monito gecko and its critical habitat. Since Monito Island is a natural reserve, all activities must be coordinated with the PRDNER. The Service has been conducting informal consultations with the U.S. Army Corps of Engineers in order to develop species-specific standard operating procedures (SOPs) for the Monito gecko and other federally listed species that occur on Monito Island. These site-specific SOPs would be considered the appropriate conservation measures required to avoid and minimize potential adverse effects on the species or its critical habitat. Based on the current consultation, the magnitude of threat of these future U.S. Army Corps of Engineers' actions on the Monito gecko is considered minimal and non-imminent (USCOE 2017).

Monito Island receives illegal immigrants, usually from the western islands of Cuba and Hispaniola, that are trying to enter U.S. territory. The PRDNER has stated that illegal immigrants sometimes light fires on Monito Island in order to be detected and rescued. This information was documented during the May 2016 trip, where two recent fire pits were found, along with a small pile of firewood cuttings, on the south-southeast side of the island on exposed rock with no vegetation in the immediate vicinity. The presence of fire pits on Monito Island had not been documented in the past. At least for the two fire pits found in May 2016, their placement and construction demonstrates these were controlled fires and their intention was not of criminal nature. Although there is no information available on the frequency and damage these fires may be causing, based on what was documented in May 2016, the potential effects of such fires may also be considered minimal. To date, there is no indication that any potential fires have spread throughout the Island.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The final listing rule (47 FR 46091, October 15, 1982) mentioned that, because of the rarity of the Monito gecko, removal of specimens could be detrimental. At present, we are not aware of any individuals taken after listing for commercial, recreational, scientific, or educational purposes. The remoteness and difficult access of Monito Island limits any collecting efforts. In addition, access is only allowed under special permits issued by

the PRDNER, mostly for research, security, or management purposes. Furthermore, the Monito gecko's apparent rarity may have been an artifact of sampling bias, because surveys from 1982 to 1993 were done during daylight hours when the species is mostly hiding and the species has a low detection probability (see Species Information section).

Factor C. Disease or Predation

The final listing rule (47 FR 46091, October 15, 1982) indicates that the presence of large numbers of introduced black rats was thought to be the major factor in the precarious state of the Monito gecko because, although predation by black rats on this species has not been confirmed, rats are predaceous and are known to feed on both lizards and lizard eggs (Dodd and Ortiz 1983, p. 120; Case and Bolger 1991, pp. 273–278). Thus, predation by rats was considered a possible cause of population decline for the Monito gecko (USFWS 1986, p. 5). As previously explained above under Recovery Action 3, Monito Island has been rat free since August–September 1999. Thus, the main threat to the species has not been present for at least the past 18 years.

Although Monito Island is currently rat free, there is still the possibility that rats could reach the island again. Rats may be transferred from Mona Island by floating debris or more likely by human means. In addition to illegal immigrants, as discussed above, there is limited evidence of public use of Monito Island for recreational or unknown purposes. Although it is logistically difficult to disembark on the island and prohibited because of unexploded ordinances from the previous military activities, these disembarking events could increase the chance of invasion and establishment of rats or other exotic species. However, this possibility is considered very low. The rat eradication campaign was completed in 1999, and 18 years later, no rats have been found.

Ortiz (1982, p. 7) included the endemic Monito skink *Spondylurus monitae* (formerly *Mabuya mabouya sloani*) as a potential predator of the Monito gecko. Other species of *Mabuya* feed primarily on small invertebrates, but the diversity of prey types in stomach contents, including small vertebrates, indicates that some skink species (such as *M. bistrata*) most likely feed on any moving animal of the appropriate size (Vitt and Blackburn 1991, p. 920). *Mabuya mabouya* live in places where *Sphaerodactylus* abound (Rivero 1998, p. 106) and it is probable that geckos constitute an important food item for this skink. During the 2016 trip,

biologists observed one adult skink active at night within the same exposed rock habitat used by the Monito gecko (*i.e.*, exposed karst rock with lots of crevices and holes). It is also highly probable that another native lizard, *Anolis monensis*, will prey on the Monito gecko as well, except that *Anolis* are considered diurnal. The Monito gecko's trait of tail autotomy (tail loss) is certainly an effective predator defense mechanism (Pianka and Vitt 2003, p. 76). During our May 2014 site visit, 2 out of the 8 geckos captured for measurements were missing the tips of their tails, and during May 2016, only 5 geckos out of the 84 seen had missing tail parts. Although difficult to determine, this suggests natural predation pressure from the two other native lizard species mentioned above is low.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

When the Monito gecko was listed (47 FR 46091; October 15, 1982), the species did not have any other statutory or regulatory protections. Now, territorial laws and regulations protect the Monito gecko. In 1999, the Commonwealth of Puerto Rico enacted Law No. 241–1999, known as the New Wildlife Law of Puerto Rico (*Nueva Ley de Vida Silvestre de Puerto Rico*). The purpose of this law is to protect, conserve, and enhance both native and migratory wildlife species; declare property of Puerto Rico all wildlife species within its jurisdiction; provide provisions to issue permits; regulate hunting activities; and regulate exotic species, among other actions. In 2004, the PRDNER approved Regulation 6766—to regulate the management of threatened and endangered species in Puerto Rico (*Reglamento 6766—Reglamento para Regir el Manejo de las Especies Vulnerables y en Peligro de Extinción en el Estado Libre Asociado de Puerto Rico*), including the Monito gecko, which was listed as endangered. Article 2.06 of this regulation prohibits collecting, cutting, removing, among other activities, listed animals within the jurisdiction of Puerto Rico. There is no evidence that either the law or the regulation is not being adequately implemented.

Additionally, the PRDNER has managed Monito Island as a natural reserve since 1986, protecting its wildlife and vegetation. Monito Island is managed for conservation because it harbors one of the largest seabird nesting colonies in the Caribbean, in addition to other endemic and federally listed species like the Higo chumbo cactus (*Harrisia portoricensis*) and the

yellow-shouldered blackbird (*Agelaius xanthomus*). No human permanent residents live on the island, and public access is prohibited. The best available information indicates that Monito Island will remain permanently protected as a nature reserve and managed for conservation. In addition, Monito Island harbors additional species protected by the ESA and the Migratory Bird Treaty Act. Any potential future federal actions on Monito Island will still require consultation with the USFWS for those species (e.g., *Harrisia* cactus, Yellow-shouldered black bird), thereby potentially also benefiting the Monito gecko from conservation measures developed for those other species.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

In listing the Monito gecko, we considered as a factor the species' extremely small population size (47 FR 46090, October 15, 1982). As previously explained in Species Information and Recovery and Recovery Plan Implementation, the Monito gecko is a small and cryptic species and difficult to detect, especially during the day. However, all of the historical surveys documented (USFWS 2016, p. 9) were done during daylight hours, when the species is apparently less active, safely hiding from diurnal native reptile predators, and/or exhibiting behavioral adaptations to avoid the hot temperatures within its xeric dry forest environment. As discussed above (see Population Size and Trends), these and other biases cause us to question the validity of these historical surveys. In contrast, as also discussed above (see Population Size and Trends), the best available population estimate for the species, completed during the May 2016 systematic plot survey, shows that the Monito gecko is widely distributed throughout Monito Island and gecko abundance appears to number in the thousands, indicating a large well-represented population (IC 2016, pp. 5–6). Our post-delisting monitoring will demonstrate the continued recovery of this species. In general, lizard populations remain fairly stable and are influenced by predation and amount of resources available, and predation and competition usually result in populations existing below their carrying capacity (Pianka and Vitt 2003, p. 64). Based on the May 2014 and 2016 observations and results, there is no indication that limited resources are acting on the population to warrant listing under the Act.

Potential sea level rise as a result of climate change is not a threat to this

species or its habitat, because the Monito gecko is found only on Monito Island, which is 66 m (217 ft) above sea level and has no beach areas. The current rate of sea level rise in the Caribbean is 10 cm (3.9 inches) per century, with more specific sea level rise estimates for Puerto Rico ranging from 0.07 to 0.57 meters (m) (0.20 to 1.87 feet) above current sea level by the year 2060 and between 0.14 to 1.70 m (0.40 to 5.59 feet) by the year 2110 (Puerto Rico Climate Change Council 2013, p. 64). Thus, the habitat occupied by the Monito gecko will remain well above the area of Monito Island predicted to be affected by sea-level rise in the foreseeable future.

Hurricanes, such as the recent Hurricanes Irma and Maria are not considered a threat to the Monito gecko in part because the island is 66 m above sea level. The vegetation on the island is short and therefore hurricane impacts are expected to be minimal. Additionally, the Monito gecko is adapted to living under cover mostly during the day when the species seems to be less active. Typical forms of cover include rocks, debris, crevices, or other substrates.

We further evaluated the potential effects of the predicted scenario of a gradual trend toward a dryer and hotter climate for Puerto Rico (Henareh et al. 2016, p. 265; Bhardwaj et al. 2018, pp. 133–134). To a certain extent, evaluating the vulnerability of the Monito gecko to climate change would require linking the magnitude of changes (i.e., temperature and humidity) with the physiological response of the species to those changes (Deutsch et al. 2008, p. 6668; Huey et al. 2009, p. 1; Glick et al. 2011, pp. 39–43; Pacifici et al. 2015, p. 215). For example, the fact that *Sphaerodactylus* are particularly vulnerable to overheating and desiccation is an important criterion to evaluate.

Based on the available information, the Monito gecko should have low evaporative water loss rates, with behavioral adaptations similar to other *Sphaerodactylus* (or other lizards) that exploit arid microhabitats (Snyder 1979, p. 110; Dunson and Bramham 1981, pp. 257–258; Nava 2001, pp. 461–463; López-Ortiz and Lewis 2004, p. 438; Nava 2004, pp. 18–26; Steinberg et al. 2007, pp. 334–335; Turk et al. 2010, pp. 128–129; Bentz et al. 2011, pp. 46–47; Allen and Powell 2014, pp. 594–596). Research suggests that these tiny lizards have behavioral and physiological traits that allow them to acclimate to and survive under each particular local environment and climate. In the case of the Monito gecko, the species usually

hides and is undetectable during the day (unless an active search of turning rocks and debris is conducted) and shifts to a more active and detectable lifestyle during the night. This is consistent with microhabitat selection and activity patterns exhibited by other *Sphaerodactylus* lizards to minimize exposure to physiologically challenging diurnal conditions of lower humidity and higher temperatures. Cover during the day not only provides insulation from higher temperatures, but also protection from predators such as the relatively abundant Anole lizard on Monito Island. In addition, *Sphaerodactylus* eggs are considered extremely resistant to desiccation (Dunson and Bramham 1981, p. 255).

Without any specific climate change studies for the Monito gecko, it is difficult to predict with certainty how the Monito gecko will respond to predicted climate change scenarios and how they might affect the species' fitness and viability. Some researchers suggest that climate change will increase the thermal stress on tropical lizards, suggesting a detrimental effect on the basic physiological functions of these ectotherms (Deutsch 2008, entire; Tewksbury 2008, entire; Huey et al. 2009, entire). However, with the current absence of other potential threats (e.g., habitat loss, disease, rat predation, etc.) and the perpetual legal protection of the species and its habitat as a nature reserve, the Monito gecko should have the best opportunity to survive and adapt well past the foreseeable future. Thus, we do not expect the Monito gecko to be endangered nor threatened currently or in the foreseeable future by potential climate change effects.

Determination of Species Status

Under section 4(a)(1) of the Act, we determine whether a species is an endangered species or threatened species because of any one or a combination of the following: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. The Act defines an endangered species as any species that is “in danger of extinction throughout all or a significant portion of its range” and a threatened species as any species “which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.”

Monito Gecko—Determination of Status Throughout All of Its Range

As required by section 4(a)(1) of the Act, we conducted a review of the status of this species and assessed the five factors to evaluate whether it is in danger of extinction currently or likely to become so in the foreseeable future throughout all of its range. The Monito gecko is endemic to Monito Island, a small island (approx. 40 acres; 16.2 hectares) off the west coast of Puerto Rico, and it has not been introduced elsewhere. There are no landscape barriers within Monito Island that might be of biological or conservation importance. The most recent survey found that the species occurs across most of the Island. The basic ecological components required for the species to complete its life cycle are considered present throughout Monito Island. We found that Monito gecko populations are persistent with an estimate of approximately 7,661 geckos (50 percent confidence interval: 5,344–10,590). During our analysis, we found that impacts thought to be threats at the time of listing (primarily predation by rats, factor C) are either not as significant as originally anticipated or have been eliminated or reduced since listing, and we do not expect any of these conditions to substantially change post-delisting and into the foreseeable future, nor do we expect climate change to affect this species in the foreseeable future. We conclude that the previously recognized impacts (*i.e.*, rat predation, small population size) to the Monito gecko no longer threaten the species, such that the species is no longer in danger of extinction throughout all of its range now or in the foreseeable future. In order to make this conclusion, we analyzed the five threat factors used in making Endangered Species Act listing (and delisting) decisions. This analysis indicates that the Monito gecko is not in danger of extinction throughout all of its range, nor is it likely to become so in the foreseeable future.

Monito Gecko—Determination of Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range (SPR). Where the best available information allows the Services to determine a status for the species rangewide, that determination should be given conclusive weight because a rangewide determination of status more accurately reflects the

species' degree of imperilment and better promotes the purposes of the Act. Under this reading, we should first consider whether the species warrants listing "throughout all" of its range and proceed to conduct a "significant portion of its range" analysis if, and only if, a species does not qualify for listing as either an endangered or a threatened species according to the "throughout all" language.

Having determined that the Monito gecko is not in danger of extinction now or likely to become so in the foreseeable future throughout all of its range, we now consider whether it may be in danger of extinction or likely to become so in the foreseeable future in an SPR. The range of a species can theoretically be divided into portions in an infinite number of ways, so we first screen the potential portions of the species' range to determine if there are any portions that warrant further consideration. To do the "screening" analysis, we ask whether there are portions of the species' range for which there is substantial information indicating that: (1) The portion may be significant; and (2) the species may be, in that portion, either in danger of extinction or likely to become so in the foreseeable future. For a particular portion, if we cannot answer both questions in the affirmative, then that portion does not warrant further consideration and the species does not warrant listing because of its status in that portion of its range. We emphasize that answering these questions in the affirmative is not a determination that the species is in danger of extinction or likely to become so in the foreseeable future throughout a significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required.

If we answer these questions in the affirmative, we then conduct a more thorough analysis to determine whether the portion does indeed meet both of the SPR prongs: (1) The portion is significant and (2) the species is, in that portion, either in danger of extinction or likely to become so in the foreseeable future. Confirmation that a portion does indeed meet one of these prongs does not create a presumption, prejudgment, or other determination as to whether the species is an endangered species or threatened species. Rather, we must then undertake a more detailed analysis of the other prong to make that determination. Only if the portion does indeed meet both SPR prongs would the species warrant listing because of its status in a significant portion of its range.

At both stages in this process—the stage of screening potential portions to identify any portions that warrant further consideration and the stage of undertaking the more detailed analysis of any portions that do warrant further consideration—it might be more efficient for us to address the "significance" question or the "status" question first. Our selection of which question to address first for a particular portion depends on the biology of the species, its range, and the threats it faces. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the second question for that portion of the species' range.

For Monito gecko, we chose to evaluate the status question (*i.e.*, identifying portions where the Monito gecko may be in danger of extinction or likely to become so in the foreseeable future) first. To conduct this screening, we considered whether the threats are geographically concentrated in any portion of the species' range at a biologically meaningful scale. If a species is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range and the threats to the species are essentially uniform throughout its range, then the species would not have a greater level of imperilment in any portion of its range than it does throughout all of its range and therefore no portions would qualify as an SPR.

We examined the following threats: The destruction and modification of habitat by humans and exotic foreign species introduced to the Monito Island, such as rats and mice, including cumulative effects. We found no concentration of threats in any portion of the Monito gecko's range at a biologically meaningful scale. Since we found no portions of the species' range where potential threats are significantly concentrated or substantially greater than in other portions of its range, we did not identify any portions where the species may be in danger of extinction or likely to become so in the foreseeable future. Therefore, no portions warrant further consideration through a more detailed analysis, and the species is not in danger of extinction or likely to become so in the foreseeable future in any significant portion of its range. Our approach to analyzing SPR in this determination is consistent with the court's holding in *Desert Survivors v. Department of the Interior*, No. 16-cv-01165-JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018).

Our review of the best available scientific and commercial information

indicates that the Monito gecko is not in danger of extinction nor likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Therefore, we find that listing the Monito gecko as an endangered species or a threatened species under the Act is not warranted at this time.

Conclusion and Determination

The Monito gecko has demonstrated the ability to persist despite changing environmental conditions over time from both anthropogenic and natural disturbances. Although the Monito gecko population is considered to have low redundancy (*i.e.*, one population endemic to Monito Island), no risk of extirpation was identified and no other populations outside of Monito Island are needed for its recovery. In addition, the fact that the species was found throughout the Island, gecko abundance is in the thousands, and past and current occurrence of juveniles and gravid females, indicates a large, well-represented population with demonstrated abilities to recover and adapt from disturbances.

Because the Monito gecko population is considered self-sustaining, contains a large number of individuals, and has demonstrated high resilience and viability, we expect this population to persist into the future. The species is considered abundant within its habitat, which consists of adequate area and quality to maintain survival and reproduction in spite of disturbances. Thus, the Monito gecko appears to have highly resilient population attributes (*e.g.*, habitat generalist, potential high adult survival rate) that allow at least some degree of disturbance within a harsh xeric environment.

For the Monito gecko, we determined that a foreseeable future of 20 to 30 years is reasonable. Based on the available information, making threat projections beyond this time frame increases speculation. For example, although rats could potentially reinvade Monito Island, the probability of rats reinvading is considered low since rats have not been detected after the eradication effort was completed in 1999. In addition, lifespan data for almost all of the *Sphaerodactylus* species is not available. One species from Martinique in the West Indies, *Sphaerodactylus vicenti ronaldi*, estimated longevity did not exceed 4 years (Leclair and Leclair 2011). Assuming the Monito gecko would have a similar lifespan, a foreseeable future of 20 to 30 years would allow for multiple generations and detection of any population changes. The Monito gecko

has been listed since 1982, has persisted apparent mayor threats (*i.e.* bombing effects, rat predation), and is currently well represented. Further, we do not anticipate significant impacts in the foreseeable future from climate change factors. Therefore, without no immediate risk of extinction, we have a baseline to continue assessing how the Monito gecko population may respond in the foreseeable future.

We carefully assessed the best scientific and commercial information available regarding the threats faced by the Monito gecko in developing the proposed rule and this final rule. The Service finds that the present or threatened destruction, modification, or curtailment of its habitat (factor A) is not a threat to the continued existence of the Monito gecko, and we do not expect it to be a threat in the future. We also conclude that overutilization (factor B) and disease (factor C) are not a threat to the Monito gecko. Natural predation by other native lizards may occur, but this activity is considered a low-magnitude threat because the Monito gecko has persisted despite potential predation and there is no indication that the magnitude of an undetermined natural predation pressure significantly affects the gecko's survival. No rats have been detected on Monito Island since August 1999. Therefore, we conclude that predation (factor C) is no longer a threat to the Monito gecko.

The species' apparent small population size (factor E), noted at the time of listing, may have been an artifact of bias as surveys were conducted under conditions when the species was not easily detectable. There are no known potential climate change effects (*i.e.*, sea level rise or changes in air temperature) (factor A) that negatively affect the Monito gecko. No other natural or manmade factors are considered threats (factor E). The Monito gecko and its habitat have been and will continue to be protected under Commonwealth laws and regulations (factor D), and these existing regulatory mechanisms are adequate to protect the Monito gecko now and in the future. The information indicates that this species is no longer at risk of extinction, nor is it likely to experience reemergence of threats and associated population declines in the foreseeable future. Based on the analysis above and after considering the best available scientific and commercial information, we conclude that the Monito gecko does not currently meet the Act's definition of either an endangered or threatened species throughout all or a significant portion of its range.

Effects of This Rule

This final rule revises 50 CFR 17.11(h) to remove the Monito gecko from the Federal List of Endangered and Threatened Wildlife. The prohibitions and conservation measures provided by the Act would no longer apply to the Monito gecko. Federal agencies will no longer be required to consult with us under section 7 of the Act to ensure that any action authorized, funded, or carried out by them is not likely to jeopardize the gecko's continued existence. The prohibitions under section 9(a)(1) of the Act will no longer make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce, or take, possess, sell, deliver, carry, transport, or ship Monito geckos. Finally, this rule will also remove the Federal regulations related to the Monito gecko listing: The critical habitat designation at 50 CFR 17.95(c).

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us to implement a system in cooperation with the States to monitor effectively for not less than 5 years the status of all species that are delisted due to recovery. Post-delisting monitoring (PDM) refers to activities undertaken to verify that a species delisted due to recovery remains secure from the risk of extinction after the protections of the Act no longer apply. The primary goal of PDM is to ensure that the species' status does not deteriorate, and if a decline is detected, to take measures to halt the decline so that proposing it as threatened or endangered is not again needed. If at any time during the PDM period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing. At the conclusion of the PDM period, we will review all available information to determine if re-listing, the continuation of monitoring, or the termination of monitoring is appropriate.

Section 4(g) of the Act explicitly requires cooperation with the States (which includes Territories such as Puerto Rico) in development and implementation of PDM programs. However, we remain responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of PDM. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation after delisting. In April 2017, the PRDNER and the Service agreed to be cooperators in the PDM for the Monito gecko.

We have prepared a PDM Plan for the Monito gecko (USFWS 2017). The plan is designed to detect significant declines in the Monito gecko with reasonable certainty and precision, and detect possible new or reoccurring threats (*i.e.*, presence of rats). The plan:

(1) Summarizes the species' status at the time of delisting;

(2) Defines thresholds or triggers for potential monitoring outcomes and conclusions;

(3) Lays out frequency and duration of monitoring;

(4) Articulates monitoring methods including sampling considerations;

(5) Outlines data compilation and reporting procedures and responsibilities; and

(6) Proposes a PDM implementation schedule including timing and responsible parties.

It is our intent to work with our partners towards maintaining the recovered status of the Monito gecko.

Required Determinations

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment or Environmental Impact Statement, as defined in the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that no tribal lands are affected by this proposal.

References Cited

A complete list of references cited is available on <http://www.regulations.gov> under Docket Number FWS-R4-ES-2017-0082.

Author

The primary authors of this document are the staff members of the Caribbean Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

§ 17.11 [Amended]

■ 2. Amend § 17.11(h) by removing the entry "Gecko, Monito" under "Reptiles" from the List of Endangered and Threatened Wildlife.

§ 17.95 [Amended]

■ 3. Amend § 17.95(c) by removing the entry for "Monito Gecko (*Sphaerodactylus micropithecus*)".

Dated: August 9, 2019.

Margaret E. Everson,

Principal Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2019–20907 Filed 10–2–19; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 190925–0038]

RIN 0648–BH91

Pacific Halibut Fisheries; Revisions To Catch Sharing Plan and Domestic Management Measures in Alaska

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

ACTION: Final rule.

SUMMARY: Currently, sport fishing activities for halibut in International Pacific Halibut Commission Regulatory Areas 2C (Southeast Alaska) and 3A (Southcentral Alaska) are subject to different regulations, depending on whether those activities are guided or unguided. In this final rule, NMFS issues regulations that apply the daily

bag limits, possession limits, size restrictions, and carcass retention requirements for guided fishing to all Pacific halibut on board a fishing vessel when Pacific halibut caught and retained by both guided anglers and unguided anglers are on the same vessel. This final rule is intended to aid enforcement and to ensure the proper accounting of halibut taken when sport fishing in Areas 2C and 3A.

DATES: Effective November 4, 2019.

ADDRESSES: Electronic copies of the Categorical Exclusion and the Regulatory Impact Review (collectively, Analysis) prepared for this action are available at <https://www.regulations.gov> or from the NMFS Alaska Region's website at <https://www.fisheries.noaa.gov/region/alaska>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99082–1668, Attn: James Bruschi, Records Officer, in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; by email to OIRA_Submission@omb.eop.gov; or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Kurt Iverson, 907–586–7228.

SUPPLEMENTARY INFORMATION: This final rule implements regulatory amendments for Pacific halibut charter fishing in International Pacific Halibut Commission (IPHC) Regulatory Areas 2C (Southeast Alaska) and 3A (Southcentral Alaska). When Pacific halibut are simultaneously retained on a fishing vessel from both guided and unguided fishing, the daily bag limits, possession limits, size restrictions, and carcass retention requirements for guided fishing will apply to all Pacific halibut on board.

NMFS published the proposed rule for these regulatory amendments on February 12, 2019 (84 FR 3403). The comment period on the proposed rule ended on March 14, 2019. NMFS received seven comment letters on the proposed rule. From these letters, NMFS identified and considered seven unique, relevant comments. A summary of the comments and NMFS' responses are provided in the Comments and Responses section of this preamble.

A detailed review of this rule and the rationale for these regulations is provided in the preamble to the proposed rule (84 FR 3403, February 12, 2019). Electronic copies of the proposed rule and the Analysis may be obtained from www.regulations.gov or from the NMFS Alaska Region website at <https://www.fisheries.noaa.gov/region/alaska>.

www.fisheries.noaa.gov/region/alaska. All public comment letters submitted during the comment period may be obtained from www.regulations.gov.

Background

Authority for Action

The IPHC and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC adopts regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention), signed in Ottawa, Ontario, on March 2, 1953, as amended by the Protocol Amending the Convention (signed in Washington, DC on March 29, 1979). For the United States, regulations developed by the IPHC are subject to acceptance by the Secretary of State with concurrence from the Secretary of Commerce. After acceptance by the Secretary of State and concurrence by the Secretary of Commerce, NMFS publishes the IPHC regulations in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62.

The Halibut Act, at 16 U.S.C. 773c(a) and (b), provides the Secretary of Commerce with general responsibility to carry out the Convention and the Halibut Act. In adopting regulations that may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act, the Secretary of Commerce is directed to consult with the Secretary of the department in which the U.S. Coast Guard is operating, which is currently the Department of Homeland Security.

The Halibut Act, at section 16 U.S.C. 773c(c), also provides the North Pacific Fishery Management Council (Council) with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations. Regulations developed by the Council may be implemented by NMFS only after approval by the Secretary of Commerce. The Council has exercised this authority in the development of subsistence halibut fishery management measures, the limited access program for charter operators in the charter halibut fishery, and the catch sharing plan and domestic management measures in waters in and off Alaska, codified at 50 CFR 300.61, 300.65, 300.66, and 300.67. The Council also developed the Individual Fishing Quota (IFQ) Program for the commercial

halibut and sablefish fisheries, codified at 50 CFR part 679, under the authority of section 5 of the Halibut Act (16 U.S.C. 773c(c)) and section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853(b)).

Summary Background on Management of the Charter Halibut Fishery

In addition to this summary, the preamble to the proposed rule and Section 2.7 of the Regulatory Impact Review (RIR) for this rule provide detail on charter halibut management programs that have been implemented in Areas 2C and 3A.

Throughout the proposed rule and this preamble, regulatory areas established by the IPHC are referred to as “IPHC Regulatory Areas” for the IFQ program regulations at 50 CFR part 679 and as “Commission regulatory areas” for the halibut management regulations at 50 CFR 300.61, 300.65, 300.66, and 300.67. This preamble uses the terms “Area 2C” and “Area 3A” to refer to IPHC Regulatory Areas 2C and 3A, respectively.

The harvest of halibut in Alaska occurs in three fisheries—the commercial, sport, and subsistence fisheries. The commercial halibut fishery is managed under the IFQ Program. The sport fishery includes guided and unguided anglers. Guided anglers are “charter vessel anglers” as defined at 50 CFR 300.61, and means persons, paying or non-paying, receiving sport fishing guide services for halibut. Throughout this preamble, the term “charter halibut fishery” is used to refer to the sport fishery prosecuted by charter operators who hold Charter Halibut Permits (CHPs) and offer sport fishing guide services for halibut. This preamble uses the terms “guided fishing” to refer to sport fishing by an angler who receives sport fishing guide services for halibut, and “guided angler” to an angler receiving those sport fishing guide services. This preamble uses the terms “unguided fishing” to refer to sport fishing by an angler who does not receive sport fishing guide services for halibut sport fishing, and “unguided angler” to an angler who does not receive those sport fishing guide services.

Essential background on the charter halibut fishery was presented in the proposed rule for this action, and in the Analysis. Among the topics described in the proposed rule is a summary of management of the charter halibut fishery and the development of the Charter Halibut Limited Access Program (CHLAP) that established a limited number of CHPs in the sport fishing

sector in Areas 2C and 3A. The proposed rule also provides details on the Catch Sharing Plan (CSP) that annually allocates Pacific halibut harvests between the charter fishery and the commercial fisheries in Areas 2C and 3A. A component of the CSP describes the public process for determining annual management measures to limit charter harvest to the allocations in each management area. As part of this process, the Council develops recommendations that are forwarded to the IPHC.

The effect of the CSP and the annual charter fishing management measures result in distinct halibut sport fishing regulations in Areas 2C and 3A, depending upon whether anglers are guided (charter) or unguided. In general, to keep the charter fishery within its annual allocation, guided fishing regulations are more stringent than unguided fishing. Guided angling restrictions have become more pronounced in recent years, as halibut abundance has dropped and charter catch limits have been reduced.

Currently, unguided anglers are managed under a two-fish of any size daily bag limit in Alaska; however, since 2008, guided anglers in Area 2C have been managed under more restrictive limits. In Area 3A, guided anglers have been managed under more restrictive limits since 2014. For example, in 2019, guided anglers in Area 2C are limited to a daily bag limit of one fish and size limits that prohibit retention of halibut greater than 38 inches and less than 80 inches. In Area 3A in 2019, guided anglers may retain two halibut per day; however, one fish must be 28 inches or less, and guided anglers are allowed to retain a maximum of four fish in a calendar year. Additionally, guided anglers in Area 3A in 2019 are prohibited from retaining halibut on any Wednesday, and on five Tuesdays from July 16 through August 13. To enforce the halibut size limit restrictions in Areas 2C and 3A, if the fish are filleted on board the charter vessel, guided anglers are required to retain the carcasses of fish until all fillets are offloaded from Convention waters.

The maximum number of halibut an angler may possess at any one time in Areas 2C and 3A is two daily bag limits. Those possession limits correspond to the respective daily bag limits for guided or unguided anglers. For example, the 2019 daily bag limit for unguided anglers in Area 2C is two halibut, so the possession limit for unguided anglers is four halibut; however, for guided anglers in Area 2C in 2019, the daily bag limit is one

halibut (within the size limit), so the possession limit for that sector is two halibut (within the size limit).

The CSP also authorizes limited annual leases of commercial IFQ for use in the charter fishery as guided angler fish (GAF). Charter vessel anglers can use GAF to retain halibut up to the limits provided for unguided halibut anglers.

Summary of This Action

This final rule changes regulations for the management of the charter halibut fishery in IPHC Regulatory Areas 2C and 3A. It implements a regulatory amendment that applies to situations in Areas 2C and 3A where Pacific halibut are caught and retained by guided and unguided anglers, and those halibut are on board a fishing vessel at the same time. In these situations, where halibut are comingled from both guided and unguided fishing, the bag limits, possession limits, size limits, and carcass retention requirements for guided fishing will apply to all halibut on board the vessel.

Purpose and Need

The preamble to the proposed rule provided a detailed description of the purpose and need for this final rule. A brief summary is provided here.

This final rule is intended to aid the enforcement and to ensure the proper accounting of halibut taken when sport fishing in Areas 2C and 3A. This final rule provides uniform halibut retention regulations, provides clearer regulatory standards for the public, reduces the amount of time needed by enforcement officers when boarding fishing vessels, and improves overall compliance with daily bag limits, possession limits, size limits, and carcass retention requirements.

When halibut are caught and retained by both guided and unguided anglers and those halibut are on the same fishing vessel, it presents enforcement challenges due to the different regulations for guided versus unguided anglers. The greatest challenge is for accountability under the bag and possession limits and halibut size restrictions. Under the current regulations, when halibut are caught and retained by guided and unguided anglers and those halibut are on the same fishing vessel, enforcement officers have no effective means to verify which angler harvested a particular fish, or whether that angler harvested the fish while fishing unguided or while being guided. It is important to note these enforcement challenges occur when the halibut from guided and unguided anglers is on

board a fishing vessel in Convention waters. Therefore, this rule will not apply to Pacific halibut that is not on a fishing vessel. Section 2.3 of the RIR provides additional information on the history of this action.

Provisions of the Final Rule

This final rule adds a new paragraph at 50 CFR 300.65(d)(6). This paragraph applies to Areas 2C and 3A under circumstances when Pacific halibut are retained by both guided and unguided anglers, and those halibut are on the same fishing vessel.

The new paragraph at § 300.65(d)(6) requires all Pacific halibut on board a fishing vessel to be subject to the daily bag limit, the possession limit, size restrictions, and carcass retention requirements for guided anglers for that IPHC Area if any halibut caught and retained by a guided angler is on board that vessel. If sport fishing guide services are performed at any point during a charter fishing trip, then all anglers on board, for the full extent of the fishing trip, will be subject to the daily bag limit, possession limits, size restrictions, and carcass retention requirements for guided charter vessel anglers, as specified for the applicable IPHC regulatory area, and determined by the annual management measures recommended by the IPHC and NMFS and published by NMFS in the **Federal Register**.

Attention to both the IPHC and NMFS regulations is critical because there may be differences between the IPHC management measures and NMFS regulations. For example, in 2018, the IPHC adopted management measures for halibut size restrictions in Area 2C that were initially accepted by the Secretary of State and published by NMFS (83 FR 10390, March 9, 2018), but those regulations were eventually superseded by a subsequent action implemented by NMFS in an interim final rule (83 FR 12133, March 20, 2018).

This final rule does not modify regulations related to the management of GAF. Regulations for GAF are principally found in § 300.65(c)(5). These regulations allow transfers of commercial halibut IFQ to a charter operator, where the IFQ is translated to fish that individual anglers can use to increase their harvests up to the limits of unguided anglers, which is currently two fish of any size per day, with no annual limit. Under this rule, guided anglers will be able to continue to use GAF on charter vessel fishing trips. Regulations applicable to GAF permitting, transfer, use, and reporting requirements in § 300.65 will still apply.

Changes From Proposed to Final Rule

NMFS did not make changes to the final rule from the proposed rule.

Comments and Responses

NMFS received seven comment letters on the proposed rule. Among the letters, NMFS identified and considered 7 unique, relevant comments, which are grouped, summarized, and responded to below. Three of the individual commenters identified themselves as either operators in the charter sector or representing charter fishing interests.

Comment 1: Several comments expressed support for the proposed regulations by recognizing the difficulty of adequately enforcing bag and possession limits when halibut from guided and unguided angling are comingled on a common fishing vessel.

Response: NMFS acknowledges the comments.

Comment 2: Some comments expressed support for the proposed rule by citing conservation concerns for halibut, and mentioned the more restrictive bag limits associated with guided halibut fishing.

Response: NMFS acknowledges that sport fishing bag limits are an important component in halibut conservation. NMFS also acknowledges the primary consideration of this final rule is the effective enforcement of those bag limits, which in turn supports the proper monitoring of catch necessary for conservation.

Comment 3: Halibut conservation and a decline in the resource are rationales to implement regulations that are different from the regulatory amendment suggested in the proposed rule. Halibut size limits that apply to guided fishing result in catch and release mortality by anglers who release many fish that fall outside of the allowable size restrictions. A simple solution is to establish the same regulations for both guided and unguided anglers, where all anglers are allowed one halibut of any size, per day.

Response: Establishing a one-fish daily bag limit for both guided and unguided anglers would require coordinated action by both the Council and IPHC and is outside of the scope of this rule. Catch and release mortality for sport caught halibut is estimated on an annual basis and is factored into the IPHC decisions on the combined commercial and charter catch limits in Areas 2C and 3A.

Comment 4: Some charter guides rent boats to clients so the clients can retain two halibut per day under the unguided fishing regulations. Regulations should allow only one halibut per day for all

guests statewide, whether they fish from a charter vessel or from a lodge. This would be more equitable. Guides seem to always find a way to work around the rules. No person needs more than one halibut per day.

Response: Although this rule does not establish a bag limit of one halibut per day for all guests statewide, NMFS acknowledges the comment and points to the enforcement concerns that resulted in this final rule. NMFS also notes this rule applies to circumstances where halibut from both guided and unguided fishing are comingled on a fishing vessel, as defined by the Halibut Act, and operating in Convention waters.

Comment 5: The issue of the proposed regulation is an unquantified problem in a very minute segment of the sport fishery. The ratio of bad actors in guided fishing is likely the same as among unguided anglers; therefore, the burden of enforcement efforts should be on the agency to find ways to discover illicit activity while preserving the rights of the majority of people who act in compliance.

Response: NMFS agrees that the number of charter fishing vessels that offer mixed guided and unguided fishing is likely to be relatively small, compared to the total number of active charter vessels in any given year. NMFS agrees there is not currently information that can precisely identify the number of charter fishing vessels and the number of charter fishing trips where mixed guided and unguided halibut fishing occurs. However, the Council expressed its intent, and NMFS agrees, that the enforcement concerns are significant for those operations where mixed guided and unguided halibut fishing occurs, and that this issue warrants the regulatory amendment implemented by this final rule. NMFS also notes the enforcement issue, if left unaddressed, could continue to grow as more charter operations decide to offer the option of mixed guided and unguided fishing on their vessels.

NMFS also notes this final rule does not prevent charter fishing vessels from continuing to offer mixed guided and unguided fishing. As mentioned in the proposed rule, public testimony to the Council suggests that—in addition to the bag, possession, and size limits addressed by this rule—pricing, convenience, and the personal preferences of the client anglers can also be reasons for sport fishing businesses to offer unguided fishing along with guided fishing.

Comment 6: GAF is still allowed under the proposed regulations; therefore, the number and size of

halibut that are onboard the fishing vessel may already exceed the guided fishing limits, although GAF must be accounted for on GAF permits. A similar requirement could be implemented for unguided fish, rather than alter size and bag limits.

Response: NMFS acknowledges that the regulatory amendment implemented under this rule allows the continued and unchanged use of GAF. When halibut regulations place size or harvest restrictions on anglers, qualified charter halibut permit holders may offer GAF to their clients as a means to retain halibut of any size, and up to the limits allowed for unguided anglers, which is currently two fish of any size per day, with four fish in possession. Under this final rule, when fishing vessels employ a mix of guided and unguided fishing, all anglers will be subject to the guided angler harvest restrictions; therefore, all anglers on the vessel will be eligible to use GAF.

As stated in the comment, regulations require that GAF harvests must be recorded on a GAF permit log. GAF must also be physically identified by removing the tips of the upper and lower lobes of the halibut tail fin. A marking and logging system similar to GAF that would be used to account for halibut retained by unguided anglers was not an alternative that was analyzed or recommended by the Council for this action.

Comment 7: Typical enforcement happens by boarding vessels engaged in fishing or by conducting dockside interviews at the termination of a trip. Nothing prohibits enforcement officers from boarding guided or unguided vessels associated with a mother ship during fishing activity or upon return to the mother vessel to determine compliance with existing regulation. There is no current or proposed requirement that anglers remain on board a mother vessel with their processed catch, so investigation of preserved fish after transfer from other fishing vessels, or fish harvested and processed on the same vessel, becomes an independent issue.

Response: NMFS acknowledges the comment, and agrees that enforcement boardings and interviews will continue on all fishing vessels, whether those vessels fish independently or whether they are associated with a mothership. NMFS also notes the primary enforcement issue that is addressed by this final rule, which is the proper determination of regulatory compliance after halibut are brought back to a common fishing vessel (*i.e.*, a mothership), and those halibut come from a mix of guided and unguided

fishing. Under these circumstances, enforcement officers currently have no effective means to properly account for the retained catch. The Council indicated, and NMFS agrees, that uniform regulations in these situations will enhance compliance and eliminate confusion among both anglers and enforcement officers.

Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the North Pacific Fishery Management Council, and the Secretary of Commerce. Section 5 of the Halibut Act (16 U.S.C. 773c) allows the regional fishery management council having authority for a particular geographical area to develop regulations governing fishing for halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. The Halibut Act at 16 U.S.C. 773c(a) and (b) provides the Secretary of Commerce with the general responsibility to carry out the Convention with the authority to, in consultation with the Secretary of the department in which the U.S. Coast Guard is operating, adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. This final rule is consistent with the Halibut Act and other applicable laws. This final rule is also consistent with the Secretary of Commerce's authority under the Halibut Act to implement management measures for the halibut fishery.

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

Regulatory Impact Review

A Regulatory Impact Review was prepared to assess the costs and benefits of available regulatory alternatives. A copy of this final analysis is available from NMFS (see **ADDRESSES**). The Council recommended the regulatory revisions in this final rule based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis related to the impact of this final rule on small entities are discussed below in the Final Regulatory Flexibility Analysis section.

Final Regulatory Flexibility Analysis (FRFA)

This FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, if any, and NMFS' responses to those comments, and a summary of

the analyses completed to support this action.

Section 604 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 604) requires that, when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a FRFA. Section 604 describes the required contents of a FRFA: (1) A statement of the need for and objectives of the rule; (2) a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made to the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in this final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

A description of this final rule, along with the need for and objectives of the rule, are contained in the preamble to this final rule and the preamble to the proposed rule (84 FR 3403, February 12, 2019), and are not repeated here.

Public and Chief Counsel for Advocacy Comments on the IRFA

NMFS published the proposed rule on February 12, 2019 (84 FR 3403). An IRFA was prepared and included in the Classification section of the preamble to the proposed rule. The comment period on the proposed rule ended on March 14, 2019. One of the comments indirectly referenced the IRFA and has been addressed in the Comments and

Responses section of the preamble (Comment 5; number of entities affected by this rule). The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule.

Number and Description of Small Entities Regulated by This Final Rule

This final rule directly regulates (1) sport fishing businesses that currently offer, or would offer, both guided and unguided halibut fishing opportunities, and the sport fishing guides that work for those businesses ("charter operations"); and (2) unguided anglers who retain halibut on board vessels at the same time as guided anglers who have also retained halibut.

NMFS does not collect information on the number of entities that offer mixed guided and unguided halibut fishing, and there appears to be no systematic means to determine an accurate number of those entities. An informal survey by enforcement officers, combined with testimony and comments from the public, indicates the practice of mixing guided and unguided fishing primarily occurs on larger charter vessels that provide multi-day fishing trips. This analysis indicates that approximately 30 fishing vessel businesses in Area 2C and 14 similar businesses in Area 3A currently offer multi-day fishing trips for their clients. This should be considered an upper-bound estimate of the number of businesses directly regulated by this action at this time because the number of those operations that offer mixed guided and unguided fishing is unknown. Public comment also indicates that on relatively rare occasions, anglers will mix guided and unguided fishing when they are based out of a shoreside lodge or facility that provides rental boats.

For Regulatory Flexibility Act (RFA) purposes only, the SBA has established a small business size standard for businesses, including their affiliates, whose primary industry is scenic and sightseeing transportation on water, or all other amusement and recreation (NAICS codes 487210, and 713990, respectively).

On July 18, 2019, the Small Business Administration (SBA) issued an interim final rule (84 FR 34261) effective August 19, 2019, that adjusted the monetary-based industry size standards (*i.e.*, receipts- and assets-based) for inflation for many industries. For fisheries for-hire businesses and marinas, the rule changes the small business size standard from \$7.5 million in annual gross receipts to \$8 million. See 84 FR at 34273 (adjusting NAICS 487990 (Scenic and Sightseeing Transportation, Other) and 713930 (Marinas)).

Pursuant to the Regulatory Flexibility Act, and prior to SBA's July 18, 2019 interim final rule, a final regulatory flexibility analysis was developed for this action using SBA's former size standards. NMFS has reviewed the analyses prepared for this action in light of the new size standards. Under the former SBA size standards, all entities subject to this action were considered small entities, and they all would continue to be considered small under the new standards.

NMFS has determined that the new size standards do not affect analyses prepared for this action. It is unlikely that the largest of the affected charter vessel operations would be considered large entities under either the former or current SBA standards; however, that cannot be confirmed because NMFS does not have or collect economic data on lodges or charter vessels necessary to definitively determine total annual receipts. Thus, all charter vessel operations are considered small entities, based on SBA criteria, because NMFS cannot confirm if any entities have annual gross revenues greater than either the former \$7.5 million or current \$8.0 million standards.

Community quota entities (CQEs) may apply for and receive community CHPs and some of those charter operations could potentially offer mixed guided and unguided halibut fishing; therefore, this final rule may directly regulate CQEs, and the CQEs are non-profit entities that represent small, remote communities in Areas 2C and 3A. There are 20 communities in Area 2C and 14 in Area 3A eligible to receive community CHPs. Of these 34 communities, 20 hold community CHPs. Again, the number of these CHP holders who offer, or would offer, mixed guided and unguided fishing is unknown.

This final rule applies more restrictive halibut bag and possession limits on clients that take multi-day charters with mixed guided and unguided halibut fishing activity. These individuals are not considered directly regulated small entities under the RFA. However, this action will also apply these more restrictive catch and possession limits on vessel crew and guides who choose to fish for halibut in any time off they may have during a guided trip. It is possible that these crew and guides may operate as subcontractors to the primary vessel and, as such, may be defined as small entities. However, the applicability of the more restrictive limits to any of these potential small entities is as an indirect consequence of their being aboard the vessel on a mixed guided and unguided trip. Thus, they are not considered to be directly

regulated small entities for RFA purposes.

Based on this analysis, NMFS has determined that there are directly regulated small entities affected by this action. The RIR notes that the action could increase costs for multi-day vessels that continue to offer both guided and unguided fishing due to transporting halibut to shore to prevent mixing. However, the analysts were unable to determine if these costs would occur or, if they did, the magnitude of these costs. NMFS indicated in the proposed rule that it may consider certifying that this action will not have a significant economic impact on a substantial number of small entities prior to publication of the final rule. However, due to the assumptions necessary to establish the factual basis for certification and the lack of information available to conduct this analysis, NMFS decided to prepare a FRFA for this action.

Recordkeeping, Reporting, and Other Compliance Requirements

This final rule does not change the recordkeeping and reporting requirements for charter halibut fishing or unguided halibut fishing in the affected Areas 2C and 3A. In terms of other compliance requirements, the final rule applies the daily bag limits, possession limits, size restrictions, and carcass retention requirements for guided fishing to all Pacific halibut on board a fishing vessel when Pacific halibut caught and retained by both guided anglers and unguided anglers are on the same vessel.

Description of Significant Alternatives Considered to the Final Action That Minimize Adverse Impacts on Small Entities

NMFS and the Council considered three alternatives for this rule. Alternative 1 was the no action alternative. This alternative would have continued to maintain different daily bag limits, possession limits, size restrictions, and carcass retention requirements for guided anglers and unguided anglers even if halibut caught and retained by both guided and unguided anglers are on the same fishing vessel simultaneously. The benefit of status quo is the flexibility and business advantages for operators seeking to accommodate the desires of a broad range of clients, and their anglers can choose guided fishing, unguided fishing, or alternating between guided and unguided fishing at different times.

The concerns about status quo are expressed in the Council's purpose and

need statement and in the RIR analysis. In Areas 2C or 3A, guided anglers are frequently subject to greater harvest restrictions than unguided anglers. When halibut from guided and unguided fishing are commingled on a vessel in these management areas, it is difficult for enforcement officers to determine whether the halibut were caught by guided or unguided anglers. When vessels are boarded by enforcement officers, establishing each person's catch and whether that person was guided or unguided can become a lengthy and complicated process for both officers and charter operators.

Alternative 2 was also considered by NMFS and the Council. It would have prevented the commingling of halibut catches from guided and unguided anglers on fishing vessels by prohibiting the possession of halibut retained by guided anglers with halibut retained by unguided anglers on the same fishing vessel simultaneously. The primary advantage of this alternative is that it would have maximized compliance of the regulations and likely reduced the duration of at-sea boardings by enforcement officers.

The RIR describes the disadvantages of Alternative 2, which are primarily the reduced flexibility and potential lost revenue for multi-day fishing vessels that currently provide, or would seek to provide, the option of mixed guided and unguided fishing. If charter operations wanted to switch from guided to unguided fishing, the vessels would need to assume the time and cost of returning to port, offloading the fish, and then beginning a new trip to prevent commingling of halibut.

Alternative 3 is the adopted alternative and is also described in detail in the RIR. Alternative 3 is intended to balance the enforcement concerns that result from commingling of halibut from guided and unguided fishing with an allowance for charter operations to maintain the flexibility of offering a mix of guided and unguided fishing, as they do now. Moreover, Alternative 3 allows other operations to assume the practice of offering both guided and unguided fishing in the future. The Council's enforcement concerns are addressed by establishing uniform bag limits, possession limits, size restrictions, and carcass retention requirements for all halibut retained by anglers on a fishing vessel, irrespective of whether the angler was guided or unguided.

Under Alternative 3, some of the requirements for guided anglers would not be imposed on unguided anglers, largely because the proposed alignment of bag and possession limits, size

restrictions, and carcass retention requirements effectively serve to mitigate the compliance risks associated with the commingling of halibut on a fishing vessel that were caught and retained by both guided and unguided anglers. For example, this final rule will not require unguided anglers to individually record their daily catch and accrue it toward guided angler annual limits, which is currently a maximum of four fish in Area 3A. Additionally, day of the week closures for guided anglers, which is a restriction to catching and retaining Pacific halibut on specific days and is currently used in Area 3A, will not apply to unguided anglers.

The RIR examines the potential negative effects of this final rule, which largely relates to reduced harvest limits for unguided anglers who have their halibut on the same fishing vessel as guided anglers. One of the advantages of fishing unguided is that anglers are allowed to keep two fish of any size per day and keep a possession limit of four fish. Relative to the status quo, it is possible that this final rule which would reduce the number and size of halibut that can be retained by unguided anglers in some situations, could also reduce the incentive to purchase charter halibut trips.

As noted above, the entities directly regulated under this final rule are assumed to be small, by the SBA definition. Overall, however, this action is likely to have a limited effect on net benefits to the Nation. The majority of Area 2C and 3A halibut charter operations, which includes business owners, guides and crew members, would not be subject to significant negative economic impacts by this final rule. Thus, NMFS is not aware of any alternatives, in addition to the alternatives considered, that would more effectively meet the RFA criteria, the objectives of the Halibut Act and other applicable statutes at a lower economic cost to directly regulated small entities.

Collection-of-Information Requirements

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA), which have been approved by the Office of Management and Budget (OMB) under OMB control number 0648-0575 (Alaska Pacific Halibut Fisheries: Charter Recordkeeping). Public reporting burden per response is estimated to average 4 minutes for the ADF&G Saltwater Sport Fishing Charter Trip Logbook, 5 minutes for the GAF Landing Report, and 2 minutes for the GAF Permit Log. The response time

includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The ADF&G Saltwater Sport Fishing Charter Trip Logbook, GAF Electronic Landing Report, and GAF Permit Log are mentioned in this final rule. Each of these are reporting requirements specified by NMFS regulations. The requirements apply only to the harvest accounting of charter vessel anglers by charter vessel guides. Under this final rule, the harvests of unguided charter vessel anglers will not be subject to these requirements; therefore, this rulemaking imposes no additional burden or cost on the regulated community.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**), and by email to OIRA_Submission@omb.eop.gov, or fax to (202) 395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: https://www.cio.noaa.gov/services_programs/prasubs.html.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. The preambles to the proposed rule and this final rule serve as the small entity compliance guide. Copies of the proposed rule and this final rule are available from the NMFS website at <https://fisheries.noaa.gov/region/alaska>.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping

requirements, Russian Federation, Transportation, Treaties, Wildlife.

Dated: September 25, 2019.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS amends 50 CFR part 300 as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

- 1. The authority citation for part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

- 2. In § 300.65, add paragraph (d)(6) to read as follows:

§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.

* * * * *

(d) * * *

(6) If a charter vessel angler catches and retains halibut, and that halibut is on board a fishing vessel with halibut caught and retained by persons who are not charter vessel anglers, then the daily bag limit, possession limit, size limit, and carcass retention regulations applicable to charter vessel anglers shall apply to all halibut on board the fishing vessel.

* * * * *

[FR Doc. 2019–21258 Filed 10–2–19; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042–8884–02]

RIN 0648–XT023

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS transfers 100 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the General category October through November 2019 subquota period. The quota transfer is intended to provide additional fishing opportunities based on consideration of the regulatory

determination criteria regarding inseason adjustments and applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: Effective October 1, 2019, through November 30, 2019.

FOR FURTHER INFORMATION CONTACT:

Sarah McLaughlin, 978–281–9260, or Larry Redd, 301–420–8503.

SUPPLEMENTARY INFORMATION:

Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and amendments. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The current baseline General and Reserve category quotas are 555.7 mt and 29.5 mt, respectively. See § 635.27(a). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a “subquota” or portion of the annual General category quota. The baseline subquotas for each time period are as follows: 29.5 mt for January; 277.9 mt for June through August; 147.3 mt for September; 72.2 mt for October through November; and 28.9 mt for December. Any unused General category quota rolls forward within the fishing year, which coincides with the calendar year, from one time period to the next, and is available for use in subsequent time periods. To date for 2019, NMFS has taken six actions that resulted in adjustments to the Reserve category, leaving 165.3 mt of quota currently available (84 FR 3724, February 13, 2019; 84 FR 6701, February 28, 2019; 84 FR 35340, July 23, 2019; 84 FR 47440, September 10, 2019; and 84 FR 48566, September 16, 2019).

Transfer of 100 mt From the Reserve Category to the General Category

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after considering regulatory determination criteria provided under § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer. These considerations include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided by bluefin tuna dealers continue to provide valuable data for ongoing scientific studies of bluefin tuna age and growth, migration, and reproductive status. Additional opportunity to land bluefin tuna in the General category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). NMFS anticipates that the current October through November subquota of 72.2 mt could be reached in a few days, given the high daily landings rates that were occurring when the September fishery closed and that commercial-sized bluefin tuna remain available in the areas where General category permitted vessels operate at this time of year. Without a quota transfer, NMFS would have to close the General category fishery for the remainder of the October through November subquota period very early, while unused quota remains in the Reserve category. Transferring 100 mt of quota from the Reserve category would result in 172.2 mt being available for the October through November 2019 subquota period, thus effectively providing additional opportunities to harvest the U.S. bluefin tuna quota while avoiding exceeding it.

Regarding the projected ability of the vessels fishing under the particular category quota (here, the General category) to harvest the additional amount of BFT before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS anticipates that all of the 100 mt of quota will be used by November 30, based on current figures and the amount of quota being transferred, but this is also subject to weather conditions and bluefin tuna availability. In the unlikely

event that any of this quota is unused by November 30, such quota will roll forward to the next subperiod within the calendar year (*i.e.*, the December period), and NMFS anticipates that it would be used before the end of the fishing year.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2019 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS will need to account for 2019 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that, even with the 100 mt transfer to the General category for the October through November fishery. NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General category quota in 2019, through active inseason management such as the timing of quota transfers, as practicable. Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds to the extent consistent with the available amount of transferable quota and other management objectives, while avoiding quota exceedance.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the transfer on accomplishing the objectives of the FMP (§ 635.27(a)(8)(v) and (vi)). This transfer would be consistent with the current quotas, which were established and analyzed in the 2018 BFT quota final rule (83 FR 51391, October 11, 2018), and with objectives of the 2006 Consolidated HMS FMP and amendments and is not expected to negatively impact stock health or to affect the stock in ways not already analyzed in those documents. Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and amendments, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations (related to § 635.27(a)(8)(x)). Specific to the General category, this includes providing opportunity equitably across all time periods.

Based on the considerations above, NMFS is transferring 100 mt of the available 165.3 mt of Reserve category quota to the General category for the October through November 2019 fishery, resulting in a subquota of 172.2 mt for the October through November 2019 fishery and 65.3 mt in the Reserve category.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustment, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing hmspermits.noaa.gov, using the HMS Catch Reporting app, or calling (888) 872-8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional action (*e.g.*, quota adjustment, daily retention limit adjustment, or closure) is necessary to ensure available subquotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281-9260, or access hmspermits.noaa.gov, for updates on quota monitoring and inseason adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason quota transfers to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement the quota transfer is impracticable and contrary to the public interest as such a delay would likely result in exceedance of the General

category October through November fishery subquota or earlier closure of the fishery while fish are available on the fishing grounds. Subquota exceedance may result in the need to reduce quota for the General category later in the year and thus could affect later fishing opportunities. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to

waive prior notice and the opportunity for public comment. For all of the above reasons, there also is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under §§ 635.27(a)(9) and 635.28(a)(1), and is exempt from review under Executive Order 12866.

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

Dated: September 30, 2019.

Alan D. Risenhoover,

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

[FR Doc. 2019-21548 Filed 9-30-19; 4:15 pm]

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Proposed Rules

Federal Register

Vol. 84, No. 192

Thursday, October 3, 2019

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 AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

[FNS–2019–0009]

RIN 0584–AE69

Supplemental Nutrition Assistance Program: Standardization of State Heating and Cooling Standard Utility Allowances

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Proposed rule.

SUMMARY: The proposed rule would revise Supplemental Nutrition Assistance Program (SNAP) regulations to standardize the methodology for calculating standard utility allowances (SUAs or standards). The new methodology would set the largest standard, the heating and cooling standard utility allowance (HCSUA), at the 80th percentile of low-income households' utility costs in the State. Standard allowances for other utility costs would subsequently be capped at a percentage of the HCSUA with the exception of an updated telecommunications SUA that would be a standard amount set nationally. These figures would continue to be updated annually and reflective of utility costs in each State.

DATES: Written comments must be received on or before December 2, 2019 to be assured of consideration.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this proposed rule. Comments may be submitted in writing by one of the following methods:

- *Preferred Method:* Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Send comments to Certification Policy Branch, Program Development Division, Food and Nutrition Services, FNS, 3101 Park

Center Drive, Room 812, Alexandria, Virginia 22302.

All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the internet via <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Certification Policy Branch, Program Development Division, FNS, 3101 Park Center Drive, Alexandria, Virginia 22302. SNAPCPBRules@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Acronyms or Abbreviations

American Community Survey, ACS
Code of Federal Regulations, CFR
Consumer Price Index, CPI
Fiscal Year, FY
Food and Nutrition Act of 2008, the Act
Food and Nutrition Service, FNS
Heating and Cooling Standard Utility Allowance, HCSUA
Limited Utility Allowance, LUA
Residential Energy Consumption Survey, RECS
Standard Utility Allowance, SUA
State SNAP Agencies, State agencies or States
Supplemental Nutrition Assistance Program, SNAP
U.S. Department of Agriculture, the Department or USDA

References

- Title 7 of the Code of Federal Regulations, part 273
- U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *Characteristics of Supplemental Nutrition Assistance Program Households: Fiscal Year 2017*, by Kathryn Cronquist and Sarah Lauffer. Project Officer, Jenny Genser. Alexandria, VA, 2019. <https://www.fns.usda.gov/snap/characteristics-supplemental-nutrition-assistance-program-households-fiscal-year-2017>
- Holleyman, Chris, Timothy Beggs, and Alan Fox. *Methods to Standardize State Standard Utility Allowances*. Prepared by Econometrica for the U.S. Department of Agriculture, Food and Nutrition Service, August 2017. <https://www.fns.usda.gov/snap/methods->

standardize-state-standard-utility-allowances

Background

The Food and Nutrition Act of 2008 (the Act) establishes national eligibility standards for SNAP, including allowable deductions from gross income. With the exception of a standard deduction for all households, most allowable deductions are available to households based on their circumstances. Some of these deductions include those for: Earned income; dependent care costs when needed for work, searching for work, training, or education; medical expenses over \$35 for elderly or disabled households; and excess shelter costs.

The excess shelter deduction allows households to deduct shelter expenses that exceed 50 percent of their income after all other deductions are taken. For households without an elderly or disabled member, the deduction must not exceed a maximum limit. Households with elderly or disabled members do not face a limit. Shelter expenses include the basic cost of housing as well as certain utilities and other allowable expenses listed in 7 CFR 273.9(d)(6)(ii). To help streamline the application and certification process, section 5(e)(6) of the Act permits States to use SUAs in lieu of actual utility expenses in determining a household's shelter costs for the purposes of the excess shelter deduction.

States may develop their own SUAs in accordance with criteria set forth in 7 CFR 273.9(d)(6)(iii). States are not required to use a particular methodology when developing SUAs under current program rules. States must update SUAs annually, but are not directed to use particular data sources, and can revise their methodology at any time so long as they receive FNS approval. In the absence of formal guidelines outlining recommended methodologies, States have considerable flexibility in developing the methodologies and amounts for the standards.

Multiple SUAs may be created by the State to reflect the differences in utility expenses that SNAP households incur. There are three different types of SUAs: Heating and cooling SUAs (HCSUAs); a limited utility allowance (LUA); and single utility allowances (also referred to as "individual standards"). The HCSUA is the largest of the SUAs and

available to households that pay heating or cooling expenses separate from their rent or mortgage. The HCSUA includes costs for all other utilities covered by SUAs as well as heating or cooling costs. States may also choose to develop a LUA that includes expenses for at least two utilities, and single utility allowances may be used for stand-alone utility costs. Utility expenses that may be captured in a LUA or a single utility allowance include: Electricity or fuel for purposes other than heating or cooling; water; sewerage; well and septic tank installation and maintenance; telephone; and garbage or trash collection.

Though most SNAP eligibility parameters are set at the Federal level, SUAs are an exception because States determine which SUAs are available in their State and how to calculate them. This can lead to considerable variation from State to State. Current rules grant broad discretion to States in determining how SUAs are calculated and the sources of information used. In Fiscal Year (FY) 2019, HCSUA amounts ranged from \$278 to \$826. The variation in SUA amounts can cause variation in benefit amounts as larger SUAs provide for greater excess shelter deductions resulting in higher benefit amounts.

In FY 2017, HCSUAs were used to determine 63 percent of household eligibility and benefit amounts.¹ Wide variation in SUAs means that households that have otherwise similar shelter costs and household circumstances but live on opposite sides of a State border would have differing benefit amounts based on the choices their States made in developing SUAs. For example, in FY2019, the difference in HCSUAs between two bordering States was as high as \$339, which would cause a difference in benefits of \$55. While differences in utility costs are expected across State lines, the degree of the variation in methodologies and therefore SUA amounts is of concern as similarly situated households living a few miles apart could have significantly different benefit amounts.

2017 SUA Study

In August 2017, USDA published a study that reviewed States' SUA methodologies titled, *Methods to Standardize State Standard Utility Allowances* (Holleyman, *et al.*, 2017). The 2017 SUA Study looked at HCSUAs from 2014 and found that most of the

methodologies States employ fall into one of two categories: (1) Those that rely on recent State-specific utility data; and (2) those that adjust a base number using an inflation measure such as the Consumer Price Index (CPI) of utility costs. States relying on State-specific utility data use a variety of data sources, including information obtained from utility providers through public service commissioners or consumption information available from other sources. States that adjust a base number annually predominately use changes in the price indexes (for electricity, natural gas, etc.) to make these changes. For States using the second methodology, the frequency of updates to the underlying base number are often infrequent or nonexistent. The report found that less than half (42 percent) of States that update a base number know the source of their base number and many do not know what year it was established.

The 2017 SUA Study also found differences in how State's FY 2014 HCSUA values reflected actual utility expenditures among low-income households in their State.² One State had an HCSUA lower than average low-income household utility expenses in the State, five States had an HCSUA lower than the 70th percentile of low-income household utility expenses in the State, and 20 States had HCSUAs lower than the 80th percentile of low-income household utility expenses in the State. The 2017 SUA Study found that in 22 States the HCSUA met or exceeded the utility expenses of 85 percent of low-income households.

As part of the 2017 SUA Study, additional methodologies and data sources were considered to identify alternative methods for calculating SUAs. These options were evaluated to determine which methodology and sources could more accurately reflect utility costs for low-income households, be applied nationally, and allow for annual adjustments. Of the methodologies considered, the report recommended using a combination of the American Community Survey (ACS) and the Residential Energy Consumption Survey (RECS) to develop base-year SUAs, and a 3-year average of the CPI for fuels and utilities to make annual adjustments.

Standardizing HCSUA Methodology

The Department is concerned that the degree of flexibility in current regulations causes inequities from State

to State. The 2017 SUA Study revealed that many States' SUAs are overinflated, which leads to additional benefits, and some States' SUAs underestimate how much households actually pay in utilities, resulting in lower benefits. The Department believes that standardizing SUA methodology would make SUAs and the program more equitable. Removing the inequities related to this deduction will also improve integrity by ensuring SUAs better reflect what low-income households are actually paying for utilities so that eligible households receive SNAP benefit amounts which more accurately reflect their circumstances, no matter the State in which they reside.

In order to address the variations found in the 2017 SUA Study and help ensure benefit equity across States, the Department is proposing to calculate each State's HCSUA using a standard methodology. The proposed standardization would set the HCSUA at the 80th percentile of utility costs for low-income households in the State. Standardizing at this level will reduce the amount of variation between utility costs and HCSUA amounts across States. Additionally, setting HCSUA values at the 80th percentile balances the need to create more accurate standards while still capturing households that have higher than average utility costs, as most States require use of SUAs in lieu of actual costs. As noted earlier, the 2017 SUA Study found that there was greater variation in State-established HCSUA values than there was in utility expenditures. This new standardized methodology would apply to all States that choose to use an HCSUA, with a few exceptions noted below.

The proposed methodology would use best-available utility cost information from national Federal sources, such as the ACS and the RECS, to calculate HCSUAs annually. A combination of these two sources was recommended in the 2017 SUA Study to account for different utility end-uses, determining which energy costs are for heating or cooling versus other utilities, and to correct for upward bias in self-reported utility expenditures reflected in the source information. Under the proposed rule, base year HCSUAs would be calculated using ACS and RECS and interim years (RECS is not conducted annually) would be updated using a 3-year CPI average for fuel and utilities to make annual adjustments. All calculations would be conducted by FNS, alleviating State administrative burden associated with determining HCSUA values and reporting to FNS.

¹ Holleyman, Chris, Timothy Beggs, and Alan Fox. *Methods to Standardize State Standard Utility Allowances*. Prepared by Econometrica for the U.S. Department of Agriculture, Food and Nutrition Service, August 2017.

² The 2017 SUA Study defined "low-income" as households with incomes at or below 150 percent of the Federal poverty level.

The Department intends to use ACS and RECS as the sources for base-year HCSUA calculations. The use of these specific sources, however, would not be codified in the proposed rule in order to maintain flexibility in the event better sources become available or these surveys cease to provide the necessary information. These sources would need to be able to determine accurate utility costs for low-income households, applied nationally, and allow for annual adjustments. If changes in the data sources from the previous year occur, FNS would notify State agencies prior to release of the updated figures for that year.

ACS and RECS were found to be the best available sources for calculating the majority of HCSUAs; however, these surveys do not collect information for Guam and the Virgin Islands. Additionally, Guam and the Virgin Islands do not currently use an HCSUA. The Department is proposing to continue to allow these territories to use their own methodologies, and conduct their own calculations, subject to FNS approval. The Department is interested in receiving public comments about this proposed exception or other possible methods for developing HCSUAs for Guam and the Virgin Islands.

The proposed rule would not eliminate the State option to mandate SUAs (HCSUAs, LUAs, and single utility allowances) for all households with qualifying expenses. In States that use but do not mandate a SUA, the proposed rule would maintain a household's ability to choose using actual costs in determining eligibility and benefit amount. For States that use an HCSUA, mandatory or not, the HCSUA would be set by FNS using the standardized methodology, annually, on the fiscal year calendar. FNS would be responsible for releasing the HCSUA figures via memo to the State agencies near the same time that cost of living adjustments are announced and would make them available publicly on the FNS website. The Department intends for the proposed standardization to begin the first fiscal year following publication of the final rule.

Changes to Current SUA Options

Program rules currently allow State agencies to vary SUAs by factors such as household size, geographical areas, or season. For FY2019, no State chose to vary by season, only two States elected to vary by geographical area, and six States varied by household size. The number of States taking these options has been consistent in recent years.

The proposed rule would eliminate the State options to vary allowances by

household size and geographic areas as part of the Department's efforts to bring greater benefit equity across States and in recognition of the low number of States taking these options.

One of the two States that currently choose to vary standards by geographical areas is Alaska. Alaska and Hawaii are granted additional considerations under program rules to account for cost of living differences, as well as further program flexibilities for Alaska because of extremely remote geography. Although no exceptions for Alaska and Hawaii are included in the proposed rule, the Department is interested in receiving public comments on whether additional attention or exceptions should be granted to Alaska and Hawaii in the proposed changes and how those might be best accomplished.

Consistent with the proposed rule's standardization efforts to promote more benefit equity, the Department is also proposing to eliminate the option for State agencies to include the excess heating and cooling costs of public housing residents in the LUA if they wish to offer the lower standard to such households. The proposed rule would also eliminate the option for States to include the cooling expense in the electricity utility allowance for States where cooling expenses are minimal. Such flexibility would not support efforts to promote consistency and parity with this deduction and therefore the Department believes the option would no longer be appropriate to offer. As such, the proposed rule clarifies that residents of public housing who incur heating or cooling costs in States that mandate SUAs would receive the HCSUA. The Department is particularly interested in receiving comments from State agencies as to whether removing these options pose administrative challenges based on their current practices.

LUAs and Single Utility Allowances

Under the proposed rule, States would continue to use their own methodologies to determine LUA and single utility allowance amounts that do not exceed maximum limits established by the Department. In FY 2017, less than 8 percent of households used a single utility allowance or LUA when determining SNAP eligibility and benefit levels. Although a small portion of SNAP participants are impacted, the Department is proposing that these standards be capped at a percentage of the HCSUA to extend standardization efforts and mitigate future inconsistencies. The Department is proposing to cap LUAs at 70 percent of

a State's HCSUA amount and single utility allowances at 35 percent of a State's HCSUA. When analyzing the SUA values developed as part of the 2017 SUA Study, it was found that most States' single utility allowances were near 35 percent of their HCSUA. Similarly, most States' LUAs did not exceed 70 percent of their HCSUA.

States would still need to calculate their own LUA and single utility allowance figures annually under the proposed changes. The methodology and final figures would continue to be subject to the cap, as well as FNS review and approval. FNS would be responsible for releasing the capped amounts via memo to the State agencies near the same time that HCSUA figures and cost of living adjustments are announced and would make them available publicly on the FNS website. The Department is interested in receiving public comments on the proposed percentage caps, particularly from State agencies.

Updating the Telephone SUA

State agencies may use SUAs for any allowable utility expense listed at 7 CFR 273.9(d)(6)(ii)(C). Allowable utility expenses listed in the section include the costs of: Heating and cooling; electricity or fuel used for purposes other than heating or cooling; water; sewage; well and septic tank installation and maintenance; garbage collection; and telephone. The Department is proposing to amend this section to add the cost of basic internet service.

The proposed inclusion of costs for basic internet service as an allowable utility expense for the shelter deduction is in recognition of internet access becoming a necessity for school, work, and job search. The proposed rule replaces the telephone standard (*i.e.*, the single utility allowance for telephone costs) with a broader telecommunications standard that consists of costs for one telephone, basic internet service, or both. State agencies would not be authorized to create a single utility allowance solely for basic internet service; rather, basic internet service costs would be allowed as part of the new telecommunications standard. FNS will calculate the maximum amount annually by reviewing nationally available low-cost plans for one telephone line and basic internet access. The Department estimates that the telecommunications standard would be approximately \$55 in FY 2020. Similar to LUAs and single utility allowances, States would still need to calculate their own telecommunications figures annually under the proposed changes. The

methodology and final figures would be subject to the cap, as well as FNS review and approval.

The new telecommunications standard would be available to households with utility costs for one telephone, basic internet service, or both. Households with basic internet and/or telephone costs would be able to either receive the telecommunications standard or have their actual costs counted, but actual costs would be limited up to the amount of the telecommunications standard. For example, households with more than basic internet packages, such as those combined with cable television service, would not have the cost of their entire package counted. Rather these households would either receive the telecommunications SUA or have their actual costs of phone and/or basic internet counted, up to the amount of the standard, depending on the option their State selects. Additionally, States may include the telecommunications costs as part of their LUA so long as the telecommunications share of the LUA would not exceed the amount set for the telecommunications standard. The Department is interested in receiving public comments, particularly from State agencies, on this proposed change.

Procedural Matters

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule has been determined to be Economically Significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

As required for rules that have been designated as economically significant by the Office of Management and Budget, a Regulatory Impact Analysis (RIA) was developed for this proposed rule. It follows this rule as an Appendix. The following summarizes the conclusions of the RIA:

The Department has estimated the total reduction in Federal spending

associated with the proposed rule to be approximately \$4.5 billion over the five years 2021–2025. This represents a reduction in Federal transfers (SNAP benefits). The Department estimates that approximately 16 percent of households will see an increase in their monthly SNAP allotment and another 19 percent will see a decrease in their monthly SNAP allotment. A very small number of households are estimated to lose eligibility for SNAP (less than 8,000 households).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize and significant impacts on a substantial number of small entities. Pursuant to that review, the Secretary certifies that this rule would not have a significant impact on a substantial number of small entities.

The proposed rule would not have an impact on small entities because it primarily impacts SNAP households. Small entities, such as smaller SNAP-authorized retailers, would not be subject to any new requirement. On average, SNAP retailers would likely see a drop in the amount of SNAP benefits redeemed at stores if these provisions were finalized, but impacts on small retailers are not expected to be disproportionate to impacts on large entities. As of FY 2017, approximately 76 percent of authorized SNAP retailers (about 200,000 retailers) were small groceries, convenience stores, combination grocery stores, and specialty stores, store types that are likely to fall under the Small Business Administration gross sales threshold to qualify as a small business for Federal Government programs. While these stores make up most authorized retailers, collectively they redeem less than 15 percent of all SNAP benefits.

The proposed rule is expected to reduce SNAP benefit payments by about \$1 billion per year in net. However, not all States will see benefit losses; in some States HCSUAs will increase under the proposed rule, resulting in larger SNAP benefits for many households. In total, 29 States are expected to see a net loss of SNAP benefits (about \$1.54 billion annually) and 22 are expected to see a net gain (about \$540 million annually). Based on USDA data, about 53 percent of stores would likely see lower redemptions and 47 percent would likely see increased redemptions.³

³ Data from the USDA Store Tracking and Redemption System (STARS).

In States with reduced benefits, this would equate to about a \$177 loss of revenue per small store on average per month $[(1.54 \text{ billion} \times 15\%)/(109,000 \text{ stores}/12 \text{ months})]$. In 2017 the average small store redeemed more than \$3,800 in SNAP each month; the potential loss of benefits represents about 4.7 percent of their SNAP redemptions and only a small portion of their gross sales. Based on 2017 redemption data, a 4.7 percent reduction in SNAP redemptions represented between 0.01 and 0.92 percent of these stores' gross sales.

In States that gain benefits, this would equate to about a \$70 increase in revenue per small store on average per month $[(0.54 \text{ billion} \times 15\%)/(96,000 \text{ stores}/12 \text{ months})]$. This potential increase in benefits represents about 1.8 percent of their SNAP redemptions and between 0.01 and 0.36 percent of these stores' gross sales.

Executive Order 13771

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that the cost of planned regulations be prudently managed and controlled through a budgeting process. The designation, as regulatory or deregulatory under E.O. 13771, of any final rule resulting from the notice of proposed rulemaking will be informed by comments received. Details on the preliminary estimates of costs and cost savings may be found in the economic analysis.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of \$100 million or more in any one year. Thus, the rule is

not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

SNAP is listed in the Catalog of Federal Domestic Assistance under Number No.10.551. For the reasons set forth in the Final Rule codified in 7 CFR part 3015, subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, impose substantial direct compliance costs on State and local governments, and are not required by statute, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13132.

The Department has considered the impact of setting HCSUA and SUA national standards and determined that this rule has federalism impacts. However, this rule does not preempt State or local law and does not impose substantial direct compliance costs on State and local governments, so under section (6)(b) of the Executive Order, a federalism summary is not required. The Department requests comments from State and local officials as to the need for national standards and any alternatives to the standards proposed.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with USDA Regulation 4300-4, "Civil Rights Impact Analysis," to identify any major civil rights

impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. After a careful review of the rule's objective and implementation, FNS has determined that this rule is likely to have an adverse or disproportionate impact on protected groups. Households with an elderly or disabled individual will be disproportionately affected by changes to HCSUAs, both positively and negatively, because these households do not face the cap on excess shelter costs and therefore would experience a greater benefit increase or decrease.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation. Additionally, other policy statements or actions that have substantial direct effects on one or more Indian Tribes, the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes also require consultation. FNS provided opportunity for consultation on the issue on June 27, 2019, but received no feedback. If further consultation is requested, the Office of Tribal Relations will work with FNS to ensure quality consultation is provided.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

In accordance with the Paperwork Reduction Act of 1995, this proposed rule will alter information collection requirements that are subject to review and approval by the Office of Management and Budget; therefore, FNS is submitting for public comment the changes in the information collection burden that would change the OMB burden inventory as a result of adoption of the proposals in the rule. While FNS is requesting a new OMB Control Number for these requirements in this proposed rule, this proposal would reduce the existing burden on State agencies currently approved under OMB Control Number 0584-0496; Expiration Date 3/31/2020. FNS intends to merge

this new collection to currently approved burden after the final rulemaking information collection request is approved.

Written comments on the information collection requirements included in this proposed rule must be received by November 4, 2019.

Send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, 725 17th St. NW, Washington, DC 20503, or via OIRA_Submissions@omb.eop.gov. Please reference the title of this rule in your message. Please also send a copy of your comments to SNAPCPBrules@usda.gov.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will be a matter of public record. Once OMB approves the information collection request (ICR), the agency will publish a separate notice in the **Federal Register** announcing its approval.

Title: Standardization of State Heating and Cooling Standard Utility Allowances.

OMB Number: 0584-NEW.

Expiration Date: [Not Yet Determined.]

Type of Request: New collection.

Abstract: Section 5 of the Food and Nutrition Act of 2008, as amended, permits States to use standard utility allowances (SUAs) in lieu of actual utility expenses in determining a household's shelter costs for the purposes of the excess shelter deduction.

Under current regulations, all States may develop SUAs for their SNAP households to be used in lieu of actual costs. States currently can decide which of the allowable utility expenses will be covered by SUAs and how they are calculated. The proposed rule would provide a clearer and more consistent

policy by standardizing the methodology for calculating SUAs.

In the currently approved burden, FNS estimates 53 State agencies will submit one request each to adjust the SUAs, for a total annual response of 53 requests at a minimum of 10 hours annually (53 State agencies × 1 SUAs request = 53 total annual responses × 10 hours = 530 hours). The total burden for this provision is estimated to be 530 hours per year. However, with this rule FNS estimates 53 State agencies will submit one request each to adjust the SUAs, for a total annual response of 53 requests at a minimum of 1 hour annually (53 State agencies × 1 SUAs request = 53 total annual responses × 1 hour = 53 hours). The total burden for this altered provision is estimated to be 53 hours per year. This is a decrease of – 447 burden hours for this requirement.

The rule would make FNS responsible for calculating the heating and cooling SUA (HCSUA) for all States. States still have the option to not use the HCSUA

and take a household's actual costs instead, however, if a State uses an HCSUA, it has to be the amount that FNS calculated. The rule would also cap the amounts of the LUAs and single utility expenses. States would continue to calculate these figures; however, their values cannot exceed the capped amount set by FNS.

States would continue to choose which types of SUAs they will use and report this information to FNS annually. Because FNS would calculate HCSUA, telecommunications SUA, and caps for LUAs and single utility allowance, the required burden on States would be significantly reduced. This is the lone reporting requirement that is being addressed in this section.

The recordkeeping is maintained under OMB Control Number 0584–0496; Expiration Date: 3/31/2020. There is no additional recordkeeping burden required for this new OMB Control Number because there is no requirement to maintain the reports submitted to FNS.

Description of Costs and Assumptions: States will be required to report to FNS annually. The Department estimates that this reporting will require an hour to prepare and process.

Reporting Burden Activities: The activity is limited to preparation, processing and submitting a report to FNS annually regarding the SUA(s) the State will use in SNAP.

We have rounded these burden times in the chart below.

The overall estimated burden we are requesting for States is 53 total annual burden hours and 53 total annual responses.

Estimated Number of Respondents: 53 State Agencies.

Estimated Frequency of Response: 1.

Estimated Total Annual Responses: 53.

Estimated Time per Response: 1.0 hours.

Estimated Total Annual Burden Hours: 53.

Reg. section	Affected public	Estimated number of respondents	Estimated frequency of response	Total annual responses	Number of burden hours per response	Estimated total burden hours	Previous submission total person hours	Difference due to program changes	Differences due to adjustments	Hourly wage rate *	Estimated cost to respondents
273.9(d)(6)(iii)(B) ...	State Agencies	53	1	53	1	53	530	– 477	0	30.12	\$1,596
Grand Total		53	1	53	1	53	530	– 477	0	30.12	1,596

* Based on the Bureau of Labor Statistics May 2018 Occupational and Wage Statistics—the salaries of the case managers are considered to be “Social Workers—other” functions performed by State and local agency staff are valued at \$30.12 per staff hour 21–1029 (<https://www.bls.gov/oes/current/oes211029.htm>).

E-Government Act Compliance

The Department is committed to complying with the E-Government Act of 2002 to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 273

Administrative practice and procedure, Claims, Employment, Food stamps, Fraud, Government employees, Grant programs—social programs, Supplemental Security Income, Wages.

Determining household eligibility and benefit levels, Income and deductions.

Accordingly, 7 CFR part 273 is proposed to be amended as follows:

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

■ 1. The authority citation for part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

■ 2. In § 273.9, revise paragraphs (d)(6)(ii)(C), (d)(6)(iii)(A), (d)(6)(iii)(D) and (E) to read as follows:

§ 273.9 Income and deductions.

* * * * *

(d) * * *

(6) * * *

(ii) * * *

(C) The cost of fuel for heating; cooling (*i.e.*, the operation of air conditioning systems or room air conditioners); electricity or fuel used for purposes other than heating or cooling; water; sewerage; well installation and maintenance; septic tank system installation and maintenance; garbage and trash collection; all service fees required to provide service for one telephone, including, but not limited to, basic service fees, wire maintenance fees, subscriber line charges, relay center surcharges, 911 fees, and taxes (not to exceed the amount of telecommunications standard described in paragraph (d)(6)(iii)(B)(3) of this section); basic internet connection (not to exceed the amount of telecommunications standard described in paragraph (d)(6)(iii)(B)(3) of this section); and fees charged by the utility provider for initial installation of the utility. One-time deposits cannot be included.

* * * * *

(iii) * * *

(A) A State agency may use standard utility allowances (standards) in place of actual costs in determining a household's excess shelter deduction. The State agency may use different types of standards but cannot allow households the use of two standards that include the same expense. Only utility costs identified in paragraph (d)(6)(ii)(C) of this section may be used in developing standards described in (d)(6)(iii)(A)(1) and (3). The following standards are allowable:

(1) An individual standard for each type of utility expense;

(2) A standard utility allowance for all utilities that includes heating or cooling costs (HCSUA); and

(3) A limited utility allowance (LUA) that includes electricity and fuel for purposes other than heating or cooling, water, sewerage, well and septic tank installation and maintenance, and garbage or trash collection. The LUA must include expenses for at least two utilities. The LUA may also include telecommunication costs so long as the share of telecommunications costs in the LUA does not exceed the maximum amount set annually by FNS, as

described in paragraph (d)(6)(iii)(B)(3) of this section.

(B) FNS will calculate the standards and caps described in paragraph (d)(6)(iii)(A) of this section annually, with the exception of the standards described in paragraph (d)(6)(iii)(B)(4) of this section. The State agency must review the standards described in paragraphs (d)(6)(iii)(B)(2), (d)(6)(iii)(B)(3), and (d)(6)(iii)(B)(4), annually and make adjustments to reflect changes in costs, rounded to the nearest whole dollar. State agencies must provide the amounts of standards to FNS when they are changed annually and submit methodologies used in developing and updating standards to FNS for approval when the methodologies are developed or changed.

(1) For the HCSUA described in paragraph (d)(6)(iii)(A)(2), standards will be calculated by FNS based on the 80th percentile of low income households' utility costs in the State. FNS will use the best-available utility cost information from national Federal surveys, such as the American Community Survey (ACS) and the Residential Energy Consumption Survey (RECS).

(2) For the LUA described in paragraph (d)(6)(iii)(A)(3), standards will be capped at 70 percent of the State's HCSUA.

(3) For individual utility expenses described in paragraph (d)(6)(iii)(A)(1), standards will be capped at 35 percent of the State's HCSUA, with the exception of the telecommunications standard. The telecommunications standard will have a maximum amount for all States set annually by FNS. The telecommunications standard includes the cost of one telephone, basic internet service, or both.

(4) Standards for Guam and the Virgin Islands may be developed by the State agency for utility costs identified in paragraph (d)(6)(ii)(C).

* * * * *

(D) At initial certification, recertification, and when a household moves, the household may choose between a standard or verified actual utility costs for any allowable expense identified in paragraph (d)(6)(ii)(C) of this section, unless the State agency has opted, with FNS approval, to mandate use of a standard. Households certified for 24 months may also choose to switch between a standard and actual costs at the time of the mandatory interim contact required by § 273.10(f)(1) if the State agency has not mandated use of the standard.

(E) *Option to make standard utility allowances mandatory* (1) A State

agency may mandate use of standard utility allowances for all households with qualifying expenses if the State uses one or more standards that include the costs of heating and cooling and one or more standards approved by FNS that do not include the costs of heating and cooling, and the standards will not result in increased program costs. The prohibition on increasing program costs does not apply to necessary increases to standards resulting from utility cost increases.

(2) If the State agency chooses to mandate use of standard utility allowances, it must use a standard utility allowance that includes heating or cooling costs to residents of public housing units which have central utility meters and which charge the households only for excess heating or cooling costs. The State agency also must not prorate a standard utility allowance that includes heating or cooling costs provided to a household that lives and shares heating or cooling expenses with others.

(3) In a State that chooses this option, households entitled to the standard may not claim actual expenses, even if the expenses are higher than the standard. Households not entitled to the standard may claim actual allowable expenses.

* * * * *

Dated: September 24, 2019.

Stephen L. Censky,

Deputy Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 2019-21287 Filed 10-2-19; 8:45 am]

BILLING CODE 3410-30-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC-2019-0160]

RIN 3150-AK36

List of Approved Spent Fuel Storage Casks: Holtec International HI-STORM 100 Multipurpose Canister Cask System, Certificate of Compliance No. 1014, Amendment No. 14

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage regulations by revising the Holtec International HI-STORM 100 Multipurpose Canister Cask System listing within the "List of approved spent fuel storage casks" to include Amendment No. 14 to

Certificate of Compliance No. 1014. Amendment No. 14 revises the technical specifications to add new heat loading patterns, reduce the minimum cooling time, allow use of a damaged fuel isolator for storing damaged fuel, and modify the description of vents in overpack. Amendment No. 14 also makes other administrative changes to the technical specifications.

DATES: Submit comments by November 4, 2019. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2019-0160. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: Carol.Gallagher@nrc.gov. For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Email comments to:* Rulemaking.Comments@nrc.gov. If you do not receive an automatic email reply confirming receipt, then contact us at 301-415-1677.

- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301-415-1677.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Yen-Ju Chen, Office of Nuclear Material Safety and Safeguards; telephone: 301-415-1018; email: Yen-Ju.Chen@nrc.gov or Torre Taylor, Office of Nuclear Material Safety and Safeguards; telephone: 301-415-7900; email: Torre.Taylor@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

- Obtaining Information and Submitting Comments
- Rulemaking Procedure

- III. Background
- IV. Plain Writing
- V. Availability of Documents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0160 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website*: Go to <https://www.regulations.gov> and search for Docket ID NRC–2019–0160.

- *NRC's Agencywide Documents Access and Management System (ADAMS)*: You may obtain publicly-available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr.resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the “Availability of Documents” section.

- *NRC's PDR*: 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–2019–0160 in your comment submission. The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. The direct final rule will become effective on December 17, 2019. However, if the NRC receives significant adverse comments on this proposed rule by November 4, 2019, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to these proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule, certificate of compliance, or technical specifications.

For procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, requires that “[t]he Secretary [of the

Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.” Section 133 of the Nuclear Waste Policy Act states, in part, that “[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.”

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled “General License for Storage of Spent Fuel at Power Reactor Sites” (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled “Approval of Spent Fuel Storage Casks,” which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on May 1, 2000, that approved the HI–STORM 100 Cask System design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1014 (65 FR 25241).

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31885). The NRC requests comment on the proposed rule with respect to the clarity and effectiveness of the language used.

V. Availability of Documents

The documents identified in the following table are available to interested persons through the following method.

Document	ADAMS accession No.
Letter from Holtec International Transmitting Request for Amendment No. 14 to Certificate of Compliance No. 1014, October 31, 2018.	ML18331A052
Attachment 1: Summary of Request for Amendment No. 14 to Certificate of Compliance No. 1014, October 31, 2018	ML18331A043
Attachment 2: Proposed Amendment No. 14 to Certificate of Compliance No. 1014, October 31, 2018	ML18331A046
Attachment 3: Proposed Amendment No. 14 to Certificate of Compliance No. 1014, Appendix A, October 31, 2018	ML18331A047
Attachment 4: Proposed Amendment No. 14 to Certificate of Compliance No. 1014, Appendix B, October 31, 2018	ML18331A048
Attachment 5: Final Safety Analysis Report Proposed Changes, October 31, 2018	ML18331A049
Letter from Holtec International Transmitting Supplement to Amendment Request, November 6, 2018	ML18324A577
Letter from Holtec International Transmitting Responses to NRC's 1st Round of Requests for Additional Information for Amendment No. 14, February 28, 2019.	ML19065A053
Attachment 2: Request for Additional Information, Combined Responses, Non-Proprietary, February 28, 2019	ML19065A027
Attachment 3: Final Safety Analysis Report Proposed Changes, Non-Proprietary, February 28, 2019	ML19065A029
Attachment 4: Summary of Proposed Changes, Non-Proprietary, February 28, 2019	ML19065A030
Letter from Holtec International Transmitting Responses to Clarification Questions, April 5, 2019	ML19101A339
Attachment 1: Responses to Clarification Questions, April 5, 2019	ML19101A337
Attachment 2: Final Safety Analysis Report (Proposed Revision 16B), April 5, 2019	ML19114A289
Letter from Holtec International, Submittal of Responses to Clarification Questions, April 23, 2019	ML19121A280
Final Safety Analysis Report (Proposed Revision 16B), Chapter 2, Changed Pages, April 5, 2019	ML19121A279
Letter from Holtec International, Submittal of Responses to Clarification Questions, dated May 13, 2019	ML19140A278
Final Safety Analysis Report (Proposed Revision 16B), Chapter 2, Changed Pages, May 13, 2019	ML19114A277
Proposed Certificate of Compliance No. 1014 Amendment No. 14, Certificate of Compliance for Spent Fuel Storage Casks	ML19120A058
Proposed Certificate of Compliance No. 1014 Amendment No. 14, Technical Specifications, Appendix A	ML19120A059
Proposed Certificate of Compliance No. 1014 Amendment No. 14, Technical Specifications, Appendix B	ML19120A061
Proposed Certificate of Compliance No. 1014 Amendment No. 14, Technical Specifications, Appendix A-100U	ML19120A062
Proposed Certificate of Compliance No. 1014 Amendment No. 14, Technical Specifications, Appendix B-100U	ML19120A063
Certificate of Compliance No. 1014 Amendment No. 14, Preliminary Safety Evaluation Report	ML19120A064
E-mail from J. Tomlinson, Holtec, regarding administrative change to HI-Storm 100 Amendment 14 CoC, Appendix B, August 8, 2019.	ML19224A393

The NRC may post materials related to this document, including public comments, on the Federal Rulemaking website at <https://www.regulations.gov> under Docket ID NRC-2019-0160. The Federal Rulemaking website allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC-2019-0160); (2) click the "Sign up for Email Alerts" link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

Dated at Rockville, Maryland, this 17th day of September, 2019.

For the Nuclear Regulatory Commission.

Daniel H. Dorman,

Acting Executive Director for Operations.

[FR Doc. 2019-21210 Filed 10-2-19; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[EERE-2014-BT-TP-0034]

RIN 1904-AD46

Energy Conservation Program: Test Procedures for Clothes Dryers

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

ACTION: Extension of public comment period.

SUMMARY: On July 23, 2019, the U.S. Department of Energy ("DOE") published in the **Federal Register** a notice of proposed rulemaking ("NOPR") regarding proposals to amend the test procedures for clothes dryers and to request comment on the proposals and other aspects of clothes dryer testing. This notice also announced a webinar to be held on August 14, 2019, and stated that DOE would hold a public meeting on the proposal if one was requested by August 6, 2019. On July 29, 2019, DOE received a comment requesting a public meeting.

DATES: The comment period for the NOPR published on July 23, 2019 (84 FR 35484), is extended. DOE will accept comments, data, and information regarding this proposed rulemaking received no later than November 6, 2019.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by "Test Procedure NOPR for Clothes Dryers" and by docket number EERE-2014-BT-TP-0034 and/or the regulatory information number ("RIN") 1904-AD46, by any of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

(2) *Email:* ResClothesDryer2014TP0034@ee.doe.gov. Include the docket number EERE-2014-BT-TP-0034 and/or RIN 1904-AD46 in the subject line of the message.

(3) *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 287-1445. If possible, please submit all items on a compact disc ("CD"), in which case it is not necessary to include printed copies.

(4) *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287-1445. If possible, please submit all items on a CD, in

which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at <http://www.regulations.gov>. All documents in the docket are listed in the <http://www.regulations.gov> index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at <https://www.regulations.gov/docket?D=EERE-2014-BT-TP-0034>. The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 586-0371. Email: ApplianceStandardsQuestions@ee.doe.gov.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 586-7796. Email: Elizabeth.Kohl@hq.doe.gov.

For further information on how to submit a comment, review other public comments and the docket, or regarding a public meeting, contact the Appliance and Equipment Standards Program staff at (202) 287-1445 or by email: ApplianceStandardsQuestions@ee.doe.gov.

SUPPLEMENTARY INFORMATION: On July 23, 2019, the U.S. Department of Energy ("DOE") published in the **Federal Register** a notice of proposed rulemaking and request for comment regarding proposals to amend the test procedures for clothes dryers. 84 FR 35484. This notice also announced a webinar to be held on August 14, 2019, and stated that DOE would hold a public meeting to discuss the proposals if one was requested by August 6, 2019.

On July 29, 2019, DOE received a comment from the Northwest Energy Efficiency Alliance (NEEA), the Natural Resources Defense Council (NRDC), and Pacific Gas and Electric Company (PG&E) requesting that DOE hold an in-person public meeting regarding the proposed amendments to the clothes

dryers test procedures.¹ On August 2, 2019, DOE issued a pre-publication **Federal Register** notice announcing a public meeting and webinar to be held on August 28, 2019 and cancelled the previously announced webinar scheduled for August 14, 2019. 84 FR 39777.

On August 2, 2019 and August 5, 2019, DOE received subsequent comments from Association of Home Appliance Manufacturers (AHAM) requesting to move the webinar and public meeting into September 2019.² On August 21, 2019, DOE published a notice in the **Federal Register** changing the public meeting from August 28, 2019 to September 17, 2019 and extending the public comment period for submitting comments and data on the NOPR by 14 days to October 7, 2019. 84 FR 43529.

On September 20, 2019, DOE received a comment from NEEA, NRDC, and PG&E requesting an additional 60 day comment period extension.³ DOE has reviewed the request and considered the benefit to stakeholders in providing additional time to review the NOPR and gather information/data that DOE is seeking. Accordingly, DOE has determined that an extension of the comment period is appropriate, and is hereby extending the comment period by 30 days to November 6, 2019. DOE will be extending the original July 23, 2019 NOPR comment period by an additional 44 days for a total of 104 days for this comment period.

Signed in Washington, DC, on September 27, 2019.

Alexander N. Fitzsimmons,

Acting Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2019-21533 Filed 10-2-19; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE-2017-BT-STD-0014]

RIN 1904-AD98

Energy Conservation Program: Energy Conservation Standards for Residential Clothes Washers

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

ACTION: Reopening of public comment period.

SUMMARY: The U.S. Department of Energy ("DOE") is reopening the public comment period for its request for information ("RFI") to solicit information from the public to help DOE determine whether to amend standards for residential clothes washers ("RCWs"). DOE published the RFI in the **Federal Register** on August 2, 2019 establishing a 30-day public comment period ending September 3, 2019. On August 2, 2019, DOE received a comment requesting a 30 day comment period extension. On August 26, 2019, DOE published a notice in the **Federal Register** extending the public comment on the RFI to receive comments no later than October 3, 2019. On September 20, 2019, DOE received a comment requesting an additional 14 day comment period extension; therefore, DOE is reopening the public comment period for submitting comments and data on the RFI by 14 days to October 17, 2019.

DATES: The comment period for the RFI published on August 2, 2019 (84 FR 37794), is reopening. DOE will accept comments, data, and information regarding this rulemaking received no later than October 17, 2019.

ADDRESSES: Interested persons are encouraged to submit comments, identified by docket number EERE-2017-BT-STD-0014, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Email: ConsumerClothesWasher2017STD0014@ee.doe.gov. Include the docket number and/or RIN in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

Postal Mail: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE-5B, 1000 Independence Avenue SW,

¹ See document number 17 within docket EERE-2014-BT-TP-0034, available on <http://www.regulations.gov>.

² See document numbers 18 and 19 within docket EERE-2014-BT-TP-0034, available on <http://www.regulations.gov>.

³ See document number 22 within docket EERE-2014-BT-TP-0034, available on <http://www.regulations.gov>.

Washington, DC 20585–0121. If possible, please submit all items on a compact disc (“CD”), in which case it is not necessary to include printed copies.

Hand Delivery/Courier: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L’Enfant Plaza SW, Suite 600, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted.

Docket: For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at <http://www.regulations.gov/#!docketDetail;D=EERE-2017-BT-STD-0014>.

The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at <http://www.regulations.gov>. All documents in the docket are listed in the <http://www.regulations.gov> index. However, some documents listed in the index may not be publicly available, such as those containing information that is exempt from public disclosure.

The docket web page can be found at: <http://www.regulations.gov/#!docketDetail;D=EERE-2017-BT-STD-0014>. The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: ApplianceStandardsQuestions@ee.doe.gov.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–7796. Email: Elizabeth.Kohl@hq.doe.gov.

For further information on how to submit a comment or review other public comments and the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: ApplianceStandardsQuestions@ee.doe.gov.

SUPPLEMENTARY INFORMATION: On August 2, 2019, DOE published a notice in the **Federal Register** soliciting public comment on its RFI to help DOE

determine whether to amend standards for RCWs. 84 FR 37794. Comments were originally due on September 3, 2019. On August 2, 2019, DOE received a comment from Association of Home Appliance Manufacturers (AHAM) requesting a 30 day comment period extension.¹ On August 26, 2019, DOE published a notice in the **Federal Register** extending the public comment on the RFI to receive comments no later than October 3, 2019. 84 FR 44557. On September 20, 2019, DOE received a comment from AHAM requesting an additional 14 day comment period extension.² DOE has reviewed the request and considered the benefit to stakeholders in providing additional time to review the RFI and gather information/data that DOE is seeking.

Accordingly, DOE has determined that an extension of the comment period is appropriate, and is hereby extending the comment period by 14 days, until October 17, 2019.

Signed in Washington, DC, on September 27, 2019.

Alexander N. Fitzsimmons,

Acting Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2019–21534 Filed 10–2–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 810

RIN 1994–AA05

Assistance to Foreign Atomic Energy Activities

AGENCY: National Nuclear Security Administration (NNSA), Department of Energy (DOE).

ACTION: Notice of proposed rulemaking.

SUMMARY: DOE proposes procedures for the imposition of civil penalties for violations of the provisions of the Atomic Energy Act of 1954 (AEA) that restrict participation by U.S. persons in the development or production of special nuclear material outside of the United States. This proposed rule provides procedures to implement a statutory amendment contained within the *John S. McCain National Defense Authorization Act for Fiscal Year 2019*.

DATES: Comments on this proposed rulemaking must be received on or before November 4, 2019.

¹ DOE has posted this comment to the docket at <https://www.regulations.gov/document?D=EERE-2017-BT-STD-0014-0003>.

² DOE has posted this comment to the docket at <https://www.regulations.gov/document?D=EERE-2017-BT-STD-0014-0007>.

ADDRESSES: You may submit comments, identified by RIN 1994–AA05, by any of the following methods:

1. **Federal Rulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

2. **Email:** Part810@nnsa.doe.gov.

Include RIN 1994–AA05 in the subject line of the message.

3. **Mail:** Katie Strangis, Office of Nonproliferation and Arms Control, NA–24, National Nuclear Security Administration, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585.

Due to potential delays in DOE’s receipt and processing of mail sent through the U.S. Postal Service, DOE encourages responders to submit comments electronically to ensure timely receipt.

All submissions must include the RIN for this rulemaking, RIN 1994–AA05. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ms. Katie Strangis, Senior Policy Advisor, Office of Nonproliferation and Arms Control (NPAC), National Nuclear Security Administration, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, telephone (202) 586–8623 or email: Katie.Strangis@nnsa.doe.gov; Mr. Thomas Reilly, Office of the General Counsel, GC–53, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, telephone (202) 586–3417; or Mr. Zachary Stern, Office of the General Counsel, National Nuclear Security Administration, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, telephone (202) 586–8627.

SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. Discussion of the Proposed Rule
- III. Public Comment Procedures
- IV. Regulatory Review
- V. Approval of the Office of the Secretary

I. Introduction

DOE’s 10 CFR part 810 regulation (Part 810) implements section 57 b.(2) of the AEA (42 U.S.C. 2077), as amended. Part 810 controls the export of unclassified nuclear technology and assistance. It enables peaceful nuclear trade by helping to ensure that nuclear technologies exported from the United States will not be used for non-peaceful purposes. Part 810 controls the export of nuclear technology and assistance by identifying some activities as “generally authorized” by the Secretary of Energy

(Secretary), thereby requiring no further authorization under Part 810 by DOE prior to engaging in such activities. For activities and/or destinations that are not generally authorized, Part 810 requires a “specific authorization” by the Secretary. Part 810 also details a process to apply for specific authorization from the Secretary and specifies the reporting requirements for generally and specifically authorized activities subject to Part 810. Violations of section 57 b. of the AEA and Part 810 may result in revocation, suspension, or modification of authorizations, pursuant to 10 CFR 810.10, as well as criminal penalties, pursuant to 10 CFR 810.15.

Section 3116(b) of the *John S. McCain National Defense Authorization Act for Fiscal Year 2019* (NDAA), Public Law 115–232, amended section 234 a. of the AEA (42 U.S.C. 2282(a)) to clarify DOE’s authority to impose civil penalties for violations of section 57 b. of the AEA, as implemented under Part 810. This proposed rule would update Part 810 to include new procedures to implement this authority.

II. Discussion of the Proposed Rule

The goals of the Part 810 enforcement program are to deter illicit transfers of U.S. nuclear technology and assistance controlled under Part 810, to encourage full and accurate compliance with the reporting requirements, and to incentivize prompt self-reporting of regulatory violations. Civil penalties are a useful tool in attaining those objectives, and DOE is authorized to impose civil penalties under section 234 a. of the AEA (42 U.S.C. 2282(a)). Section 234 a., as amended by section 3116(b) of the NDAA provides in part that persons that violate any provision of section 57 are subject to a civil penalty.

This proposed rule would update 10 CFR 810.1 to identify specification of civil penalties and enforcement procedures as a purpose of the Part 810 regulation. This proposed rule would also update 10 CFR 810.15 to include procedures to implement DOE’s civil penalty authority. It would establish procedures for DOE to impose a penalty not to exceed an amount identified by Congress and adjusted by the *Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*. This amount is to be annually adjusted pursuant to the *Federal Civil Penalties Inflation Adjustment Act of 1990*, 28 U.S.C. 2461.

The authority to impose civil penalties for violations of section 57 b. of the AEA as implemented under Part 810 was provided by section 3116(b) of the NDAA for FY 2019, which amended section 234 a. of the AEA. Section 234

a. listed statutory provisions the violation of which would subject a person to an express civil penalty referencing an amount identified in section 234a. of the AEA. Separately, every Federal agency is required by law to adjust annually civil monetary penalties to account for inflation.

Congress identified the upper bound penalty amount to be consistent with section 234a. of the AEA, which set the maximum penalty for a number of violations at \$100,000, prior to enactment of the *Federal Civil Penalties Inflation Adjustment Act of 1990* or the *Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*. DOE intends to apply the inflation adjustment to the section 234a. base amount of \$100,000 and then to the extent permitted by law apply the catch-up adjustment required under OMB Memorandum M–16–06, the Federal guidance to implement the *Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*. Subsequent adjustments would be made following OMB Memoranda M–17–11, M–18–03, and M–19–04 for a maximum penalty of \$265,815.

Congress did not specifically change the amount of the allowable maximum penalty, as it did in previous amendments. There may be a question of whether Congress desired a lower maximum civil penalty amount to apply. An alternative approach would be to start with the statutory base amount of \$100,000 as defined in section 234a. as amended and apply the 2019 inflation adjustment according to OMB Memorandum M–19–04 bringing it to \$102,522.

Pursuant to section 234 a. of the AEA, as amended, (42 U.S.C. 2282(a)), this civil penalty is to be imposed per violation, and if a violation is a continuing one, each day from the point at which the violating activity began to the point at which the violating activity was suspended constitutes a separate violation for purposes of computing the civil penalty. The mere act of suspending an activity does not constitute admission that the activity was in violation of the Part 810 regulation, and does not waive the rights and processes outlined in paragraphs (c)(4) through (c)(14) of the proposed rule or otherwise impact the right of the person to appeal any civil penalty that may be imposed.

The proposed rule would require DOE to give the person subject to the penalty notice of the violation and the proposed penalty, would provide the person an opportunity to respond to the notice and demonstrate why a proposed penalty should not be imposed, and would

establish the process for a decision by the Deputy Administrator for Defense Nuclear Nonproliferation within DOE’s National Nuclear Security Administration. It would also provide for an opportunity for a hearing and a subsequent final decision by the DOE Under Secretary for Nuclear Security.

The proposed rule would require the Deputy Administrator for Defense Nuclear Nonproliferation or his/her designee to notify the person subject to the penalty, by a written notice of violation sent by registered or certified mail to the last known address of such person, of: The date, facts, and nature of each act or omission with which the person is charged; the particular provision or provisions of section 57 b. of the AEA, as implemented under Part 810, involved in each alleged violation; the penalty which DOE proposes to impose; the opportunity of the person to submit a written reply within 30 calendar days of receipt of such preliminary notice of violation showing why such penalty should not be imposed; and the possibility of collection by civil action upon failure to pay the civil penalty.

The proposed rule would require that a reply to a notice of violation: State any facts, explanations, and arguments which support a denial of the alleged violation; demonstrate any extenuating circumstances or other reason why a proposed penalty should not be imposed or should be mitigated; discuss the relevant authorities which support the position asserted; furnish full and complete answers to any questions set forth in the notice of violation; and include copies of all relevant documents. DOE guidance regarding self-disclosures of violations of Part 810 is set forth on the Part 810 website (<https://www.energy.gov/nnsa/10-cfr-part-810>), under “Part 810 Frequently Asked Questions,” and specifies that self-disclosures must be made via email to Part810@nnsa.doe.gov within 30 days of becoming aware of a violation or potential violation of Part 810, and that when considering instances of actual or potential violations, DOE will take into account whether the violation in question was self-reported.

The proposed rule provides that if a person fails to submit a written reply within 30 calendar days of receipt of a notice of violation, the notice of violation, including any penalties therein, would constitute a final decision, and payment of the full amount of the civil penalty assessed in the notice of violation would be due 30 calendar days after receipt of the notice of violation. Such failure to submit a reply would constitute a waiver of the

rights and processes outlined in paragraphs (c)(4) through (c)(14) of the proposed rule.

The proposed rule provides that the Deputy Administrator for Defense Nuclear Nonproliferation or designee, at the written request of a person notified of an alleged violation, may extend in writing, for a reasonable period, the time for submitting a reply.

The proposed rule provides that if a person submits a timely written reply to the notice of violation, the Deputy Administrator for Defense Nuclear Nonproliferation would make a final determination whether the person violated or is continuing to violate a requirement of section 57 b., as implemented by Part 810. Based on a determination that a person has violated or is continuing to violate such a requirement, the Deputy Administrator for Defense Nuclear Nonproliferation may issue to that person a final notice of violation that concisely states the violation, the amount of the civil penalty imposed, further actions necessary by or available to the person, and that upon failure to timely pay the civil penalty, the penalty may be collected by civil action. The Deputy Administrator for Defense Nuclear Nonproliferation would send such a final notice of violation by registered or certified mail to the last known address of the person.

The amount of a civil penalty assessed under this proposed rule would be based on: The nature, circumstances, extent, and gravity of the violation(s); the violator's ability to pay; the effect of the civil penalty on the person's ability to do business; any history of prior violations; the degree of culpability; whether the violator self-disclosed the violation; the economic significance of the violation; and such other matters as justice may require.

Pursuant to proposed § 810.15(c)(6), any person who receives a final notice of violation following submission of a timely written reply to the original notice of violation may request a hearing concerning the allegations contained in the notice. The person would be required to mail or deliver any written request for a hearing to the Under Secretary for Nuclear Security within 30 calendar days of receipt of the final notice of violation. If the person does not request a hearing within 30 calendar days, the final notice of violation, including any penalties therein, would constitute a final decision and payment of the full amount of the civil penalty assessed would be due 45 calendar days after receipt of the final notice of violation.

Upon receipt from a person of a written request for a hearing, the Under Secretary for Nuclear Security or his/her designee would appoint a Hearing Counsel and forward the request for a hearing to the DOE Office of Hearings and Appeals (OHA). The OHA Director would appoint an OHA Administrative Judge. Under proposed § 810.15(c)(8), the Hearing Counsel shall be an attorney employed by DOE and shall have all powers necessary to represent DOE before OHA.

Pursuant to proposed § 810.15(c)(9), in all hearings under the proposed rule, the parties have the right to be represented by a person of their choosing, subject to possessing an appropriate information access authorization for the subject matter, and would be responsible for producing witnesses on their behalf, including requesting the issuance of subpoenas, if necessary. Testimony of witnesses would be given under oath or affirmation, and witnesses must be advised of the applicability of 18 U.S.C. 1001 and 1621, dealing with the criminal penalties associated with false statements and perjury. Witnesses would be subject to cross-examination. Formal rules of evidence would not apply, but OHA may use the Federal Rules of Evidence as a guide. A court reporter would make a transcript of the hearing.

In addition, pursuant to proposed § 810.15(c)(9), the Administrative Judge would have all powers necessary to regulate the conduct of proceedings: (i) The Administrative Judge may order discovery at the request of a party, based on a showing that the requested discovery is designed to produce evidence regarding a matter, not privileged, that is relevant to the subject matter of the complaint; (ii) the Administrative Judge may permit parties to obtain discovery by any appropriate method, including deposition upon oral examination or written questions; written interrogatories; production of documents or things; permission to enter upon land or other property for inspection and other purposes; and requests for admission; (iii) the Administrative Judge may issue subpoenas for the appearance of witnesses on behalf of either party, or for the production of specific documents or other physical evidence; (iv) the Administrative Judge may rule on objections to the presentation of evidence; exclude evidence that is immaterial, irrelevant, or unduly repetitious; require the advance submission of documents offered as evidence; dispose of procedural

requests; grant extensions of time; determine the format of the hearing; direct that written motions, documents, or briefs be filed with respect to issues raised during the course of the hearing; ask questions of witnesses; direct that documentary evidence be served upon other parties (under protective order if such evidence is deemed confidential); and otherwise regulate the conduct of the hearing; (v) the Administrative Judge may, at the request of a party or on his or her own initiative, dismiss a claim, defense, or party and make adverse findings upon the failure of a party or the party's representative to comply with a lawful order of the Administrative Judge, or, without good cause, to attend a hearing; (vi) the Administrative Judge, upon request of a party, may allow the parties a reasonable time to file pre-hearing briefs or written statements with respect to material issues of fact or law. Any pre-hearing submission must be limited to the issues specified and filed within the time prescribed by the Administrative Judge; (vii) the parties are entitled to make oral closing arguments, but post-hearing submissions are only permitted by direction of the Administrative Judge; (viii) Parties allowed to file written submissions, or documentary evidence must serve copies upon the other parties within the timeframe prescribed by the Administrative Judge; (ix) the Administrative Judge is prohibited, beginning with his or her appointment and until a final agency decision is issued, from initiating or otherwise engaging in ex parte (private) discussions with any party on the merits of the complaint; (x) the Administrative Judge is responsible for determining the date, time, and location of the hearing, including whether the hearing will be conducted via video conference; and (xi) the Administrative Judge shall convene the hearing within 180 days of the OHA's receipt of the request for a hearing, unless the parties agree to an extension of this deadline by mutual written consent, or the Administrative Judge determines that extraordinary circumstances exist that require a delay.

Under proposed § 810.15(c)(10), hearings shall be open only to Hearing Counsel, duly authorized representatives of DOE, the person subject to the penalty and the person's counsel or other representatives, and such other persons as may be authorized by the Administrative Judge. Unless otherwise ordered by the Administrative Judge, witnesses shall testify in the presence of the person subject to the penalty but not in the presence of other witnesses.

Pursuant to proposed § 810.15(c)(11), the Administrative Judge must use procedures appropriate to safeguard and prevent unauthorized disclosure of classified information or any other information protected from public disclosure by law or regulation, with minimum impairment of rights and obligations under this part. The classified or otherwise protected status of any information shall not, however, preclude its being introduced into evidence. The Administrative Judge may issue such orders as may be necessary to consider such evidence in camera including the preparation of a supplemental recommended decision to address issues of law or fact that arise out of that portion of the evidence that is classified or otherwise protected.

The proposed rule provides that the person requesting the hearing has the burden of going forward and of demonstrating that the decision to impose the civil penalty is not supported by substantial evidence.

The proposed rule provides that within 180 days of receiving a copy of the hearing transcript, or the closing of the record, whichever is later, the Administrative Judge shall issue a recommended decision. The recommended decision shall contain findings of fact and conclusions regarding all material issues of law, as well as the reasons therefor. If the Administrative Judge determines that a violation has occurred and that a civil penalty is appropriate, the recommended decision shall set forth the amount of the civil penalty based on the factors in § 810.15(c)(5) of the proposed rule.

Pursuant to proposed § 810.15(c)(14) the Administrative Judge shall forward the recommended decision to the Under Secretary for Nuclear Security. The Under Secretary for Nuclear Security shall make a final decision as soon as practicable after completing his/her review. This may include compromising, mitigating, or remitting the penalties in accordance with section 234 a. of the AEA, as amended. DOE would notify the person of the Under Secretary for Nuclear Security's final decision or other action under this paragraph in writing by certified mail, return receipt requested. The person against whom the civil penalty is assessed by the final decision would be required to pay the full amount of the civil penalty assessed in the final decision within 30 calendar days unless otherwise determined by the Under Secretary for Nuclear Security.

The proposed rule at paragraph (c)(15) provides that if a civil penalty assessed in a final decision is not paid as

provided in § 810.15(c)(3), (c)(6) or (c)(14), as appropriate, the Under Secretary for Nuclear Security may request the Department of Justice to initiate a civil action to collect the penalty imposed under this paragraph in accordance with section 234 c. of the AEA, as amended.

Pursuant to proposed § 810.15(c)(16), the Under Secretary for Nuclear Security or his/her designee may publish redacted versions of notices of violation and final decisions.

III. Public Comment Procedures

Interested persons are invited to submit comments on this regulatory proposal. Written comments should be submitted to the address indicated in the **ADDRESSES** section of this proposed rule. All comments submitted in writing or in electronic form may be made available to the public in their entirety. Personal information such as your name, address, telephone number, email address, etc., will not be removed from your submission. Comments will be available for public inspection at <http://www.regulations.gov>.

If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. DOE is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it accordingly under the DOE Freedom of Information regulations at 10 CFR 1004.11.

IV. Regulatory Review

A. Executive Order 12866

The proposed rule has been determined to be a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. National Environmental Policy Act

DOE has determined that the proposed rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A5 of Appendix A to Subpart D, 10 CFR part 1021, which applies to a rulemaking that amends an existing rule or regulation and that does not change the environmental effect of the rule or regulation being amended. Accordingly,

neither an environmental assessment nor an environmental impact statement is required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of the General Counsel's website: <https://www.energy.gov/gc/office-general-counsel>.

This proposed rule would update 10 CFR 810.15 to include procedures for the imposition of civil penalties. DOE has reviewed the proposed changes under the provisions of the *Regulatory Flexibility Act* and the procedures and policies published on February 19, 2003. The proposed changes do not expand the scope of activities currently regulated under 10 CFR part 810.

DOE has conducted a review of the potential small businesses that may be impacted by this proposed rule. This review consisted of an analysis of the number of businesses impacted generally in Fiscal Years 2016 and 2017, and a determination of which of those are considered "small businesses" by the Small Business Administration. Small businesses impacted by Part 810 generally fall within two North American Industry Classification System codes: Engineering services (541330) and computer systems designs services (541512). Often, their requests for authorization include the transfer of computer codes or other similar products. A total of 89 businesses and other entities submitted reports and applications pursuant to the regulation during this time period. DOE estimates that approximately 10% of those entities impacted by Part 810 are small businesses. As such, of those 89 entities that submitted reports and applications under Part 810, approximately 9 are estimated to be small businesses.

Small businesses exporting nuclear technology like all other regulated entities, would be subject to civil penalties for violations of Part 810.

Further, the requirements for small businesses exporting nuclear technology would not substantively change because the proposed revisions to this rule do not add new burdens or duties to small businesses. The obligations of any person subject to the jurisdiction of the United States who engages or participates directly or indirectly in the production of special nuclear material outside the United States have not changed in a manner that would provide any significant economic impact on small businesses. Because the proposed changes to this rule would not alter the businesses' standards or processes for receiving Part 810 authorization, there would be no impact on these businesses' ability to comply with Part 810 in the same manner they have previously.

On the basis of the foregoing, DOE certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this proposed rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Paperwork Reduction Act

The collection of information requirements have been approved under OMB Control Number 1901-0263. The proposed rule would provide procedures for imposing civil penalties for a violation of Part 810. There would be no collection of information under the proposed rule.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector. Public Law 104-4, sec. 201 (codified at 2 U.S.C. 1531). For regulatory actions likely to result in a rule that may cause 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), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy (2 U.S.C. 1532(a),(b)). UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a "significant intergovernmental

mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (This policy is also available at <http://energy.gov/gc/office-general-counsel>.) DOE examined this proposed rule according to UMRA and its statement of policy and has determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and tribal government, in the aggregate, or by the private sector, of \$100 million or more in any year. Accordingly, no further assessment or analysis is required under UMRA.

F. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b), Executive Order 12988 specifically requires that Federal agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met, or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it would not preempt State law and 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. No further action is required by Executive Order 13132.

H. Treasury and General Government Appropriations Act, 1999

Section 654 of the *Treasury and General Government Appropriations Act, 1999* (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. The proposed rule would have no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This proposed regulatory action would not have a

significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant regulatory action. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Executive Orders 13771, 13777, and 13783

On January 30, 2017, the President issued Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs." That Order stated the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. The Order stated it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations.

Additionally, on February 24, 2017, the President issued Executive Order 13777, "Enforcing the Regulatory Reform Agenda." The Order required the head of each agency designate an agency official as its Regulatory Reform Officer (RRO). Each RRO oversees the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law. At a minimum, each regulatory reform task force must attempt to identify regulations that:

- (i) Eliminate jobs, or inhibit job creation;
- (ii) Are outdated, unnecessary, or ineffective;
- (iii) Impose costs that exceed benefits;
- (iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;

(v) Are inconsistent with the requirements of *Information Quality Act*, or the guidance issued pursuant to that Act, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or

(vi) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

Finally, on March 28, 2017, the President signed Executive Order 13783, entitled "Promoting Energy Independence and Economic Growth." Among other things, E.O. 13783 requires the heads of agencies to review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. Such review does not include agency actions that are mandated by law, necessary for the public interest, and consistent with the policy set forth elsewhere in that order.

Executive Order 13783 defined burden for purposes of the review of existing regulations to mean to unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources.

DOE concludes that this proposed rule is consistent with the directives set forth in these executive orders. This proposed rule is not expected to impose a new regulatory burden, because U.S. persons are already required to comply with Part 810. The proposed rule would merely detail procedures that DOE would follow in the event that section 57 b.(2) of the AEA (42 U.S.C. 2077(b)(2)) and implementing regulations at Part 810 are violated.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 810

Foreign relations, Nuclear energy, Reporting and recordkeeping requirements.

Signed in Washington, DC, on September 20, 2019.

Rick Perry,
Secretary of Energy.

For the reasons set forth in the preamble, the Department of Energy

proposes to amend part 810 of chapter III, title 10 of the Code of Federal Regulations as set forth below.

PART 810—ASSISTANCE TO FOREIGN ATOMIC ENERGY ACTIVITIES

■ 1. The authority citation for part 810 is revised to read as follows:

Authority: Secs. 57, 127, 128, 129, 161, 222, 232, and 234 AEA, as amended by the *Nuclear Nonproliferation Act of 1978*, Pub. L. 95–242, 68 Stat. 932, 948, 950, 958, 92 Stat. 126, 136, 137, 138 (42 U.S.C. 2077, 2156, 2157, 2158, 2201, 2272, 2280, 2282), the *Intelligence Reform and Terrorism Prevention Act of 2004*, Pub. L. 108–458, 118 Stat. 3768, and sec. 3116 of the *John S. McCain National Defense Authorization Act for Fiscal Year 2019*, Pub. L. 115–232; Sec. 104 of the *Energy Reorganization Act of 1974*, Pub. L. 93–438; Sec. 301, *Department of Energy Organization Act*, Pub. L. 95–91; *National Nuclear Security Administration Act*, Pub. L. 106–65, 50 U.S.C. 2401 *et seq.*, as amended.

■ 2. Section 810.1 is amended by adding paragraph (d) to read as follows:

§ 810.1 Purpose.

* * * * *

(d) Specify civil penalties and enforcement proceedings.

■ 3. Section 810.15 is amended by adding paragraph (c) to read as follows:

§ 810.15 Violations.

* * * * *

(c) In accordance with section 234 of the AEA, any person who violates any provision of section 57 b. of the AEA, as implemented under this part, shall be subject to a civil penalty, not to exceed \$102,522 per violation. If any violation is a continuing one, each day from the point at which the violating activity began to the point at which the violating activity was suspended shall constitute a separate violation for the purpose of computing the applicable civil penalty. The mere act of suspending an activity does not constitute admission that the activity was a violation and does not waive the rights and processes outlined in paragraphs (c)(4) through (c)(14) of this section or otherwise impact the right of the person to appeal any civil penalty that may be imposed.

(1) In order to begin a proceeding to impose a civil penalty under this paragraph (c), the Deputy Administrator for Defense Nuclear Nonproliferation or his/her designee, shall notify the person by a written notice of violation sent by registered or certified mail to the last known address of such person, of:

(i) The date, facts, and nature of each act or omission with which the person is charged;

(ii) The particular provision or provisions of section 57 b. of the AEA,

as implemented under this part, involved in each alleged violation;

(iii) The penalty which DOE proposes to impose;

(iv) The opportunity of the person to submit a written reply within 30 calendar days of receipt of such preliminary notice of violation showing why such penalty should not be imposed; and

(v) The possibility of collection by civil action upon failure to pay the civil penalty.

(2) A reply to the notice of violation must:

(i) State any facts, explanations, and arguments which support a denial of the alleged violation;

(ii) Demonstrate any extenuating circumstances or other reason why a proposed penalty should not be imposed or should be mitigated;

(iii) Discuss the relevant authorities which support the position asserted;

(iv) Furnish full and complete answers to any questions set forth in the notice of violation; and

(v) Include copies of all relevant documents.

(3) If a person fails to submit a written reply within 30 calendar days of receipt of a notice of violation, the notice of violation, including any penalties therein, constitutes a final decision, and payment of the full amount of the civil penalty assessed in the notice of violation is due 30 calendar days after receipt of the notice of violation. Such failure to submit a reply constitutes a waiver of the rights and processes outlined in paragraphs (c)(4) through (c)(14) of this section.

(4) The Deputy Administrator for Defense Nuclear Nonproliferation or his/her designee, at the written request of a person notified of an alleged violation, may extend in writing, for a reasonable period, the time for submitting a reply.

(5) If a person submits a timely written reply to the notice of violation, the Deputy Administrator for Defense Nuclear Nonproliferation will make a final determination whether the person violated or is continuing to violate a requirement of section 57 b. of the AEA, as implemented under this part. Based on a determination that a person has violated or is continuing to violate a requirement of section 57 b., as implemented under this part, the Deputy Administrator for Defense Nuclear Nonproliferation may issue to that person a final notice of violation that concisely states the violation, the amount of the civil penalty imposed, further actions necessary by or available to the person, and that upon failure to timely pay the civil penalty, the penalty

may be collected by civil action. The Deputy Administrator for Defense Nuclear Nonproliferation will send such a final notice of violation by registered or certified mail to the last known address of the person. The amount of the civil penalty will be based on:

(i) The nature, circumstances, extent, and gravity of the violation or violations;

(ii) The violator's ability to pay;

(iii) The effect of the civil penalty on the person's ability to do business;

(iv) Any history of prior violations;

(v) The degree of culpability;

(vi) Whether the violator self-disclosed the violation;

(vii) The economic significance of the violation; and

(viii) Such other factors as justice may require.

(6) Any person who receives a final notice of violation under paragraph (c)(5) of this section may request a hearing concerning the allegations contained in the notice. The person must mail or deliver any written request for a hearing to the Under Secretary for Nuclear Security within 30 calendar days of receipt of the final notice of violation. If the person does not request a hearing within 30 calendar days, the final notice of violation, including any penalties therein, constitutes a final decision, and payment of the full amount of the civil penalty assessed in the final notice of violation is due 45 calendar days after receipt of the final notice of violation.

(7) Upon receipt from a person of a written request for a hearing, the Under Secretary for Nuclear Security or his/her designee, shall:

(i) Appoint a Hearing Counsel; and

(ii) Forward the request to the DOE Office of Hearings and Appeals (OHA). The OHA Director shall appoint an OHA Administrative Judge to preside at the hearing.

(8) The Hearing Counsel shall be an attorney employed by DOE, and shall have all powers necessary to represent DOE before the OHA.

(9) In all hearings under this paragraph (c):

(i) The parties have the right to be represented by a person of their choosing, subject to possessing an appropriate information access authorization for the subject matter. The parties are responsible for producing witnesses on their behalf, including requesting the issuance of subpoenas, if necessary;

(ii) Testimony of witnesses is given under oath or affirmation, and witnesses must be advised of the applicability of 18 U.S.C. 1001 and 18 U.S.C. 1621, dealing with the criminal penalties

associated with false statements and perjury;

(iii) Witnesses are subject to cross-examination;

(iv) Formal rules of evidence do not apply, but OHA may use the Federal Rules of Evidence as a guide; and

(v) A court reporter will make a transcript of the hearing.

(vi) The Administrative Judge has all powers necessary to regulate the conduct of proceedings;

(vii) The Administrative Judge may order discovery at the request of a party, based on a showing that the requested discovery is designed to produce evidence regarding a matter, not privileged, that is relevant to the subject matter of the complaint;

(viii) The Administrative Judge may permit parties to obtain discovery by any appropriate method, including deposition upon oral examination or written questions; written interrogatories; production of documents or things; permission to enter upon land or other property for inspection and other purposes; and requests for admission;

(ix) The Administrative Judge may issue subpoenas for the appearance of witnesses on behalf of either party, or for the production of specific documents or other physical evidence;

(x) The Administrative Judge may rule on objections to the presentation of evidence; exclude evidence that is immaterial, irrelevant, or unduly repetitious; require the advance submission of documents offered as evidence; dispose of procedural requests; grant extensions of time; determine the format of the hearing; direct that written motions, documents, or briefs be filed with respect to issues raised during the course of the hearing; ask questions of witnesses; direct that documentary evidence be served upon other parties (under protective order if such evidence is deemed confidential); and otherwise regulate the conduct of the hearing;

(xi) The Administrative Judge may, at the request of a party or on his or her own initiative, dismiss a claim, defense, or party and make adverse findings upon the failure of a party or the party's representative to comply with a lawful order of the Administrative Judge, or, without good cause, to attend a hearing;

(xii) The Administrative Judge, upon request of a party, may allow the parties a reasonable time to file pre-hearing briefs or written statements with respect to material issues of fact or law. Any pre-hearing submission must be limited to the issues specified and filed within the time prescribed by the Administrative Judge;

(xiii) The parties are entitled to make oral closing arguments, but post-hearing submissions are only permitted by direction of the Administrative Judge;

(xiv) Parties allowed to file written submissions, or documentary evidence must serve copies upon the other parties within the timeframe prescribed by the Administrative Judge;

(xv) The Administrative Judge is prohibited, beginning with his or her appointment and until a final agency decision is issued, from initiating or otherwise engaging in *ex parte* (private) discussions with any party on the merits of the complaint;

(xvi) The Administrative Judge is responsible for determining the date, time, and location of the hearing, including whether the hearing will be conducted via video conference; and

(xvii) The Administrative Judge shall convene the hearing within 180 days of the OHA's receipt of the request for a hearing, unless the parties agree to an extension of this deadline by mutual written consent, or the Administrative Judge determines that extraordinary circumstances exist that require a delay.

(10) Hearings shall be open only to Hearing Counsel, duly authorized representatives of DOE, the person and the person's counsel or other representatives, and such other persons as may be authorized by the Administrative Judge. Unless otherwise ordered by the Administrative Judge, witnesses shall testify in the presence of the person but not in the presence of other witnesses.

(11) The Administrative Judge must use procedures appropriate to safeguard and prevent unauthorized disclosure of classified information or any other information protected from public disclosure by law or regulation, with minimum impairment of rights and obligations under this part. The classified or otherwise protected status of any information shall not, however, preclude its being introduced into evidence. The Administrative Judge may issue such orders as may be necessary to consider such evidence in camera including the preparation of a supplemental recommended decision to address issues of law or fact that arise out of that portion of the evidence that is classified or otherwise protected.

(12) The person requesting the hearing has the burden of going forward and of demonstrating that the decision to impose the civil penalty is not supported by substantial evidence.

(13) Within 180 days of receiving a copy of the hearing transcript, or the closing of the record, whichever is later, the Administrative Judge shall issue a recommended decision. The

recommended decision shall contain findings of fact and conclusions regarding all material issues of law, as well as the reasons therefor. If the Administrative Judge determines that a violation has occurred and that a civil penalty is appropriate, the recommended decision shall set forth the amount of the civil penalty based on the factors in paragraph (c)(5) of this section.

(14) The Administrative Judge shall forward the recommended decision to the Under Secretary for Nuclear Security. The Under Secretary for Nuclear Security shall make a final decision as soon as practicable after completing his/her review. This may include compromising, mitigating, or remitting the penalties in accordance with section 234 a. of the AEA, as amended. DOE shall notify the person of the Under Secretary for Nuclear Security's final decision or other action under this paragraph in writing by certified mail, return receipt requested. The person against whom the civil penalty is assessed by the final decision shall pay the full amount of the civil penalty assessed in the final decision within 30 calendar days unless otherwise determined by the Under Secretary for Nuclear Security.

(15) If a civil penalty assessed in a final decision is not paid as provided in paragraphs (c) (3), (c)(6) or (c)(14) of this section, as appropriate, the Under Secretary for Nuclear Security may request the Department of Justice to initiate a civil action to collect the penalty imposed under this paragraph in accordance with section 234 c. of the AEA.

(16) The Under Secretary for Nuclear Security or his/her designee may publish redacted versions of notices of violation and final decisions.

[FR Doc. 2019–21301 Filed 10–2–19; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AF16

Assessments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking; supplemental notice.

SUMMARY: On September 4, 2019, the Federal Deposit Insurance Corporation (FDIC) issued a notice of proposed rulemaking with request for comments

on proposed that would amend the deposit insurance assessment regulations that govern the use of small bank assessment credits (small bank credits) and one-time assessment credits (OTACs) by certain insured depository institutions (IDIs). The FDIC is supplementing that notice of proposed rulemaking with an updated regulatory flexibility analysis to reflect changes to the Small Business Administration's monetary-based size standards which were adjusted for inflation as of August 19, 2019.

DATES: Comments on the updated regulatory flexibility analysis must be received on or before November 4, 2019.

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

- **FDIC Website:** <https://www.fdic.gov/regulations/laws/federal/>. Follow instructions for submitting comments on the agency website.

- **Email:** Comments@fdic.gov. Include RIN 3064–AF16 on the subject line of the message.

- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

- **Hand Delivery to FDIC:** 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 a.m. and 5 p.m.

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

Please include your name, affiliation, address, email address, and telephone number(s) in your comment. All statements received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. You should submit only information that you wish to make publicly available.

Public Inspection: All comments received will be posted generally without change to <https://www.fdic.gov/regulations/laws/federal/>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

Ryan T. Singer, Chief, Regulatory Analysis Section, Division of Insurance and Research, (202) 898–7352, rsinger@fdic.gov; Jennifer M. Jones, Counsel, Legal Division, (202) 898–6768, jennjones@fdic.gov.

SUPPLEMENTARY INFORMATION: On September 4, 2019, the FDIC issued a notice of proposed rulemaking with request for comments on proposed that would amend the deposit insurance assessment regulations that govern the use of small bank credits and OTACs by certain IDIs. (See 84 FR 45443 (August

29, 2019).) The FDIC is supplementing that notice of proposed rulemaking with an updated regulatory flexibility analysis to reflect changes to the Small Business Administration's monetary-based size standards which were adjusted for inflation as of August 19, 2019. (See 84 FR 34261 (July 18, 2019).)

Updated Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, 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.¹ 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 Small Business Administration (SBA) has defined "small entities" to include banking organizations with total assets of less than or equal to \$600 million.² Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-insured institutions. Certain types of rules, such as rules of particular applicability relating to rates or corporate or financial structures, or practices relating to such rates or structures, are expressly excluded from the definition of "rule" for purposes of the RFA.³ The proposed rule relates directly to the rates imposed on IDIs for deposit insurance and to the deposit insurance assessment system that measures risk and determines each established small bank's assessment rate and is, therefore, not subject to the RFA. Nonetheless, the FDIC is voluntarily presenting information in this RFA section.

Based on quarterly regulatory report data as of March 31, 2019, the FDIC insures 5,371 depository institutions, of

which 4,004 are defined as small entities by the terms of the RFA. Further, 4,001 RFA-defined small, FDIC-insured institutions have small bank credits totaling \$183.7 million.

As stated previously, the proposed rule eliminates the possibility that affected small, FDIC-insured institutions would begin receiving small bank credits in the quarter when the reserve ratio first reaches or exceeds 1.38 percent, but that these credits then would be suspended if the reserve ratio subsequently falls below 1.38 percent (but remains at least 1.35 percent). Therefore, the economic effect of this aspect of the proposed rule is a reduction in the potential future costs associated with a disruption of the type just described in the application of small bank credits by affected small, FDIC-insured institutions. It is difficult to accurately estimate the magnitude of this benefit to affected small, FDIC-insured institutions, because it depends, among other things, on future economic and financial conditions, the operational and financial management practices at affected small, FDIC-insured institutions, and the future levels of the reserve ratio. However, the FDIC believes the economic effects of the proposed rule are likely to be small, because an estimated 41 percent of the aggregate amount of small bank credits would be applied in the first quarter that the reserve ratio is at least 1.38 percent. Further, the FDIC estimates that 3,851 small, FDIC-insured institutions (or 96.3 percent) would exhaust their individual shares of small bank credits within four assessment periods. Of the 150 small, FDIC-insured institutions that the FDIC estimates would have small bank credits that would last more than four quarters, 139 are expected to exhaust their individual shares after being applied for two additional assessment periods (*i.e.*, after a total of six assessment periods of application), and four within four additional assessment periods of application (*i.e.*, after a total of eight assessment periods), and seven will last more than eight quarters. Therefore, the dollar amount of remaining small bank credits declines substantially after the initial application of credits in the first quarter of use, reducing the effects of credit application being suspended due to a decrease in the reserve ratio. Additionally, recent history suggests a generally positive near-term outlook for the banking sector (implying lower costs to the DIF), therefore the probability of suspension of applying small bank credits is low, particularly in the near-term quarters.

As stated previously, the proposed rule would require the FDIC to remit the

outstanding balances of remaining OTACs in a lump-sum payment, in the next assessment period in which the reserve ratio is at least 1.35 percent, at the same time that the outstanding small bank credit balances are remitted. As of March 31, 2019, only two IDIs have outstanding OTACs, totaling approximately \$300,000. However, both institutions are subsidiaries of large banking organizations and therefore do not qualify as small entities under the RFA. Therefore, this aspect of the proposed rule would not affect any small, FDIC-insured institutions. The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this proposed rule have any significant effects on small entities that the FDIC has not identified?

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on September 26, 2019.

Robert E. Feldman,
Executive Secretary.

[FR Doc. 2019–21322 Filed 10–2–19; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 390

RIN 3064–AF15

Removal of Transferred OTS Regulations Regarding Accounting Requirements for State Savings Associations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: In order to streamline Federal Deposit Insurance Corporation (FDIC) regulations, the FDIC proposes to rescind and remove from the Code of Federal Regulations rules entitled *Accounting Requirements* (part 390, subpart T) that were transferred to the FDIC from the Office of Thrift Supervision (OTS) on July 21, 2011, in connection with the implementation of Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The proposed rule would rescind and remove part 390, subpart T (including the Appendix to 12 CFR 390.384) because the financial statement and disclosure requirements set forth in part 390, subpart T are substantially similar to, although more detailed than, otherwise applicable financial statement form and content requirements and disclosure requirements that a State savings

¹ 5 U.S.C. 601 *et seq.*

² The SBA defines a small banking organization as having \$600 million or less in assets, where "a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). "SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates." See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is "small" for purposes of the RFA.

³ 5 U.S.C. 601.

association must satisfy under federal banking or securities laws or regulations.

DATES: Comments must be received on or before November 4, 2019.

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

- **FDIC Website:** <https://www.fdic.gov/regulations/laws/federal/>. Follow instructions for submitting comments on the agency website.

- **Email:** Comments@fdic.gov. Include RIN 3064–AF15 on the subject line of the message.

- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

- **Hand Delivery to FDIC:** 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 a.m. and 5 p.m.

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

Please include your name, affiliation, address, email address, and telephone number(s) in your comment. All statements received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. You should submit only information that you wish to make publicly available.

Please note: All comments received will be posted generally without change to <https://www.fdic.gov/regulations/laws/federal/>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

Maureen Loviglio, Senior Staff Accountant, Division of Risk Management Supervision, (202) 898–6777, MLoviglio@FDIC.gov; Suzanne Dawley, Counsel, Legal Division, (202) 898–6509, sudawley@FDIC.gov.

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The policy objectives of the proposed rule are twofold. The first is to simplify the FDIC's regulations by removing unnecessary regulations, or realigning existing regulations in order to improve the public's understanding and to improve the ease of reference. The second is to promote parity between State savings associations and State nonmember banks by making both classes of institutions subject to the same accounting requirements. Thus, as further detailed in this section, the FDIC proposes to rescind and remove from the Code of Federal Regulations rules entitled Accounting Requirements (part 390, subpart T) applicable to State

savings associations. Such requirements prescribe definitions, public accountant qualifications, and the form and content of financial statements pertaining to certain securities and their related transaction documents. Transaction documents may include proxy statements and offering circulars in connection with a conversion, any offering of securities by a State savings association, and filings by State savings associations requiring financial statements under the Securities Exchange Act of 1934 (Exchange Act).¹ The FDIC has determined that the additional financial disclosure requirements required by part 390, subpart T for State savings associations are substantially similar to, although more detailed than, otherwise applicable financial statement form and content requirements and disclosure requirements that State nonmember banks must satisfy under federal banking or securities laws or regulations. Therefore, the FDIC is proposing to remove part 390, subpart T and apply existing disclosure requirements, and related form and content of financial statements requirements to State savings associations.

II. Background

A. The Dodd-Frank Act

The Dodd-Frank Act, signed into law on July 21, 2010, provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies.² Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act,³ the powers, duties, and functions formerly performed by the OTS were divided among the FDIC, as to State savings associations, the Office of the Comptroller of the Currency (OCC), as to Federal savings associations, and the Board of Governors of the Federal Reserve System (FRB), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act,⁴ provides the manner of treatment for all orders, resolutions, determinations, regulations, and advisory materials issued, made, prescribed, or allowed to become effective by the OTS. The section provides that, if such materials were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or

superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Pursuant to section 316(c) of the Dodd-Frank Act,⁵ on June 14, 2011, the FDIC's Board of Directors approved a "List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act." This list was published by the FDIC and the OCC as a Joint Notice in the **Federal Register** on July 6, 2011.⁶

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act⁷ granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the Federal Deposit Insurance Act (FDI Act)⁸ and other laws as the "appropriate Federal banking agency" or under similar statutory terminology. Section 312(c)(1) of the Dodd-Frank Act⁹ revised the definition of "appropriate Federal banking agency" contained in section 3(q) of the FDI Act,¹⁰ to add State savings associations to the list of entities for which the FDIC is designated as the "appropriate Federal banking agency." As a result, when the FDIC acts as the designated "appropriate Federal banking agency" (or under similar terminology) for State savings associations, as it does here, the FDIC is authorized to issue, modify and rescind regulations involving such associations. Further, section 376 of the Dodd Frank Act¹¹ grants rulemaking and administrative authority to the FDIC over the Exchange Act¹² filings of State savings associations.

As noted, on June 14, 2011, operating pursuant to this authority, the FDIC's Board of Directors reissued and re-designated certain transferring regulations of the former OTS. These transferred OTS regulations were published as new FDIC regulations in the **Federal Register** on August 5, 2011.¹³ When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the

⁵ 12 U.S.C. 5414(c).

⁶ 76 FR 39246 (July 6, 2011).

⁷ 12 U.S.C. 5412(b)(2)(B)(i)(II).

⁸ 12 U.S.C. 1811 *et seq.*

⁹ 12 U.S.C. 5412(c)(1).

¹⁰ 12 U.S.C. 1813(q).

¹¹ Section 376 of the Dodd Frank Act amended section 3(a) of the Exchange Act. *See*, 15 U.S.C. 78c(a)(34).

¹² 12 U.S.C. 78a *et seq.*

¹³ 76 FR 47652 (Aug. 5, 2011).

¹ 12 U.S.C. 78a *et seq.*

² Public Law 111–203, 124 Stat. 1376 (2010).

³ 12 U.S.C. 5411.

⁴ 12 U.S.C. 5414(b).

transferred OTS regulations into other FDIC rules, amending them, or rescinding them, as appropriate.

B. OTS Regulations Transferred to the FDIC's Part 390, Subpart T

One of the OTS rules transferred to the FDIC governs the accounting requirements for State savings associations. The OTS rule, formerly found at 12 CFR part 563c, was transferred to the FDIC with nominal changes and is now found in the FDIC's rules at part 390, subpart T, entitled *Accounting Requirements*.¹⁴ This subpart prescribes for State savings associations accounting requirements with respect to definitions, public accountant qualifications, and the form and content of financial statements pertaining to certain securities transaction documents. These transaction documents include proxy statements and offering circulars in connection with a conversion, any offering of securities by a State savings association, and filings by State savings associations requiring financial statements under the Exchange Act.¹⁵ Each provision of part 390, subpart T is discussed in Part III of this section.

III. The Proposal To Rescind the Transferred OTS Accounting Requirements Regulations

After careful review of part 390, subpart T, the FDIC has determined that the accounting requirements with respect to financial statement and disclosure form and content set forth by part 390, subpart T are substantially similar to, although more detailed than, other requirements that a State savings association must satisfy under federal banking or securities laws or regulations. Therefore, the FDIC proposes to rescind and remove part 390, subpart T (including the Appendix to 12 CFR 390.384).

State savings association reports and financial statements are required to be uniform and consistent with U.S. generally accepted accounting principles (GAAP) pursuant to section 37 of the FDI Act and section 4(b) of the Homeowners Owners Loan Act (HOLA).¹⁶ While securities issued by State savings associations are exempt from registration requirements of the Securities Act of 1933 (Securities Act),¹⁷ the FDIC reviews for compliance with 12 CFR part 192, *Conversion from a*

Mutual to Stock Form, offering circulars related to mutual-to-stock conversions involving securities offerings by State savings associations. The FDIC will not approve an offering circular until concerns regarding the adequacy or accuracy of the offering circular or the disclosures are satisfactorily addressed.¹⁸ The FDIC is also responsible for administering and enforcing certain sections of the Exchange Act with respect to State savings associations with securities that are publicly traded.¹⁹ As such, a State savings association that is an Exchange Act reporting company must file required periodic reports such as annual reports on Form 10-K, quarterly reports on Form 10-Q, and current reports on Form 8-K with the FDIC pursuant to part 335 of the FDIC rules.²⁰ With respect to the form and content requirements for offerings of mutual capital certificates and debt securities of State savings associations set forth in part 390, subpart T,²¹ the FDIC has determined that the additional disclosures required by part 390, subpart T, may be more detailed than otherwise applicable financial statement form and content and disclosure requirements that a State savings association must satisfy under GAAP, the Exchange Act, FDIC regulations, and state regulations, as appropriate. While

there may be situations where the disclosures required under GAAP, FDIC regulations, and state regulations, as appropriate, with respect to the offerings of mutual capital certificates and debt securities are less detailed than the requirements under part 390, subpart T, there have been no recent filings by State savings associations to the FDIC related to the offerings of mutual capital certificates and debt securities. Therefore, the FDIC has concluded that the practical impact of the differences in level of disclosure detail is negligible and does not justify maintaining separate disclosure regulations applicable solely to State savings associations.

A brief review of the State savings association accounting requirements in part 390, subpart T follows.

A. Part 390, Subpart T—Accounting Requirements

Historically, the Federal Home Loan Bank Board (FHLBB), the predecessor to the OTS, established various accounting and financial reporting requirements for savings associations.²² These requirements occasionally differed from GAAP and when this occurred, such requirements were referred to as regulatory accounting practices. Regulatory accounting practices were often less stringent than GAAP.²³ The Competitive Equality Banking Act of 1987 (CEBA)²⁴ amended HOLA to require the FHLBB to prescribe uniformly applicable accounting standards to be used by all savings associations for the purpose of determining compliance with any rule or regulation of the FHLBB to the same degree that GAAP is used to determine compliance with rules and regulations of the Federal banking agencies. To implement the statute, the FHLBB promulgated regulations that required all unaudited financial statements and financial reports submitted and Statements of Condition be prepared in accordance with GAAP. The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA),²⁵ amended section 4(b)(1) of HOLA to require the Director of the OTS to prescribe, by regulation, uniform accounting and disclosure standards for savings associations, to be used to

¹⁸ 12 CFR 192.300.

¹⁹ 12 CFR 335.101. Part 335 issued by the FDIC under section 12(i) of the Exchange Act applies to all securities of State savings associations that are subject to the registration requirements of section 12(b) or section 12(g) of the Exchange Act. The FDIC is vested with the powers, functions, and duties of the Securities and Exchange Commission (SEC) to administer and enforce Exchange Act sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act (15 U.S.C. 78j–1, 78l, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p) and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley) (15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265) regarding State savings associations with one or more classes of securities subject to the registration provisions of sections 12(b) or 12(g) of the Exchange Act.

²⁰ Pursuant to section 12(a) of the Exchange Act, an issuer must register as an Exchange Act reporting company if it elects to list a class of securities (debt or equity) on a national securities exchange. 15 U.S.C. 78l(a). Generally, an issuer must register pursuant to section 12(g) of the Exchange Act if a class of its equity securities (other than exempted securities) is held of record by either (i) 2,000 persons, or (ii) 500 persons who are not accredited investors and, on the last day of the issuer's fiscal year, its total assets exceed \$10 million. 12 CFR part 335. However, for banks, bank holding companies, and savings and loan holding companies, the threshold is 2,000 or more holders of record; the separate registration trigger for 500 or more non-accredited holders of record does not apply. A list of FDIC-supervised depository institutions currently reporting to the FDIC under the Exchange Act and part 335 can be accessed at <https://www.fdic.gov/bank/individual/part335/index.html>.

²¹ 12 CFR 390.384(c).

²² 57 FR 40085 (September 2, 1992). The term "savings association" includes both any Federal savings association, any State savings association, and any corporation (other than a bank) that the FDIC Board of Directors and the Comptroller of the Currency jointly determine to be operating in substantially the same manner as a savings association. 12 U.S.C. 1831(b)(1).

²³ *Id.*

²⁴ Public Law 100–86, 101 Stat. 552 (1978).

²⁵ Public Law 101–73, 103 Stat. 183 (1989).

¹⁴ 12 CFR part 390, subpart T.

¹⁵ *Id.*

¹⁶ 12 U.S.C. 1831n(a)(2); 12 U.S.C. 1463(b)(2).

¹⁷ 15 U.S.C. 77a *et seq.* Section 3(a)(5) of the Securities Act exempts from registration requirements securities issued by State savings associations. 15 U.S.C. 77c(a)(5).

determine savings associations' compliance with all applicable regulations. Section 4(b)(2) of HOLA requires that these uniform accounting standards for savings associations incorporate GAAP to the same degree that such principles are used to determine compliance with regulations prescribed by the Federal banking agencies. Consistent with these goals, the former OTS savings association accounting requirements, formerly found at part 563c, as they applied to State savings associations, were transferred to the FDIC with only nomenclature changes as part 390, subpart T.

390.380 Form and Content of Financial Statements

This section provides the form and content requirements of financial disclosures, including specific statements, to be included by a State savings association in a proxy statement or offering circular required to be used in connection with a mutual-to-stock conversion under 12 CFR part 192 and an offering circular or nonpublic offering materials required to be used in connection with an offer or sale of securities under part 390, subpart W (*Securities Offerings*). Unless provided for by FDIC rule or order, the financial disclosures governed by this subpart must be prepared and presented in accordance with U.S. generally accepted accounting principles (GAAP) and be consistent with certain provisions of SEC Regulation S-X (Regulation S-X).²⁶ In addition, this section requires that financial statement disclosures comply with the Appendix to § 390.384, which specifies the various items that must appear on the face of the financial statements related to any proxy statement and offering circular for conversion application and any filing under the Exchange Act under this section, and additional disclosures that must be included with the financial statements in related notes.²⁷ Regulation S-X sets forth the specific form and content of financial reports for several federal securities laws, and extends the meaning of financial statements to

include all notes to the statements and all related schedules.²⁸

390.381 Definitions

Section 390.381 provides a general cross-reference to the definitions section of Regulation S-X. This section also includes Regulation S-X definitions of *registrant* and *significant subsidiary* that the OTS modified specifically for State savings associations. Under this section, *registrant* includes an applicant, State savings association, or any other person required to prepare financial statements pursuant to part 390, subpart T. The definition of *significant subsidiary* pursuant to this subpart means a subsidiary (including its subsidiary) for which (1) the State savings association or its other subsidiaries' investments in and advances to the subsidiary exceed 10 percent of the total consolidated assets of the association and its subsidiaries; (2) the State savings association or its other subsidiaries' proportionate share of the total assets of the subsidiary exceeds 10 percent of the total consolidated assets of the State savings association and its subsidiaries; or (3) the State savings association or its other subsidiaries' equity in the income from continuing operations before income taxes, extraordinary items, and cumulative effect of a change in accounting principle of the subsidiary exceeds 10 percent of the consolidated income of the State savings association and its subsidiaries; all for the most recently completed fiscal year.

390.382 Qualification of Public Accountant

Section 390.382 provides a cross-reference to SEC Rule 2-01 of Regulation S-X that sets forth qualifications of accountants.²⁹ Pursuant to this section, a "qualified public accountant" must be a certified public accountant certified by, or a licensed public accountant licensed by, a regulatory authority of a State or other political subdivision of the United States who is in good standing under the laws of the jurisdiction where the home office of the registrant to be audited is located. Further, any person or firm suspended from practice before the SEC or other governmental agency is not a qualified public accountant for the purposes of this section.

390.383 Condensed Financial Information [Parent only]

Section 390.383 applies to the condensed financial information of the State savings association as the parent of

consolidated subsidiaries required to be presented in a note to the financial statements when the restricted net assets of consolidated subsidiaries exceed 25 percent of the consolidated net assets as of the end of the most recent fiscal year, and is closely related to the following section, § 390.384, *Financial statements for conversions, SEC filings, and offering circulars*.³⁰ Section 390.383 further requires that the investment in, and indebtedness of and to, State savings association subsidiaries be stated separately in the condensed balance sheet from amounts for other subsidiaries, and the amount of cash dividends paid to the parent State savings association for each of the last three years by the State savings association subsidiaries be stated separately in the condensed income statement from amounts from other subsidiaries. Restricted net assets of a subsidiary are the amount of the State savings association's proportionate share of the net assets of the subsidiaries (after intercompany netting) that as of the end of the most recent year may not be transferred to the parent State savings association by the subsidiaries in the form of loans, advances, or cash dividends without the consent of a third party, such as a lender, regulatory agency, or foreign government. For the purposes of this section, if the restrictions on the amount of the funds that may not be loaned or advanced differ from the amount restricted for transfer as cash dividends, the State savings association should use the amount least restrictive to the subsidiary. Also, redeemable preferred stocks and minority interest must be deducted in computing net assets.

390.384 Financial Statements for Conversions, SEC Filings, and Offering Circulars

Section 390.384 and its appendix prescribe the form and content of State savings association financial statements used in connection with (1) mutual-to-stock conversions pursuant to 12 CFR 192, (2) filings under the Exchange Act, and (3) offering circulars used in connection with mutual capital certificates³¹ and debt securities.³² This section reflects items in SEC Rule 9-03 and SEC Rule 9-04 that, if applicable, should appear on the face of the balance sheets or its notes, or income statement or its notes, respectively, as well as incorporating items from other rules in Regulation S-X as modified by the OTS to specifically apply to savings

²⁶ 17 CFR part 210, entitled *Form and Content of and Requirements for Financial Statements, Securities Act of 1933, Securities Exchange Act of 1934, Public Utility Holding Company Act of 1935, Investment Company Act of 1940, Investment Advisers Act of 1940, and Energy Policy and Conservation Act of 1975*. Such provisions include articles 1, 2, 3, 4, 10, and 11 of Regulation S-X, 17 CFR 210.1-210.4; 210.10, and 210.11. Regulation S-X generally sets forth form and content of and requirements for financial statements with respect to filing under the Securities Act and Exchange Act, among others.

²⁷ Appendix to 12 CFR 390.384.

²⁸ See 17 CFR 210.1-01.

²⁹ 17 CFR 210.2-01.

³⁰ 12 CFR 390.383.

³¹ 12 CFR 163.74.

³² 12 CFR 390.341.

associations and includes references to Regulation S–X rules as well.³³

B. Accounting Requirements Applicable to State Savings Associations

The FDIC's regulations do not have a direct analog to the accounting requirements for State savings association set forth in the transferred OTS regulations at part 390, subpart T. However, as mentioned above, existing federal banking and securities laws and regulations provide requirements that are substantially similar.

Generally Accepted Accounting Principles

In the United States, GAAP is a commonly recognized set of rules and procedures designed to govern corporate accounting and financial reporting.³⁴ This comprehensive set of accounting practices was developed by the Financial Accounting Standards Board (FASB), an independent not-for-profit body that derives its authority from the SEC.³⁵ FASB sets GAAP with input from the SEC, the American Institute of Certified Public Accountants, and other stakeholders that include preparers, users, and auditors.³⁶

Section 37 of the FDI Act, like part 390, subpart T, requires that reports and statements to be filed with federal banking agencies by insured depository institutions, including insured State saving associations, be uniform and consistent with GAAP.³⁷ Section 4(b) of HOLA also requires that savings associations use accounting standards that are no less stringent than GAAP.³⁸ Further, the instructions to the Consolidated Reports of Condition and Income (Call Report) state that the regulatory reporting requirements applicable to the Call Report shall conform to GAAP as set forth in the FASB's Accounting Standards Codification.³⁹ By eliminating

regulations that are substantially similar to existing statutory directives for State savings associations to use GAAP, the FDIC would follow the SEC in amending disclosure requirements that have become redundant in light of GAAP, among other things.⁴⁰

Exchange Act Filings

State saving associations that have securities subject to the registration requirements of Section 12(b) or Section 12(g) of the Exchange Act are subject to a mandatory periodic disclosure process that is designed to require Exchange Act-registered companies to make public the information that investors would find pertinent in making investment decisions. Section 12(i) of the Exchange Act provides that the appropriate Federal banking agencies must issue substantially similar regulations to regulations and rules issued by the SEC.⁴¹ Therefore, the FDIC is vested with the powers and duties of the SEC to enforce the registration provisions of the Exchange Act with respect to State nonmember banks and State savings associations.⁴²

Part 335, *Securities of State Nonmember Banks and State Savings Associations*, applies to all securities of State nonmember banks and State savings associations (FDIC-supervised institutions). Part 335 implements section 12(i) of the Exchange Act which vests authority in the FDIC to administer and enforce certain sections of the Exchange Act and Sarbanes-Oxley, including the accounting standards to be used in the preparation of filings and other reports under the respective laws. Part 335 incorporates the regulations and rules of the SEC with respect to the registration, reporting, and accounting requirements applicable to companies subject to the Exchange Act. The FDIC amended the scope of part 335 to include State savings associations in 2014, and, therefore, the requirement for all FDIC-supervised institutions is the same. These requirements are substantially similar to the securities offerings disclosure regulations that the OCC promulgated under the same authority for national banks and federal savings associations.⁴³ Therefore, State savings associations would file reports containing generally the same information, and the same form and content, that would be included in Exchange Act reports, including applicable financial statement form and

content requirements of Regulation S–X, with the FDIC rather than the SEC, and subject to the same regulations as State nonmember banks.

Mutual to Stock Conversion Offerings

Mutually-owned State savings associations may convert from the mutual form of ownership, where the institution is owned jointly by the association members, to the stock form of ownership, where the institution is owned by shareholders. Although section 312 of the Dodd-Frank Act transferred all functions of the OTS relating to State savings associations to the FDIC, rulemaking authority for Federal and State savings associations was transferred to the OCC.⁴⁴ As a result, the form and content of financial statements included as part of a State savings association conversion application is governed by part 192 of the OCC's Rules (OCC conversion regulations), instead of part 390, subpart T. Part 192 governs savings association conversions generally. These OCC conversion regulations apply to financial statements included with proxy solicitations and offering circulars.⁴⁵ In reviewing a notice of intent to convert from mutual to stock form from an insured state-chartered mutually-owned savings association, the FDIC takes into account the extent to which the proposed conversion transaction conforms with the OCC conversion regulations, providing consistency in standards for financial statements included with proxy solicitations and offering circulars for mutual State savings association and mutual State bank conversions.⁴⁶ Additionally, mutual State savings associations must comply with the disclosure requirements for offering materials used in connection with the issuance of mutual capital certificates pursuant to 12 CFR 163.74.⁴⁷

State Savings Association Securities Offerings

Securities issuances by State savings association are exempt from registration requirements pursuant to section 3(a)(5) of the Securities Act.⁴⁸ State savings

³³ 17 CFR 210–9.03, 210–9.04. Other items included by the OTS in the Appendix to § 390.384 are similar to items in SEC Rule 1–02 *Definitions*, Rule 3–04 *Changes in stockholders' equity and noncontrolling interests*, Rule 4–08, *General notes to financial statements*, and Rule 10–01, *Interim financial statements*.

³⁴ Robert Parrino and David Kidwell, *Fundamentals of Corporate Finance*, 3.1 (John Wiley & Sons) (2009).

³⁵ *Id.*

³⁶ *Id.*

³⁷ 12 U.S.C. 1831n(a)(2).

³⁸ 12 U.S.C. 1463(b)(2).

³⁹ Instructions for Preparation of Consolidated Reports of Condition and Income, Form FFIEC 031 and 041, https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_201906_i.pdf; Instructions for Preparation of Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less than \$1 Billion, Form FFIEC 051, https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC051_201906_i.pdf.

⁴⁰ 83 FR 50148 (Oct. 4, 2018).

⁴¹ 15 U.S.C. 78l(i).

⁴² *Id.*

⁴³ 12 CFR part 16.

⁴⁴ Section 312(b)(2), 124 Stat. at 1522, codified to 12 U.S.C. 5412(b)(2).

⁴⁵ 12 CFR part 192, subpart A, Standard Conversions.

⁴⁶ 12 CFR 303.163(b). Paragraph (b) references the former OTS mutual-to-stock regulations that were at 12 CFR part 563b. The OCC republished part 563b as part 192 as an interim final rule in August 2011, 76 FR 49156 (Aug. 9, 2011).

⁴⁷ Debt securities issued pursuant to 12 CFR 390.341 are also subject to the disclosure requirements for offering materials.

⁴⁸ 15 U.S.C. 77c(a)(5).

associations are subject to a separate and stringent regulatory and reporting structure under federal banking laws independent of the SEC, such as through ongoing supervision and oversight, as well as extensive reporting requirements, frequent safety and soundness examinations⁴⁹ and capital requirements⁵⁰ that protect investors from securities fraud and improper disclosure that the SEC registration process is designed to prevent. The Securities Act registration exemption allows State savings associations to issue securities with many of the benefits of registered offerings with the efficiency and cost effectiveness of private placements, does not place limitations on the number or type of investors that can participate, or on the amount of securities offered. As a result, State savings associations may access capital markets without the time and expense of conducting an SEC-registered offering.

Nonetheless, as in any other securities offering, the anti-fraud provisions of the federal securities laws apply, including section 17 of the Securities Act and section 10(b) of and Rule 10b-5 under the Exchange Act.⁵¹ Financial statements used in proxy solicitations or offering circulars used in marketing securities must disclose the information necessary to avoid liability under the anti-fraud provisions even if specific disclosure requirements are not imposed. The FDIC reviews offering circulars to ensure that they were prepared in compliance with the anti-fraud provisions of the federal securities laws which require full and adequate disclosure of material facts and meet the needs of investors, depositors, and issuers.

With respect to the form and content requirements for offerings of mutual capital certificates and debt securities of State savings associations set forth in part 390, subpart T, the FDIC has determined that the additional disclosures required by part 390, subpart T may be more detailed than otherwise applicable financial statement form and content and disclosure requirements that a State savings association must satisfy under GAAP, FDIC regulations, and state regulations, as appropriate. While there may be situations where the disclosures required under GAAP, FDIC regulations, and state regulations, as appropriate, with respect to the offerings of mutual capital certificates and debt securities

are less detailed than the requirements under part 390, subpart T, there have been no recent filings by State savings associations to the FDIC related to the offerings of mutual capital certificates and debt securities. Therefore, the FDIC has concluded that the practical impact of the differences in level of disclosure detail is negligible and does not justify maintaining separate disclosure regulations applicable solely to State savings associations. The FDIC continues to evaluate whether to update the 1996 statement of policy related to the use of offering circulars in connection with the public distribution of bank securities to include issuances of mutual capital certificates and debt securities by State savings associations. The statement of policy currently applies only to insured state nonmember banks.⁵²

IV. Summary

If the proposal is finalized, 12 CFR part 390, subpart T would be rescinded and removed because the financial statement and disclosure requirements set forth in part 390, subpart T are substantially similar to, although more detailed than, otherwise applicable financial statement form and content requirements and disclosure requirements that a State savings association must satisfy under federal banking or securities laws or regulations. The FDI Act has long required that reports and statements to be filed with the FDIC by insured depository institutions, including insured State saving associations, be uniform and consistent with GAAP. Moreover, the HOLA has required that savings association reports and financial statements be consistent with GAAP since CEBA was enacted in 1987. State savings associations with securities traded in the secondary market are subject to the registration provisions and reporting requirements of the Exchange Act as implemented by the FDIC, pursuant to the authority granted by Section 12(i) of the Exchange Act. As a result, a State savings association, like a State nonmember bank, is required to file reports and other filings containing generally the same information that would be included in Exchange Act reports with the FDIC pursuant to part 335, instead of filing with the SEC.

The form and content of financial statements used in connection with proxy solicitations and offering circulars for the conversion of a State savings association from mutual to stock form remain subject to the OCC conversion

regulations at part 192 and offering materials for the issuance of mutual capital certificates remain subject to the OCC regulations at 12 CFR 163.74, in addition to GAAP and any applicable Exchange Act requirements. While State savings association public offerings of securities are exempt from Securities Act registration requirements, the FDIC reviews offering circulars to ascertain that they were prepared in compliance with the anti-fraud provisions of the federal securities laws which require full and adequate disclosure of material facts and meet the needs of investors, depositors, and are uniform and consistent with GAAP, including financial statement disclosure requirements. Removing part 390, subpart T will streamline the FDIC's regulations and will not increase regulatory burden for FDIC-supervised institutions.

V. Expected Effects

As of March 31, 2019, the FDIC supervises 3,465 insured depository institutions, of which 38 (1.1%) are insured State saving associations.⁵³ The proposed rule primarily would only affect regulations that govern State savings associations. As explained previously, the proposed rule would remove sections 390.380, 390.381, 390.382, 390.383, and 390.384 of part 390, subpart T because other federal banking or securities laws or regulations contain similar requirements. Because these regulations are largely redundant, rescinding them will not have any substantive effects on FDIC-supervised institutions.

The FDIC invites comments on all aspects of this analysis. In particular, would the proposed rule have any costs or benefits to covered entities that the FDIC has not identified?

VI. Alternatives

The FDIC considered alternatives to the proposed rule but believes that the proposed amendments represent the most appropriate option for covered institutions. As discussed previously, the Dodd-Frank Act transferred certain powers, duties, and functions formerly performed by the OTS to the FDIC. The FDIC's Board reissued and redesignated certain transferred regulations from the OTS, but noted that it would evaluate them and might later incorporate them into other FDIC regulations, amend them, or rescind them, as appropriate. The FDIC has evaluated the existing regulations relating to State savings association accounting requirements and part 390, subpart T (including the

⁴⁹ 12 CFR 337.12.

⁵⁰ 12 CFR part 324.

⁵¹ 15 U.S.C. 77q; 15 U.S.C. 78j(b) and 17 CFR 240.10b-5.

⁵² 44 FR 39381 (July 6, 1979); 61 FR 46808 (Sept. 5, 1996).

⁵³ FDIC Call Report, March 31, 2019.

Appendix to 12 CFR 390.384). The FDIC considered the alternative of retaining the current regulations, but did not choose to do so because it would be needlessly complex and confusing for its supervised institutions if substantively similar regulations regarding accounting requirements for Exchange Act filers were located in different locations within the Code of Federal Regulations. The FDIC believes it would be burdensome for FDIC-supervised institutions to refer to these separate sets of regulations. Therefore, the FDIC is proposing to rescind part 390, subpart T (including the Appendix to 12 CFR 390.384) and streamline the FDIC's regulations.

VII. Request for Comments

The FDIC invites comments on all aspects of this proposed rulemaking, and specifically requests comments on the following:

1. *Are the provisions of part 192, part 335, and section 37 of the FDI Act sufficient to provide consistent and effective filing and disclosure requirements for securities registered under the Exchange Act, mutual-to-stock conversions, and mutual capital certificates and debt securities for State savings associations? Please provide a detailed response.*

2. *Should part 390, subpart T pertaining to the accounting requirements for State savings associations be retained in whole or in part? Please substantiate your response.*

3. *What negative impacts, if any, can you foresee in the FDIC's proposal to rescind part 390, subpart T and remove it from the Code of Federal Regulations?*

4. *What negative impacts to State savings associations, if any, do you foresee in the FDIC's proposal to rescind part 390, subpart T and rely on 12 CFR part 192 and section 37 of the FDI Act with respect to the accounting requirements that would be applicable to public offerings?*

5. *What negative impacts to State savings associations, if any, do you foresee in the FDIC's proposal to rescind the accounting requirements in part 390, subpart T that are applicable to State savings association mutual-to-stock conversions involving a public offering of securities and registration of the securities under the Exchange Act?*

Written comments must be received by the FDIC no later than November 4, 2019.

VIII. Regulatory Analysis and Procedure

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995

(PRA),⁵⁴ the FDIC may not conduct or sponsor, and the 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 proposed rule would rescind and remove from FDIC regulations part 390, subpart T (including the Appendix to 12 CFR 390.384). The proposed rule will not create any new or revise any existing collections of information under the PRA. Therefore, no information collection request will be submitted to the OMB for review.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.⁵⁵ 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, and publishes its certification and a short explanatory statement in the **Federal Register** together with the rule. The Small Business Administration (SBA) has defined "small entities" to include banking organizations with total assets of less than or equal to \$600 million.⁵⁶ Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons provided below, the FDIC certifies that the proposed rule, if adopted in final form, would not have a significant economic impact on a substantial number of small banking organizations. Accordingly, a regulatory flexibility analysis is not required.

As of March 31, 2019, the FDIC supervised 3,465 insured depository institutions, of which 2,705 are

considered small banking organizations for the purposes of RFA. The proposed rule primarily affects regulations that govern State savings associations.⁵⁷ There are 36 State savings associations considered to be small banking organizations for the purposes of the RFA.⁵⁸

As explained previously, the proposed rule would remove sections 390.380, 390.381, 390.382, 390.383, and 390.364 of part 390, subpart T because these sections are unnecessary or redundant of existing federal banking and securities laws or regulations that prescribe accounting requirements for State savings associations. Because these regulations are redundant to existing regulations, rescinding them would not have any substantive effects on small FDIC-supervised institutions.

Based on the information above, the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

6. *The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this rule have any significant effects on small entities that the FDIC has not identified?*

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act⁵⁹ requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. As a federal banking agency subject to the provisions of this section, the FDIC has sought to present the proposed rule to rescind part 390, subpart T in a simple and straightforward manner.

7. *The FDIC invites comments on whether the proposal is clearly stated and effectively organized, and how the FDIC might make the proposal easier to understand.*

D. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPA), the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.⁶⁰ The FDIC, along with the other federal banking agencies, submitted a Joint Report to Congress on March 21, 2017,

⁵⁴ 44 U.S.C. 3501–3521.

⁵⁵ 5 U.S.C. 601, *et seq.*

⁵⁶ The SBA defines a small banking organization as having \$600 million or less in assets, where an organization's "assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See 13 CFR 121.201 (as amended, by 84 FR 34261, effective August 19, 2019). "SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates." See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is "small" for the purposes of RFA.

⁵⁷ FDIC Call Report, March 31, 2019.

⁵⁸ *Id.*

⁵⁹ Public Law 106–102, 113 Stat. 1338, 1471 (codified at 12 U.S.C. 4809).

⁶⁰ Public Law 104–208, 110 Stat. 3009 (1996).

(EGRPRA Report) discussing how the review was conducted, what has been done to date to address regulatory burden, and further measures that will be taken to address issues that were identified. As noted in the EGRPRA Report, the FDIC is continuing to streamline and clarify its regulations through the OTS rule integration process. By removing outdated or unnecessary regulations, such as part 390, subpart T, this proposal complements other actions the FDIC has taken, separately and with the other federal banking agencies, to further the EGRPRA mandate.

List of Subjects in 12 CFR Part 390

Administrative practice and procedure, Advertising, Aged, Civil rights, Conflict of interests, Credit, Crime, Equal employment opportunity, Fair housing, Government employees, Individuals with disabilities, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend 12 CFR 390 as follows:

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

■ 1. The authority citation for part 390 is revised to read as follows:

Authority: 12 U.S.C. 1819.

Subpart F also issued under 5 U.S.C. 552; 559; 12 U.S.C. 2901 *et seq.*

Subpart G also issued under 12 U.S.C. 2810 *et seq.*, 2901 *et seq.*; 15 U.S.C. 1691; 42 U.S.C. 1981, 1982, 3601–3619.

Subpart M also issued under 12 U.S.C. 1818.

Subpart O also issued under 12 U.S.C. 1828.

Subpart Q also issued under 12 U.S.C. 1462; 1462a; 1463; 1464.

Subpart R also issued under 12 U.S.C. 1463.

Subpart S also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1468a; 1817; 1820; 1828; 1831e; 1831o; 1831p–1; 1881–1884; 3207; 3339; 15 U.S.C. 78b; 78l; 78m; 78n; 78p; 78q; 78w; 31 U.S.C. 5318; 42 U.S.C. 4106.

Subpart W also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78l; 78m; 78n; 78p; 78w.

Subpart Y also issued under 12 U.S.C. 1831o.

Subpart T—[Removed and Reserved]

■ 2. Remove and reserve subpart T, consisting of §§ 390.380 through 390.384.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on September 17, 2019.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2019–20770 Filed 10–2–19; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 390

RIN 3064–AF07

Removal of Transferred OTS Regulation Regarding Deposits

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking; supplemental notice.

SUMMARY: On August 26, 2019, the Federal Deposit Insurance Corporation (FDIC) issued a notice of proposed rulemaking with request for comments on proposed revisions to its regulations relating to deposits that apply to State savings associations. The FDIC is supplementing that notice of proposed rulemaking with an updated regulatory flexibility analysis to reflect changes to the Small Business Administration's monetary-based size standards, which were adjusted for inflation as of August 19, 2019.

DATES: Comments on the updated regulatory flexibility analysis must be received on or before November 4, 2019.

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

- **FDIC Website:** <https://www.fdic.gov/regulations/laws/federal/>. Follow instructions for submitting comments on the agency website.

- **Email:** Comments@fdic.gov. Include RIN 3064–AF07 on the subject line of the message.

- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

- **Hand Delivery to FDIC:** 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 a.m. and 5 p.m.

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

Please include your name, affiliation, address, email address, and telephone number(s) in your comment. All statements received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. You should submit only information

that you wish to make publicly available.

Public Inspection: All comments received will be posted generally without change to <https://www.fdic.gov/regulations/laws/federal/>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

Ryan T. Singer, Chief, Regulatory Analysis Section, Division of Insurance and Research, (202) 898–7352, rsinger@fdic.gov; Laura J. McNulty, Counsel, Legal Division, (202–898–3817), lmcnulty@fdic.gov; Jennifer M. Jones, Counsel, Legal Division, (202) 898–6768, jennjones@fdic.gov.

SUPPLEMENTARY INFORMATION: On August 26, 2019, the FDIC issued a notice of proposed rulemaking with request for comments on proposed revisions to its regulations relating to deposits that apply to State savings associations. (See 84 FR 44558 (August 26, 2019).) The FDIC is supplementing that notice of proposed rulemaking with an updated regulatory flexibility analysis to reflect changes to the Small Business Administration's monetary-based size standards, which were adjusted for inflation as of August 19, 2019. (See 84 FR 34261 (July 18, 2019).)

Updated Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.¹ 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, and publishes its certification and a short explanatory statement in the **Federal Register**, together with the rule. The Small Business Administration (SBA) has defined “small entities” to include banking organizations with total assets of less than or equal to \$600 million.² Generally, the FDIC considers a significant effect to be a quantified

¹ 5 U.S.C. 601, *et seq.*

² The SBA defines a small banking organization as having \$600 million or less in assets, where “a financial institution’s assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.” See 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). “SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.” See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity’s affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the FDIC-supervised institution is “small” for purposes of the RFA.

effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons provided below, the FDIC certifies that the proposed rule, if adopted in final form, would not have a significant economic impact on a substantial number of small banking organizations. Accordingly, a regulatory flexibility analysis is not required.

As of March 31, 2019, the FDIC supervised 3,465 insured depository institutions, of which 2,705 are considered small banking organizations for purposes of the RFA. The proposed rule primarily affects regulations that govern State savings associations. There are 36 State savings associations considered to be small banking organizations for purposes of the RFA.³

The proposed rule would remove §§ 390.230 and 390.231, part 390, subpart M, because these sections are unnecessary, redundant of, or otherwise duplicative of other statutes and regulations, including safety and soundness standards. Therefore, rescinding subpart M would not have any substantive effects on small FDIC-supervised institutions.

Based on the information above, the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this rule have any significant effects on small entities that the FDIC has not identified?

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on September 26, 2019.

Robert E. Feldman,
Executive Secretary.

[FR Doc. 2019-21323 Filed 10-2-19; 8:45 am]

BILLING CODE 6714-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-105474-18]

RIN 1545-BO59, 1545-BM69

Guidance on Passive Foreign Investment Companies; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Proposed rule; notice of hearing.

SUMMARY: This document provides a notice of public hearing on proposed regulations under sections 1291, 1297, and 1298 of the Internal Revenue Code (“Code”) regarding the determination of ownership in a passive foreign investment company within the meaning of section 1297(a) (“PFIC”) and the treatment of certain income received or accrued by a foreign corporation and assets held by a foreign corporation for purposes of section 1297.

DATES: The public hearing is being held on Monday, December 9, 2019, at 10:00 a.m. The IRS must receive speakers’ outlines of the topics to be discussed at the public hearing by Friday, November 22, 2019. If no outlines are received by November 22, 2019, the public hearing will be cancelled.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present a valid photo identification to enter the building. Send Submissions to CC:PA:LPD:PR (REG-105474-18), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG-105474-18), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-105474-18).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Josephine Firehock at (202) 317-4932 (for the PFIC Insurance Exception) or Jorge M. Oben at (202) 317-6934 (for general rules, including indirect ownership and look-through rules); concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the

hearing, Regina Johnson at (202) 317-6901 (not toll-free numbers), fdms.database@irsounsel.treas.gov.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG-105474-18) that was published in the **Federal Register** on Thursday, July 11, 2019 (84 FR 33120).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments by September 9, 2019, must submit an outline of the topics to be addressed and the amount of time to be devoted to each topic by Friday, November 22, 2019.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or by contacting the Publications and Regulations Branch at (202) 317-6901 (not a toll-free number).

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Crystal Pemberton,

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

[FR Doc. 2019-21476 Filed 10-2-19; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-1067]

RIN 1625-AA00

Safety Zone; Hurricanes, Tropical Storms and Other Disasters in South Florida

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On June 5, 2017, the Coast Guard published a notice of proposed rulemaking (NPRM) to establish a

³ Based on data from the March 31, 2019, Call Report and Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

temporary safety zone over certain navigable waters within the Sector Miami Captain of the Port (COTP) zone. This safety zone would allow the Coast Guard to restrict certain vessels from entering or transiting through certain navigable waters in the Miami River and Ports of Miami, Everglades, Palm Beach and Fort Pierce during periods of reduced or restricted visibility due to tropical storm force winds (39–73 mph/34–63 knots), hurricanes and/or other disasters. The Coast Guard proposes to publish this supplemental notice of proposed rulemaking (SNPRM) since considerable time has passed from the time when the initial NPRM was published, and because minor modifications have been made to the proposed rule. This SNPRM requests comments on the revised proposal.

DATES: Comments and related material must be received by the Coast Guard on or before November 4, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2016–1067 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 contact Mr. Omar Beceiro, Sector Miami Waterways Management Division, U.S. Coast Guard at (305) 535–4317, or by email at Omar.Beceiro@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

A. Regulatory History and Information

The purpose of the proposed regulation is to ensure the safety of life on navigable waters of the United States by restricting movement of certain vessels in the event of severe weather conditions or disasters, including tropical storms and hurricanes. The COTP has determined reduced or restricted visibility and tropical storm force winds, which may occur during tropical storms, hurricanes and other disasters, constitute a safety concern for anyone within the proposed safety zone.

B. Discussion of Comments on NPRM and Changes to the Proposed Rule

On May 10, 2017, the Coast Guard published a NPRM titled “Safety Zone; Hurricanes and Other Disasters in South Florida” (see 82 FR 21742). The purpose of the proposed regulation was to ensure the safety of life on navigable waters of the United States within the Sector Miami COTP zone by restricting movement of certain vessels in the event of severe weather conditions or disasters, including tropical storms and hurricanes. During the comment period, the Coast Guard received two comments, both in favor of the proposed regulations. One comment; however, also expressed several concerns. The commenter expressed a concern that the proposed rule did not clearly indicate that the COTP has the discretion to implement only those measures necessary given the specific circumstances of the emergency, rather than all measures being required. In addition, the commenter indicated the proposed rule should clearly state the application of restrictive measures would be applied only to those areas within the Sector Miami COTP zone affected by the hazardous condition. The commenter indicated that the proposed rule should not restrict operations in other areas of the COTP zones which are minimally or not at all affected. Finally, the commenter suggested that language in the section heading and text be modified to clearly indicate the regulation would be applicable when tropical storm-force winds are expected. To address these concerns, the Coast Guard made changes to the title and text of the proposed rule to include the use of “tropical storm” when referencing severe weather and clarified the COTP may restrict vessel movement only in ports affected by impending tropical storm force winds.

III. Discussion of Proposed Rule

The COTP is proposing to establish a temporary safety zone on certain navigable waters within the Sector Miami COTP zone in response to disasters and/or specified severe weather conditions (e.g. tropical storms and hurricanes) that would restrict movement of certain vessels when the COTP sets specific Port Conditions. The movement of certain vessel traffic within navigable waters of the Miami River and Ports of Miami, Everglades, Palm Beach and Fort Pierce would be affected by this rule. Vessel movement restrictions would only apply to those ports within the Sector Miami COTP zone forecast to experience tropical

storm force winds within a specific timeframe. The proposed rule would give the COTP flexibility in controlling and reconstituting vessel traffic during periods of heavy weather and expedite resumption of the Marine Transportation System following disasters and severe weather.

Port Conditions (WHISKEY, X–RAY, YANKEE, and ZULU) are standardized states of operation instituted by the COTP and shared with all major ports, facilities, and members of the Marine Transportation System. The intermodal and dynamic nature of the Marine Transportation System requires all parties to comply with safety and security procedures when faced with the challenges of tropical storms, hurricanes and other disasters.

Notice of Port Conditions and their requirements will be given via Marine Safety Information Bulletins, online at <http://homeport.uscg.mil/miami>, Broadcast Notice to Mariners, and Severe Weather Advisory Team meetings.

The revised regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This SNPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the SNPRM 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 safety zone. Port facilities and vessel traffic will be affected by this rule only during limited times when heavy weather is expected to make imminent landfall within the Sector Miami COTP zone. In addition, vessel traffic would be secured only during port conditions Yankee and Zulu, and only in ports potentially

affected by tropical storm force winds. The Coast Guard would issue updates on homeport.uscg.mil/miami, via broadcasts on VHF-FM marine channel 16, and during Severe Weather Advisory Team meetings.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this 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 Management Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone of limited duration implemented during tropical storms, hurricanes or other heavy weather events. Normally such actions are categorically excluded from further review under paragraph L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A preliminary Record of Environmental Consideration 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 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 <https://www.regulations.gov/privacyNotice>.

Documents mentioned in this SNPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted 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: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 165.785 to read as follows:

§ 165.785 Safety Zone; Hurricanes, Tropical Storms and Other Disasters in South Florida.

(a) *Regulated Areas.* All navigable waters, as defined in 33 CFR 2.36, within Sector Miami COTP zone, Miami, Florida, as described in 33 CFR 3.35–10, during specified conditions.

(b) Definitions. (1) The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the COTP Miami, in the enforcement of the regulated areas.

(2) Port Condition WHISKEY means a condition set by the COTP when weather advisories indicate sustained tropical storm force winds from a tropical or hurricane force storm are predicted to make landfall at the port within 72 hours.

(3) Port Condition X–RAY means a condition set by the COTP when weather advisories indicate sustained tropical storm force winds from a tropical or hurricane force storm are predicted to make landfall at the port within 48 hours.

(4) Port Condition YANKEE means a condition set by the COTP when weather advisories indicate that sustained tropical storm force winds from a tropical or hurricane force storm are predicted to make landfall at the port within 24 hours.

(5) Port Condition ZULU means a condition set by the COTP when weather advisories indicate that sustained tropical storm force winds from a tropical or hurricane force storm are predicted to make landfall at the port within 12 hours.

(c) Regulations. (1) *Port Condition WHISKEY.* All vessel and port facilities must exercise due diligence in preparation for potential storm impacts. Slow-moving vessels may be ordered to depart to ensure safe avoidance of the incoming storm upon the anticipation of the setting of Port Condition X–RAY. Ports and waterfront facilities shall begin removing all debris and securing potential flying hazards. Container stacking plans shall be implemented.

Waterfront facilities that are unable to reduce container-stacking height to no more than four high must submit a container stacking protocol to the COTP.

(2) *Port Condition X–RAY.* All vessels and port facilities shall ensure that potential flying debris is removed or secured. Hazardous materials/pollution hazards must be secured in a safe manner and away from waterfront areas. Facilities shall continue to implement container-stacking protocol. Containers must not exceed four tiers, unless previously approved by the COTP.

Containers carrying hazardous materials may not be stacked above the second tier. All oceangoing commercial vessels greater than 500-gross tons must prepare to depart ports and anchorages within the affected regulated area. These vessels shall depart immediately upon the setting of Port Condition YANKEE. During this condition, slow-moving vessels may be ordered to depart to ensure safe avoidance of the incoming storm. Vessels that are unable to depart the port must contact the COTP to request and receive permission to remain in port. Vessels with COTP’s permission to remain in port must implement their pre-approved mooring arrangement. Terminal operators shall prepare to terminate all cargo operations. The COTP may require additional precautions to ensure the safety of the ports and waterways.

(3) *Port Condition YANKEE.* Affected ports would be closed to inbound vessel traffic. All oceangoing commercial vessels greater than 500-gross tons must have departed designated ports within the Sector Miami COTP zone.

Appropriate container stacking protocol must be completed. Terminal operators must terminate all cargo operations not associated with storm preparations. Cargo operations associated with storm preparations include moving cargo within or off the port for securing purposes, crane and other port/facility equipment preparations, and similar activities, but do not include moving cargo onto the port or vessel loading/discharging operations unless specifically authorized by the COTP. All facilities shall continue to operate in accordance with approved Facility Security Plans and comply with the requirements of the Maritime Transportation Security Act (MTSA).

(4) *Port Condition ZULU.* All port waterfront operations are suspended, except final preparations that are expressly permitted by the COTP as necessary to ensure the safety of the ports and facilities. Coast Guard Port Assessment Teams will conduct final port assessments.

(5) *Emergency Restrictions for Other Disasters.* Any natural or other disasters that are anticipated to affect the Sector Miami COTP zone will result in the prohibition of facility operations and commercial vessel traffic transiting or remaining in the affected port.

Dated: September 23, 2019.

J.F. Burdian,

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

[FR Doc. 2019–21510 Filed 10–2–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0541; FRL–10000–65–Region 9]

Clean Air Plans; 2008 8-Hour Ozone Nonattainment Area Requirements; Phoenix-Mesa, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing action on a state implementation plan (SIP) revision submitted by the State of Arizona on behalf of the Maricopa Association of Governments (MAG) to meet Clean Air Act (CAA or “the Act”) requirements for the 2008 ozone national ambient air quality standards (NAAQS or “standards”) in the Phoenix-Mesa (“Phoenix”) ozone nonattainment area. The EPA is proposing to approve the portions of the “MAG 2017 8-Hour Ozone Moderate Area Plan” (“MAG 2017 Ozone Plan” or “Plan”) that address the requirements for emissions inventories, a demonstration of attainment by the applicable attainment date, reasonably available control measures, reasonable further progress (RFP), motor vehicle emission budgets for transportation conformity, vehicle inspection and maintenance programs, new source review rules, and offsets. The EPA is proposing to disapprove the portion of the MAG 2017 Ozone Plan that addresses the requirements for contingency measures for failure to attain or to make RFP. However, based on a separate proposed action finding that the Phoenix nonattainment area attained the 2008 ozone standard by the applicable attainment date, we are also proposing to determine that the requirement for contingency measures will no longer apply to the Phoenix nonattainment area. Finally, we are proposing to approve the portions of a

SIP revision, the “2014 Eight-Hour Ozone Plan—Submittal of Marginal Area Requirements for the Maricopa Nonattainment Area (June 2014)” (“MAG 2014 Ozone Plan”), on which we previously deferred action.

DATES: Written comments must arrive on or before November 4, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2019–0541 at <https://www.regulations.gov>. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Nancy Levin, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Phone: (415) 972–3848 or by email at levin.nancy@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

Table of Contents

- I. Regulatory Context
 - A. Ozone Standards, Area Designations, and SIPs
 - B. The Phoenix 2008 Ozone Nonattainment Area
- II. Submission From the State of Arizona To Address 2008 Ozone Requirements in the Phoenix Nonattainment Area
 - A. Summary of Submission
 - B. Clean Air Act Procedural Requirements for Adoption and Submission of SIP Revisions
- III. Evaluation of the MAG 2017 Ozone Plan
 - A. Emissions Inventories
 - B. Reasonably Available Control Measures Demonstration and Control Strategy
 - C. Attainment Demonstration

- D. Reasonable Further Progress Demonstration
- E. Contingency Measures in the Event of Failure To Make Reasonable Further Progress or Attain
- F. Motor Vehicle Emissions Budgets for Transportation Conformity
- G. Vehicle Inspection and Maintenance
- H. New Source Review Rules
- I. Offset Requirements
- IV. Proposed Action
- V. Statutory and Executive Order Reviews

I. Regulatory Context

A. Ozone Standards, Area Designations, and SIPs

Ground-level ozone is formed when oxides of nitrogen (NO_x) and volatile organic compounds (VOC) react in the presence of sunlight. These two pollutants, referred to as ozone precursors, are emitted by many types of pollution sources, including on- and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints.

Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases. Ozone exposure also has been associated with increased susceptibility to respiratory infections, medication use, doctor visits, and emergency department visits and hospital admissions for individuals with lung disease. Ozone exposure also increases the risk of premature death from heart or lung disease. Children are at increased risk from exposure to ozone because their lungs are still developing, and they are more likely to be active outdoors, which increases their exposure.¹ In 1979, under CAA section 109, the EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm) averaged over a 1-hour period.²

On July 18, 1997, the EPA revised the primary and secondary NAAQS for ozone to 0.08 ppm, averaged over an 8-hour period (“1997 ozone standard”).³ The EPA set the 1997 ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was

set. The EPA determined that the 1997 ozone standard would be more protective of human health, especially of children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On March 12, 2008, the EPA revised the primary and secondary NAAQS for ozone to 0.075 ppm (annual fourth-highest daily maximum 8-hour concentration, averaged over 3 years) (“2008 ozone standard”).⁴ The EPA set the 2008 ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1997 ozone standard was set. The EPA determined that the 2008 ozone standard would be more protective of human health, especially of children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

In accordance with section 107(d) of the CAA, the EPA must designate an area “nonattainment” if it is violating the NAAQS or if it is contributing to a violation of the NAAQS in a nearby area. On May 21, 2012, the EPA designated areas of the country with respect to the 2008 ozone standard.⁵

The EPA proposed the 2008 ozone standard SIP Requirements Rule (“2008 Ozone SRR” or SRR) on June 6, 2013⁶ and finalized the SRR on March 6, 2015,⁷ effective April 6, 2015. The SRR promulgated implementation requirements for the 2008 ozone NAAQS and revoked the 1997 ozone standard.⁸ The rule is codified at 40 CFR part 51, subpart AA. The SRR was challenged by various parties, and on February 16, 2018, the U.S. Court of Appeals for the D.C. Circuit published its decision in *South Coast Air Quality Management District v. EPA*⁹ (“*South Coast II*”) vacating portions of the

⁴ 73 FR 16436 (March 27, 2008). Since the 2008 primary and secondary NAAQS for ozone are identical, for convenience, we refer to both as “the 2008 ozone NAAQS” or “the 2008 ozone standard.”

⁵ 77 FR 30087 and 40 CFR 81.330.

⁶ 78 FR 34178.

⁷ 80 FR 12264, codified at 40 CFR part 51, subpart AA.

⁸ The SRR revokes the 1997 ozone NAAQS, but not all of the requirements for implementing the 1997 ozone NAAQS.

⁹ *South Coast Air Quality Management District v. EPA*, 882 F.3d 1138 (D.C. Cir. 2018) (“*South Coast II*”).

¹⁰ The term “*South Coast II*” is used in reference to the 2018 court decision to distinguish it from a decision published in 2006 also referred to as “*South Coast*.” The earlier decision involved a challenge to the EPA’s Phase 1 implementation rule for the 1997 ozone NAAQS. *South Coast Air*

¹ “Fact Sheet–2008 Final Revisions to the National Ambient Air Quality Standards for Ozone” dated March 2008 and 75 FR 2938 (January 19, 2010).

² 44 FR 8202 (February 8, 1979).

³ 62 FR 38856 (July 18, 1997).

2008 Ozone SRR. The *South Coast II* decision does not affect this proposed action.

On October 1, 2015, the EPA strengthened the primary and secondary 8-hour ozone NAAQS to 0.070 ppm (annual fourth-highest daily maximum 8-hour concentration, averaged over 3 years).¹¹ Today's action only applies to the 2008 ozone standard and does not address requirements of the 2015 ozone standard.

In Arizona, the Arizona Department of Environmental Quality (ADEQ or "State") is the state agency responsible for the adoption and submission of SIP revisions to the EPA. In the Phoenix nonattainment area, MAG develops and adopts air quality management plans to address CAA planning requirements applicable to that region. MAG submits those plans to ADEQ, which in turn adopts and submits the plans to the EPA.

B. The Phoenix 2008 Ozone Nonattainment Area

The EPA designated the Phoenix area as nonattainment for the 2008 ozone standard on May 21, 2012, effective July 20, 2012.¹² The Phoenix nonattainment area, which includes a portion of Maricopa County and a portion of Pinal County, was classified by operation of law as "Marginal" nonattainment¹³ and became subject to Marginal nonattainment area requirements under the CAA.¹⁴ On July 2, 2014, ADEQ submitted the MAG 2014 Ozone Plan.

On October 16, 2015, the EPA took direct final action to approve the MAG 2014 Ozone Plan with respect to the requirements of CAA section 182(a)(1) (Base Year Emissions Inventory), 182(a)(2)(A) (Reasonably Available Control Technology Corrections), and 182(a)(2)(B) (Vehicle Inspection and Maintenance Programs), and 182(a)(3)(B) (Emissions Statements).¹⁵ We deferred action with respect to the requirements of CAA sections 176(c) (Transportation Conformity), 182(a)(2)(C) (Permit Programs) and 182(a)(4) (General Offset Requirement).

On August 27, 2015, the EPA proposed to reclassify the Phoenix nonattainment area as "Moderate" nonattainment for the 2008 ozone NAAQS because the area failed to attain

the 2008 ozone standard by the Marginal area attainment deadline of July 20, 2015.¹⁶ The EPA finalized this action on May 4, 2016.¹⁷ As a result of this reclassification to Moderate nonattainment, the Phoenix nonattainment area, already subject to Marginal Area requirements, became subject to additional requirements, including: A reasonably available control measures (RACM) demonstration; an attainment demonstration; an RFP demonstration; contingency measures to provide for RFP and attainment; motor vehicle emission budgets (MVEB or "budgets") for transportation conformity; and Moderate area vehicle inspection and maintenance (I/M) provisions.¹⁸ SIP revisions addressing these requirements¹⁹ were due to the EPA by January 1, 2017.²⁰

II. Submission From the State of Arizona To Address 2008 Ozone Requirements in the Phoenix Nonattainment Area

A. Summary of Submission

On December 13, 2016, in response to the area's reclassification to Moderate nonattainment for the 2008 ozone standard, ADEQ adopted the MAG 2017 Ozone Plan, which had previously been adopted by MAG and forwarded to ADEQ for adoption and submittal to the EPA. ADEQ submitted the MAG 2017 Ozone Plan to the EPA as a revision to the Arizona SIP on December 19, 2016.

The MAG 2017 Ozone Plan submittal consists of documents developed by MAG and the Maricopa County Air Quality District (MCAQD). The plan addresses the requirements for emissions inventories, air quality modeling demonstrating attainment of the 2008 ozone standard by the applicable attainment year, provisions demonstrating implementation of RACM, and a demonstration of RFP, among other requirements.

B. Clean Air Act Procedural Requirements for Adoption and Submission of SIP Revisions

CAA section 110(a)(1) and (2), and 110(l) require states to provide reasonable notice and opportunity for public hearing prior to the adoption and submission of a SIP or SIP revision. To meet this requirement, every SIP

submittal must include evidence that adequate public notice was given and an opportunity for a public hearing was provided consistent with the EPA's implementing regulations in 40 CFR 51.102.

Section 110(k)(1)(B) requires the EPA to determine whether a SIP submittal is complete within 60 days of receipt. Any plan that we have not affirmatively determined to be complete or incomplete will become complete six months after the day of submittal by operation of law. A finding of completeness starts a 12-month clock for the EPA to act on the SIP submittal.²¹ ADEQ's submittal documents the public review process followed by MAG and ADEQ in adopting the MAG 2017 Ozone Plan prior to submittal to the EPA as a revision to the SIP.²² The public hearing was held October 17, 2016, at the MAG offices in Phoenix.²³ In addition, ADEQ's submittal documents the adoption of the MAG 2017 Ozone Plan by the MAG Regional Council and authorization to submit the plan to ADEQ and the EPA on December 7, 2016.²⁴ On December 19, 2016, ADEQ submitted to the EPA the MAG 2017 Ozone Plan and requested its approval into the Arizona SIP.²⁵

Based on the documentation included in ADEQ's submittal, we find that the MAG 2017 Ozone Plan satisfies the procedural requirements of sections 110(a)(1), 110(a)(2) and 110(l) of the Act requiring states to provide reasonable notice and opportunity for public hearing prior to adoption of SIP revisions. The MAG 2017 Ozone Plan became complete by operation of law on June 19, 2017, pursuant to section 110(k)(1)(B).

We previously found that the MAG 2014 Ozone Plan also satisfied the procedural requirements of sections 110(a)(1) and 110(l) of the Act.²⁶ The MAG 2014 Ozone Plan became complete by operation of law on January 2, 2015, pursuant to section 110(k)(1)(B).

²¹ CAA section 110(k)(2).

²² Plan Appendix C Exhibit 1—Public Hearing Process Demonstration.

²³ *Id.*

²⁴ Plan Appendix C, Exhibit 2: Certification of Adoption and MAG Authority for Regional Air Quality Planning.

²⁵ See letter dated December 13, 2016, from Timothy S. Franquist, ADEQ, to Alexis Strauss, EPA, which was submitted electronically to the EPA with the MAG 2017 Ozone Plan on December 19, 2019.

²⁶ 80 FR 62457, 62458.

Quality Management Dist. v. EPA, 472 F.3d 882 (D.C. Cir. 2006).

¹¹ 80 FR 65292.

¹² 77 FR 30088.

¹³ 40 CFR 81.303.

¹⁴ See section 172, "Nonattainment plan provisions," and subpart 2, "Additional Provisions for Ozone Nonattainment Areas," sections 181 and 182(a).

¹⁵ 80 FR 62457.

¹⁶ 80 FR 51992.

¹⁷ 81 FR 26697.

¹⁸ CAA section 182(b).

¹⁹ We note that the EPA discontinued the "Stage II Vapor Recovery Program" required under CAA section 182(b)(3). 80 FR 70689 (November 16, 2015).

²⁰ 80 FR 51992, 51999.

III. Evaluation of the MAG 2017 Ozone Plan

A. Emissions Inventories

1. Statutory and Regulatory Requirements and Guidance

Sections 172(c)(3) and 182(a)(1) of the CAA require states to submit for each ozone nonattainment area a “base year inventory” that is a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in the area. The 2008 Ozone SRR requires that the inventory year be selected consistent with the baseline year for the RFP demonstration, which is the most recent calendar year for which a complete triennial inventory is required to be submitted to the EPA under the Air Emissions Reporting Requirements.²⁷

In addition, CAA section 182(a)(3)(A) and the 2008 Ozone SRR at 40 CFR 51.1115(b) require states to submit a periodic emissions inventory of emissions sources in each ozone nonattainment by the end of each 3-year period after the required submission of the base year inventory for the nonattainment area. Finally, although not expressly required by the CAA, future year emissions inventories are also necessary for photochemical modeling to demonstrate attainment, as well as to demonstrate RFP.

The EPA has issued guidance on the development of base year, periodic, and future year emissions inventories for 8-hour ozone and other pollutants.²⁸ Emissions inventories for ozone must include emissions of VOC and NO_x and represent emissions for a typical ozone season weekday.²⁹ States should include documentation explaining how the emissions data were calculated. In estimating mobile source emissions, states should use the latest emissions models and planning assumptions available at the time the SIP is developed.³⁰

²⁷ 2008 Ozone SRR at 40 CFR 51.1115(a) and the Air Emissions Reporting Requirements at 40 CFR part 51 subpart A.

²⁸ “Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,” EPA-454/B-17-002, May 2017. At the time the MAG 2017 Ozone Plan was developed, the following EPA emissions inventory guidance applied: “Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations” EPA-454-R-05-001, November 2005.

²⁹ 40 CFR 51.1115(a) and (c), and 40 CFR 51.1100(bb) and (cc).

³⁰ 80 FR 12264, at 12290 (March 6, 2015).

2. Summary of the State’s Submission

The MAG 2017 Ozone Plan includes a base year (2011) inventory,³¹ a periodic (2014) inventory,³² and a future (attainment) year (2017) inventory.³³

3. The EPA’s Evaluation

Based in part on a supplemental “recast” ozone season-day emissions inventory for June–August, we previously approved the 2011 base year inventory submitted with MAG’s 2014 Ozone Plan as meeting the requirements of CAA section 182(a)(1) and 40 CFR 51.1115.³⁴ We recommended that this revised 2011 ozone season-day emission inventory be included as part of the Moderate area SIP revision.³⁵ This inventory is included as part of Appendix A, Exhibit 1 in the MAG 2017 Ozone Plan. Based on the evaluation in that previous approval, we find that this revised inventory meets the requirements of CAA section 182(a)(1).

The 2014 periodic inventory generally follows the same approach as the 2011 inventory. Accordingly, we propose to find that it meets the requirements of CAA section 182(a)(3)(A) and 40 CFR 51.1115.

With respect to the 2017 modeling emissions inventory, we have reviewed the growth and control factors and find them acceptable and conclude that the future emissions projections in the MAG 2017 Ozone Plan reflect appropriate calculation methods. For further discussion of the future year 2017 modeling emissions inventory, see section III.C. of this notice (“Attainment Demonstration”).

B. Reasonably Available Control Measures Demonstration and Control Strategy

1. Statutory and Regulatory Requirements and Guidance

CAA section 172(c)(1) requires that each attainment plan provide for the implementation of all RACM as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through implementation of reasonably available control technology (RACT))³⁶ and provide for attainment of

³¹ MAG 2017 Ozone Plan, Appendix A, Exhibit 1.

³² Id. Appendix A, Exhibit 2.

³³ Id. Appendix A to Appendix B, Exhibit 1, (“Modeling Protocol”), section 6.2.

³⁴ 80 FR 62457, 62459.

³⁵ Id.

³⁶ For ozone nonattainment areas classified as Moderate or above, CAA section 182(b)(2) also requires implementation of RACT for all major sources of VOC and for each VOC source category for which the EPA has issued a Control Techniques Guideline. CAA section 182(f) requires that RACT

the NAAQS. The 2008 Ozone SRR requires that, for each nonattainment area required to submit an attainment demonstration, the state concurrently submit a SIP revision demonstrating that it has adopted all RACM necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements.³⁷

In the preamble to final SRR, the EPA explained that we would continue to apply existing RACM guidance to the 2008 ozone NAAQS.³⁸ In particular, the EPA has previously provided guidance interpreting the RACM requirement in the General Preamble for the Implementation of the Clean Air Act Amendments of 1990 and in a memorandum entitled “Guidance on the Reasonably Available Control Measure Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas.”³⁹ Consistent with this existing guidance, we interpret the RACM provision to require a demonstration that the state has adopted all reasonable measures (including RACT) to meet RFP requirements and to demonstrate attainment as expeditiously as practicable and thus that no additional measures that are reasonably available will advance the attainment date or contribute to RFP for the area.⁴⁰ States should consider all available measures, including those being implemented in other areas, but are only required to adopt measures that are economically and technologically feasible and will advance the attainment date or are necessary for RFP.⁴¹ Any measures that are necessary to meet these requirements that are not already either federally promulgated, or part of the state’s SIP, or otherwise creditable in the SIP, must be submitted in enforceable form as part of the state’s attainment plan for the area.

CAA section 172(c)(6) requires that nonattainment area plans include enforceable emissions limitations, and such other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emission

under section 182(b)(2) also apply to major stationary sources of NO_x. ADEQ has submitted separate SIP revisions to address these requirements. We are not addressing the section 182 RACT requirements in today’s proposed rule.

³⁷ 40 CFR 51.1112(c).

³⁸ 80 FR 12264, 12282.

³⁹ See General Preamble, 57 FR 13498 at 13560 (April 16, 1992) and Memorandum dated November 30, 1999, from John Seitz, Director, OAQPS, to Regional Air Directors, titled “Guidance on the Reasonably Available Control Measure Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas.”

⁴⁰ 80 FR 12264, 12282.

⁴¹ Id.

rights), and schedules and timetables for compliance, as may be necessary or appropriate to provide for timely attainment of the NAAQS.⁴² Under the 2008 Ozone SRR, all control measures needed for attainment must be implemented no later than the beginning of the attainment year ozone season.⁴³ The attainment year ozone season is defined as the ozone season immediately preceding a nonattainment area's maximum attainment date.⁴⁴

2. Summary of the State's Submission

MAG addresses RACM requirements in Chapter Four, "Evaluation of Control Measure Requirements in the Clean Air Act." To identify RACM, MAG reviewed existing control measures for ozone precursors in the Phoenix nonattainment area and compared them to the EPA's Menu of Control Measures (MCM)⁴⁵ and to VOC and NO_x rules in the Sacramento Metropolitan Air Quality Management District (SMAQMD).⁴⁶ In Table 4–1 of the MAG 2017 Ozone Plan, MAG lists 93 existing ozone control measures and the dates that they were approved by the EPA. In the years prior to the adoption of the MAG 2017 Ozone Plan, MAG developed and the EPA approved comprehensive plans to provide for attainment of the NAAQS for carbon monoxide (e.g., Revised MAG 1999 Serious Area Carbon Monoxide Plan)⁴⁷ and ozone (e.g., 2000

Ozone Plan for the 1-hour ozone NAAQS, 2007 Ozone Plan for the 1997 ozone NAAQS, and 2009 Redesignation Request and Maintenance Plan for the 1997 ozone NAAQS).⁴⁸ These plans, and other actions, have resulted in the adoption of new rules and amendments to existing rules for stationary, area, and mobile sources, many of which are listed in Table 4–1 of the Plan.

When comparing the existing measures in the Phoenix nonattainment area with the MCM, MAG generally finds the following: (1) MCAQD has adopted rules that have equivalent controls; (2) the controls apply to sources that are not present in the nonattainment area (e.g., cement kilns, Fluid Catalytic Cracking Units, glass manufacturing); and/or (3) the controls are not necessary for attainment or RFP and will not advance the attainment date.⁴⁹ When comparing the existing measures with SMAQMD NO_x and VOC rules, MAG finds the following: MCAQD has adopted rules that have equivalent controls (e.g., Rule 348, Aerospace Manufacturing and Rework Operations; Rule 337, Graphic Arts; and Rule 331, Solvent Cleaning) and/or additional controls are not necessary for attainment or RFP and will not advance the attainment date.⁵⁰ With respect to the Pinal County portion of the Phoenix nonattainment area, MAG notes the

following: There are no major sources of NO_x and VOC; the RACT rules for the only two source categories subject to RACT requirements, gas stations and a metal surface coating operation, are currently being updated; and the few remaining permitted stationary sources in the Pinal County portion of the nonattainment area have negligible emissions in comparison to total anthropogenic emissions in the nonattainment area.⁵¹ MAG also concludes that additional controls beyond those required by existing rules are not necessary for expeditious attainment or RFP because modeling indicates that the existing control measures are sufficient to demonstrate attainment as expeditiously as practicable and to make RFP. In addition, MAG notes that any new or strengthened measures could not be implemented in time to advance the attainment date.

MAG describes the overall control strategy for the Phoenix ozone nonattainment area in Chapter 5 of the Plan. In Table 5–1 of the Plan MAG lists 93 existing and approved federal, state, and local ozone control measures in the Phoenix nonattainment area. Out of these 93 measures, MAG identifies 13 measures with quantifiable emissions reduction benefits.⁵² Table 1 lists these 13 measures.

TABLE 1—CONTROL MEASURES USED FOR NUMERIC EMISSIONS REDUCTIONS CREDIT

Rule Title	Source category	Citation for EPA approval
Long-Term Fuel Reformulation: From and After May 1, 1999	Onroad/Nonroad	70 FR 11553 (March 9, 2005).
Phased-In Emission Test Cutpoints	Onroad	70 FR 11553 (March 9, 2005).
One-Time Waiver from Vehicle Emissions Test	Onroad	70 FR 11553 (March 9, 2005).
Tougher Enforcement of Vehicle Registration and Emissions Test Compliance	Onroad	70 FR 11553 (March 9, 2005).
Expansion of Area A boundaries	Onroad/Nonroad/ Area.	70 FR 11553 (March 9, 2005).
Gross Polluter Option for I/M Program Waivers	Onroad	70 FR 11553 (March 9, 2005).
Coordinate Traffic Signal Systems	Onroad	70 FR 11553 (March 9, 2005).
Develop Intelligent Transportation Systems	Onroad	70 FR 11553 (March 9, 2005).
Federal Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements; Federal Tier 3 Motor Vehicle Emission and Fuel Standards.	Onroad	65 FR 6697 (February 2, 2000); 79 FR 23413 (April 28, 2014).
Federal Phase 1 Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles; Phase 1 and Phase 2 Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards.	Onroad	76 FR 57105 (September 15, 2011); 75 FR 25323 (May 7, 2010); 77 FR 62623 (October 15, 2012).
Federal Nonroad Equipment Emissions Standards (Control of Emissions of Air Pollution From Nonroad Diesel Engines and Fuel; Control of Emissions of Air Pollution From Nonroad Diesel Engines; Control of Emissions From Nonroad Spark-Ignition Engines and Equipment).	Nonroad	69 FR 38957 (June 29, 2004); 63 FR 56968 (October 23, 1998); 73 FR 59033 (October 8, 2008).
Federal Heavy-Duty Diesel Vehicle Emissions Standards (Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements).	Onroad	66 FR 5001 (January 18, 2001); 77 FR 35285 (June 13, 2012).

⁴² See also CAA section 110(a)(2)(A).

⁴³ 40 CFR 51.1108(d).

⁴⁴ 40 CFR 51.1100(h).

⁴⁵ <https://www.epa.gov/air-quality-implementation-plans/menu-control-measures-naaqs-implementation>. The Menu of Control Measures for NAAQS Implementation provides state, local and tribal air agencies with information

on existing emissions reduction measures and relevant information concerning the efficiency and cost effectiveness of the measures. The MCM is intended to provide a broad, though not comprehensive, listing of potential emissions for direct PM_{2.5} and ozone precursors, for use as an initial screening step.

⁴⁶ The Sacramento metropolitan area is classified as "Severe-15" for the 2008 ozone NAAQS.

⁴⁷ 70 FR 11553 (March 9, 2005).

⁴⁸ 70 FR 34362 (June 14, 2005), 77 FR 35285 (June 13, 2012), 79 FR 55645 (September 17, 2014).

⁴⁹ Plan, Table 4–2.

⁵⁰ Plan, Table 4–3.

⁵¹ Plan, 4–2–4–3.

⁵² Plan, 5–12.

TABLE 1—CONTROL MEASURES USED FOR NUMERIC EMISSIONS REDUCTIONS CREDIT—Continued

Rule Title	Source category	Citation for EPA approval
Control of Hazardous Air Pollutants From Mobile Sources (including VOCs from portable gas cans).	Onroad/Area	72 FR 8427 (February 26, 2007).

Source: Plan, 5–12–5–18.

MAG states that the first 12 measures listed in Table 1 will result in onroad and nonroad emissions reductions.⁵³ Specifically, MAG states that the measures will produce onroad reductions, on an average ozone season day in 2017, of 25.3 metric tons per day (tpd) of VOC and 54.5 metric tpd of NO_x. MAG states that the nonroad mobile source emissions reductions in 2017 for these 12 measures are 7.6 metric tpd of VOC and 17.3 metric tpd of NO_x. MAG states that the final measure listed in Table 1 (Control of Hazardous Air Pollutants From Mobile Sources) will result in 6.2 metric tpd of VOC reductions on an average ozone season day. MAG notes that MCAQD and the Pinal County Air Quality Control District (PCAQCD) separately prepared RACT analyses to meet the requirements of CAA sections 182(b)(2) and 182(f). However, MAG did not include reductions from RACT rules in the RACM determination and the attainment demonstration (described in section III.B of this notice) because it determined that RACT-related reductions were not necessary for expeditious attainment or for RFP requirements.

3. The EPA's Evaluation

The process followed by MAG in the MAG 2017 Ozone Plan to identify RACM is generally consistent with the EPA's recommendations in the General Preamble. The process included comparing existing control measures in the Phoenix nonattainment area to a comprehensive list of potential control measures for sources of NO_x and VOC. As part of this process, MAG evaluated potential controls for all relevant source categories. MAG provided justification for rejecting measures that may provide greater emissions reductions, namely that those measures are not necessary for attainment or reasonable further progress and will not advance the Moderate Area attainment date.

We have reviewed MAG's determination in the MAG 2017 Ozone Plan that its control measures represent RACM for NO_x and VOC. MAG presented 13 measures for which it is claiming numerical credit towards attainment. We agree with the

conclusion that there are no additional reasonably available measures that would advance attainment of the 2008 ozone standards in the Phoenix area by at least one year, because advancing attainment by one year could only have been achieved through implementation of additional controls by January 1, 2016, one year before the attainment plan was due. As explained in section III.C of this notice, we find that MAG has met RFP requirements with existing measures. Because the plan demonstrates expeditious attainment and RFP without new or more stringent control measures, we agree that the area's rules provide for the implementation of RACM for NO_x and VOC. For the foregoing reasons, we propose to find that the MAG 2017 Ozone Plan provides for the implementation of all RACM as required by CAA section 172(c)(1) and 40 CFR 51.1112(c).

C. Attainment Demonstration

1. Statutory and Regulatory Requirements and Guidance

CAA section 182(b)(1)(A)(i) requires RFP plans for Moderate areas to provide for such specific annual reductions in emissions of VOC and NO_x as necessary to attain the NAAQS by the applicable attainment date. The EPA interprets this as a requirement for Moderate areas to submit an attainment demonstration.⁵⁴ Accordingly, under the SRR, Moderate areas are required to submit an attainment demonstration "based on photochemical grid modeling or any other analytical method determined . . . to be at least as effective."⁵⁵ The demonstration must also meet the requirements of 40 CFR 51.112,⁵⁶ which refers to the EPA's "Guideline on Air Quality Models," 40 CFR part 50, Appendix W. The attainment demonstration predicts future ambient concentrations for comparison to the NAAQS, making use of available information on measured concentrations, meteorology, and current and projected emissions inventories of ozone precursors,

including the effect of control measures in the plan.

As described in section II.B of this notice, the Phoenix area was designated nonattainment effective July 20, 2012, and was reclassified to Moderate nonattainment in 2016. Therefore, the attainment date for the 2008 ozone NAAQS is as expeditious as practicable but no later than July 20, 2018.⁵⁷ As explained in the preamble to the SRR, "[t]o demonstrate attainment, the modeling results for the nonattainment area must predict that emissions reductions implemented by the beginning of the last full ozone season preceding the attainment date will result in ozone concentrations that meet the level of the standard."⁵⁸ The SRR defines "ozone season" with reference to each state's ozone monitoring season,⁵⁹ which for Arizona is year-round.⁶⁰ Therefore, the modeling year for Phoenix must be no later than 2017.⁶¹

The Guideline on Air Quality Models recommends the use of photochemical grid models for ozone attainment demonstrations and encourages states to follow current modeling guidance.⁶² The EPA's recommended procedures for modeling ozone as part of an attainment demonstration are contained in "Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, PM_{2.5}, and Regional Haze" ("Modeling Guidance").⁶³ The Modeling Guidance includes recommendations for a modeling protocol, model input preparation, model performance evaluation, use of model output for the numerical NAAQS attainment test, and modeling documentation. Air quality modeling is performed using meteorology and emissions from a base year, and the predicted concentrations from this base case modeling are compared to air

⁵⁷ 40 CFR 51.1103(a).

⁵⁸ 80 FR 12264, 12270.

⁵⁹ 40 CFR 51.1110(n).

⁶⁰ 40 CFR part 58, appendix D, section 4.1(i).

⁶¹ 80 FR 12264, 12270.

⁶² 40 CFR part 50, appendix W, section 5.3.1.

⁶³ "Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, PM_{2.5}, and Regional Haze", November 2018, EPA 454/R-18-009 ("Modeling Guidance").

⁵⁴ 80 FR 12264, 12269.

⁵⁵ 40 CFR 51.1108(c).

⁵⁶ Id.

⁵³ Plan, Chapter 5.

quality monitoring data from that year to evaluate model performance.

Once the model performance is determined to be acceptable, future year emissions are simulated with the model. The relative (or percent) change in modeled concentration due to future emissions reductions provides a Relative Response Factor (RRF). Each monitoring site's RRF is applied to its monitored base year design value to provide the future design value for comparison to the NAAQS. The Modeling Guidance also recommends supplemental air quality analyses, which may be used as part of a weight of evidence (WOE) analysis. A WOE analysis corroborates the attainment demonstration by considering evidence other than the main air quality modeling attainment test, such as trends and additional monitoring and modeling analyses.

2. Summary of the State's Submission and the EPA's Evaluation

MAG performed the air quality modeling for the plan, which relies on a 2011 base year and demonstrates attainment in 2017.⁶⁴ The plan includes a modeling protocol that details and formalizes the procedures MAG used to prepare the attainment demonstration. The modeling protocol contains all the elements recommended in the Modeling Guidance: An overview of the air quality issue; selection of model, time period to model, modeling domain, and model boundary conditions and initialization procedures; a discussion of emissions inventory development and other model input preparation procedures; model performance evaluation procedures; selection of days and other details for calculating RRFs; supplemental analyses needed to develop a WOE analysis; and a list of participants in the analyses, schedules, and deliverables.⁶⁵

The modeling and modeled attainment demonstration are described in Chapter 6 of the MAG 2017 Ozone Plan and in more detail in Appendix B, Exhibit 1 ("Modeling Technical Support Document" or "Modeling TSD"). The modeling analysis uses version 6.2 of the Comprehensive Air Quality Model with Extensions (CAMx) with meteorological input generated using the Weather and Research Forecasting

model version 3.7 (WRF). CAMx and WRF are both recognized in the Modeling Guidance as technically sound, state-of-the-art models. We reviewed the areal extent and the horizontal and vertical resolution used in these models and determined they were adequate for modeling Phoenix ozone. MAG chose 2011 as the model base year because it corresponded to the most recent triennial inventory at the time of plan development. Additionally, supplemental analysis in Section IV of the Modeling TSD shows that 2011 had among the highest number of ozone exceedance days and 4th highest daily maximum ozone concentrations in the 2009–2014 period. MAG modeled May through September, which spans the period of highest ozone concentrations in the Phoenix area.

Section IV of the Modeling TSD describes the meteorological and ozone model performance statistics used to evaluate the modeling. MAG provides statistical metrics for modeled wind speed, wind direction, temperature, and water vapor mixing ratio compared to observations from 13 weather stations in the nonattainment area paired in time and space. Temperature and water vapor mixing ratios show good agreement with observations, with little bias. The modeled wind speed shows an overestimate at low wind speeds and an underestimate at high wind speed. Modeled wind direction shows poorer performance for wind directions from the south-east. MAG asserts that modeling wind speed and direction in Phoenix is difficult due to the complex terrain in the area, but that results are comparable to the benchmarks described in the Modeling Guidance. No phenomenological evaluation, as described in the Modeling Guidance, was provided in the MAG 2017 Ozone Plan. While this type of analysis would have provided additional confidence, the model adequately simulates the temporal and spatial variability in ozone concentrations across the area, suggesting the model captures the meteorological phenomena that are important for ozone formation in the Phoenix area. We agree that the plan's meteorological modeling performance statistics appear satisfactory.

Ozone model performance is described in Section IV–2 of the Modeling TSD and includes a comprehensive operational evaluation including tables of statistics, as recommended in the Modeling Guidance, for 1-hour ozone, daily maximum 8-hour ozone, and 8-hour ozone greater than 60 parts per billion (ppb) for the Phoenix area. Figures IV–5 through IV–10 of the Modeling TSD

provide time series plots, scatter plots, spatial maps of mean error and bias, and box plots comparing model performance with previous studies.

MAG set adequacy goals for normalized mean bias (± 15 percent) and normalized mean error (35 percent), and results were well within these goals for the five-month modeling period, except in July where the model underpredicted ozone values greater than 60 ppb (normalized mean bias was -21 percent). The timeseries comparisons show generally good performance, except for a few periods where peak ozone concentrations were underpredicted in July and overpredicted in August. MAG modeling statistics are within or close to the distribution of other published modeling studies. Overall, the operational evaluation shows good model performance. While the addition of some dynamic and diagnostic evaluations as described in the Modeling Guidance would have provided additional confidence, the information provided in the MAG 2017 Ozone Plan supports the adequacy of the modeling for the attainment demonstration.

After determining that model performance for the 2011 base case was acceptable, MAG applied the model to develop RRFs for the attainment demonstration.⁶⁶ This entailed running the model with the same meteorological inputs as before, but with adjusted emissions inventories to reflect the expected changes between 2011 and the 2017 attainment year.

MAG carried out the attainment test procedure consistent with the Modeling Guidance. The RRFs were calculated as the ratio of future to base year concentrations. This was done for each monitor using the top 10 ozone days over 60 ppb in the base year simulation. The resulting RRFs were then applied to 2011 weighted base year design values⁶⁷ for each monitor to arrive at 2017 future year design values.⁶⁸ The highest 2017 ozone design value calculated is 0.0756 ppm, which occurs at the North Phoenix site. Ozone design values are truncated to the third decimal digit, so this value is sufficient to demonstrate attainment of the 2008 ozone standard.⁶⁹

⁶⁶ See Chapter 6, pp. 6–8–6–11, and Modeling TSD, Section V–1.

⁶⁷ The Modeling Guidance recommends that RRFs be applied to the average of 3-year design values centered on the base year, in this case the design values for 2009–2011, 2010–2012, and 2011–2013. This amounts to a 5-year weighted average of individual year 4th high concentrations, centered on the base year of 2011, and so is referred to as a weighted design value.

⁶⁸ Modeling TSD, Section V–1, Table V–2.

⁶⁹ 40 CFR part 50, Appendix P, section 2.2.

⁶⁴ As described in section III.A. 3 of this notice, the Plan demonstrates that no additional reasonably available measures would advance attainment of the 2008 ozone standards in the Phoenix area by at least one year ahead of 2017. Therefore, 2017 is the appropriate modeled attainment year.

⁶⁵ MAG 2017 Ozone Plan, Appendix B, Exhibit 1, ("Modeling Technical Support Document" or "Modeling TSD"), Appendix A.

Finally, the MAG 2017 Ozone Plan modeling includes an unmonitored area analysis to assess the attainment status of locations other than monitoring sites.⁷⁰ The Modeling Guidance describes a “gradient adjusted spatial fields” procedure and the EPA software (“Modeled Attainment Test Software” or MATS) used to carry it out.⁷¹ MAG used MATS v2.6.1 and showed that all modeled grid cells in the Phoenix area were predicted to be below the 2008 ozone standard in 2017. This analysis adds assurance that the attainment demonstration provides for attainment at all locations in Phoenix.

In addition to the formal attainment demonstration, the plan also contains a comprehensive WOE analysis.⁷² This analysis provides support and corroboration for the modeling used in the attainment demonstration and the credibility of attainment in 2017. Downward trends are demonstrated for measured ozone concentrations, number of days above the ozone standard, measured concentrations of the ozone precursors NO_x and VOC, and emissions of NO_x and VOC. These analyses show the substantial air quality progress made in the Phoenix area and add support to the attainment demonstration. In addition, on June 13, 2019, the EPA proposed to find that the area attained the 2008 ozone NAAQS based on quality-assured 2015–2017 data.⁷³

3. Summary of the EPA’s Evaluation

For the reasons described in the previous section, and given the extensive discussion of modeling procedures, tests, performance analyses, and the good model performance in the Plan, the EPA finds that the modeling is

adequate for purposes of supporting the attainment demonstration. The modeling shows that existing control measures are sufficient for the Phoenix area to attain the 2008 ozone standard by 2017.

D. Reasonable Further Progress Demonstration

1. Statutory and Regulatory Requirements and Guidance

Requirements for RFP for Moderate ozone nonattainment areas are specified in CAA sections 172(c)(2) and 182(b)(1). CAA section 172(c)(2) requires that plans for nonattainment areas provide for RFP, which is defined as such annual incremental reductions in emissions of the relevant air pollutant as are required under part D (“Plan Requirements for Nonattainment Areas”) or may reasonably be required by the EPA for the purpose of ensuring attainment of the applicable NAAQS by the applicable date. CAA section 182(b)(1) specifically requires that ozone nonattainment areas that are classified as Moderate or above demonstrate a 15 percent reduction in VOC between the years of 1990 and 1996. The EPA generally refers to section 182(b)(1) as the rate of progress (ROP) requirement.

In the 2008 Ozone SRR, the EPA provided two options for areas that have an approved 15 percent VOC ROP plan under the 1-hour or 1997 ozone NAAQS for only a portion of the 2008 NAA.⁷⁴ The MAG 2017 Ozone Plan employs the option to provide a demonstration of a 15 percent reduction in VOC emissions for the entire nonattainment area under 40 CFR 51.1100(a)(3)(i).⁷⁵ Except as specifically

provided in CAA section 182(b)(1)(C), emissions reductions from all SIP-approved, federally promulgated, or otherwise SIP-creditable measures that occur after the baseline year are creditable for purposes of demonstrating that the RFP targets are met. Because the EPA has determined that the passage of time has caused the effect of certain exclusions to be de minimis, the RFP demonstration is no longer required to calculate and specifically exclude reductions from measures related to motor vehicle exhaust or evaporative emissions promulgated by January 1, 1990; regulations concerning Reid vapor pressure promulgated by November 15, 1990; measures to correct previous RACT requirements; and, measures required to correct previous I/M programs.⁷⁶

The 2008 Ozone SRR requires the RFP baseline year to be the most recent calendar year for which a complete triennial inventory was required to be submitted to the EPA.⁷⁷ For the purposes of developing RFP demonstrations for the 2008 ozone standards, the applicable triennial inventory year is 2011.

2. Summary of the State’s Submission

MAG selected 2011 as its baseline year for ROP. Table 6–1 of the MAG 2017 Ozone Plan shows 2011 average ozone season anthropogenic VOC emissions of 195.78 metric tpd. MAG multiplies 195.78 tpd by 85 percent (100 percent minus 15 percent) to calculate a 2017 ROP target of 166.41 tpd. The plan estimates 2017 average daily VOC emissions at 165.28 metric tpd, which is equivalent to a 15.6 percent reduction in 2011 base year VOC emissions.⁷⁸

TABLE 2—OZONE SEASON AVERAGE DAILY EMISSIONS DURING MAY—SEPTEMBER IN 2011 AND 2017 FOR THE PHOENIX OZONE NONATTAINMENT AREA (METRIC TPD)

VOC emission categories	2011	2017	Percent reduction 2011–2017
Point	2.47	3.32	– 34.4
Area	94.46	96.05	– 1.7
Nonroad Mobile	27.89	20.26	27.4
Onroad Mobile	70.96	45.65	35.7
Total *	195.78	165.28	15.6

* Total percent change is a comparison of total 2011 VOC and 2017 VOC emissions, and is not the sum of the percent changes of the VOC emission categories in Table 2.

Source: Plan, Table 6–1.

⁷⁰ Modeling TSD, Section V–2.

⁷¹ Modeling Guidance, Section 4.7.

⁷² Modeling TSD, Section VI.

⁷³ 84 FR 27566.

⁷⁴ 40 CFR 51.1110(a)(3).

⁷⁵ MAG 2017 Ozone Plan, 6–16.

⁷⁶ 40 CFR 51.1110(a)(7).

⁷⁷ 40 CFR 51.1110(b). The 2008 Ozone SRR allowed states to use an alternative year, between 2008 and 2012, for the baseline emissions inventory provided that the state demonstrated why the alternative baseline year was appropriate. In *South*

Coast II, the U.S. Court of Appeals for the D.C. Circuit vacated this provision.

⁷⁸ See MAG 2017 Ozone Plan, Table 6–1, “Ozone Season Average Daily Emissions during May–September in 2011 and 2017 for the Maricopa Eight-Hour Ozone Nonattainment Area (metric tons/day).”

3. The EPA's Review of the State's Submission

MAG demonstrates a 15.6 percent reduction in VOC from 2011 to 2017, which meets the one-time ROP requirement for 15 percent reduction within 6 years from the baseline year. No other RFP demonstration is required for Moderate ozone nonattainment areas. Therefore, we propose to approve the RFP demonstration under sections 172(c)(2) and 182(b)(1)(A) of the CAA and 40 CFR 51.1110(a)(3).

E. Contingency Measures in the Event of Failure To Make Reasonable Further Progress or Attain

1. Statutory and Regulatory Requirements

Under the CAA, SIPs for ozone nonattainment areas classified under subpart 2 as Moderate must include contingency measures consistent with section 172(c)(9). Contingency measures are additional controls or measures to be implemented in the event the area fails to make RFP or attain the NAAQS by the attainment date. The SIP should contain trigger mechanisms for the contingency measures, specify a schedule for implementation, and indicate that the measure will be implemented without significant further action by the state or the EPA.⁷⁹

Neither the CAA nor the EPA's implementing regulations establish a specific amount of emissions reductions that implementation of contingency

measures must achieve, but the 2008 Ozone SRR reiterates the EPA's guidance recommendation that contingency measures should provide for emissions reductions approximately equivalent to one year's worth of RFP, thus amounting to reductions of 3 percent of the baseline emissions inventory for the nonattainment area.⁸⁰

It has been the EPA's long-standing interpretation of section 172(c)(9) that states may rely on existing federal measures (e.g., federal mobile source measures based on the incremental turnover of the motor vehicle fleet each year) and state or local measures in the SIP already scheduled for implementation that provide emissions reductions in excess of those needed to meet any other nonattainment plan requirements, such as meeting RACM/RACM, RFP or expeditious attainment requirements. The key is that the statute requires that contingency measures provide for additional emissions reductions that are not relied on for RFP or attainment and that are not included in the RFP or attainment demonstrations as meeting part or all of the contingency measure requirements. The purpose of contingency measures is to provide continued emissions reductions while the state revises the SIP to meet the missed milestone or attainment date.

The EPA has approved numerous nonattainment area plan submissions under this interpretation, i.e., SIP revisions that use as contingency measures one or more federal or state

control measures that are already in place and provide reductions that are in excess of the reductions required to meet other requirements or relied upon in the modeled attainment demonstration,⁸¹ and there is case law supporting the EPA's interpretation in this regard.⁸² However, in *Bahr v. EPA*, the Ninth Circuit rejected the EPA's interpretation of CAA section 172(c)(9) as allowing for approval of already implemented control measures as contingency measures.⁸³ The Ninth Circuit concluded that contingency measures must be measures that would take effect at the time the area fails to make RFP or attain by the applicable attainment date, not before.⁸⁴ Thus, within the geographic jurisdiction of the Ninth Circuit, states cannot rely on already implemented control measures to comply with the contingency measure requirements under CAA section 172(c)(9).

2. Summary of the State's Submission

The MAG 2017 Ozone Plan relies upon surplus emissions reductions from already implemented control measures in the 2017 attainment and RFP year to demonstrate compliance with the attainment and RFP contingency measure requirements of CAA section 172(c)(9).⁸⁵ The State claims that the projected combined VOC and NO_x emissions reductions between 2017 and 2018 of 3.68 percent (from the 2011 baseline) satisfies the CAA requirements for contingency measures.

TABLE 3—AVERAGE DAILY ANTHROPOGENIC VOC AND NO_x EMISSION REDUCTIONS IN 2018 FOR CONTINGENCY MEASURE REQUIREMENTS

[Metric tons/day]

	VOC					NO _x				
	2011	2017	2018	Reduction (2018–2017)	2018 Reduction from 2011	2011	2017	2018	Reduction (2018–2017)	2018 Reduction from 2011
Point	2.47	3.32	3.39	+0.07	2.83%	7.02	13.75	13.76	+0.01	0.14%
Area	94.46	96.05	97.88	+1.83	1.94%	10.96	12.59	12.98	+0.39	3.56%
Nonroad	27.89	20.26	20.07	–0.19	–0.68%	53.58	36.26	34.36	–1.90	–3.55%
Onroad	70.96	45.65	42.74	–2.91	–4.10%	117.15	62.69	58.05	–4.64	–3.96%
Total	195.78	165.28	164.08	–1.20	–0.61%	188.71	125.29	119.15	–6.14	–3.25%

Combined VOC and NO_x Emissions Reduction Percent in 2018: 3.86%.

Source: MAG 2017 Ozone Plan, Table V–4, page V–10.

⁷⁹ See 70 FR 71612 (November 29, 2005). See also 80 FR 12264, 12285.

⁸⁰ 80 FR 12264, 12285.

⁸¹ See, e.g., 62 FR 15844 (April 3, 1997) (direct final rule approving an Indiana ozone SIP revision); 62 FR 66279 (December 18, 1997) (final rule approving an Illinois ozone SIP revision); 66 FR 30811 (June 8, 2001) (direct final rule approving a

Rhode Island ozone SIP revision); 66 FR 586 (January 3, 2001) (final rule approving District of Columbia, Maryland, and Virginia ozone SIP revisions); and 66 FR 634 (January 3, 2001) (final rule approving a Connecticut ozone SIP revision).

⁸² See, e.g., *LEAN v. EPA*, 382 F.3d 575 (5th Cir. 2004) (upholding contingency measures that were previously required and implemented where they

were in excess of the attainment demonstration and RFP SIP).

⁸³ *Bahr v. EPA*, 836 F.3d 1218, at 1235–1237 (9th Cir. 2016).

⁸⁴ *Id.* at 1235–1237.

⁸⁵ MAG 2017 Ozone Plan, Chapter 4 and Appendix B, Exhibit 1, V–9 to V–10.

3. The EPA's Review of the State's Submission

Arizona is within the geographic jurisdiction of the Ninth Circuit and, therefore, following the *Bahr* decision, cannot rely on already implemented control measures to comply with the contingency measure requirement of CAA section 172(c)(9). Because the MAG 2017 Ozone Plan relies entirely upon such measures to meet the requirements of CAA section 172(c)(9), we are proposing to disapprove the contingency measure element of the plan.

However, we are also proposing to find that contingency measures are no longer required for the Phoenix nonattainment area for the 2008 ozone standard, for the reasons discussed below. Attainment contingency measures under 172(c)(9) are triggered upon the EPA's determination that an area failed to attain a given NAAQS by its applicable attainment date. Section 181(b)(2) requires the EPA to determine whether the area attained the NAAQS by its applicable attainment date. On June 13, 2019, the EPA proposed to determine that the Phoenix nonattainment area attained the Moderate area 2008 ozone NAAQS by the attainment date.⁸⁶ We also proposed to find that, upon finalization of that determination, the attainment contingency measure requirement would no longer apply to the Phoenix nonattainment area for the 2008 ozone NAAQS because attainment contingency measures for this NAAQS would never be required to be implemented.⁸⁷

We are now also proposing to find that, upon finalization of that determination of attainment by the attainment date, the RFP contingency measure requirement would no longer apply to the Phoenix nonattainment area for the 2008 ozone NAAQS, for the reasons that follow. The purpose of the RFP requirements under the CAA is to "ensur[e] attainment of the applicable [NAAQS] by the applicable date."⁸⁸ Consistent with this purpose, under CAA section 182(g), ozone nonattainment areas classified "Serious" or higher are required to meet RFP emission reduction "milestones" and to demonstrate compliance with those milestones, except when the milestone coincides with the attainment date and the standard has been attained.⁸⁹ This specific statutory exemption from milestone compliance

demonstration submittals for areas that attained by the attainment date indicates that Congress intended that a finding that an area attained the standard—the finding made in a determination of attainment by the attainment date—would serve as a demonstration that RFP requirements for the area have been met. In other words, if a Serious or above area has attained the NAAQS by the attainment date, the RFP milestones have been sufficiently achieved. Accordingly, such a finding would also indicate that RFP contingency measures could not be triggered and are therefore no longer necessary.

In the case of Moderate areas, there are no RFP milestone compliance demonstration requirements.⁹⁰ Accordingly, the EPA's long-standing interpretation is that RFP contingency measures for Moderate areas would be triggered only by a finding that the area has failed to attain the standard by the attainment date.⁹¹ In other words, as with Serious and above areas, a determination of attainment by the attainment date for a Moderate area serves as demonstration that RFP requirements for the area have been met and that RFP contingency measures are no longer needed. Thus, the EPA concludes that RFP contingency measures for Moderate areas are no longer needed if the area has attained the relevant NAAQS. Accordingly, because we have proposed to determine that the Phoenix nonattainment area has attained the 2008 ozone NAAQS by the attainment date, we are now also proposing to determine that RFP contingency measures are no longer required for this standard in this area. Therefore, if we finalize our proposed determination of attainment by the attainment date, neither attainment nor RFP contingency measures would be required for the Phoenix ozone nonattainment area.

Under section 179(a) of the CAA, final disapproval of a submittal that

addresses a requirement of part D, title I of the CAA or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP Call) starts sanctions clocks. The MAG 2017 Ozone Plan, including the contingency measures element, does address requirements of part D. However, if we finalize our determinations that the requirements for attainment and RFP contingency measures no longer apply to the Phoenix nonattainment area for the 2008 ozone NAAQS, then the contingency measure element of the MAG 2017 Ozone Plan would no longer be required to address any part D requirement. Therefore, final disapproval of the contingency measure element of the MAG 2017 Ozone Plan would not trigger sanctions clocks. Similarly, final disapproval would not trigger any obligation for the EPA to promulgate a federal implementation plan (FIP) under CAA section 110(c) because there would be no deficiency for such a FIP to correct. Furthermore, if the State chooses to withdraw the contingency measures prior to our final action on the MAG 2017 Ozone Plan, we would take no final action either to approve or to disapprove those measures.

F. Motor Vehicle Emissions Budgets for Transportation Conformity

1. Statutory and Regulatory Requirements and Guidance

Section 176(c) of the CAA requires federal actions in nonattainment and maintenance areas to conform to the SIP's goals of eliminating or reducing the severity and number of violations of the NAAQS and achieving timely attainment of the standards. Conformity to the SIP's goals means that such actions will not: (1) Cause or contribute to violations of a NAAQS, (2) worsen the severity of an existing violation, or (3) delay timely attainment of any NAAQS or any interim milestone.

Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the EPA's transportation conformity rule, codified at 40 CFR part 93, subpart A. Under this rule, metropolitan planning organizations in nonattainment and maintenance areas coordinate with state and local air quality and transportation agencies, the EPA, the FHWA, and the FTA to demonstrate that an area's regional transportation plans and transportation improvement programs conform to the applicable SIP. This demonstration is typically done by showing that estimated emissions from

⁸⁶ 84 FR 27566.

⁸⁷ *Id.* at 27569.

⁸⁸ CAA section 171(c).

⁸⁹ CAA section 182(g)(2).

⁹⁰ CAA section 182(g)(1) (exempting areas classified as Moderate from milestone requirements).

⁹¹ See 57 FR 13498, 13511 (contrasting Moderate areas, for which "contingency measures would be needed when the area fails to attain the standard by the attainment date" with Serious and above areas, for which contingency measures would also be triggered "if the area fails to meet the rate-of-progress requirements for any milestone other than one falling on an attainment year"). See also Memorandum from G.T. Helms, Chief Ozone/Carbon Monoxide Programs Branch, to Air Branch Chief, Regions I–X ("The test for moderate areas will be whether they attained the standard because the attainment date for moderate areas coincides with the milestone demonstration date.

Failure to attain will cause an area to be required to implement its contingency measures . . .").

existing and planned highway and transit systems are less than or equal to the MVEBs contained in all control strategy SIPs. Budgets are generally established for specific years and specific pollutants or precursors. Ozone plans should identify budgets for on-road emissions of ozone precursors (NO_x and VOC) in the area for each RFP milestone year and the attainment year, if the plan demonstrates attainment.⁹²

For budgets to be approvable, they must meet, at a minimum, the EPA's adequacy criteria in 40 CFR 93.118(e)(4). To meet these requirements, the budgets must be consistent with the attainment and RFP requirements and reflect all the motor vehicle control measures contained in the attainment and RFP demonstrations.⁹³

The EPA's process for determining adequacy of a budget consists of three basic steps: (1) providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the budget during a public comment period; and (3) making a finding of adequacy or inadequacy.⁹⁴

2. Summary of the State's Submission

The MAG 2017 Ozone Plan establishes conformity budgets based on 2017 onroad mobile source VOC and NO_x emissions in the nonattainment area used to model attainment of the 2008 ozone standard. The conformity budgets are represented by the average daily onroad VOC and NO_x emissions from May 1 to September 30. The budgets are 45.7 metric tpd for VOC and 62.7 metric tpd for NO_x.

MAG developed budgets using the EPA's Motor Vehicle Emission Simulator (MOVES) 2014a model and MAG MOVESLINK2014 tool. At the time of plan preparation, MOVES2014a (released on November 4, 2015) was the EPA's latest approved version of the MOVES model for estimating emissions from on-road vehicles operating in states (other than California). MOVES2014a uses local data such as vehicle miles traveled, vehicle population, meteorological data, and average speed distribution to develop emissions estimates.

3. The EPA's Review of the State's Submission

We have evaluated the submitted budgets in the MAG 2017 Ozone Plan against our adequacy criteria in 40 CFR 93.118(e)(4) as part of our review of the budgets' approvability and will complete the adequacy review concurrent with our final action on the ozone plan. We posted the Plan for adequacy review on the EPA's website on September 9, 2019.⁹⁵ The EPA is not required under our transportation conformity rule to find budgets adequate prior to proposing approval of them.⁹⁶

The MAG 2017 Ozone Plan budgets are consistent with the RFP demonstration and attainment demonstration, are clearly identified and precisely quantified, and meet all other applicable statutory and regulatory requirements, including the adequacy criteria in 40 CFR 93.118(e)(4) and (5).⁹⁷ For these reasons, the EPA proposes to approve the budgets in the Plan. We also interpret the budgets in the MAG 2017 Ozone Plan as superseding the transportation conformity discussion in MAG's 2014 Ozone Plan, which we previously deferred action on. Therefore, we propose to find that no further action on that element of the MAG 2014 Ozone Plan is necessary.

If we finalize approval of the budgets in the MAG 2017 Ozone Plan as proposed, they will replace the budgets from the MAG 2007 and 2009 ozone plans that we previously found adequate for use in conformity determinations by transportation agencies in the Phoenix nonattainment area.⁹⁸

⁹⁵ <https://www.epa.gov/state-and-local-transportation/state-implementation-plans-sip-submissions-currently-under-epa>.

⁹⁶ Under the Transportation Conformity regulations, the EPA may review the adequacy of submitted motor vehicle emission budgets simultaneously with the EPA's approval or disapproval of the submitted implementation plan. 40 CFR 93.118(f)(2).

⁹⁷ Memorandum to File, Nancy Levin, EPA Region IX, "Adequacy Documentation for Plan Motor Vehicle Emission Budgets in December 2016 Phoenix 2008 Ozone NAAQS Attainment Plan," September 6, 2019.

⁹⁸ On June 13, 2012, the EPA published the final rule approving the MAG 2007 Eight-Hour Ozone Plan, including the 2008 emissions budgets for VOC of 67.9 metric tpd and NO_x of 138.2 metric tpd, effective July 13, 2012. On September 17, 2014, the EPA published a final rule approving the MAG 2009 Eight-Hour Ozone Maintenance Plan, including the 2025 emissions budget for VOC of 43.8 metric tpd and NO_x of 101.8 metric tpd, effective October 17, 2014.

G. Vehicle Inspection and Maintenance

1. Statutory and Regulatory Requirements and Guidance

The EPA's I/M regulations are codified at 40 CFR part 51, subpart S ("Inspection/Maintenance Program Requirements"), sections 51.350 through 51.373. As explained in the preambles to the proposed and final SRR, no new vehicle I/M programs were required for purposes of the 2008 ozone NAAQS based on the initial designations and classifications for the 2008 ozone NAAQS.⁹⁹ However, the preamble to the proposed SRR also noted that if a Marginal 2008 ozone nonattainment area meeting the population cutoff for mandatory I/M were reclassified to Moderate or a higher classification, then an I/M program would be required at that time.¹⁰⁰

2. Summary of the State's Submission

The Plan notes that the EPA approved ADEQ's basic and enhanced vehicle emissions I/M programs on January 22, 2003, and that in 2016 the State legislature passed Senate Bill 1255, which includes a statutory provision that authorizes the Arizona Vehicle Emissions Inspection (VEI) Program through July 1, 2022.¹⁰¹ This statutory provision (A.R.S. Section 41-3022.09) was included as part of the submittal.¹⁰²

3. The EPA's Review of the State's Submission

Following our initial approval of ADEQ's VEI program in 1995, the EPA has taken several actions to approve changes to the program.¹⁰³ Most recently, in 2013 we approved revisions that exempted motorcycles in the Phoenix metropolitan area from emissions testing and expanded the portion of the Phoenix metropolitan area where the VEI program and other control programs apply ("Area A").¹⁰⁴ We found that with these changes, the ADEQ VEI program would continue to meet minimum federal requirements for vehicle I/M programs.¹⁰⁵ These requirements have not changed since 2013. Therefore, we conclude that the ADEQ VEI program continues to meet the minimum stringency requirements of 40 CFR part 51, subpart S.

⁹⁹ 78 FR 34178, 34194–34196, 80 FR 12283.

¹⁰⁰ 78 FR 34178, 34194–34195.

¹⁰¹ 2017 Ozone Plan, 5–14–5–15.

¹⁰² 2017 Ozone Plan, Appendix B, Exhibit 2. S.B. 1255 and associated fact sheet.

¹⁰³ See 77 FR 66422, 66422–66423 (November 5, 2012) for a summary of these actions.

¹⁰⁴ 78 FR 30209 (May 22, 2013).

¹⁰⁵ *Id.* at 30211.

⁹² 40 CFR 93.102(b)(2)(i).

⁹³ 40 CFR 93.118(e)(4)(iii), (iv) and (v). For more information on the transportation conformity requirements and applicable policies on MVEBs, please visit our transportation conformity website at: <http://www.epa.gov/otaq/stateresources/transconf/index.htm>.

⁹⁴ 40 CFR 93.118(f)(2).

With respect to the geographic scope of the VEI program, we note that 40 CFR 51.350(b)(2) requires the program to “nominally cover at least the entire urbanized area, based on the 1990 census.” The current Area A includes all of the Phoenix urbanized area, based on the 1990 census.¹⁰⁶ Therefore, the VEI program meets the geographic scope requirements of 40 CFR part 51, subpart S.

Finally, 40 CFR 51.350(b) provides that legislation authorizing an I/M program must not sunset prior to the attainment deadline for the NAAQS. The Plan includes a copy of S.B. 1255, which repealed an existing statutory provision that would have terminated the VEI program on January 1, 2017 (*i.e.*, A.R.S. 41–3017.01) and added a new statutory provision to extend the program through July 1, 2022 (*i.e.*, A.R.S. Section 41–3022.09). The VEI program is, therefore, authorized beyond the attainment date of July 20, 2018. Furthermore, based on the Arizona legislature’s past support for the VEI program, we expect the legislature to extend the life of the VEI program once again prior to July 1, 2022. Therefore, we propose to determine that the Plan meets the statutory and regulatory I/M requirements.

H. New Source Review Rules

1. Statutory and Regulatory Requirements and Guidance

Section 182(a)(2)(C) of the CAA requires states to develop SIP revisions containing permit programs for each of its ozone nonattainment areas. The SIP revisions are to include requirements for permits in accordance with CAA sections 172(c)(5) and 173 for the construction and operation of each new or modified major stationary source for VOC and NO_x anywhere in the nonattainment area. The 2008 Ozone SRR includes provisions and guidance for nonattainment new source review (NSR) programs.¹⁰⁷

2. Summary of the State’s Submittal

The MAG 2017 Ozone Plan describes the roles of ADEQ, MCAQD and PCAQCD in implementing the preconstruction permit program in the Phoenix nonattainment area.¹⁰⁸ In particular, the Plan explains that ADEQ has permitting jurisdiction for the following stationary source categories: smelting of metal ores, coal-fired

electric generating stations, petroleum refineries, Portland cement plants, and portable sources. ADEQ also has permitting jurisdiction over other major source categories in Pinal County, but has delegated implementation of the major source program to PCAQCD, which implements ADEQ’s major NSR rules. MCAQD has jurisdiction over other sources in Maricopa County. The Plan also described various SIP revisions submitted by ADEQ to meet nonattainment NSR requirements.

3. The EPA’s Review of the State’s Submission

On November 2, 2015, the EPA published a final limited approval and limited disapproval of revisions to ADEQ’s NSR rules.¹⁰⁹ On May 4, 2018, the EPA approved additional rule revisions to address many of the deficiencies identified in the 2015 action.¹¹⁰ On April 5, 2019, the EPA approved revisions to MCAQD’s NSR rules.¹¹¹ Collectively these rule revisions will ensure that ADEQ’s rules provide for appropriate NSR for sources undergoing construction or major modification in the Phoenix nonattainment area. Therefore, the EPA proposes to approve the NSR element of the MAG 2017 Ozone Plan as demonstrating that the NSR requirement has been met for the Phoenix Moderate nonattainment area.

We previously deferred action on the NSR element of the 2014 MAG Ozone Plan, in light of the expected submittal of revised ADEQ and MCAQD NSR rules. Based on our recent approvals of these rules, we now propose to approve this element of the 2014 MAG Ozone Plan as demonstrating that the NSR requirement has been met for Phoenix ozone Marginal NAA.

I. Offset Requirements

1. Statutory and Regulatory Requirements and Guidance

CAA Section 173 requires new and modified major sources in nonattainment areas to secure emissions reductions (*i.e.*, “offsets”) to compensate for a proposed emissions increase. As explained in the preamble to the SRR, “[o]ffsets are generated by emissions reductions that meet specific creditability criteria set forth by the SIP consistent with EPA regulations.”¹¹² For Moderate areas, section 182(b)(5) of the Act sets a general offset ratio of 1.15

to 1 for total VOC and NO_x emissions reductions as compared to VOC and NO_x emissions increases.

2. Summary of the State’s Submittal

The MAG 2017 Ozone Plan references Arizona Administrative Code Rule 18–2–404(J) and Maricopa County Air Pollution Control Regulations, Rule 240, Section 304.6 as fulfilling the requirements of CAA section 182(b)(5).

3. The EPA’s Review of the State’s Submission

The EPA approved Arizona Administrative Code Rule 18–2–404 and Maricopa County Air Pollution Control Regulations, Rule 240 part of our recent actions on the ADEQ and MCAQD NSR rules.¹¹³ Therefore, we propose to approve the offset element of the MAG 2017 Ozone Plan as demonstrating that the Moderate area offset requirements of CAA sections 173 and 182(b)(5) have been met for the Phoenix nonattainment area.

In light of the expected submittal of revised ADEQ and MCAQD NSR rules, we previously deferred action on the offset element of the MAG 2014 Ozone Plan. Based on our recent approvals of these rules, we now propose to approve the offset element of the MAG 2014 Ozone Plan as demonstrating that the Marginal area offset requirements of CAA sections 173 and 182(a)(4) have been met for the Phoenix nonattainment area.

IV. Proposed Action

For the reasons discussed above, under CAA section 110(k)(3), the EPA is proposing to approve as a revision to the Arizona SIP the following portions of the MAG “2017 Eight-Hour Ozone Moderate Area Plan for the Maricopa Nonattainment Area” submitted by ADEQ on December 19, 2016:

- Base year and periodic emission inventories as meeting the requirements of CAA sections 172(c)(3), 182(a)(1), and 182(a)(3)(A), and 40 CFR 51.1115(a) and 40 CFR 51.1115(b);
- RACM demonstration and control strategy as meeting the requirements of CAA section 172(c)(1) and 172 (c)(6) and 40 CFR 51.1112(c);
- Attainment demonstration as meeting the requirements of CAA section 182(b)(1)(A)(i) and 40 CFR 51.112 and 51.1108(c);
- ROP plan and RFP demonstration as meeting the requirements of CAA sections 172(c)(2) and 182(b)(1) and 40 CFR 51.1110(a)(3)(i);
- Motor vehicle emissions budgets for the attainment year of 2017 because

¹⁰⁶ See Map of 2008 Ozone Phoenix NAA and Area A (“AIR19037—2008 8hr O3 Phoenix NAA and Area A Stage 2 Vapor Recovery Area.png”).

¹⁰⁷ 80 FR 12264, 12286–12288.

¹⁰⁸ 2017 Ozone Plan.

¹⁰⁹ 80 FR 67319.

¹¹⁰ 83 FR 19631.

¹¹¹ 84 FR 13543.

¹¹² 80 FR 12264, 12288 (citing 40 CFR 51.165(a)(3)(ii)(A)–(J) and part 51 appendix S section IV.C).

¹¹³ *Id.*, 83 FR 19631.

they are consistent with the RFP demonstration and the attainment demonstration proposed for approval herein and meet the other criteria in 40 CFR 93.118(e);

- Vehicle I/M provisions as meeting the requirements of 40 CFR part 51, subpart S;
- NSR discussion as demonstrating that the requirements of CAA sections 173 and 182(a)(2)(C) have been met; and
- Offset discussion as demonstrating that the requirements of CAA sections 173 and 182(b)(5) have been met.

The EPA is proposing to disapprove the contingency measure element of the MAG 2017 Ozone Plan for failing to meet the requirements of CAA sections 172(c)(9) and 182(c)(9). However, based on our proposed finding of attainment by the applicable attainment date, we are also proposing to determine that the contingency measures requirement will no longer apply to the Phoenix nonattainment area if we finalize the determination of attainment by the applicable attainment date. Therefore, our proposed disapproval, if finalized, would not trigger sanctions or FIP clocks.

Finally, we are proposing to approve the NSR and offset elements of the MAG 2014 Ozone Plan as demonstrating that the Marginal area requirements of CAA section 182(a)(2)(C) and CAA sections 173 and 182(b)(5), respectively, have been met for the Phoenix nonattainment area.

The EPA is soliciting public comments on the proposed actions listed above, our rationales for the proposed actions, and any other pertinent matters related to the issues discussed in this document. We will accept comments from the public on this proposal for a period of 30 days from publication and will consider comments before taking final action.

V. Statutory and Executive Order Reviews

Additional information about the following statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13711: Reducing Regulations and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

F. Executive Order 13132: Federalism

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

G. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern

environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

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

J. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

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

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

Dated: September 20, 2019.

Deborah Jordan

Acting Regional Administrator, Region IX.

[FR Doc. 2019–21468 Filed 10–2–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0041; FRL–9999–89]

Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities (August 2019)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before November 4, 2019.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- **Mail:** OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: RD@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 11).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).

- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for preparing your comments.** When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

3. **Environmental justice.** EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the

submitted data at this time or whether the data supports granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available at <http://www.regulations.gov>.

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petitions so that the public has an opportunity to comment on these requests for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petitions may be obtained through the petition summaries referenced in this unit.

A. New Tolerances for Non-Inerts

1. **PP 8E8730.** (EPA-HQ-OPP-2019-0205). Interregional Research Project No. 4 (IR-4), IR-4 Project Headquarters, Rutgers, The State University of NJ, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to amend 40 CFR part 180.697 by establishing tolerances for residues of flutianil, (2Z)-2-[2-fluoro-5-(trifluoromethyl)phenyl]sulfanyl-2-[3-(2-methoxyphenyl)thiazolidin-2-ylidene]acetonitrile, including its metabolites and degradates, in or on hop, dried cones at 2.0 parts per million (ppm); vegetable, cucurbit, group 9 at 0.20 ppm; cherry subgroup 12-12A at 0.40 ppm; berry, low growing, subgroup 13-07G at 0.50 ppm; and Fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13-07F at 0.70 ppm. The residue analytical methods GC/MSD (apples, cucumber, strawberry, cherry, and hops) and GC-ECD (grapes) have been adequately validated and are acceptable for data collection and enforcement purposes. **Contact:** RD.

2. **PP 9E8769.** (EPA-HQ-OPP-2019-0461). IR-4, IR-4 Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, New Jersey 08540, requests to amend 40 CFR part 180.412(a) by establishing a tolerance for residues of the herbicide sethoxydim, including its metabolites and degradates, determined by measuring only the sum of sethoxydim, 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-

cyclohexen-1-one (CAS Reg. No. 74051-80-2) and its metabolites containing the 2-cyclohexen-1-one moiety, calculated as the stoichiometric equivalent of sethoxydim, in or on the following agricultural commodities: Basil, dried leaves at 20 ppm and basil, fresh leaves at 8 ppm. Adequate enforcement analytical methodology involves extraction, partition, and clean-up. Samples are then analyzed by gas chromatography with sulfur-specific flame photometric detection. The limit of quantitation is 0.05 ppm. *Contact:* RD.

Authority: 21 U.S.C. 346a.

Dated: September 16, 2019.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2019-21543 Filed 10-2-19; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA-R01-UST-2019-0420; FRL-10000-56-Region 1]

Maine: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Protection Agency (EPA) is proposing to approve revisions to the State of Maine's Underground Storage Tank (UST) program submitted by the Maine Department of Environmental Protection (ME DEP). This action is based on EPA's determination that these revisions satisfy all requirements needed for program approval. This action also proposes to codify EPA's approval of Maine's state program and to incorporate by reference those provisions of the State regulations that we have determined meet the requirements for approval. The provisions will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions.

DATES: Send written comments by November 4, 2019.

ADDRESSES: Submit any comments, identified by EPA-R01-UST-2019-0420, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

2. *Email:* hanamoto.susan@epa.gov.

3. *Mail:* Susan Hanamoto, RCRA Waste Management, UST, and Pesticides Section; Land, Chemicals, and Redevelopment Division; EPA Region 1, 5 Post Office Square, Suite 100, (Mail Code 07-1), Boston, MA 02109-3912.

4. *Hand Delivery or Courier:* Deliver your comments to Susan Hanamoto, RCRA Waste Management, UST, and Pesticides Section; Land, Chemicals, and Redevelopment Division; EPA Region 1, 5 Post Office Square, Suite 100, (Mail Code 07-1), Boston, MA 02109-3912.

Instructions: Direct your comments to Docket ID No. EPA-R01-UST-2019-0420. EPA's policy is that all comments received will be included in the public docket without change and may be 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 Federal <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.

You can view and copy the documents that form the basis for this codification and associated publicly available materials from 8:30 a.m. to 4:00 p.m. Monday through Friday at the

following location: EPA Region 1 Library, 5 Post Office Square, 1st floor, Boston, MA 02109-3912; by appointment only; tel: (617) 918-1990. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT:

Susan Hanamoto, (617) 918-1219; email address: hanamoto.susan@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the "Rules and Regulations" section of this **Federal Register**.

Authority: This rule is issued under the authority of Sections 2002(a), 9004, and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

Dated: September 13, 2019.

Dennis Deziel,

Regional Administrator, EPA Region 1.

[FR Doc. 2019-21204 Filed 10-2-19; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300, 600, and 679

[Docket No.: 190925-0042]

RIN 0648-BI65

Fisheries of the Exclusive Economic Zone Off Alaska; Authorize the Retention of Halibut in Pot Gear in the BSAI; Amendment 118

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to implement Amendment 118 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and a regulatory amendment to revise regulations on Vessel Monitoring System (VMS) requirements in the Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA). This proposed rule is necessary to improve efficiency and provide economic benefits for the Individual Fishing Quota (IFQ) and Community Development Quota (CDQ) fleets, minimize whale depredation and seabird interactions in the IFQ and CDQ fisheries, and reduce the risk of

exceeding an overfishing limit for any species. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Northern Pacific Halibut Act of 1982, the BSAI FMP, and other applicable laws.

DATES: Submit comments on or before November 4, 2019.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2018–0134, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal eRulemaking Portal. Go to www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2018-0134, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

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

Electronic copies of the Environmental Assessment and the Regulatory Impact Review (collectively referred to as the “Analysis”) and the Finding of No Significant Impact prepared for this proposed rule may be obtained from <http://www.regulations.gov> or from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the above address; by email to OIRA.Submission@omb.eop.gov; or by fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Stephanie Warpinski, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages U.S. groundfish fisheries of the BSAI under the BSAI FMP. The North Pacific Fishery Management Council (Council) prepared, and the Secretary of Commerce (Secretary) approved, the BSAI FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the BSAI FMP appear at 50 CFR parts 600 and 679. The Council is authorized to prepare and recommend an FMP amendment for the conservation and management of a fishery managed under the FMP. NMFS conducts rulemaking to implement FMP amendments and regulatory amendments.

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC develops regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention, signed at Washington, DC, on March 29, 1979. The IPHC’s regulations are subject to approval by the Secretary of State with the concurrence of the Secretary. NMFS promulgates the IPHC’s regulations as annual management measures pursuant to 50 CFR 300.62. The final rule implementing the 2019 annual management measures published March 14, 2019 (84 FR 9243).

The Halibut Act provides the Secretary with general responsibility to carry out the Convention and the Halibut Act (16 U.S.C. 773c(a) & (b)). The Halibut Act also provides the Council with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations (16 U.S.C. 773c(c)). Regulations developed by the Council may be implemented by NMFS only after approval by the Secretary in consultation with the United States Coast Guard. Under the authority of the BSAI FMP and the Halibut Act, the Council developed the Individual Fishing Quota Program (IFQ Program) for the commercial halibut and sablefish fisheries. The IFQ Program allocates sablefish and halibut harvesting

privileges among U.S. fishermen. The IFQ Program for the halibut fishery is implemented by Federal regulations at 50 CFR part 679 under the authority of section 5 of the Halibut Act (16 U.S.C. 773c). The IFQ Program for the sablefish fishery is implemented by the BSAI FMP and Federal regulations at 50 CFR part 679 under the authority of section 303(b) of the Magnuson-Stevens Act (16 U.S.C. 1853(b)).

The Council has recommended Amendment 118 to the BSAI FMP (Amendment 118) to require the retention of halibut by vessels using pot gear in the IFQ and CDQ fisheries in the BSAI, to prohibit the use of pot gear in the PIHCZ, to require vessels using pot gear to fish IFQ and CDQ to use logbooks and VMS, and to develop regulations that allow NMFS to limit or close IFQ or CDQ fishing for halibut if a groundfish or shellfish overfishing level is approached, consistent with existing regulations for groundfish. In recommending Amendment 118, the Council intended to address whale depredation in the IFQ and CDQ fisheries and allow for more efficient harvest of halibut. FMP amendments and regulations developed by the Council may be implemented by NMFS only after approval by the Secretary.

A notice of availability (NOA) for Amendment 118 was published in the **Federal Register** on October 3, 2019 with comments invited through December 2, 2019. Comments submitted on this proposed rule by the end of the comment period (See **DATES**) will be considered by NMFS and addressed in the response to comments in the final rule. Comments submitted on this proposed rule may address Amendment 118 or this proposed rule. However, all comments addressing Amendment 118 must be received by December 2, 2019, to be considered in the approval/disapproval decision on Amendment 118. Commenters do not need to submit the same comments on both the NOA and this proposed rule. All relevant written comments received by December 2, 2019, whether specifically directed to the FMP amendment, this proposed rule, or both, will be considered by NMFS in the approval/disapproval decision for Amendment 118 and addressed in the response to comments in the final rule.

Background

The following background sections describe (1) the IFQ Program, (2) the CDQ Program, (3) IFQ Regulatory Areas, (4) retention of halibut by IFQ or CDQ fishermen using authorized gear, (5) limitations on the use of pot gear to

reduce bycatch concerns, and (6) whale depredation in the BSAI.

The IFQ Program

The commercial halibut and sablefish fisheries in the GOA and the BSAI management areas are managed under the IFQ Program that was implemented in 1995 (58 FR 59375, November 9, 1993). The IFQ Program allocates quota share (QS), and each year that quota share yields an exclusive harvest privilege, an annual IFQ permit, among participants in the fixed gear commercial fishery. An IFQ permit is expressed in pounds and is based on the amount of quota share held in relation to the total quota share pool.

The IFQ Program allows harvesters to tailor their fishing operations to the amount of quota that they hold and avoid an unsafe “race for fish” that can occur when vessels race to harvest their catch as quickly as possible before an annual catch limit is reached. NMFS also allocates a small portion of the annual sablefish total allowable catch limit (TAC) to vessels using trawl gear. The trawl sablefish fishery is not managed under the IFQ Program, and this proposed rule does not modify regulations applicable to the trawl sablefish fishery. Many fishermen participate in both the halibut and sablefish fisheries because the species overlap in some fishing areas and are harvested with the same type of fishing gear.

Each year, NMFS issues IFQ to each QS holder to harvest a specific percentage of either the TAC in the sablefish fishery or the annual commercial catch limit in the halibut fishery. In addition to being specific to sablefish or halibut, QS and IFQ are designated for specific geographic areas of harvest (the regulatory area), a specific vessel operation type (catcher vessel or catcher/processor), and for a specific range of vessel sizes that may be used to harvest the sablefish or halibut (vessel category). An annual IFQ permit authorizes the permit holder to harvest a specified amount of the IFQ species in a regulatory area from a specific operation type and vessel category. Section 4.5 of the Analysis (see **ADDRESSES**) provides additional information on the sablefish and halibut IFQ Program.

The CDQ Program

The Western Alaska Community Development Program (CDQ Program) was implemented in 1992 (57 FR 54936, November 23, 1992). Subsequently, the Magnuson-Stevens Act was amended to include provisions specific to the CDQ Program. The purposes of the CDQ

Program are (1) to provide eligible western Alaska villages with the opportunity to participate and invest in fisheries in the BSAI management area; (2) to support economic development in western Alaska; (3) to alleviate poverty and provide economic and social benefits for residents of western Alaska; and (4) to achieve sustainable and diversified local economies in western Alaska (16 U.S.C. 1855(i)(1)(A)).

The CDQ Program consists of six different non-profit managing organizations (CDQ groups) representing different geographical regions in Alaska. The CDQ Program receives annual allocations of TAC for a variety of commercially valuable species in the BSAI groundfish, crab, and halibut fisheries, which are in turn allocated among the CDQ groups. CDQ groups use their allocations of halibut to provide opportunities for small vessel fishing by residents of their member communities. Pacific halibut is an important species allocated to CDQ groups for community resident employment and income. NMFS allocates halibut to CDQ groups, and those allocations correspond with the geographic area in which a CDQ group's member communities are located (see Section 4.5.1.2 of the Analysis). A CDQ group may transfer its halibut CDQ to another CDQ group provided that CDQ group has halibut CDQ allocations in the same regulatory area (50 CFR 679.31(c)). Section 4.5.2 of the Analysis provides additional detail on the history of the CDQ halibut fishery.

IFQ Regulatory Areas

The IFQ and CDQ fisheries are prosecuted in accordance with catch limits established by regulatory area. The sablefish IFQ regulatory areas defined for sablefish in the BSAI are the Bering Sea (BS) and the Aleutian Islands (AI). The sablefish regulatory areas are defined and shown in Figure 14 to 50 CFR part 679. This proposed rule preamble refers to these areas collectively as sablefish regulatory areas.

This proposed rule would implement provisions that affect IFQ halibut and CDQ halibut fisheries in the BSAI. The IPHC defines halibut regulatory areas (Areas). The Areas are defined in 50 CFR part 679 and described in Figure 15 to 50 CFR part 679 and Section 1.3 of the Analysis. NMFS issues halibut IFQ and CDQ consistent with the IPHC's Areas. Halibut Areas encompass different geographic ranges than the sablefish regulatory areas, and the boundary lines do not coincide except at the border between the United States and Canada. For halibut, Area 2 is

composed of Area 2A (Washington, Oregon, and California); Area 2B (British Columbia); and Area 2C (Southeast Alaska). Area 3 is composed of Area 3A (Central Gulf of Alaska) and Area 3B (Western Gulf of Alaska); and Area 4 (BSAI) is composed of Areas 4A, 4B, 4C, 4D and 4E. The IPHC combines Areas 4C, 4D, and 4E into Area 4CDE for purposes of establishing a commercial fishery catch limit. Area 4CDE, Area 4B, and portions of Area 4A roughly correspond to the Bering Sea and Aleutian Islands Area defined in the BSAI FMP. A portion of Area 4A also includes part of the Western Regulatory Area of the GOA, as defined in the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). Action 1 under this proposed rule would apply within Areas 4B, 4C, 4D, 4E, and that portion of Area 4A that occurs in the Bering Sea and Aleutian Islands Area defined in the BSAI FMP.

The commercial catch limits for Areas 4B and 4CDE are allocated between two distinct management programs: the CDQ Program and the IFQ Program. Throughout the duration of the IFQ Program, the Area 4E commercial catch limit has been exclusively allocated to the CDQ Program; therefore, no Area 4E QS is allocated to non-CDQ Program participants.

Retention of Halibut by IFQ Sablefish Fishermen Using Authorized Gear

IFQ sablefish fishermen who also hold halibut IFQ are required to retain halibut of legal-size. Currently, the IPHC requires the retention of all halibut 32 inches or greater in length (84 FR 9243, March 14, 2019), although the IPHC may recommend in its annual management measures changes to the size limit for the retention of halibut. This retention requirement is intended to promote full utilization of halibut by reducing discards of halibut caught incidentally in the IFQ sablefish fishery. Many IFQ fishermen hold both sablefish and halibut IFQ, and the species can overlap in some fishing areas (see Section 4.5.2 of the Analysis).

Pot gear has long been an authorized gear type for vessels that harvest IFQ sablefish and CDQ sablefish in the BSAI, and is now an authorized gear in the GOA. Beginning in 2017, Amendment 101 to the GOA FMP and implementing regulations authorized the use of longline pot gear in the GOA IFQ sablefish fishery (81 FR 95435, December 28, 2016).

The IPHC authorizes fishing gear for halibut in the BSAI through its annual management measures and regulations. The IPHC meets annually to approve the regulations that apply to persons and

vessels fishing for and retaining halibut. In 2016, the IPHC recommended, and the U.S. approved, regulations to authorize the retention of halibut by vessels using pot gear in the GOA (81 FR 14000, March 16, 2016). Although the IPHC took action to authorize the use of pot gear to retain halibut, accompanying action was required by NMFS to authorize the use of longline pot gear for the commercial halibut fishery in Federal regulations under 50 CFR part 679. Therefore, the final rule implementing Amendment 101 to the GOA FMP also included regulations developed under the Halibut Act to authorize harvest of IFQ halibut caught incidentally in longline pot gear used in the GOA IFQ sablefish fishery.

However, in the BSAI, IFQ sablefish fishermen who hold halibut IFQ currently are required to discard legal-size halibut that are harvested in the IFQ sablefish pot gear fishery. After implementation of Amendment 101 to the GOA FMP, IFQ sablefish fishermen requested greater consistency between the regulatory requirements in the BSAI and in the GOA, and sought revisions to regulations to authorize the retention of halibut while fishing for sablefish with pot gear in the BSAI to reduce the potential for discarding legal-sized halibut. Section 1.2 of the Analysis provides a more detailed description of the history of use of pot gear in the IFQ sablefish fishery.

In 2018, the IPHC recommended, and the U.S. approved, regulations to authorize the retention of halibut by vessels using pot gear throughout Alaska (83 FR 12133, March 20, 2018). Section 20(1) of the IPHC's 2019 annual management measures authorizes a person to retain and possess IFQ halibut or CDQ halibut taken with hook-and-line or pot gear in the IFQ or CDQ fisheries provided retention and possession is authorized by NMFS regulations published at 50 CFR part 679. If the Secretary approves a final rule to implement Amendment 118, NMFS would amend regulations to require vessel operators using pot gear and holding sufficient halibut IFQ or CDQ to retain legal-size halibut in the BSAI IFQ or CDQ halibut or sablefish fisheries, as recommended by the Council and the IPHC. This regulatory requirement would be consistent with section 773c(c) of the Halibut Act (16 U.S.C. 773c(c)).

Limitations on the Use of Pot Gear To Reduce Bycatch Concerns

Pribilof Islands Blue King Crab (PIBKC) are overfished and experienced overfishing most recently in 2016. Rebuilding the PIBKC stock has been a

Council priority since 2002, when NMFS notified the Council that the PIBKC stock was overfished. NMFS initiated a rebuilding plan in 2002, and when that rebuilding plan did not rebuild PIBKC, a new rebuilding plan was instituted in 2011. In order to further protect PIBKC, the Council recommended closing the Pribilof Islands Habitat Conservation Zone (PIHCZ) year-round to directed fishing for Pacific cod with pot gear to minimize the bycatch of PIBKC.

Bycatch of PIBKC in pot gear is a concern in the BSAI, particularly in areas where PIBKC are concentrated. The greatest concentration of PIBKC is within the PIHCZ. The PIHCZ is defined in § 679.22(a)(6) and shown in Figure 10 to 50 CFR part 679. Initially, the PIHCZ was closed to directed fishing for groundfish using trawl gear to minimize the bycatch of PIBKC. In 2014, NMFS implemented Amendment 103 to the BSAI FMP to prohibit the use of Pacific cod pot gear in the PIHCZ to promote bycatch reduction of PIBKC (79 FR 71344, December 2, 2014). No pot fishing for Pacific cod has occurred within the PIHCZ since 2015. However, this existing pot gear closure in the PIHCZ does not include pot gear when fishing for halibut and sablefish. Section 3.6 of the Analysis provides more information about PIBKC and the PIHCZ.

In addition to the current closure of the PIHCZ to all trawl gear and Pacific cod pot gear, regulations in § 679.25 provide NMFS with inseason management authority to issue precise closures to BSAI groundfish and shellfish fisheries if a stock, in this case PIBKC, approaches its acceptable biological catch limit and is approaching the overfishing level (OFL). Regulations in § 679.25 describe a series of progressively more restrictive measures that NMFS may implement if a stock approaches an OFL, including closures of specific geographic areas, limitations on use of specific gear, and closures of specific fisheries, if necessary, to ensure an OFL is not exceeded.

Whale Depredation in the BSAI

At its June 2017 meeting, the Council received a public comment letter describing a worsening situation of whale depredation on BSAI IFQ hook-and-line gear. Killer whale (*Orcinus orca*) depredation is most common in the BSAI. Section 3.5 of the Analysis provides the most recent information on whale depredation in the IFQ sablefish and IFQ halibut fishery, and Figure 11 in the Analysis shows a map of observed depredation on sablefish

longline surveys. Whale depredation events are difficult to observe because depredation occurs near the ocean floor in deep water or during active gear retrieval. Fishery participants have testified to the Council that depredation continues to be a major cost in the IFQ sablefish and IFQ halibut fisheries and appears to be occurring more frequently in the BSAI.

Depredation can reduce fishing efficiency by increasing operating costs (e.g., fuel, labor) and the opportunity cost of time lost that would have been available for additional fishing effort or dedicated to other fishing and non-fishing activities. Depredation can result in lost catch, additional time waiting for whales to leave fishing grounds before hauling gear, and additional time and fuel spent relocating to avoid whales. Information provided in Section 3.5.3 in the Analysis indicates that depredation can reduce harvesting efficiency and impose substantial costs, thereby reducing revenue in the IFQ halibut and sablefish fisheries.

Industry groups have tested a variety of methods to deter whales from preying on fish caught on hook-and-line gear, such as gear modifications and acoustic decoys, but these methods have not significantly reduced the problem of depredation in the BSAI IFQ sablefish and IFQ halibut fisheries. A summary of efforts to mitigate whale depredation in Alaska and elsewhere is provided in Section 3.5.2 of the Analysis.

Participants in the BSAI IFQ fisheries indicated to the Council and NMFS that authorizing the use of pot gear for IFQ halibut fishing could reduce the adverse impacts of depredation for those vessel operators who choose to switch from hook-and-line to pot gear. Section 1.2 of the Analysis provides additional information on the Council's development and recommendation of Amendment 118 and this proposed rule.

Need for Amendment 118 and This Proposed Rule

Amendment 118 and this proposed rule would address several key management issues. First, this proposed rule would authorize the use of pot gear to target IFQ and CDQ halibut and would authorize the retention of halibut in the existing IFQ or CDQ sablefish pot fisheries. The proposed rule also would require retention of legal-sized halibut in pot gear used to fish for IFQ or CDQ halibut or sablefish in the BSAI provided the IFQ or CDQ permit holder holds sufficient halibut IFQ or CDQ for the retained halibut. Requiring retention of legal-sized halibut incidentally harvested while fishing for sablefish using pot gear would minimize discard

mortality and would allow the development of a halibut pot fishery that could reduce fishery interactions with killer whales throughout the BSAI. This proposed rule would improve the ability of sablefish and halibut IFQ and CDQ permit holders to harvest their IFQ or CDQ by reducing potential whale depredation, reducing the costs associated with whale depredation, and reducing the additional mortality that may be caused by whale depredation. Second, this proposed rule would establish regulations to prohibit all use of pot gear for groundfish and halibut in the PIHCZ to limit the potential adverse effects on PIBKC from the use of pot gear. Third, this proposed rule would exempt vessel operators fishing IFQ or CDQ halibut or sablefish with pot gear from the requirement to have a tunnel opening of a specified size when the operator is required to retain halibut. Fourth, this proposed rule would specify the regulatory authority NMFS would use to limit or close IFQ or CDQ halibut fishing in the event there is a conservation concern for groundfish or shellfish. Finally, this proposed rule would require the use of VMS and logbooks and would add requirements for the Prior Notice of Landing (PNOL), in order to ensure accurate monitoring of the use of pot gear to retain halibut.

In addition, NMFS proposes to modify existing regulations governing VMS. First, NMFS proposes to remove two obsolete reporting requirements at §§ 679.28 and 679.42 that are no longer necessary for management or enforcement purposes. Removing these obsolete requirements will reduce reporting costs for vessels in the BSAI and GOA. Second, NMFS proposes to modify the VMS regulations at § 679.28, and related prohibitions at § 679.7, to provide clarity regarding the VMS requirements for vessels in the BSAI and GOA.

Proposed Rule

This section describes the proposed changes to current regulations. This proposed rule includes two actions that would revise 50 CFR part 300, 50 CFR part 600, and 50 CFR part 679. The primary action, Action 1, proposes management measures that would authorize retention of legal-size halibut in pot gear in the BSAI. The scope of this action would not authorize the retention of halibut IFQ or CDQ in other directed pot fisheries, including crab fisheries and Pacific cod fisheries. Action 2 would modify regulations to provide clarity and to remove from regulation two VMS requirements that are no longer necessary.

Action 1: Authorize the Use of Pot Gear To Retain Halibut and Other Related Regulatory Provisions

Action 1 would include the following five elements: (1) Authorize retention of legal-size halibut in pot-and-line or longline pot gear used to fish for IFQ or CDQ halibut or sablefish in the BSAI and require retention of legal-sized halibut provided the IFQ or CDQ permit holder holds sufficient halibut IFQ or CDQ for that retained halibut; (2) close the PIHCZ to all groundfish and halibut fishing with pot gear; (3) remove the requirement for a 9-inch maximum width tunnel opening when an IFQ or CDQ permit holder fishes for halibut or sablefish IFQ in the BSAI with pot gear and is required to retain halibut; (4) clarify the inseason management measures, and determinations required, that NMFS would use to limit or close IFQ or CDQ fishing for halibut if an OFL is approached for a groundfish or shellfish species, consistent with regulations in place for groundfish; and (5) require logbooks and VMS for all vessels using pot gear to retain halibut and sablefish and add requirements for reporting on the PNOL.

This action would not authorize the retention of IFQ halibut or CDQ halibut in other directed pot fisheries, other than sablefish. That means that an IFQ permit holder or a vessel fishing on behalf of a CDQ group would not be permitted, nor would they be required, to retain halibut on a pot fishing trip while directed fishing in other pot fisheries (e.g., Pacific cod or crab), even if they hold available IFQ or CDQ.

The first action would authorize the harvest of IFQ halibut or CDQ halibut with pot gear and would provide halibut quota holders the opportunity to use pot gear on a trip solely intended to harvest halibut, or on a mixed trip in which both halibut and sablefish are the intended target, provided the vessel has quota for the appropriate areas for both species. Section 679.7(f)(11) prohibits IFQ permit holders from discarding halibut or sablefish caught with fixed gear for which they hold unused halibut or sablefish IFQ or CDQ for that vessel and IFQ regulatory area. Consistent with that regulatory requirement and with proposed § 679.42(m)(2) & (3), Action 1 would prohibit IFQ and CDQ permit holders fishing in the BSAI with pot gear from discarding legal-size halibut for which they have the necessary quota. IFQ and CDQ participants that hold both sablefish and halibut quota would have more flexibility to use their quota opportunistically and minimize variable costs.

This proposed rule would revise the definition of “Fishing” at § 300.61 to include the deployment of pot gear in the BSAI halibut IFQ or CDQ fishery.

This proposed rule would revise § 679.2 to include pot gear as authorized fishing gear in the BSAI IFQ and CDQ fisheries. Specifically, this proposed rule would revise the definition of “Fixed gear” under the definition of “Authorized fishing gear” at § 679.2(4)(v) to include pot gear as an authorized gear in the BSAI halibut IFQ or CDQ fishery. The regulations currently define fixed gear for sablefish harvested in the BSAI to include hook-and-line gear and pot gear (§ 679.2(4)(ii)). Fixed gear is a general term that describes the multiple gear types allowed to fish sablefish and halibut under the IFQ and CDQ Programs and is referred to throughout 50 CFR part 679. This proposed rule would revise § 679.24 (and § 679.42, discussed later) to require retention of halibut in pot gear in the BSAI IFQ and CDQ fisheries. Specifically, this proposed rule would revise § 679.24(b) to require retention of groundfish for any person using pot gear while directed fishing for sablefish and halibut in the BSAI.

This proposed rule would revise § 679.42(b)(1) to specify that IFQ halibut may be harvested using pot gear, but the proposed rule would not change the existing prohibition on the use of trawl gear.

The second element of Action 1 would close the PIHCZ to all fishing for groundfish and halibut with pot gear to avoid groundfish fishery and area closures that could be triggered by approaching an OFL for the PIBKC. This proposed rule would revise § 679.22(a)(6) to close the PIHCZ to all directed fishing for groundfish and halibut with pot gear. The majority of the PIBKC stock is distributed within the PIHCZ. Regulations at § 679.22 already prohibit the use of pot gear to harvest Pacific cod in the PIHCZ. The Pacific cod pot fishery is the largest groundfish pot fishery in the BSAI. Closing the PIHCZ to pot gear is necessary to avoid groundfish fishery and area closures that could be triggered by approaching an OFL for the PIBKC. Although the existing sablefish fishing grounds do not overlap with the PIHCZ, historical halibut fishing grounds for vessels using hook-and-line gear do overlap with the PIHCZ. Therefore, a general prohibition on the use of pot gear within the PIHCZ would limit the risk of bycatch of PIBKC by vessels using pot gear in the IFQ or CDQ halibut or sablefish fisheries. Section 3.6 of the Analysis provides additional details on

the distribution of halibut and potential overlap with the PIHCZ.

The third element of Action 1 would amend regulations at § 679.2(15) that describe the definition of “Authorized Fishing Gear” to exempt vessel operators fishing halibut or sablefish IFQ or CDQ with pot gear from the requirement to have a tunnel opening no wider and no taller than 9 inches when the vessel operator is required to retain halibut. If the tunnel opening requirement remained in effect, the extent to which halibut quota holders in the BSAI could target halibut with pot gear would be greatly reduced, contrary to the intent of Amendment 118. Section 4.7.4.2 of the Analysis describes this element in more detail.

The fourth element of Action 1 would specify the management measures, and required determinations, that NMFS would use to limit or close IFQ or CDQ fishing for halibut in the BSAI and GOA if an OFL for groundfish or shellfish is approached, consistent with regulations in place for directed fishing for groundfish. Under existing regulations at § 679.25, NMFS has the authority to close groundfish fisheries, including the IFQ or CDQ sablefish fishery, to prevent overfishing of groundfish and shellfish species. However, these regulations do not apply to the IFQ or CDQ halibut fishery to prevent overfishing of groundfish or shellfish. While NMFS has authority to enact emergency regulations to limit fishing to avoid exceeding an OFL under section 305(c) of the Magnuson-Stevens Act and authority under the Halibut Act to implement measures that are in addition to and not in conflict with those adopted by the IPHC (16 U.S.C. 773(c)), the specific regulatory measures that NMFS could use to limit halibut fishing to prevent overfishing are not described in regulation. This proposed rule would apply the same regulations to limit halibut fishing if an OFL is approached as the procedure used for groundfish species: the proposed rule would authorize NMFS to make inseason adjustments for halibut fishing, including inseason closures of an area, district, or portions thereof, of harvest of halibut fisheries, and would authorize NMFS to close a management area or portion thereof, gear type, or season for halibut fishing, in both the BSAI and GOA, in addition to the existing regulatory authority under § 679.25 for the management of groundfish fishing.

This proposed rule therefore would revise § 679.25 to specify the management measures NMFS can use, and the determinations required, to limit or close halibut fisheries in the BSAI and GOA in the event an OFL is

approached for a groundfish or shellfish species, consistent with regulations in place for directed fishing for groundfish. These changes would provide the public with a clear understanding of NMFS’s regulatory authority to limit or close halibut directed fishing in the event that the OFL for PIBKC, or other groundfish or shellfish species, is approached. Section 4.7.6 of the Analysis further describes this element in greater detail.

The fifth element of Action 1 would require all vessels fishing IFQ or CDQ sablefish or halibut with pot gear to complete the Daily Fishing Logbook (DFL), to use VMS, and to provide additional pot gear information on the PNOL. A vessel operator records where and when fishing activity occurs and the number of sets and hauls in the DFL. Section 4.7.5 of the Analysis describes reporting and monitoring requirements for vessels using pot gear to fish IFQ, including the existing requirements to use logbooks and VMS. There are several types of logbooks, including a DFL, required by NMFS (§ 679.5) and an IPHC logbook. The Council’s intent for this element is to require all vessels fishing sablefish or halibut IFQ or CDQ with pot gear to complete the DFL. The proposed rule would revise regulations at § 679.5 to require vessels fishing sablefish or halibut IFQ and CDQ to complete the DFL. In addition to the Council’s recommendations, NMFS proposes to require vessels to report specific information on the use of pot gear in the BSAI on the PNOL under § 679.5, including adding the requirement to report the number of pots set, the number of pots lost, and the number of pots left deployed on the fishing grounds, in addition to the information they currently submit in the PNOL.

Due to concern over additional pot fishing in the PIHCZ and within the PIBKC stock boundary area, NMFS recommended that the Council also require all vessels retaining IFQ or CDQ halibut or sablefish with pot gear use a VMS to ensure consistency in monitoring fishery behavior. The proposed rule would revise § 679.7 to prohibit vessels using pot gear to fish for sablefish or halibut IFQ and CDQ in the BSAI without functioning VMS equipment as would be required under the proposed § 679.42(m).

All vessels that participated in the BSAI IFQ or CDQ sablefish pot fishery in 2016 have VMS and maintain a DFL already. However, additional vessels may use pot gear to harvest IFQ or CDQ halibut or sablefish in the future. Any additional vessels would be required to install VMS and begin maintaining a DFL, as well as report pot gear

information on the PNOL, under this proposed rule. Section 4.7.5 of the Analysis provides more information supporting these monitoring and reporting provisions.

To effectuate each of the five elements described above, the proposed rule would also revise § 679.42 to specify at § 679.42(m) the requirements for any vessel operator who fishes for IFQ or CDQ halibut or IFQ or CDQ sablefish in the BSAI using pot gear. This includes the proposed requirements that operators must retain legal-sized halibut provided the operator has sufficient IFQ or CDQ for the retained halibut; that all operators must comply with the proposed VMS requirements; that all vessel operators must complete a DFL; and that all vessels operators must report pot gear set, lost, and left deployed on the fishing grounds when they submit a PNOL.

Finally, to promote consistency and clarity with the provisions proposed under this action, this proposed rule would make editorial revisions throughout regulations at 50 CFR part 679. Existing regulations implementing the Observer Program state the gear type (hook-and-line) used to harvest halibut in the applicability paragraph for which vessels are in partial coverage or full coverage. Regulations at § 679.51(a)(1) would be modified to remove the language describing the specific gear type used to fish for halibut, which is in accordance with this proposed action that would authorize another specific gear type (pot) in addition to hook-and-line gear. This would be an editorial change that would not modify existing observer coverage requirements for vessels participating in the IFQ or CDQ halibut or sablefish fisheries.

Action 2: NMFS’s Proposed Regulatory Amendment To Modify VMS Regulations

Action 2 would modify regulations to remove certain provisions that are no longer required for management and enforcement purposes and would make other minor revisions to the regulations governing VMS; however, Action 2 would not materially change existing VMS coverage, requirements, or equipment.

First, this proposed rule would remove from § 679.28 a check-in requirement for vessel owners activating VMS for the first time. Currently, vessel owners are required to check in by fax to register a new unit with the NMFS Office of Law Enforcement (OLE) (§ 679.28(f)(4)(ii)). This faxed check-in is no longer necessary because the information OLE needs about a new VMS unit is provided automatically by

the VMS unit when the new unit is activated.

Second, this action would remove from § 679.42 a requirement for vessel operators in the IFQ sablefish fisheries in BSAI and GOA to contact NMFS by phone and receive confirmation that their VMS unit is operating. Currently, vessel operators are required to call OLE at least 72 hours prior to fishing for IFQ sablefish in the BSAI and prior to using longline pot gear to fish for IFQ sablefish in the GOA (§ 679.42(k)). These vessel clearance requirements are no longer needed because the VMS unit provides the information needed by OLE to monitor these fisheries.

This action also would modify in § 679.28(f)(6) the list of circumstances in which a VMS unit must be transmitting to include reference to all of the VMS requirements elsewhere in 50 CFR part 679 and 50 CFR part 680. The current list is only a partial list of the VMS requirements in Federally-managed fisheries off Alaska. Completion of the list will reduce confusion about the VMS requirements under § 679.28(f), but would not alter existing VMS requirements at § 679.28(f) when a VMS transmitter must be transmitting. The proposed action also would revise two cross references to the VMS requirements in § 679.7(a)(21)–(22) to more accurately refer to the VMS regulations in § 679.28(f). This revision will provide greater clarity and specificity in the VMS regulations without changing existing VMS requirements.

Anticipated Effects of Action 1

This section describes the proposed rule implementing Amendment 118 and the anticipated effects on fishery participants and the environment.

Fishery Participants

This proposed rule would authorize the use of pot gear in the halibut IFQ and CDQ fisheries and would require retention of legal-sized halibut in pot gear used in the existing IFQ and CDQ sablefish pot gear fisheries and in the new IFQ and CDQ halibut pot gear fisheries if the operator has sufficient IFQ or CDQ for the retained halibut. Pot gear includes pot-and-line gear and longline pot gear. Pot-and-line gear is pot gear with a stationary, buoyed line with a single pot attached. Longline pot gear is pot gear with a stationary, buoyed, and anchored line with two or more pots attached. Longline pot gear is often deployed as a series of many pots attached together in a “string” of gear. For additional information on longline gear, pot-and-line gear, and longline pot

gear, see the definition of “Authorized Fishing Gear” in § 679.2.

This action could improve operational efficiency of vessels participating in the IFQ or CDQ halibut or sablefish pot fisheries by reducing the discard mortality associated with halibut discard in the existing sablefish pot fisheries and reducing whale depredation for vessels that would choose to switch to using pot gear instead of hook-and-line gear. The sablefish and halibut hook-and-line gear fisheries are prosecuted simultaneously. Vessels that fish sablefish IFQ typically also fish halibut IFQ. The majority of sablefish IFQ permit holders also hold a halibut IFQ permit (see Section 4.5 of the Analysis). As analyzed in Section 4.7.2 of the Analysis, replacing some hook-and-line effort with pot gear effort could benefit permit holders in the IFQ halibut fishery because many IFQ sablefish fishery participants also participate in the IFQ halibut fishery. This proposed rule would create efficiencies in the harvest of halibut and sablefish for these participants.

The Council and NMFS also considered the impacts of this proposed rule on the hook-and-line IFQ and CDQ halibut fisheries. Based on the analysis in Section 4.7.2 of the Analysis, the overall impact of this proposed rule on the IFQ or CDQ halibut fishery is likely to be small.

As explained in Section 4.5.2 of the Analysis, vessel operators who switch to pot gear to harvest halibut would benefit from this proposed rule from reduced whale depredation, reduced operating costs, and reduced fishing time. This proposed rule would provide vessel operators with the option to use pot gear if they determine it is appropriate for their fishing operation.

The Analysis (see Section 4.7.2.1) recognizes that it is not possible to estimate how many hook-and-line vessel operators would switch to pot gear to harvest halibut under this action. Vessel operators that currently target sablefish with pot gear would be required to retain incidentally caught halibut. The total number of vessels using pot gear likely would be limited by the costs of pot gear and vessel reconfiguration. For some vessel operators, reconfiguration costs likely would be prohibitive. The Analysis suggests that vessel operators who already use pot gear in other fisheries (e.g., Pacific cod) would be the most likely operators to use pot gear in the BSAI IFQ halibut fishery because their conversion costs likely would be lower relative to participants who currently use only hook-and-line gear.

This proposed rule would require vessel operators that catch halibut in pot gear to comply with current retention requirements under the IFQ Program and the provisions recommended by the Council and would not change other management components of the IFQ Program. The Council recommended, and NMFS agrees, that an IFQ or CDQ permit holder onboard a vessel that catches halibut with pot gear in the BSAI would be required to retain legal-size halibut provided they hold a halibut IFQ or CDQ permit with sufficient halibut IFQ or CDQ pounds to cover the retained halibut. This proposed rule would provide halibut permit holders the opportunity to use pot gear on a trip solely intended to harvest halibut, or on a mixed trip in which both halibut and sablefish are the intended target, provided the vessel has quota for the appropriate areas for both species. Section 679.7(f)(4) prohibits an IFQ or CDQ permit holder from retaining legal-size halibut if no person onboard the vessel holds sufficient IFQ or CDQ pounds to cover the retained halibut. In these instances, fishermen are required to discard the halibut with a minimum of injury consistent with regulatory requirements at § 679.7(a)(13) and Section 15 of the IPHC annual management measures (84 FR 9243, March 14, 2019).

Gear Conflicts

The Council and NMFS analyzed the extent to which this proposed rule could result in gear conflicts and grounds preemption. As explained in Section 4.7.3 of the Analysis, gear conflict and grounds preemption impose costs on fishermen who are unable to, or choose not to, deploy hook-and-line gear in an area because longline pot gear is used in that area. The Council considered possible gear tending regulations while balancing the risk of grounds preemption and gear conflict from a new sector, with the expected effectiveness of the measures and the implications to the BSAI IFQ and CDQ harvesters currently participating or wishing to participate with pot gear. Specifically, vessels unable to convert to pot gear that fish in the same footprint as the pot vessels may be disadvantaged if vessels set pot gear on mutual fishing grounds for extended periods, preventing hook-and-line vessels from deploying gear for fear of gear entanglement. Compared to other IFQ areas, such as in the GOA, the Analysis did not identify, and the Council did not receive public testimony indicating, the potential for gear conflict and grounds preemption concerns that would warrant additional

regulatory provisions under this proposed rule.

As explained in Section 4.7.3 of the Analysis, it is extremely difficult to determine with certainty the extent to which gear conflicts and grounds preemption might occur under this proposed rule because it is not known at this time how many vessel operators will use pot gear in the BSAI IFQ or CDQ halibut or sablefish fisheries. After reviewing the Analysis and receiving public testimony, the Council and NMFS determined the likelihood of gear conflicts and grounds preemption was low, but not possible to determine with certainty.

The Council's recommendation did not include gear retrieval requirements based on public testimony, and NMFS is not proposing to include gear retrieval requirements in this proposed rule. Stakeholders voiced that gear retrieval requirements would negatively impact fishermen in the existing sablefish pot fishery in the BSAI and that it was expected that a limited number of vessels would begin experimentally fishing for halibut using pot gear. Section 4.7.3.3 of the Analysis discusses in more detail the potential impacts of gear retrieval requirements on the existing sablefish pot fishery in the BSAI.

The Council considered and did not recommend requiring an escape mechanism to release undersized halibut or other species as part of this proposed rule. NMFS is not including in this proposed rule a requirement for pot gear to have an escape mechanism. By not including specific recommendations for dimensions of escapement rings or slots at this time, the fleet retains the flexibility to test different gear specifications to minimize bycatch most effectively. Industry-led innovation could be more responsive than regulations to address the range of bycatch issues that may be experienced with a new gear type. NMFS and the Council will continue to review the performance of this gear, and if bycatch increases, additional regulatory revisions could be undertaken.

To implement the Council's recommendation to close the PIHCZ to all fishing with pot gear, the proposed rule would require that all vessels retaining IFQ or CDQ halibut or sablefish in pot gear use logbooks and VMS to ensure consistency in monitoring fishery behavior.

Section 304(d)(2)(A) of the Magnuson-Stevens Act obligates NMFS to recover the actual costs of management, data collection, and enforcement (direct program cost) of catch share programs, such as the IFQ fisheries. Therefore,

NMFS implemented a cost recovery fee program for the IFQ fisheries in 2000 (65 FR 14919, March 20, 2000). The cost to implement and manage the IFQ sablefish and halibut pot gear fishery would be included in the annual calculation of NMFS's recoverable costs, and this proposed rule would be included under this cost recovery program. These costs will be part of the total management and enforcement costs used in the calculation of the annual fee percentage. While costs specific to the CDQ Program for halibut are recoverable through a separate cost recovery program (81 FR 150, January 5, 2016), this rule would not change the process that harvesters use to pay cost recovery fees.

Whale Interactions

If some portion of the IFQ and CDQ halibut fleet switches to pot gear, interactions between whales and the halibut fishery could decrease. Unaccounted halibut mortality due to depredation would be expected to decline as IFQ and CDQ halibut fishermen voluntarily switch from hook-and-line gear to pot gear. Because the amount of depredation is not known with certainty, the potential effects of reduced depredation from this proposed rule cannot be quantified.

Depredation by killer whales and sperm whales is common in the sablefish and IFQ halibut hook-and-line fisheries in the GOA and BSAI. Section 3.5 of the Analysis provides available information on the interactions of the IFQ fishery with killer whales and sperm whales. In the Analysis, NMFS examined data from the commercial fisheries and sablefish survey data and concluded that the use of pot gear would support the purpose and need of this proposed rule to reduce IFQ sablefish and halibut fishery interactions with whales in the BSAI. Use of pot gear is expected to reduce fishing gear interactions with whales and have a positive effect on killer whales and sperm whales compared to the status quo.

Section 3.5.3.2 of the Analysis describes whale entanglement with vertical gear lines in the water. Determining future behavior of fishery participants and potential gear configurations is challenging, so a large amount of uncertainty exists regarding entanglement likelihood. However, based on the very low likelihood of whale entanglements in hook-and-line gear in Alaska fisheries and based on historic halibut fishing grounds, NMFS expects that whale entanglements with pot gear would be minimal.

Seabird Interactions

This proposed rule would likely reduce the incidental catch of seabirds in the IFQ and CDQ halibut fisheries because it would provide vessel operators with the opportunity to use pot gear, which has a lower incidental catch rate of seabirds than hook-and-line gear. Many seabird species are attracted to fishing vessels to forage on bait, offal, discards, and other prey made available by fishing operations. These interactions can result in direct mortality for seabirds if they become entangled in fishing gear or strike the vessel or fishing gear while flying. In addition, seabirds are attracted to sinking baited hooks and can be hooked and drowned. Hook-and-line gear has the greatest impact on seabirds relative to other fishing gear.

In Section 3.9 of the Analysis, NMFS compared the number of seabird mortalities by hook-and-line and pot gear and determined that a higher level of seabird mortality occurred with hook-and-line gear than pot gear. Data from 2007 to 2017 indicate the annual incidental catch of seabirds in all pot gear fisheries constitutes about 3 percent of total, fisheries-related seabird mortality in Alaska, while hook-and-line gear constitutes 87.3 percent of total, fisheries-related seabird mortality in Alaska. From 2007 to 2017, 62 percent of the average seabird bycatch in all pot gear fisheries was attributed to the BS area.

Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the BSAI FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the North Pacific Fishery Management Council, and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the regional fishery management councils that have authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters which are in addition to, and not in conflict with, IPHC regulations (16 U.S.C. 773c(c)). This proposed rule is consistent with the Council's authority to allocate halibut catch among fishery participants in the waters in and off

Alaska. The Halibut Act provides the Secretary of Commerce with the general responsibility to carry out the Convention with the authority to, in consultation with the Secretary of the department in which the U.S. Coast Guard is operating, adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act (16 U.S.C. 773c(a) & (b)). This proposed rule is consistent with the Halibut Act and other applicable law.

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

A Regulatory Impact Review was prepared to assess costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). The Council recommended and NMFS proposes Amendment 118 and these regulations based on those measures that maximize net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the Initial Regulatory Flexibility Analysis section.

Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (IRFA) was prepared for this action, as required by Section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603), to describe the economic impact this proposed rule, if adopted, would have on small entities. The IRFA describes the action; the reasons why this action is proposed; the objectives and legal basis for this proposed rule; the number and description of directly regulated small entities to which this proposed rule would apply; the recordkeeping, reporting, and other compliance requirements of this proposed rule; and the relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule. The IRFA also describes significant alternatives to this proposed rule that would accomplish the stated objectives of the Magnuson-Stevens Act, and any other applicable statutes, and that would minimize any significant economic impact of this proposed rule on small entities. The description of the proposed action, its purpose, and the legal basis are explained in the preamble and are not repeated here.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation

(including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

Number and Description of Small Entities Regulated by This Proposed Rule

NMFS estimates that, between the BSAI and the GOA, 815 vessels participated in the IFQ or CDQ commercial halibut fisheries in 2018; 802 of which are considered small entities based on the \$11.0 million threshold. All of these small entities in the BSAI or GOA could be directly regulated by that aspect of the proposed rule that would specify NMFS's regulatory authority to limit or close IFQ or CDQ halibut fishing if NMFS determined it was necessary in the event of a conservation concern for groundfish or shellfish. In addition, vessels that currently participate in the GOA fisheries would be directly regulated by the proposed rule if they choose to participate in the IFQ or CDQ halibut or sablefish fisheries in the BSAI. NMFS estimates that, in the BSAI, 152 vessels participated in the IFQ or CDQ halibut or sablefish fisheries in 2018. Of those vessels, 125 are considered small entities. In the BSAI sablefish pot fishery, 5 of the 9 total vessels that participated in 2018 are defined as a small entity. Therefore, NMFS estimates a total of 130 small entities that would be directly regulated by this proposed rule if they decide to use pot gear to harvest IFQ or CDQ halibut or IFQ or CDQ sablefish. In addition, a portion of these small entities engaged in the IFQ or CDQ halibut or sablefish fisheries would be subject to the proposed requirements for using pot gear if they choose to use pot gear in the BSAI IFQ or CDQ halibut or sablefish fisheries. In addition, this proposed action would close the PIHCZ to all fishing with pot gear. No entities are currently using pot gear to fish within the PIHCZ, therefore, no additional entities other than the 130 entities engaged in the IFQ or CDQ fisheries would be affected by this provision. Those entities engaged in the IFQ or CDQ fisheries with pot gear in the BSAI would be required to use logbooks and VMS and submit additional pot gear information on the PNOL while IFQ or CDQ fishing with pot gear in the BSAI.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

Several aspects of this rule directly regulate small entities. BSAI halibut harvesters that are directly regulated by

this action are expected to benefit from the additional flexibility to use a new gear type in order to minimize the costs of whale depredation that occurs on hook-and-line gear. Additional impacts may be expected for small directly regulated IFQ or CDQ halibut and sablefish harvesters in terms of potential additional costs for daily fishing logbooks, reporting on the PNOLs, or VMS requirements. Small entities would be required to comply with the requirements for using pot gear in the BSAI IFQ and CDQ halibut and sablefish fisheries. Authorizing halibut retention in pot gear in this proposed rule would provide an opportunity for small entities to choose whether to use hook-and-line or pot gear to increase harvesting efficiencies and reduce operating costs in the IFQ and CDQ halibut and sablefish fisheries. Because NMFS currently has statutory authority to enact emergency regulations to prevent overfishing under section 305(c) of the Magnuson-Stevens Act, NMFS does not anticipate additional costs to small entities from potential inseason closures; however, NMFS expects that this proposed rule would provide better clarity and certainty to the regulated public by specifying in regulation the management measures, and required determinations, that NMFS would use to limit or close IFQ or CDQ fishing for halibut in the BSAI and GOA if an OFL for groundfish or shellfish is approached, consistent with regulations in place for directed fishing for groundfish.

As noted in Section 4.7.12 of the Analysis, the proposed requirements for using pot gear are not expected to adversely impact small entities because such entities could choose to use pot gear or continue to use hook-and-line gear. In addition, the requirements for using pot gear would not be expected to restrict existing sablefish harvesting operations. The Council and NMFS considered requirements that would impose larger costs on directly regulated small entities. These included requiring all vessels to remove gear from the fishing grounds each time the vessel made a landing and requiring gear modifications, such as escape mechanisms for bycatch. The Council and NMFS determined that the costs of additional requirements on the existing fleet outweighed the benefits of increased regulations because the preferred specifications for gear modifications to reduce bycatch are unknown at this time but could be developed by industry in the future if allowed the flexibility to innovate. This proposed rule would meet the objectives

of the action while minimizing adverse impacts on fishery participants.

Small entities would be required to comply with additional recordkeeping and reporting requirements under this proposed rule if they choose to use pot gear in the BSAI IFQ or CDQ halibut fishery. Directly regulated small entities using pot gear would be required to maintain and submit logbooks to NMFS, report specific information on the PNOL, and have an operating VMS on board the vessel. These additional recordkeeping and reporting requirements would not be expected to adversely impact directly regulated small entities because the costs of complying with these requirements is de minimus relative to total gross fishing revenue that the opportunity to fish with pot gear would provide. More detail can be found in Section 4.7.5 of the Analysis. In addition, it is likely that vessels will not incur new costs under the proposed rule because many of the vessels that may choose to use pot gear under this proposed rule likely currently comply with the logbook and VMS reporting requirements when participating in the IFQ sablefish fishery and in other fisheries.

The Council and NMFS considered alternatives to implement additional requirements to report locations of deployed and lost gear in an electronic database. The Council and NMFS determined that these additional requirements were not necessary to meet the objectives of the action; could undermine other aspects of the Magnuson-Stevens Act because coordinates of lost pot gear are confidential under section 402(b) of the MSA; and were not practicable at this time because NMFS cannot enforce a location reporting requirement since it is not currently possible to verify the location of lost fishing gear. In addition, this action eliminates the requirement for a one-time report that must be faxed into NMFS OLE, which results in an estimated savings of \$1,340 a year in personnel and miscellaneous costs to the industry. And this action also eliminates the requirements for vessels using pot gear to harvest IFQ sablefish to check-in when using VMS, which results in estimated annual savings of \$268 for all vessel operators in the BSAI and GOA. This proposed rule would meet the objectives of the action while minimizing the reporting burden for fishery participants.

There are no significant alternatives to this proposed rule that would accomplish the objectives to authorize retention of halibut in pot gear in the BSAI IFQ or CDQ halibut or sablefish fisheries and that would minimize

adverse economic impacts on small entities.

Duplicate, Overlapping, or Conflicting Federal Rules

NMFS has not identified any duplication, overlap, or conflict between this proposed action and existing Federal rules.

Recordkeeping, Reporting, and Other Compliance Requirements

The recordkeeping, reporting, and other compliance requirements of some vessels affected by this action would be increased slightly. This proposed rule contains new requirements for vessels participating in the proposed IFQ and CDQ halibut pot fishery in the BSAI. This proposed rule would remove two unnecessary VMS check-in requirements in the BSAI and GOA.

NMFS currently requires catcher vessels 60 feet (ft) or greater length overall (LOA), using fixed gear, setline, or pot gear to harvest IFQ sablefish or IFQ halibut to maintain a longline and pot gear Federal DFL. Catcher/processors currently must also maintain a daily catcher/processor logbook (DCPL). All vessels participating in the BSAI sablefish IFQ or CDQ pot fishery maintain a longline and pot gear DFL. This proposed rule would revise regulations to also require all vessels using pot gear to harvest IFQ or CDQ halibut in the BSAI to maintain a longline and pot gear DFL.

NMFS currently requires vessels in the BSAI to have an operating VMS on board while participating in the IFQ or CDQ sablefish pot fishery. This proposed rule would revise regulations to extend this requirement to vessels using pot gear in the BSAI IFQ or CDQ halibut fishery.

NMFS currently requires all vessels in the IFQ sablefish and halibut fisheries to submit a PNOL to NMFS. This proposed rule would revise regulations to require vessels using pot gear in the BSAI IFQ or CDQ halibut fishery to report the number of pots set, the number of pots lost, and the number of pots left deployed on the fishing grounds in addition to the information they currently submit in the PNOL.

Two regulations would be removed because they are no longer necessary, but these proposed removals would not materially change existing VMS coverage, requirements, or equipment. This action would remove a check-in requirement for vessel operators activating VMS for the first time and would remove a requirement for vessel operators to contact NMFS and receive a VMS confirmation number at least 72 hours prior to fishing for IFQ sablefish

in the BSAI or using longline pot gear to fish for sablefish in the GOA.

Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). NMFS has submitted these requirements to OMB for approval under Control Numbers 0648–0213, 0648–0272, and 0648–0445.

OMB Control Number 0648–0213

Public reporting burden is estimated to average 35 minutes per individual response for the Catcher Vessel Longline and Pot Gear Daily Fishing Logbook.

OMB Control Number 0648–0272

Public reporting burden is estimated to average 15 minutes per individual response for the Prior Notice of Landing.

OMB Control Number 0648–0445

VMS transmissions are not assigned a reporting burden because the transmissions are automatic. Public reporting burden is estimated to average 12 minutes per individual response for the VMS check-in report and 12 minutes for the sablefish call-in; both are being removed because they are no longer necessary.

Public comment is sought regarding whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collections of information to NMFS (see **ADDRESSES**), and by email to OIRA_Submission@omb.eop.gov or fax to 202–395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with, a collection of information subject to the requirement of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: http://www.cio.noaa.gov/services_programs/prasubs.html.

List of Subjects**50 CFR Part 300**

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fish, Fisheries, Fishing, Fishing regulations, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: September 25, 2019.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR parts 300, 600, and 679 are proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS**Subpart E—Pacific Halibut Fisheries**

- 1. The authority citation for part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

- 2. In § 300.61, add paragraph (3) to the definition of “Fishing” to read as follows:

§ 300.61 Definitions.

* * * * *

Fishing means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including:

* * * * *

(3) The deployment of pot gear as defined in § 679.2 of this title in Commission regulatory areas 4B, 4C, 4D, and 4E and the portion of Area 4A in the Bering Sea Aleutian Islands west of 170°00′ W long.

* * * * *

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

- 3. The authority citation for 50 CFR part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

- 4. In § 600.725, revise paragraph (v) table entry “7. Pacific Halibut Fishery (Non-FMP):” row A to read as follows:

§ 600.725 General prohibitions.

* * * * *

(v) * * *

Fishery	Authorized gear types
* * *	* * *

* * *

VII. North Pacific Fishery Management Council

* * *	* * *
7. Pacific Halibut Fishery (Non-FMP):	
A. Commercial (IFQ and CDQ).	A. Hook and line, pot.
* * *	* * *

* * *

* * *

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

- 5. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111–281.

- 6. In § 679.2, for the definition of “Authorized fishing gear,” add paragraphs (4)(v) and (15)(iii) to read as follows:

§ 679.2 Definitions.

* * * * *

Authorized fishing gear (see also § 679.24 for gear limitations and Table 15 to this part for gear codes) means trawl gear, fixed gear, longline gear, pot gear, and nontrawl gear as follows:

(4) * * *

(v) For halibut harvested from any IFQ regulatory area in the BSAI, all pot gear, if the vessel operator is fishing for IFQ or CDQ halibut in accordance with § 679.42.

* * * * *

(15) * * *

(iii) *Halibut retention exception.* If required to retain halibut when harvesting halibut from any IFQ regulatory area in the BSAI, vessel operators are exempt from requirements to comply with a tunnel opening for pots when fishing for IFQ or CDQ halibut or IFQ or CDQ sablefish in accordance with § 679.42(m).

* * * * *

- 7. In § 679.5,

- a. Revise paragraph (a)(4)(i);
■ b. Revise paragraph (c)(3)(i)(B) heading and paragraphs (c)(3)(i)(B)(1) and (c)(3)(i)(B)(3); and
■ c. Revise paragraph (l)(1)(iii)(I).

The revisions read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

(a) * * *

(4) * * * (i) *Catcher vessels less than 60 ft (18.3 m) LOA.* Except for vessels using pot gear as described in paragraph (c)(3)(i)(B)(1) of this section and the vessel activity report described at paragraph (k) of this section, the owner or operator of a catcher vessel less than 60 ft (18.3 m) LOA is not required to comply with the R&R requirements of this section.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(B) *IFQ or CDQ halibut, or IFQ or CDQ sablefish fisheries.* (1) The operator of a catcher vessel less than 60 ft (18.3 m) LOA, using longline pot gear to harvest IFQ sablefish or IFQ halibut in the GOA, or using pot gear to harvest IFQ or CDQ halibut or IFQ or CDQ sablefish in the BSAI, must maintain a longline and pot gear DFL according to paragraph (c)(3)(iv)(A)(2) of this section.

* * * * *

(3) Except as described in paragraph (f)(1)(i) of this section, the operator of a catcher vessel 60 ft (18.3 m) or greater LOA in the BSAI must maintain a longline and pot gear DFL according to paragraph (c)(3)(iv)(A)(2) of this section, when using hook-and-line gear or pot gear to harvest IFQ or CDQ sablefish, and when using pot gear or gear composed of lines with hooks attached or setline gear (IPHC) to harvest IFQ halibut or CDQ halibut.

* * * * *

(l) * * *

(1) * * *

(iii) * * *

(I) If using longline pot gear in the GOA or pot gear in the BSAI, report the number of pots set, the number of pots lost, and the number of pots left deployed on the fishing grounds.

* * * * *

- 8. In § 679.7:

■ a. In paragraphs (a)(21) and (a)(22), remove the words “§ 679.28” and add in its place the words “§ 679.28 (f)”;

■ b. Remove paragraph (f)(6)(ii) and redesignate paragraph (f)(6)(iii) as paragraph (f)(6)(ii); and

■ c. Add paragraph (f)(26).

The revisions and additions read as follows:

§ 679.7 Prohibitions.

* * * * *

(f) * * *

(26) Operate a catcher vessel or a catcher/processor using pot gear to fish for IFQ or CDQ halibut or IFQ or CDQ sablefish in the BSAI and fail to use

functioning VMS equipment as required in § 679.42(m).

* * * * *

■ 9. In § 679.22, revise paragraph (a)(6) to read as follows:

§ 679.22 Closures.

(a) * * *

(6) *Pribilof Islands Habitat*

Conservation Zone. Directed fishing for groundfish using trawl gear or pot gear, or fishing for halibut using pot gear, is prohibited at all times in the area defined in Figure 10 to this part as the Pribilof Islands Habitat Conservation Zone.

* * * * *

■ 10. In § 679.24, add paragraph (b)(1)(iv) to read as follows:

§ 679.24 Gear limitations.

* * * * *

(b) * * *

(1) * * *

(iv) While fishing for IFQ or CDQ halibut in the BSAI.

* * * * *

■ 11. In § 679.25,

■ a. Revise paragraph (a)(1) introductory text;

■ b. Add paragraph (a)(1)(v); and

■ c. Revise paragraphs (a)(2)(i) introductory text and (a)(2)(iii)(C);

The additions and revisions read as follows:

§ 679.25 Inseason adjustments.

(a) * * *

(1) *Types of adjustments.* Inseason adjustments for directed fishing for groundfish or fishing for IFQ or CDQ halibut issued by NMFS under this section include:

* * * * *

(v) Inseason closures of an area, district, or portions thereof, of harvest of specified halibut fisheries.

(2) * * *

(i) Any inseason adjustment taken under paragraphs (a)(1)(i), (ii), (iii), or (iv) of this section must be based on a determination that such adjustments are necessary to prevent:

* * * * *

(iii) * * *

(C) Closure of a management area or portion thereof, or gear type, or season to all groundfish or halibut fishing; or

* * * * *

■ 12. In § 679.28,

■ a. Remove and reserve paragraph (f)(4)(ii);

■ b. In paragraph (f)(6)(iv) remove “or”; and

■ c. Add paragraphs (f)(6)(vi) through (f)(6)(ix).

The additions read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(f) * * *

(6) * * *

(vi) You operate an Amendment 80 catcher/processor (see § 679.5(s));

(vii) You are fishing for IFQ sablefish in the Bering Sea or Aleutian Islands (see § 679.42(k));

(viii) You are fishing for IFQ sablefish in the GOA using longline pot gear (see § 679.42(l)) or fishing for IFQ or CDQ halibut or CDQ sablefish in the BSAI using pot gear (see § 679.42(m)); or

(ix) You are required under the Crab Rationalization Program regulations at 50 CFR 680.23(d).

* * * * *

■ 13. In § 679.42,

■ a. Revise paragraph (b)(1)(i);

■ b. Revise paragraphs (k)(1) and (k)(2); and

■ c. Add paragraph (m).

The revisions and additions read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(b) * * *

(1) * * *

(i) *IFQ halibut.* IFQ halibut must not be harvested with trawl gear in any IFQ regulatory area.

* * * * *

(k) * * *

(1) *Bering Sea or Aleutian Islands.*

Any vessel operator who fishes for IFQ sablefish in the Bering Sea or Aleutian Islands must possess a transmitting VMS transmitter while fishing for IFQ sablefish. The operator of the vessel must comply with VMS requirements at § 679.28(f)(3), (f)(4), and (f)(5).

(2) *Gulf of Alaska.* A vessel operator using longline pot gear to fish for IFQ sablefish in the Gulf of Alaska must possess a transmitting VMS transmitter while fishing for sablefish. The operator of the vessel must comply with VMS requirements at § 679.28(f)(3), (f)(4), and (f)(5).

* * * * *

(m) *BSAI halibut and sablefish pot gear requirements.* Additional regulations that implement specific requirements for any vessel operator who fishes for IFQ or CDQ halibut or IFQ or CDQ sablefish in the BSAI using pot gear are set out under § 300.61 Definitions, § 679.2 Definitions, § 679.5 Recordkeeping and reporting (R&R), § 679.7 Prohibitions, § 679.20 General limitations, § 679.22 Closures, § 679.24 Gear limitations, § 679.25 Inseason adjustments, § 679.28 Equipment and operational requirements, § 679.42 Limitations on use of QS and IFQ, and

§ 679.51 Observer requirements for vessels and plants.

(1) *Applicability.* Any vessel operator who fishes for IFQ or CDQ halibut or IFQ or CDQ sablefish with pot gear in the BSAI must comply with the requirements of paragraph (m) of this section. The IFQ regulatory areas in the BSAI include 4B, 4C, 4D, and 4E and the portion of Area 4A in the Bering Sea Aleutian Islands west of 170°00' W long.

(2) *General.* To use pot gear to fish for IFQ or CDQ halibut or IFQ or CDQ sablefish in the BSAI, a vessel operator must:

(i) Retain IFQ or CDQ halibut caught in pot gear if sufficient halibut IFQ or CDQ is held by persons on board the vessel as specified in paragraph (m)(3) of this section; and

(ii) Comply with other requirements as specified in paragraph (m)(4) of this section.

(3) *Retention of halibut.* A vessel operator who fishes for IFQ or CDQ halibut or IFQ or CDQ sablefish using pot gear must retain IFQ or CDQ halibut if:

(i) The IFQ or CDQ halibut is caught in any IFQ regulatory area in the BSAI in accordance with paragraph (m) of this section; and

(ii) An IFQ or CDQ permit holder on board the vessel has unused halibut IFQ or CDQ for the IFQ regulatory area fished and IFQ vessel category.

(4) *Other requirements.* A vessel operator who fishes for IFQ or CDQ halibut or IFQ or CDQ sablefish using pot gear in the BSAI must:

(i) Complete a longline and pot gear Daily Fishing Logbook (DFL) or Daily Cumulative Production Logbook (DCPL) as specified in § 679.5(c); and

(ii) Possess a transmitting VMS transmitter and comply with the VMS requirements at § 679.28(f)(3), (f)(4), and (f)(5).

(iii) Report pot gear information required when submitting a PNOL as described in § 679.5.

§ 679.51 [Amended]

■ 14. In paragraph (a)(1)(i) introductory text remove the phrase “with hook-and-line gear”.

[FR Doc. 2019–21261 Filed 10–2–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 190927–0047]

RIN 0648–BI83

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagics Resources in the Gulf of Mexico and Atlantic Region; Framework Amendment 7

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in Framework Amendment 7 to the Fishery Management Plan (FMP) for Coastal Migratory Pelagic (CMP) Resources of the Gulf of Mexico (Gulf) and Atlantic Region (FMP) (Framework Amendment 7), as prepared by the Gulf of Mexico Fishery Management Council (Gulf Council). This proposed rule would revise the commercial and recreational minimum size limit for the Gulf zone of the Gulf migratory group of cobia (Gulf cobia). The purpose of this proposed rule is to reduce harvest of Gulf cobia in the Gulf zone in response to concerns about the status of the stock until additional stock information becomes available.

DATES: Written comments must be received by November 4, 2019.

ADDRESSES: You may submit comments on the proposed rule, identified by “NOAA–NMFS–2019–0036,” by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0036 click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Rich Malinowski, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

- *Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov

without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in required fields if you wish to remain anonymous).

Electronic copies Framework Amendment 7 that contain an environmental assessment and a Regulatory Flexibility Act (RFA) analysis may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/modifications-gulf-mexico-migratory-group-cobia-size-and-possession-limits>.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, NMFS Southeast Regional Office, telephone: 727–824–5305, or email: rich.malinowski@noaa.gov.

SUPPLEMENTARY INFORMATION: The CMP fishery in the Gulf and Atlantic region is jointly managed by the Gulf Council and the South Atlantic Fishery Management Council (South Atlantic Council) (Councils) under the FMP, and includes king mackerel, Spanish mackerel, and Gulf cobia. The FMP was prepared by the Councils and is implemented by NMFS through regulations at 50 CFR part 622 under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Under the FMP, each Council can develop individual framework amendments to the FMP for actions that are specific to that Council’s jurisdiction.

Background

Two migratory groups of cobia exist in the southeastern US: the Atlantic migratory group and the Gulf migratory group. The Atlantic migratory group ranges from Georgia through New York and is managed by the Atlantic States Marine Fisheries Commission (84 FR 4736, February 19, 2019). The Gulf migratory group ranges in the Gulf from Texas through Florida and in the Atlantic off the east coast of Florida. The Gulf migratory group is further divided into the Gulf zone and the Florida east coast zone. The Gulf zone is defined as encompassing an area of the exclusive economic zone (EEZ) north of a line extending east of the United States/Mexico border, and north and west of the line of demarcation between the Atlantic Ocean and the Gulf (the Councils’ boundary) (50 CFR 622.369(c)(1)(i)). The Florida east coast zone encompasses an area of the EEZ south and east of the line of demarcation between the Atlantic Ocean and the Gulf, and south of a line

extending due east from the Florida/Georgia border (50 CFR 622.369(c)(1)(ii)).

Within the Gulf migratory group, the Gulf Council is responsible for management in the Gulf zone, and the South Atlantic Council is responsible for management in the Florida east coast zone. Framework Amendment 7 is only applicable to the Gulf zone for Gulf cobia. The South Atlantic Council is not presently considering management changes to the Florida east coast zone.

The most recent stock assessment of Gulf cobia (SEDAR 28 2013) determined that Gulf cobia is not overfished and is not undergoing overfishing. The Gulf Council’s Scientific and Statistical Committee (SSC) accepted the stock assessment for management advice. The Gulf Council’s SSC recommended the overfishing limit and acceptable biological catch levels for the entire Gulf cobia stock, including the Florida east coast zone, based on the results of the SEDAR 28 (2013) stock assessment. Subsequently, Amendment 20B to the FMP implemented the two zones for Gulf cobia as well as annual catch targets (ACT) and annual catch limits (ACL) for each zone (80 FR 4216, January 27, 2015).

Within the Gulf zone, Gulf cobia is managed using a stock ACT (quota) and ACL, among other measures. There are no sector-specific allocations for the commercial and recreational sectors. Landings of Gulf cobia from the Gulf zone remained relatively consistent from 2012 through 2016; however, a decrease in landings was observed in 2017. During the 2018 June and August Gulf Council meetings fishers provided public testimony that they were witnessing a decrease in the presence of Gulf cobia in the Gulf zone, and requested that the Gulf Council address concerns about the potential health of the Gulf cobia stock in the Gulf zone. Landings of Gulf zone cobia from 2018, which became available following the Gulf Council’s transmittal of Framework Amendment 7, revealed that 2018 landings did in fact continue to decline from previous years. These public comments were primarily from charter vessel and headboat operators, and private angling stakeholders. Recreational landings account for greater than 90 percent of all Gulf zone cobia landings.

The minimum size limit for Gulf cobia in both the Gulf and South Atlantic is 33 inches (83.8 cm), fork length, and has been in effect since the implementation of the original CMP FMP in 1983 (48 FR 5270, February 4, 1983). This minimum size limit applies to both sectors, and corresponds with

the length at which life history information indicates that 50 percent of cobia are sexually mature (sexes combined) and capable of reproduction (SEDAR 28 2013). The current daily Federal possession limit of two fish per person per day for both sectors has been in effect since Amendment 5 to the FMP was implemented in 1990 (55 FR 29370, July 19, 1990). The Gulf Council intends Framework Amendment 7 to take a precautionary approach. Although the 2013 stock assessment (SEDAR 28 2013) did not indicate that Gulf cobia are overfished or undergoing overfishing, the Gulf Council decided to reduce fishing mortality in response to constituent concerns, in case the decrease in landings observed in 2017 indicates an unknown issue with the health of the stock. The management measures considered in Framework 7 do not reflect those adopted for Atlantic cobia, because the Atlantic and Gulf cobia are separate and genetically distinct stocks with different growth, recruitment, and migratory patterns. Atlantic cobia can reach similar sizes as Gulf cobia, but do so over a longer lifespan (approximately 15 years compared to 11 years for Gulf cobia). Therefore, management measures appropriate for Atlantic cobia may not be appropriate for Gulf cobia.

As a result of recent decreases in landings and concerns about declining landings expressed by stakeholders, the Gulf Council decided to explore options for reducing fishing mortality of Gulf cobia in the Gulf zone at its April 2018 meeting. Framework Amendment 7 includes alternatives to revise the Gulf zone minimum size limit, as well as the possession limit, prior to the completion of the next stock assessment. This stock assessment is scheduled to begin in late 2019, and is expected to be available to the Gulf Council and their SSC in late 2020.

Management Measure Contained in This Proposed Rule

This proposed rule to implement Framework Amendment 7 would increase the commercial and recreational minimum size limit for Gulf cobia in the Gulf zone. The Gulf zone commercial and recreational minimum size limit would be increased from 33 inches (83.8 cm), fork length, to 36 inches (91.4 cm), fork length. The Gulf Council determined that increasing the minimum size limit to 36 inches (91.4 cm), fork length, would reduce fishing mortality by requiring fishers to release all Gulf cobia in the Gulf zone that are less than the minimum size limit. Raising the minimum size limit would accordingly increase the probability of a

sexually mature Gulf zone cobia being able to spawn before being harvested, resulting in positive biological effects for the stock in the form of additional recruitment to the spawning stock over time. Harvest is expected to be reduced by 10.3 percent for the commercial sector, and 26.1 percent for the recreational sector, as a result of increasing the minimum size limit.

Measure Contained in Framework Amendment 7 Not in This Proposed Rule

In addition to the action in Framework 7 and this proposed rule to increase the Gulf zone cobia minimum size limit, Framework Amendment 7 also contains an action with alternatives to revise the possession limit for cobia in the Gulf zone by reducing the individual possession limit and/or creating vessel limits. As described in 50 CFR 622.383(b), the current possession limit for Gulf cobia is two fish per person per day in or from the Gulf EEZ, regardless of the number of trips or duration of a trip.

At its October 2018 meeting, the Gulf Council decided to retain the current possession limit, because there was public opposition to the action and comparatively less of a reduction in fishing mortality from a possession limit than raising the minimum size limit. The Council determined that the reduction in harvest predicted as a result of the proposed increase in the minimum size limit (10.3 percent for the commercial sector and 26.1 percent for the recreational sector) would be sufficiently protective until the next planned stock assessment for the entire Gulf cobia stock is available in late 2020.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Framework Amendment 7, the FMP, the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

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

NMFS prepared an initial regulatory flexibility analysis (IRFA) for this proposed rule, as required by section 603 of the RFA (5 U.S.C. 603). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of this proposed rule, why it is being considered, and the objectives of this proposed rule are contained in the preamble. The Magnuson-Stevens Act

provides the statutory basis for this proposed rule. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

This proposed rule, if implemented, would apply to all commercial vessels, charter vessels and headboats (for-hire vessels), and recreational anglers that fish for or harvest cobia in the Gulf zone. Because no Federal permit is required for the commercial harvest or sale of Gulf cobia, the distinction between commercial and recreational fishing activity for the purposes of this proposed rule is whether the fish are sold. Individuals that harvest Gulf cobia under the recreational possession limit in Federal waters and who do not subsequently sell these fish are considered to be recreational anglers. The RFA does not consider recreational anglers to be small entities, so they are outside the scope of this analysis and only the impacts on businesses that engage in commercial fishing (*i.e.*, those that sell their harvests of Gulf cobia) will be discussed.

For-hire vessels sell fishing services to recreational anglers. The proposed changes to the FMP would not directly alter the services sold by these for-hire vessels. Any change in anglers' demand for these fishing services (and associated economic effects) as a result of this proposed rule would be secondary to any direct effect on anglers and, therefore, would be an indirect effect of this proposed rule. Indirect effects are not germane to the RFA; however, because for-hire captains and crew are allowed to harvest and sell Gulf cobia under the possession limit when the commercial season is open, for-hire businesses, or employees thereof, could be directly affected by this proposed rule as well.

Although no Federal permit is required for the commercial harvest and sale of Gulf cobia, vessels with other Federal commercial permits are required to report their catches for all species harvested, including Gulf cobia. On average from 2013 through 2017, there were 277 federally permitted commercial vessels with reported landings of cobia in the Gulf zone. Their average annual vessel-level revenue from all species for 2013 through 2017 was approximately \$184,000 (2017 dollars) and cobia harvested from the Gulf zone accounted for less than one percent of this revenue. The maximum annual revenue from all species reported by a single one of these vessels from 2013 through 2017 was approximately \$2.28 million (2017 dollars). Finally, it is unknown how many non-federally permitted vessels

may have fished commercially for Gulf cobia in Federal waters during this time.

For-hire vessels in the Gulf are required to have a limited access Gulf Charter Vessel/Headboat for Coastal Migratory Pelagics permit (Gulf CMP for-hire permit) to fish for or possess CMP species in or from the Gulf. As of December 4, 2018, there were 1,286 valid (non-expired) or renewable Gulf CMP for-hire permits and 32 valid or renewable Gulf CMP historical captain for-hire permits. Although the for-hire permit application collects information on the primary method of operation, the permit itself does not identify the permitted vessel as either a headboat or a charter vessel and vessels may operate in both capacities. However, only federally permitted headboats are currently required to submit harvest and effort information to the NMFS Southeast Region Headboat Survey (SRHS). Participation in the SRHS is based on determination by the Southeast Fisheries Science Center that the vessel primarily operates as a headboat. As of June 11, 2018, 70 Gulf headboats were registered in the SRHS. As a result, of the 1,318 vessels with Gulf CMP for-hire permits (including historical captain permits), up to 70 may primarily operate as headboats and the remainder as charter vessels. The average charter vessel is estimated to receive approximately \$86,000 (2017 dollars) in annual revenue. The average headboat is estimated to receive approximately \$261,000 (2017 dollars) in annual revenue.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. All of the commercial fishing businesses that would be directly regulated by this proposed rule are believed to be small entities based on the NMFS size standard.

The Small Business Administration (SBA) has established size standards for all major industry sectors in the U.S. including for-hire businesses (NAICS code 487210). A business primarily involved in the for-hire fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has

combined annual receipts not in excess of \$7.5 million for all its affiliated operations worldwide. All of the for-hire businesses that would be directly regulated by this proposed rule are believed to be small entities based on the SBA size criteria. NMFS has not identified any other small entities that would be directly affected by this proposed rule.

This proposed rule would increase the commercial and recreational minimum size limit for cobia in the Gulf zone from 33 inches (83.8 cm), fork length, to 36 inches (91.4 cm), fork length. This proposed increase in the minimum size limit would be expected to reduce aggregate annual cobia landings by 10.3 percent or 7,319 lb (3,320 kg) and decrease aggregate annual ex-vessel revenue by approximately \$25,000 (2017 dollars). If this \$25,000 decrease in ex-vessel revenue is divided by the average number of federally permitted commercial vessels that harvested and sold cobia from 2013 through 2017, it results in an average loss of \$90 per vessel per year. If it is divided by the average number of federally permitted commercial vessels that harvested and sold cobia from 2013 through 2017, plus the number of vessels with a Federal CMP for-hire permit, it results in an average loss of \$16 per vessel per year. The economic costs to each vessel would be expected to vary based on individual fishing practices and location; however, such distributional effects cannot be quantified with available data.

Framework Amendment 7 also contains an action to consider modification of the possession limit for cobia in the Gulf zone; however, the Council decided to retain the current possession limit. Because this proposed rule would not make any changes to the current possession limit, no additional direct economic effects would be expected.

The following discussion describes the alternatives that were not selected as preferred by the Gulf Council.

Four alternatives were considered for the action to increase the commercial and recreational minimum size limit for cobia in the Gulf zone. The first alternative, the no action alternative, would retain the current minimum size limit of 33 inches (83.8 cm), fork length, for both sectors. This would not be expected to alter commercial harvest rates relative to the status quo, so no direct economic effects to small entities would be expected to occur. This alternative was not selected by the Council because it would fail to address concerns about the status of the Gulf cobia in the Gulf zone.

The second alternative, which was selected as preferred, would increase the commercial and recreational minimum size limit for cobia to 36 inches (91.4 cm), fork length, in the Gulf zone.

The third alternative would increase the recreational and commercial minimum size limit for cobia to 39 inches (99.1 cm), fork length, in the Gulf zone. This alternative would be expected to reduce aggregate annual ex-vessel revenue by approximately \$70,000 (2017 dollars). This alternative was not selected by the Gulf Council because they decided a smaller increase in the minimum size limit was appropriate given the uncertainty surrounding potential overfishing and the potential for negative economic effects.

The fourth alternative would increase the recreational and commercial minimum size limit for cobia to 42 inches (106.7 cm), fork length, in the Gulf zone. This alternative would be expected to reduce aggregate annual ex-vessel revenue by approximately \$135,000 (2017 dollars). This alternative was not selected by the Gulf Council because they decided a smaller increase in the minimum size limit was appropriate given the uncertainty surrounding potential overfishing and the potential for negative economic effects.

Three alternatives were considered for the action to modify the possession limit for cobia in the Gulf zone. The first alternative, the no action alternative, was selected as preferred and would maintain the current possession limit.

The second alternative would decrease the per person recreational and commercial possession limit for cobia in the Gulf zone to one fish per day. This alternative would be expected to result in an estimated 6 percent reduction in Gulf cobia commercial landings and an estimated loss in annual ex-vessel revenue of \$14,495 (2017 dollars). This alternative was not selected by the Council, because they determined that the proposed increase in the minimum size limit would be sufficient to address the concerns of potential overfishing of Gulf cobia prior to the next planned stock assessment. In accordance with that determination, and in consideration of potential negative economic effects, the Council decided to maintain the current possession limit for cobia in the Gulf zone.

The third alternative would create a recreational and commercial vessel trip limit for cobia in the Gulf zone. Under this vessel limit, anglers would not be permitted to exceed the per person possession limit. The third alternative

contained three options. The first option would set the recreational and commercial vessel trip limit for cobia in the Gulf zone at two fish, which would be expected to result in an estimated 5 percent reduction in commercial landings and an estimated loss in annual ex-vessel revenue of \$12,080 (2017 dollars). The second option would set the recreational and commercial vessel trip limit for cobia in the Gulf zone at four fish, which would be expected to result in an estimated 1.6 percent reduction in commercial landings and an estimated loss in annual ex-vessel revenue of \$3,865 (2017 dollars). The third option would set the recreational and commercial vessel trip limit for cobia in the Gulf zone at six fish, which would be expected to result in an estimated 0.7 percent reduction in commercial landings and an estimated loss in annual ex-vessel revenue of \$1,691 (2017 dollars). This alternative was not selected by the Council, because they determined that the proposed increase in the minimum size limit would be

sufficient to address the concerns of potential overfishing of Gulf cobia prior to the next planned stock assessment. In accordance with that determination, and in consideration of potential negative economic effects, the Council decided not to implement a vessel trip limit.

No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this proposed rule. Accordingly, the Paperwork Reduction Act does not apply to this proposed rule.

List of Subjects in 50 CFR Part 622

Cobia, Fisheries, Fishing, Gulf of Mexico, Size limits.

Dated: September 27, 2019.

Samuel D. Rauch III,

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

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

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

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

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

■ 2. In § 622.380, revise paragraph (a)(1) to read as follows:

§ 622.380 Size limits.

* * * * *

(a) * * *

(1) *Gulf migratory group* (i) *Gulf zone*—36 inches (91.4 cm), fork length.

(ii) *Florida east coast zone*—33 inches (83.8 cm), fork length.

* * * * *

[FR Doc. 2019–21482 Filed 10–2–19; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 84, No. 192

Thursday, October 3, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by November 4, 2019 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: Food Program Reporting System (FPRS).

OMB Control Number: 0584–0594.

Summary of Collection: The Food and Nutrition Service (FNS) is consolidating certain programmatic and financial data reporting requirements under the Food Programs Reporting System (FPRS), an electronic reporting system. The purpose is to give State agencies and Indian Tribal Organization (ITO) agencies one portal for the various reporting required for the programs that the State and ITO agencies operate.

Need and Use of the Information: The data collected will be used for a variety of purposes, mainly program evaluation, planning, audits, funding, research, regulatory compliance and general statistics. The data is gathered at various times, ranging from monthly, quarterly, annual or final submissions. Without the information, FNS would be unable to meet its legislative and regulatory reporting requirements for the affected programs.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 12,708.

Frequency of Responses: Reporting: Quarterly, Semi-annually, Monthly; Annually.

Total Burden Hours: 105,670.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–21529 Filed 10–2–19; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Farm Service Agency

Notice of Availability of the Draft Programmatic Environmental Assessment for the Farm Service Agency's Conservation Reserve Program

AGENCY: Commodity Credit Corporation (CCC), Farm Service Agency (FSA), USDA.

ACTION: Notice of Availability (NOA); request for comments.

SUMMARY: FSA, acting on behalf of the CCC, announces the availability for review and comment the draft Programmatic Environmental Assessment (PEA) assessing the alternatives to and anticipated environmental impacts of potential changes from the Agricultural Improvement Act of 2018 (2018 Farm Bill) to the Conservation Reserve Program (CRP), in compliance with the National Environmental Policy Act of 1969 (NEPA). The intent of this notice is to make the draft PEA available for review and request comments by the public, other agencies, and Tribes on the proposed alternatives and their potential impacts to the human environment. The feedback we receive from this notice will be incorporated into the final PEA, as appropriate, prior to FSA's decision.

DATES: We will consider comments that we receive by October 27, 2019. Comments received after this date will be considered to the extent possible.

ADDRESSES: The CRP draft PEA is available at: <https://www.fsa.usda.gov/programs-and-services/environmental-cultural-resource/nepa/current-nepa-documents/index>.

We invite you to submit comments on the CRP draft PEA. In your comments, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments:

- By mail at Conservation Reserve Program PEA Comments, c/o Cardno-GS, 2496 Old Ivy Road, Suite 300, Charlottesville, VA 22903, or
- Electronically at FPAC.Comments@usda.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Robyn Rose, (202) 720–5104. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION: FSA is assessing mandatory and potential discretionary changes to CRP resulting from the passage of the 2018 Farm Bill, by preparing a PEA to provide FSA decisionmakers, other agencies, Tribes, and the public with an analysis that evaluates effects in appropriate contexts, describes the intensity of adverse as well as beneficial impacts, and addresses cumulative environmental impacts associated with proposed programmatic changes to these programs. CRP was first

authorized in the Food Security Act of 1985 (Pub. L. 99–198, 99 Stat. 1509–1514, 16 U.S.C. 3831–3835), and is governed by regulations in 7 CFR part 1410. CRP is a voluntary program that supports the implementation of long-term conservation measures designed to improve the quality of ground and surface waters, control soil erosion, and enhance wildlife habitat on environmentally sensitive agricultural land. In return, CCC provides participants with rental payments and cost share assistance under contracts that extend from 10 to 15 years. CRP is a CCC program administered by FSA with the support of other Federal, State, and local agencies and organizations. More information on CRP is available at: <https://www.fsa.usda.gov/programs-and-services/conservation-programs/conservation-reserve-program/index>.

The CRP draft PEA is available at: <https://www.fsa.usda.gov/programs-and-services/environmental-cultural-resource/nepa/current-nepa-documents/index>. The availability of the CRP draft PEA was announced on September 27, 2019, through an FSA news release; that announcement started the 30-day public comment period.

The draft PEA evaluates No Action and Proposed Action Alternatives to ensure the full range of mandatory and potential discretionary alternatives and impacts are analyzed. The alternatives and impacts included in the draft PEA will be amended, as appropriate, based on input from the public, other agencies, and Tribes submitted during this comment period, in the final PEA and FSA's decision document, which will be made available at the site listed above under Addresses.

Robert Stephenson,

Executive Vice President, Commodity Credit Corporation.

Richard Fordyce,

Administrator, Farm Service Agency.

[FR Doc. 2019–21481 Filed 10–2–19; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Utilities Service

Community Facilities Guaranteed Loan Program Guarantee Fee Rate, Annual Renewal Fee, Rural Area Definition, and Funding Priority for Fiscal Year 2020; and Water and Waste Disposal Programs Guaranteed Rural Area Definition and Funding Reservation for Fiscal Year 2020

AGENCY: Rural Housing Service and Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces implementation of several provisions of the 2018 Farm Bill related to the Rural Housing Service (RHS) and the Rural Utilities Service (RUS) agencies of the Rural Development mission area of the United States Department of Agriculture, USDA, sometimes hereinafter referred to as Agency. Specifically, it provides notice of the population change in the rural area definition for the Community Facilities (CF) Guaranteed Loan Program and the Water and Waste Disposal (WWD) Guaranteed Loan Program and priorities for each program. It also provides established fee levels for Fiscal Year (FY) 2020 for the CF Guaranteed Loan Program.

This Notice is being issued prior to enactment of full year appropriation for FY 2020. The Agency will publish the amount of funding received in the final appropriations act on its website at <https://www.rd.usda.gov/newsroom/fy2020-appropriated-funding>.

DATES: *Applicability date:* The Agency will not act on any applications received under this Notice until December 2, 2019.

FOR FURTHER INFORMATION CONTACT:

Karla Peiffer, USDA Rural Development, Community Facilities Program at (515) 238–6668 or via email at karla.peiffer@usda.gov; or Susan Woolard, USDA Rural Development, Water and Waste Disposal Program at (202) 720–9631, or via email at susan.woolard@usda.gov.

SUPPLEMENTARY INFORMATION:

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this notice as major, as defined by 5 U.S.C. 804(2).

Background

The Agriculture Improvement Act of 2018 (Pub. L. 115–334, 2018 Farm Bill)

was signed into law by the President on December 20, 2018. The Farm Bill included several statutory provisions affecting the CF and WWD Programs.

Rural Area Population Threshold

Section 6402 of the Farm Bill amended section 343(a)(13) of the Consolidated Farm and Rural Development Act (CONACT) to change the eligible population threshold in the definition of “rural” and “rural area” for the CF and WWD Guaranteed Loan Programs to 50,000. As a result of this amended definition, § 343(a)(13)(D) “Areas Rural in Character” is also applicable to CF and WWD Guaranteed Loans, but this portion of the definition has been determined to not be self-executing and, therefore, will be implemented through the rulemaking process consistent with Administrative Procedure Act requirements. While the guaranteed programs generally are available in more highly populated rural areas, Section 306(a)(24) of the CONACT was amended to establish a reservation of funds for CF Guaranteed Loans for projects in rural areas with a population of not more than 20,000 inhabitants and to provide a prioritization for WWD Guaranteed Loans for rural areas with a population of not more than 10,000 people.

CF Guaranteed Loans

Section 6402 of the 2018 Farm Bill amended § 343(a)(13) of the CONACT to define a rural area for CF Guaranteed loans as “an area other than (i) a city or town that has a population of greater than 50,000 inhabitants; and (ii) any urbanized area contiguous and adjacent to a city or town described in clause (i).” Applications for CF Guaranteed Loan funds for projects in rural areas with a population up to 50,000 may be submitted to RHS in accordance with 7 CFR 3575.52 for processing. Pursuant to Section 6402 of the 2018 Farm Bill and Section 306(a)(24) of the CONACT, guarantee funds appropriated during the fiscal year (including FY 2020) will be reserved for projects in rural areas with a population of not more than 20,000 inhabitants based on the following reservation of funds schedule:

- (1) 100 percent of the first \$200,000,000 so made available;
- (2) 50 percent of the next \$200,000,000 so made available; and
- (3) 25 percent of all amounts exceeding \$400,000,000 so made available.

Based on the reservation of funds schedule outlined above, applications received where no funds are available (*i.e.* applications for projects in areas with more than 20,000 inhabitants, but

only reserved funding is available) will not be processed by RHS and will be returned to the lender. The lender may resubmit the application when funds become available.

WWD Guaranteed Loans

Notwithstanding the definition in 7 CFR 1779.2, pursuant to section 343(A)(13) of the CONACT, the eligible population threshold for WWD Guaranteed Loans is now 50,000. Applications for WWD Guaranteed Loan funds may be submitted to RUS in accordance with 7 CFR 1779.53 for processing.

Pursuant to section 306(a)(24), the Secretary shall prioritize water and waste facility projects in rural areas with a population of not more than 10,000 people. For FY 2020, the Agency will use National Office reserves to ensure that funding is prioritized for eligible projects in rural areas with a population of not more than 10,000 people. Applications for WWD Guaranteed Loan funds may be submitted to the RUS in accordance with 7 CFR 1779.53 for processing.

Guarantee Fees

Section 307(b) of the CONACT provides the authority for the Agency to charge fees. Pursuant to section 6418 of

the 2018 Farm Bill, the Agency by statute is now required to “charge and collect from the lender fees in such amounts as to bring down the costs of subsidies for the insured or guaranteed loan, except that the fees shall not act as a bar to participation in the programs nor be inconsistent with current practices in the marketplace.”

CF Guarantee Fees

Rural Housing Service has routinely collected an initial (or one-time) guarantee fee for CF Guaranteed Loans as set forth in 7 CFR 3575.29(c). Pursuant to its statutory authority as described above, RHS is establishing an initial guarantee fee rate of 1.5 percent and an annual renewal fee rate of one-half of 1 percent for the CF Guaranteed Loan Program. These rates will apply to all loans obligated in FY 2020 that are made under the CF Guaranteed Loan Program.

The initial guarantee fee is paid by the lender at the time the Loan Note Guarantee is issued. The fee is determined by multiplying the amount of the guarantee fee rate (1.5 percent) by the principal loan amount multiplied by the percent of guarantee. The annual renewal fee is paid by the lender to RHS once a year. Payment of the annual renewal fee is required in order to

maintain the enforceability of the guarantee. The amount of the annual fee on each guaranteed loan will be determined by multiplying the annual fee rate (.5 percent) by the outstanding principal loan balance as of December 31, multiplied by the percentage of guarantee. For Loan Note Guarantees issued in FY 2020, the annual renewal fee will be assessed on December 31, 2020, and is due January 31, 2021.

WWD Guarantee Fees

Rural Utilities Service (RUS) has routinely collected an initial (or one-time) guarantee fee for WWD Guaranteed Loans as set forth in 7 CFR 1779.29(c). For FY 2020, RUS will continue to charge an initial guarantee fee rate of 1.0 percent. The initial guarantee fee is paid by the lender at the time the Loan Note Guarantee is issued. The fee is determined by multiplying the amount of the guarantee fee rate (1.0 percent) by the principal loan amount multiplied by the percent of guarantee. RUS will not charge an annual renewal fee rate.

Summary

To summarize, this notice announces the population limits and guarantee fee rates for the CF and WWD Guarantee Loan Program for FY 2020, as follows:

Program	Population limit	Initial guarantee fee	Annual renewal fee
CF Guarantee	50,000	1.5%	.5%
WWD Guarantee	50,000	1.0%	0

Non-Discrimination Statement

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(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 400 Independence Avenue SW, Washington, DC 20250-9410;

(2) *Fax:* (202) 690-7442; or

(3) *Email:* program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

Dated: September 27, 2019.

Donald J. LaVoy,

Deputy Under Secretary, Rural Development.

[FR Doc. 2019-21475 Filed 10-2-19; 8:45 am]

BILLING CODE 3410-XV-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the California Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the California Advisory Committee (Committee) to the Commission will be held at 1:00 p.m. (Pacific Time) Monday, October 7, 2019.

The purpose of the meeting is for the Committee to continue planning briefing on the immigration enforcement impacting California children.

DATES: The meeting will be held on Monday, October 7, 2019 at 1:00 p.m. PT.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes at afortes@usccr.gov or (213) 894-3437.

SUPPLEMENTARY INFORMATION:

Public Call Information: Dial: 800-353-6461; Conference ID: 2888229.

This meeting is available to the public through the following toll-free call-in number: 800-353-6461 conference ID number: 2888229. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894-0508, or emailed Ana Victoria Fortes at afortes@usccr.gov. Persons who desire additional information may contact the Regional Programs Unit at (213) 894-3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at <https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkUAAQ>.

Please click on "Committee Meetings" tab. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, <https://www.usccr.gov>, or may contact the Regional Programs Unit at the above email or street address.

Agenda

- I. Welcome
- II. Planning Discussion
 - a. Speakers/Panels
 - b. Logistics
 - c. Publicity
- III. Public Comment
- III. Next Steps
- IV. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102-3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of preparing for the committee's October 16 hearing.

Dated: September 27, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019-21479 Filed 10-2-19; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of Open Meeting.

SUMMARY: National Institute of Standards and Technology (NIST)'s Visiting Committee on Advanced Technology (VCAT or Committee) will meet on Tuesday, October 29, 2019, from 8:30 a.m. to 5:00 p.m. Eastern Time, and Wednesday, October 30, 2019, from 8:30 a.m. to 12:00 p.m. Eastern Time.

DATES: The VCAT will meet on Tuesday, October 29, 2019, from 8:30 a.m. to 5:00 p.m. and Wednesday, October 30, 2019, from 8:30 a.m. to 12:00 p.m. Eastern Time.

ADDRESSES: The meeting will be held in the Portrait Room, Administration Building, at NIST, 100 Bureau Drive, Gaithersburg, Maryland, 20899 with an option to participate via webinar. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT:

Stephanie Shaw, VCAT, NIST, 100 Bureau Drive, Mail Stop 1060, Gaithersburg, Maryland 20899-1060, telephone number 301-975-2667. Ms. Shaw's email address is stephanie.shaw@nist.gov.

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 278, as amended, and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the VCAT will meet on Tuesday, October 29, 2019, from 8:30 a.m. to 5:00 p.m. Eastern Time, and Wednesday, October 30, 2019, from 8:30 a.m. to 12:00 p.m. Eastern Time. The meeting will be open to the public. The VCAT is composed of not fewer than 9 members appointed by the NIST Director, eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The primary purpose of this meeting is for the VCAT to review and make recommendations regarding general policy for NIST, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on major programs at NIST. In addition, the meeting will include an update from the Technology Transfer Subcommittee, NIST strategic planning, and discussion of items surrounding standards and other emerging issues. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST website at <http://www.nist.gov/director/vcat/agenda.cfm>.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's business are invited to request a place on the agenda. Approximately one-half hour will be reserved for public comments and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received but, is likely to be about 3 minutes each. The exact time for public comments will be included in the final agenda that will be posted on the NIST website at <http://www.nist.gov/director/vcat/agenda.cfm>. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to VCAT, NIST, 100 Bureau Drive, MS 1060, Gaithersburg, Maryland, 20899, via fax at 301-216-0529 or electronically by email to stephanie.shaw@nist.gov.

All visitors to the NIST site are required to pre-register to be admitted. Please submit your name, time of arrival, email address, and phone number to Stephanie Shaw by 5:00 p.m. Eastern Time, Tuesday, October 22, 2019. Non-U.S. citizens must submit

additional information; please contact Ms. Shaw. Ms. Shaw's email address is stephanie.shaw@nist.gov and her phone number is 301-975-2667. For participants attending in person, please note that federal agencies, including NIST, can only accept a state-issued driver's license or identification card for access to federal facilities if such license or identification card is issued by a state that is compliant with the REAL ID Act of 2005 (Pub. L. 109-13), or by a state that has an extension for REAL ID compliance. NIST currently accepts other forms of federal-issued identification in lieu of a state-issued driver's license. For detailed information please contact Ms. Shaw at 301-975-2667 or visit: http://nist.gov/public_affairs/visitor/. For participants attending via webinar, please contact Ms. Shaw at 301-975-2667 or stephanie.shaw@nist.gov for detailed instructions on how to join the webinar by 5:00 p.m. Eastern Time, Monday, October 28, 2019.

Kevin A. Kimball,
Chief of Staff.

[FR Doc. 2019-21470 Filed 10-2-19; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

XRIN 0648-XT019

Atlantic Highly Migratory Species; 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan; Three-Year Review of Individual Bluefin Quota Program

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

ACTION: Notice of availability (NOA).

SUMMARY: NMFS announces the availability of the final version of Three-Year Review of the Individual Bluefin Quota (IBQ) Program. A Draft Three-Year Review of the IBQ Program was released on May 10, 2019. This Three-Year Review of the IBQ Program was conducted pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) requirement that formal and detailed reviews of certain Limited Access Privilege Programs (LAPPs) be conducted.

ADDRESSES: The Three-Year Review is available by sending your request to Tom Warren at the mailing address specified below, or by calling the phone numbers listed below. *Mail:* Tom

Warren, Highly Migratory Species Management Division, NOAA Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. The Three-Year Review may also be downloaded from the Atlantic Highly Migratory Species (HMS) website at: <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>.

FOR FURTHER INFORMATION CONTACT: Tom Warren at 978-281-9260, or George Silva at 301-427-8503, or online at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>.

SUPPLEMENTARY INFORMATION: NMFS announces the availability of the final Three-Year Review of the IBQ Program. This document is consistent with the MSA requirement that calls for regional Fishery Management Councils and the Secretary to periodically conduct "formal and detailed" reviews of all LAPPs established after January 12, 2007 (MSA Section 303(c)(1)(G)). This MSA requirement includes those LAPPs established under Secretarial authority, such as the IBQ Program, which is a catch share program for bluefin tuna bycatch in the Atlantic HMS pelagic longline fishery. The guidelines state that the first review should be conducted no later than five years after the establishment of the catch share program.

The IBQ Program was established in 2015. Therefore, pursuant to the MSA requirement, NOAA Fisheries conducted a review, which is now completed and being made available to the public. This review is intended to evaluate the progress made in meeting the goals and objectives of the IBQ Program, implemented under Amendment 7 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP). The IBQ Program was designed to provide individual vessel accountability for bluefin catch (landings and dead discards) and incentivize the pelagic longline fishery to minimize interactions with bluefin. A draft program review was conducted according to guidelines developed by NMFS Procedural Instruction 01-121-01, and released on May 10, 2019 ("Draft Three-Year Review of the Individual Bluefin Quota Program"; Draft Three-Year Review). NMFS presented a summary of the Draft Three Year Review, including key data elements, to the HMS Advisory Panel on May 22, 2019. The final version of the Three-Year Review incorporates the HMS Advisory Panel suggestions as well as updated information (2018 data) for several important parameters. The

conclusions and the recommendations of the final Three-Year Review are the same as those in the Draft Three-Year Review.

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

Dated: September 30, 2019.

Alan D. Risenhoover,

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

[FR Doc. 2019-21562 Filed 10-2-19; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Western Alaska Community Development Quota (CDQ) Program

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 December 2, 2019.

ADDRESSES: Direct all written comments to Adrienne Thomas, Government Information Specialist, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or via the internet at PRAComments@doc.gov). Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Gabrielle Aberle, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668. Telephone (907) 586-7228.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for revision and extension of a current information collection.

The Western Alaska Community Development Quota (CDQ) Program is an economic development program associated with federally managed fisheries in the Bering Sea and Aleutian Islands (BSAI). The purpose of the program is to provide eligible western Alaska communities with the opportunity to participate and invest in fisheries in the BSAI, to support economic development in western Alaska, to alleviate poverty and provide economic and social benefits to residents of western Alaska, and to achieve sustainable local economies in western Alaska. The Magnuson-Stevens Fishery Conservation and Management Act allocates a portion of the annual catch limit for each directed fishery of the BSAI management area among six non-profit entities (CDQ groups) that represent 65 western Alaska communities. The CDQ groups administer the CDQ allocations, investments, and economic development projects. The CDQ groups use the revenue derived from the harvest of their fisheries allocations to fund economic development activities and provide employment opportunities.

One component, the Annual Statement of Compliance, is being added to this collection. If this revision and extension is approved, this information collection will contain the following forms and components used for managing the CDQ fisheries:

- The Annual Statement of Compliance is a document required under section 305(i)(1)(E)(v) of the Magnuson-Stevens Fishery Conservation and Management Act. Section 305(i)(1)(E)(v) requires that each year each CDQ group, following approval by its board of directors and signed by its chief executive officer, shall submit a written statement to the Secretary of Commerce and the State of Alaska that summarizes the purposes for which it made investments during the preceding year.

- The CDQ Vessel Registration System is an online system used by the CDQ groups to add small hook-and-line catcher vessels to the CDQ vessel registration list. Registered vessels are exempt from the requirements to obtain and carry a License Limitation Program license under regulations at 50 part 679. This system is also used to remove vessels from the CDQ vessel registration list.

- The Groundfish/Halibut CDQ and Prohibited Species Quota (PSQ)

Transfer Request form is used to transfer annual amounts of groundfish and halibut CDQ and PSQ, except Bering Sea Chinook salmon, between two CDQ groups. This form is completed by the transferring and receiving CDQ groups.

- The Application for Approval of Use of Non-CDQ Harvest Regulations is used by a CDQ group, an association representing CDQ groups, or a voluntary fishing cooperative to request approval to use non CDQ harvest regulations when the CDQ regulations are more restrictive than the regulations otherwise required for participants in non-CDQ groundfish fisheries.

- An appeals process is provided for an applicant who receives an adverse initial administrative determination (IAD) related to its Application for Approval of Use of Non-CDQ Harvest Regulations. No such adverse IADs have been issued to date.

II. Method of Collection

The CDQ Vessel Registration System is accessed online through eFISH on the NMFS Alaska Region website at <https://alaskafisheries.noaa.gov/webapps/efish/login>. The Groundfish/Halibut CDQ and PSQ Transfer Request may be submitted through eFISH, or by mail or fax. The Annual Statement of Compliance and the Application for Approval of Use of Non-CDQ Harvest Regulations may be submitted by email, fax, mail, or commercial carrier. Appeals may be submitted by fax, mail, or commercial carrier.

III. Data

OMB Control Number: 0648-0269.

Form Number(s): None.

Type of Review: Regular Submission (Revision of a currently approved collection).

Affected Public: Not-for-profit institutions; Business or other for-profit organizations.

Estimated Number of Respondents: 6.

Estimated Time per Response: 5 minutes to register and 5 minutes to print letter for CDQ Vessel Registration System; 35 minutes for Groundfish/Halibut CDQ and PSQ Transfer Request; 5 hours for Application for Approval of Use of Non-CDQ Harvest Regulations; and 4 hours each for Appeals and the Annual Statement of Compliance.

Estimated Total Annual Burden Hours: 49 hours.

Estimated Total Annual Cost to Public: \$8 in recordkeeping and 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.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019-21521 Filed 10-2-19; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF EDUCATION

[Docket ID ED-2019-OPEPD-0108]

Privacy Act of 1974; System of Records

AGENCY: Office of Planning, Evaluation and Policy Development, Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (the Department) publishes this notice of a new system of records entitled "Presidential Cybersecurity Education Award" (18-15-01). Pursuant to Executive Order 13870 of May 2, 2019, as published in the **Federal Register** on May 9, 2019 (Executive Order 13870), the Department, in consultation with the Deputy Assistant to the President for Homeland Security and Counterterrorism and the National Science Foundation, has developed and implemented, consistent with applicable law, an annual Presidential Cybersecurity Education Award to be presented to one elementary and one secondary school educator per year who demonstrate superior achievement in instilling skills, knowledge, and passion with respect to cybersecurity and cybersecurity-related subjects. The Department will solicit nominations for the two individual educators who will be awarded this Presidential Cybersecurity Education Award.

DATES: Submit your comments on this new system of records notice on or before November 4, 2019.

This new system of records will become applicable upon publication in the **Federal Register** on October 3, 2019. All proposed routine uses in the paragraph entitled “ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES” will become applicable on November 4, 2019, unless the new system of records notice needs to be changed as a result of public comment. The Department will publish any changes to the system of records or routine uses that result from public comment.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- **Federal eRulemaking Portal:** Go to www.regulations.gov to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the “Help” tab.

- **Postal Mail, Commercial Delivery, or Hand Delivery:** If you mail or deliver your comments about this modified system of records, address them to: Awards Coordinator, Presidential Cybersecurity Education Awards, Office of Planning, Evaluation and Policy Development, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202.

Privacy Note: The Department’s policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of

accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Jean Morrow, Presidential Cybersecurity Education Award, Office of Planning, Evaluation and Policy Development, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202, or by email at CyberAwards@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), you may call the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The information maintained in this system will be used to (1) review and evaluate applications and nominations of candidates, including, but not limited to, assessing candidate eligibility, in order to select one elementary and one secondary educator to whom the Department will present on an annual basis, the Presidential Cybersecurity Education Award; (2) develop and implement the Presidential Cybersecurity Education Award program’s annual recognition component; and, (3) carry out the responsibilities set forth in section 3(c) of Executive Order 13870.

Accessible Format: Individuals with disabilities can obtain this document 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 at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

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

Dated: September 30, 2019.

James Blew,

Assistant Secretary, Office of Planning, Evaluation and Policy Development.

For the reasons discussed in the preamble, the Assistant Secretary, Office

of Planning, Evaluation and Policy Development, U.S. Department of Education (Department), publishes a notice of a new system of records to read as follows:

SYSTEM NAME AND NUMBER:

Presidential Cybersecurity Education Award (18–15–01).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Planning, Evaluation and Policy Development, 400 Maryland Avenue SW, Washington, DC 20202.

SYSTEM MANAGER(S):

Awards Coordinator, Presidential Cybersecurity Education Award, Office of Planning, Evaluation and Policy Development, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202. The email address is: CyberAwards@ed.gov.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 13870 of May 2, 2019, entitled, “America’s Cybersecurity Workforce,” as published in the **Federal Register** at 84 FR 20523 (May 9, 2019) (Executive Order 13870).

PURPOSE(S) OF THE SYSTEM:

The records maintained in this system will be used to (1) review and evaluate applications and nominations of candidates, including, but not limited to, assessing candidate eligibility, in order to select one elementary and one secondary educator to whom the Department will present, on an annual basis, the Presidential Cybersecurity Education Award; (2) develop and implement the Presidential Cybersecurity Education Award program’s annual recognition component; and, (3) carry out the responsibilities set forth in section 3(c) of Executive Order 13870.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on elementary and secondary educators who apply or are nominated for the Presidential Cybersecurity Education Award.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of records about each applicant and nominee, including, but not limited to, their: (1) Name, (2) level of education taught; (3) city and State; (4) school, school district, or

facility; and, (5) work name, address, email address, and contact number.

The system also contains applicant or nominee narrative responses addressing the applicant's or nominee's superior educator accomplishment (without respect to research, scholarship, or technology development) and the academic achievement of their students. Examples of information provided in narrative responses regarding the applicant's or nominee's superior educator accomplishment include, but are not limited to, whether the educator taught the knowledge, skills, and abilities of the National Initiative for Cybersecurity Education (NICE) Cybersecurity Workforce Framework; increased cybersecurity career awareness; infused cybersecurity across their educational portfolio; integrated innovative cybersecurity educational approaches; developed work-based learning and training through an educator-employer partnership or consortia; designed academic and/or career pathways aligned to the NICE Framework and the multi-part definition of career pathways set forth in Section 3 of the Workforce Innovation and Opportunity Act; started a successful cyber program, club, competition team, or mentoring program; attended professional development workshops; attended a cyber camp; earned an industry-valued credential or certification in a cybersecurity or cybersecurity-related subject; and scaled or repeated the cybersecurity intervention (e.g., lesson, partnership, etc.) across the school district, State, or country. Examples of information provided in narrative responses regarding the academic achievement of the educator's students include, but are not limited to, whether the students achieved high grades; a concentration in a Career Technical Education (CTE) cybersecurity program of study; passage of performance-based assessments; participation in work-based learning opportunity via an internship, apprenticeship, or job; and, an industry-valued credential (including trade or degree) in cybersecurity. The system also includes information in the narrative responses addressing how the educator has accomplished (if applicable) the following: (1) Built strong foundations for cybersecurity literacy; (2) increased diversity, equity, and inclusion in cybersecurity; and (3) prepared the cybersecurity workforce for the future.

The system also contains references provided in connection with applications and nominations, such as references from principals, school district superintendents, and general

references (e.g., a parent, local industry leader, community leader, etc., with whom the educator has worked before), including the references' work contact email addresses and telephone numbers.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from individual educators who apply and persons submitting nominations on behalf of other educators. Information also may be obtained from other persons or entities from which data is obtained under the routine uses set forth below.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. The Department may make these disclosures on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act of 1974, as amended (Privacy Act), under a computer matching agreement.

(1) *Programmatic Purposes.* The Department may disclose information from this system of records as part of the Department's review and evaluation of candidate applications and nominations, and in order to promote the selection and recognition of recipients of the Presidential Cybersecurity Education Award, along with the visibility of the award itself, to the following entities for the purposes specified:

(a) *Disclosures to the General Public Announcing the Awardees.* The Department will disclose to the general public, via the Department's website, the name, State, city, and school name of each awardee.

(b) *Disclosures to Individuals and Entities Assisting the Department in Arranging Awardee Accommodations, Transportation, and Other Services.* The Department may provide information from this system of records to individuals and entities, such as vendors, in preparation for and in connection with the awards ceremony held, annually, by the Department in Washington, DC, and related educational and celebratory activities.

(c) *Disclosures to National, State, and Local Media to Publicize the Awardees and Respond to Press Inquiries about Them.* The Department may disclose awardee information from this system of records to national, State, and local

media for the purposes of publicizing the awardees and responding to press inquiries about them.

(d) *Disclosures to the White House and Federal Agencies for Briefings, Speechwriting, or to Obtain Security Clearances.* The Department may disclose awardee information from this system of records to the White House and Federal agencies for any speechwriting and briefings for officials addressing the awardees or guests at recognition events, or to permit awardees to obtain security clearances to attend such events or to gain entry into buildings with limited access, as appropriate.

(e) *Disclosures to National, State, and Locally Elected Officials and Their Respective Staff to Notify Them of Awardees in their States or Districts or to Assist with Other Activities to Recognize These Individuals.* The Department may disclose records from this system of records to national, State, and locally elected officials to notify them of awardees in their States or districts or to assist with preparing congratulatory letters, certificates, or other honors or scheduling events or office visits in Washington, DC, or elsewhere.

(f) *Disclosures to State and Local Education Officials to Notify Them of Awardees in Their States, Districts, or Schools.* The Department may disclose awardee information from this system of records to Chief State School Officers, Superintendents of school districts, principals, and guidance counselors for the purpose of notifying them of the awardees in their States, districts, or schools.

(g) *Disclosures to References.* The Department may disclose information on applicants and nominees to references listed in applications and nominations in order to permit the Department to verify: (1) Superior educator accomplishment; (2) academic achievement by the educator's students; and (3) that the educator is in good standing, such as that the educator is not on probation, has received positive yearly reviews, etc.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, Executive

Order, rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the parties listed in sub-paragraphs (i) through (v) is involved in judicial or administrative litigation or ADR, or has an interest in judicial or administrative litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department;

(ii) Any Department employee in his or her official capacity;

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed or has been requested to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity if the agency has agreed to represent the employee; or

(v) The United States if the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative Disclosures.* If the Department determines that it is relevant and necessary to the litigation or ADR to disclose certain records to an adjudicative body, whether judicial or administrative, before which the Department is authorized to appear or to a person or an entity designated by the Department or otherwise empowered to resolve or mediate disputes, the Department may disclose those records as a routine use to the adjudicative body, person, or entity.

(d) *Disclosure to Parties, Counsel, Representatives, and Witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative, or witness is relevant and necessary to the litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(4) *Freedom of Information Act (FOIA) and Privacy Act Advice Disclosure.* The Department may disclose records from this system of records to the DOJ or the Office of Management and Budget (OMB) if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required

to be disclosed under the FOIA or the Privacy Act.

(5) *Disclosure to the DOJ.* The Department may disclose records from this system of records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the Presidential Cybersecurity Education Awards covered by this system.

(6) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. As part of such a contract, the Department shall require the contractor to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(7) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(8) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(9) *Disclosure in the Course of Responding to a Breach of Data.* The Department may disclose records from this system of records to appropriate agencies, entities, and persons when: (a) The Department suspects or has confirmed that there has been a breach of the system of records; (b) the Department has determined that as a result of the suspected or confirmed breach, there is a risk of harm to individuals, the Department (including its information systems, programs, and operation), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist the Department's efforts to respond to the suspected or confirmed breach or to

prevent, minimize, or remedy such harm.

(10) *Disclosure in Assisting another Agency in Responding to a Breach of Data.* The Department may disclose records from this system to another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records are maintained on an access-controlled electronic system.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The records are retrieved by the applicant's or nominee's name, State, school, and year of nomination, if applicable.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are retained and disposed of in accordance with Department Records Schedule 102: Recognition Programs Files (N1-441-09-6), Items (d) and (e). The Department will transfer official recognition program records, such as final publications awards, photographs, and videos, to the National Archives and Records Administration annually upon the close of the program awards cycle. Background recognition program records, namely, records received as part of the application or nomination process, may be destroyed four (4) years after cut off, which occurs annually upon the close of the program awards cycle.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All physical access to the Department of Education site where this system of records is maintained and the sites of the Department of Education's staff and contractors with access to the system is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

The computer systems employed by the Department and its contractors offer a high degree of security against tampering and circumvention. These

security systems limit data access to Department and contract personnel on a “need to know” basis and control individual users’ ability to access and alter records within the system.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record regarding you in the system of records, contact the system manager at the address listed above. You must provide necessary particulars, such as your name and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name. Your request must meet the requirements of 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. You must provide necessary particulars, such as your name and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name. Your request must meet the requirements of 34 CFR 5b.7.

NOTIFICATION PROCEDURES:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager at the address listed above. You must provide necessary particulars, such as your name and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name. Your request must meet the requirements of 34 CFR 5b.5, including proof of identity.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2019–21532 Filed 10–2–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0078]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; IES Research Training Program Surveys

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 4, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–2019–ICCD–0078. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the www.regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9089, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Phil Gagne, 202–245–7139.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public’s reporting burden. It also helps the public understand the Department’s information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance

the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: IES Research Training Program Surveys.

OMB Control Number: 1850–0873.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 580.

Total Estimated Number of Annual Burden Hours: 197.

Abstract: The surveys are for participants in the fellowship research training programs and the non-fellowship research training programs funded by Institute of Education Sciences (IES). IES’s fellowship programs include predoctoral training under the National Center for Education Research (NCER) and postdoctoral training under NCER and the National Center for Special Education Research (NCSE). These programs provide universities support to provide training in education research and special education research to graduate students (predoctoral program) and postdoctoral fellows. IES also supports non-fellowship research training through its current programs, e.g., NCER’s Methods Research Training program and NCER’s Undergraduate Pathways program. IES would like to collect satisfaction information from the participants in these programs and other similar training programs funded through NCER or NCSE grant programs. The results of the surveys will be used both to improve the training programs as well as to provide information on the programs to the participants, policymakers, practitioners, and the general public. All information released to the public will be in aggregate so that no one program or training group can be distinguished.

Dated: September 30, 2019.

Stephanie Valentine,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–21566 Filed 10–2–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION**[Docket No.: ED–2019–ICCD–0125]****Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application for Grants Under the Native American-Serving Nontribal Institutions Program CFDA# 84.031X****AGENCY:** Office of Postsecondary Education (OPE), Department of Education (ED).**ACTION:** Notice.**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing a reinstatement of a previously approved information collection.**DATES:** Interested persons are invited to submit comments on or before November 4, 2019.**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–2019–ICCD–0125. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the www.regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Don Crews, 202–453–7920.**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in

accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Application for grants under the Native American-Serving Nontribal Institutions Program CFDA# 84.031X.

OMB Control Number: 1840–0816.

Type of Review: A reinstatement of a previously approved information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 50.

Total Estimated Number of Annual Burden Hours: 2,000.

Abstract: The Title III, Part A Native American-Serving Nontribal Institutions Program provides grants and related assistance to Native American Serving-Non Tribal Institutions to enable such institutions to plan, develop, undertake, and carry out activities to improve and expand such institutions' capacity to serve Native American and low-income individuals.

Dated: September 30, 2019.

Kate Mullan,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–21509 Filed 10–2–19; 8:45 am]

BILLING CODE 4000–01–P**DEPARTMENT OF ENERGY****Notice of Orders Issued Under Section 3 of the Natural Gas Act During August 2019**

	FE Docket Nos.
CANNAT ENERGY INC	19–90–NG
CERTARUS (USA) LTD	18–88–NG
SEVEN GENERATIONS ENERGY (US) CORP.	19–95–NG
NEW WORLD GLOBAL, LLC	19–71–NG
FREEPORT LNG DEVELOPMENT, L.P.	19–61–LNG
CAMERON LNG, LLC	19–62–LNG

AGENCY: Office of Fossil Energy, Department of Energy.**ACTION:** Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during August 2019, it issued orders granting authority to import and export natural gas, to export previously imported liquefied natural gas (LNG), and vacating authorization. These orders are summarized in the attached appendix and may be found on the FE website at <https://www.energy.gov/fe/listing-doe-fe-authorizations-orders-issued-2019>.

They are also available for inspection and copying in the U.S. Department of Energy (FE–34), Division of Natural Gas Regulation, Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Signed in Washington, DC, on September 30, 2019.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Oil and Natural Gas.

Appendix**DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS**

4420	08/01/19	19–90–NG	Cannat Energy Inc	Order 4420 granting blanket authority to import/export natural gas from/to Canada.
4421–A ..	08/16/19	18–88–NG	Certarus (USA) Ltd	Order 4221—A vacating authority to import natural gas from Canada, and to export natural gas to Canada/Mexico.

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS—Continued

4421	08/16/19	19–95–NG	Seven Generations Energy (US) Corp.	Order 4421 granting blanket authority to import natural gas from Canada.
4422	08/16/19	19–71–NG	New World Global, LLC	Order 4422 granting blanket authority to import natural gas from Canada, and to export natural gas to Mexico.
4424	08/21/19	19–61–LNG ...	Freeport LNG Development, L.P	Order 4424 granting blanket authority to export previously imported LNG by vessel to Free-trade Agreement Nations and Non-Free Trade Agreement Nations.
4425	08/21/19	19–62–LNG ...	Cameron LNG, LLC	Order 4425 granting blanket authority to export previously imported LNG by vessel to Free-trade Agreement Nations and Non-Free Trade Agreement Nations.

[FR Doc. 2019–21551 Filed 10–2–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP19–1598–000]

Castex Offshore, Inc., EnVen Energy Ventures, LLC, Fieldwood Energy LLC, M21K, LLC, W&T Offshore, Inc. v. Stingray Pipeline Company, L.L.C.; Notice of Complaint

Take notice that on September 26, 2019, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2019), Castex Offshore, Inc., EnVen Energy Ventures, LLC, Fieldwood Energy LLC, M21K, LLC, and W&T Offshore, Inc., (collectively, the Complainants) filed a formal complaint against Stingray Pipeline Company, L.L.C., (Respondent) alleging that Respondent failed to comply with Respondent's FERC's Gas Tariff by failing to provide reasonable notice of a planned shut-in of its interstate pipeline system and failing to consult with its shippers to minimize the impact of the shut-in on its shippers, all as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on Respondent's corporate representatives designated on the Commission's Corporate Officials List.

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

The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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

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

Comment Date: 5:00 p.m. Eastern Time on October 16, 2019.

Dated: September 27, 2019.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2019–21501 Filed 10–2–19; 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: ER15–1387–006.
Applicants: Appalachian Power Company, PJM Interconnection, L.L.C.
Description: Compliance filing: PJM TOs submit compliance filing per Commission's 8/30/2019 order in ER15–1387 to be effective 5/25/2015.
Filed Date: 9/27/19.
Accession Number: 20190927–5106.
Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: ER19–2643–001.

Applicants: Duke Energy Florida, LLC.

Description: Tariff Amendment: DEF OATT Revisions (FRCC Dissolution Amendment) to be effective 9/1/2019.
Filed Date: 9/27/19.

Accession Number: 20190927–5098.
Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: ER19–2888–000.

Applicants: PHWD Affiliate LLC.
Description: § 205(d) Rate Filing:

Revised Market-Based Rate Tariff to be effective 9/28/2019.

Filed Date: 9/27/19.

Accession Number: 20190927–5073.
Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: ER19–2889–000.

Applicants: Refresh Wind, LLC.

Description: § 205(d) Rate Filing:
Revised Market-Based Rate Tariff to be effective 9/28/2019.

Filed Date: 9/27/19.

Accession Number: 20190927–5074.
Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: ER19–2890–000.

Applicants: Refresh Wind 2, LLC.

Description: § 205(d) Rate Filing:
Revised Market-Based Rate Tariff to be effective 9/28/2019.

Filed Date: 9/27/19.

Accession Number: 20190927–5075.
Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: ER19–2891–000.

Applicants: Avista Corporation.

Description: § 205(d) Rate Filing:
Avista Corp E Greenacres Unsigned SA T1157 to be effective 10/1/2019.

Filed Date: 9/27/19.

Accession Number: 20190927–5077.
Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: ER19–2892–000.

Applicants: Terra-Gen 251 Wind,

LLC.

Description: § 205(d) Rate Filing:
Revised Market-Based Rate Tariff to be effective 9/28/2019.

Filed Date: 9/27/19.

Accession Number: 20190927–5083.
Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: ER19–2893–000.

Applicants: El Paso Electric Company.

Description: § 205(d) Rate Filing:
Depreciation Rate Update Associated

with Rate Schedule No. 18 to be effective 8/1/2017.

Filed Date: 9/27/19.

Accession Number: 20190927–5085.

Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: ER19–2894–000.

Applicants: Terra-Gen Dixie Valley, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 9/28/2019.

Filed Date: 9/27/19.

Accession Number: 20190927–5087.

Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: ER19–2895–000.

Applicants: Terra-Gen Energy Services, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 9/28/2019.

Filed Date: 9/27/19.

Accession Number: 20190927–5092.

Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: ER19–2896–000.

Applicants: Terra-Gen VG Wind, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 9/28/2019.

Filed Date: 9/27/19.

Accession Number: 20190927–5095.

Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: ER19–2897–000.

Applicants: NSTAR Electric Company.

Description: § 205(d) Rate Filing: Third Supplement to Stony Brook ? Ludlow Agreement to be effective 10/1/2019.

Filed Date: 9/27/19.

Accession Number: 20190927–5096.

Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: ER19–2898–000.

Applicants: Voyager Wind I, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 9/28/2019.

Filed Date: 9/27/19.

Accession Number: 20190927–5099.

Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: ER19–2899–000.

Applicants: Voyager Wind II, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 9/28/2019.

Filed Date: 9/27/19.

Accession Number: 20190927–5101.

Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: ER19–2900–000.

Applicants: Yavi Energy, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 9/28/2019.

Filed Date: 9/27/19.

Accession Number: 20190927–5102.

Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: ER19–2901–000.

Applicants: Bronco Plains Wind, LLC.

Description: Baseline eTariff Filing: Bronco Plains Wind, LLC Application for Market-Based Rates to be effective 11/27/2019.

Filed Date: 9/27/19.

Accession Number: 20190927–5144.

Comments Due: 5 p.m. ET 10/18/19.

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

Docket Numbers: ES19–63–000.

Applicants: Mid-Atlantic Interstate Transmission, LL.

Description: Application under Section 204 of the Federal Power Act for Authorization to Issue Securities of Mid-Atlantic Interstate Transmission, LLC.

Filed Date: 9/27/19.

Accession Number: 20190927–5105.

Comments Due: 5 p.m. ET 10/18/19.

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: September 27, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–21500 Filed 10–2–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP19–73–001.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: Report Filing: Refund Report in Docket No. RP19–73 to be effective N/A.

Filed Date: 9/26/19.

Accession Number: 20190926–5050.

Comments Due: 5 p.m. ET 10/8/19.

Docket Numbers: RP19–1084–001.

Applicants: KO Transmission.

Description: KO Transmission Company submits tariff filing per 154.203: Order No. 587–Y Second Compliance Filing to be effective 8/1/2019 under RP19–1084.

Filed Date: 9/19/19.

Accession Number: 20190919–5062.

Comments Due: 5 p.m. ET 10/2/19.

Docket Numbers: RP19–1362–001.

Applicants: RH energytrans, LLC.

Description: RH energytrans, LLC submits tariff filing per 154.203: RH energytrans, LLC—Filing to Comply with Order Accepting Baseline Tariff to effective 9/1/29.

File Date: 9/18/19.

Accession Number: 20190918–5071.

Comments Due: 10/2/19.

Docket Numbers: RP19–1108–001.

Applicants: Wyckoff Gas Storage Company LLC.

Description: Wyckoff Gas Storage Company, LLC submits tariff filing per 154.203: Amended Order 587–Y Compliance to be effective 8/1/2019 under RP19–1108.

Filed Date: 9/20/19.

Accession Number: 20190920–5079.

Comments Due: 10/2/19.

Docket Numbers: RP16–1173–003.

Applicants: Greylock Pipeline, LLC.

Description: Greylock Pipeline, LLC submits tariff filing per 154.203: CP16–35–000 and the cost and revenue study to be effective N/A under RP16–1173.

Filed Date: 9/20/19.

Accession Number: 20190920–5027.

Comments Due: 10/2/19.

Docket Numbers: RP19–1595–000.

Applicants: Southern Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: SNG Housekeeping Filing 2019 to be effective 11/1/2019.

Filed Date: 9/25/19.

Accession Number: 20190925–5007.

Comments Due: 5 p.m. ET 10/7/19.

Docket Numbers: RP19–1023–001.

Applicants: MIGC LLC.

Description: Compliance filing NAESB V3.1 (Order No. 587–Y) Compliance 2 to be effective 8/1/2019.

Filed Date: 9/26/19.

Accession Number: 20190926–5035.

Comments Due: 5 p.m. ET 10/8/19.

Docket Numbers: RP19–1598–000.

Applicants: Castex Offshore, Inc., et al. v. Stingra.

Description: Complaint, et al. of Castex Offshore, Inc., et al. under RP19–1598.

Filed Date: 9/26/19.

Accession Number: 20190926–5047.

Comments Due: 5 p.m. ET 10/8/19.

Docket Numbers: RP19–1599–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: § 4(d) Rate Filing: FOS—All Rate Schedules—email Notices to be effective 11/1/2019.

Filed Date: 9/26/19.

Accession Number: 20190926–5115.

Comments Due: 5 p.m. ET 10/8/19.

Docket Numbers: RP19–1600–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: Compliance filing 09–2019 Refund Report—Rate Schedule S–2 to be effective N/A.

Filed Date: 9/26/19.

Accession Number: 20190926–5123.

Comments Due: 5 p.m. ET 10/8/19.

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: September 27, 2019.

Nathaniel J. Davis Sr.,

Deputy Secretary.

[FR Doc. 2019–21496 Filed 10–2–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–19–000]

Magnolia LNG, LLC; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Magnolia LNG Production Capacity Amendment

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft supplemental environmental impact statement (EIS) for the Production Capacity Amendment, proposed by Magnolia LNG, LLC (Magnolia LNG) in

the above-referenced docket. Magnolia LNG requests authorization to increase the liquefied natural gas (LNG) production capacity of the previously authorized Magnolia LNG Project in Calcasieu Parish, Louisiana (Docket No. CP14–347–000) from 8 million metric tonnes per annum (MTPA) to 8.8 MTPA. The increased LNG production capacity would be achieved through the optimization of Magnolia LNG's final design for the terminal, including additional and modified process equipment.

The draft supplemental EIS assesses the potential changes to the air and noise emissions, and our reliability and safety engineering analyses associated with the construction and operation of the Production Capacity Amendment from what was presented in the final EIS in Docket No. CP14–347–000 for the Magnolia LNG Project. The FERC staff concludes that the proposed modifications, with the additional mitigation measures recommended in the supplemental EIS, would continue to avoid or reduce impacts to less than significant levels.

The U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration, the U.S. Coast Guard, and the U.S. Department of Energy participated as cooperating agencies in the preparation of the supplemental EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the analysis conducted under the National Environmental Policy Act.

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The draft supplemental EIS is only available in electronic format. It may be viewed and downloaded from the FERC's website (www.ferc.gov), on the Environmental Documents page (<https://www.ferc.gov/industries/gas/enviro/eis.asp>). In addition, the draft supplemental EIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (<https://www.ferc.gov/docs-filing/elibrary.asp>), click on General Search, and enter the docket number in the "Docket Number" field, excluding the last three digits (*i.e.*, CP19–19). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at

FercOnlineSupport@ferc.gov or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any person wishing to comment on the draft supplemental EIS may do so. Your comments should focus on draft supplemental EIS's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. To ensure consideration of your comments on the proposal in the final supplemental EIS, it is important that the Commission receive your comments on or before 5:00 p.m. Eastern Time on November 18, 2019.

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or FercOnlineSupport@ferc.gov. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's website (www.ferc.gov) under the link to *Documents and Filings*. This is an easy method for submitting brief, text-only comments on a project;

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

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP19–19–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR part 385.214). Motions to intervene are more fully described at <http://www.ferc.gov/resources/guides/how-to/intervene.asp>. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good

cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Questions?

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC website (www.ferc.gov) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

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

Dated: September 27, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019-21494 Filed 10-2-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

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

Docket Numbers: EC19-100-000.

Applicants: Tucson Electric Power Company.

Description: Response of Tucson Electric Power Company to September 12, 2019 Deficiency Letter.

Filed Date: 9/26/19.

Accession Number: 20190926-5162.

Comments Due: 5 p.m. ET 10/17/19.

Docket Numbers: EC19-142-000.

Applicants: Energy Center Dover LLC, DB Energy Assets, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of Energy Center Dover LLC, et al.

Filed Date: 9/26/19.

Accession Number: 20190926-5133.

Comments Due: 5 p.m. ET 10/17/19.

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

Docket Numbers: EG19-189-000.

Applicants: Bearkat Wind Energy II LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Bearkat Wind Energy II LLC.

Filed Date: 9/26/19.

Accession Number: 20190926-5150.

Comments Due: 5 p.m. ET 10/17/19.

Docket Numbers: EG19-190-000.

Applicants: Camilla Solar Energy LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Camilla Solar Energy LLC.

Filed Date: 9/27/19.

Accession Number: 20190927-5044.

Comments Due: 5 p.m. ET 10/18/19.

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

Docket Numbers: ER11-2105-004.

Applicants: Oklahoma Gas and Electric Company.

Description: Notice of Non-Material Change in Status of Oklahoma Gas and Electric Company.

Filed Date: 9/26/19.

Accession Number: 20190926-5145.

Comments Due: 5 p.m. ET 10/17/19.

Docket Numbers: ER19-2092-001.

Applicants: GridLiance Heartland LLC.

Description: Tariff Amendment: GHL OATT Deficiency Filing to be effective 8/9/2019.

Filed Date: 9/26/19.

Accession Number: 20190926-5124.

Comments Due: 5 p.m. ET 10/17/19.

Docket Numbers: ER19-2103-001.

Applicants: GridLiance Heartland LLC.

Description: Tariff Amendment: GLH OATT TSA Deficiency Filing to be effective 12/31/9998.

Filed Date: 9/26/19.

Accession Number: 20190926-5126.

Comments Due: 5 p.m. ET 10/17/19.

Docket Numbers: ER19-2875-000.

Applicants: Interstate Power and Light Company.

Description: § 205(d) Rate Filing: Load Balancing Authority Agreement—IPL and Odin Wind to be effective 11/25/2019.

Filed Date: 9/26/19.

Accession Number: 20190926-5116.

Comments Due: 5 p.m. ET 10/17/19.

Docket Numbers: ER19-2876-000.

Applicants: Sempra Gas & Power Marketing, LLC.

Description: Compliance filing: Sempra Gas & Power Marketing, LLC Revised Market Based Rate Tariff to be effective 9/19/2019.

Filed Date: 9/26/19.

Accession Number: 20190926-5125.

Comments Due: 5 p.m. ET 10/17/19.

Docket Numbers: ER19-2877-000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Second Amendment to LGIA

Huntington Beach Energy TOT839 SA No. 196 to be effective 9/28/2019.

Filed Date: 9/27/19.

Accession Number: 20190927-5003.

Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: ER19-2878-000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Second Amendment to LGIA Alamitos Energy Center TOT840 SA No. 197 to be effective 9/28/2019.

Filed Date: 9/27/19.

Accession Number: 20190927-5004.

Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: ER19-2879-000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: First Amended GIA & DSA Altwind Project WDT1129QFC SA Nos. 867-868 to be effective 9/28/2019.

Filed Date: 9/27/19.

Accession Number: 20190927-5005.

Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: ER19-2880-000.

Applicants: Alta Oak Realty, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 9/28/2019.

Filed Date: 9/27/19.

Accession Number: 20190927-5042.

Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: ER19-2881-000.

Applicants: Dutch Wind, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 9/28/2019.

Filed Date: 9/27/19.

Accession Number: 20190927-5045.

Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: ER19-2882-000.

Applicants: Coachella Wind, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 12/31/9998.

Filed Date: 9/27/19.

Accession Number: 20190927-5048.

Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: ER19-2883-000.

Applicants: Garnet Wind, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 9/28/2019.

Filed Date: 9/27/19.

Accession Number: 20190927-5057.

Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: ER19-2884-000.

Applicants: LUZ Solar Partners IX, Ltd.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 9/28/2019.

Filed Date: 9/27/19.

Accession Number: 20190927–5059.

Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: ER19–2885–000.

Applicants: LUZ Solar Partners VIII, Ltd.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 9/28/2019.

Filed Date: 9/27/19.

Accession Number: 20190927–5063.

Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: ER19–2886–000.

Applicants: Mojave 3/4/5 LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 9/28/2019.

Filed Date: 9/27/19.

Accession Number: 20190927–5064.

Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: ER19–2887–000.

Applicants: Mojave 16/17/18 LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 9/28/2019.

Filed Date: 9/27/19.

Accession Number: 20190927–5071.

Comments Due: 5 p.m. ET 10/18/19.

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

Docket Numbers: ES19–60–000.

Applicants: PPL Electric Utilities Corporation.

Description: Application under Section 204 of the Federal Power Act for Authorization to Issue Securities of PPL Electric Utilities Corporation.

Filed Date: 9/27/19.

Accession Number: 20190927–5054.

Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: ES19–61–000.

Applicants: Allegheny Generating Company.

Description: Application under Section 204 of the Federal Power Act for Authorization to Issue Securities of Allegheny Generating Company.

Filed Date: 9/27/19.

Accession Number: 20190927–5062.

Comments Due: 5 p.m. ET 10/18/19.

Docket Numbers: ES19–62–000.

Applicants: Jersey Central Power & Light Co.

Description: Application under Section 204 of the Federal Power Act for Authorization to Issue Securities of Jersey Central Power & Light Company.

Filed Date: 9/27/19.

Accession Number: 20190927–5065.

Comments Due: 5 p.m. ET 10/18/19.

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: September 27, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–21499 Filed 10–2–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP17–494–000 and CP17–495–000]

Pacific Connector Gas Pipeline LP and Jordan Cove Energy Project L.P.; Notice of Revised Schedule for the Environmental Review and the Final Order for the Jordan Cove Energy Project

This notice identifies the Federal Energy Regulatory Commission (Commission) staff's revised schedule for the completion of the environmental impact statement (EIS) for the Jordan Cove Energy Project. Previously, a notice was issued identifying October 11, 2019 and January 9, 2020 as the respective dates for the final EIS and Order issuances. The U.S. Forest Service, who is a cooperating agency in the EIS preparation, only recently received critical information from the project proponent that is necessary for it to complete its land and resource management plan amendments; therefore, additional time is required in order to incorporate this new information into the final EIS. Accordingly, staff has revised the schedule for issuance of the final EIS as follows.

Schedule for Environmental Review

Issuance of Notice of Availability of the final EIS—November 15, 2019
90-day Federal Authorization Decision
Deadline—February 13, 2020

Based on the revised final EIS schedule, the Commission currently

anticipates issuing a final Order for the project no later than:

Issuance of Final Order—February 13, 2020

If a schedule change becomes necessary, an additional notice will be provided so that the relevant agencies are kept informed of the project's progress.

Additional Information

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

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (www.ferc.gov). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.*, CP17–494 and CP17–495), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at FERCOnlineSupport@ferc.gov. The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Dated: September 27, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–21497 Filed 10–2–19; 8:45 am]

BILLING CODE 6717–01–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board

AGENCY: Farm Credit Administration.

ACTION: Notice, regular meeting.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act, of the regular meeting of the Farm Credit Administration Board (Board).

DATES: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on October 10, 2019, from 9:00 a.m. until such time as the Board concludes its business.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090. Submit attendance requests via email to VisitorRequest@FCA.gov. See

SUPPLEMENTARY INFORMATION for further information about attendance requests.

FOR FURTHER INFORMATION CONTACT: Dale Aultman, Secretary to the Farm Credit Administration Board, (703) 883-4009, TTY (703) 883-4056.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. Please send an email to VisitorRequest@FCA.gov at least 24 hours before the meeting. In your email include: Name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale Aultman, Secretary to the Farm Credit Administration Board, at (703) 883-4009. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- September 12, 2019

B. New Business

- Delegation of Authority to approve *De Minimus* capital redemption requests

C. Closed Session

- Office of Secondary Market Oversight Periodic Report ¹

Dated: September 30, 2019.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2019-21624 Filed 10-1-19; 11:15 am]

BILLING CODE 6705-01-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, if any, 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)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington, DC 20551-0001, not later than November 4, 2019.

A. Federal Reserve Bank of Atlanta (Kathryn Haney, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to Applications.Comments@atl.frb.org:

1. *Professional Holding Corp., Coral Gables, Florida*; to merge with Marquis Bancorp Inc., and thereby indirectly acquire Marquis Bank, both of Coral Gables, Florida.

B. Federal Reserve Bank of Boston (Prabal Chakrabarti, Senior Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02210-2204. Comments can also be sent electronically to BOS.SRC.Applications.Comments@bos.frb.org:

1. *GSB Mutual Holding Company and GSB Bancorp, Inc., both of Guilford, Connecticut*; to become a mutual holding company and a mid-tier stock bank holding company, respectively, by acquiring The Guilford Savings Bank, Guilford, Connecticut, in connection with the conversion by The Guilford Savings Bank from mutual to stock form.

Board of Governors of the Federal Reserve System, September 27, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019-21483 Filed 10-2-19; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.604]

Announcement of Intent To Award Three OPDIV-Initiated Supplements for Grantees Under the Direct Services for Survivors of Torture Program

AGENCY: Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of intent to issue three OPDIV-Initiated Supplements.

SUMMARY: The ACF, ORR, Division of Refugee Health announces the intent to award three OPDIV-Initiated Supplements in the amount of \$67,724 to each of three current grantees providing direct services funded through the Services for Survivors of Torture (SOT) Program.

DATES: The proposed period of support for the supplements begins on September 30, 2019, and ends on September 29, 2020.

FOR FURTHER INFORMATION CONTACT: Curi Kim, Division Director, Division of Refugee Health, Office of Refugee Resettlement, 330 C Street SW, Washington, DC 20201. Telephone: 202-401-5585. Email: curi.kim@acf.hhs.gov.

SUPPLEMENTARY INFORMATION: Three grantees that are located in states which have the greatest need for services will receive supplements to enhance their capacity to serve survivors of torture within the scope of their original proposed activities. The table below shows the grantees, location, and supplemental award amount.

Organization	City	State	Supplement amount
Program for Torture Victims	Los Angeles	CA	\$67,724
Gulf Coast Jewish Family and Community Services, Florida Center for Survivors of Torture.	Clearwater and Miami	FL	67,724
Center for Survivors of Torture	Dallas	TX	67,724

¹ Session Closed-Exempt pursuant to 5 U.S.C. Section 552b(c)(8) and (9).

Authority: Torture Victims Relief Act of 1998, Section 5(a), Pub. L. 105–320 (22 U.S.C. 2152 note).

Elizabeth Leo,

Senior Grants Policy Specialist, Division of Grants Policy, Office of Administration.

[FR Doc. 2019–21518 Filed 9–30–19; 11:15 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–3197]

Further Testing of Donations That Are Reactive on a Licensed Donor Screening Test for Antibodies to Hepatitis C Virus; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled “Further Testing of Donations that are Reactive on a Licensed Donor Screening Test for Antibodies to Hepatitis C Virus; Guidance for Industry.” The guidance document provides blood establishments that collect Whole Blood and blood components, including Source Plasma, with recommendations for further testing of donations that are reactive on a licensed donor screening test for antibodies to hepatitis C virus (anti-HCV). The guidance also provides guidance to blood establishments on how to report the implementation of these recommendations. The guidance updates the recommendations related to the use of an appropriate multiantigen supplemental test contained in “Guidance for Industry: ‘Lookback’ for Hepatitis C Virus (HCV): Product Quarantine, Consignee Notification, Further Testing, Product Disposition, and Notification of Transfusion Recipients Based on Donor Test Results Indicating Infection with HCV” dated December 2010. The guidance announced in this notice finalizes the draft guidance of the same title dated September 2018.

DATES: The announcement of the guidance is published in the **Federal Register** on October 3, 2019.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2018–D–3197 for “Further Testing of Donations that are Reactive on a Licensed Donor Screening Test for Antibodies to Hepatitis C Virus; Guidance for Industry.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The

Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled “Further Testing of Donations that are Reactive on a

Licensed Donor Screening Test for Antibodies to Hepatitis C Virus; Guidance for Industry.” The guidance document provides blood establishments that collect Whole Blood and blood components, including Source Plasma, with recommendations for further testing of donations that are reactive on a licensed donor screening test for anti-HCV, as required under § 610.40(e) (21 CFR 610.40(e)). The guidance also provides guidance to blood establishments on how to report the implementation of these recommendations.

In accordance with § 610.40(e), each donation, including autologous donations, found to be reactive by a donor screening test must be further tested using a licensed, approved or cleared supplemental test, when available. If no such supplemental test is available, blood establishments must perform one or more licensed, approved, or cleared tests as adequate and appropriate to provide additional information concerning the reactive donor’s infection status (§ 610.40(e)). The guidance provides recommendations for adequate and appropriate testing under § 610.40(e), using a licensed HCV NAT (nucleic acid test) labeled with the supplemental indication and licensed anti-HCV donor screening tests or approved or cleared anti-HCV diagnostic tests that are currently available, to provide additional information concerning the donor’s infection status. The guidance updates the recommendations related to the use of an appropriate multiantigen supplemental test contained in “Guidance for Industry: ‘Lookback’ for Hepatitis C Virus (HCV): Product Quarantine, Consignee Notification, Further Testing, Product Disposition, and Notification of Transfusion Recipients Based on Donor Test Results Indicating Infection with HCV” dated December 2010 (available at: <https://www.fda.gov/media/124265/download>).

In the **Federal Register** of September 25, 2018, (83 FR 48446), FDA announced the availability of the draft guidance of the same title dated September 2018. FDA received a few comments on the draft guidance and those comments were considered as the guidance was finalized. In addition, editorial changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance dated September 2018.

This guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on further testing of donations that are reactive on a licensed

donor screening test for antibodies to hepatitis C virus. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338; and the collections of information in 21 CFR part 610 and 21 CFR part 630 have been approved under OMB control number 0910–0116.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances> or <https://www.regulations.gov>.

Dated: September 27, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–21506 Filed 10–2–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–1246]

Investigational Enzyme Replacement Therapy Products: Nonclinical Assessment; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guidance for industry entitled “Investigational Enzyme Replacement Therapy Products: Nonclinical Assessment.” The purpose of this guidance is to help sponsors design and conduct nonclinical studies needed to support initiation of clinical trials, ongoing clinical development, and marketing approval of enzyme replacement therapy (ERT) products. This guidance incorporates the comments received for and finalizes the

draft guidance of the same title issued May 13, 2015.

DATES: The announcement of the guidance is published in the **Federal Register** on October 3, 2019.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2015–D–1246 for “Investigational Enzyme Replacement Therapy Products: Nonclinical Assessment.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Jenny Doan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5345, Silver Spring, MD 20903, 301–796–1023; or Sushanta

Chakder, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5108, Silver Spring, MD 20903, 301–796–0861.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance for industry entitled “Investigational Enzyme Replacement Therapy Products: Nonclinical Assessment.” The nonclinical study requirements for ERT products may be different from products used to treat other diseases because of the rare, seriously debilitating, and life-threatening nature of the diseases treated by ERT products. Currently, there is no other final guidance that provides recommendations about the substance and scope of nonclinical information needed to support initiation of clinical trials, ongoing clinical development, and marketing approval of ERT products. This guidance provides consistent recommendations for nonclinical studies to expedite developments of ERT products used to treat these rare, life-threatening conditions, especially in pediatric patients.

This guidance finalizes the draft guidance of the same title issued May 13, 2015. All public comments received on the draft guidance have been considered, and the guidance has been revised as appropriate, along with a few editorial changes. Changes from the draft to the final include the following: “Changes in disease-specific biomarkers” has been added as a pharmacodynamic endpoint; a statement on the preference for animal disease models in assessing pharmacodynamic activity has been added; safety pharmacology parameters to proof-of-concept studies were added; a statement was added to clarify the exposure margins; a clarification on the rapidly progressing disease phenotype was provided by adding “approximately” 1 year; a statement on the 3-month toxicology study in one species to support marketing approval was added; and a statement on recovery animals was added.

This guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on “Investigational Enzyme Replacement Therapy Products: Nonclinical Assessment.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This

guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014, and the information collection in the regulations on good laboratory practice for nonclinical laboratory studies (21 CFR part 58) is approved under OMB control number 0910–0119.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs> or <https://www.regulations.gov>.

Dated: September 27, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–21507 Filed 10–2–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–1707]

Teva Pharmaceuticals USA, Inc., et al.; Withdrawal of Approval of Five Abbreviated New Drug Applications for Pemoline Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of June 4, 2019. That notice, withdrawing approval of five abbreviated new drug applications for pemoline products, contained an incorrect website address for an archived web page of a *Postmarket Drug Safety Information for Healthcare Professionals* communication that FDA issued on October 24, 2005, stating its conclusion that the overall liver toxicity risk of CYLERT (new drug applications 016832 and 017703) and generic pemoline products outweighed the benefits of these products. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Kimberly Lehrfeld, Center for Drug

Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6226, Silver Spring, MD 20993-0002, 301-796-3137.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 4, 2019 (84 FR 25811), appearing on page 25811 in FR Doc. 2019-11519, the following correction is made:

On page 25811, in the last paragraph of the third column, the website address, <https://wayback.archive-it.org/7993/20171114124349/https://www.fda.gov/DrugsDrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/ucm126461.htm>, is corrected to read <https://wayback.archive-it.org/7993/20171114124349/https://www.fda.gov/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/ucm126461.htm>.

Dated: September 27, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019-21526 Filed 10-2-19; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Autism Spectrum Disorder (ASD) Research Portfolio Analysis, NIMH

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork

Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Institute of Mental Health (NIMH), National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: The Office of Autism Research Coordination, NIMH, NIH, Neuroscience Center, 6001 Executive Boulevard, MSC 9663, Room 6184, Bethesda, Maryland, 20892 or can email your request, including your address to: iaccpublicinquiries@mail.nih.gov or nimhprapubliccomments@mail.nih.gov. Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function 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) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: Autism Spectrum Disorder (ASD) Research Portfolio Analysis, NIMH, 0925-0682, expiration date 12/31/2019, EXTENSION, National Institute of Mental Health (NIMH, National Institutes of Health (NIH).

Need and Use of Information Collection: The purpose of the ASD research portfolio analysis is to collect research funding data from U.S. and international ASD research funders, to assist the Interagency Autism Coordinating Committee (IACC) in fulfilling the requirements of the Combating Autism Act, and to inform the committee and interested stakeholders of the funding landscape and current directions for ASD research. Specifically, these analyses will continue to examine the extent to which current funding and research topics align with the *IACC Strategic Plan for ASD Research*. The findings will help guide future funding priorities by outlining current gaps and opportunities in ASD research as well as serving to highlight annual activities and research progress.

OMB approval is requested for three years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 520.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
U.S. Federal	22	63	15/60	347
U.S. Private	8	75	15/60	150
International Government	4	14	15/60	14
International Private	4	9	15/60	9
Total		2,078		520

Dated: September 23, 2019.

Melba O. Rojas,

Project Clearance Liaison, National Institute of Mental Health, National Institutes of Health.

[FR Doc. 2019-21523 Filed 10-2-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Clinical Aging Review Committee, September 26, 2019, 12:00 p.m. to September 27, 2019, 12:00 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on July 31, 2019, 84 FR 37328.

The meeting notice is amended to change the time of the meeting from 12:00 p.m.–12:00 p.m. to 9:00 a.m.–1:00 p.m. The meeting is closed to the public.

Dated: September 27, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–21490 Filed 10–2–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Outreach and Education to Health Care Providers on Substance Use (1159).

Date: October 22, 2019.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lyle Furr, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439, lf33c@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: September 27, 2019.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–21491 Filed 10–2–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: Compositions, Devices and Processes for Production and Delivery of Cell Grafts of Manufactured Retinal Pigment Epithelium Cell(s) Alone, or in Combination With Photoreceptor Cells, and on a Biodegradable Support Scaffold Transplanted Subretinally for Intra-Ocular Ophthalmic Treatment of Conditions of Degeneration, Dysfunction or Terminal Injury of Retinal Pigment Epithelium and/or Photoreceptors in Humans

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Eye Institute, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the Patents and Patent Applications listed in the **SUPPLEMENTARY INFORMATION** section of this notice to Opsis Therapeutics, LLC, (“Opsis”) located in Madison Wisconsin and its affiliate, FUJIFILM Cellular Dynamics, Inc.

DATES: Only written comments and/or complete applications for a license which are received by the National Cancer Institute’s Technology Transfer Center on or before October 18, 2019 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated an Exclusive Patent License should be directed to: Edward Fenn., Senior Technology Transfer Manager, NCI Technology Transfer Center, 9609 Medical Center Drive, RM 1E530 MSC 9702, Bethesda, MD 20892–9702 (for business mail), Rockville, MD 20850–9702; Telephone: (240) 276–5530; Facsimile: (240) 276–5504 Email: Tedd.Fenn@nih.gov.

SUPPLEMENTARY INFORMATION:

Intellectual Property

- PCT Patent App. No. PCT/US2015/039932, filed 07/10/15 (NIH Ref. E–192–2014–1–PCT–01); United States Patent App. No. 15/325,584, filed 01/11/17 (NIH Ref. E–192–2014–1–US–02); Australia Patent App. No. 2015287692, filed 07/10/15 (NIH Ref. E–192–2014–1–AU–03); Canada Patent App. No. 2954762, filed 07/10/15 (NIH Ref. E–192–2014–1–CA–04); PEC Patent App. No. 15741462.4, filed 07/10/15 (NIH Ref. E–192–2014–1–EP–05); India Patent App. No. 01717003244, filed 01/30/17 (NIH Ref. E–192–2014–1–IN–06); Japan Patent App. No. 2017–501212 Filed 01/10/17 (NIH Ref. E–192–2014–1–JP–07); each entitled “Surgical Tool and Method for Ocular Tissue Transplantation”;

- United States Patent App. No. 62/215,579, filed 09/08/15 (NIH Ref. E–212–2015–0–US–01); PCT Patent App. No. PCT/US2016/050543, filed 09/07/16 (NIH Ref. E–212–2015–0–PCT–02); Australia Patent App. No. 2016321170, filed 03/21/18 (NIH Ref. E–212–2015–0–AU–03); Canada Patent App. No. 2997952, filed 09/07/16 (NIH Ref. E–212–2015–0–CA–04); EPC Patent App. No. 16766444.0, filed 09/07/16 (NIH Ref. E–212–2015–0–EP–05); Japan Patent App. No. 2018–512373, filed 03/07/18 (NIH Ref. E–212–2015–0–JP–06); United States Patent App. No. 15/758,314, filed 03/07/18 (NIH Ref. E–212–2015–0–US–07); China patent application No. 201680060872.4, filed 04/18/2018 (NIH Ref. pending); Korea patent application No. 1020187009942, file 04/06/2018 (NIH Ref. pending); each entitled “Method for Reproducible Differentiation of Clinical-Grade Retinal Pigment Epithelium Cells”;

- United States Provisional Patent App. No. 62/419,804, filed 11/09/16 (NIH Ref. E–293–2016–0–US–01); PCT Patent App. No. PCT/US2017/060672, filed 11/08/17 (NIH Ref. E–293–2016–0–PCT–02); Australia Patent App. No. 2017359336, filed 11/08/17 (NIH Ref. E–293–2016–0–AU–04); Canada Patent App. No. 3043174, filed 11/08/17 (NIH Ref. E–293–2016–0–CA–05); EPC Patent App. No. 17801272.0, filed 11/08/17 (NIH Ref. E–293–2016–0–EP–06); Japan Patent App. No. pending (NIH Ref. E–293–2016–0–JP–07); United States Patent App. No. 16/348,855, filed 05/09/2019 (NIH Ref. E–293–2016–0–US–03); each entitled “A Surgical Clamp to Gate Large Scleral Surgery Port and Suture Alignment Tool”;

- United States Patent App. No. 62/453,148, filed 02/01/17 (NIH Ref. E–094–2016–0–US–01); PCT Patent App. No. PCT/US2018/016101, Filed 01/31/18 (NIH Ref. E–094–2016–0–PCT–02)

entitled “Devices for Tissue Cryopreservation and Recovery” and; United States Patent App. No. pending (NIH Ref. E-094-2016-0-US-03); Australia Patent App. No. 2018214954 filed 01/31/18 (NIH Ref. E-094-2016-0-AU-04); Canada Patent App. No. pending (NIH Ref. E-094-2016-0-CA-05); EPC Patent App. No. pending (NIH Ref. E-094-2016-0-EP-06); Japan Patent App. No. pending (NIH Ref. E-094-2016-0-JP-07); each “A Self-contained Cryopreservation and Recovery Device for Tissue Storage, Shipping and Recovery”;

- United States Provisional Patent App. No. 62/644,175, filed 03/16/18 (NIH Ref. E-058-2018-0-US-01) entitled “Using Machine Learning And/or Neural Networks to Validate Stem Cells and Their Derivatives for Use in Cell Therapy, Drug Discovery and Diagnostics”; PCT Patent App. No. pending (NIH Ref. E-058-2018-0-PCT-02) entitled “Using Machine Learning And/or Neural Networks to Validate Stem Cells and Their Derivatives (2-D Cells And 3-D Tissues) for Use in Cell Therapy And Tissue Engineered Products”;

- United States Patent App. No 62/769,484, filed 11/19/18 (NIH Ref. E-015-2019-0-US-01) entitled “Biodegradable Tissue Replacement Implant and its Use”;

and all U.S. and foreign patent applications claiming priority to the aforementioned applications.

The patent rights in these inventions have been assigned to the government of the United States of America.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to the following:

“The development, production and commercialization of allogeneic cell grafts of manufactured Retinal Pigment Epithelium cell(s) alone, or in combination with photoreceptor cells, and on a biodegradable support scaffold transplanted subretinally for intra-ocular ophthalmic treatment of conditions of degeneration, dysfunction or terminal injury of retinal pigment epithelium and/or photoreceptors in humans.”

The technologies relate to development of compositions, devices and processes for production and delivery of RPE-containing tissue graft therapies for treating a range of retinal function disorders, including retinal degenerative conditions in humans.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective

exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the National Cancer Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a completed license application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information in these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 26, 2019.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2019-21520 Filed 10-2-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: Development and Commercialization of Cell Therapies for Cancer

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the Patents and Patent Applications listed in the Supplementary Information section of this Notice to Ziopharm Oncology, Inc. (“Ziopharm”), headquartered in Boston, MA.

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute’s Technology Transfer Center on or before October 18, 2019 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, and comments relating to the contemplated Exclusive Patent License should be directed to: Andrew Burke, Ph.D.,

Senior Technology Transfer Manager, NCI Technology Transfer Center, 9609 Medical Center Drive, RM 1E530, MSC 9702, Bethesda, MD 20892-9702 (for business mail), Rockville, MD 20850-9702; Telephone: (240) 276-5484; Facsimile: (240) 276-5504; Email: andy.burke@nih.gov.

SUPPLEMENTARY INFORMATION:

Intellectual Property

Group A

E-029-2019: HLA Class II-Restricted T Cell Receptors Against RAS With G12R Mutation

1. U.S. Provisional Patent Application 62/795,203, filed January 22, 2019 (E-029-2019-0-US-01).

Group B

E-135-2019: T Cell Receptors Recognizing R175H or Y220C Mutation in P53

1. U.S. Provisional Patent Application 62/867,619, filed June 27, 2019 (E-135-2019-0-US-01).

The patent rights in these inventions have been assigned and/or exclusively licensed to the government of the United States of America.

The prospective exclusive license territory may be worldwide, and the fields of use may be limited to the following:

Fields of Use Applying to Intellectual Property Group A

“Development, manufacture and commercialization of autologous, peripheral blood T cell therapy products engineered by transposon-mediated gene transfer to express T cell receptors reactive to mutated KRAS, as claimed in the Licensed Patent Rights, for the treatment of human cancers. Specifically excluded from this field of use are, (a) retrovirally-engineered peripheral blood T cell therapy products for the treatment of human cancers, and (b) CRISPR-engineered peripheral blood T cell therapy products for the treatment of human cancers.

Development, manufacture and commercialization of companion diagnostics approved or cleared by the FDA or equivalent foreign regulatory agency for Licensee-proprietary T cell therapy products.”

Fields of Use Applying to Intellectual Property Group B

“Development, manufacture and commercialization of autologous, peripheral blood T cell therapy products engineered by transposon-mediated gene transfer to express T cell receptors reactive to mutated P53, as claimed in

the Licensed Patent Rights, for the treatment of human cancers. Specifically excluded from this field of use are CRISPR-engineered peripheral blood T cell therapy products for the treatment of human cancers.

Development, manufacture and commercialization of companion diagnostics approved or cleared by the FDA or equivalent foreign regulatory agency for Licensee-proprietary T cell therapy products.”

Intellectual Property Group A is primarily directed to isolated T cell receptors (TCRs) reactive to mutated Kirsten rat sarcoma viral oncogene homolog (KRAS), within the context of several human leukocyte antigens (HLAs). Mutated KRAS, which plays a well-defined driver role in oncogenesis, is expressed by a variety of human cancers, including: Pancreatic, lung, endometrial, ovarian and prostate. Due to its restricted expression in precancerous and cancerous cells, this antigen may be targeted on mutant KRAS-expressing tumors with minimal normal tissue toxicity.

Intellectual Property Group B is primarily directed to isolated TCRs reactive to mutated tumor protein 53 (TP53 or P53), within the context of several HLAs. *P53* is the archetypal tumor suppressor gene and the most frequently mutated gene in cancer. Contemporary estimates suggest that >50% of all tumors carry mutations in *P53*. Because of its prevalence in cancer and its restricted expression to precancerous and cancerous cells, this antigen may be targeted on mutant P53-expressing tumors with minimal normal tissue toxicity.

This Notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published Notice, the National Cancer Institute receives written

evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information from these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 26, 2019.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2019–21519 Filed 10–2–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Chemical and Petrochemical Inspections (Groves, TX), as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Chemical and Petrochemical Inspections (Groves, TX), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Chemical and Petrochemical Inspections (Groves, TX), has been approved to gauge petroleum and certain petroleum products and

accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of September 25, 2018.

DATES: Chemical and Petrochemical Inspections (Groves, TX) was approved and accredited, as a commercial gauger and laboratory as of September 25, 2018. The next triennial inspection date will be scheduled for September 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Chemical and Petrochemical Inspection, 5300 39th Street, Groves, TX 77619 has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Chemical and Petrochemical Inspections (Groves, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Marine Measurement.

Chemical and Petrochemical Inspections (Groves, TX) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–05	D 4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–08	D 86	Standard Test Method for Distillation of Petroleum Products.
27–48	D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or

gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to

CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

Dated: September 25, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019-21524 Filed 10-2-19; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Product Quality Management, LLC (Pasadena, TX) as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Product Quality Management, LLC (Pasadena, TX), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, Product Quality Management, LLC (Pasadena,

TX), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of April 9, 2019.

DATES: Product Quality Management, LLC (Pasadena, TX) was approved and accredited as a commercial gauger and laboratory as of April 9, 2019. The next triennial inspection date will be scheduled for April 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Product Quality Management, LLC, 1710 Preston Ave., Suite 160, Pasadena, TX 77503 has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the

provisions of 19 CFR 151.12 and 19 CFR 151.13.

Product Quality Management, LLC (Pasadena, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Marine Measurement.

Product Quality Management, LLC (Pasadena, TX) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-03	D 4006	Standard Test Method for Water in Crude Oil by Distillation.
27-04	D 95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27-06	D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-07	D 4807	Standard Test Method for Sediment in Crude Oil by Membrane Filtration.
27-08	D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27-11	D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27-13	D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27-48	D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27-50	D 93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27-53	D 2709	Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.
27-58	D 5191	Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method).
N/A	D 1319	Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption.
N/A	D 4007	Standard Test Method for Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

Dated: September 27, 2019.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019-21525 Filed 10-2-19; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-HQ-FAC-2019-N100; FXFR131109WFHS0-190-FF09F12000; OMB Control Number 1018-0078]

Agency Information Collection Activities; Injurious Wildlife; Importation Certification for Live Fish and Fish Eggs

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service, we), are proposing to renew information collection.

DATES: Interested persons are invited to submit comments on or before December 2, 2019.

ADDRESSES: Send your comments on the information collection request (ICR) by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO/1N), 5275 Leesburg Pike, Falls Church, VA 22041-3803 (mail); or by email to Info_Coll@fws.gov. Please reference OMB Control Number 1018-

0078 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *InfoColl@fws.gov*, or by telephone at (703) 358-2503.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed information collection request (ICR) that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the Service; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Service enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Service minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request

to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Lacey Act (Act, 18 U.S.C. 42) prohibits the importation of any animal deemed to be and prescribed by regulation to be injurious to:

- Human beings;
- The interests of agriculture, horticulture, and forestry; or
- Wildlife or the wildlife resources of the United States.

The Department of the Interior is charged with implementation and enforcement of this Act. The 50 CFR 16.13 regulations allow for the importation of dead unviscerated salmonids (family Salmonidae), live salmonids, live fertilized eggs, or gametes of salmonid fish into the United States. To effectively carry out our responsibilities and protect the aquatic resources of the United States, it is necessary to collect information regarding the source, destination, and health status of salmonid fish and their reproductive parts. In order to evaluate import requests that contain this data, it is imperative that the information collected is accurate. Those individuals who provide the fish health data and sign the health certificate must demonstrate professional qualifications, and be approved as Title 50 Certifiers by

the Fish and Wildlife Service through an application process.

We use three forms to collect this Title 50 Certifier application information:

(1) FWS Form 3-2273 (Title 50 Certifying Official Form). New applicants and those seeking recertification as a title 50 certifying official provide information so that we can assess their qualifications.

(2) FWS Form 3-2274 (U.S. Title 50 Certification Form). Certifying officials use this form to affirm the health status of the fish or fish reproductive products to be imported.

(3) FWS Form 3-2275 (Title 50 Importation Request Form). We use the information on this form to ensure the safety of the shipment and to track and control importations.

Title of Collection: Injurious Wildlife; Importation Certification for Live Fish and Fish Eggs (50 CFR 16.13).

OMB Control Number: 1018-0078.

Form Numbers: FWS Forms 3-2273, 3-2274, and 3-2275.p.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Aquatic animal health professionals seeking to be certified title 50 inspectors; certified title 50 inspectors who have performed health certifications on live salmonids; and any entity wishing to import live salmonids or salmonid reproductive products into the United States.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

TABLE 37—RANGE TO EFFECTS (METERS) FROM AIR GUNS FOR 1 PULSE

Requirement	Annual number of respondents	Total annual responses	Completion time per response	Total annual burden hours*
FWS Form 3-2273 (Title 50 Certifying Official Form)				
Private Sector	9	9	1 hour	9
Government	7	7	1 hour	7
FWS Form 3-2274 (U.S. Title 50 Health Certification Form)				
Private Sector	20	40	30 minutes	20
Government	30	60	30 minutes	30
FWS Form 3-2275 (Title 50 Importation Request Form)				
Private Sector	20	40	15 minutes	10
Government	30	60	15 minutes	16
Totals	116	216		92

* Rounded.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: September 27, 2019.

Madonna L. Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2019-21503 Filed 10-2-19; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GWXXRB000AP8100; OMB Control Number 1028-0107/Renew]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Economic Contribution of Federal Investments in Restoration of Degraded, Damaged, or Destroyed Ecosystems

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before November 4, 2019.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at OIRA_Submission@omb.eop.gov; or via facsimile to (202) 395-5806. Please provide a copy of your comments to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to gs-info_collections@usgs.gov. Please reference OMB Control Number 1028-0107 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Rudy Schuster by email at schusterr@usgs.gov, or by telephone at 970.226.9165. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the

general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on June 11, 2019 (84 FR 27154). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Federal investments in ecosystem restoration restore injured natural resources and improve the health and resiliency of terrestrial, freshwater, and marine ecosystems. These investments also generate business activity and create jobs. The Economic Impacts of Ecosystem Restoration project aims to increase the availability of information on the costs and activities associated with ecosystem restoration and to gauge the economic effects of these investments to local economies. Researchers with the U.S. Geological Survey (USGS) and the DOI Office of Policy Analysis are conducting this information collection at the request of the Natural Resource Damage Assessment (NRDA) Restoration Program. The NRDA Restoration Program is weighing the pros and cons

of collecting restoration cost data as part of contractor reporting requirements for restoration projects associated with NRDA cases. The collection described under this request is designed to refine potential expenditure questions prior to developing contractor reporting requirements. The project comprises a series of case studies that quantify the economic impacts of restoration projects. The case studies include examples of collaboratively funded and managed projects to restore a wide range of degraded, damaged, or destroyed ecosystems. Project methods include the collection of primary expenditure data and economic input/output modeling. Results from the first phase of case studies are available in a 2016 USGS report entitled, "Estimating the economic impacts of ecosystem restoration—methods and case studies." This second phase of case studies aims to refine the survey methods and to develop and test a Web-based data collection form that would enable broader collection of project expenditure data.

Title of Collection: Economic Contribution of Federal Investments in Restoration of Degraded, Damaged, or Destroyed Ecosystems.

OMB Control Number: 1028-0107.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Restoration project managers working on selected case study restoration projects; this includes project managers from state and local government, non-profits, and the private sector.

Total Estimated Number of Annual Respondents: 6.

Total Estimated Number of Annual Responses: 6.

Estimated Completion Time per Response: 120 minutes.

Total Estimated Number of Annual Burden Hours: 12 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: There are no "non-hour cost" burdens associated with this collection of information.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Rudolph Schuster,

Social and Economic Science Branch Chief, Fort Collins Science Center Director.

[FR Doc. 2019-21489 Filed 10-2-19; 8:45 am]

BILLING CODE 4338-11-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**[LLNVS01000 L5105.0000.EA0000
LVRCF1906920 241A 19X] MO# 4500136313]**Notice of Temporary Closure of Public Land in Clark County, NV****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of temporary closure.

SUMMARY: The Bureau of Land Management (BLM) Las Vegas Field Office announces the temporary closure of certain public lands under its administration in Clark County, NV. This temporary closure is being made in the interest of public safety in relation to the authorized 2019 Rise Lantern Festival. This temporary closure controls access to multiple points of entry to the festival located on the Jean Dry Lake Bed in order to minimize the risk of vehicle collisions with festival participants and workers. The temporary closure also ensures adequate time to conduct clean-up of the festival location.

DATES: The temporary closure takes effect at 12:01 a.m. on October 4, 2019 and remains in effect until 11:59 p.m. on October 6, 2019.

ADDRESSES: The temporary closure order and map of the closure area will be posted at the BLM Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130 and on the BLM website: www.blm.gov. These materials will also be posted at the access point of Jean Dry Lake Bed and the surrounding areas.

FOR FURTHER INFORMATION CONTACT: Kenny Kendrick, Acting Supervisory Resource Management Specialist, by phone at 702-515-5073 or by email at kkendrick@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM Las Vegas Field Office announces the temporary closure of selected public lands under its administration. This action is being taken to help ensure public safety and prevent unnecessary environmental degradation during the official Special Recreation Permit for the 2019 Rise Lantern Festival.

The public lands affected by this closure are described as follows:

Mount Diablo Meridian, Nevada

T. 24 S, R. 60 E,

Secs 20 and 21, that portion lying easterly and southerly of the easterly and southerly right-of-way boundary of State Route 604;

Sec. 22;

Secs. 27 and 28;

Sec. 29, and 32 that portion lying easterly and southerly of the easterly and southerly right-of-way boundary of State Route 604;

Secs. 33, and 34.

T. 25 S, R. 60 E,

Sec. 2, W¹/₂;

Secs. 3 thru 5;

Secs. 8 thru 10; Sec. 11, W¹/₂;Sec. 14, W¹/₂;

Secs. 15 thru 17.

Roads leading into the public lands under the temporary closure will be posted to notify the public of the temporary closure. The temporary closure area includes the Jean Dry Lake Bed and is bordered by Hidden Valley to the east, Sheep Mountain to the southwest, and the right-of-way boundary of State Route 604. Under the authority of Section 303(a) of the Federal Lands Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360.0-7 and 43 CFR 8364.1, the BLM will enforce the following rules in the area described above:

The entire area as listed in the legal description above is closed to all vehicles and personnel except Law Enforcement, Emergency Vehicles, event personnel, and ticketed festival participants. Access routes leading to the closed area are closed to vehicles. No vehicle stopping or parking in the closed area except for designated parking areas will be permitted. Festival participants are required to remain within designated spectator areas only.

The following restrictions will be in effect for the duration of the temporary closure to ensure public safety of festival participants. Unless otherwise authorized, the following activities within the closure area are prohibited:

- Camping.
- Possession and/or consumption of any alcoholic beverage unless the person has reached the age of 21 years.
- Discharge or use of firearms or other weapons.
- Possession and/or discharge of fireworks.
- Allowing any pet or other animal in their care to be unrestrained at any time. Animals must be on a leash or other restraint no longer than 3 feet.
- Operation of any vehicle including any off-highway vehicle (OHV) and/or Golf Cart within the closure area, except along designated event routes to and from entrance/exit points and parking

areas; or designated event vehicles and official vehicles.

- Parking any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, creating a safety hazard, or endangering any person, property or feature. Vehicles so parked are subject to citation, removal and impoundment at the owner's expense.

- Operating a vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier or device.

Signs and maps directing the public to designated spectator areas will be provided by the event sponsor.

Exceptions: Temporary closure restrictions do not apply to activities conducted under contract with the BLM, agency personnel monitoring the event, or activities conducted under an approved plan of operation. Authorized users must have in their possession a written permit or contract from BLM signed by the authorized officer.

Enforcement: Any person who violates this temporary closure may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0-7, or both. In accordance with 43 CFR 8365.1-7, State or local officials may also impose penalties for violations of Nevada law.

Authority: 43 CFR 8360.0-7 and 8364.1.

Shonna Dooman,

Field Manager—Las Vegas Field Office.

[FR Doc. 2019-21550 Filed 10-2-19; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR**National Park Service**[NPS-WASO-NRNHL-DTS#-28985;
PPWOCRADIO, PCU00RP14.R50000]**National Register of Historic Places;
Notification of Pending Nominations
and Related Actions****AGENCY:** National Park Service, Interior.**ACTION:** Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before September 21, 2019, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by October 18, 2019.

ADDRESSES: Comments may be sent via U.S. Postal Service and all other carriers

to the National Register of Historic Places, National Park Service, 1849 C St. NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before September 21, 2019. Pursuant to Section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State Historic Preservation Officers:

NEW YORK

Columbia County

Bigelow-Finch-Fowler Farm, 1549 US 20, West Lebanon, SG100004553

Westchester County

Rockefeller Pocantico Hills Estate Historic District, Bedford, Sleepy Hollow & Lake Rds. et al., Pocantico Hills, SG100004554

Authority: Section 60.13 of 36 CFR part 60.

Dated: September 24, 2019.

Julie H. Ernstein,

Supervisory Archeologist, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2019–21516 Filed 10–2–19; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1140–1142 (Second Review)]

Uncovered Innerspring Units From China, South Africa, and Vietnam;

Determinations

On the basis of the record ¹ developed in the subject five-year reviews, the United States International Trade

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Commission ("Commission") determines, pursuant to the Tariff Act of 1930 ("the Act"), that revocation of the antidumping duty orders on uncovered innerspring units from China, South Africa, and Vietnam would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.²

Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted these reviews on March 1, 2019 (84 FR 7126) and determined on June 4, 2019 that it would conduct expedited reviews (84 FR 40090, August 13, 2019).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on September 27, 2019. The views of the Commission are contained in USITC Publication 4974 (September 2019), entitled *Uncovered Innerspring Units from China, South Africa, and Vietnam: Investigation Nos. 731–TA–1140–1142 (Second Review)*.

By order of the Commission.

Issued: September 27, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–21486 Filed 10–2–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–919 (Third Review)]

Certain Welded Large Diameter Line Pipe From Japan

Determination

On the basis of the record ¹ developed in the subject five-year review, the United States International Trade Commission ("Commission") determines, pursuant to the Tariff Act of 1930 ("the Act"), that revocation of the antidumping duty order on certain welded large diameter line pipe from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.²

² Commissioner Kearns did not participate in these reviews.

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

² Commissioners Randolph J. Stayin and Amy A. Karpel did not participate.

Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted this review on September 4, 2018 (83 FR 44900) and determined on December 10, 2018 that it would conduct a full review (83 FR 65361, December 20, 2018). Notice of the scheduling of the Commission's full review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on April 22, 2019 (84 FR 16694). The hearing was held in Washington, DC, on July 30, 2019 and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on September 30, 2019. The views of the Commission are contained in USITC Publication 4973 (September 2019), entitled *Certain Welded Large Diameter Line Pipe from Japan: Investigation No. 731–TA–919 (Third Review)*.

By order of the Commission.

Dated: September 30, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–21563 Filed 10–2–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1178]

Certain Collapsible and Portable Furniture; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 16, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of GCI Outdoor, Inc. of Higganum, Connecticut. An amended complaint was filed on August 29, 2019. The amended complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain collapsible and portable furniture by reason of infringement of certain claims of U.S. Patent No. 9,282,824 ("the '824 patent") and U.S.

Patent No. 9,060,611 (“the ‘611 patent”). The amended complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The amended complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The amended complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: Katherine Hiner, Office of the Secretary, Docket Services Division, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission’s Rules of Practice and Procedure, 19 CFR 210.10 (2019).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on September 27, 2019, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–3, 6, 8–12, 15, 16, and 18–20 of the ‘824 patent and claims 1–3, 8, 10, 11, 13–15, and 19 of the ‘611 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission’s Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is “collapsible and portable rocking chairs”;

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:
GCI Outdoor, Inc., 66 Killingworth Road, Higganum, CT 06441

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:
Denovo Brands, LLC, 905 SE 21st Street, Bentonville, AR 72712
Zhenli (Zhangzhou) Industrial Co., Ltd., Jiulong Industrial Park, Hua’an Economic Development Zone, Zhangzhou, Fujian, China 363801
Fujian Zenithen Consumer Products Co., Ltd., No. 1 Gaonan Road, Cangshan District, Fuzhou, Fujian, China 350026
Zenithen Hong Kong Ltd., Unit 1606, Citicorp Center, 18 Whitfield Road, Causeway Bay, Hong Kong
Zenithen USA LLC, 299 W. Foothill Blvd., Suite 240, Upland, CA 91786
Westfield Outdoor, Inc., d/b/a Westfield Outdoors, 8675 Purdue Road, Indianapolis, IN 46268
MacSports Inc., 82083 Puddingstone Drive, La Verne, CA 91750
Meike (Qingdao) Leisure Products Co., Ltd, 46–67 Tong Yu Road, Shi Bei District, Qing Dao, China 266000

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge; and

(4) The office of Unfair Import Investigations will not be named as a party to this investigation.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission’s Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the amended complaint and the notice of investigation. Extensions of time for submitting responses to the amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: September 30, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–21555 Filed 10–2–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

Proposed Renewal of the Approval of Information Collection Requirements; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), 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 and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA). 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 Office of Federal Contract Compliance Programs (OFCCP) is soliciting comments concerning its proposal to renew the Office of Management and Budget (OMB) approval of the following information collections: “Vietnam Era Veterans’ Readjustment Assistance Act, as Amended” (OMB Control No. 1250–0004) and “Section 503 of the Rehabilitation Act of 1973, as Amended” (OMB Control No. 1250–0005). The current OMB approval for these information collections expires on January 31, 2020. A copy of the proposed information collection request

can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice or by accessing it at www.regulations.gov.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before December 2, 2019.

ADDRESSES: You may submit comments, identified by Control Number 1250–0004 and/or 1250–0005, by one of the following methods:

Electronic Comments: Through the federal eRulemaking Portal at www.regulations.gov. Follow the instructions for submitting comments.

Mail, Hand Delivery, Courier: Address comments to Harvey D. Fort, Deputy Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW, Room C3325, Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified above for this information collection. Commenters are strongly encouraged to submit their comments electronically via the www.regulations.gov website or to mail their comments early to ensure that they are timely received. Comments, including any personal information provided, become a matter of public record and will be posted to the www.regulations.gov website. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Harvey D. Fort, Deputy Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW, Room C–3325, Washington, DC 20210. Telephone: (202) 693–0103 (voice) or (877) 889–5627 (TTY). Copies of this notice may be obtained in alternative formats (e.g. large print, braille, audio recording), upon request, by calling the numbers listed above.

SUPPLEMENTARY INFORMATION:

I. *Background:* OFCCP administers and enforces Executive Order 11246, section 503 of the Rehabilitation Act (section 503), and the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), and their implementing regulations. Collectively, these laws require federal contractors to take affirmative action and not discriminate on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a

protected veteran. Additionally, Executive Order 11246 prohibits a contractor from discharging or otherwise discriminating against applicants or employees who inquire about, discuss or disclose their compensation or that of others, subject to certain limitations.

This information collection request covers the recordkeeping and third party disclosure requirements for Section 503 and VEVRAA. OFCCP is not proposing to collect new information with this renewal.

Section 503 prohibits employment discrimination against applicants and employees because of physical or mental disability and requires affirmative action to ensure that persons are treated without regard to disability. Section 503 applies to Federal contractors and subcontractors with contracts in excess of \$15,000.¹

VEVRAA prohibits employment discrimination against protected veterans and requires affirmative action to ensure that persons are treated without regard to their status as a protected veteran. VEVRAA applies to Federal contractors and subcontractors with contracts of \$150,000 or more.²

II. *Review Focus:* DOL is particularly interested in comments which:

- Evaluate the proposed changes to the Voluntary Self-Identification of Disability, including specific suggestions for updating the form and for matching applicants with forms for affirmative action purposes using a method other than name;
- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

¹ Effective October 1, 2010, the coverage threshold under Section 503 increased from \$10,000 to \$15,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908.

² Effective October 1, 2015, the coverage threshold under VEVRAA increased from \$100,000 to \$150,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908.

other forms of information technology, e.g., permitting electronic submissions of responses.

III. *Current Actions:* DOL seeks the approval of the extension of this information in order to carry out its responsibility to enforce the affirmative action and nondiscrimination provisions of Section 503 and VEVRAA, which it administers.

Type of Review: Renewal.

Agency: Office of Federal Contract Compliance Programs.

Title: 38 U.S.C. 4212, Vietnam Era Veterans' Readjustment Assistance Act, as Amended.

OMB Number: 1250–0004.

Agency Number: None.

Affected Public: Business or other for profit; individuals.

Total Respondents: 117,819 Contractors. 42,414,840 Applicants.

Total Annual Responses: 117,819 Contractors. 42,414,840 Applicants.

Average Time per Response: 16.8 hours per contractor. .08 hours (5 minutes) per applicant.

Estimated Total Burden Hours: 5,377,349.

Frequency: On occasion.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$763,467.

Type of Review: Renewal.

Agency: Office of Federal Contract Compliance Programs.

Title: 29 U.S.C 793, Section 503 of the Rehabilitation Act of 1973, as Amended.

OMB Number: 1250–0005.

Agency Number: None.

Affected Public: Business or other for profit; individuals.

Total Respondents: 117,819 Contractors. 42,414,840 Applicants. 31,927,590 Employees.

Total Annual Responses: 117,819 Contractors. 42,414,840 Applicants. 6,385,518 Employees.

Average Time per Response: 3.7 hours per contractor. .08 hours (5 minutes) per applicant. .08 hours (5 minutes) per employee.

Estimated Total Burden Hours: 4,426,841

Frequency: On occasion.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$763,467.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: September 27, 2019.

Harvey D. Fort,

Deputy Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs.

[FR Doc. 2019-21488 Filed 10-2-19; 8:45 am]

BILLING CODE 4510-CM-P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; CW-1 Application for Temporary Employment Certification

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL or Department) is submitting the Employment and Training Administration (ETA) sponsored Information Collection Request (ICR) titled, *CW-1 Application for Temporary Employment Certification* (OMB Control Number 1205-0534), to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments it receives on or before November 4, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free of charge from the *RegInfo.gov* website at: http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201909-1205-005 (this link will only become active on the day following publication of this notice); by contacting Frederick Licari at 202-693-4129/TTY 202-693-8064 (these are not toll-free numbers); or by sending an email to: DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-ETA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202-395-6881 (this is not a toll-free number); or by email: OIRA_submission@omb.eop.gov. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance

Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION CONTACT:

Frederick Licari by telephone at 202-693-4129/TTY 202-693-8064 (these are not toll-free numbers); or by sending an email to: DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA (44 U.S.C. 3501 *et seq.*) for the extension to *CW-1 Application for Temporary Employment Certification*, which is currently set to expire on September 30, 2019, and all applicable forms, instructions, and electronic versions (OMB Control Number 1205-0534). The Department collects information through Form ETA-9142C, *Application for Temporary Employment Certification* and appendices, and Form ETA-9141C, *Application for Prevailing Wage Determination*, to carry out the responsibilities created for the Department under the Northern Mariana Islands U.S. Workforce Act of 2018 (Pub. L. 115-218) (Workforce Act).

The Workforce Act provides that a petition to employ a nonimmigrant worker under the CW-1 visa classification may not be approved by the U.S. Department of Homeland Security unless the employer has received a temporary labor certification from DOL confirming the following: (1) There are not sufficient U.S. workers in the Commonwealth of the Northern Mariana Islands who are able, willing, qualified, and available at the time and place needed to perform the services or labor involved in the petition; and (2) the employment of a nonimmigrant worker who is the subject of a petition will not adversely affect the wages and working conditions of similarly employed U.S. workers. 48 U.S.C. 1806(d)(2)(A).

The ICR was originally submitted under the emergency processing provisions outlined at 5 CFR 1320.13, and the Department requested the maximum six-month approval. Because this ICR relates to an Interim Final Rule (IFR) that the Workforce Act required to be promulgated on an expedited basis, there was no opportunity to engage in normal clearance activities. Public harm would have resulted by a failure timely to enact the information collection, because employers and jobseekers would not have had the protections afforded by the Workforce Act.

In accordance with the PRA, the Department afforded the public notice and an opportunity to comment on these new information collection tools that are related to the CW-1 program

and that are necessary to implement the requirements of the IFR. The information collection activities covered by this new OMB Control Number 1205-0534 include forms and recordkeeping requirements on which the Department relies for determining prevailing wages and issuing temporary labor certifications (TLCs) in connection with the CW-1 program. Additionally, these information collection tools permit employers to assure compliance with respect to the minimum terms and conditions associated with the Prevailing Wage Determinations and TLC processes, which include the rights and obligations of CW-1 workers and workers in corresponding employment, in addition to information regarding recordkeeping requirements associated with the CW-1 program. Specifically, ETA has created new Form ETA-9141C, *Application for Prevailing Wage Determination*, and new Form ETA-9142C, *CW-1 Application for Temporary Employment Certification*.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public generally is not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. 5 CFR 1320.6. The Department obtained OMB approval for this information collection under Control Number 1205-0534. The current approval is scheduled to expire on September 30, 2019; however, DOL notes that remaining information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review.

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs, at the address shown in the **ADDRESSES** section within thirty (30) days of the publication of this notice in the **Federal Register** by November 4, 2019. To help ensure appropriate consideration, comments should mention OMB Control Number 1205-0534. OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–ETA.

Title of the Collection: CW–1 Application for Temporary Employment Certification (Form ETA–9142C; Form ETA–9141C; recordkeeping requirements).

OMB Number: 1205–0534

Agency Form Number: Form ETA–9142C; Form ETA–9141C; recordkeeping requirements.

Affected Public: Private Sector—businesses or other for-profits; non-profits.

Total Estimated Number of Respondents: Approximately 2,314.

Form ETA–9142C:

Estimated Number of Respondents filing electronically: Approximately 2,198.

Estimated Number of Respondents filing by mail: Approximately 166.

Form ETA–9141C:

Estimated Number of Respondents filing electronically: Approximately 2,198.

Estimated Number of Respondents filing by mail: Approximately 116.

Record keeping:

Estimated Number of Respondents that must comply with record keeping requirements: Approximately 2,314.

Total Estimated Number of Responses: Approximately 149,739 responses.

Average Time per Response: 46 minutes per Form ETA–9141C application and 1 hour and 50 minutes per Form ETA–9142C application materials; 20 minutes to comply with recordkeeping requirements.

Total Estimated Annual Time Burden: 73,987 hours.

Total Estimated Other Costs Burden: \$155,155.

Program Authority: 48 U.S.C. 1806; 44 U.S.C. 3507; 20 CFR 655, subpart E.

Dated: September 27, 2019.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2019–21484 Filed 10–2–19; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Vacancy Posting for a Member of the Administrative Review Board

ACTION: Vacancy posting correction.

SUMMARY: On September 26, 2019, the Office of the Assistant Secretary for Administration and Management published a vacancy posting for a member of the Administrative Review Board. That document included incorrect information in the *Qualifications* section. This document corrects the *Qualifications* information.

DATES: Effective on the date of publication.

FOR FURTHER INFORMATION CONTACT: John Sylvia, HR Specialist, Office of Executive Resources, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, 200 Constitution Avenue NW, ATTN: Office of Executive Resources, Room N2453, Washington, DC 20210, phone: 774–365–6851. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 26, 2019 (84 FR 50860), on page 50860, columns two and three, “*Qualifications*” should read: The applicant should be well versed in law and the appeals process, as well as have the ability to interpret regulations and to come to a consensus to determine an overall appeals determination with members of board. Applicants must possess a J.D. and are required to be active members of the Bar in any U.S. State of U.S. Territory Court under the U.S. Constitution.

Dated: September 27, 2019.

Bryan Slater,

Assistant Secretary for Administration & Management.

[FR Doc. 2019–21487 Filed 10–2–19; 8:45 am]

BILLING CODE 4510–04–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 19–08]

Notice of Open Meeting

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C.—App., the Millennium Challenge Corporation (MCC) Advisory Council was established as a discretionary advisory committee on July 14, 2016. Its charter was renewed for a second term on July

11, 2018. The MCC Advisory Council serves MCC in an advisory capacity only and provides insight regarding innovations in infrastructure, technology and sustainability; perceived risks and opportunities in MCC partner countries; new financing mechanisms for developing country contexts; and shared value approaches. The MCC Advisory Council provides a platform for systematic engagement with the private sector and other external stakeholders and contributes to MCC’s mission—to reduce poverty through sustainable, economic growth.

DATES: Thursday, October 17, 2019, from 8:30 a.m.–2 p.m. ET.

ADDRESSES: The meeting will be held at the Millennium Challenge Corporation, 1099 14th St. NW, Suite 700, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Jennifer Rimbach 202.521.3932, MCCAdvisoryCouncil@mcc.gov, or visit <https://www.mcc.gov/about/org-unit/advisory-council>.

SUPPLEMENTARY INFORMATION:

Agenda. During the Fall 2019 meeting of the MCC Advisory Council, members will be provided an update from MCC leadership. MCC Advisory Council Co-Chairs will provide updates from the subcommittee meetings, and council members will provide advice on the compact development process and MCC’s investment strategy in Tunisia. Guest speakers will share information on Prosper Africa and MCC/MCA’s procurement systems.

Public Participation. The meeting will be open to the public. Members of the public may file written statement(s) before or after the meeting. If you plan to attend, please submit your name and affiliation no later than Thursday, October 10, 2019 to MCCAdvisoryCouncil@mcc.gov to be placed on an attendee list.

Dated: September 30, 2019.

Jeanne M. Hauch,

VP/General Counsel and Corporate Secretary.

[FR Doc. 2019–21579 Filed 10–2–19; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (19–060)]

NASA Astrophysics Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public

Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Astrophysics Advisory Committee. This Committee reports to the Director, Astrophysics Division, Science Mission Directorate, NASA Headquarters. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Monday, October 28, 2019, 12:00 p.m.–5:00 p.m.; and Tuesday, October 29, 2019, 11:00 a.m.–5:00 p.m., Eastern Time.

FOR FURTHER INFORMATION CONTACT: Ms. KarShelia Henderson, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355, fax (202) 358–2779, or khenderson@nasa.gov.

SUPPLEMENTARY INFORMATION: The meeting will be available telephonically and by WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the USA toll-free conference call number 1–877–922–4779, or toll number 1–312–470–7379, passcode 5276208, to participate in this meeting by telephone on both days. The WebEx link is <https://nasaenterprise.webex.com/>; the meeting number on October 28 is 903 324 540, password is APActcon1028#; and the meeting number on October 29 is 908 379 589, password is APActcon1029#.

The agenda for the meeting includes the following topics:

- Astrophysics Division Update
- Updates on Specific Astrophysics Missions
- Reports from the Program Analysis Groups
- Reports from Specific Research & Analysis Programs

The agenda will be posted on the Astrophysics Advisory Committee web page: <https://science.nasa.gov/researchers/nac/science-advisory-committees/apac>.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia Rausch,
Advisory Committee Management Officer,
National Aeronautics and Space Administration.

[FR Doc. 2019–21466 Filed 10–2–19; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0178]

Use of Listserv for Fuel Cycle Facilities Correspondence

AGENCY: Nuclear Regulatory Commission.

ACTION: Implementation of electronic distribution of fuel cycle facilities correspondence.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing this document to inform the public that, as of September 30, 2019, publicly-available fuel cycle facilities correspondence originating from the Office of Nuclear Material Safety and Safeguards (NMSS) and Region II will be transmitted by a computer-based email distribution system, Listserv, to addressees and subscribers. This change does not affect the availability of official agency records in the NRC's Agencywide Documents Access and Management System (ADAMS).

DATES: This initiative will be implemented on October 3, 2019.

ADDRESSES: Please refer to Docket ID NRC–2019–0178 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2019–0178. Address questions about NRC docket IDs in *Regulations.gov* 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.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr.resource@nrc.gov.

FOR FURTHER INFORMATION CONTACT:

Tilda Liu, telephone: 404–997–4730; email: Tilda.Liu@nrc.gov and Matthew Bartlett, telephone: 301–415–7119; email: Matthew.Bartlett@nrc.gov. Both are staff of the Office of Nuclear

Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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Dated at Rockville, Maryland, this 27th day of September, 2019.

For the Nuclear Regulatory Commission.

Cinthya I. Roman-Cuevas,

Acting Director, Division of Fuel Cycle Safety, Safeguards, and Environmental Review, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2019–21512 Filed 10–2–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87142; File No. SR–CboeBZX–2019–072]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Amending the Fee Schedule Assessed on Members To Establish a Monthly Trading Rights Fee

September 27, 2019.

I. Introduction

On August 1, 2019, Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² a proposed rule change (File Number SR–CboeBZX–2019–072) to amend the BZX fee schedule to establish a monthly Trading Rights Fee to be assessed on Members. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.³ The proposed rule change was published for comment in the **Federal Register** on August 21, 2019.⁴ The Commission has received one comment letter on the proposal, and one response letter from the Exchange.⁵ Under Section 19(b)(3)(C) of the Act,⁶ the Commission is hereby: (i) Temporarily suspending the proposed rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to amend the Membership Fees section of the BZX fee schedule to establish a monthly Trading Rights Fee, which would be assessed on Members that trade more than a specified volume in U.S. equities.⁷

Specifically, the Exchange proposes to charge Members a Trading Rights Fee of \$500 per month for the ability to trade on the Exchange.⁸ A Member would not be charged the monthly Trading Rights Fee if it qualifies for one of the following waivers: (1) The Member has a monthly ADV⁹ of less than 100,000 shares, (2) at least 90% of the Member’s orders submitted to the Exchange per month are retail orders,¹⁰ or (3) a new Member is within the first three months of their membership.¹¹

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,¹² at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,¹³ the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (“SRO”) if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change’s consistency with the Act and the rules thereunder.

The Exchange asserts that the proposed Trading Rights Fee “is reasonable because it will assist in funding the overall regulation and maintenance of the Exchange” and will contribute to “ensuring that adequate resources are devoted to regulation.”¹⁴ The Exchange also believes the proposed fee is reasonable because it “represents a modest charge” applied to firms that “have chosen to become members of the Exchange,” and such firms consume more regulatory resources and “benefit from the Exchange’s regulatory efforts by having

access to a well-regulated market.”¹⁵ The Exchange notes that its Regulatory Services Agreement (“RSA”) costs, which cover regulatory services in connection with market and financial surveillance, examinations, investigations, and disciplinary procedure, have increased 12.2%, while the Exchange’s overall regulatory costs have grown 64%, from 2016 to 2019.¹⁶ The Exchange also asserts that the proposed Trading Rights Fee is reasonable because the “cost of this membership fee is generally less than the analogous membership fees of other markets” and that a number of national securities exchanges currently charge similar Trading Rights fees to assist in funding their regulatory efforts.¹⁷

The Exchange states that it believes the proposed Trading Rights Fee is equitable and not unfairly discriminatory because it will apply equally to all Members that do not qualify for a waiver.¹⁸ The Exchange further asserts that the proposed fee is equitable and not unfairly discriminatory because it will “contribute to a portion of the costs incurred by the Exchange in providing its Members with an efficient and well-regulated market, which benefits all Members.”¹⁹

In regard to the proposed waivers pursuant to which Members would not be charged the Trading Rights Fee, the Exchange states that it believes that such waivers are reasonable.²⁰ Specifically, the Exchange states that the proposed waiver for Members that trade less than a monthly ADV of 100,000 shares is reasonable because it would allow such smaller Members to continue to trade at a lower cost.²¹ In addition, the Exchange states the waiver is reasonable because such firms consume fewer regulatory resources.²² The Exchange also asserts that the proposed ADV threshold of 100,000 is reasonable because the median ADV per firm per month on the Exchange is 475,591; therefore, the proposed ADV threshold would serve to capture “smaller volume firm outliers as

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ See Securities Exchange Act Release No. 86686 (August 15, 2019), 84 FR 43633 (“Notice”).

⁵ See Letters from: Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, dated September 12, 2019 (“SIFMA Letter”); Adrian Griffiths, Assistant General Counsel, Cboe, dated September 25, 2019 (“Exchange Response Letter”). Comment letters are available on the Commission’s website at: <https://www.sec.gov/comments/sr-cboebzx-2019-072/sr-cboebzx2019072.htm>.

⁶ 15 U.S.C. 78s(b)(3)(C).

⁷ See Notice, *supra* note 4, at 43633. The Commission notes that the Exchange’s affiliates,

Cboe BYX Exchange, Inc., Cboe EDGA Exchange, Inc., and Cboe EDGX Exchange, Inc., each also filed a proposed rule change to amend their fee schedules to establish a monthly Trading Rights Fee to be assessed on Members: CboeBYX–2019–013, CboeEDGA–2019–014, and CboeEDGX–2019–050, respectively.

⁸ See *id.*

⁹ See *id.* “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis. See *id.* at n.5.

¹⁰ See Notice, *supra* note 4, at 43633.

¹¹ See *id.* For any month in which a firm is approved for Membership with the Exchange, the monthly Trading Rights Fee would be pro-rated in accordance with the date on which Membership is approved. See *id.* at 43634.

¹² 15 U.S.C. 78s(b)(3)(C).

¹³ 15 U.S.C. 78s(b)(1).

¹⁴ See Notice, *supra* note 4, at 43635.

¹⁵ See *id.*

¹⁶ See *id.*

¹⁷ See *id.* The Exchange notes, for example, that the Exchange’s proposed Trading Rights Fee of \$500 a month is “substantially lower” than the monthly \$1,250 Trading Rights Fee that Nasdaq assesses on its members. *Id.*

¹⁸ See Notice, *supra* note 4, at 43636.

¹⁹ See *id.* at 43635–36.

²⁰ See *id.* at 43635. The Exchange also asserts that the waivers are equitable and not unfairly discriminatory in the Notice. See *id.* at 43636.

²¹ See *id.* at 43625.

²² See *id.* at 43635–36.

compared to the overall ADV across all firms.”²³

The Exchange also states that the second waiver for Members that submit 90% or more of their orders per month as retail orders is reasonable because it would ensure that “retail broker members can continue to submit orders for individual investors at a lower cost, thereby continuing to encourage retail investor participation on the Exchange.”²⁴ The Exchange also argues that increased liquidity in retail order flow could benefit all market participants by incentivizing other Members to send order flow to the Exchange and increasing overall liquidity, as well by positively impacting market quality by reflecting long-term investment intentions of retail participation.²⁵ The Exchange also asserts that the retail order volume threshold is reasonable because it would serve to capture broker-dealers that are primarily in the business of handling orders on behalf of retail investors, rather than larger broker-dealers that may route some retail orders on behalf of other broker-dealers, but for the most part are engaging in a significant amount of activity not related to servicing retail investors.²⁶

Finally the Exchange states that it believes that not charging a Trading Rights Fee for new Members is reasonable because it would incentivize firms to become Members of the Exchange and bring additional liquidity to the market to the benefit of all market participants.²⁷ The Exchange asserts that the proposed waiver for new Members is also reasonable because “it will allow new firms the flexibility in resources needed to initially adjust to the Exchange’s market-model and functionality.”²⁸

Regarding competition, the Exchange states that it believes the proposed rule change does not impose any burden on either intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.²⁹ The Exchange notes that, with regard to intramarket competition, the proposed rule change would apply equally to all Members that reach an ADV of 100,000 shares traded or greater, those in which less than 90% of their order volume is retail order volume per month, and those that are not within their first three months of

new Membership on the Exchange.³⁰ In regard to intermarket competition, the Exchange states that it operates in a highly competitive market, and that this includes competition for exchange memberships.³¹ The Exchange explains that Members have numerous venues on which they can participate, including other equities exchanges and off-exchange venues such as alternative trading systems.³² The Exchange asserts that while trade-through and best execution obligations may require a firm to access the Exchange, no firm is compelled to be a Member of the Exchange in order to participate on the Exchange, and accordingly firms may freely choose to participate on the Exchange without holding a Membership.³³ The Exchange believes that if the proposed fee is unattractive to members, the Exchange is likely to lose membership and market share as a result.³⁴

As noted above, the Commission received one comment letter on the proposed rule change.³⁵ SIFMA notes that the Exchange previously filed a proposed rule change to institute a trading rights fee, and the Commission suspended that filing.³⁶ SIFMA argues that, like the prior proposal, the Exchange did not provide sufficient information in the filing to support a finding that the proposal is consistent with the Act.³⁷ Specifically, SIFMA asserts that the Exchange should provide quantitative data showing its anticipated revenues, costs and profitability, as well as describe its methodology for estimating the baseline and expected costs and revenues.³⁸ Further, SIFMA argues that the Exchange should provide specific detail regarding the amount of its regulatory costs rather than information about broad percentage increases in such costs.³⁹ In addition, SIFMA believes the Exchange should provide specific detail about the amount of revenue it would expect to receive from the Trading

Rights Fee, as well as the amount of revenue it receives from other sources that are intended to fund regulation, such as registration and licensing fees.⁴⁰

SIFMA also asserts the Exchange’s Trading Rights Fee would not be constrained by competition because broker-dealers must pay this fee prior to being able to satisfy their regulatory obligations and deciding where to route orders.⁴¹ SIFMA notes that trade-through requirements under Regulation NMS, as well as broker-dealers’ best execution obligations, effectively require direct or indirect access and connection to all registered exchanges, and each exchange remains the exclusive purveyor of those services.⁴²

In response, the Exchange reiterated several of the arguments for the proposed rule change that were provided in the Notice. In addition, the Exchange states that contrary to SIFMA’s assertions, the instant filing contains significantly more information and analysis in regard to the proposed fee, including information related to increases in regulatory costs.⁴³ The Exchange indicates that the proposed fee would defray only a portion of these increasing costs.⁴⁴ The Exchange also asserts that in regard to competition, broker-dealers are not compelled to become members of any particular exchange, and a number of broker-dealers are able to meet their business and compliance needs by trading via other arrangements.⁴⁵

The Exchange originally filed a proposal to implement a Trading Rights Fee on May 2, 2019.⁴⁶ That proposal, CboeBZX–2019–041, was published for comment in the **Federal Register** on May 16, 2019.⁴⁷ On June 28, 2019, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (i) Temporarily suspended the proposed rule change; and (ii) instituted proceedings to determine whether to approve or disapprove the proposed rule change.⁴⁸ The instant filing proposes an identical Trading Rights Fee and raises similar concerns as to whether it is consistent with the Act.⁴⁹

When exchanges file their proposed rule changes with the Commission,

²³ See *id.* at 43636.

²⁴ See *id.*

²⁵ See *id.*

²⁶ See *id.*

²⁷ See *id.* at 43635.

²⁸ See *id.*

²⁹ See *id.* at 43636.

³⁰ See *id.* at 43636.

³¹ See *id.* at 43636–37.

³² See *id.* at 43637. The Exchange states that it represents a small percentage of the overall market, and based on publicly available information, no single equities exchange has more than 20% market share, and no exchange group has more than 22% market share. See *id.* The Exchange references the Cboe Global Markets U.S. Equities Market Volume Summary (July 31, 2019), available at https://markets.cboe.com/us/equities/market_share. See *id.* at n.15.

³³ See *id.* at 43637.

³⁴ See *id.*

³⁵ See *supra* note 5.

³⁶ See SIFMA Letter, *supra* note 5, at 1.

³⁷ See *id.*

³⁸ See *id.* at 2.

³⁹ See *id.*

⁴⁰ See *id.*

⁴¹ See *id.*

⁴² See *id.*

⁴³ See Exchange Response Letter, *supra* note 5, at 2.

⁴⁴ See *id.*

⁴⁵ See *id.*

⁴⁶ See Securities Exchange Act Release No. 85840 (May 10, 2019), 84 FR 22190.

⁴⁷ See *id.*

⁴⁸ See Securities Exchange Act Release No. 86233 (June 28, 2019), 84 FR 32230 (July 5, 2019).

⁴⁹ See *id.*

including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.⁵⁰ The instructions to Form 19b-4, on which exchanges file their proposed rule changes, specify that such statement "should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements."⁵¹

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities;⁵² (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;⁵³ and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.⁵⁴

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether assessing the proposed monthly Trading Rights Fee on certain Members is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.⁵⁵

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes

of the Act, to temporarily suspend the proposed rule changes.⁵⁶

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C)⁵⁷ and 19(b)(2)(B) of the Act⁵⁸ to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,⁵⁹ the Commission is providing notice of the grounds for possible disapproval under consideration:

- Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange "provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities,"⁶⁰
- Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to perfect the operation of a free and open market and a national market system" and "protect investors and the public interest," and not be "designed to permit unfair discrimination between customers, issuers, brokers, or dealers,"⁶¹ and
- Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]."⁶²

As noted above, the proposal imposes a new monthly Trading Rights Fee on certain Members. The Commission notes that the Exchange's statements in support of the proposed rule change are general in nature and lack detail and

specificity. For example, while the Exchange asserts that the proposed fee will fund overall regulation and maintenance of the Exchange and provides broad figures illustrating the percentage by which RSA and regulatory costs have increased from 2016 to 2019, the Exchange has not described how the proposed fee would address these regulatory increases.⁶³ Further, the rationale provided does not address how the proposed fee is an equitable allocation of fees beyond noting that it applies to all Members who do not qualify for a waiver, and broadly asserting that the proposed fee should benefit "all Members" by contributing to the provision of "an efficient and well-regulated market" for Members.⁶⁴

As discussed above, one commenter asserts, among other concerns, that the Exchange's cost-based discussion is not sufficiently detailed to support its claims that the proposed Trading Rights Fee is consistent with the requirements of the Act, and that the Exchange has not offered sufficient detail to establish that the proposed fee would be constrained by significant competitive forces.⁶⁵ The commenter indicates that, among other things, additional information addressing both revenues and costs is lacking in the Exchange's proposal.

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change."⁶⁶ The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,⁶⁷ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.⁶⁸

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, and

⁵⁰ See 17 CFR 240.19b-4 (Item 3 entitled "Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change").

⁵¹ See *id.*

⁵² 15 U.S.C. 78f(b)(4).

⁵³ 15 U.S.C. 78f(b)(5).

⁵⁴ 15 U.S.C. 78f(b)(8).

⁵⁵ See 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

⁵⁶ For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵⁷ 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

⁵⁸ 15 U.S.C. 78s(b)(2)(B).

⁵⁹ 15 U.S.C. 78s(b)(2)(B).

⁶⁰ 15 U.S.C. 78f(b)(4).

⁶¹ 15 U.S.C. 78f(b)(5).

⁶² 15 U.S.C. 78f(b)(8).

⁶³ See Notice, *supra* note 4, at 43635.

⁶⁴ See *id.* at 43636.

⁶⁵ See SIFMA Letter, *supra* note 5, at 1-2.

⁶⁶ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

⁶⁷ See *id.*

⁶⁸ See *id.*

specifically, with its requirements that exchange fees be reasonable and equitably allocated; be designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public interest, and not be unfairly discriminatory; or not impose an unnecessary or inappropriate burden on competition.⁶⁹

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by October 24, 2019. Rebuttal comments should be submitted by November 7, 2019. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.⁷⁰

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2019-072 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-CboeBZX-2019-072. This file number should be included on the subject line if email is used. To help the Commission process and review your

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2019-072 and should be submitted on or before October 24, 2019. Rebuttal comments should be submitted by November 7, 2019.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,⁷¹ that File Number SR-CboeBZX-2019-072 be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷²

Eduardo A. Aleman,
Deputy Secretary.

[FR Doc. 2019-21472 Filed 10-2-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87149; File No. 4-698]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the National Market System Plan Governing the Consolidated Audit Trail by Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., BOX Options Exchange LLC, Cboe C2 Options Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIAx EMERALD, LLC, MIAx PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE Arca, Inc., NYSE American, LLC, NYSE Chicago, Inc. and NYSE National, Inc.

September 27, 2019.

I. Introduction

On August 29, 2019, the Operating Committee for CAT NMS, LLC (the "Company"), on behalf of the following parties to the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan"):¹

¹ On February 27, 2015, BATS-Y Exchange, Inc. (n/k/a Cboe BYX Exchange, Inc.), BATS Exchange, Inc. (n/k/a Cboe BZX Exchange, Inc.), BOX Options Exchange LLC, C2 Options Exchange, Incorporated (n/k/a Cboe C2 Options Exchange, Inc.), Chicago Board Options Exchange, Incorporated (n/k/a Cboe Exchange Inc.), Chicago Stock Exchange, Inc. (n/k/a NYSE Chicago, Inc.), EDGA Exchange, Inc. (n/k/a Cboe EDGA Exchange, Inc.), EDGX Exchange, Inc. (n/k/a Cboe EDGX Exchange, Inc.), Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC (n/k/a Nasdaq ISE LLC), ISE Gemini, LLC (n/k/a Nasdaq GEMX, LLC), Miami International Securities Exchange LLC, NASDAQ OMX BX, Inc. (n/k/a Nasdaq BX, Inc.), NASDAQ OMX PHLX LLC (n/k/a Nasdaq PHLX LLC), The NASDAQ Stock Market LLC, National Stock Exchange, Inc. (n/k/a NYSE National, Inc.), New York Stock Exchange LLC, NYSE MKT LLC (n/k/a NYSE American, LLC), and NYSE Arca, Inc. filed with the Commission, pursuant to Section 11A of the Exchange Act and Rule 608 of Regulation NMS thereunder, the CAT NMS Plan. 15 U.S.C. 78k-1; 17 CFR 242.608. The Plan was published for comment in the **Federal Register** on May 17, 2016, and approved by the Commission, as modified, on November 15, 2016. See Securities Exchange Act Release Nos. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016); 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) ("CAT NMS Plan Approval Order"). On January 30, 2017, the Commission noticed for immediate effectiveness an amendment to the Plan to add MIAx PEARL, LLC as a Participant. See Securities Exchange Act Release No. 79898, 82 FR 9250 (February 3, 2017). On March 1, 2019, the Commission noticed for immediate effectiveness an amendment to the Plan to add MIAx Emerald, LLC as a Participant. See Securities Exchange Act Release No. 85230, 84 FR 8356 (March 7, 2019).

⁶⁹ See 15 U.S.C. 78f(b)(4), (5), and (8).

⁷⁰ 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

⁷¹ 15 U.S.C. 78s(b)(3)(C).

⁷² 17 CFR 200.30-3(a)(57) and (58).

Cboe BYX Exchange, Inc., (previously known as Bats BYX Exchange, Inc.), Cboe BZX Exchange, Inc. (previously known as Bats BZX Exchange), Inc., Cboe EDGA Exchange, Inc. (previously known as Bats EDGA Exchange, Inc.), Cboe EDGX Exchange, Inc. (previously known as Bats EDGX Exchange, Inc.), BOX Options Exchange LLC, Cboe C2 Options Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors' Exchange, LLC, Miami International Securities Exchange, LLC, MIAX EMERALD, LLC, MIAX PEARL, LLC, Nasdaq ISE, LLC (previously known as International Securities Exchange, Inc.), Nasdaq GEMX (previously known as ISE Gemini, LLC), Nasdaq MRX (previously known as ISE Mercury, LLC), Nasdaq BX, Inc. (previously known as NASDAQ BX, Inc.), Nasdaq PHLX LLC (previously known as NASDAQ PHLX LLC), The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Chicago, Inc. (previously known as Chicago Stock Exchange, Inc.), NYSE American, LLC (previously known as NYSE MKT, LLC) and NYSE National, Inc. (previously known as National Stock Exchange, Inc.) (collectively, the "Participants," "self-regulatory organizations," or "SROs") filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 ("Exchange Act"),² and Rule 608 thereunder,³ a proposed amendment to the CAT NMS Plan to accommodate the creation of a new Delaware limited liability company, named Consolidated Audit Trail, LLC, for the purpose of conducting activities related to the CAT.⁴ A copy of the proposed revisions to the CAT NMS Plan is attached as *Appendix A* hereto. The Commission is publishing this notice to solicit comments from interested persons on the amendment.⁵

II. Description of the Plan

Set forth in this Section II is the statement of the purpose and summary of the amendment, along with information required by Rule 608(a)(4) and (5) under the Exchange Act,⁶ substantially as prepared and submitted by the Participants to the Commission.⁷

A. Description of the Amendments to the CAT NMS Plan

The Participants previously formed a Delaware limited liability company named CAT NMS, LLC for the purpose of conducting activities related to the consolidated audit trail ("CAT"), and CAT NMS, LLC currently conducts those activities.⁸ The Participants are the limited liability company members of CAT NMS, LLC. The Limited Liability Company Agreement of CAT NMS, LLC, itself, including its appendices, is the CAT NMS Plan, the national market system plan as defined in Rule 600(b)(43) of Regulation NMS under the Exchange Act.⁹ The Participants propose to form a new Delaware limited liability company named Consolidated Audit Trail, LLC for the purpose of conducting activities related to the CAT from and after the effectiveness of the proposed amendment of the CAT NMS Plan, and Consolidated Audit Trail, LLC will conduct those activities from and after that time. The Participants will be the limited liability company members of Consolidated Audit Trail, LLC. Upon the effectiveness of the proposed amendment of the CAT NMS Plan, the Limited Liability Company Agreement of Consolidated Audit Trail, LLC would serve as the CAT NMS Plan, and the Limited Liability Company Agreement of CAT NMS, LLC would no longer serve as the CAT NMS Plan.

The language of the Limited Liability Company Agreement of Consolidated Audit Trail, LLC is the same as the language of the Limited Liability Company Agreement of CAT NMS, LLC except for changes related to the name of the new limited liability company and the date of the agreement.¹⁰ Specifically, the proposed amendment would replace the name CAT NMS, LLC with the name Consolidated Audit Trail, LLC in the title, opening paragraph, Section 2.3 and the title of Exhibit A of the new limited liability company agreement. In addition, the proposed amendment would replace the current date of the agreement in the opening paragraph with the date of the new agreement with Consolidated Audit Trail, LLC. Accordingly, the proposed

revisions to the current CAT NMS Plan are limited only to those that are necessary to accommodate the creation of the new limited liability company, not to change any of the substantive provisions of the CAT NMS Plan that govern the way activities with regard to the CAT are performed, including, for example, provisions related to governance, fees, the Plan Processor, and CAT Data. The proposed revisions to the CAT NMS Plan are attached as the *Appendix A* to this filing.

The Operating Committee proposes to amend the CAT NMS Plan for several reasons. On February 26, 2019, the Operating Committee selected a successor Plan Processor for the CAT, FINRA CAT LLC. With FINRA CAT LLC as the successor Plan Processor, a new CAT System will be used to conduct the activities related to the CAT. With a successor Plan Processor and new CAT System, the Operating Committee has been advised that it would be appropriate to utilize a new entity to implement the CAT NMS Plan. The Operating Committee also proposes to create Consolidated Audit Trail, LLC to ensure that fees collected by that entity will fund the development and operation of the CAT System.

B. Governing or Constituent Documents

The governing document for Consolidated Audit Trail, LLC, the Limited Liability Company Agreement for Consolidated Audit Trail, LLC, is the same as the Limited Liability Agreement for CAT NMS, LLC except for the changes set forth in the *Appendix A* to this letter. In addition, the changes made to the Limited Liability Company Agreement of CAT NMS, LLC are described above in Section A.

C. Implementation of Amendment

The terms of the proposed amendment will become effective upon filing pursuant to Rule 608(b)(3)(ii) of the Exchange Act because it is concerned solely with the administration of the Plan, or involving the governing or constituent documents relating to any person authorized to implement or administer the Plan on behalf of its sponsors.¹¹ The Limited Liability Company Agreement of Consolidated Audit Trail, LLC will become the CAT NMS Plan immediately upon filing the proposed amendment with the Commission. To effectuate the proposed amendment upon filing, the Participants have previously filed the necessary documents with the State of Delaware to form Consolidated Audit Trail, LLC. In addition, CAT NMS, LLC

Countryman, Secretary, Commission, dated August 29, 2019.

⁸ CAT NMS Plan Approval Order at 84699.

⁹ *Id.*

¹⁰ In addition to these name changes, the Operating Committee notes that the names and addresses of the Participants have been updated in the signature block and Exhibit A of the Limited Liability Company Agreement of Consolidated Audit Trail, LLC to reflect the current names and addresses of the Participants. These changes are set forth in the *Appendix A* to this letter.

¹¹ 17 CFR 242.608(b)(3)(ii).

² 15 U.S.C. 78k-1(a)(3).

³ 17 CFR 242.608.

⁴ See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Brent J. Fields, Secretary, Commission, dated May 8, 2017 ("Transmittal Letter").

⁵ 17 CFR 242.608.

⁶ See 17 CFR 242.608(a)(4) and (a)(5).

⁷ See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Ms. Vanessa

has taken the necessary steps to assign its agreement with the Plan Processor, FINRA CAT LLC, and the Technical Specifications for the CAT System to Consolidated Audit Trail, LLC and for Consolidated Audit Trail, LLC to guarantee the payment obligations under the promissory notes made by CAT NMS, LLC to the Participants for development costs related to the CAT for the period prior to the creation of Consolidated Audit Trail, LLC. Consolidated Audit Trail, LLC also has taken the necessary steps to enter into new contracts with other third parties performing administrative and other functions on behalf of Consolidated Audit Trail, LLC.

At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled in accordance with paragraph (a)(1) of Rule 608 and reviewed in accordance with paragraph (b)(1) of Rule 608, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Exchange Act.

D. Development and Implementation Phases

Not applicable.

E. Analysis of Impact on Competition

The Participants do not believe the proposed amendments will have any impact on competition, that the proposed amendment is a technical amendment related to the entity which would conduct the activities related to the CAT, and that the proposed amendment does not make substantive changes to the CAT NMS Plan or the operation of the CAT.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

G. Approval by Plan Sponsors in Accordance With Plan

Section 12.3 of the CAT NMS Plan states that, subject to certain exceptions, the Plan may be amended from time to time only by a written amendment, authorized by the affirmative vote of not less than two-thirds of all of the Participants, that has been approved by the SEC pursuant to Rule 608 or has otherwise become effective under Rule 608. The Participants, by a vote of the Operating Committee taken at a meeting on August 29, 2019, has authorized the filing of this proposed amendment with the SEC in accordance with the Plan.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

Not applicable.

J. Method and Frequency of Processor Evaluation

Not applicable.

K. Dispute Resolution

Not applicable.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment is consistent with the Exchange 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 4–698 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 4–698. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the Participants' offices. 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 4–698 and should be submitted on or before October 24, 2019.

By the Commission.

Eduardo A. Aleman,
Deputy Secretary.

BILLING CODE 8011–01–P

APPENDIX A

Additions underlined; deletions [bracketed]

LIMITED LIABILITY COMPANY AGREEMENT
OF
[CAT NMS,] CONSOLIDATED AUDIT TRAIL, LLC
a Delaware Limited Liability Company

* * * * *

LIMITED LIABILITY COMPANY AGREEMENT
OF
[CAT NMS,] CONSOLIDATED AUDIT TRAIL, LLC
a Delaware Limited Liability Company

This Limited Liability Company Agreement (including its Recitals and the Exhibits, Appendices, Attachments, and Schedules identified herein, this “Agreement”) of [CAT NMS,] CONSOLIDATED AUDIT TRAIL, LLC, a Delaware limited liability company (the “Company”), dated as of the [20th day of February, 2019] 29th day of August, 2019, is made and entered into by and among the Participants.

* * * * *

Section 2.3. Name. The name of the Company is “[CAT NMS,] CONSOLIDATED AUDIT TRAIL, LLC.” The name of the Company may be changed at any time or from time to time with the approval of the Operating Committee. All Company business shall be conducted in that name or such other names that comply with applicable law as the Operating Committee may select from time to time.

* * * * *

IN WITNESS WHEREOF, the Participants have executed this Limited Liability Company Agreement as of the day and year first above written.

PARTICIPANTS:

BOX EXCHANGE LLC [BATS BZX EXCHANGE, INC.]

By: _____

Name: _____

Title: _____

CBOE [BATS] BYX EXCHANGE, INC.

By: _____

Name: _____

Title: _____

CBOE BZX EXCHANGE, INC. [BOX OPTIONS LLC]

By: _____

Name: _____

Title: _____

CBOE EDGA EXCHANGE, INC. [C2 OPTIONS
INCORPORATED]

By: _____

Name: _____

Title: _____

[CHICAGO BOARD OPTIONS EXCHANGE,
INCORPORATED]

By: _____

Name: _____

Title: _____]

[CHICAGO STOCK] CBOE EDGX EXCHANGE, INC.

By: _____

Name: _____

Title: _____

[BATS EDGA] CBOE C2 EXCHANGE, INC.

By: _____

Name: _____

Title: _____

[BATS EDGX] CBOE EXCHANGE, INC.

By: _____

Name: _____

Title: _____

FINANCIAL INDUSTRY REGULATORY AUTHORITY,
INC.

By: _____

Name: _____

Title: _____

[ISE GEMINI] INVESTORS' EXCHANGE, LLC

By: _____

Name: _____

Title: _____

[ISE MERCURY] MIAX EMERALD, LLC

By: _____

Name: _____

Title: _____

MIAMI INTERNATIONAL SECURITIES EXCHANGE LLC

By: _____

Name: _____

Title: _____

[INVESTORS' EXCHANGE LLC

By: _____

Name: _____

Title: _____]

[MIAMI INTERNATIONAL SECURITIES EXCHANGE LLC

By: _____

Name: _____

Title: _____]

MIAMI PEARL, LLC

By: _____

Name: _____

Title: _____

[MIAX EMERALD, LLC

By: _____

Name: _____

Title: _____]

NASDAQ BX, INC.

By: _____

Name: _____

Title:_____

NASDAQ [PHLX] GEMX, LLC

By:_____

Name:_____

Title:_____

NASDAQ ISE, LLC

By:_____

Name:_____

Title:_____

NASDAQ MRX, LLC

By:_____

Name:_____

Title:_____

NASDAQ PHLX LLC

By:_____

Name:_____

Title:_____

THE NASDAQ STOCK MARKET LLC

By:_____

Name:_____

Title:_____

[NATIONAL STOCK EXCHANGE, INC.

By: _____

Name: _____

Title: _____]

NEW YORK STOCK EXCHANGE LLC

By: _____

Name: _____

Title: _____

NYSE [MKT] AMERICAN LLC

By: _____

Name: _____

Title: _____

NYSE ARCA, INC.

By: _____

Name: _____

Title: _____

NYSE [ARCA] CHICAGO, INC.

By: _____

Name: _____

Title: _____

NYSE NATIONAL, INC.

By: _____

Name: _____

Title: _____

EXHIBIT A

PARTICIPANTS IN [CAT NMS,] CONSOLIDATED AUDIT TRAIL, LLC

[Bats] <u>Cboe BZX Exchange, Inc.</u> <u>400 South LaSalle St.</u> <u>Chicago, IL 60605</u> [8050 Marshall Drive, Lenexa, KS 66214]	[Bats] <u>Cboe BYX Exchange, Inc.</u> <u>400 South LaSalle St.</u> <u>Chicago, IL 60605</u> [8050 Marshall Drive Lenexa, KS 66214]	<u>Cboe Exchange, Inc.</u> <u>400 South LaSalle St.</u> <u>Chicago, IL 60605</u> [BOX Options Exchange LLC 101 Arch St., Suite 610 Chicago, IL 60605]
<u>Cboe C2 Options Exchange, Inc.</u> [Incorporated] <u>400 South LaSalle St.</u> <u>Chicago, IL 60605</u>	[Chicago Board Options] <u>Cboe EDGA Exchange, Inc.</u> [Incorporated] <u>400 South LaSalle St.</u> <u>Chicago, IL 60605</u>	[Chicago Stock] <u>Cboe EDGX Exchange, Inc.</u> [440] <u>400 South LaSalle St.</u> <u>Chicago, IL 60605</u>
<u>BOX Exchange LLC</u> <u>101 Arch St., Suite 610</u> <u>Boston, MA 02110</u> [Bats EDGA Exchange, Inc.] 8050 Marshall Drive Lenexa, KS 66214]	<u>New York Stock Exchange LLC</u> <u>11 Wall St.</u> <u>New York, NY 10005</u> [Bats EDGX Exchange, Inc. 8050 Marshall Drive Lenexa, KS 66214]	<u>NYSE Chicago, Inc.</u> <u>440 South LaSalle St., Suite 800</u> <u>Chicago, IL 60605</u> [Financial Industry Regulatory Authority Inc. 1735 K Street, NW Washington DC, 20006]
<u>NYSE National, Inc.</u> <u>11 Wall St.</u> <u>New York, NY 10005</u> [ISE Gemini, LLC 60 Broad Street New York, New York 10004]	<u>NYSE American LLC</u> <u>11 Wall St.</u> <u>New York, NY 10005</u> [International Securities Exchange, LLC 60 Broad Street New York, New York 10004]	<u>NYSE Arca, Inc.</u> <u>11 Wall St.</u> <u>New York, NY 10005</u> [Miami International Securities Exchange LLC 7 Roszel Road, 5th floor Princeton, NJ 08540]
NASDAQ [BX] <u>GEMX, LLC</u> [Inc.] One Liberty Plaza 165 Broadway New York, NY 10006	NASDAQ [PHLX] <u>ISE, LLC</u> [.] <u>One Liberty Plaza</u> <u>165 Broadway</u> <u>New York, NY 10006</u> [1900 Market Street Philadelphia, PA 19103]	[The] NASDAQ [Stock Market] <u>MRX, LLC</u> <u>60 Broad Street</u> <u>New York, NY 10004</u> [One Liberty Plaza 165 Broadway New York, NY 10006]

<u>NASDAQ BX, Inc.</u> <u>One Liberty Plaza</u> <u>165 Broadway</u> <u>New York, NY 10006</u> [National Stock Exchange, Inc. 101 Hudson Street Suite 1200 Jersey City, NJ 07302]	<u>NASDAQ PHLX LLC.</u> <u>One Liberty Plaza</u> <u>165 Broadway</u> <u>New York, NY</u> <u>10006</u> [New York Stock Exchange LLC 11 Wall St. New York, NY 10005]	<u>The NASDAQ Stock Market</u> <u>LLC</u> <u>One Liberty Plaza</u> <u>165 Broadway</u> <u>New York, NY</u> <u>10006</u> [NYSE MKT LLC 11 Wall St. New York, NY 10005]
<u>Financial Industry Regulatory</u> <u>Authority, Inc.</u> <u>1735 K Street, NW</u> <u>Washington DC, 20006</u> [NYSE Arca, Inc. 11 Wall St. New York, NY 10005]	<u>Investors' Exchange, LLC</u> <u>3 World Trade Center,</u> <u>58th Floor</u> <u>New York, NY 10007</u> [ISE Mercury, LLC 60 Broad Street New York, NY 10004]	<u>Miami International</u> <u>Securities Exchange LLC</u> <u>7 Roszel Road, 5th floor</u> <u>Princeton, NJ 08540</u> [Investors' Exchange, LLC 4 World Trade Center 44th Floor New York, NY 10007]
MIAX PEARL, LLC 7 Roszel Road, 5th Floor, Princeton, New Jersey 08540	MIAX Emerald, LLC 7 Roszel Road, 5th Floor Princeton, New Jersey 08540	

[FR Doc. 2019-21492 Filed 10-2-19; 8:45 am]
BILLING CODE 8011-01-C

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No.
33651]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

September 27, 2019.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of August 2019. A copy of each 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. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 22, 2019, 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: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Assistant Director, at (202) 551-6413 or Chief Counsel's Office at (202) 551-6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549-8010.

Aberdeen Emerging Markets Smaller Company Opportunities Fund, Inc. [File No. 811-08076]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Aberdeen Emerging Markets Equity Income Fund, Inc. (formerly, Aberdeen Chile Fund, Inc.), and on June 28, 2018, made a final distribution to its shareholders based on

net asset value. Expenses of \$294,766 incurred in connection with the reorganization were paid by the applicant.

Filing Date: The application was filed on July 16, 2019.

Applicant's Address: c/o Aberdeen Standard Investments, Inc., 1735 Market Street, 32nd Floor, Philadelphia, Pennsylvania 19103.

Aberdeen Greater China Fund, Inc. [File No. 811-06674]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Aberdeen Emerging Markets Equity Income Fund, Inc. (formerly, Aberdeen Chile Fund, Inc.), and on June 28, 2018, made a final distribution to its shareholders based on net asset value. Expenses of approximately \$299,543 incurred in connection with the reorganization were paid by the applicant and the applicant's investment adviser.

Filing Date: The application was filed on July 16, 2019.

Applicant's Address: c/o Aberdeen Standard Investments, Inc., 1735 Market Street, 32nd Floor, Philadelphia, Pennsylvania 19103.

Aberdeen Latin America Equity Fund, Inc. [File No. 811-06094]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Aberdeen Emerging Markets Equity Income Fund, Inc. (formerly, Aberdeen Chile Fund, Inc.), and on June 28, 2018, made a final distribution to its shareholders based on net asset value. Expenses of approximately \$458,482 incurred in connection with the reorganization were paid by the applicant.

Filing Date: The application was filed on July 16, 2019.

Applicant's Address: c/o Aberdeen Standard Investments, Inc., 1735 Market Street, 32nd Floor, Philadelphia, Pennsylvania 19103.

Aberdeen Indonesia Fund, Inc. [File No. 811-06024]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Aberdeen Emerging Markets Equity Income Fund, Inc. (formerly, Aberdeen Chile Fund, Inc.), and on June 28, 2018, made a final distribution to its shareholders based on net asset value. Expenses of \$186,627 incurred in connection with the reorganization were paid by the applicant.

Filing Date: The application was filed on July 16, 2019.

Applicant's Address: c/o Aberdeen Standard Investments, Inc., 1735 Market Street, 32nd Floor, Philadelphia, Pennsylvania 19103.

Aberdeen Israel Fund, Inc. [File No. 811-06120]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Aberdeen Emerging Markets Equity Income Fund, Inc. (formerly, Aberdeen Chile Fund, Inc.), and on June 28, 2018, made a final distribution to its shareholders based on net asset value. Expenses of \$208,347 incurred in connection with the reorganization were paid by the applicant.

Filing Date: The application was filed on July 16, 2019.

Applicant's Address: c/o Aberdeen Standard Investments, Inc., 1735 Market Street, 32nd Floor, Philadelphia, Pennsylvania 19103.

Aberdeen Singapore Fund, Inc. [File No. 811-06115]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Aberdeen Emerging Markets Equity Income Fund, Inc. (formerly, Aberdeen Chile Fund, Inc.), and on June 28, 2018, made a final distribution to its shareholders based on net asset value. Expenses of approximately \$333,020 incurred in connection with the reorganization were paid by the applicant.

Filing Date: The application was filed on July 16, 2019.

Applicant's Address: c/o Aberdeen Standard Investments, Inc., 1735 Market Street, 32nd Floor, Philadelphia, Pennsylvania 19103.

Asia Tigers Fund, Inc. [File No. 811-08050]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Aberdeen Emerging Markets Equity Income Fund, Inc. (formerly, Aberdeen Chile Fund, Inc.), and on June 28, 2018, made a final distribution to its shareholders based on net asset value. Expenses of \$486,582 incurred in connection with the reorganization were paid by the applicant and the applicant's investment adviser.

Filing Date: The application was filed on July 16, 2019.

Applicant's Address: c/o Aberdeen Standard Investments, Inc., 1735 Market Street, 32nd Floor, Philadelphia, Pennsylvania 19103.

Gabelli NextShares Trust [File No. 811-23160]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 28, 2019, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of \$5,000 incurred in connection with the liquidation were paid by the applicant's investment adviser.

Filing Date: The application was filed on July 30, 2019.

Applicant's Address: One Corporate Center, Rye, New York 10580-1434.

Government Obligations Portfolio [File No. 811-08012]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 5, 2018, applicant made a liquidating distribution to its shareholders based on net asset value. No expenses were

incurred in connection with the liquidation.

Filing Date: The application was filed on September 11, 2019.

Applicant's Address: Two International Place, Boston, Massachusetts 02110.

ML of New York Variable Annuity Separate Account [File No. 811-06320]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. Expenses of \$1,531 incurred in connection with the liquidation were paid by Transamerica Financial Life Insurance Company.

Filing Dates: The application was filed on December 27, 2018, and amended on April 1, 2019 and September 5, 2019.

Applicant's Address: 4333 Edgewood Road NE, Cedar Rapids, Iowa 52499-0001.

MSAR Completion Portfolio [File No. 811-22427]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 19, 2018, applicant made a liquidating distribution to its shareholders based on net asset value. No expenses were incurred in connection with the liquidation.

Filing Date: The application was filed on August 22, 2019.

Applicant's Address: Two International Place, Boston, Massachusetts 02110.

Short-Term U.S. Government Portfolio [File No. 811-21132]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 12, 2018, applicant made a liquidating distribution to its shareholders based on net asset value. No expenses were incurred in connection with the liquidation.

Filing Date: The application was filed on September 11, 2019.

Applicant's Address: Two International Place, Boston, Massachusetts 02110.

Sims Total Return Fund, Inc. [File No. 811-04704]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 28, 2019, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of \$20,000 incurred in connection with the liquidation were paid by the applicant's investment adviser.

Filing Date: The application was filed on July 24, 2019.

Applicant's Address: Sims Total Return Fund, Inc., 225 East Mason Street, Suite 802, Milwaukee, Wisconsin 53202.

Stira Alcentra Global Credit Fund [File No. 811-23210]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Priority Income Fund, Inc. Expenses of approximately \$526,800 incurred in connection with the reorganization were paid by the applicant and the acquiring fund.

Filing Dates: The application was filed on May 24, 2019, and amended on July 25, 2019.

Applicant's Address: 18100 Von Karman Avenue, Suite 500, Irvine, California 92612.

Vanguard Convertible Securities Fund [File No. 811-04627]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 19, 2019, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of \$34,850.80 incurred in connection with the liquidation were paid by the applicant.

Filing Date: The application was filed on July 29, 2019.

Applicant's Address: P.O. Box 2600, Valley Forge, Pennsylvania 19482.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019-21498 Filed 10-2-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87140; File No. SR-CboeBYX-2019-013]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Amending the Fee Schedule Assessed on Members To Establish a Monthly Trading Rights Fee

September 27, 2019.

I. Introduction

On August 1, 2019, Cboe BYX Exchange, Inc. ("BYX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act

of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change (File Number SR-CboeBYX-2019-013) to amend the BYX fee schedule to establish a monthly Trading Rights Fee to be assessed on Members. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.³ The proposed rule change was published for comment in the **Federal Register** on August 21, 2019.⁴ The Commission has received one comment letter on the proposal, and one response letter from the Exchange.⁵ Under Section 19(b)(3)(C) of the Act,⁶ the Commission is hereby: (i) Temporarily suspending the proposed rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to amend the Membership Fees section of the BYX fee schedule to establish a monthly Trading Rights Fee, which would be assessed on Members that trade more than a specified volume in U.S. equities.⁷ Specifically, the Exchange proposes to charge Members a Trading Rights Fee of \$250 per month for the ability to trade on the Exchange.⁸ A Member would not be charged the monthly Trading Rights Fee if it qualifies for one of the following waivers: (1) The Member has a monthly ADV⁹ of less than 100,000 shares, (2) at least 90% of the Member's orders submitted to the Exchange per month are retail orders,¹⁰ or (3) a new

Member is within the first three months of their membership.¹¹

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,¹² at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,¹³ the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization ("SRO") if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

The Exchange asserts that the proposed Trading Rights Fee "is reasonable because it will assist in funding the overall regulation and maintenance of the Exchange" and will contribute to "ensuring that adequate resources are devoted to regulation."¹⁴ The Exchange also believes the proposed fee is reasonable because it "represents a modest charge" applied to firms that "have chosen to become members of the Exchange," and such firms consume more regulatory resources and "benefit from the Exchange's regulatory efforts by having access to a well-regulated market."¹⁵ The Exchange notes that its Regulatory Services Agreement ("RSA") costs, which cover regulatory services in connection with market and financial surveillance, examinations, investigations, and disciplinary procedure, have increased 29.3%, while the Exchange's overall regulatory costs have grown 134.2%, from 2016 to 2019.¹⁶ The Exchange also asserts that the proposed Trading Rights Fee is reasonable because the "cost of this membership fee is generally less than the analogous membership fees of other markets" and that a number of national securities exchanges currently charge

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ See Securities Exchange Act Release No. 86685 (August 15, 2019), 84 FR 43627 ("Notice").

⁵ See Letters from: Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, dated September 12, 2019 ("SIFMA Letter"); Adrian Griffiths, Assistant General Counsel, Cboe, dated September 25, 2019 ("Exchange Response Letter"). Comment letters are available on the Commission's website at: <https://www.sec.gov/comments/sr-cboebyx-2019-013/sr-cboebyx2019013.htm>.

⁶ 15 U.S.C. 78s(b)(3)(C).

⁷ See Notice, *supra* note 4, at 43627. The Commission notes that the Exchange's affiliates, Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., and Cboe EDGX Exchange, Inc., each also filed a proposed rule change to amend their fee schedules to establish a monthly Trading Rights Fee to be assessed on Members: CboeBZX-2019-072, CboeEDGA-2019-014, and CboeEDGX-2019-050, respectively.

⁸ See *id.*

⁹ See *id.* "ADV" means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis. See *id.* at n.5.

¹⁰ See Notice, *supra* note 4, at 43627.

¹¹ See *id.* For any month in which a firm is approved for Membership with the Exchange, the monthly Trading Rights Fee would be pro-rated in accordance with the date on which Membership is approved. See *id.* at 43628.

¹² 15 U.S.C. 78s(b)(3)(C).

¹³ 15 U.S.C. 78s(b)(1).

¹⁴ See Notice, *supra* note 4, at 43629.

¹⁵ See *id.*

¹⁶ See *id.*

similar Trading Rights fees to assist in funding their regulatory efforts.¹⁷

The Exchange states that it believes the proposed Trading Rights Fee is equitable and not unfairly discriminatory because it will apply equally to all Members that do not qualify for a waiver.¹⁸ The Exchange further asserts that the proposed fee is equitable and not unfairly discriminatory because it will “contribute to a portion of the costs incurred by the Exchange in providing its Members with an efficient and well-regulated market, which benefits all Members.”¹⁹

In regard to the proposed waivers pursuant to which Members would not be charged the Trading Rights Fee, the Exchange states that it believes that such waivers are reasonable.²⁰ Specifically, the Exchange states that the proposed waiver for Members that trade less than a monthly ADV of 100,000 shares is reasonable because it would allow such smaller Members to continue to trade at a lower cost.²¹ In addition, the Exchange states the waiver is reasonable because such firms consume fewer regulatory resources.²² The Exchange also asserts that the proposed ADV threshold of 100,000 is reasonable because the median ADV per firm per month on the Exchange is 276,309; therefore, the proposed ADV threshold would serve to capture “smaller volume firm outliers as compared to the overall ADV across all firms.”²³

The Exchange also states that the second waiver for Members that submit 90% or more of their orders per month as retail orders is reasonable because it would ensure that “retail broker members can continue to submit orders for individual investors at a lower cost, thereby continuing to encourage retail investor participation on the Exchange.”²⁴ The Exchange also argues that increased liquidity in retail order flow could benefit all market participants by incentivizing other Members to send order flow to the Exchange and increasing overall liquidity, as well by positively impacting market quality by reflecting

long-term investment intentions of retail participation.²⁵ The Exchange also asserts that the retail order volume threshold is reasonable because it would serve to capture broker-dealers that are primarily in the business of handling orders on behalf of retail investors, rather than larger broker-dealers that may route some retail orders on behalf of other broker-dealers, but for the most part are engaging in a significant amount of activity not related to servicing retail investors.²⁶

Finally the Exchange states that it believes that not charging a Trading Rights Fee for new Members is reasonable because it would incentivize firms to become Members of the Exchange and bring additional liquidity to the market to the benefit of all market participants.²⁷ The Exchange asserts that the proposed waiver for new Members is also reasonable because “it will allow new firms the flexibility in resources needed to initially adjust to the Exchange’s market-model and functionality.”²⁸

Regarding competition, the Exchange states that it believes the proposed rule change does not impose any burden on either intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.²⁹ The Exchange notes that, with regard to intramarket competition, the proposed rule change would apply equally to all Members that reach an ADV of 100,000 shares traded or greater, those in which less than 90% of their order volume is retail order volume per month, and those that are not within their first three months of new Membership on the Exchange.³⁰ In regard to intermarket competition, the Exchange states that it operates in a highly competitive market, and that this includes competition for exchange memberships.³¹ The Exchange explains that Members have numerous venues on which they can participate, including other equities exchanges and off-exchange venues such as alternative trading systems.³² The Exchange asserts

that while trade-through and best execution obligations may require a firm to access the Exchange, no firm is compelled to be a Member of the Exchange in order to participate on the Exchange, and accordingly firms may freely choose to participate on the Exchange without holding a Membership.³³ The Exchange believes that if the proposed fee is unattractive to members, the Exchange is likely to lose membership and market share as a result.³⁴

As noted above, the Commission received one comment letter on the proposed rule change.³⁵ SIFMA notes that the Exchange previously filed a proposed rule change to institute a trading rights fee, and the Commission suspended that filing.³⁶ SIFMA argues that, like the prior proposal, the Exchange did not provide sufficient information in the filing to support a finding that the proposal is consistent with the Act.³⁷ Specifically, SIFMA asserts that the Exchange should provide quantitative data showing its anticipated revenues, costs and profitability, as well as describe its methodology for estimating the baseline and expected costs and revenues.³⁸ Further, SIFMA argues that the Exchange should provide specific detail regarding the amount of its regulatory costs rather than information about broad percentage increases in such costs.³⁹ In addition, SIFMA believes the Exchange should provide specific detail about the amount of revenue it would expect to receive from the Trading Rights Fee, as well as the amount of revenue it receives from other sources that are intended to fund regulation, such as registration and licensing fees.⁴⁰

SIFMA also asserts the Exchange’s Trading Rights Fee would not be constrained by competition because broker-dealers must pay this fee prior to being able to satisfy their regulatory obligations and deciding where to route orders.⁴¹ SIFMA notes that trade-through requirements under Regulation NMS, as well as broker-dealers’ best execution obligations, effectively require direct or indirect access and connection to all registered exchanges, and each exchange remains the exclusive purveyor of those services.⁴²

²⁵ See *id.*

²⁶ See *id.* at 43630.

²⁷ See *id.* at 43629.

²⁸ See *id.*

²⁹ See *id.* at 43630.

³⁰ See *id.*

³¹ See *id.*

³² See *id.* The Exchange states that it represents a small percentage of the overall market, and based on publicly available information, no single equities exchange has more than 20% market share, and no exchange group has more than 22% market share. See *id.* The Exchange references the Cboe Global Markets U.S. Equities Market Volume Summary (July 31, 2019), available at https://markets.cboe.com/us/equities/market_share. See *id.* at n.15.

³³ See *id.* at 43630.

³⁴ See *id.*

³⁵ See *supra* note 5.

³⁶ See SIFMA Letter, *supra* note 5, at 1.

³⁷ See *id.*

³⁸ See *id.* at 2.

³⁹ See *id.*

⁴⁰ See *id.*

⁴¹ See *id.*

⁴² See *id.*

¹⁷ See *id.* The Exchange notes, for example, that the Exchange’s proposed Trading Rights Fee of \$250 a month is “substantially lower” than the monthly \$1,250 Trading Rights Fee that Nasdaq assesses on its members. *Id.*

¹⁸ See *id.* at 43630.

¹⁹ See *id.*

²⁰ The Exchange also asserts that the waivers are equitable and not unfairly discriminatory in the Notice. See *id.*

²¹ See *id.* at 43629.

²² See *id.*

²³ See *id.*

²⁴ See *id.*

In response, the Exchange reiterated several of the arguments for the proposed rule change that were provided in the Notice. In addition, the Exchange states that contrary to SIFMA's assertions, the instant filing contains significantly more information and analysis in regard to the proposed fee, including information related to increases in regulatory costs.⁴³ The Exchange indicates that the proposed fee would defray only a portion of these increasing costs.⁴⁴ The Exchange also asserts that in regard to competition, broker-dealers are not compelled to become members of any particular exchange, and a number of broker-dealers are able to meet their business and compliance needs by trading via other arrangements.⁴⁵

The Exchange originally filed a proposal to implement a Trading Rights Fee on May 2, 2019.⁴⁶ That proposal, ChoeBYX-2019-009, was published for comment in the **Federal Register** on May 16, 2019.⁴⁷ On June 28, 2019, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (i) Temporarily suspended the proposed rule change; and (ii) instituted proceedings to determine whether to approve or disapprove the proposed rule change.⁴⁸ The instant filing proposes an identical Trading Rights Fee and raises similar concerns as to whether it is consistent with the Act.⁴⁹

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.⁵⁰ The instructions to Form 19b-4, on which exchanges file their proposed rule changes, specify that such statement "should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements."⁵¹

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the

rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities;⁵² (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;⁵³ and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.⁵⁴

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether assessing the proposed monthly Trading Rights Fee on certain Members is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.⁵⁵

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule changes.⁵⁶

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C)⁵⁷ and 19(b)(2)(B) of the Act⁵⁸ to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the

Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,⁵⁹ the Commission is providing notice of the grounds for possible disapproval under consideration:

- Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange "provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities,"⁶⁰

- Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to perfect the operation of a free and open market and a national market system" and "protect investors and the public interest," and not be "designed to permit unfair discrimination between customers, issuers, brokers, or dealers,"⁶¹ and

- Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]."⁶²

As noted above, the proposal imposes a new monthly Trading Rights Fee on certain Members. The Commission notes that the Exchange's statements in support of the proposed rule change are general in nature and lack detail and specificity. For example, while the Exchange asserts that the proposed fee will fund overall regulation and maintenance of the Exchange and provides broad figures illustrating the percentage by which RSA and regulatory costs have increased from 2016 to 2019, the Exchange has not described how the proposed fee would address these regulatory increases.⁶³ Further, the rationale provided does not address how the proposed fee is an equitable allocation of fees beyond noting that it applies to all Members who do not qualify for a waiver, and broadly asserting that the proposed fee should benefit "all Members" by contributing to the provision of "an efficient and well-regulated market" for Members.⁶⁴

⁵² 15 U.S.C. 78f(b)(4).

⁵³ 15 U.S.C. 78f(b)(5).

⁵⁴ 15 U.S.C. 78f(b)(8).

⁵⁵ See 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

⁵⁶ For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵⁷ 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

⁵⁸ 15 U.S.C. 78s(b)(2)(B).

⁵⁹ 15 U.S.C. 78s(b)(2)(B).

⁶⁰ 15 U.S.C. 78f(b)(4).

⁶¹ 15 U.S.C. 78f(b)(5).

⁶² 15 U.S.C. 78f(b)(8).

⁶³ See Notice, *supra* note 4, at 43629.

⁶⁴ See *id.* at 43630.

⁴³ See Exchange Response Letter, *supra* note 5, at 2.

⁴⁴ See *id.*

⁴⁵ See *id.*

⁴⁶ See Securities Exchange Act Release No. 85841 (May 10, 2019), 84 FR 22199.

⁴⁷ See *id.*

⁴⁸ See Securities Exchange Act Release No. 86232 (June 28, 2019), 84 FR 32227 (July 5, 2019).

⁴⁹ See *id.*

⁵⁰ See 17 CFR 240.19b-4 (Item 3 entitled "Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change").

⁵¹ See *id.*

As discussed above, one commenter asserts, among other concerns, that the Exchange's cost-based discussion is not sufficiently detailed to support its claims that the proposed Trading Rights Fee is consistent with the requirements of the Act, and that the Exchange has not offered sufficient detail to establish that the proposed fee would be constrained by significant competitive forces.⁶⁵ The commenter indicates that, among other things, additional information addressing both revenues and costs is lacking in the Exchange's proposal.

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change."⁶⁶ The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,⁶⁷ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.⁶⁸

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated; be designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public interest, and not be unfairly discriminatory; or not impose an unnecessary or inappropriate burden on competition.⁶⁹

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by October 24, 2019. Rebuttal comments should be submitted by November 7, 2019. Although there do not appear to

be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.⁷⁰

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, 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-CboeBYX-2019-013 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-CboeBYX-2019-013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of

10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBYX-2019-013 and should be submitted on or before October 24, 2019. Rebuttal comments should be submitted by November 7, 2019.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,⁷¹ that File Number SR-CboeBYX-2019-013 be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷²

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019-21471 Filed 10-2-19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87150; File No. SR-NYSEArca-2013-107]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting an Extension to Limited Exemptions From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Liquidity Programs Until October 31, 2019

September 27, 2019.

On December 23, 2013, the Securities and Exchange Commission ("Commission") issued an order pursuant to its authority under Rule 612(c) of Regulation NMS ("Sub-Penny Rule")¹ that granted NYSE Arca, Inc. ("Exchange") a limited exemption from the Sub-Penny Rule in connection with the operation of the Exchange's Retail Liquidity Program ("Program").² The limited exemption was granted concurrently with the Commission's

⁶⁵ See SIFMA Letter, *supra* note Error! Bookmark not defined., at 1-2.

⁶⁶ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

⁶⁷ See *id.*

⁶⁸ See *id.*

⁶⁹ See 15 U.S.C. 78f(b)(4), (5), and (8).

⁷⁰ 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

⁷¹ 15 U.S.C. 78s(b)(3)(C).

⁷² 17 CFR 200.30-3(a)(57) and (58).

¹ 17 CFR 242.612(c).

² See Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR-NYSEArca-2013-107) ("Order").

approval of the Exchange's proposal to adopt its Program for a one-year pilot term.³ The exemption was granted coterminous with the effectiveness of the pilot Program; both the pilot Program and exemption are scheduled to expire on September 30, 2019.⁴

³ See *id.*

⁴ On March 19, 2015, the Exchange requested an extension of the exemption for the Program. See letter from Martha Redding, Senior Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated March 19, 2015. The pilot period for the Program was extended until September 30, 2015. See Securities Exchange Act Release No. 74572 (Mar. 24, 2015), 80 FR 16705 (Mar. 30, 2015) (SR-NYSEArca-2015-22).

On September 17, 2015, the Exchange requested another extension of the exemption for the Program. See letter from Martha Redding, Senior Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated September 17, 2015. The pilot period for the Program was extended until March 31, 2016. See Securities Exchange Act Release Nos. 75994 (Sept. 28, 2015), 80 FR 59834 (Oct. 2, 2015) (SR-NYSEArca-2015-84) and 77236 (Feb. 25, 2016), 81 FR 10943 (Mar. 2, 2016) (SR-NYSEArca-2016-30). On March 17, 2016, the Exchange requested another extension of the exemption for the Program. See letter from Martha Redding, Senior Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated March 17, 2016. The pilot period for the Program was extended until August 31, 2016. See Securities Exchange Act Release No. 77425 (Mar. 23, 2016), 81 FR 17523 (Mar. 29, 2016) (SR-NYSEArca-2016-47). On August 8, 2016, the Exchange requested another extension of the exemption for the Program. See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated August 8, 2016. The pilot period for the Program was extended until December 31, 2016. See Securities Exchange Act Release No. 78601 (Aug. 17, 2016), 81 FR 57632 (Aug. 23, 2016) (SR-NYSEArca-2016-113). On November 28, 2016, the Exchange requested another extension of the exemption for the program. See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated November 28, 2016. The pilot period for the Program was extended until June 30, 2017. See Securities Exchange Act Release No. 79495 (Dec. 7, 2016), 81 FR 90033 (Dec. 13, 2016) (SR-NYSEArca-2016-157). On May 23, 2017, the Exchange requested another extension of the exemption for the program. See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated May 23, 2017. The pilot period for the Program was extended until December 31, 2017. See Securities Exchange Act Release No. 80851 (June 2, 2017), 82 FR 26722 (June 8, 2017) (SR-NYSEArca-2017-63). On November 30, 2017, the Exchange requested another extension of the exemption to the program. See Letter from Martha Redding, Assistant Secretary, NYSE, to Brent J. Fields, Secretary, Commission, dated November 30, 2017. The pilot period for the Program was extended until June 30, 2018. See Securities Exchange Act Release No. 82289 (December 11, 2017), 82 FR 59677 (December 15, 2017) (SR-NYSEArca-2017-137). On June 14, 2018, the Exchange requested another extension of the exemption for the Program. See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, NYSE to Brent J. Fields, Secretary, Commission, dated June 14, 2018. The pilot period for the Program was extended until December 31, 2018. See Securities Exchange Act Release No. 83538 (June 28, 2018), 83 FR 31210 (July 3, 2018) (SR-NYSEArca-2018-46). On November 30, 2018, the Exchange requested another extension of the

The Exchange now seeks to extend the exemptions until October 31, 2019.⁵ The Exchange's request was made in conjunction with an immediately effective filing that extends the operation of the Program through the same date.⁶ In its request to extend the exemption, the Exchange notes that the participation in the Program has increased more recently with additional Retail Liquidity Providers. Accordingly, the Exchange has asked for additional time to both allow for additional opportunities for greater participation in the Program and allow for further assessment of the results of such participation. For this reason and the reasons stated in the Order originally granting the limited exemptions, the Commission finds that extending the exemption, pursuant to its authority under Rule 612(c) of Regulation NMS, is appropriate in the public interest and consistent with the protection of investors.

Therefore, it is hereby ordered that, pursuant to Rule 612(c) of Regulation NMS, the Exchange is granted a limited exemption from Rule 612 of Regulation NMS that allows it to accept and rank orders priced equal to or greater than \$1.00 per share in increments of \$0.001, in connection with the operation of its Retail Liquidity Program, until October 31, 2019.

The limited and temporary exemption extended by this Order is subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934. Responsibility for compliance with any applicable provisions of the Federal securities laws must rest with the persons relying on the exemptions that are the subject of this Order.

exemption for the Program. See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, NYSE to Brent J. Fields, Secretary, Commission, dated November 30, 2018. The pilot period for the Program was extended until June 30, 2019. See Securities Exchange Act Release No. 84773 (December 10, 2018), 83 FR 64419 (December 14, 2018) (SR-NYSEArca-2018-89). On June 19, 2019, the Exchange requested another extension of the exemption for the Program. See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, NYSE to Vanessa Countryman, Secretary, Commission, dated June 19, 2019. The pilot period for the Program was extended until September 30, 2019. See Securities Exchange Act Release No. 86198 (June 26, 2019), 84 FR 31648 (July 2, 2019) (SR-NYSEArca-2019-45).

⁵ See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, NYSE to Vanessa Countryman, Secretary, Commission, dated September 26, 2019.

⁶ See SR-NYSEArca-2019-67.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019-21493 Filed 10-2-19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Tuesday, October 8, 2019.

PLACE: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

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.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

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.

The subject matters of the closed meeting will consist of the following topics:

- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings;
- Resolution of litigation claims;
- Regulatory matters regarding certain financial institutions; and
- Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION:

For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

⁷ 17 CFR 200.30-3(a)(83).

Dated: October 1, 2019.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2019-21721 Filed 10-1-19; 4:15 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87143; File No. SR-
CboeEDGA-2019-014]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Amending the Fee Schedule Assessed on Members To Establish a Monthly Trading Rights Fee

September 27, 2019.

I. Introduction

On August 1, 2019, Cboe EDGA Exchange, Inc. (“EDGA” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change (File Number SR-CboeEDGA-2019-014) to amend the EDGA fee schedule to establish a monthly Trading Rights Fee to be assessed on Members. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.³ The proposed rule change was published for comment in the **Federal Register** on August 20, 2019.⁴ The Commission has received one comment letter on the proposal, and one response letter from the Exchange.⁵ Under Section 19(b)(3)(C) of the Act,⁶ the Commission is hereby: (i) Temporarily suspending the proposed rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to amend the Membership Fees section of the EDGA fee schedule to establish a monthly Trading Rights Fee, which would be assessed on Members that trade more than a specified volume in U.S. equities.⁷ Specifically, the Exchange proposes to charge Members a Trading Rights Fee of \$250 per month for the ability to trade on the Exchange.⁸ A Member would not be charged the monthly Trading Rights Fee if it qualifies for one of the following waivers: (1) The Member has a monthly ADV⁹ of less than 100,000 shares, or (2) a new Member is within the first three months of their membership.¹⁰

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,¹¹ at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,¹² the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (“SRO”) if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change’s consistency with the Act and the rules thereunder.

The Exchange asserts that the proposed Trading Rights Fee “is reasonable because it will assist in funding the overall regulation and maintenance of the Exchange” and will contribute to “ensuring that adequate resources are devoted to regulation.”¹³ The Exchange also believes the

proposed fee is reasonable because it “represents a modest charge” applied to firms that “have chosen to become members of the Exchange,” and such firms consume more regulatory resources and “benefit from the Exchange’s regulatory efforts by having access to a well-regulated market.”¹⁴ The Exchange notes that its Regulatory Services Agreement (“RSA”) costs, which cover regulatory services in connection with market and financial surveillance, examinations, investigations, and disciplinary procedure, have increased 18.9%, while the Exchange’s overall regulatory costs have grown 115.1%, from 2016 to 2019.¹⁵ The Exchange also asserts that the proposed Trading Rights Fee is reasonable because the “cost of this membership fee is generally less than the analogous membership fees of other markets” and that a number of national securities exchanges currently charge similar Trading Rights fees to assist in funding their regulatory efforts.¹⁶

The Exchange states that it believes the proposed Trading Rights Fee is equitable and not unfairly discriminatory because it will apply equally to all Members that do not qualify for a waiver.¹⁷ The Exchange further asserts that the proposed fee is equitable and not unfairly discriminatory because it will “contribute to a portion of the costs incurred by the Exchange in providing its Members with an efficient and well-regulated market, which benefits all Members.”¹⁸

In regard to the proposed waivers pursuant to which Members would not be charged the Trading Rights Fee, the Exchange states that it believes that such waivers are reasonable.¹⁹ Specifically, the Exchange states that the proposed waiver for Members that trade less than a monthly ADV of 100,000 shares is reasonable because it would allow such smaller Members to continue to trade at a lower cost.²⁰ In addition, the Exchange states the waiver is reasonable because such firms consume fewer regulatory resources.²¹ The Exchange also asserts that the proposed ADV threshold of 100,000 is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ See Securities Exchange Act Release No. 86684 (August 14, 2019), 84 FR 43242 (“Notice”).

⁵ See Letters from: Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, dated September 12, 2019 (“SIFMA Letter”); Adrian Griffiths, Assistant General Counsel, Cboe, dated September 25, 2019 (“Exchange Response Letter”). Comment letters are available on the Commission’s website at: <https://www.sec.gov/comments/sr-cboeedga-2019-014/sr-cboeedga2019014.htm>.

⁶ 15 U.S.C. 78s(b)(3)(C).

⁷ See Notice, *supra* note 4, at 43242. The Commission notes that the Exchange’s affiliates, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., and Cboe EDGX Exchange, Inc., each also filed a proposed rule change to amend their fee schedules to establish a monthly Trading Rights Fee to be assessed on Members: CboeBYX-2019-013, CboeBZX-2019-072, and CboeEDGX-2019-050, respectively.

⁸ See *id.*

⁹ See *id.* “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis. See *id.* at n.5.

¹⁰ See *id.* at 43242. For any month in which a firm is approved for Membership with the Exchange, the monthly Trading Rights Fee would be pro-rated in accordance with the date on which Membership is approved. See *id.* at 43243.

¹¹ 15 U.S.C. 78s(b)(3)(C).

¹² 15 U.S.C. 78s(b)(1).

¹³ See Notice, *supra* note 4, at 43243–44.

¹⁴ See *id.* at 43244.

¹⁵ See *id.*

¹⁶ See *id.* The Exchange notes, for example, that the Exchange’s proposed Trading Rights Fee of \$250 a month is “substantially lower” than the monthly \$1,250 Trading Rights Fee that Nasdaq assesses on its members. *Id.*

¹⁷ See *id.* at 43244.

¹⁸ See *id.*

¹⁹ See *id.* The Exchange also asserts that the waivers are equitable and not unfairly discriminatory in the Notice. See *id.*

²⁰ See *id.*

²¹ See *id.*

reasonable because the median ADV per firm per month on the Exchange is 243,595; therefore, the proposed ADV threshold would serve to capture “smaller volume firm outliers as compared to the overall ADV across all firms.”²²

The Exchange also states that it believes that not charging a Trading Rights Fee for new Members is reasonable because it would incentivize firms to become Members of the Exchange and bring additional liquidity to the market to the benefit of all market participants.²³ The Exchange asserts that the proposed waiver for new Members is also reasonable because “it will allow new firms the flexibility in resources needed to initially adjust to the Exchange’s market-model and functionality.”²⁴

Regarding competition, the Exchange states that it believes the proposed rule change does not impose any burden on either intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.²⁵ The Exchange notes that, with regard to intramarket competition, the proposed rule change would apply equally to all Members that reach an ADV of 100,000 shares traded or greater, and those that are not within their first three months of new Membership on the Exchange.²⁶ In regard to intermarket competition, the Exchange states that it operates in a highly competitive market, and that this includes competition for exchange memberships.²⁷ The Exchange explains that Members have numerous venues on which they can participate, including other equities exchanges and off-exchange venues such as alternative trading systems.²⁸ The Exchange asserts that while trade-through and best execution obligations may require a firm to access the Exchange, no firm is compelled to be a Member of the Exchange in order to participate on the Exchange, and accordingly firms may freely choose to participate on the Exchange without holding a

Membership.²⁹ The Exchange believes that if the proposed fee is unattractive to members, the Exchange is likely to lose membership and market share as a result.³⁰

As noted above, the Commission received one comment letter on the proposed rule change.³¹ SIFMA notes that the Exchange previously filed a proposed rule change to institute a trading rights fee, and the Commission suspended that filing.³² SIFMA argues that, like the prior proposal, the Exchange did not provide sufficient information in the filing to support a finding that the proposal is consistent with the Act.³³ Specifically, SIFMA asserts that the Exchange should provide quantitative data showing its anticipated revenues, costs and profitability, as well as describe its methodology for estimating the baseline and expected costs and revenues.³⁴ Further, SIFMA argues that the Exchange should provide specific detail regarding the amount of its regulatory costs rather than information about broad percentage increases in such costs.³⁵ In addition, SIFMA believes the Exchange should provide specific detail about the amount of revenue it would expect to receive from the Trading Rights Fee, as well as the amount of revenue it receives from other sources that are intended to fund regulation, such as registration and licensing fees.³⁶

SIFMA also asserts the Exchange’s Trading Rights Fee would not be constrained by competition because broker-dealers must pay this fee prior to being able to satisfy their regulatory obligations and deciding where to route orders.³⁷ SIFMA notes that trade-through requirements under Regulation NMS, as well as broker-dealers’ best execution obligations, effectively require direct or indirect access and connection to all registered exchanges, and each exchange remains the exclusive purveyor of those services.³⁸

In response, the Exchange reiterated several of the arguments for the proposed rule change that were provided in the Notice. In addition, the Exchange states that contrary to SIFMA’s assertions, the instant filing contains significantly more information and analysis in regard to the proposed fee, including information related to

increases in regulatory costs.³⁹ The Exchange indicates that the proposed fee would defray only a portion of these increasing costs.⁴⁰ The Exchange also asserts that in regard to competition, broker-dealers are not compelled to become members of any particular exchange, and a number of broker-dealers are able to meet their business and compliance needs by trading via other arrangements.⁴¹

The Exchange originally filed a proposal to implement a Trading Rights Fee on May 2, 2019.⁴² That proposal, CboeEDGA–2019–011, was published for comment in the **Federal Register** on May 16, 2019.⁴³ On June 28, 2019, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (i) Temporarily suspended the proposed rule change; and (ii) instituted proceedings to determine whether to approve or disapprove the proposed rule change.⁴⁴ The instant filing proposes an identical Trading Rights Fee and raises similar concerns as to whether it is consistent with the Act.⁴⁵

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange’s present proposal, they are required to provide a statement supporting the proposal’s basis under the Act and the rules and regulations thereunder applicable to the exchange.⁴⁶ The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement “should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.”⁴⁷

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange’s facilities;⁴⁸ (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to

²² See *id.*

²³ See *id.*

²⁴ See *id.*

²⁵ See *id.* at 43244–45.

²⁶ See *id.*

²⁷ See *id.* at 43245.

²⁸ See *id.* The Exchange states that it represents a small percentage of the overall market, and based on publicly available information, no single equities exchange has more than 20% market share, and no exchange group has more than 22% market share. See *id.* The Exchange references the Cboe Global Markets U.S. Equities Market Volume Summary (July 31, 2019), available at https://markets.cboe.com/us/equities/market_share. See *id.* at n.14.

²⁹ See *id.* at 43245.

³⁰ See *id.*

³¹ See *supra* note 5.

³² See SIFMA Letter, *supra* note 5, at 1.

³³ See *id.*

³⁴ See *id.* at 2.

³⁵ See *id.*

³⁶ See *id.*

³⁷ See *id.*

³⁸ See *id.*

³⁹ See Exchange Response Letter, *supra* note 5, at 2.

⁴⁰ See *id.*

⁴¹ See *id.*

⁴² See Securities Exchange Act Release No. 85842 (May 10, 2019), 84 FR 22212.

⁴³ See *id.*

⁴⁴ See Securities Exchange Act Release No. 86236 (June 28, 2019), 84 FR 32235 (July 5, 2019).

⁴⁵ See *id.*

⁴⁶ See 17 CFR 240.19b–4 (Item 3 entitled “Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change”).

⁴⁷ See *id.*

⁴⁸ 15 U.S.C. 78f(b)(4).

permit unfair discrimination between customers, issuers, brokers, or dealers;⁴⁹ and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.⁵⁰

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether assessing the proposed monthly Trading Rights Fee on certain Members is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.⁵¹

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule changes.⁵²

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C)⁵³ and 19(b)(2)(B) of the Act⁵⁴ to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,⁵⁵ the Commission is providing notice of the grounds for possible disapproval under consideration:

- Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange "provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities,"⁵⁶
- Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to perfect the operation of a free and open market and a national market system" and "protect investors and the public interest," and not be "designed to permit unfair discrimination between customers, issuers, brokers, or dealers,"⁵⁷ and
- Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]."⁵⁸

As noted above, the proposal imposes a new monthly Trading Rights Fee on certain Members. The Commission notes that the Exchange's statements in support of the proposed rule change are general in nature and lack detail and specificity. For example, while the Exchange asserts that the proposed fee will fund overall regulation and maintenance of the Exchange and provides broad figures illustrating the percentage by which RSA and regulatory costs have increased from 2016 to 2019, the Exchange has not described how the proposed fee would address these regulatory increases.⁵⁹ Further, the rationale provided does not address how the proposed fee is an equitable allocation of fees beyond noting that it applies to all Members who do not qualify for a waiver, and broadly asserting that the proposed fee should benefit "all Members" by contributing to the provision of "an efficient and well-regulated market" for Members.⁶⁰

As discussed above, one commenter asserts, among other concerns, that the Exchange's cost-based discussion is not sufficiently detailed to support its claims that the proposed Trading Rights Fee is consistent with the requirements of the Act, and that the Exchange has not offered sufficient detail to establish that the proposed fee would be

constrained by significant competitive forces.⁶¹ The commenter indicates that, among other things, additional information addressing both revenues and costs is lacking in the Exchange's proposal.

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change."⁶² The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,⁶³ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.⁶⁴

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated; be designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public interest, and not be unfairly discriminatory; or not impose an unnecessary or inappropriate burden on competition.⁶⁵

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by October 24, 2019. Rebuttal comments should be submitted by November 7, 2019. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.⁶⁶

⁶¹ See SIFMA Letter, *supra* note Error! Bookmark not defined., at 1-2.

⁶² Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

⁶³ See *id.*

⁶⁴ See *id.*

⁶⁵ See 15 U.S.C. 78f(b)(4), (5), and (8).

⁶⁶ 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what

⁴⁹ 15 U.S.C. 78f(b)(5).

⁵⁰ 15 U.S.C. 78f(b)(8).

⁵¹ See 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

⁵² For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵³ 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

⁵⁴ 15 U.S.C. 78s(b)(2)(B).

⁵⁵ 15 U.S.C. 78s(b)(2)(B).

⁵⁶ 15 U.S.C. 78f(b)(4).

⁵⁷ 15 U.S.C. 78f(b)(5).

⁵⁸ 15 U.S.C. 78f(b)(8).

⁵⁹ See Notice, *supra* note 4, at 43243-44.

⁶⁰ See *id.* at 43244.

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, 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-CboeEDGA-2019-014 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-CboeEDGA-2019-014. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from

type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGA-2019-014 and should be submitted on or before October 24, 2019. Rebuttal comments should be submitted by November 6, 2019.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,⁶⁷ that File Number SR-CboeEDGA-2019-014 be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁸

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019-21473 Filed 10-2-19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87144; File No. SR-CboeEDGX-2019-050]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Amending the Fee Schedule Assessed on Members To Establish a Monthly Trading Rights Fee

September 27, 2019.

I. Introduction

On August 1, 2019, Cboe EDGX Exchange, Inc. ("EDGX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change (File Number SR-CboeEDGX-2019-050) to amend the EDGX fee schedule to establish a monthly Trading Rights Fee to be assessed on Members. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.³ The proposed rule change was published for comment in the **Federal Register** on August 20,

2019.⁴ The Commission has received one comment letter on the proposal, and one response letter from the Exchange.⁵ Under Section 19(b)(3)(C) of the Act,⁶ the Commission is hereby: (i) Temporarily suspending the proposed rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to amend the Membership Fees section of the EDGX fee schedule to establish a monthly Trading Rights Fee, which would be assessed on Members that trade more than a specified volume in U.S. equities.⁷ Specifically, the Exchange proposes to charge Members a Trading Rights Fee of \$500 per month for the ability to trade on the Exchange.⁸ A Member would not be charged the monthly Trading Rights Fee if it qualifies for one of the following waivers: (1) The Member has a monthly ADV⁹ of less than 100,000 shares, (2) at least 90% of the Member's orders submitted to the Exchange per month are retail orders,¹⁰ or (3) a new Member is within the first three months of their membership.¹¹

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,¹² at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the

⁴ See Securities Exchange Act Release No. 86686 (August 14, 2019), 84 FR 43222 ("Notice").

⁵ See Letters from: Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, dated September 12, 2019 ("SIFMA Letter"); Adrian Griffiths, Assistant General Counsel, Cboe, dated September 25, 2019 ("Exchange Response Letter"). Comment letters are available on the Commission's website at: <https://www.sec.gov/comments/sr-cboeedgx-2019-050/sr-cboeedgx2019050.htm>.

⁶ 15 U.S.C. 78s(b)(3)(C).

⁷ See Notice, *supra* note 4, at 43222. The Commission notes that the Exchange's affiliates, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., and Cboe EDGA Exchange, Inc., each also filed a proposed rule change to amend their fee schedules to establish a monthly Trading Rights Fee to be assessed on Members: CboeBYX-2019-013, CboeBZX-2019-072, and CboeEDGA-2019-014, respectively.

⁸ See *id.*

⁹ See *id.* "ADV" means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis. See *id.* at n.5.

¹⁰ See *id.* at 43222.

¹¹ See *id.* For any month in which a firm is approved for Membership with the Exchange, the monthly Trading Rights Fee would be pro-rated in accordance with the date on which Membership is approved. See *id.* at 43223.

¹² 15 U.S.C. 78s(b)(3)(C).

⁶⁷ 15 U.S.C. 78s(b)(3)(C).

⁶⁸ 17 CFR 200.30-3(a)(57) and (58).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

Act,¹³ the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization ("SRO") if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

The Exchange asserts that the proposed Trading Rights Fee "is reasonable because it will assist in funding the overall regulation and maintenance of the Exchange" and will contribute to "ensuring that adequate resources are devoted to regulation."¹⁴ The Exchange also believes the proposed fee is reasonable because it "represents a modest charge" applied to firms that "have chosen to become members of the Exchange," and such firms consume more regulatory resources and "benefit from the Exchange's regulatory efforts by having access to a well-regulated market."¹⁵ The Exchange notes that its Regulatory Services Agreement ("RSA") costs, which cover regulatory services in connection with market and financial surveillance, examinations, investigations, and disciplinary procedure, have increased 17.5%, while the Exchange's overall regulatory costs have grown 117%, from 2016 to 2019.¹⁶ The Exchange also asserts that the proposed Trading Rights Fee is reasonable because the "cost of this membership fee is generally less than the analogous membership fees of other markets" and that a number of national securities exchanges currently charge similar Trading Rights fees to assist in funding their regulatory efforts.¹⁷

The Exchange states that it believes the proposed Trading Rights Fee is equitable and not unfairly discriminatory because it will apply equally to all Members that do not qualify for a waiver.¹⁸ The Exchange further asserts that the proposed fee is equitable and not unfairly discriminatory because it will "contribute to a portion of the costs

incurred by the Exchange in providing its Members with an efficient and well-regulated market, which benefits all Members."¹⁹

In regard to the proposed waivers pursuant to which Members would not be charged the Trading Rights Fee, the Exchange states that it believes that such waivers are reasonable.²⁰ Specifically, the Exchange states that the proposed waiver for Members that trade less than a monthly ADV of 100,000 shares is reasonable because it would allow such smaller Members to continue to trade at a lower cost.²¹ In addition, the Exchange states the waiver is reasonable because such firms consume fewer regulatory resources.²² The Exchange also asserts that the proposed ADV threshold of 100,000 is reasonable because the median ADV per firm per month on the Exchange is 443,192; therefore, the proposed ADV threshold would serve to capture "smaller volume firm outliers as compared to the overall ADV across all firms."²³

The Exchange also states that the second waiver for Members that submit 90% or more of their orders per month as retail orders is reasonable because it would ensure that "retail broker members can continue to submit orders for individual investors at a lower cost, thereby continuing to encourage retail investor participation on the Exchange."²⁴ The Exchange also argues that increased liquidity in retail order flow could benefit all market participants by incentivizing other Members to send order flow to the Exchange and increasing overall liquidity, as well by positively impacting market quality by reflecting long-term investment intentions of retail participation.²⁵ The Exchange also asserts that the retail order volume threshold is reasonable because it would serve to capture broker-dealers that are primarily in the business of handling orders on behalf of retail investors, rather than larger broker-dealers that may route some retail orders on behalf of other broker-dealers, but for the most part are engaging in a significant amount of activity not related to servicing retail investors.²⁶

Finally the Exchange states that it believes that not charging a Trading

Rights Fee for new Members is reasonable because it would incentivize firms to become Members of the Exchange and bring additional liquidity to the market to the benefit of all market participants.²⁷ The Exchange asserts that the proposed waiver for new Members is also reasonable because "it will allow new firms the flexibility in resources needed to initially adjust to the Exchange's market-model and functionality."²⁸

Regarding competition, the Exchange states that it believes the proposed rule change does not impose any burden on either intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.²⁹ The Exchange notes that, with regard to intramarket competition, the proposed rule change would apply equally to all Members that reach an ADV of 100,000 shares traded or greater, those in which less than 90% of their order volume is retail order volume per month, and those that are not within their first three months of new Membership on the Exchange.³⁰ In regard to intermarket competition, the Exchange states that it operates in a highly competitive market, and that this includes competition for exchange memberships.³¹ The Exchange explains that Members have numerous venues on which they can participate, including other equities exchanges and off-exchange venues such as alternative trading systems.³² The Exchange asserts that while trade-through and best execution obligations may require a firm to access the Exchange, no firm is compelled to be a Member of the Exchange in order to participate on the Exchange, and accordingly firms may freely choose to participate on the Exchange without holding a Membership.³³ The Exchange believes that if the proposed fee is unattractive to members, the Exchange is likely to lose membership and market share as a result.³⁴

As noted above, the Commission received one comment letter on the

²⁷ See *id.* at 43224.

²⁸ See *id.*

²⁹ See *id.* at 43225.

³⁰ See *id.*

³¹ See *id.*

³² See *id.* at 43225–26. The Exchange states that it represents a small percentage of the overall market, and based on publicly available information, no single equities exchange has more than 20% market share, and no exchange group has more than 22% market share. See *id.* at 43226. The Exchange references the Cboe Global Markets U.S. Equities Market Volume Summary (July 31, 2019), available at https://markets.cboe.com/us/equities/market_share. See *id.* at n.15.

³³ See *id.* at 43226.

³⁴ See *id.*

¹³ 15 U.S.C. 78s(b)(1).

¹⁴ See Notice, *supra* note 4, at 43224.

¹⁵ See *id.*

¹⁶ See *id.*

¹⁷ See *id.* The Exchange notes, for example, that the Exchange's proposed Trading Rights Fee of \$500 a month is "substantially lower" than the monthly \$1,250 Trading Rights Fee that Nasdaq assesses on its members. *Id.*

¹⁸ See *id.* at 43225.

¹⁹ See *id.*

²⁰ See *id.* at 43224–25. The Exchange also asserts that the waivers are equitable and not unfairly discriminatory in the Notice. See *id.* at 43225.

²¹ See *id.* at 43224.

²² See *id.*

²³ See *id.* at 43224–25.

²⁴ See *id.* at 43225.

²⁵ See *id.*

²⁶ See *id.*

proposed rule change.³⁵ SIFMA notes that the Exchange previously filed a proposed rule change to institute a trading rights fee, and the Commission suspended that filing.³⁶ SIFMA argues that, like the prior proposal, the Exchange did not provide sufficient information in the filing to support a finding that the proposal is consistent with the Act.³⁷ Specifically, SIFMA asserts that the Exchange should provide quantitative data showing its anticipated revenues, costs and profitability, as well as describe its methodology for estimating the baseline and expected costs and revenues.³⁸ Further, SIFMA argues that the Exchange should provide specific detail regarding the amount of its regulatory costs rather than information about broad percentage increases in such costs.³⁹ In addition, SIFMA believes the Exchange should provide specific detail about the amount of revenue it would expect to receive from the Trading Rights Fee, as well as the amount of revenue it receives from other sources that are intended to fund regulation, such as registration and licensing fees.⁴⁰

SIFMA also asserts the Exchange's Trading Rights Fee would not be constrained by competition because broker-dealers must pay this fee prior to being able to satisfy their regulatory obligations and deciding where to route orders.⁴¹ SIFMA notes that trade-through requirements under Regulation NMS, as well as broker-dealers' best execution obligations, effectively require direct or indirect access and connection to all registered exchanges, and each exchange remains the exclusive purveyor of those services.⁴²

In response, the Exchange reiterated several of the arguments for the proposed rule change that were provided in the Notice. In addition, the Exchange states that contrary to SIFMA's assertions, the instant filing contains significantly more information and analysis in regard to the proposed fee, including information related to increases in regulatory costs.⁴³ The Exchange indicates that the proposed fee would defray only a portion of these increasing costs.⁴⁴ The Exchange also asserts that in regard to competition, broker-dealers are not compelled to

become members of any particular exchange, and a number of broker-dealers are able to meet their business and compliance needs by trading via other arrangements.⁴⁵

The Exchange originally filed a proposal to implement a Trading Rights Fee on April 29, 2019.⁴⁶ That proposal, CboeEDGX-2019-029, was published for comment in the **Federal Register** on May 16, 2019.⁴⁷ On June 28, 2019, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (i) Temporarily suspended the proposed rule change; and (ii) instituted proceedings to determine whether to approve or disapprove the proposed rule change.⁴⁸ The instant filing proposes an identical Trading Rights Fee and raises similar concerns as to whether it is consistent with the Act.⁴⁹

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.⁵⁰ The instructions to Form 19b-4, on which exchanges file their proposed rule changes, specify that such statement "should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements."⁵¹

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities;⁵² (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;⁵³ and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.⁵⁴

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether assessing the proposed monthly Trading Rights Fee on certain Members is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.⁵⁵

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule changes.⁵⁶

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C)⁵⁷ and 19(b)(2)(B) of the Act⁵⁸ to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,⁵⁹ the Commission is providing notice of the grounds for possible disapproval under consideration:

- Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange "provide for the equitable allocation of reasonable dues,

⁴⁵ See *id.*

⁴⁶ See Securities Exchange Act Release No. 85838 (May 10, 2019), 84 FR 22174.

⁴⁷ See *id.*

⁴⁸ See Securities Exchange Act Release No. 86231 (June 28, 2019), 84 FR 32233 (July 5, 2019).

⁴⁹ See *id.*

⁵⁰ See 17 CFR 240.19b-4 (Item 3 entitled "Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change").

⁵¹ See *id.*

⁵² 15 U.S.C. 78f(b)(4).

⁵³ 15 U.S.C. 78f(b)(5).

⁵⁴ 15 U.S.C. 78f(b)(8).

⁵⁵ See 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

⁵⁶ For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵⁷ 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

⁵⁸ 15 U.S.C. 78s(b)(2)(B).

⁵⁹ 15 U.S.C. 78s(b)(2)(B).

³⁵ See *supra* note 5.

³⁶ See SIFMA Letter, *supra* note 5, at 1.

³⁷ See *id.*

³⁸ See *id.* at 2.

³⁹ See *id.*

⁴⁰ See *id.*

⁴¹ See *id.*

⁴² See *id.*

⁴³ See Exchange Response Letter, *supra* note 5, at 2.

⁴⁴ See *id.*

fees, and other charges among its members and issuers and other persons using its facilities.”⁶⁰

- Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be “designed to perfect the operation of a free and open market and a national market system” and “protect investors and the public interest,” and not be “designed to permit unfair discrimination between customers, issuers, brokers, or dealers.”⁶¹ and

- Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange “not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].”⁶²

As noted above, the proposal imposes a new monthly Trading Rights Fee on certain Members. The Commission notes that the Exchange’s statements in support of the proposed rule change are general in nature and lack detail and specificity. For example, while the Exchange asserts that the proposed fee will fund overall regulation and maintenance of the Exchange and provides broad figures illustrating the percentage by which RSA and regulatory costs have increased from 2016 to 2019, the Exchange has not described how the proposed fee would address these regulatory increases.⁶³ Further, the rationale provided does not address how the proposed fee is an equitable allocation of fees beyond noting that it applies to all Members who do not qualify for a waiver, and broadly asserting that the proposed fee should benefit “all Members” by contributing to the provision of “an efficient and well-regulated market” for Members.⁶⁴

As discussed above, one commenter asserts, among other concerns, that the Exchange’s cost-based discussion is not sufficiently detailed to support its claims that the proposed Trading Rights Fee is consistent with the requirements of the Act, and that the Exchange has not offered sufficient detail to establish that the proposed fee would be constrained by significant competitive forces.⁶⁵ The commenter indicates that, among other things, additional information addressing both revenues and costs is lacking in the Exchange’s proposal.

Under the Commission’s Rules of Practice, the “burden to demonstrate

that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.”⁶⁶ The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,⁶⁷ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.⁶⁸

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated; be designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public interest, and not be unfairly discriminatory; or not impose an unnecessary or inappropriate burden on competition.⁶⁹

V. Commission’s Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by October 24, 2019. Rebuttal comments should be submitted by November 7, 2019. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.⁷⁰

The Commission asks that commenters address the sufficiency and merit of the Exchange’s statements in support of the proposal, in addition to

any other comments they may wish to submit about the proposed rule change.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, 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–CboeEDGX–2019–050 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–CboeEDGX–2019–050. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2019–050 and should be submitted on or before October 24, 2019. Rebuttal comments should be submitted by November 7, 2019.

⁶⁰ 15 U.S.C. 78f(b)(4).

⁶¹ 15 U.S.C. 78f(b)(5).

⁶² 15 U.S.C. 78f(b)(8).

⁶³ See Notice, *supra* note 4, at 43224.

⁶⁴ See *id.* at 43225.

⁶⁵ See SIFMA Letter, *supra* note 5, at 1–2

⁶⁶ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

⁶⁷ See *id.*

⁶⁸ See *id.*

⁶⁹ See 15 U.S.C. 78f(b)(4), (5), and (8).

⁷⁰ 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,⁷¹ that File Number SR–CboeEDGX–2019–050 be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷²

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–21474 Filed 10–2–19; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 10917]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: “A Wonder to Behold: Craftsmanship and the Creation of Babylon’s Ishtar Gate” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition “A Wonder to Behold: Craftsmanship and the Creation of Babylon’s Ishtar Gate,” imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Institute for the Study of the Ancient World, New York University, New York, New York, from on or about November 6, 2019, until on or about May 24, 2020, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Paralegal Specialist, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign

Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Matthew R. Lussenhop,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2019–21535 Filed 10–2–19; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–1999–5756]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on September 3, 2019, the Canadian National Railway (CN) petitioned the Federal Railroad Administration (FRA) to extend and modify a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 229. Specifically, CN seeks to extend its waiver for 81 carbody style locomotives (BCOL 4601–4626 and CN 2400–2454) that are not equipped with a brake valve adjacent to each end exit door. CN also requests relief from a condition of the original waiver which required such locomotives to be captive to CN’s system while operated in the United States. FRA assigned the petition Docket Number FRA–1999–5756.

CN explains that all locomotives covered under its request are equipped with a rear walkway from which the engineer may be directed during a reverse movement. CN further states it has been complying with the existing conditions of the waiver and is not aware of any operational problems with these locomotives while in service in the United States.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation’s (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in

connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- **Website:** <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Fax:** 202–493–2251.
- **Mail:** Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- **Hand Delivery:** 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by November 18, 2019 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacyNotice> for the privacy notice of www.regulations.gov.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2019–21513 Filed 10–2–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2019–0017]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

⁷¹ 15 U.S.C. 78s(b)(3)(C).

⁷² 17 CFR 200.30–3(a)(57) and (58).

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describe the nature of the information collection and their expected burdens.

DATES: Comments must be submitted on or before November 4, 2019.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: FTA Desk Officer. Alternatively, comments may be sent via email to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: oira_submissions@omb.eop.gov.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Tia Swain, Office of Administration, Management Planning Division, 1200 New Jersey Avenue SE, Mail Stop TAD-10, Washington, DC 20590 (202) 366-0354 or tia.swain@dot.gov.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On June 18, 2019, FTA published a 60-day notice (84 FR 28383) in the **Federal Register** soliciting comments on the ICR that the agency

was seeking OMB approval. FTA received no comments after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507 (b)-(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The requirements are being submitted for clearance by OMB as required by the PRA.

Title: Public Transportation Emergency Relief Program.

OMB Control Number: 2132-0575.

Type of Request: Renewal of a previously approved information collection.

Abstract: Since the authorization of the Public Transportation Emergency Relief Program in 2012, Congress has appropriated funds three times for transit agencies affected by disaster.

The first appropriation of funds for the program was in 2013 following Hurricane Sandy, for which the President declared a major disaster for areas of 12 States and the District of Columbia. Under the Disaster Relief Appropriations Act (Pub. L. 113-2), Congress provided \$10.9 billion for FTA's Emergency Relief Program for recovery, relief, and resilience efforts in the counties specified in the disaster declaration. Approximately \$10.0 billion remained available after implementation of the Balanced Budget and Emergency Deficit Control Act of 2011 (Pub. L. 112-25) and after intergovernmental transfers to other bureaus and offices within DOT. FTA has allocated the full amount in multiple tiers for response, recovery and rebuilding; for locally prioritized

resilience projects, and for competitively selected resilience projects.

The second appropriation of funds for the Emergency Relief Program was in 2018 following Hurricanes Harvey, Irma, and Maria, for which the President declared major disasters in areas of Florida, Georgia, Louisiana, Puerto Rico, South Carolina, Texas, and the U.S. Virgin Islands. Under the Bipartisan Budget Act of 2018 (Pub. L. 115-123), Congress provided \$330 million for FTA's Emergency Relief Program for transit systems affected by Hurricanes Harvey, Irma, and Maria. On May 31, 2018 FTA allocated \$277.5 million for response, recovery, rebuilding, and resilience projects.

The third appropriation of funds for the Emergency Relief Program was in 2019. Under the Additional Supplemental Appropriations for Disaster Relief Act of 2019, Congress appropriated \$10.5 million for FTA's Emergency Relief Program for transit systems affected by major declared disasters occurring in calendar year 2018.

Respondents: States, local governmental authorities, Indian tribes and other FTA recipients impacted by Hurricane Sandy which affected mid-Atlantic and northeastern states in October 2012; Hurricane Harvey which affected areas of Texas and Louisiana in August 2017; and Hurricanes Irma and Maria which affected the southeastern states and the territories of the Puerto Rico and the U.S. Virgin Islands in September 2017, and by major declared disasters occurring in calendar year 2018.

Estimated Annual Number of Respondents: 26.

Estimated Total Annual Burden: 4,680 hours.

Frequency: Annually.

Nadine Pembleton,

Director Office of Management Planning.

[FR Doc. 2019-21546 Filed 10-2-19; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2019-0018]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this

notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describe the nature of the information collection and their expected burdens.

DATES: Comments must be submitted on or before November 4, 2019.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: FTA Desk Officer. Alternatively, comments may be sent via email to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: oira_submissions@omb.eop.gov.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Tia Swain, Office of Administration, Management Planning Division, 1200 New Jersey Avenue SE, Mail Stop TAD-10, Washington, DC 20590 (202) 366-0354 or tia.swain@dot.gov.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On July 2, 2019, FTA published a 60-day notice (84 FR 31657) in the **Federal Register** soliciting comments on the ICR that the agency was seeking OMB approval. FTA received one comment after issuing this 60-day notice. The comment was from the Michigan Department of

Transportation (MDOT) Docket #FTA-0008-0001. The comment states: "MDOT supports the continued collection of bus testing information by the Thomas D. Larson Pennsylvania Transportation Institute (LTI) with the following concerns: (1) Timeliness of testing on new or updated bus bodies and OEM vehicle chassis, test completion can take up to a year or more in some instances; (2) Communication of testing delays to recipients. Explanation of delays doesn't seem to be provided to bus manufacturers or chassis OEMs; (3) Increased testing capacity. With the increase in Federal emissions and fuel economy standards, OEMs are continually introducing new engine and transmission combinations that require new tests. Adding staff or opening additional test facilities may help alleviate this issue. The LoNo test facilities at Ohio State University and Auburn University may be an option to help assist in the testing of traditional buses if allowed, which would shorten test delays." FTA's responded by stating, "FTA acknowledges that improvements can be made in the application response process. In an effort to address these issues, this information is working on a web-based test form for bus testing determinations and approvals with the purpose of not only improving request turn arounds, but increasing transparency where submitters will be provided real-time updates with the status of their applications. The purpose of the PRA is to provide an estimate of time burdens associated with the preparation of a determination and/or and approval request. The time burdens consider all the technical and legal advisors involved in the process of gathering information to prepare and submit an application. Unfortunately, addressing the duration of tests, how many tests are performed, and any modification to 49 CFR 665 is outside of the scope of this document. We appreciate MDOT's comments and encourage to submit any suggestions and/or recommended amendments following applicable protocols established in 49 CFR 601, "Organization, Functions, and Procedures". In addition, FTA will be hosting a Bus Maintenance and Bus Testing Peer-to-Peer Exchange in October 2019, to engage the vehicle manufacturers industry, encourage an open dialogue, and address areas of improvement within the Bus Testing Program. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and

forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)-(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The requirements are being submitted for clearance by OMB as required by the PRA.

Title: Bus Testing Program.

OMB Control Number: 2132-0550.

Type of Request: Renewal of a previously approved information collection.

Abstract: 49 U.S.C. Section 5318(e) provides that Federal funds appropriated or otherwise made available under 49 U.S.C. Chapter 53 [FTA funding] may not be obligated or expended for the acquisition of a new bus model unless a bus of that model has been tested for maintainability, reliability, safety, performance (including braking performance), structural integrity, fuel economy, emissions, and noise at a bus testing facility authorized under 49 U.S.C. Section 5318(a).

At this time, there is one active Bus Testing Center operated by the Thomas D. Larson Pennsylvania Transportation Institute of the Pennsylvania State University (LTI). LTI operates and maintains the Center under a cooperative agreement with FTA, and establishes and collects fees for the testing of the vehicles at the facility. Two additional bus testing facilities authorized to test low and no-emission (LoNo) buses have been authorized by Congress. FTA is working with Auburn University and The Ohio State University to establish those facilities, which are not yet operational. The nature and quantity of the information that must be collected to operate the Bus Testing Program will not change significantly when these additional

centers become operational. Auburn and Ohio State separately received appropriations to conduct testing of components for LoNo buses. Those projects are separate from Bus Testing and FTA does not expect them to affect the paperwork burden for the Bus Testing Program. Upon completion of the testing of the vehicle at the Center with a passing test score, a draft Bus Testing Report is provided to the manufacturer of the new bus model. If the manufacturer approves the Report for publication, the bus model becomes eligible for FTA funding. 49 CFR 665.7 requires a recipient of FTA funds to certify that a bus model has been tested at the bus testing facility, that the bus model received a passing score, and that the recipient has a copy of the applicable Bus Testing Report(s) on a bus model before final acceptance of any buses of that model. Recipients are strongly encouraged to review the Bus Testing Report(s) relevant to a bus model before final acceptance and/or selection of that bus model.

Respondents: Bus manufacturers and recipients of FTA funds.

Estimated Annual Number of Respondents: 60 (40 testing determination requirements requests at 32 hours each, 20 testing authorization requests at 32 hours each, 16 tests scheduled at 10 hours each, and 3 retest requests at 17 hours each).

Estimated Total Annual Burden: 2,131 hours.

Frequency: On Occasion.

Nadine Pembleton,

Director, Office of Management Planning.

[FR Doc. 2019-21545 Filed 10-2-19; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF VETERANS AFFAIRS

VA Standards for Quality

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) establishes these standards for quality to satisfy the requirements in section 1703C of title 38, United States Code (U.S.C.), as added by section 104 of the VA MISSION Act of 2018.

FOR FURTHER INFORMATION CONTACT:

Joseph Francis, Office of Reporting, Analytics, Performance, Improvement, and Deployment (RAPID), 10A8, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461-5833. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Section 1703C of 38 U.S.C., as added by section 104 of the VA MISSION Act of 2018 requires VA to establish standards for quality regarding hospital care, medical services, and extended care services furnished by the Department, including through non-Department health care providers pursuant to section 1703 of this title. Starting in August 2018, VA began consulting with various stakeholders and experts including the Department of Defense (DoD) Defense Health Agency, the Centers for Medicare & Medicaid Services, the Department of Health and Human Services (HHS), Veterans Insight Panel focus groups selected from a standing veteran consumer panel (maintained by a neutral third-party) that is demographically representative of veterans served by VA, regulatory and accreditation groups, Veterans Service Organizations, Federal employee representatives, and health care specialty associations and organizations. VA also solicited comments from the public through a Notice in the **Federal Register** on August 24, 2018, (83 FR 42983), and held a public meeting on September 24, 2018, inviting the public to discuss and provide input regarding what VA should consider when developing the standards for quality. VA submitted a report to Congress on the proposed VA standards for quality on March 13, 2019. This Notice formally establishes VA's standards for quality.

In defining VA's standards for quality established by the Secretary, VA incorporated findings from a review of existing standards, stakeholder feedback, and the framework for quality put forth by the National Academy of Medicine in its report, "Crossing the Quality Chasm". The standards for quality consist of Quality Domains and Quality Measures.

- **Quality Domains**—broad categories of quality used to describe the desired characteristics of care received by veterans, whether furnished by VA or community-based providers.

- **Quality Measures**—an evolving series of numeric indicators that evaluate clinical performance within each of the quality domains.

These standards for quality are:

- **Timely Care**—provided without inappropriate or harmful delays.
- **Effective Care**—based on scientific knowledge of what is likely to provide benefits to veterans.
- **Safe Care**—avoids harm from care that is intended to help veterans.
- **Veteran-Centered Care**—anticipates and responds to veterans' and their caregivers' preferences and needs and

ensures that veterans have input into clinical decisions.

The initial quality measures for each standard for quality are:

- **Timely Care**
 - Patient-reported measures on getting timely appointments, care, and information
 - Wait times for outpatient care
- **Effective Care**
 - Risk adjusted mortality rate for heart attack
 - Risk adjusted mortality rate for pneumonia
 - Risk adjusted mortality rate for heart failure
 - Risk adjusted mortality rate for chronic obstructive pulmonary disease
 - Smoking and tobacco use cessation—advising smokers to quit
 - Immunization for influenza
 - Controlling high blood pressure
 - Beta-blocker treatment after a heart attack
 - Comprehensive diabetes care—blood pressure control
 - Comprehensive diabetes care—Hemoglobin A1c poor control
 - Breast cancer screening
 - Cervical cancer screening
 - Improvement in function (short-stay skilled nursing facility patients)
 - Newly received antipsychotic medications (short-stay skilled nursing facility patients)
- **Safe Care**
 - Catheter associated urinary tract infection rate
 - Central line associated bloodstream infection rate
 - Clostridioides difficile infection rate
 - Death rate among surgical patients with serious treatable complications
 - New or worse pressure ulcer (short-stay skilled nursing facility patients)
 - Falls with major injury (long-stay skilled nursing facility patients)
 - Physical restraints (long-stay skilled nursing facility patients)
- **Veteran-Centered Care**
 - Hospital Consumer Assessment of Health Providers and Systems (HCAHPS) overall summary star rating
 - HCAHPS Care Transition summary star rating
 - Patient's overall rating of the provider on the Consumer Assessment of Health Providers and Systems (CAHPS) survey
 - Patient's rating of coordination of care on the CAHPS survey

These standards for quality were selected based on availability of

comparative data for community providers and importance to veterans, as determined through an extensive review of existing health care standards for quality and consultation with Federal, regulatory, and public stakeholders through focus groups, meetings, and requests for information. The standards for quality established through this Notice and presented above will be posted on VA's Access to Care website, <https://www.accesstocare.va.gov/>. Further changes to the standards will be made on that website, and the public can review those changes at any time.

VA will use these standards as a framework to guide internal improvement efforts, provide a basis for determining eligibility for the Veterans

Community Care Program under 38 Code of Federal Regulations 17.4010(a)(6) and 17.4015, and inform decisions on where to furnish care from community providers, when that information is available. To facilitate the most effective partnership with community providers caring for veterans, VA will take an iterative approach, collaborating with our Federal partners at DoD and HHS, as well as community partners in the private sector, to remain in lockstep with the evolution of standards for quality as the industry advances.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and

authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Pamela Powers, Chief of Staff, Department of Veterans Affairs, approved this document on September 27, 2019, for publication.

Dated: September 30, 2019.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

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Part II

Securities and Exchange Commission

17 CFR Parts 210, 229, and 249

Update of Statistical Disclosures for Bank and Savings and Loan Registrants; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229, and 249

[Release No. 33–10688; 34–86984; File No. S7–02–17]

RIN 3235–AL79

Update of Statistical Disclosures for Bank and Savings and Loan Registrants

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing rules to update our statistical disclosures for banking registrants. These registrants currently provide many disclosures in response to the items set forth in Industry Guide 3 (“Guide 3”), *Statistical Disclosure by Bank Holding Companies*, which are not Commission rules. The proposed rules would update the disclosures that investors receive, codify certain Guide 3 disclosures and eliminate other Guide 3 disclosures that overlap with Commission rules, U.S. Generally Accepted Accounting Principles (“U.S. GAAP”), or International Financial Reporting Standards (“IFRS”). In addition, we propose to relocate the codified disclosures to a new subpart of Regulation S–K and to rescind Guide 3. **DATES:** Comments should be received on or before December 2, 2019.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number S7–02–17 on the subject line.

Paper Comments

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–02–17. 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 of submission. The Commission will post all comments on the Commission’s website (<http://www.sec.gov/rules/proposed.shtml>). Comments also are 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. 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 publicly available.

Studies, memoranda or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission’s website. To ensure direct electronic receipt of such notifications, sign up through the “Stay Connected” option at www.sec.gov to receive notification by email.

FOR FURTHER INFORMATION CONTACT: Stephanie Sullivan, Associate Chief Accountant, or Dana Hartz, Accountant, Division of Corporation Finance, at (202) 551–3400, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing to amend 17 CFR 229.404 (“Item 404 of Regulation S–K”) under the Securities Act of 1933 (“Securities Act”)¹ and the Securities Exchange Act of 1934 (“Exchange Act”);² 17 CFR 210.9–03 (“Rule 9–03 of Regulation S–X”) under the Securities Act and the Exchange Act; and 17 CFR 249.220f (“Form 20–F”) under the Exchange Act. In addition, the Commission is proposing to add a new subpart, 17 CFR 229.1400 (“Item 1400 of Regulation S–K”), which would include 17 CFR 229.1401 through 17 CFR 229.1406, and is proposing to rescind 17 CFR 229.801(c) and 229.802(c) Guide 3 Securities Act Industry Guide and Guide 3 Exchange Act Industry Guide (“Guide 3”) under the Securities Act and Exchange Act.

Table of Contents

- I. Introduction and Backgrounds
 - A. Background
 - B. Issuance of the Request for Comment
- II. Proposed New Subpart 1400 of Regulation S–K
 - A. Codification
 - B. Proposed Scope
 - C. Proposed Applicability to Domestic Registrants and Foreign Registrants
 - D. Reporting Periods
 - E. Distribution of Assets, Liabilities, and Stockholders’ Equity; Interest Rate and Interest Differential (Average Balance, Interest and Yield/Rate Analysis and Rate/Volume Analysis)
 - F. Investment Portfolio

¹ 15 U.S.C. 77a et seq.

² 15 U.S.C. 78a et seq.

- G. Loan Portfolio
- H. Allowance for Credit Losses
- I. Deposits
- III. Certain Existing Guide 3 Disclosures That Would Not Be Codified in Proposed Subpart 1400 of Regulation S–K
 - A. Return on Equity and Assets
 - B. Short-Term Borrowings
- IV. Proposed Changes to Article 9 of Regulation S–X
- V. General Request for Comments
- VI. Economic Analysis
 - A. Introduction
 - B. Baseline
 - C. Economic Effects
 - D. Effects on Efficiency, Competition, and Capital Formation
 - E. Request for Comment
- VII. Paperwork Reduction Act
 - A. Background
 - B. Burden and Cost Estimates Related to the Proposed Rules
 - C. Request for Comment
- VIII. Small Business Regulatory Enforcement Fairness Act
- IX. Regulatory Flexibility Act Certification
- X. Statutory Authority and Text of Proposed Rules

I. Introduction and Backgrounds

A. Background

Guide 3 was first published in 1976 as “a convenient reference to the statistical disclosures sought by the staff of the Division of Corporation Finance in registration statements and other disclosure documents filed by bank holding companies (“BHCs”).”³ Guide 3 calls for disclosure in seven areas: (1) “distribution of assets, liabilities and stockholders’ equity; interest rates and interest differential”, (2) investment portfolios, (3) loan portfolios, (4) summary of loan loss experience, (5) deposits, (6) return on equity and assets, and (7) short-term borrowings. Guide 3 applies to BHCs,⁴ although other registrants, including savings and loan holding companies, provide Guide 3 disclosures to the extent applicable. The Guide 3 Release noted that “as the

³ *Guides for Statistical Disclosure by Bank Holding Companies*, Release No. 33–5735 (Aug. 31, 1976) [41 FR 39007] (“Guide 3 Release”). When it published the Guide 3 Release, the Commission stated that “[t]he Guides are not Commission rules nor do they bear the Commission’s official approval; they represent policies and practices followed by the Commission’s Division of Corporation Finance in administering the disclosure requirements of the federal securities laws.” Guide 3 was originally published as Securities Act Guide 61 and Exchange Act Guide 3. In 1982, Securities Act Guide 61 and Exchange Act Guide 3 were redesignated as Securities Act Industry Guide 3 and Exchange Act Industry Guide 3. See *Rescission of Guides and Redesignation of Industry Guides*, Release No. 33–6384 (Mar. 16, 1982) [47 FR 11476].

⁴ Rule 1–02(e) of Regulation S–X [17 CFR 210.1–02(e)] defines a BHC as “a person who is engaged, either directly or indirectly, primarily in the business of owning securities of one or more banks for the purpose, and with the effect, of exercising control.”

operations of bank holding companies have diversified, it has become increasingly difficult for investors to identify the sources of income of such companies.”⁵ The Division believed that disclosure of the same statistical information about BHCs on a regular, periodic basis would assist in assessing their future earning potential and enable investors to compare BHCs more easily.⁶ Guide 3 has been amended over time to provide more consistency with Article 9 of Regulation S-X (“Article 9”) ⁷ and to elicit additional information about various risk elements involved in lending and deposit activities.⁸

Since the last substantive revision to Guide 3 in 1986,⁹ the Commission has adopted disclosure requirements¹⁰ and the Financial Accounting Standards Board (“FASB”) ¹¹ and International

Accounting Standards Board (“IASB”) ¹² have issued accounting standards that have changed the financial reporting obligations for registrants engaged in financial services. Consequently, some of the disclosures called for by Guide 3 overlap with subsequently adopted Commission rules, U.S. GAAP, or IFRS.¹³

B. Issuance of the Request for Comment

On March 1, 2017, the Commission published a request for comment on possible changes to Industry Guide 3 (the “Request for Comment”).¹⁴ The Request for Comment sought feedback on a number of areas, including:

- Whether, and in which respects, the specific quantitative and qualitative disclosures called for by Guide 3 should be modified, including elimination due to overlapping disclosure requirements in U.S. GAAP, IFRS, or other regulatory disclosure regimes;
- The types of information about registrants in the financial services industry that investors find important and the degree to which other disclosure regimes, such as those instituted by U.S. banking agencies, may be used by investors;
- Whether Guide 3 disclosures should be applicable to registrants other than BHCs; and
- Whether the reporting periods for Guide 3 disclosures should be modified.

In response to the Request for Comment, commenters expressed a range of views. Most commenters expressed support for an update to Guide 3.¹⁵ Many of these commenters

stated that Guide 3 disclosures that overlap with Commission rules, U.S. GAAP, and IFRS should be eliminated.¹⁶ Some commenters stated there are overlapping disclosures contained in the U.S. banking agencies public regulatory reports.¹⁷ However, one commenter noted the U.S. banking agencies information may be of limited use to investors given the volume and level of detail of it.¹⁸ Furthermore, several commenters noted that the primary purpose of U.S. banking agencies reporting is different from the Commission’s disclosure objectives.¹⁹ Several commenters called for the Guide 3 disclosures to be less prescriptive and more principles-based.²⁰

A few commenters recommended that we consider addressing items such as (1) market risk and derivatives disclosures, (2) regulatory capital and other information currently required to be reported to U.S. banking agencies, (3) implementation and compliance with the Volcker Rule,²¹ and (4) merchant banking and commercial assets information.²² Some of these items affect a broader population of registrants than those addressed in this release and are activities for which Commission rules, U.S. GAAP, or IFRS already require detailed disclosures, such as derivatives. In addition, some of the recommended disclosures would likely give rise to confidentiality concerns related to confidential supervisory information ²³ under the federal banking regulations.²⁴

(“RSM”) (April 25, 2017); PricewaterhouseCoopers LLP (“PwC”) (June 28, 2017); Sumitomo Mitsui Financial Group, Inc. (submitted by Davis Polk & Wardwell LLP) (“SMFG”) (June 30, 2017); and XBRL US (“XBRL US”) (July 7, 2017).

¹⁶ See letters from ABA; AmEx; BDO; BerryDunn; CAQ; CBA; CH/SIFMA; Crowe; Deloitte; EY; IBC; ICBA; KPMG; Mizuho Financial Group Inc. (“MFG”) (submitted by Simpson Thacher & Bartlett) (July 7, 2017); Mitsubishi UFJ Financial Group (“MUFG”) (submitted by Paul Weiss) (July 7, 2017); PNC; PwC; and RSM.

¹⁷ See letters from ABA; Amex; CH/SIFMA; Deloitte; IBC; KPMG; and PNC.

¹⁸ See letter from CH/SIFMA.

¹⁹ See letters from ABA; Amex; CAQ; CH/SIFMA; Crowe; Deloitte; EY; PwC; and RSM.

²⁰ See letters from ABA; AmEx; BDO; CAQ; Crowe; Deloitte; EY; KPMG; and PNC.

²¹ See *Prohibitions and Restrictions on Proprietary Trading and Certain Interests In, and Relationships With, Hedge Funds and Private Equity Funds*; Release No. BHCA-1 (Dec. 10, 2013) [79 FR 5535], which is commonly referred to as the Volcker Rule. The Volcker Rule is intended to prohibit banks from engaging in proprietary trading, which involves the bank using its funds to make short term trades in securities, derivatives, or commodity futures.

²² See letters from CAP; Public Citizen; Ethics Metrics, LLC (“EM”) (May 8, 2017); and RSM.

²³ See 12 CFR 261.20.

²⁴ The U.S. banking agencies have rules that address the disclosure of confidential supervisory

Continued

⁵ See *supra* note 3.

⁶ *Id.*

⁷ 17 CFR 210.9–01 through 9–07. Article 9 sets forth the form and content of the consolidated financial statements filed for bank holding companies and for any financial statements of banks that are included in filings with the Commission.

⁸ *Amendments to Guides for Statistical Disclosure by Bank Holding Companies*, Release No. 33–6221 (July 8, 1980) [45 FR 47138] (“1980 Guide 3 Release”); *Revision of Financial Statement Requirements and Industry Guide Disclosure for Bank Holding Companies*, Release No. 33–6458 (Mar. 7, 1983) [48 FR 11104]; *Revision of Industry Guide Disclosures for Bank Holding Companies*, Release No. 33–6478 (Aug. 11, 1983) 48 FR 37609 (together with Release 33–6458 the “1983 Guide 3 Releases”); *Notification of Technical Amendments to Securities Act Industry Guides*, Release No. 33–9337 (Jul. 13, 2012) [77 FR 42175] (“2012 Guide 3 Release”).

⁹ This revision added disclosures regarding loans and extensions of credit to borrowers in countries experiencing liquidity problems. See *Amendments to Industry Guide Disclosures by Bank Holding Companies*, Release No. 33–6677 (Nov. 25, 1986) [51 FR 43594].

¹⁰ For example, the Commission adopted Item 305 of Regulation S-K [17 CFR 229.305] in 1997. *Disclosure of Accounting Policies for Derivative Financial Instruments and Derivative Commodity Instruments and Disclosure of Quantitative and Qualitative Information about Market Risk Inherent in Derivative Financial Instruments, Other Financial Instruments and Derivative Commodity Instruments*, Release No. 33–7386 (Jan. 31, 1997) [62 FR 6044] (“Disclosure of Market Risk Sensitive Instruments Release”).

¹¹ The Commission has broad authority and responsibility under the federal securities laws to prescribe the methods to be followed in the preparation of accounts and the form and content of financial statements to be filed under those laws. See, e.g., Sections 7 [15 U.S.C. 77g], 19(a) [15 U.S.C. 77s(a)] and Schedule A, Items (25) and (26) [15 U.S.C. 77aa(25) and (26)] of the Securities Act and Sections 3(b) [15 U.S.C. 78c(b)], 12(b) [17 CFR 781(b)] and 13(b) [17 CFR 78m(b)] of the Exchange Act. To assist it in meeting this responsibility, the Commission historically has looked to private sector standard-setting bodies designated by the accounting profession to develop accounting principles and standards. In 2003, in accordance with criteria established by the Sarbanes-Oxley Act, the Commission designated the FASB as the private sector accounting standard setter for U.S. financial

reporting. See *Policy Statement: Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter*, Release No. 33–8221 (Apr. 25, 2003) [68 FR 23333].

¹² The IASB, which is subject to oversight by the IFRS Foundation, is responsible for IFRS. For further information, see <http://www.ifrs.org/About-us/Pages/IFRS-Foundation-and-IASB.aspx>.

¹³ References to IFRS throughout are to IFRS as issued by the IASB.

¹⁴ See *Request for Comment on Possible Changes to Industry Guide 3 (Statistical Disclosures by Bank Holding Companies)*; Release No. 33–10321 (Mar. 1, 2017) [82 FR 12757].

¹⁵ See letters from American Bankers Association (“ABA”) (June 28, 2017); American Express Company (“AmEx”) (July 7, 2017); BDO USA LLP (“BDO”) (May 4, 2017); Berry Dunn McNeil & Parker LLC (“BerryDunn”) (July 6, 2017); Center for American Progress (“CAP”) (July 7, 2017); Center for Audit Quality (“CAQ”) (May 8, 2017); Canadian Bankers Association (“CBA”) (June 2, 2017); Clearing House Association L.L.C., Securities Industry and Financial Markets Association (“CH/SIFMA”) (June 29, 2017); Crowe Horwath LLP (“Crowe”) (July 6, 2017); Deloitte & Touche (“Deloitte”) (June 1, 2017); Ernst & Young LLP (“EY”) (May 24, 2017); International Bancshares Corporation (“IBC”) (July 7, 2017); Independent Community Bankers of America (“ICBA”) (May 8, 2017); KPMG LLP (“KPMG”) (July 7, 2017); PNC Financial Services Group Inc. (“PNC”) (July 6, 2017); Public Citizen (July 7, 2017); RSM US LLP

In developing our proposal, we considered the above recommendations, as well as the other comments received in response to the Request for Comment. Although the Request for Comment asked for feedback on a number of areas, in this release we focus on commenter feedback relevant to our proposals. We welcome additional feedback and encourage interested parties to submit comments on any or all aspects of the proposed amendments. When commenting, it would be most helpful if you include the reasoning behind your position or recommendation.

II. Proposed New Subpart 1400 of Regulation S-K

A. Codification

In the Request for Comment, the Commission sought input on whether any of the Guide 3 disclosures should be codified as Commission rules.²⁵ Some commenters recommended codifying these disclosures,²⁶ while others recommended that they not be codified.²⁷ Most of the latter commenters cited the ease of updating as the reason for not codifying the disclosures.²⁸ One commenter further stated that codification would not enhance adherence by registrants and that retaining Guide 3 as guidance would continue to allow registrants flexibility in their approach to disclosure.²⁹

We propose updating and codifying certain Guide 3 disclosures in a new Subpart 1400 of Regulation S-K.³⁰ This

information. Except in very limited circumstances, financial institutions are prohibited by law from disclosing nonpublic supervisory information to nonrelated third parties without written permission from the appropriate U.S. banking agency.

²⁵ In 1996, the Commission's *Task Force on Disclosure Simplification* recommended relocating the industry guides, including Guide 3, into Regulation S-K. See *Report of the Task Force on Disclosure Simplification* (Mar. 5, 1996), available at <http://www.sec.gov/news/studies/smpl.htm>. Currently, Instruction 13 to Regulation S-K Item 303(a) [17 CFR 229.303(a)] directs the attention of bank holding companies to the information called for by Guide 3. Additionally, an Instruction to Item 4 of Form 20-F indicates that the information specified in any industry guide that applies to the registrant should be furnished, and Item 7(c) of Form 1-A states that the disclosure guidelines in all Securities Act Industry Guides must be followed, and to the extent the industry guides are codified into Regulation S-K, the Regulation S-K industry disclosure items must be followed. We propose to amend Item 4 of Form 20-F to refer to proposed Items 1400 through 1406 of Regulation S-K.

²⁶ See letters from Crowe; Deloitte; and EY.

²⁷ See letters from ABA; AmEx; CBA; and CH/SIFMA.

²⁸ See letters from ABA; AmEx; and CH/SIFMA.

²⁹ See letter from CH/SIFMA.

³⁰ The Industry Guides, or Guide 3 specifically, are referenced in instructions to Forms 20-F and 1-A, as well as in instructions to Items 303 and 404 of Regulation S-K. We have proposed to replace

is consistent with the approach taken by the Commission when it has modernized other Industry Guides.³¹ This proposed approach would mitigate uncertainty about when these disclosures must be included in Commission filings and enhance comparability across banking registrants, both foreign and domestic. Furthermore, the process to update an Industry Guide is the same as amendments to disclosure requirements. While there may be a decrease in flexibility driven by codification of the proposed rules into Regulation S-K, we believe this reduced flexibility is outweighed by the benefits of certainty about whether the disclosures are required. We also believe codification would streamline compliance by including these disclosures in Regulation S-K along with other non-financial statement disclosure requirements.

Request for Comment:

1. Should we codify the Guide 3 disclosures in new subpart 1400 of Regulation S-K, generally as proposed? Should some disclosures remain in Guide 3? If so, which ones?

B. Proposed Scope

i. Background

By its terms, Guide 3 applies to BHCs. However, the disclosures called for by Guide 3 are also provided by other registrants with material lending and deposit activities, including savings and loan holding companies.³² In the Request for Comment, the Commission acknowledged that BHCs today conduct a wider array of activities than at the time of Guide's publication.³³ Moreover,

these references, as applicable, with a reference to the proposed Subpart 1400 of Regulation S-K. We also propose to delete the reference to potential problem loans in Item III.C.1 and 2 of Guide 3 and Instruction 4(c) of Item 404 of Regulation S-K because we are not proposing to codify these disclosures. See Section II.G for further discussion.

³¹ For example, Industry Guide 2 was revised and codified in Subpart 1200 of Regulation S-K (17 CFR 229.1201 through 1208), *Modernization of Oil and Gas Reporting*, Release No. 33-8995 [74 FR 2157]. The Commission also recently consolidated the property disclosure requirements for mining registrants in a new Subpart 1300 of Regulation S-K, *Modernization of Property Disclosures for Mining Registrants*, Release No. 33-10570 (October 31, 2018) [83 FR 66344].

³² Many registrants refer to Staff Accounting Bulletin Topic 11:K—Application of Article 9 and Guide 3 ("SAB 11:K"), which states that "[t]he SEC staff believes [Guide 3 information] would be material to a description of business of [non-BHC] registrants with material lending and deposit activities . . ." The Industry Guides and SAB 11:K are not rules, regulations or statements of the Commission. If the proposed rule is adopted, the staff intends to rescind SAB 11:K.

³³ For example, some BHCs engage in activities involving asset management, investment

a wider range of companies, such as insurance companies, online marketplace lenders,³⁴ and other financial technology companies³⁵ engage in some of the activities addressed by the Guide 3 disclosure areas. However, these companies normally do not engage in deposit-taking activities and therefore do not provide Guide 3 disclosures. Based on these observations, the Commission asked whether Guide 3 should employ an activity-based scope, rather than a scope based on the type of registrant. For example, the Commission asked whether the Guide 3 investment disclosures should be extended to other registrants, such as those engaged in the financial services industry, regardless of whether the registrant is a BHC or has material lending and deposit-taking activities. The Commission also asked whether Guide 3 should employ a principles-based approach, instead of using bright-line percentages or dollar amount thresholds to trigger disclosure.

ii. Comments on Scope

Several commenters stated that the applicability of Guide 3 disclosures to non-BHC registrants should be clarified.³⁶ For example, a registrant with material lending or deposit-taking activities, but not both, may be uncertain about whether, and if so which, Guide 3 disclosures it should provide. Furthermore, uncertainty may exist about when investment, short-term borrowings, or return on equity and asset disclosures should be provided because those disclosures do not necessarily correspond to a "material lending and deposit activity" threshold. One commenter noted that this uncertainty could impede capital formation, because a registrant may incur costs to prepare Guide 3 disclosures that are not required.³⁷ One commenter stated that Guide 3 should continue to apply to BHCs and other registrants with material lending and deposit activities as this provides useful information to investors.³⁸ Another commenter stated that Guide 3

management, physical commodities, insurance, and broker-dealer activities.

³⁴ Online marketplace lending is a method of debt financing, generally through loans, that does not use a traditional financial institution as an intermediary.

³⁵ Financial technology companies develop or provide technological innovation in financial services. For example, a financial technology company may use computer programs and other technology to support or enable banking and financial services activities.

³⁶ See letters from CAQ; Crowe; Deloitte; EY; KPMG; and PwC.

³⁷ See letter from Crowe.

³⁸ See letter from CH/SIFMA.

disclosures should apply to non-BHC registrants that have significant operations in which credit is provided.³⁹ Several commenters recommended an activity-based approach for Guide 3 disclosures,⁴⁰ and some of them recommended that it be specific to the material operations of the registrant.⁴¹ Another commenter stated that an activity-based approach could be based on numerical thresholds, such as the percentage of a registrant's revenues derived from interest or dividends.⁴²

iii. Proposed Scope

We are proposing that the proposed disclosure requirements continue to apply to BHCs, as well as include most of the registrants that under existing practice provide the disclosures called for by Guide 3.⁴³ Proposed Item 1401 of Regulation S-K would apply to banks, BHCs, savings and loan associations, and savings and loan holding companies (together, "bank and savings and loan registrants"). Most commenters focused on the need to clarify the existing practice of providing Guide 3 disclosures when there are material lending *and* deposit-taking activities. We believe identifying and codifying the types of registrants within the scope of the proposed rules would provide this clarification. We also believe this scope would capture the majority of registrants that predominantly engage in the activities covered by existing Guide 3 and for which these activities are material.⁴⁴ We do not believe there is a large population of non-banking registrants that are providing Guide 3 disclosure today that only engage in one or a few of the activities addressed by its disclosure areas, *e.g.*, lending and deposit-taking. Furthermore, we believe registrants should be able to easily ascertain whether they are a bank or savings and loan registrant, reducing confusion regarding the applicability of the disclosures to non-BHCs.

We are not proposing to expand the scope to include other registrants, such as insurance companies, online marketplace lenders or other financial technology companies. While the proposed disclosures may be relevant to other registrants in the financial services industry, commenters provided limited

feedback on the types of registrants, other than BHCs, that the Guide 3 disclosures would be applicable to and whether it would be material under an activities-based approach. We believe additional feedback on how investors of registrants outside of the proposed scope would use the proposed disclosures would be valuable. Further, we would like to understand whether these other registrants are providing similar information in a different format. We encourage interested parties, including those outside of the banking industry, to provide feedback on the proposed disclosures as they relate to registrants outside of the proposed scope.

Request for Comment:

2. Is the proposed scope of the proposed rules sufficiently clear? If not, how should we revise the scope to make it clearer? Should the proposed rules specifically include banks, savings and loan associations, and savings and loan holding companies, as proposed? If not, why not?

3. Are there other types of registrants that should be included? For example, should we expand the scope of the proposed rules to include credit unions or all financial services registrants with material operations in any of the activities covered by the proposed rules? What are the other types of registrants that have material operations in any of the activities covered by the proposed rules? Would expanding the scope in this way elicit information material to an investment decision or are these registrants providing similar information in a different format? Would it enhance comparability? Are there particular burdens that financial services registrants, including domestic and foreign registrants, other than those within the proposed scope, would face in providing the disclosures? If so, what are the burdens and would these burdens outweigh the benefits of the disclosures? Are there ways to modify the proposal to help alleviate the burdens of providing the disclosures for these registrants?

4. If we expand the scope to include all financial services registrants, how should we define a financial services registrant for this purpose? For example, should we define a financial services registrant to include entities that fall within the scope of ASC 942 Financial Services—Depository and Lending under U.S. GAAP?⁴⁵ Or should we

define a financial services registrant as one that directly, or indirectly through its subsidiaries, engages primarily in providing financial services, including banking, investment, asset management, or other financial services? If so, would any of the following types of financial registrants be included in the definition: banks and bank holding companies, savings associations and savings and loan association holding companies, insurance companies, broker dealers, finance companies, foreign financial institutions, mortgage companies, online marketplace lenders, real estate investment trusts ("REITs"), asset managers, investment advisers, or government-sponsored enterprises? If the scope was expanded to include all financial services registrants, are there types of registrants, such as business development companies, that should be excluded?

5. If the scope included all financial services registrants, should we require disclosure only for the activities that are material to the business or financial statements of a registrant, or should disclosure be required for each of the areas covered by the proposed rules? Would a bright-line threshold work better for determining when these disclosures should be provided? If so, what bright-line threshold would be appropriate?

6. Should we consider an activity-based standard, such as one that captures material lending *and* deposit-taking activity, irrespective of registrant type? Should we consider a broader standard that would capture material lending *or* deposit-taking activity? What other activities could serve as the basis for such a standard? What additional types of registrants would be captured by an activity-based standard?

7. Are there registrants currently providing the Guide 3 disclosures that would not provide disclosures based on the proposed scope? If so, what types of registrants and which of the disclosures would they no longer provide? Would this change result in the loss of information material to an investment decision related to those registrants?

either (1) the FDIC's Deposit Insurance Fund, or (2) the National Credit Union Administration's National Credit Union Share Insurance Fund, (c) bank holding companies, (d) savings and loan association holding companies, (e) branches and agencies of foreign banks regulated by U.S. federal banking regulatory agencies, (f) state-chartered banks, credit unions, and savings institutions that are not federally insured, (g) foreign financial institutions whose financial statements are purported to be prepared in conformity with accounting principles generally accepted in the United States, (h) mortgage companies, and (i) corporate credit unions.

³⁹ See letter from ABA.

⁴⁰ See letters from BDO; CAQ; CH/SIFMA; Deloitte; EY; KPMG; and RSM.

⁴¹ See letters from CAQ; EY; and KPMG.

⁴² See letter from RSM.

⁴³ See *supra* note 32.

⁴⁴ There are only four registrants that have loans and bank deposits on their balance sheet, but are not within the proposed scope. See Table 1: Registrants Currently Applying Guide 3 in the Economic Analysis.

⁴⁵ ASC 942 provides incremental industry-specific guidance to the entities within its scope. The guidance in the Financial Services—Depository and Lending topic applies to the following entities: (a) Finance companies, including finance company subsidiaries, (b) depository institutions insured by

C. Proposed Applicability to Domestic Registrants and Foreign Registrants

i. Background

General Instruction 1 to Guide 3 states that the disclosures apply to the description of business portions of those registration statements and other specified filings for which financial statements are required. General Instruction 6 to Guide 3 indicates that the disclosures also apply to foreign registrants to the extent the information is available or can be compiled without unwarranted or undue burden and expense. Instructions to Item 4 of Form 20-F also indicate that the information specified in any industry guide that applies to the registrant should be furnished.⁴⁶ The staff has observed that bank and savings and loan registrants that are foreign registrants, including foreign private issuers, typically provide the Guide 3 disclosures.

In the Request for Comment, the Commission asked whether these foreign registrants should provide the Guide 3 disclosures, whether IFRS disclosures provide the same or similar information as those called for by Guide 3, whether there are concepts or disclosures in Guide 3 that are not recognized under or contradict IFRS, and whether the unwarranted or undue burden or expense accommodation for foreign registrants was still necessary.

ii. Comments on Applicability to Domestic Registrants and Foreign Registrants

One commenter stated that Guide 3 should not apply to foreign banking registrants.⁴⁷ This commenter, along with several other commenters,⁴⁸ stated that foreign registrants face challenges in providing certain Guide 3 disclosures because they are based on U.S. GAAP or U.S. banking concepts that do not exist under IFRS.⁴⁹ Some commenters stated

that the disclosures called for by Guide 3 should be aligned with the measurement and disclosure principles in IFRS, or provide more flexibility in accommodating accounting differences between U.S. GAAP and IFRS.⁵⁰ These commenters recommended, at a minimum, that foreign private issuers that apply IFRS be permitted to provide disclosures that address the objectives of the Guide 3 disclosure in a manner consistent with IFRS principles.⁵¹

Two commenters addressed circumstances where information called for by Guide 3 is unavailable and cannot be compiled without unwarranted or undue burden or expense⁵² and recommended the staff continue to evaluate requests for disclosure accommodations.⁵³ For example, one of these commenters stated that, in some situations, the staff has not objected to a foreign private issuer providing information that is different from what a domestic registrant would provide under Guide 3 as long as it achieves the same objective as the information called for by Guide 3.⁵⁴ Another commenter stated that corresponding home country standards provide adequate protection to investors, and noted that the act of converting existing financial reporting systems into systems that would generate the information to provide the exact disclosures called for by Guide 3 would result in significant costs.⁵⁵

iii. Proposed Rule—Applicability to Domestic Registrants and Foreign Registrants

Our proposed rules would apply to both domestic registrants and foreign registrants. We recognize that there are

significant differences between U.S. GAAP and IFRS in some of the items called for by Guide 3, such as the measurement of credit losses and disclosures of financial instruments, among other areas.⁵⁶ As a result, the proposed rules would provide flexibility in identifying specific categories and classes of instruments that should be disclosed. In several instances, the proposed rules specifically link the disclosure requirements to the categories or classes of financial instruments disclosed in the registrant's U.S. GAAP or IFRS financial statements. Furthermore, the proposed rules explicitly exempt foreign private issuers applying IFRS ("IFRS registrants") from certain of the disclosure requirements that are not applicable under IFRS.⁵⁷ We believe these elements of the proposed rules substantially address the challenges foreign registrants may face in providing the required disclosures. We do not believe this flexibility for IFRS registrants will significantly change the level of information disclosed by these registrants because Guide 3 currently provides latitude in the categories used for certain of its disclosures and IFRS registrants generally do not provide Guide 3 disclosures that are not applicable under IFRS.

All registrants, not just foreign registrants, can avail themselves of relief from providing information that is "unknown and not reasonably available to the registrant" under 17 CFR 230.409 ("Securities Act Rule 409") and 17 CFR 240.12b-21 ("Exchange Act Rule 12b-21").⁵⁸ These rules also consider

⁵⁶ For example, currently under U.S. GAAP (ASC 310-10-35-4), impairment on a loan is recognized when it is probable that a loss has been incurred, while IFRS 9, effective January 1, 2018 for calendar year companies, requires a 12-month expected credit loss measurement unless there has been a significant increase in credit risk, in which case it is a lifetime expected credit loss measurement. Differences will continue to exist for credit loss measurement between U.S. GAAP and IFRS subsequent to the adoption of Accounting Standards Update ("ASU") 2016-13—*Financial Instruments—Credit Losses (Topic 326)* ("New Credit Loss Standard"). When effective, the New Credit Loss Standard will replace the current U.S. GAAP incurred loss methodology with a methodology that reflects expected credit losses over the entire contractual terms of the financial instruments. This differs from the 12-month expected credit loss measurement methodology that may be applicable in IFRS 9. Additionally, U.S. GAAP has recognition and disclosure requirements related to troubled debt restructurings (TDRs) (ASC 310-40) and nonaccrual loans (ASC 310-10-50-6), but neither of these concepts exists in IFRS.

⁵⁷ For example, there is not a concept of nonaccrual loans in IFRS.

⁵⁸ Securities Act Rule 409 and Exchange Act Rule 12b-21 state that information required need be given only insofar as it is known or reasonably available to the registrant. If any required information is unknown and not reasonably

⁴⁶ Form 40-F [17 CFR 249.240f] does not have a similar requirement, but the staff has observed that Canadian foreign private issuers that are financial institutions typically provide Guide 3 disclosures in their Form 40-F filings.

Foreign private issuers are a subset of foreign registrants, and include any foreign issuer other than a foreign government, except for an issuer that has more than 50% of its outstanding voting securities held of record by U.S. residents and any of the following: A majority of its officers or directors are citizens or residents of the United States; more than 50% of its assets are located in the United States; or its business is principally administered in the United States. See Rule 405 of Regulation C [17 CFR 230.405] and Exchange Act Rule 3b-4(c) [17 CFR 240.3b-4(c)].

⁴⁷ See letter from CH/SIFMA.

⁴⁸ See letters from CAQ; CBA; Deloitte; EY; KPMG; SMFG; and PwC.

⁴⁹ In 2008 the Commission began accepting financial statements of foreign private issuers prepared in accordance with IFRS as issued by the

IASB without reconciliation to U.S. GAAP. See Item 17(c) of Form 20-F and *Acceptance from Foreign Private Issuers of Financial Statements Prepared in Accordance with International Financial Reporting Standards Without Reconciliation to U.S. GAAP*, Release No. 33-8879 (Dec. 21, 2007) [73 FR 985].

⁵⁰ See letters from CAQ; CBA; EY; and KPMG.

⁵¹ The commenters that opposed applying Guide 3 to foreign registrants also recommended this approach if foreign private issuers continue to be scoped into the disclosures. See letter from CH/SIFMA.

⁵² General Instruction 6 to Guide 3 states that it should be brought to the staff's attention if Guide 3 information is unavailable to foreign registrants and cannot be compiled without undue burden or expense. The instruction further states that in evaluating the reasonableness of assertions by registrants that the compilation of requested information, such as historical data or daily averages, would involve an unwarranted or undue burden or expense, the staff takes into consideration, among other factors, the size of the registrant, the estimated costs of compiling the data, the electronic data processing capacity of the registrant, and efforts in process to obtain the information in future periods.

⁵³ See letters from SMFG and PwC.

⁵⁴ See letter from PwC.

⁵⁵ See letter from SMFG.

whether obtaining the information would involve “unreasonable effort or expense,” which we believe is similar to the “unwarranted or undue burden or expense” threshold described in General Instruction 6 to Guide 3. Given that the proposed rules do not change the availability of Securities Act Rule 409 and Exchange Act Rule 12b–21 to foreign registrants, and because we believe the purpose of the thresholds overlap, we propose not to codify the Guide 3 accommodation for undue burden or expense.⁵⁹

Request for Comment:

8. Should foreign registrants be subject to the proposed rules?

9. Should we, as proposed, not codify the Guide 3 accommodation for undue burden or expense? For which aspects of the proposed rules would foreign registrants need to rely on this accommodation that would not be covered by Securities Act Rule 409 and Exchange Act Rule 12b–21? Would foreign registrants still seek to discuss an accommodation or alternative presentation with the staff if this provision is not codified?

10. Are there particular challenges or costs that foreign registrants would face in complying with the proposed rules as compared to domestic registrants? If so, what are those challenges or costs and are there ways the proposed rules could be modified to help alleviate those challenges and costs?

11. Would IFRS registrants face any different or additional challenges in complying with the proposed rules relative to other foreign private issuers applying a different comprehensive basis of accounting along with an U.S. GAAP reconciliation? If so, what challenges would they face and why? Are there other proposed disclosure requirements that we should explicitly state do not apply to IFRS registrants? If so, which ones?

12. Would there be a reduction in material information being disclosed due to the proposed flexibility for IFRS registrants, that is, reference to IFRS categories and exemption from

available to the registrant, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the registrant, the information may be omitted. The rule provides two additional conditions. The first is that the registrant must give such information on the subject that it possesses or can acquire without unreasonable effort or expense, together with the sources of that information. The second is that the registrant must include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

⁵⁹ See *supra* note 52.

disclosures that are not applicable under IFRS? Would the proposed flexibility for IFRS registrants impact the material information needed to make investment decisions and comparability of that information?

D. Reporting Periods

i. Background

Guide 3 currently calls for five years of Loan Portfolio and Summary of Loan Loss Experience data and three years of all other information. However, Guide 3 states that registrants with less than \$200 million of assets or \$10 million of net worth⁶⁰ may present only two years of the information. In addition, Guide 3 calls for interim period disclosures when there is a material change in the information presented or when a new trend has become evident.⁶¹ At the time Guide 3 was issued, only two years of financial statements were required as the current three year requirement was adopted in 1980.⁶² Commenters of the Guide 3 Release stated that five years of historical information would be “extremely difficult to obtain in some cases, especially where detailed breakdowns of certain assets or reserves are requested.”⁶³ Therefore, the Guide 3 Release also stated that historical information need not be provided if it’s not presently available and cannot be compiled without unwarranted or undue burden or expense.

In the Request for Comment, the Commission asked whether the reporting periods called for by Guide 3 should be modified, and if so, how; whether the reporting periods should match Regulation S–X requirements for financial statements and scaled disclosure requirements for smaller reporting companies (“SRCs”)⁶⁴ and emerging growth companies (“EGCs”);⁶⁵ and whether the reporting

⁶⁰ Net worth is the amount by which assets exceeds liabilities and thus represents the total stockholders’ equity of a registrant.

⁶¹ In practice, registrants that provide Guide 3 disclosures generally provide interim disclosures.

⁶² *Amendments to Annual Report Form, Related Forms, Rules, Regulations, and Guides; Integration of Securities Act Disclosure Systems*, Release No. 33–6231 (Sept. 25, 1980) [45 FR 63630].

⁶³ See *supra* note 3.

⁶⁴ An SRC is a registrant that had a public float of less than \$250 million as of the last business day of its most recently completed second fiscal quarter, or had annual revenues of less than \$100 million during its most recently completed fiscal year and no public float or a public float of less than \$700 million. See Rule 405 of Regulation C, Rule 12b–2 of the Exchange Act [17 CFR 240.12b–2], and Item 10(f) of Regulation S–K [17 CFR 229.10(f)].

⁶⁵ An EGC is a registrant with less than \$1.07 billion in total annual gross revenues during its most recently completed fiscal year. If a registrant qualifies as an EGC on the first day of its fiscal year, it maintains that status until the earliest of: (1) The

periods should explicitly include interim periods.

ii. Comments on Reporting Periods

Many commenters recommended reducing the Guide 3 reporting periods.⁶⁶ Most of these commenters recommended using the reporting periods for which financial statements are required.⁶⁷ A number of these commenters recommended reducing the reporting periods for certain types of registrants,⁶⁸ including those that provide scaled disclosures under Commission rules.⁶⁹ Several other commenters recommended the Commission evaluate the relevance of reporting periods that go beyond the financial statement periods.⁷⁰

One commenter suggested that interim period disclosures should only be called for when such disclosures are necessary to reflect material changes since the issuance of the annual financial statements,⁷¹ while several others⁷² called for no interim period disclosures.

iii. Proposed Rule—Reporting Periods

We propose defining the term “reported period” for purposes of new Subpart 1400 of Regulation S–K to mean each annual period required by Commission rules for a registrant’s financial statements. Our rules generally require two years of balance sheets and three years of income statements,⁷³ except that SRCs may present only two years of income statements⁷⁴ and EGCs may present only two years of financial statements in initial public offerings of common equity securities.⁷⁵ However,

last day of the fiscal year of the registrant during which it has total annual gross revenues of \$1.07 billion or more; (2) the last day of its fiscal year following the fifth anniversary of the first sale of its common equity securities pursuant to an effective registration statement; (3) the date on which the registrant has, during the previous 3-year period, issued more than \$1.07 billion in non-convertible debt; or (4) the date on which the registrant is deemed to be a “large accelerated filer” (as defined in Exchange Act Rule 12b–2). See Rule 405 of Regulation C under the Securities Act and Rule 12b–2 of the Exchange Act.

⁶⁶ See letters from ABA; AmEx; CBA; CH/SIFMA; Crowe; EY; ICBA; KPMG; and RSM.

⁶⁷ See letters from ABA; AmEx; CBA; CH/SIFMA; Crowe; EY; and KPMG.

⁶⁸ Commenters recommended reduced reporting periods for SRCs, EGCs, foreign private issuers and non-issuer targets in Form S–4 [17 CFR 239.25] registration statements.

⁶⁹ See letters from ABA; AmEx; Crowe; EY; and RSM.

⁷⁰ See letters from BDO; CAQ; Deloitte; and PwC.

⁷¹ See letter from CH/SIFMA.

⁷² See letters from ABA; AmEx; CAQ; and CBA.

⁷³ 17 CFR 210.3 (“Article 3 of Regulation S–X”).

⁷⁴ 17 CFR 210.8 (“Article 8 of Regulation S–X”).

⁷⁵ Securities Act § 7(a)(2)(A), 15 U.S.C. 77g(a)(2)(A).

with respect to the disclosure of credit ratios, the disclosure would be required for each of the last five fiscal years in initial registration statements by new bank and savings and loan registrants and in offering statements by new bank and savings and loan issuers under Regulation A (“Regulation A offering statements”). But, as discussed further in Section II.H.iv, pursuant to Securities Act Rule 409 and Exchange Act Rule 12b–21 the information would only be required insofar as it is known or reasonably available to the registrant.⁷⁶

We are proposing to reduce the required reporting periods to align them with the relevant annual periods required by Commission rules for a registrant’s financial statements because we believe the proposed disclosures are integrally related to the financial statements. We also believe this change is consistent with other Commission rulemakings over the years.⁷⁷ There have been changes in technology since Guide 3 was issued, in particular the availability of past financial statements and other disclosure made in filings on the Commission’s Electronic Data Gathering, Analysis, and Retrieval system (“EDGAR”). As such, the historical information that would be omitted from the proposed disclosures will generally be accessible through registrant’s prior filings on EDGAR. Furthermore, the reduction of repetitive disclosures, reduction in costs and burdens to registrants and leveraging the use of technology is in line with the 2015 Fixing America’s Surface Transportation Act (the “FAST Act”) mandate⁷⁸ and the related rulemaking.⁷⁹

In addition, we propose to slightly modify the current interim period instruction to clarify that the threshold to include an additional interim period is based on whether there is a material change in the information or the trend evidenced thereby, which is consistent with the existing wording in General Instruction 3 and with the discussion of the interim period disclosure threshold added to Guide 3 in the 1980 Guide 3 Release.⁸⁰ The proposed rules would

not codify the existing language in General Instruction 3(d) which states that any additional interim period should be included if necessary to keep the information from being misleading because we believe this standard is encompassed within the general disclosure requirement in 17 CFR 230.408 (“Securities Act Rule 408”) and 17 CFR 240.12b–20 (“Exchange Act Rule 12b–20”).⁸¹

Request for Comment:

13. Would the proposed reporting periods provide the number of years of information an investor needs to analyze and comprehend changes in trends? If not, what additional information would be material for purposes of this analysis?

14. Would the proposed change in reporting periods result in a loss of information material to an investment decision? If so, please explain how.

15. Should the proposed rules require interim period disclosures even if there is not a material change in the information or a trend that has become evident? If so, why?

16. Should we, as proposed, require five years of Credit Ratio disclosures in initial registration statements or initial Regulation A offering statements of bank and savings and loan registrants or should we align the number of required years to those in other Commission rules? Would a requirement to provide five years of Credit Ratio disclosure impose undue burdens on registrants considering an initial registration statement or initial Regulation A offering statement? Should initial registration statements and initial Regulation A offering statements include additional reporting period information for any of the other proposed disclosures? If so, which ones, and for which reporting periods?

E. Distribution of Assets, Liabilities and Stockholders’ Equity; Interest Rate and Interest Differential (Average Balance, Interest and Yield/Rate Analysis and Rate/Volume Analysis)

i. Background

For registrants with material net interest earnings, like bank and savings and loan registrants, future earnings depend significantly on present and future economic conditions, as changes

amending the reported period definition to only call for information for a subsequent interim period “if a material change in the information presented or the trend evidenced thereby has occurred.” See 1980 Guide 3 Release, *supra* note 8.

⁸¹ Securities Act Rule 408 and Exchange Act Rule 12b–20 require disclosure of material information that may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

in interest rates can have a significant impact on these registrants’ performance. As such, investors and other users of registrant disclosures would benefit from understanding the components of net interest earnings in order to evaluate the impact of potential changes in interest rates on future income of these registrants.

Average balance sheets provide investors with an indication of the balance sheet items that have been, and have the potential to be, most affected by changes in interest rates as well as an indication of a registrant’s ability to move into or out of positions with favorable or unfavorable risk/return characteristics.⁸² For example, an average balance sheet may provide an indication of whether a registrant is asset-sensitive or liability-sensitive.⁸³ Liability-sensitive registrants that rely heavily on short-term and other rate-sensitive funding sources may experience significant increases in future funding costs in a rising interest rate environment. Such registrants may be unable to offset an increase in funding costs with a higher yield on assets, which could result in an adverse impact on net interest earnings.

Item I.A of Guide 3 calls for balance sheets that show the average daily balances⁸⁴ of significant categories of assets and liabilities, including all major categories of interest-earning assets and interest-bearing liabilities.⁸⁵ Item I.B of Guide 3 calls for the disclosure of:

- Interest earned or paid⁸⁶ on the average amount of each major category

⁸² See Guide 3 Release, *supra* note 3.

⁸³ A registrant is asset sensitive when the impact of the change in its assets is larger than the impact of the change in its liabilities after a change in prevailing interest rates. An asset-sensitive registrant’s earnings or net income increases when prevailing rates rise and declines when prevailing rates fall. A liability-sensitive registrant has a long-term asset maturity and repricing structure, relative to a shorter-term liability structure. For example, liability-sensitive registrants may have significant exposure to longer-term mortgage-related assets that reprice slowly while relying heavily on rate-sensitive funding sources that reprice more quickly.

⁸⁴ Guide 3 indicates that if the collection of data on a daily average basis would involve unwarranted or undue burden or expense, weekly or month end averages may be used, provided they are representative of the operations of the registrant. The basis used for presenting averages should be disclosed when not presented on a daily average basis.

⁸⁵ Item I.A of Guide 3 indicates that major categories of interest-earning assets should include loans, taxable investment securities, non-taxable investment securities, interest-bearing deposits in other banks, federal funds sold and securities purchased with agreements to resell, other short-term investments and other assets. Major categories of interest-bearing liabilities should include savings deposits, other time deposits, short-term debt, long-term debt and other liabilities.

⁸⁶ The interest earned and interest paid reported on the average balance sheet is based on the

⁷⁶ See discussion of proposed credit ratios disclosure in Section II.H.iv.

⁷⁷ For example, the Commission in 1980 eliminated the five-year Summary of Operations disclosure and adopted the Management’s Discussion and Analysis (“MD&A”) disclosure requirement for the periods covered by the financial statements. See *supra* note 62.

⁷⁸ Public Law 114–94, Sec. 72003, 129 Stat. 1312 (2015).

⁷⁹ FAST Act Modernization and Simplification of Regulation S–K. Release No. 33–10618 (Mar. 20, 2019) [84 FR 12674].

⁸⁰ The 1980 Guide 3 Release reduced the frequency of interim period Guide 3 disclosures by

of interest-earning asset and interest-bearing liability;

- Average yield for each major category of interest-earning asset;
- Average rate paid for each major category of interest-bearing liability;
- Average yield on all interest-earning assets;
- Average effective rate paid on all interest-bearing liabilities; and
- Net yield on interest-earning assets.⁸⁷

Item I.C of Guide 3 calls for a rate and volume analysis of interest income and interest expense for the last two fiscal years. This analysis is segregated by each major category of interest-earning asset and interest-bearing liability into amounts attributable to:

- Changes in volume (changes in volume multiplied by the old rate);
- Changes in rates (changes in rates multiplied by the old volume); and
- Changes in rates and volume (changes in rates multiplied by changes in volume).

Lastly, Instruction 5 to Item I states that if disclosure regarding foreign activities is required pursuant to General Instruction 7 of Guide 3,⁸⁸ the information required by paragraphs A, B and C of Item I should be further segregated between domestic and foreign activities for each significant category of assets and liabilities disclosed pursuant to Item I.A, as well as disclosure of the percentage of total assets and total liabilities attributable to foreign activities.

In the Request for Comment, the Commission asked whether the existing disclosures called for by Guide 3 provide investors with information material to an investment decision and whether the disclosures would otherwise overlap with information required by Commission rules, U.S. GAAP or IFRS.

amounts reported in the audited financial statements. Under U.S. GAAP and IFRS, reported interest expense may differ from the cash paid for interest during the period.

⁸⁷ Net yield is net interest earnings divided by total interest-earning assets, with net interest earnings equaling the difference between total interest earned and total interest paid.

⁸⁸ Instruction 7 of Guide 3 clarifies that foreign data need not be presented if the registrant is not required to make separate disclosures concerning its foreign activities pursuant to the test set forth in Rule 9-05 of Regulation S-X [17 CFR 210.9-05]. Rule 9-05 requires disclosure when foreign activities, which include loans and other revenue producing assets, exceed 10% of (1) assets, (2) revenue, (3) income (loss) before income tax expense, or (4) net income (loss).

ii. Comments on Distribution of Assets, Liabilities and Stockholders' Equity; Interest Rate and Interest Differential (Average Balance, Interest and Yield/Rate Analysis and Rate/Volume Analysis)

Many commenters stated that the existing distribution of "assets, liabilities and stockholders' equity; interest rate and interest differential" disclosures called for by Item I of Guide 3 may be of value to investors and others.⁸⁹ Most of these commenters indicated that Item I does not overlap in its entirety with Commission rules or U.S. GAAP.⁹⁰ However, one commenter stated that the presentation of the change in interest income and expense called for by Item I.C is duplicative of disclosures in MD&A and that the rate/volume analysis is not representative of how financial institutions currently manage interest rate risk and, thus, should be eliminated.⁹¹ Several commenters stated that the disclosures called for by Items I.A and I.B of Guide 3 are not specifically required by IFRS unless the period-end balances are not representative of activity during the period,⁹² and indicated that the disclosures called for by Item I.C are unique to Guide 3.⁹³

iii. Proposed Rule—Distribution of Assets, Liabilities and Stockholders' Equity; Interest Rate and Interest Differential (Average Balance, Interest and Yield/Rate Analysis and Rate/Volume Analysis)

Proposed Item 1402 of Regulation S-K would codify all of the disclosures currently called for by Item I of Guide 3 and further disaggregate the categories of interest-earning assets and interest-bearing liabilities required for disclosure. The new categories of interest-earning assets represent the separation of federal funds⁹⁴ sold and securities purchased with agreements to resell. The new categories of interest-bearing liabilities represent the separation of federal funds purchased and securities sold under agreements to

repurchase,⁹⁵ and the disclosure of commercial paper.⁹⁶ We believe these more disaggregated categories would provide investors with further detail of the drivers of the changes in net interest earnings and the sources of funding.⁹⁷ Furthermore, the proposed rules would also codify the instructions related to foreign activities contained in General Instruction 7 and Instruction 5 of Item I of Guide 3. We believe the distinction between foreign and domestic activities continues to provide relevant information regarding registrants' activities and can provide insight into drivers of changes in business focus as well as factors driving material changes in interest-earning assets and interest-bearing liabilities, and the related interest rates.

While some bank and savings and loan registrants manage interest rate risk using more complex models or systems than a rates and volume analysis, we believe this disclosure nevertheless provides material and comparable information to investors about the drivers of the changes in net interest earnings across registrants in a simple format. Furthermore, we do not believe that all bank and savings and loan registrants would provide these disclosures, in the same format and level of detail, under the existing principles-based MD&A⁹⁸ requirements to discuss whether material increases in net sales⁹⁹ are due to increases in

⁹⁵ ASC 860-10 defines a repurchase agreement as an arrangement under which a transferor (repo party) transfers a security to a transferee (repo counterparty or reverse party) in exchange for cash and concurrently agrees to reacquire the security at a future date for an amount equal to the cash exchanged plus a stipulated interest factor.

⁹⁶ Commercial paper consists of short-term promissory notes issued primarily by corporations. Maturities range up to 270 days but average about 30 days.

⁹⁷ Item VII of Guide 3 currently call for disclosures related to short-term borrowings and requires disclosure for (1) Federal funds purchased and securities sold under agreements to repurchase; (2) commercial paper; and (3) other short-term borrowings, to the extent the average balance of those categories meet or exceed 30 percent of stockholders' equity at the end of the period. As discussed in Section III.B below, we are proposing not to codify all of those disclosures. However, given that the proposed Item 1402 of Regulation S-K would require disaggregated disclosure for federal funds purchased, securities sold under agreements to repurchase, and commercial paper, including the average amount outstanding and the average effective rate paid on these liabilities, the proposed rule effectively would codify the disclosure currently called for by Item VII.3. We believe the average outstanding balance and yield of these short-term borrowing categories could be material for investors.

⁹⁸ See Item 303(a)(3)(iii) of Regulation S-K.

⁹⁹ For registrants preparing their income statement in accordance with Rule 9-04 of Regulation S-X, the closest equivalent to net sales is net interest income. Net interest income

⁸⁹ See letters from ABA; AmEx; CAQ; CH/SIFMA; Crowe; Deloitte; EY; KPMG; PNC; PwC; and RSM.

⁹⁰ See letters from ABA; AmEx; CAQ; Crowe; Deloitte; EY; KPMG; PNC; PwC; and RSM.

⁹¹ See letter from CH/SIFMA.

⁹² IFRS 7.35, IFRS 7.BC48 and IFRS 7.IG20 require this additional disclosure if period-end information is unrepresentative of a registrant's exposure during the period.

⁹³ See letters CAQ; EY; KPMG; and PwC.

⁹⁴ The federal funds rate is the interest rate that banks charge one another for borrowing funds overnight. Federal funds are excess funds that banks deposit with the Federal Reserve Bank for lending to other banks.

prices,¹⁰⁰ or increases in volume,¹⁰¹ or due to the introduction of new products or services. We believe the proposed level of detail for these disclosures strikes a balance between providing sufficient information to help investors understand the changes in interest earning income and expense from period to period, and excessive amount of information that could make it difficult to understand the material drivers. We are therefore proposing to codify these disclosures.

Request for Comment:

17. Should we codify, as proposed, all of the disclosures currently called for by Item I of Guide 3? If not, which disclosures should not be codified?

18. Should we codify, as proposed, the rate and volume analysis called for by Item I.C?

19. Are the additional categories of interest-earning assets and interest-bearing liabilities proposed for disclosure appropriate? Are there other categories for which disclosure should be required?

20. Should we codify, as proposed, General Instruction 7 of Guide 3 and General Instruction 5 of Item I regarding disclosure of foreign activities? Is the threshold for disclosure of foreign activities appropriate? If not, how should it be revised?

F. Investment Portfolio

i. Background

The investment portfolio disclosures currently called for by Item II of Guide 3 provide investors with information about the types of investments a registrant holds, the earnings potential of those investments, and their risk characteristics. Item II.A of Guide 3 calls for disclosure of the book value¹⁰² of investments by specified categories¹⁰³

represents interest revenue less interest expense. Net interest income is typically the primary component of sales revenue for financial institutions.

¹⁰⁰ For registrants preparing their income statement in accordance with Rule 9-04 of Regulation S-X, the closest equivalent to increases in prices is increases in interest rates.

¹⁰¹ For registrants preparing their income statement in accordance with Rule 9-04 of Regulation S-X, the closest equivalent to increases in volume is increases in net interest earning assets such as securities or loans.

¹⁰² At the time Guide 3 was issued, most securities were accounted for at cost with the exception of certain marketable securities, which were carried at the lower of aggregate cost or market value. The FASB issued FASB Statement No. 115, *Accounting for Certain Investments in Debt and Equity Securities*, an accounting standard creating three types of investment securities categories and the related accounting for each, in 1993.

¹⁰³ The specified categories are obligations of: (1) U.S. Treasury and other U.S. Government agencies and corporations; (2) States of the U.S. and political subdivisions; and (3) other securities including

as of the end of each reported period. Item II.B calls for a maturity analysis for each category of investment as of the end of the latest reported period, as well as the weighted average yield for each range of maturities.¹⁰⁴ When the aggregate book value of securities from a single issuer exceeds 10% of stockholders' equity as of the end of the latest reported period, Item II.C calls for disclosure of the name of the issuer and the aggregate book value and aggregate market value of those securities.

Subsequent to the last substantive revisions to Guide 3, the FASB and IASB have issued accounting standards that require disclosures that are similar to many of the investment portfolio disclosures called for by Guide 3. For example, U.S. GAAP requires disclosure, by major security type,¹⁰⁵ of the amortized cost basis, aggregate fair value and information about the contractual maturities¹⁰⁶ as of the date of the most recent balance sheet presented, among other disclosures, for both held-to-maturity ("HTM") and available-for-sale ("AFS") debt securities, which overlaps with the disclosures called for by Items II.A and II.B.¹⁰⁷ IFRS requires disclosure of the

bonds, notes, debentures and stock of business corporations, foreign governments and political subdivisions, intergovernmental agencies and the Federal Reserve Bank.

¹⁰⁴ The ranges of maturities are securities due (1) in one year or less, (2) between one and five years, (3) between five and ten years, and (4) after ten years.

¹⁰⁵ ASC 320-10-50-1B states that major security types should be based on the nature and risks of the security and that an entity should consider all of the following when considering whether disclosure for a particular security type is necessary: (a) Shared activity or business sector, (b) vintage, (c) geographic concentration, (d) credit quality, and (e) economic characteristics. Financial institutions, including banks, savings and loan associations, savings banks, credit unions, finance companies and insurance entities are required to include the nine securities categories listed in ASC 942-320-50-2, although additional types may also be necessary: (a) Equity securities, segregated by either (1) industry type or (2) registrant size, or (3) investment objective; (b) debt securities issued by U.S. Treasury and other U.S. government corporations and agencies; (c) debt securities issued by states of the United States and political subdivisions of the states; (d) debt securities issued by foreign governments; (e) corporate debt securities; (f) residential mortgage-backed securities; (g) commercial mortgage-backed securities; (h) collateralized debt obligations; and (i) other debt obligations.

¹⁰⁶ ASC 320-10-50-3 and ASC 320-10-50-5(f) both indicate that maturity information may be combined in appropriate groupings. Those paragraphs also both state that in complying with these requirements, financial institutions (see paragraph ASC 942-320-50-1) shall disclose the fair value and net carrying amount (if different from fair value) of debt securities on the basis of at least the following four maturity groupings: (a) Within one year, (b) after one year through five years, (c) after five years through ten years, and (d) after ten years.

¹⁰⁷ ASC 320-10-50-2 and ASC 320-10-50-5.

fair value and carrying value of each class¹⁰⁸ of a registrant's financial instruments, but only requires a maturity analysis of financial instruments held for managing liquidity risk if necessary for users to evaluate the nature and extent of liquidity risk.¹⁰⁹ Additionally, both U.S. GAAP¹¹⁰ and IFRS¹¹¹ require disclosure of significant concentrations of credit risk, which we believe substantially overlaps with the disclosure called for by Item II.C related to the issuer name and aggregate book value and market value of securities exceeding 10% of stockholders equity. Neither U.S. GAAP nor IFRS requires disclosure of the weighted average yield information for each maturity category called for by Item II.B.

In the Request for Comment, the Commission asked whether the investment portfolio disclosures called for by Guide 3 provide information material to an investment decision and whether Commission rules, U.S. GAAP, or IFRS require the same or similar information.

ii. Comments on the Investment Portfolio

Many commenters indicated that a substantial portion of the investment portfolio disclosures called for by Guide 3 overlap with Commission rules and U.S. GAAP.¹¹² Most of these commenters stated that the overlap

¹⁰⁸ IFRS 7.6 requires disclosures by classes of financing instruments, which are defined as "... classes that are appropriate to the nature of the information disclosed and that take into account the characteristics of those financial instruments."

¹⁰⁹ IFRS 7.25 and IFRS 7.B11E.

¹¹⁰ ASC 825-10-50-20 and 21 requires disclosure of significant concentrations of credit risk arising from all financial instruments, including information about the (shared) activity, region, or economic characteristic that identifies the concentration, the maximum amount of loss due to credit risk, that, based on the gross fair value of the financial instrument, the registrant would incur if the parties to the financial instruments that make up the concentration failed completely to perform according to the terms of the contracts and the collateral or other security, information related to any collateral and policies regarding master netting arrangements

¹¹¹ IFRS 7.34(a) requires disclosure of risks based on information provided internally to management and IFRS 7.34(c) requires disclosure of concentrations of risk if not apparent from the other disclosure requirements. IFRS 7.B8 states that disclosure of concentration of credit risk should include: (a) A description of how management determines concentrations, (b) a description of the shared characteristic that identifies each concentration (e.g. counterparty, geographical area, currency or market), and, (c) the amount of the risk exposure associated with all financial instruments sharing that characteristic.

¹¹² See letters from ABA; AmEx; BerryDunn; CAQ; CH/SIFMA; Crowe; Deloitte; EY; KPMG; MFG; MUFG; PNC; and PwC.

should be eliminated,¹¹³ while one indicated, given the substantial overlap, that Guide 3 should be eliminated in its entirety.¹¹⁴

Many commenters noted that the book value of investments disclosures called for by Item II.A of Guide 3 overlap with U.S. GAAP.¹¹⁵ Most of these commenters also stated that the maturity disclosure called for by Item II.B overlaps with U.S. GAAP.¹¹⁶ By contrast, most of these commenters indicated that the weighted average yield disclosure called for by Item II.B is not redundant with U.S. GAAP requirements.¹¹⁷ Two of these commenters further stated that the weighted average yield disclosure may be of value to investors and others.¹¹⁸ Regarding the disclosures called for by Item III.C relating to investments exceeding 10% of stockholders' equity, several commenters characterized this disclosure as unique to Guide 3.¹¹⁹ However, one commenter¹²⁰ said the disclosure is largely duplicative of the U.S. GAAP significant concentrations of credit risk arising from financial instruments disclosures.¹²¹ Lastly, a few commenters noted that there is some overlap between the investment portfolio disclosures called for by Guide 3 and IFRS disclosure requirements, and stated that the overlap should be eliminated.¹²²

iii. Proposed Rule—Investment Portfolio

The proposed rules would not codify the following disclosures in Item II: (a) Book value information; (b) the maturity analysis of book value information; and (c) the disclosures related to investments exceeding 10% of stockholders' equity. We are proposing not to codify these disclosures because they substantially overlap with U.S. GAAP and IFRS disclosure requirements. Therefore, the proposed rules should not result in the loss of information material to an investment decision. We also note that this proposal is generally consistent with the Commission's recent efforts to

streamline its disclosure requirements when they overlap with reasonably similar U.S. GAAP or IFRS disclosure requirements.¹²³

Proposed Item 1403 of Regulation S–K would codify the weighted average yield disclosure for each range of maturities by category of debt securities currently called for by Item II.B, with a change to the categories presented. Specifically, the categories of debt securities in the proposed rules would be the categories required to be disclosed in the registrant's U.S. GAAP¹²⁴ or IFRS¹²⁵ financial statements. The proposed rules would only apply to debt securities that are not carried at fair value through earnings. Guide 3 calls for disclosures about both debt and equity securities and does not specifically exclude debt securities that are carried at fair value through earnings.¹²⁶ We believe this change is appropriate given that maturity and yield disclosures are not applicable to equity securities. Furthermore, we believe the weighted average yield disclosure is most relevant for debt securities that are not carried at fair value through earnings because these debt securities are often held longer than debt securities carried at fair value through the income statement (such as trading securities),¹²⁷ and thus the weighted average yield and maturity information would appear to be more

meaningful for these securities.¹²⁸ We believe the proposed weighted average yield disclosure does not overlap with U.S. GAAP or IFRS requirements and provides investors with information to better evaluate the performance of the portfolio. Furthermore, revising the categories of debt securities to conform to the categories presented in accordance with U.S. GAAP or IFRS would enhance the consistency of the investment disclosures in a registrant's filing and increase their usefulness to investors. This also would ease the preparation burden on registrants because they would no longer have to present separate or additional categories between the Guide 3 disclosures and the financial statements.

Request for Comment:

21. The proposed rules would not codify the investment portfolio book value disclosures currently called for by Item II.A. Would this result in the loss of information material to an investment decision not readily available elsewhere in Commission filings? If so, what material information would be lost and how should we codify it?

22. The proposed rules would not codify the maturity analysis of book value disclosures called for by Item II.B, but would codify the weighted average yield for each range of maturities. Would this result in the loss of information material to an investment decision not readily available elsewhere in Commission filings? Would the more principles-based IFRS maturity disclosure¹²⁹ result in the loss of material information about IFRS registrants, or would IFRS registrants within the scope of the proposed rules continue to provide the maturity analysis for debt securities absent a specific requirement? Are there additional disclosures related to a maturity analysis that we should codify to avoid the potential loss of information material to an investment decision?

23. Should we codify, as proposed, the weighted average yield disclosure for each range of maturities in Item II.B of Guide 3 for debt securities not carried at fair value through earnings? Should the proposed rules also require this disclosure for debt securities carried at

¹²³ See *Disclosure Update and Simplification*, Release No. 33–10532 (Aug. 17, 2018) [83 FR 50148].

¹²⁴ See *supra* note 105.

¹²⁵ See *supra* note 108.

¹²⁶ Guide 3 was last amended in 1986 and at that time, most investment securities were accounted for at cost, except for certain marketable securities. As such, the Guide 3 investment disclosures were applicable to most investment securities and thus it was unnecessary to limit the disclosure by type or accounting model of investment. SFAS 115 “*Accounting for Certain Investments and Debt and Equity Securities*” was issued 1993 and created three categories of investment securities: HTM, AFS, and trading securities. These same categories exist in U.S. GAAP today (ASC 320–10–25–1). Of these categories, only trading securities are carried at fair value through earnings and thus would not be subject to the proposed rule. However, debt securities classified as HTM and AFS would be subject to the proposed rule. Additionally, U.S. GAAP (ASC 825–10–15–4) allows registrants to elect to measure certain eligible items, e.g., investment securities, at fair value, with changes in fair value recognized through earnings. Thus, where a registrant made this election to measure debt securities at fair value through earnings, those debt securities would also not be subject to the proposed rule. For IFRS registrants, only debt securities that are subsequently measured at amortized cost, or fair value through other comprehensive income, would be subject to the proposed rule.

¹²⁷ ASC 320–10–25–1(a) states that if a security is acquired with the intent of selling it within hours or days, the security shall be classified as trading. However, at acquisition, an entity is not precluded from classifying as trading a security it plans to hold for a longer period.

¹²⁸ ASC 320–10–50 only requires information about the contractual maturities of securities that are classified as either HTM or AFS, and does not require similar disclosure for securities classified as trading.

¹²⁹ IFRS 7.B11E requires a maturity analysis of financial instruments that registrants hold for managing liquidity risk *if necessary* for users to evaluate the nature and extent of liquidity risk; whereas U.S. GAAP requires contractual maturities disclosure for HTM and AFS debt securities without an “if necessary” concept.

¹¹³ See letters from ABA; AmEx; BerryDunn; CAQ; CH/SIFMA; Crowe; Deloitte; EY; KPMG; MUFG; and PwC.

¹¹⁴ See letter from PNC.

¹¹⁵ See letters from ABA; AmEx; BerryDunn; CAQ; CH/SIFMA; EY; KPMG; MFG; MUFG; PNC; and PwC.

¹¹⁶ See letters from ABA; AmEx; BerryDunn; CAQ; CH/SIFMA; EY; KPMG; MFG; PNC; and PwC.

¹¹⁷ See letters from ABA; AmEx; BerryDunn; CAQ; CH/SIFMA; EY; KPMG; PNC; and PwC.

¹¹⁸ See letters from ABA and AmEx.

¹¹⁹ See letters from CAQ; EY; KPMG; PNC; and PwC.

¹²⁰ See letter from CH/SIFMA.

¹²¹ See *supra* note 110.

¹²² See letters from CAQ; EY; KPMG; and PwC.

fair value through earnings, including trading securities or debt securities where the fair value option is elected? If so, how would this information be used by investors?

24. The proposed weighted average yield disclosure would only apply to debt securities. Should this proposed rule require disclosures related to equity securities? If so, what additional disclosures should be required? Would this information be available without undue cost or burden?

25. Should the categories for the weighted average yield disclosure in the proposed rules be conformed to those presented in the U.S. GAAP or IFRS financial statements as proposed? Given that U.S. GAAP and IFRS do not require the same categories to be disclosed,¹³⁰ would the lack of standardization of the categories disclosed among registrants result in confusion for investors? If so, how should we revise the proposed rules to avoid such confusion? For example, should we codify the Guide 3 investment categories?

26. The proposed rules would not codify disclosure of the name of any issuer and aggregate book value and market value of the securities of such issuer that exceeds 10% of stockholders' equity as called for in Item II.C of Guide 3. Would this result in the loss of information material to an investment decision in light of the fact that U.S. GAAP¹³¹ and IFRS¹³² require reasonably similar disclosure about significant concentrations of credit risk? Would the "significant" threshold in U.S. GAAP and IFRS likely result in the same or nearly the same population of securities being disclosed as the current 10% bright-line threshold in Item II.C. of Guide 3?

27. Is there additional information material to an investment decision related to investment securities that should be disclosed? If so, what information should be disclosed and how would this information be used by investors? Would there be a significant cost or burden to registrants in providing this additional information?

G. Loan Portfolio

i. Background

A registrant's loan portfolio may consist of various categories of loans, including consumer loans, such as

residential real estate, credit card and auto loans, as well as commercial loans, such as commercial real estate, lease financings, and wholesale loans. Loan portfolio compositions differ considerably among registrants because lending activities are influenced by many factors, including the type of organization, management's objectives and philosophies about diversification and credit risk management, the availability of funds, credit demands, interest rate margins and regulations, among others. Different types of loans have different characteristics. For example, commercial loans tend to have shorter maturities than residential real estate loans and are more likely to have balloon payments at maturity. Further, the composition of a registrant's loan portfolio may vary substantially over time due to factors such as changes in regulation or management strategy. For example, if management expects interest rates to rise, it may seek to increase the registrant's holdings of variable-rate mortgages.

The loan portfolio disclosures in Item III of Guide 3 provide investors with information about the registrant's loan investment policies and lending practices, including: (1) The types of lending in which a registrant engages; (2) the nature of credit risk inherent in the loan portfolio, including types of loans and portfolio maturity; (3) indications of loan collectibility risks; and (4) portfolio concentrations.

Item III.A of Guide 3 calls for disclosure of the amount of loans in specified categories¹³³ as of the end of each period. Item III.B calls for a maturity analysis¹³⁴ for each category of loans as of the end of the latest reported period, along with a separate presentation of all loans due after one year with fixed interest rates versus those with floating or adjustable interest rates.¹³⁵ Item III.C.1 calls for disclosure

of the aggregate amount of domestic and foreign¹³⁶ loans in each of the following categories:

- loans accounted for on a nonaccrual basis;¹³⁷
- loans accruing but contractually past due 90 days or more as to principal or interest payments; and
- loans classified as troubled debt restructurings ("TDRs")¹³⁸ that are not otherwise disclosed as being on nonaccrual status or past due 90 days or more.¹³⁹

Item III.C.2 calls for descriptions of the nature and extent of any potential problem loans¹⁴⁰ at the end of the most recent reported period and the policy for placing loans on nonaccrual status. The instructions to Item III.C.2 call for disclosure of the foregone interest income and recognized interest income for nonaccrual loans and TDRs during the period.

If material amounts of the loans described above are outstanding to borrowers in any foreign country, Guide 3 states that each country should be identified and that the amounts

maturity should be revised as appropriate and the rollover policy should be briefly discussed.

¹³⁶ See *supra* note 88.

¹³⁷ The term "nonaccrual" is not defined in U.S. GAAP or Commission rules. U.S. banking agencies require their regulated financial institutions to file publicly available Consolidated Reports of Condition and Income (Call Reports). Call Report instructions generally require an asset to be reported as nonaccrual if: (1) It is maintained on a cash basis because of deterioration in the financial condition of the borrower, (2) payment in full of principal or interest is not expected, or (3) principal or interest has been in default for a period of 90 days or more unless the asset is both well secured and in the process of collection. Certain loans, such as consumer loans and purchased credit-impaired loans, are not placed on nonaccrual status as discussed in the nonaccrual definitions section of Call Report Schedule RC-N-2. Guide 3 also currently calls for and U.S. GAAP also requires disclosure of the registrant's nonaccrual policy.

¹³⁸ Under U.S. GAAP, a restructuring of a debt is a TDR if the creditor, for economic or legal reasons related to the debtor's financial difficulties, grants a concession to the debtor that it would not otherwise consider. See ASC 310-40-15-5.

¹³⁹ Guide 3 originally called for disclosure of nonperforming loans and a discussion of the risk elements associated with those loans for which there were serious doubts as to the ability of the borrowers to comply with the present loan payment terms. The current Item III.C.1 disclosures reflect amendments made in 1980 and 1983 to promote consistency with bank regulatory disclosure requirements and comparability among registrants. See 1980 Guide 3 Release, *supra* note 8; and 1983 Guide 3 Releases, *supra* note 8.

¹⁴⁰ Potential problem loans are loans not disclosed pursuant to Item III.C.1, except where known information about possible credit problems of borrowers (which are not related to transfer risk inherent in cross-border lending activities) causes management to have serious doubts as to the ability of the borrowers to comply with the present loan repayment terms and which may result in disclosure of the loans pursuant to Item III.C.1.

¹³⁰ U.S. GAAP and IFRS have a principles-based approach for determining the categories of investments to be disclosed. See *supra* notes 105 and 108. Thus, both U.S. GAAP and IFRS registrants will make judgments about the categories to be disclosed and there likely will not be consistency amongst all registrants.

¹³¹ See *supra* note 110.

¹³² See *supra* note 111.

¹³³ The specified categories are, for domestic loans: (1) Commercial, financial and agricultural, (2) real estate—construction, (3) real estate—mortgage, (4) installment loans to individuals, and (5) lease financing, and for foreign loans: (6) governments and official institutions, (7) banks and other financial institutions, (8) commercial and industrial, and (9) other. The instructions to Item III.A indicate that registrants may present a series of loan categories other than those specified if considered a more appropriate presentation.

¹³⁴ The range of maturities are loans due (1) in one year or less, (2) between one and five years, (3) between five and ten years, and (4) after ten years. This information need not be presented for mortgage real estate loans, installment loans to individuals and lease financing. Foreign loan categories may be aggregated.

¹³⁵ Instruction 3 to Item III.B states that determinations should be based upon contract terms. However, such terms may vary due to the registrant's "rollover policy," in which case the

outstanding should be quantified.¹⁴¹ Item III.C.3 calls for disclosure of the aggregate amount of cross-border outstandings¹⁴² to borrowers in each foreign country where they exceed 1% of total assets.¹⁴³ These disclosures should be provided by category of foreign borrower specified by Item III.A. Where current conditions in a foreign country give rise to liquidity problems that are expected to have a material impact on the timely repayment of principal or interest on the country's private or public sector debt, Guide 3 calls for:

- A description of the nature and impact of the developments;
- An analysis of the changes in aggregate outstandings to borrowers in each country for the most recent reported period;
- Quantitative information about interest income and interest collected during the most recent period; and
- Quantitative information about any outstandings that may be subject to a restructuring.

Item III.C.4 calls for disclosure as of the end of the most recent reported period of any concentration of loans exceeding 10% of total loans not otherwise disclosed as a category of loans pursuant to Item III.A.¹⁴⁴ Item III.D calls for disclosure as of the end of the most recent reported period of the nature and amounts of any other interest-bearing assets that would be disclosed under Item III.C.1 or III.C.2 if those assets were loans.

Subsequent to the last substantive revisions to Guide 3, the FASB and IASB have issued accounting standards that have resulted in similar, and sometimes overlapping, loan disclosure. For example, U.S. GAAP requires major

categories of loans to be presented separately either on the balance sheet or in the financial statement footnotes,¹⁴⁵ similar to the disclosure called for by Item III.A of Guide 3. U.S. GAAP also requires disclosure, by class of financing receivable,¹⁴⁶ of nearly all of the same information related to loans accounted for as nonaccrual and accruing loans contractually past due 90 days or more, as specified by Item III.C.1(a) and (b) and Item III.C.3 of Guide 3.¹⁴⁷ There are two main differences between the disclosures called for by the Instructions to Item III.C.1 and U.S. GAAP. The first is that U.S. GAAP does not require disclosure of the amount of gross interest income that would have been recorded during the period for the loans classified as nonaccrual or TDRs if they had been current in accordance with their original terms and had been outstanding throughout the period or since origination. The second difference is that U.S. GAAP does not explicitly require disclosure separately between domestic and foreign nonaccrual loans, accruing loans contractually past due 90 days or more and TDRs. Furthermore, U.S. GAAP requires information about TDRs, although there is a difference between the U.S. GAAP disclosures and those called for by Item III.C.1(c).¹⁴⁸ Specifically, U.S. GAAP only requires disclosure of TDRs occurring during each period that an income statement is presented and does not provide a cumulative level of TDRs existing on the balance sheet, similar to the disclosure called for by Item III.C.1(c). However, U.S. GAAP requires additional TDR

disclosures beyond those called for by Guide 3.¹⁴⁹

In addition, while certain of the disclosures currently called for by Guide 3 are not completely duplicative of U.S. GAAP requirements, we believe that in certain cases U.S. GAAP requires reasonably similar disclosures. For example, while there is not a specific disclosure requirement in U.S. GAAP analogous to the potential problem loans disclosure called for by Item III.C.2, U.S. GAAP requires disclosure of credit quality indicators¹⁵⁰ by class of financing receivable.¹⁵¹ Additionally, Item 303 of Regulation S-K¹⁵² requires a discussion of known trends and uncertainties in MD&A that may help supplement the U.S. GAAP disclosures.

¹⁴⁹ ASC 310–10–50–33 requires disclosure, by class of financing receivable, of qualitative and quantitative information about how the financing receivables were modified, the financial effects of the modifications, and by portfolio segment, qualitative information about how such modifications were factored into the determination of the allowance for credit losses. ASC 310–10–50–34 requires, by class of financing receivable, qualitative and quantitative information about TDRs that were modified within the previous 12 months and for which there was a payment default occurring during the period, including the types of financing receivables that defaulted, the amount of financing receivables that defaulted, and by portfolio segment, qualitative information about how such defaults are factored into the determination of the allowance for credit losses.

¹⁵⁰ A credit quality indicator is defined as a statistic about the credit quality of financing receivables. ASC 310–10–55–19 provides the following examples of credit quality indicators: Consumer credit risk scores, credit-rating-agency ratings, a registrant's internal credit risk grades, loan-to-value ratios, collateral, collection experience, or other internal metrics.

¹⁵¹ ASC 310–10–50–29 and 30 requires a description of the credit quality indicator, the recorded investment in financing receivables by credit quality indicator, the date or range of dates in which the information was updated for each credit quality indicator, and qualitative information on how internal risk ratings, if disclosed, relate to the likelihood of loss.

¹⁵² Item 303(a) of Regulation S-K requires a registrant to discuss its financial condition, changes in financial condition, and results of operations. Instruction 3 to paragraph 303(a) states that the discussion should focus on the material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. The instruction further states that it would include descriptions and amounts of (A) matters that would have an impact on future operations and have not had an impact in the past, and (B) matters that have had an impact on reported operations and are not expected to have an impact upon future operations.

Similarly, for foreign private issuers, Item 5.D. of Form 20-F requires a foreign private issuer to discuss, for at least the current financial year, any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the company's net sales or revenues income from continuing operations, profitability, liquidity, or capital resources, or that would cause reported financial information not necessarily to be indicative of future operating results or financial condition.

¹⁴¹ For purposes of determining the amount of outstandings to be reported, loans made to or deposits placed with a branch of a foreign bank located outside the foreign bank's home country should be considered as loans to or deposits with the foreign bank.

¹⁴² Cross-border outstandings are defined as loans (including accrued interest), acceptances, interest-bearing deposits with other banks, other interest-bearing investments and any other monetary assets which are denominated in dollars or other nonlocal currency. The foreign outstandings disclosure was added in 1983 to consolidate all risk-related disclosure guidelines in one section of Guide 3 and to emphasize the risks present in cross-border lending activities. See 1983 Guide 3 Releases, *supra* note 8.

¹⁴³ For countries whose outstandings are between 0.75% and 1% of total assets, the names of the countries and the aggregate amount of outstandings attributable to them should be disclosed.

¹⁴⁴ Loan concentrations are considered to exist when there are amounts loaned to multiple borrowers engaged in similar activities which would cause them to be similarly affected by economic or other conditions. For example, loans may be concentrated in a specific industry, such as the energy sector, and exceed the 10% threshold.

¹⁴⁵ ASC 310–10–45–2 and ASC 310–10–50–3.

¹⁴⁶ U.S. GAAP uses the term “financing receivable,” and a loan is considered a type of financing receivable. A class of financing receivable is defined as a group of financing receivables determined on the basis of all of the following: (a) Initial measurement attribute (for example, amortized cost), (b) risk characteristics of the financing receivable, and (c) a registrant's method for monitoring and assessing credit risk.

¹⁴⁷ ASC 310–10–50–6 requires disclosure of the policy for placing financing receivables on nonaccrual, as well as the policy for resuming accrual of interest. ASC 310–10–50–7 requires disclosure of nonaccrual loans and loans 90 days or more past due and still accruing by class of financing receivable. ASC 310–10–50–7A requires disclosure of an analysis of the age of the recorded investment in financing receivables at the end of the reporting period that are past due, as determined by the entity's policy. ASC 310–10–50–15 requires disclosure of impaired loans and of the related amount of interest income that was recognized during the time the loans were impaired.

¹⁴⁸ ASC 310–10–50–33 requires disclosure, by class of financing receivable, of quantitative and qualitative information about TDRs occurring during the period.

When considered together, we believe these U.S. GAAP and MD&A disclosures allow an investor to evaluate loans where management has doubts about the borrowers' ability to comply with loan repayment terms. Additionally, while U.S. GAAP does not require the exact disclosures called for by Item III.C.3 regarding cross-border outstanding loans to countries where conditions give rise to liquidity problems expected to have a material impact on repayment of principal or interest, or by Item III.C.4 regarding other concentrations of loans, we believe the combination of certain U.S. GAAP¹⁵³ and Regulation S-X¹⁵⁴ disclosure requirements call for reasonably similar information.

Lastly, while U.S. GAAP does not require specific disclosure related to other interest bearing assets that would be required to be disclosed by Item III.C.1 or Item C.2 if they were loans, it does require disclosure of nonaccrual and past due financing receivables, including items such as credit cards, notes receivables and trade receivables with maturities of more than one year, consistent with the disclosures currently called for by Item III.D of Guide 3.¹⁵⁵ When it takes effect, the New Credit Loss Standard¹⁵⁶ will increase the credit quality-related disclosures for loans. For example, it will require registrants to present credit quality indicator disclosures by year of origination and require additional disclosures about loans on nonaccrual status.¹⁵⁷

¹⁵³ See *supra* note 110.

¹⁵⁴ Rule 9-05 requires disclosure when foreign activities, which include loans and other revenue producing assets, exceed 10% of (1) assets, (2) revenue, (3) income (loss) before income tax expense, or (4) net income (loss).

¹⁵⁵ ASC 310-10-50-5B.

¹⁵⁶ The FASB has an ongoing project to reconsider the effective dates for major standards, including the New Credit Loss Standard. As currently issued, the New Credit Loss Standard is effective for public business entities that meet the definition of an SEC filer for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years. Entities that are not public business entities are provided a delayed effective date of two years. Thus, an EGC that chooses to elect the private company timeline for adopting new or revised accounting standards may defer adopting the New Credit Loss Standard until their fiscal year beginning after December 15, 2021. As part of its ongoing project, available at: https://www.fasb.org/jsp/FASB/FASBContent_C/ProjectUpdateExpandPage&cid=1176173010144, the FASB has proposed to amend the New Credit Loss Standard effective dates so that SEC filers that are eligible to be a SRC, as defined by the SEC, and entities that are not SEC filers would be provided a delayed effective date of three years. Thus, SRCs, EGCs and non-SEC filers would be able to elect to defer adopting the New Credit Loss Standard until their fiscal year beginning after December 15, 2022.

¹⁵⁷ ASC 326-20-50-6 and ASC 326-20-50-16 and 17.

IFRS often requires similar loan disclosure to that called for by Item III of Guide 3, as follows:

- IFRS requires the disclosure of the carrying value (and fair value) of each class of financial instruments, similar to the disclosure called for by Item III.A.¹⁵⁸

- IFRS requires disclosure of the credit risk management process, credit exposure, and how changes in the gross carrying amount of financial instruments contributed to the changes in the loss allowance, which is similar to the types of information called for by Items III.C.1 and 2.¹⁵⁹ Additionally, Item 5.D of Form 20-F¹⁶⁰ requires a discussion of known trends and uncertainties that may supplement the IFRS disclosures. When considered together, we believe these disclosures allow an investor to evaluate loans where management has doubts about the borrowers' ability to comply with repayment terms. The nonaccrual and TDR disclosures called for by Items III.C.1 and 2 are not applicable under IFRS because, unlike in U.S. GAAP, there is no concept of TDRs or nonaccrual loans in IFRS. However, IFRS does require disclosure related to the nature and effect of modifications of contractual cash flows on financial instruments that have not resulted in derecognition from the balance sheet.¹⁶¹

- IFRS requires disclosure about significant concentrations of credit risk, which is similar to the types of disclosures called for by Item III.C.3 related to cross-border outstanding loans or to countries where conditions give rise to liquidity problems expected to have a material impact on repayment of principal or interest, the Item III.C.4 disclosure regarding other concentrations of loans, and the Item III.D disclosure related to other interest bearing assets.¹⁶²

In the Request for Comment, the Commission asked whether Commission rules, U.S. GAAP or IFRS require the same or similar information as called for by Guide 3 and whether the disclosures provide investors with information material to an investment decision.

ii. Comments on the Loan Portfolio

Many commenters indicated that substantial portions of the Item III disclosures overlap with U.S. GAAP or Commission rules.¹⁶³ For example, a number of commenters stated that the

disclosures called for by Item III.A—Types of Loans—overlap with U.S. GAAP¹⁶⁴ and that the disclosures called for by Item III.C.1 related to nonaccrual, past due and restructured loans overlap with U.S. GAAP.¹⁶⁵ One commenter noted that, while U.S. GAAP requires similar, but not identical, information, its requirements are more extensive than the Guide 3 disclosures.¹⁶⁶

Several commenters indicated that U.S. GAAP addresses the objective of the potential problem loans disclosure called for by Item III.C.2.¹⁶⁷ Additionally, a few commenters indicated that while U.S. GAAP may not require the same information about potential problem loans, this disclosure would appear to be more appropriate for MD&A.¹⁶⁸ These commenters also noted that the relevance of problem loans could change significantly upon the effectiveness of the New Credit Loss Standard. Several commenters stated that the disclosure related to foreign outstandings called for by Item III.C.3 Risk Elements and the loan concentrations disclosure called for by Item III.C.4 are similar to disclosures required by U.S. GAAP.¹⁶⁹

A few commenters stated that the disclosures called for by Item III.D relating to other (*i.e.*, non-loan) interest bearing assets, while not explicitly required by U.S. GAAP, likely overlap with areas of U.S. GAAP that address credit risk disclosures for financial instruments.¹⁷⁰ However, two other commenters thought that this disclosure is only called for by Item III.D of Guide 3 and is not required by U.S. GAAP and “may be useful” to some investors.¹⁷¹ While commenter feedback on this point was mixed, no commenter pointed to specific material information that would be lost if Item III.D disclosures were not codified.

Several commenters did not view the maturity and sensitivities to changes in interest rate disclosures called for by Item III.B as redundant with Commission rules or U.S. GAAP,¹⁷² and a few of these commenters said the information “may be useful” to some

¹⁶⁴ See letters from BerryDunn; CAQ; CH/SIFMA; EY; KPMG; MFG; MUFG; PNC; and PwC.

¹⁶⁵ See letters from BerryDunn; CAQ; CH/SIFMA; Deloitte; EY; KPMG; MFG; MUFG; PNC; and PwC.

¹⁶⁶ See letter from Deloitte.

¹⁶⁷ See letters from CAQ; CH/SIFMA; EY; KPMG; MFG; PNC; and PwC.

¹⁶⁸ See letters from ABA and AMEX.

¹⁶⁹ See letters from CAQ; CH/SIFMA; Deloitte; EY; KPMG; MFG; PNC; and PwC.

¹⁷⁰ See letters from CAQ; EY; KPMG; PNC; and PwC.

¹⁷¹ See letters from ABA and AmEx.

¹⁷² See letters from ABA; AmEx; BerryDunn; CAQ; CH/SIFMA; KPMG; PNC; and PwC.

¹⁵⁸ See *supra* note 108.

¹⁵⁹ IFRS 7.35I, IFRS 7.IG20B, and IFRS 7.35M.

¹⁶⁰ See *supra* note 152.

¹⁶¹ IFRS 7.35J.

¹⁶² See *supra* note 111.

¹⁶³ See letters from ABA; AmEx; BerryDunn; CAQ; CBA; CH/SIFMA; Crowe; Deloitte; EY; KPMG; ICBA; MFG; MUFG; PNC; PwC; and RSM.

investors.¹⁷³ However, a number of these commenters noted that Item 305 of Regulation S-K—Quantitative and Qualitative Disclosures about Market Risk, requires similar disclosure to that called for by Guide 3.¹⁷⁴

Several commenters indicated that there is some overlap between the disclosures called for by Item III of Guide 3 and IFRS.¹⁷⁵ For example, several commenters noted that IFRS¹⁷⁶ calls for disclosure of financial instruments by class, but acknowledged that the classes disclosed would require judgment by management versus the prescriptive categories in Guide 3.¹⁷⁷ Commenters also highlighted certain areas where there are potential differences. For example, several commenters said that IFRS does not align with the maturities and sensitivities to changes in interest rate disclosures called for by Item III.B because IFRS includes a threshold that must be met before disclosure is required.¹⁷⁸ Specifically, IFRS requires disclosure of a maturity analysis of financial instruments a registrant holds for managing liquidity risk if that information is necessary to enable users of the financial statements to evaluate the nature and extent of liquidity risk.¹⁷⁹ Additionally, many commenters stated that IFRS and Guide 3 differ in the treatment and presentation of past due and nonaccrual/impaired loans, given that there is no concept of nonaccrual or TDRs under IFRS.¹⁸⁰ Lastly, several commenters stated that there is no specific disclosure requirement under IFRS similar to that called for by Items III.C.2–C.4 and III.D.¹⁸¹ However, these commenters also indicated that the disclosure framework under IFRS is consistent with the Guide 3 instructions and that any significant concentration risk (by class of financial instrument) should be disclosed under IFRS.

iii. Proposed Rule—Loan Portfolio

The proposed rules would not include the loan category disclosure currently called for by Item III.A of Guide 3, the loan portfolio risk elements disclosure called for by Item III.C and the other interest bearing assets disclosure called

for by Item III.D,¹⁸² as we believe reasonably similar disclosures are required by Commission rules, U.S. GAAP, or IFRS as discussed in more detail above. Proposed Item 1404 of Regulation S-K would codify the maturity by loan category disclosure currently called for by Item III.B, but the loan categories may increase as it would be the categories required to be disclosed in the registrant's U.S. GAAP¹⁸³ or IFRS¹⁸⁴ financial statements. Existing Guide 3 provided latitude to registrants to use loan categories outside of those identified in Guide 3 "if considered a more appropriate presentation." Therefore, we believe some registrants may already be using the U.S. GAAP or IFRS loan categories for the Guide 3 disclosures. Additionally, the proposed rules would codify the existing Guide 3 instruction stating that the determination of maturities should be based on contractual terms. We also propose to clarify the "rollover policy" for these disclosures by stating that, to the extent non-contractual rollovers or extensions are included for purposes of measuring the allowance for credit losses under U.S. GAAP or IFRS, such non-contractual rollovers or extensions should be considered for purposes of the maturities classification and that the policy should be briefly disclosed. This clarification may represent a change from existing Guide 3 application, which provides that the determination of maturities should be revised as appropriate to comply with the registrant's "rollover policy" and makes no reference to U.S. GAAP or IFRS.¹⁸⁵ The proposed rules also would codify the disclosure currently called for by Item III.B of the total amount of loans due after one year that have (a) predetermined interest rates and (b) floating or adjustable interest rates and would specify that this disclosure should also be segregated by the loan categories disclosed in the registrant's U.S. GAAP or IFRS financial statements. Item III.B currently permits the exclusion of certain loan categories (real estate-mortgage, installment loans to individuals and lease financing) and the aggregation of other loan categories (foreign loans to governments and official institutions, banks and other financial institutions, commercial and industrial and other loans) from the

maturity and sensitivity to changes in interest rates disclosure. The proposed rule would not provide any exclusion of loan categories, or permit the aggregation of any loan categories, for purposes of this disclosure. We are not aware of any reason why the proposed disclosure would be less relevant or useful for these specific loan categories, nor do we think the information would be any more burdensome for registrants to produce, or for investors to evaluate, for these categories.

The proposed rules would codify the Guide 3 loan disclosures that we believe elicit information material to an investment decision and do not overlap with other existing disclosure requirements or principles. Furthermore, we believe revising the current loan categories to conform to the loan categories required by U.S. GAAP or IFRS would promote consistency of loan portfolio disclosures throughout a registrant's filing. Lastly, we believe that specifically linking the maturities guidance to whether the rollovers or extensions are included for purposes of measuring the allowance for credit losses under U.S. GAAP or IFRS promotes comparability and consistency amongst U.S. GAAP or IFRS registrants and provides a more objective basis to make the maturities determination. The proposed changes would thereby assist investors in evaluating the disclosures while also reducing the burdens on registrants to prepare such disclosures because registrants should be able to derive this information from their existing books and records.

Request for Comment:

28. The proposed rules would not codify the loan portfolio disclosures currently called for by Item III.A of Guide 3. Would this result in the loss of information material to an investment decision not readily available from other publicly available disclosures? If so, what material information would be lost and how should we modify the proposed rules to preserve this information?

29. Should we codify, as proposed, the disclosures currently called for by Item III.B related to maturities and sensitivities to changes in interest rates? Are the maturity categories in the proposed rules appropriate? If not, what maturity categories should be required?

30. Should we, as proposed, require that maturity category determinations take into account non-contractual rollovers or extensions that are included for purposes of measuring the allowance for credit losses under U.S. GAAP or IFRS? If not, what approach should be required?

¹⁷³ See letters from ABA; AmEx; and CH/SIFMA.

¹⁷⁴ See letters from CAQ; EY; KPMG; PNC; and PwC.

¹⁷⁵ See letters from CAQ; EY; KPMG; and PwC.

¹⁷⁶ See *supra* note 108.

¹⁷⁷ See letters from CAQ; EY; KPMG; and PwC.

¹⁷⁸ *Id.*

¹⁷⁹ See *supra* note 129.

¹⁸⁰ See letters from CAQ; CBA; CH/SIFMA; Deloitte; EY; KPMG; and PwC.

¹⁸¹ See letters from CAQ; EY; KPMG; and PwC.

¹⁸² The proposed rule also deletes the loan presentation disclosure required under Rule 9–03(7)(a)–(c) of Regulation S-X. See Section IV below.

¹⁸³ See *supra* notes 145 and 146.

¹⁸⁴ See *supra* note 108.

¹⁸⁵ See *supra* note 135.

31. Should the loan categories for the maturities and sensitivities to changes in interest rate disclosures in the proposed rules be conformed to those presented in the registrant's U.S. GAAP or IFRS financial statements as proposed? Given that U.S. GAAP and IFRS do not require the same categories to be disclosed,¹⁸⁶ would the lack of standardization of the categories disclosed between registrants applying U.S. GAAP ("U.S. GAAP registrants") and IFRS registrants result in confusion for investors? If so, how should we revise the proposed rules to avoid such confusion? For example, should we codify the Guide 3 loan categories?

32. Unlike current Guide 3, the proposed rules would require disclosure for loans due after one year with predetermined interest rates and floating or adjustable interest rate for all loan categories, and not exclude or aggregate certain loan categories.¹⁸⁷ Would this information be material to an investment decision? Should we permit certain categories of loans to be excluded or aggregated? If so, which categories?

33. The proposed rules would not codify disclosure of the period end amount of TDRs as called for by Item III.C.1 even though the U.S. GAAP disclosure requirement is not substantially the same.¹⁸⁸ Is the disclosure of the TDR balance at period-end material to an investment decision and should it be codified?

34. Under the proposed rules, IFRS registrants would not be required to provide disclosure of nonaccrual loans or TDRs because IFRS does not recognize the concept of nonaccrual or TDRs. Should the proposed rules require IFRS registrants to disclose these amounts, calculated on a U.S. GAAP basis, in order to aid in comparability with U.S. GAAP registrants?

35. The proposed rules would not codify the potential problem loans

disclosure called for by Item III.C.2 even though the U.S. GAAP and IFRS disclosure requirements are not substantially the same. Is the disclosure of potential problem loans material to an investment decision and should it be codified? How would investors use this disclosure? Can the information provided by the potential problem loan disclosure be obtained from other disclosures required by U.S. GAAP¹⁸⁹ or IFRS,¹⁹⁰ or from the trends and uncertainties disclosures called for by Item 303 of Regulation S-K?¹⁹¹

36. The proposed rules would not codify the disclosures in Item III.C.3 of Guide 3 related to foreign outstandings, which currently calls for disclosure of the name of the country and aggregate amount of cross-border outstandings to borrowers in each foreign country where such outstandings exceed one percent of total assets. Would this result in the loss of information material to an investment decision in light of the fact that U.S. GAAP¹⁹² and IFRS¹⁹³ require disclosure about significant concentrations of credit risk? Would the "significant" threshold in U.S. GAAP and IFRS likely result in substantially the same population of countries being disclosed as the one percent bright-line threshold currently called for by Guide 3? Should we instead codify the one-percent bright-line threshold? If so, why? Are there additional disclosures related to foreign outstandings that we should codify to avoid potential loss of information material to an investment decision? If so, what are those disclosures?

37. The proposed rules would not codify the Item III.C.4 of Guide 3 disclosure of loan concentrations that exceed 10% of total loans. Would this result in the loss of information material to an investment decision in light of the fact that U.S. GAAP¹⁹⁴ and IFRS¹⁹⁵ require disclosure about significant concentrations of credit risk? Would the "significant" threshold in U.S. GAAP and IFRS likely result in substantially the same categories of loans being disclosed as the 10% bright-line threshold currently called for by Guide 3? Should we instead codify the 10% bright-line threshold? If so, why? Are there additional disclosures related to loan concentrations that we should codify or propose to avoid potential loss of information material to an investment

decision? If so, what are those disclosures?

38. The proposed rules would not codify the disclosure in Item III.D of Guide 3 disclosure related to other interest bearing assets. Would this result in the loss of information material to an investment decision in light of the fact that U.S. GAAP¹⁹⁶ and IFRS¹⁹⁷ require disclosure of reasonably similar information for assets likely to have been disclosed under this item? Should we instead codify the current interest-bearing assets disclosure?

39. Is there additional information related to loans that should be disclosed? If so, what information and how would this information be used by investors? Would there be a significant cost or burden to bank and savings and loan registrants in providing this additional information?

H. Allowance for Credit Losses

i. Background

Item IV.A of Guide 3 calls for a five-year analysis of loan loss experience,¹⁹⁸ including the beginning and ending balances of the allowance for loan losses, charge-offs and recoveries by loan category¹⁹⁹ and additions charged to operations. Item IV.A also calls for disclosure of the ratio of net charge-offs to average loans outstanding during the period, as well as a brief discussion of the factors that influenced management's judgment in determining the amount of the additions to the allowance charged to operating expense.

Item IV.B calls for a breakdown of the allowance for loan losses by category²⁰⁰ along with the percentage of loans in each category. Registrants may, however, furnish a narrative discussion of the loan portfolio's risk elements and the factors considered in determining the amount of the allowance in lieu of providing a breakdown. The staff has observed that BHC registrants generally elect to use a tabular format to present the allocation of allowance for loan losses instead of a narrative discussion.

Since Guide 3 was last amended, a number of new disclosures related to credit losses of financial instruments have been added to U.S. GAAP and

¹⁸⁶ U.S. GAAP and IFRS have a principles-based approach for determining the categories of loans to be disclosed. See *supra* notes 108 and 145. Thus, both U.S. GAAP and IFRS registrants will make judgments about the loan categories to be disclosed and there likely will not be consistency amongst all registrants.

¹⁸⁷ Item III.B currently permits the exclusion of certain loan categories (real estate-mortgage, installment loans to individuals and lease financing) and the aggregation of other loan categories (foreign loans to governments and official institutions, banks and other financial institutions, commercial and industrial and other loans) from the maturity and sensitivity to changes in interest rates disclosure.

¹⁸⁸ U.S. GAAP only requires disclosure of TDRs occurring during each period that an income statement is presented, and does not provide a cumulative level of TDRs existing on the balance sheet, similar to the disclosure called for by Item III.C.1(c).

¹⁸⁹ See *supra* note 151.

¹⁹⁰ IFRS 7.35M.

¹⁹¹ See *supra* note 152.

¹⁹² See *supra* note 110.

¹⁹³ See *supra* note 111.

¹⁹⁴ See *supra* note 110.

¹⁹⁵ See *supra* note 111.

¹⁹⁶ See *supra* note 155.

¹⁹⁷ IFRS 7.35B and M.

¹⁹⁸ This analysis of activity in the allowance for loan losses is known as a "rollforward" of the allowance for loan losses.

¹⁹⁹ The loan categories presented in Item IV.A are the same as in Item III of Guide 3.

²⁰⁰ The specified categories for domestic loans are: (1) Commercial, financial and agricultural, (2) real estate construction, (3) real estate-mortgage, (4) installment loans to individual, and (5) lease financing. The other categories for the breakdown are foreign and unallocated.

IFRS. For example, U.S. GAAP²⁰¹ requires a rollforward of the activity in the allowance for loan losses for each period by portfolio segment,²⁰² as well as a description of the factors that influenced management's judgment, which overlaps with the disclosure called for by Item IV.A of Guide 3.²⁰³ Similarly, IFRS requires reconciliation, by class of financial instrument, of the opening balance to the closing balance of the allowance, as well as a discussion of the inputs, assumptions, and estimation techniques used to determine the allowance.²⁰⁴ The staff has observed that, since the IFRS reconciliation of the allowance is by class²⁰⁵ of financial instrument, the disclosure of this information is typically more disaggregated than the reconciliation by portfolio segment under U.S. GAAP. Furthermore, this more detailed allowance reconciliation provides information consistent with the breakdown of the allowance for loan losses by loan category called for by Item IV.B.

There are differences in the credit loss impairment standards under U.S. GAAP²⁰⁶ and IFRS.²⁰⁷ Such differences will continue to exist subsequent to the adoption of the New Credit Loss Standard. Currently under U.S. GAAP, an impairment is recognized for certain financial instruments when it is probable that a loss has been incurred.²⁰⁸ When effective, the New Credit Loss Standard will replace the current incurred loss methodology with a methodology that reflects expected credit losses over the entire contractual term of the financial instruments.²⁰⁹ By

contrast, IFRS²¹⁰ requires a 12-month expected credit loss measurement for certain financial instruments unless there has been a significant increase in credit risk, in which case a lifetime expected credit loss measurement is required.

The New Credit Loss Standard will require consideration of a broader range of reasonable and supportable information to inform credit loss estimates. The new methodology will require registrants to use forecasted information, in addition to past events and current conditions, when developing their estimates. Similar to current U.S. GAAP, it will not specify a method for measuring expected credit losses and will allow registrants to apply methods that reasonably reflect their expectations of the credit loss estimate. The New Credit Loss Standard and IFRS both require disclosure about how the registrant measures expected credit losses, as well as how it incorporates forward-looking information into the measurement.

In the Request for Comment, the Commission asked whether Commission rules, U.S. GAAP, or IFRS require the same or similar loan loss information as that called for by Guide 3 as well as whether additional disclosures would be material to an investment decision upon the change from an accrual method to an expected loss method for credit losses.

ii. Comments on Allowance for Credit Losses

Many commenters stated that all or a portion of the disclosures called for by Item IV relating to loan losses overlap with Commission rules or U.S. GAAP.²¹¹ Several of these commenters stated that the disclosures called for by Item IV overlap in their entirety with U.S. GAAP requirements and should be eliminated.²¹² However, one commenter

stated that the disclosure of the ratio of net charge-offs to average loans outstanding during the period is not a U.S. GAAP requirement.²¹³ Several commenters stated that the disclosures called for by Item IV.B relating to the allocation of the allowance for loan losses overlap with U.S. GAAP.²¹⁴ However, a few of those commenters observed that the disclosure breakdowns called for by Item IV.B are more prescriptive than the U.S. GAAP requirements.²¹⁵ Several commenters also stated that IFRS addresses the objective of the disclosures called for by Item IV.²¹⁶

One commenter called for additional disclosure under U.S. GAAP regarding the allowance for credit losses under the New Credit Loss Standard.²¹⁷ In contrast, two commenters stated that it would be premature for the Commission to add disclosure that relates to future accounting standards.²¹⁸ These commenters generally noted that at a later time, after implementation has been reviewed, the Commission, FASB, registrants and investors can assess and determine whether additional disclosures may be necessary or useful.²¹⁹ Lastly, one commenter observed that the financial asset disclosures under IFRS are qualitative in nature and a registrant has more discretion to disaggregate and provide information on investments and loan portfolios compared to the current disclosures called for by Guide 3.²²⁰

²¹³ See letter from BerryDunn.

²¹⁴ See letters from CAQ; CH/SIFMA; EY; KPMG; MFG; MUFG; PNC; PwC; and RSM.

²¹⁵ See letters from CAQ; EY; KPMG; PNC; and PwC.

²¹⁶ See letters from CAQ; EY; KPMG; and PwC.

²¹⁷ See letter from Capital Group. In this letter, the Capital Group requested that the FASB require more detailed disclosure about the assumptions being made in the accounting and how those judgments and actual experience occur and change over time. More specifically, the Capital Group viewed the following disclosures as crucial elements in making the new standard operational: (1) Transparency around loan loss reserves at origination, (2) change in estimate of the loan loss reserve disaggregated by year of loan origination and type of loan, (3) gross and net chargeoffs and recoveries each period by vintage, and (4) disaggregation of credit quality indicators by vintage, including loan-to-value, internal risk rating, and geography.

²¹⁸ See letters from CAQ and CH/SIFMA.

²¹⁹ Since the Request for Comment, IFRS 9 has become effective.

²²⁰ See letter from Deloitte.

²⁰¹ ASC 310–10–50–11B (and ASC 326–20–50–11 and ASC 326–20–50–13 upon the adoption of the New Credit Loss Standard).

²⁰² ASC 310–20 defines a portfolio segment as the level at which an entity develops and documents a systematic methodology to determine its allowance for credit losses.

²⁰³ The staff has observed that some BHC registrants present their Guide 3 rollforward using their U.S. GAAP portfolio segments instead of the loan categories specified in Guide 3 or Article 9 because Guide 3 provides latitude in determining loan categories.

²⁰⁴ IFRS 7.35G and H.

²⁰⁵ See *supra* note 108.

²⁰⁶ ASC 310–10 (and ASC 326 upon the adoption of the New Credit Loss Standard).

²⁰⁷ IFRS 9.

²⁰⁸ ASC 310–10–35–4.

²⁰⁹ As discussed in paragraph BC46 of the New Credit Loss Standard, the FASB decided not to characterize expected credit losses as “lifetime”

expected credit losses, even though a registrant must estimate credit losses over the entire contractual term of the financial instruments (recognizing that expected prepayments affect the estimated life). The FASB observed that the use of the term “lifetime” could be interpreted in many ways and could lead some to believe the standard was defining the model a registrant must use to estimate.

²¹⁰ See *supra* note 207.

²¹¹ See letters from ABA; AmEx; BerryDunn; CAQ; CH/SIFMA; Crowe; Deloitte; EY; KPMG; MFG; MUFG; PNC; PwC; and RSM.

²¹² See letters from ABA; AmEx; Crowe; Deloitte; MFG; and MUFG.

iii. Proposed Rule—Allowance for Credit Losses

The proposed rules would not require the analysis of loss experience disclosure currently called for by Item IV.A of Guide 3, but would codify in Item 1405 of Regulation S–K the ratio of net charge-offs during the period to average loans outstanding as this disclosure does not overlap with existing Commission, U.S. GAAP, or IFRS requirements. The proposed rules would require the disclosure of the net charge-off ratio on a more disaggregated basis than the current Guide 3 disclosure, based on the loan categories required to be disclosed in the registrant's U.S. GAAP²²¹ or IFRS²²² financial statements. We believe this ratio, as well as the disaggregation of information that will be based on the loan categories disclosed in the financial statements would provide further insight into the performance of specific loan categories. The proposed rules would also codify the breakdown of the allowance disclosures called for by Item IV.B with some revisions, as we concur with commenter feedback that this disclosure provides more detailed information than that required by U.S. GAAP. Specifically, a tabular breakdown of the allowance would be required for registrants applying or reconciling to U.S. GAAP, rather than permitting an alternative option to provide a narrative discussion. We believe the tabular breakdown would provide for easier analysis by investors when reviewing these disclosures and note that the alternative narrative discussion is not widely used by registrants. The breakdown would be based on the loan categories presented in the U.S. GAAP financial statements, instead of the specified loan categories currently listed by Item IV.B.²²³ We are not proposing to apply this requirement to IFRS registrants because IFRS already requires this information at a similar level of disaggregation in the financial statements.²²⁴

The proposed rules would not codify the existing overlap between the Item IV disclosures in Guide 3, U.S. GAAP and IFRS. At the same time, our proposal to link the proposed disclosures to the specific loan categories required by U.S. GAAP or IFRS would provide investors with consistent categories of disclosures throughout the filing without imposing undue cost or burden on registrants to prepare the disclosure, because registrants should be able to derive this

information from their existing books and records.

We are not proposing any disclosures related to the New Credit Loss Standard at this time. Consistent with the recommendation of several commenters, the staff will wait until after the effective date of the new standards before we assess the disclosures provided under the new standards and whether additional material information is necessary. Additionally, the FASB has a codification improvement project²²⁵ related to disclosures to be provided as part of the New Credit Loss Standard. In light of these ongoing efforts, we are requesting comment on whether there are allowance disclosures under an expected credit loss model that would be material to an investment decision that are not already required by Commission rules, the proposed rules, U.S. GAAP, or IFRS. This request for comment will help inform future Commission consideration of the information available regarding the New Credit Loss Standard and any changes that may arise from the FASB activities described above.

Request for Comment:

40. Would the proposed rules result in the loss of information material to an investment decision? If so, what additional disclosures should be codified to avoid such loss?

41. Should we, as proposed, require a U.S. GAAP registrant to provide the tabular breakdown of the allowance for credit losses, and not codify the existing option of providing an alternative narrative discussion?

42. Should we, as proposed, revise the allowance breakdown to be based on the U.S. GAAP loan categories? If not, what alternative breakdown would be more appropriate? Should the proposed rules also require a breakdown of the liability for credit losses on unfunded commitments?²²⁶

43. The proposed rules would not require IFRS registrants to provide the tabular breakdown of the allowance because IFRS already requires similar information. Would any information material to an investment decision be lost by not requiring this disclosure for IFRS registrants? If so, how should we

revise the proposed rules to avoid such loss?

44. The proposed rules would require the net charge off ratio to be disclosed on a more disaggregated basis than the level of charge off disclosure that currently exists in U.S. GAAP. Specifically, the proposed rules would require the ratio for each of the U.S. GAAP loan categories or IFRS loan classes disclosed in the registrant's financial statements. Is this level of disaggregation appropriate for this ratio?

45. Should the proposed rules also require additional expected credit loss information by U.S. GAAP loan category, such as the provision for credit losses for each loan category? Would information at the U.S. GAAP loan category level be available to preparers without significant undue cost or burden?

46. Are there additional disclosures that registrants with material portfolios of financial instruments with an allowance based on an expected credit loss model (e.g., the New Credit Loss Standard) should provide? If so, what additional disclosures should be required and why? Should these disclosures allow for scalability among registrants, and if so, how?

47. Would disclosure of the key inputs and assumptions used in an expected credit loss model (e.g., the New Credit Loss Standard) provide information material to an investment decision? If so, what key inputs and assumptions would be material?

48. Are there other disclosures about allowance for credit losses we should consider requiring? For example, should we require registrants to disclose the material qualitative adjustments used in the estimation of the allowance for credit losses and how those adjustments were determined? Should we require registrants to provide a description of any material changes in the key inputs/assumptions disclosed from period-to-period, including quantitative and/or directional information as to how the inputs and assumptions changed, and the factors driving the changes? If so, how would these disclosures be used? At what disaggregation level, for example, at a loan category level or portfolio segment level, should they be presented?

iv. Proposed New Disclosure—Credit Ratios

a. Background

Guide 3 currently calls for the disclosure of one credit ratio, net charge-offs during the period to average loans outstanding, as outlined in Item IV.A. As discussed in Section 2.H.iii

²²¹ See *supra* note 145.

²²² See *supra* note 108.

²²³ See *supra* note 145.

²²⁴ IFRS 7.35H.

²²⁵ See *Financial Instruments—Credit Losses (Vintage Disclosures: Gross Writeoffs and Gross Recoveries)* available at: <https://www.fasb.org/jsp/FASB/Page/TechnicalAgendaPage?cid=1175805470156>.

²²⁶ Unfunded commitments, such as revolving lines of credit or other unfunded loan commitments, represent off-balance sheet credit exposures. Because they are often legally binding agreements to extend credit under certain terms and conditions, loan commitments can expose an entity to credit losses.

above, we propose to codify this disclosure. Guide 3 currently calls for this disclosure on a consolidated basis. However, we are proposing to require it by the loan categories disclosed in the U.S. GAAP or IFRS financial statements. There is no requirement in Commission rules, U.S. GAAP, or IFRS to disclose other commonly used credit ratios by bank and savings and loan registrants, such as the allowance for credit losses to total loans, nonaccrual loans to total loans, or the allowance for credit losses to nonaccrual loans. Nevertheless, bank and savings and loan registrants commonly disclose other credit ratios and such information is generally readily available to them without undue cost or burden as the components are provided in Call Reports filed with the U.S. banking agencies. Furthermore, U.S. GAAP requires disclosure of many of the components of these ratios, such as nonaccrual loans, and the rollforward of the allowance for credit losses by portfolio segment, including separate line items showing writeoffs charged against the allowance and recoveries of amounts previously charged off (which together can be used to calculate net charge-offs).²²⁷ IFRS includes a similar requirement to provide disclosure of the rollforward of the allowance for credit losses²²⁸ at a more disaggregated class level compared to U.S. GAAP, but there is no requirement to disclose nonaccrual loans because nonaccrual loans are not a concept recognized in IFRS.

In the Request for Comment, the Commission asked whether it should require disclosure of financial services industry-specific ratios, such as nonaccrual loans to total loans. We did not, however, receive commenter feedback on this point.

b. Proposed Rule—Credit Ratios

Proposed Item 1405 of Regulation S-K would require disclosure of the following credit ratios, along with each of the components used in their calculation: (1) Allowance for Credit Losses to Total Loans; (2) Nonaccrual Loans to Total Loans; (3) Allowance for Credit Losses to Nonaccrual Loans; and (4) Net Charge-offs²²⁹ to Average

Loans,²³⁰ by loan category disclosed in the financial statements. The first three ratios would be disclosed on a consolidated basis, while the fourth ratio of Net Charge-Offs to Average Loans would be at the more disaggregated loan category level. The disaggregated loan category level is more detailed than the components to the ratios, net charge-offs and average loans outstanding, are required to be disclosed under U.S. GAAP. The proposed rules would also require a discussion of the factors that drove material changes in the ratios, or related components, during the periods presented. In our experience, these credit ratios are commonly disclosed by bank and savings and loan registrants with material lending portfolios. Consequently, investors may already be evaluating these ratios in making investment decisions. We believe disclosure of the components used in the calculation of these ratios, along with the proposed narrative disclosure would further aid investors' understanding of the drivers of the changes in the ratios, particularly if both the numerator and denominator of the ratio have changed significantly during a period. If the related components are separately disclosed with the ratios, investors would be able to get a better sense of the magnitude of changes in each component. As discussed in Section II.D.ii, these ratios would be required for each of the last five years in initial registration statements under the Securities or Exchange Act and in initial Regulation A offering statements. For all other filings, the ratios and related disclosure of the components used in the calculation would be included for the same periods that financial statements are required by Commission rules.²³¹

We believe it is appropriate to require five years of this credit ratio information in initial registration and initial Regulation A offering statements given that investors would be seeing the loan portfolio and related credit history for the first time, and absent this requirement, investors would not have insight into the registrant's loan

portfolio credit history beyond, at most, the last two years based on our proposed changes to the reporting period discussed in Section II.D.²³² We believe the proposed disclosure could elicit information material to an investment decision regarding registrant-specific credit trends as credit trends often take several years to develop in the disclosed components. Additionally, if after reasonable effort, the registrant is unable to obtain the five years of credit ratio information, it would be able to rely on Securities Act Rule 409 and Exchange Act Rule 12b-21 to omit the information that is unknown and not reasonably available.

The proposed rules seek to balance the need for additional credit trend information when investors make an initial investment decision absent prior reporting about the registrant, with the added cost to the registrant of producing such information by requiring only information that is not available from prior period filings. The proposed rules would also include an instruction stating that IFRS registrants do not have to provide either of the nonaccrual ratios as there is no concept of nonaccrual in IFRS.

Request for Comment:

49. Are the proposed new disclosures appropriate? Would the proposed ratio disclosures help investors better understand how the credit trends in the loan portfolio change over time? Should different or additional credit ratios be included?

50. Would there be a significant cost or burden to registrants in providing the proposed ratio disclosures, including for 5 years in initial registration and initial Regulation A offering statements? Would registrants have the information readily available from the information they report to the U.S. banking agencies?

51. The proposed rules would require the ratio of Net Charge-offs to Average Loans to be provided on a disaggregated basis, with the other ratios provided on a consolidated basis. Should we require further disaggregation for the other credit ratios? If so, at what disaggregation level? Is there a significant cost or burden to registrants in providing this information?

52. Should we require, as proposed, the disclosure of each of the components used in the calculation of the ratios for each period, along with a discussion of the drivers of the material changes in the ratios? If not, why not?

53. Is the proposed five years of disclosure in initial registration and initial Regulation A offering statements

²²⁷ ASC 310-10-50-7 (and ASC 326-20-50-16 after the adoption of the New Credit Loss Standard) requires disclosure of nonaccrual loans by class of financing receivable. ASC 310-10-50-11B (and ASC 326-20-50-13 upon the adoption of the New Credit Loss Standard) requires disclosure of a rollforward of the allowance for credit losses, by portfolio segment, showing the beginning and ending balance, the current period provision, writeoffs charged against the allowance and recoveries of amounts previously charged off.

²²⁸ See *supra* note 224.

²²⁹ Net charge-offs should be based on current period net charge-offs.

²³⁰ See discussion in Section II.H.iii above.

²³¹ Article 3 of Regulation S-X generally requires two years of balance sheets and three years of income statements, except that SRCs may present only two years of income statements under Article 8 of Regulation S-X. EGCs may also present only two years of financial statements in initial public offerings of common equity securities. Issuers in Regulation A offerings will not be required to update the ratio disclosures in reports filed subsequent to the qualification of the initial registration statement since the ongoing reporting requirements under Regulation A do not require this information.

²³² *Id.*

a sufficient time period for evaluation of the loan portfolio credit trends? Would a shorter time period capture the same credit trends? Are there other registration statements, Regulation A filings, or periodic filings that should include the five years of credit ratios?

54. Should we require, as proposed, five years of credit ratios for initial registration or initial Regulation A offering statements filed by EGCs and SRCs or should we limit the requirement to the periods presented in the financial statements provided by those types of registrants?

55. The proposed rules would not require disclosure of the ratio of Nonaccrual Loans to Total Loans or the Allowance for Credit Losses to Nonaccrual Loans for IFRS registrants since there is no concept of nonaccrual loans in IFRS. Should the proposed rules require disclosure of these ratios, calculated on a U.S. GAAP basis, to aid in comparability? Are there different ratios that should be required for IFRS registrants that would provide similar information?

56. Would the ratio of the allowance for credit losses to total nonaccrual loans continue to be necessary upon the adoption of the New Credit Loss Standard by U.S. GAAP registrants?

I. Deposits

i. Background

Deposit disclosures, together with the level of other disclosed funding sources,²³³ may provide transparency with respect to a registrant's sources of funding and liquidity risk profile. Insured retail deposits can be a reliable funding source and may play an integral role in mitigating liquidity risk. Disclosures about significant amounts of deposits from a small number of depositors or certain types of deposits, such as uninsured deposits, could provide investors with insight as to the registrant's reliance on particular sources of funding and risks related to those sources of funding.

Items V.A and V.B of Guide 3 call for the presentation of the average amounts of and the average rates paid for specified deposit categories that exceed 10% of average total deposits.²³⁴ Most

registrants that currently provide Guide 3 disclosures present this disclosure by disaggregating the deposit categories in the average balance sheet called for by Item I of Guide 3. Item V.C calls for disclosure of the aggregate amount of deposits by foreign depositors in U.S. offices, if material. Items V.D and V.E of Guide 3 focus on the disclosure of time certificates of deposits and other time deposits in amounts of \$100,000 or more.²³⁵ Item V.D calls for a maturity analysis of time deposits,²³⁶ and Item V.E calls for disclosure of time deposits in excess of \$100,000 issued by foreign offices.²³⁷

U.S. GAAP and Commission rules require similar, but not the same, deposit disclosures as those called for by Guide 3. For example, U.S. GAAP²³⁸ requires disclosure of the aggregate amount of time deposits (including certificates of deposit) in denominations that meet or exceed the FDIC insurance limit at the balance sheet date.²³⁹ This disclosure is similar to that called for by Item V.D, but differs in that it is not broken out by different maturity categories. Moreover, Item V.D calls for disclosure based on a \$100,000 threshold rather than linking to the FDIC insurance limit. In addition, Article 9 requires separate presentation on the balance sheet of noninterest-bearing deposits and interest-bearing deposits.²⁴⁰ IFRS does not specifically require deposit disclosures that overlap with those called for by Guide 3.

In the Request for Comment, the Commission asked whether Commission rules, U.S. GAAP or IFRS require the same or similar information as called for by Guide 3, whether the disclosures provide investors with information material to an investment decision, and

foreign demand deposits, and (8) other foreign time and savings deposits. Categories (1) to (4) are deposits in U.S. bank offices and categories (5) to (8) are deposits in foreign bank offices. Other categories may be used for U.S. bank offices if they more appropriately describe the nature of the deposits.

²³⁵ The \$100,000 thresholds were established in 1976 when the FDIC insurance limit was \$40,000 and has never changed.

²³⁶ The ranges of maturities are by time remaining until maturity: (1) 3 months or less, (2) over 3 through 6 months, (3) over 6 through 12 months, and (4) over 12 months.

²³⁷ If the aggregate of certificates of deposit and time deposits over \$100,000 issued by foreign offices represents a majority of total foreign deposit liabilities, this disclosure need not be provided if a statement to that effect is provided.

²³⁸ ASC 942-405-50-1.

²³⁹ See *supra* note 45.

²⁴⁰ 17 CFR 201.9-03. If the disclosures about foreign activities in Rule 9-05 apply, the amount of noninterest-bearing deposits and interest-bearing deposits in foreign banking offices also must be presented separately.

requested recommendations for how the disclosures could be improved.

ii. Comments on Deposits

Many commenters stated that a portion of the disclosures called for by Item V of Guide 3 overlap with Commission rules or U.S. GAAP.²⁴¹ For example, one of these commenters stated that the disclosures called for by Item V.A relating to the average amount and average rate paid on interest-bearing deposits are duplicative of the disclosures called for by Item I.A.²⁴² Many commenters stated that the disclosures called for by Item V.D relating to the amount of outstanding domestic time certificates of deposit and other time deposits equal to or in excess of \$100,000 by maturity overlap with U.S. GAAP.²⁴³ However, these commenters generally noted the difference in disclosure thresholds.²⁴⁴ A few of these commenters stated that the disclosures called for by Item V.E relating to the amount of outstanding foreign office time certificates of deposit and other time deposits equal to or in excess of \$100,000 overlap with U.S. GAAP.²⁴⁵

Several commenters stated that a portion of the disclosures called for by Item V of Guide 3 elicit information that may be of value to investors.²⁴⁶ A few of these commenters²⁴⁷ indicated that the disclosure of the average rate paid on deposits is only called for by Item V.A of Guide 3, and some of these commenters²⁴⁸ asserted that the disclosure of other categories of deposits is only called for by Item V.B of Guide 3. All of these commenters expressed the view that the disclosure of the aggregate amount of deposits by foreign depositors in domestic offices is only called for by Item V.C of Guide 3 and is not required by other disclosure requirements.²⁴⁹ One commenter stated that the disclosures called for by Item V.D relating to the amount of domestic time deposits equal to or in excess of \$100,000 by maturity elicit "meaningful

²⁴¹ See letters from ABA; AmEx; BDO; BerryDunn; CAQ; Crowe; Deloitte; EY; KPMG; ICBA; MFG; MUFG; PNC; PwC; and RSM.

²⁴² See letter from MFG.

²⁴³ See letters from ABA; AmEx; BDO; BerryDunn; CAQ; Crowe; Deloitte; EY; KPMG; ICBA; MFG; MUFG; PNC; PwC; and RSM.

²⁴⁴ ASC 942-405-50-1 requires disclosure of the amount of time deposits equal to or in excess of the FDIC insurance limit, which is currently \$250,000, whereas Guide 3 has a \$100,000 threshold.

²⁴⁵ See letters from BerryDunn; MFG; and MUFG.

²⁴⁶ See letters from ABA; AmEx; CAQ; CH/SIFMA; EY; KPMG; PNC; and PwC.

²⁴⁷ See letters from ABA; AmEx; and CH/SIFMA.

²⁴⁸ See letters from CAQ; EY; KPMG; PNC; and PwC.

²⁴⁹ See letters from ABA; AmEx; CAQ; CH/SIFMA; EY; KPMG; PNC; and PwC.

²³³ ASC 942-470-50-3 requires disclosures related to debt agreements. ASC 942 and Rule 9-03 of Regulation S-X call for disclosures about short-term borrowings as described below in Section III.B.

²³⁴ The specified deposit categories are: (1) Noninterest-bearing demand deposits, (2) interest-bearing demand deposits, (3) savings deposits, (4) time deposits, (5) deposits of banks located in foreign countries including foreign branches of other U.S. banks, (6) deposits of foreign governments and official institutions, (7) other

additional information” for investors.²⁵⁰ Several commenters stated that the disclosure of the amount of foreign office time deposits equal to or in excess of \$100,000 is only called for by Item V.E of Guide 3 and is not required by other rules.²⁵¹ One commenter also recommended that Guide 3 should be updated to align with the U.S. GAAP requirement to disclose information regarding time deposits in excess of the FDIC insurance limit.²⁵²

Several commenters stated that the disclosures called for by Items V.A, V.B, V.C and V.E of Guide 3 are not specifically required by IFRS.²⁵³ However, these commenters also noted that IFRS requires disclosure of more information about financial instruments if period-end information is not representative of a registrant’s exposure to risk (e.g., credit, liquidity and market) during the period.²⁵⁴ Further, these commenters noted that IFRS requires disclosure of risks based on information provided internally to management.²⁵⁵ Several commenters noted that the disclosures called for by Item V.D are not required by IFRS.²⁵⁶ However, these commenters also indicated that the IFRS disclosures generally address the objective of the disclosures called for by Item V.D.²⁵⁷

iii. Proposed Rule—Deposits

Proposed Item 1406 of Regulation S–K would codify the majority of the disclosures currently called for by Item V of Guide 3, with some revisions. Specifically, the proposed rules would replace the “amount of outstanding domestic time certificates of deposit and other time deposits equal to or in excess of \$100,000” by maturity disclosure in Item V.D with a requirement to disclose the “amount of time deposits in uninsured accounts” by maturity. The proposed rules would require separate presentation of (1) U.S. time deposits in amounts in excess of the FDIC insurance limit, and (2) time deposits that are otherwise uninsured (including for example, U.S. time deposits in uninsured accounts, non-U.S. time deposits in uninsured accounts, or non-U.S. time deposits in excess of any

country-specified insurance fund), by time remaining until maturity of (1) 3 months or less; (2) over 3 through 6 months; (3) over 6 through 12 months; and (4) over 12 months. By not having a defined dollar threshold for the disclosure, the disclosure requirement would accommodate changes in the FDIC limit, making it easier for registrants to apply the rule when there is a change in the FDIC Insurance limit.

Additionally, the proposed rules would require bank and savings and loan registrants to quantify the amount of uninsured deposits as of the end of each reported period. Because uninsured deposits may have a different funding and interest rate risk profile than other deposits, we believe separate disclosure of these deposits would provide decision-relevant information about the registrant’s sources of funds. For example, disclosure of uninsured deposits would provide enhanced information about deposits that are more prone to withdrawals if a registrant experiences financial difficulty,²⁵⁸ which could help investors better evaluate potential risks related to the registrant’s funding sources. The proposed rules define uninsured deposits for bank and savings and loan registrants that are U.S. federally insured deposit institutions and require foreign bank and savings and loan registrants to disclose how they have defined uninsured deposits for purposes of this disclosure.²⁵⁹ The proposed rules do not provide a definition of uninsured deposits for foreign bank and savings and loan registrants given that the definition varies from jurisdiction to jurisdiction.

Given that U.S. GAAP and IFRS do not require disclosure at the same level of detail that is currently called for by Item V of Guide 3, we believe the disclosures currently called for by Item V, including the proposed revision to the disclosure called for by Item V.D, should be codified in Item 1406 of Regulation S–K. We believe codifying these disclosures would provide transparency with respect to a registrant’s sources of funding, which could be information material to an investment decision.

Request for Comment:

57. Should we codify the disclosures currently called for by Item V of Guide 3 with the proposed revisions?

²⁵⁸ Stavros Peristiani and João Santos., *Liberty Street Economics, Depositor Discipline of Risk-Taking by U.S. Banks* (April 2014), available at: <https://libertystreeteconomics.newyorkfed.org/2014/04/depositor-discipline-of-risk-taking-by-us-banks.html>.

²⁵⁹ See Item 1406(e).

58. Should we, as proposed, require disclosure related to uninsured deposits? Would the proposed disclosures provide investors with information about amounts that are at a higher risk of being withdrawn on short notice and not replaced? Are there additional disclosures an investor needs to understand potential risks related to uninsured deposits? If so, what are those disclosures? Are there other types of deposits that may be considered at higher risk of being withdrawn? If so, which ones, and what type of disclosure would be material for these deposits?

59. Is the proposed definition of uninsured deposits for U.S. federally insured depository institutions appropriate? If not, how should it be revised? Should we, as proposed, allow foreign bank and savings and loan registrants to apply their own definition of uninsured deposits for the purposes of this disclosure? If not, how should we define uninsured deposits for these registrants? Would the lack of a definition for uninsured deposits result in a lack of comparability among foreign bank and savings and loan registrants?

60. Are the deposit types specified in the proposed rules the appropriate categories? If not, which deposit types should be added or excluded? Should we, as proposed, codify the Guide 3 disclosure for deposit categories that are in excess of 10 percent of average total deposits? Should we specify a different threshold for disclosure of specific deposit categories? If so, what should the threshold be?

61. Should we, as proposed, revise the time certificate of deposit disclosure to be based on all uninsured deposits rather than the current threshold of amounts of \$100,000 or more? Would the proposed revision result in the disclosure of information that may be material to an investment decision? Would any information material to an investment decision be lost by the change in threshold?

III. Certain Existing Guide 3 Disclosures That Would Not Be Codified in Proposed Subpart 1400 of Regulation S–K

A. Return on Equity and Assets

i. Background

Financial ratios aid investors in comparing registrants across different industries and time periods. Guide 3 (Item VI.) calls for disclosure of four specific ratios for each reported period, including return on asset (“ROA”), return on equity (“ROE”), a dividend payout ratio, and an equity to assets ratio. Guide 3 also includes an instruction that directs registrants to

²⁵⁰ See letter from CH/SIFMA.

²⁵¹ See letters from ABA; AmEx; CAQ; CH/SIFMA; EY; KPMG; PNC; and PwC.

²⁵² See letter from CH/SIFMA.

²⁵³ See letters from CAQ; EY; KPMG; and PwC.

²⁵⁴ See, e.g., IFRS 7.35; IFRS 7.BC48; IFRS 7.IG20

²⁵⁵ IFRS 7.34(a).

²⁵⁶ See letters from CAQ; EY; KPMG; and PwC.

²⁵⁷ For example, one commenter referenced the maturity analysis of financial liabilities and concentration of risk from financial instruments disclosures in IFRS 7.39, IFRS 7.34(c), IFRS 7.B8 and B11, and IFRS 7.IG18 as disclosures with the same objective as Guide 3. See letter from CAQ.

supply any other ratios that they deem necessary to explain their operations.

In the Request for Comment, the Commission asked whether Commission rules, U.S. GAAP, or IFRS require the same or similar information as called for by Guide 3, whether the disclosures provide investors with information material to an investment decision, and how the disclosures could be improved.

ii. Comments on Return on Equity and Assets

Many commenters stated that the existing return on equity and assets disclosures called for by Item VI. of Guide 3 “may be of value” to investors and others.²⁶⁰ Most of these commenters stated that these disclosures are unique disclosures called for by Guide 3.²⁶¹ Despite believing that this information may be valuable to investors, a few of these commenters²⁶² also indicated that these ratios or their components are easily derived from information otherwise disclosed in financial statements and are largely duplicative of data filed within Federal Reserve Form FY Y–9C.²⁶³

iii. Proposed Rule—Return on Equity and Assets

The proposed rules would not codify the ratios called for by Item VI. While these ratios may provide useful information to investors for comparing registrants and making investment decisions, these ratios are not unique to bank and savings and loan registrants. Instead these ratios may be key performance measures for any and all registrant types and our proposed rules focus on disclosures related to traditional “banking” activities. In this regard, we note that the Commission’s guidance on MD&A²⁶⁴ states companies should identify and discuss key performance indicators when they are used to manage the business and would be material to investors. We therefore believe investors would continue to receive return on equity and asset ratio disclosures when necessary to an understanding of the bank and savings

and loan registrant’s financial condition and results of operations.

To the extent registrants stop disclosing these ratios and investors still want the return on equity and asset ratios, the information to calculate these ratios can be derived from amounts reported on the income statement and the average balance sheet called for by Item I.A of Guide 3, which we propose to codify.²⁶⁵ Similarly, the dividend payout ratio can be calculated based on the disclosures required by Article 3 of Regulation S–X.²⁶⁶ We do not believe the burden to calculate the ratios justifies the cost to provide them when the disclosure threshold in the Commission MD&A guidance is not met.

Request for Comment:

62. The proposed rules would not codify the ratios currently called for by Item VI of Guide 3 (ROA, ROE, a dividend payout ratio, and an equity to assets ratio). Would this result in the loss of information material to an investment decision not readily available from other disclosures or publicly available information? If so, which ratios should be codified? How would investors use these ratios?

63. Are investors able to calculate the ratios using existing financial information? If so, does the benefit of having the ratios readily available to an investor without calculation outweigh the cost of providing the ratio disclosures in circumstances when a bank and savings and loan registrant would otherwise not provide these ratios in MD&A?²⁶⁷

64. Would registrants no longer disclose these ratios in their filings if not codified in the proposed rules? Are there registrants currently disclosing these ratios under Guide 3 but who do not consider these ratios material to an investment decision? If so, would these registrants not disclose such ratios in MD&A?

65. Should we require other specific ratios for bank and savings and loan registrants? If so, what types of ratios should we require? Are these ratios able to be calculated based on existing information available in the filings? How would investors use these ratios?

66. If we were to expand the scope of the proposed rules to include all financial services registrants with material operations in any of the

activities covered by the proposed rules, are there specific ratios we should require? If so, which ones, and how would investors use these ratios? Are financial services registrants currently providing these ratios? Would they be material to all financial services registrants or just certain types?

B. Short-Term Borrowings

i. Background

Bank and savings and loan registrants often use short-term borrowings to supplement their deposits and diversify their funding sources. Short-term borrowings may include federal funds transactions, repurchase agreements, commercial paper, inter-bank loans, and any other short-term borrowings reflected on the registrant’s balance sheet.²⁶⁸ Federal funds transactions can be an important tool for managing liquidity, while repurchase agreements can provide a cost-effective source of funds and may allow a registrant to leverage its securities portfolio for liquidity and funding needs.

A registrant’s use of short-term borrowings can fluctuate significantly during a reporting period. As a result, the presentation of period-end amounts alone may not accurately reflect a registrant’s funding needs or use of short-term borrowings during the period.

Item VII of Guide 3 currently calls for the following short-term borrowings disclosures by category:

- The period-end amount outstanding;
- The average amount outstanding during the period; and
- The maximum month-end amount outstanding.²⁶⁹

Item VII also calls for disclosure, by category of borrowing, of the weighted average interest rates at period-end and during the period, and the general terms of the borrowing. The disclosures called for by Item VII need not be provided for categories of short-term borrowings for which the average balance outstanding during the period was less than 30% of stockholders’ equity at the end of the period.

Since Guide 3 was last amended, a number of disclosures have been added to U.S. GAAP and IFRS, and the Commission has issued guidance related to borrowings and liquidity disclosures, as discussed below. For example, U.S. GAAP requires certain financial services

²⁶⁰ See letters from ABA; AmEx; CAQ; CH/ SIFMA; Crowe; Deloitte; EY; KPMG; PNC; and PwC.

²⁶¹ See letters from CAQ; CH/SIFMA; Crowe; Deloitte; EY; KPMG; PNC; and PwC.

²⁶² See letters from ABA and AmEx.

²⁶³ The Federal Reserve Board collects basic financial data on a consolidated basis from domestic bank holding companies, savings and loan holding companies and securities holding companies on Form FR Y–9C.

²⁶⁴ *Commission Guidance Regarding Management’s Discussion and Analysis of Financial Condition and Results of Operation*, Release No. 33–8350 (Dec. 19, 2003) [68 FR 75056] (“2003 MD&A Interpretive Release”).

²⁶⁵ In the case of average amounts, current and prior year amounts presented on the balance sheet can also be used to calculate the average.

²⁶⁶ 17 CFR 210.3–01 through 3–20. Rule 3–04 of Regulation S–X requires disclosure of dividends per common share in the changes in stockholders’ equity and noncontrolling interests’ statement or footnote.

²⁶⁷ *Id.*

²⁶⁸ 17 CFR 210.9–03.13(3).

²⁶⁹ Item VII. refers to Rule 9–04.11 for categories of short-term borrowings. The correct reference, however, is Rule 9–03.13. Registrants often provide the average short-term borrowings disclosures as part of their average balance sheet disclosures.

registrants to disclose significant categories of borrowings,²⁷⁰ as well as disclosures for repurchase agreements, securities lending transactions and repurchase-to-maturity transactions for all registrants for which the disclosures are material.²⁷¹ Article 9 of Regulation S-X requires disclosure of certain specified short-term borrowing categories, including (1) federal funds purchased and securities sold under agreements to repurchase, (2) commercial paper, and (3) other short-term borrowings.²⁷²

IFRS requires disclosure of the carrying amount and fair value of each class of financial liabilities.²⁷³ Additionally, IFRS requires a discussion of risk arising from financial instruments, and if the quantitative data disclosed for the risk is unrepresentative of the registrant's exposure to risk during the period, IFRS requires further disclosure, such as exposure at various times during the period, or the highest, lowest and average exposures.²⁷⁴

In addition to the specific U.S. GAAP and IFRS requirements noted above, the Commission issued guidance in 2010 regarding appropriate disclosure when the registrant's financial statements do not adequately convey the registrant's financing arrangements, such as if borrowing arrangements during the period are materially different than the period-end amounts.²⁷⁵ Registrants typically discuss their sources of funding and outstanding borrowings in their liquidity section of MD&A. The 2010 MD&A Interpretive Release highlights important trends and uncertainties related to liquidity for

registrants to consider in their MD&A disclosures. The guidance notes as examples of trends and uncertainties the reliance on commercial paper or other short-term financing arrangements for liquidity, and intra-period variations in borrowings in circumstances where borrowings during the period are materially different than the period-end amounts. Therefore, when material, Item 303 of Regulation S-K elicits similar disclosure to that called for by Item VII.

In the Request for Comment, the Commission asked whether Commission rules, U.S. GAAP, or IFRS require the same or similar information as called for by Guide 3, whether the disclosures provide investors with information material to an investment decision, and requested recommendations for how the disclosures could be improved.

ii. Comments on Short-Term Borrowings

Many commenters said that a portion of the short-term borrowings disclosures called for by Item VII of Guide 3 overlaps with Commission rules, U.S. GAAP, or other disclosures called for by Guide 3.²⁷⁶ One commenter suggested that Item VII should be eliminated in its entirety due to overlap with existing Item I of Guide 3 disclosures relating to weighted average amounts outstanding and otherwise sufficient disclosures in the financial statements of period end amounts.²⁷⁷

A few commenters stated that all or a portion of the disclosures called for by Item VII are not required by Commission rules or U.S. GAAP.²⁷⁸ Two of these commenters expressed the view that the disclosures called for by Item VII relating to average and maximum month-end amounts of short-term borrowings outstanding, as well as weighted average interest rate (*i.e.*, Items VII.2 and VII.3 and the portion of Item VII.1 related to weighted-average interest rates), "may be useful" to some investors because they provide further context to the period-end amounts.²⁷⁹ One commenter stated that they believe all of the information regarding short-term borrowings required by Item VII of Guide 3 provides "meaningful information" but did not elaborate on how the information is used.²⁸⁰

A few commenters stated that the disclosures called for by Item VII.1 are not required by IFRS, while the disclosures called for by Items VII.2 and VII.3 are not specifically required by IFRS.²⁸¹ However, these commenters also noted that IFRS requires disclosure of more information about financial instruments if period-end information is unrepresentative of a registrant's exposure to risk (*e.g.*, credit, liquidity, or market risk) during the period.²⁸²

iii. Proposed Rule—Short-Term Borrowings

The proposed rules would not codify the Item VII short-term borrowing disclosures currently called for by Guide 3 in their current form. Instead, we propose to codify the average balance and related average rate paid for each major category of interest-bearing liability disclosures currently called for by Item I.B.1 and I.B.3 of Guide 3 and to further disaggregate the major categories of interest-bearing liabilities to include those referenced in Item VII and Article 9 of Regulation S-X. We believe the disclosures currently called for by VII.1 and VII.3 would be substantially covered by these proposed requirements and the financial statements.²⁸³ These proposed requirements do not codify the bright-line disclosure threshold of 30% of stockholders' equity at the end of the period because Regulation S-X already includes thresholds for disclosure of short-term borrowing categories. Furthermore, in light of the guidance set forth in the 2010 Interpretive Release, we believe Item 303 of Regulation S-K will elicit disclosure of any trends or uncertainties that may arise related to the maximum month-end amounts of short-term borrowings called for by Item VII.2. Given this overlap, we do not believe it is necessary to codify the current Item VII disclosures in proposed subpart 1400.

Request for Comment:

67. The proposed rules would effectively codify the disclosures currently called for by Items VII.1 and VII.3 that are not already addressed in Regulation S-X as part of the codification and further disaggregation of the Item I average balance sheet and

²⁷⁰ ASC 942-470-45-1 requires that significant categories of borrowings be presented as separate line items in the liability section of the balance sheet, or as a single line item with appropriate note disclosures of the components. Financial institutions may alternatively present debt based on the debt's priority (that is, senior or subordinated) if they also provide separate disclosure of significant categories of borrowings. See *supra* note 45.

²⁷¹ ASC 860-30-50-7 requires a registrant to provide an understanding of the nature and risks of short-term collateralized financing obtained through repurchase agreements, securities lending transactions, and repurchase-to-maturity transactions that are accounted for as secured borrowings, including a disaggregation of the gross obligation by class of collateral, the remaining contractual maturity, and a discussion of the potential risks associated with the agreements and related collateral pledged, including obligations arising from a decline in the fair value of the collateral pledged and how those risks are managed.

²⁷² Rule 9-03 of Regulation S-X.

²⁷³ IFRS 7.25.

²⁷⁴ IFRS 7.34-35 and IFRS 7.IG20.

²⁷⁵ *Commission Guidance on Presentation of Liquidity and Capital Resources Disclosures in Management's Discussion and Analysis*, Release No. 33-9144 (Sept. 17, 2010) ("2010 MD&A Interpretive Release") [75 FR 59894].

²⁷⁶ See letters from ABA; AmEx; BerryDunn; CAQ; Crowe; Deloitte; EY; KPMG; MFG; MUFG; PNC; and PwC.

²⁷⁷ See letter from MFG. Items I.B.1 and I.B.3 of Guide 3 call for disclosure of the average balance and related average rate paid for each major category of interest-bearing liabilities.

²⁷⁸ See letters from ABA; AmEx; CH/SIFMA; and Crowe.

²⁷⁹ See letters from ABA and AmEx.

²⁸⁰ See letter from CH/SIFMA.

²⁸¹ See letters from CAQ; EY; KPMG; and PwC.

²⁸² See, *e.g.*, letter from CAQ (referring to disclosures in IFRS 7.35, IFRS 7.BC48, and IFRS 7.IG20).

²⁸³ See Section II.E discussing the proposed codification of the average amount outstanding during the period and the interest paid on such amount, and the average rate paid, for each major category of interest-bearing liability. Article 9 of Regulation S-X requires disclosure of the period-end amount outstanding by the short-term borrowing categories.

the interest and yield/rate analysis disclosures. Would the proposal to codify only these disclosures as part of that section of the proposed rules result in a loss of information material to an investment decision? If so, what other disclosures should be retained? The proposed rules would not codify the disclosure currently called for by Item VII.2. Would the proposal not to codify this disclosure result in a loss of information material to an investment decision? If so, what disclosure should be retained?

68. Are there other types of short-term borrowing disclosures that are material to an investment decision and that are not already available from publicly available information? If so, what types of disclosures should be required?

69. If we were to expand the scope of the proposed rules to include all financial services registrants that have material operations in any of the activities covered by the proposed rules, are there short-term borrowing disclosures that would be material to investors and that are not already available from publicly available information? If so, what types of disclosures should be required? Are any financial services registrants currently providing these disclosures? Would they be material to all financial services registrants or just certain types?

IV. Proposed Changes to Article 9 of Regulation S-X

As noted in Section II.G of this Release, in the Request for Comment the Commission asked whether Commission rules require the same or similar loan information as called for by Guide 3. Many commenters indicated that the Item III.A loan disclosures overlap with U.S. GAAP.²⁸⁴ Most of these commenters also indicated that the Item III.A loan disclosures overlap with Article 9 of Regulation S-K.²⁸⁵ Additionally, several commenters indicated that IFRS calls for disclosure of financial instruments by class, although they acknowledged that determination of the classes will require judgement by management.²⁸⁶

Rule 9-01 of Regulation S-X states that Article 9 is applicable to the consolidated financial statements filed for BHCs and to any financial statements of banks that are included in filings with the Commission, although other registrants with material lending and deposit activities also apply the

rules in Article 9 of Regulation S-X.²⁸⁷ In light of our proposal to revise the scope of the proposed rules to include savings and loan associations and savings and loan holding companies, we propose to amend Rule 9-01 of Regulation S-X to include these registrants within the scope of Article 9 of Regulation S-X. However, if registrants outside one of the defined types of applicable registrants believe the Article 9 presentation is material to an understanding of its business, our rules would not preclude that presentation for those registrants. Additionally, Rule 9-03 of Regulation S-X provides guidance on the various items, which if applicable, should appear on the face of the balance sheets or in the notes thereto. Rule 9-03(7)(a)-(c) of Regulation S-X and U.S. GAAP²⁸⁸ both require disclosure of loans by category. Similarly, IFRS²⁸⁹ requires disclosure of financial instruments by class, which is consistent with the requirement in Rule 9-03(7)(a)-(c) of Regulation S-X. Based on the foregoing, we propose to delete Rule 9-03(7)(a)-(c).

Request for Comment:

70. Should we, as proposed, revise the scope of Rule 9-01 of Regulation S-X to include savings and loan associations and savings and loan holding companies? Should we include other types of companies in the scope of Rule 9-01 of Regulation S-X? If so, which types?

71. Would the proposal to delete Rule 9-03(7)(a)-(c) result in a loss of information material to an investment decision? If so, should all or part of Rule 9-03(7)(a)-(c) be retained?

72. Are there other parts of Article 9 of Regulation S-X that are duplicative of, or substantially overlap with, U.S. GAAP and IFRS? If so, which ones? Would the deletion of them result in the loss of information material to an investment decision?

73. Are there other types of registrants that should be included in the scope of Rule 9-01 of Regulation S-X? For example, should we expand the scope to include all financial services registrants? Do registrants, other than those within the proposed scope, currently apply the requirements in Article 9 of Regulation S-X? If so, what types of registrants? Are there particular burdens that registrants, other than those within the proposed scope, would face in providing this information? If so, what are the burdens and would these

burdens outweigh the benefits of this disclosure?

V. General Request for Comments

The proposed rules address three financial activities: (1) Holding debt securities, (2) holding loans and the related allowance for credit losses, and (3) deposit-taking, as well as the related interest income and interest expense generated from these activities. Guide 3 also calls for disclosure of short-term borrowings and return on equity and assets. We did not codify these disclosures except for the categories of short-term borrowings in the average balance sheet. We seek feedback on whether the financial activities for which we are proposing disclosure requirements are the material activities for bank and savings and loan registrants and whether we should propose any other disclosures.

Consistent with existing Guide 3, we are not proposing to require the disclosures in new Subpart 1400 of Regulation S-K to be presented in the notes to the financial statements. Therefore, the proposed disclosures would not be required to be audited,²⁹⁰ nor would they be subject to the Commission's requirements to file financial statements in a machine-readable format using eXtensible Business Reporting Language ("XBRL").²⁹¹ In the Request for Comment, the Commission asked whether it should require the Guide 3 tabular disclosures to be submitted in XBRL. We received limited feedback on this point²⁹² and thus believe that additional feedback based on the

²⁹⁰ Article 3 of Regulation S-X generally requires two years of audited balance sheets and three years of audited income statements, except that SRCs may present only two years of audited income statements under Article 8 of Regulation S-X. EGCs may also present only two years of financial statements in initial public offerings of common equity securities. Additionally, Part F/S(c)(ii) of Form 1-A requires audited financial statements for Tier 2 offerings, and issuers in Tier 2 offerings are required to file an annual report on Form 1-K containing two years of audited financial statements.

²⁹¹ For domestic disclosure forms, the XBRL data-tagging requirements are imposed through Item 601(b)(101) of Regulation S-K and Rule 405(b) of Regulation S-T. See Item 601(b)(101) of Regulation S-K [17 CFR 229.601(b)(101)] and Rule 405(b) of Regulation S-T [17 CFR 232.405(b)]. For foreign disclosure forms, analogous XBRL tagging requirements are included in the instructions to the relevant forms. See, e.g., paragraphs 100 and 101 of the Instructions to Exhibits to Form 20-F. The Commission recently adopted rules requiring the use of Inline XBRL format, where XBRL data is embedded into the HTML document, instead of the traditional XBRL format. See *Inline XBRL Filing of Tagged Data*, Release No. 33-10514 (June 28, 2018) [83 FR 40846 (July 10, 2018)].

²⁹² See letters from ABA, AmEx, CAP, CH/SIFMA, Deloitte, and XBRL US.

²⁸⁴ See letters from BerryDunn; CAQ; CH/SIFMA; Deloitte; EY; KPMG; MFG; MUFG; PNC; and PwC.

²⁸⁵ See letters from CAQ; CH/SIFMA; Deloitte; EY; KPMG; MFG; MUFG; PNC; and PwC.

²⁸⁶ See letters from CAQ; EY; KPMG; PNC; and PwC.

²⁸⁷ See *supra* note 32.

²⁸⁸ See *supra* note 145.

²⁸⁹ See *supra* note 108.

proposed disclosure requirements set forth in this release would be useful.

74. Are the activities listed in the proposed rules the appropriate ones for disclosure? If not, how should we revise the proposed rules?

75. Are there additional areas of disclosure, such as information related to non-interest income revenue streams or capital that also should be included in the proposed rules? If so, what are those other areas and what additional disclosures are appropriate and why?

76. Are there disclosures about derivatives not already addressed by Commission rules, U.S. GAAP, or IFRS that also should be included in the proposed rules? If so, what disclosures would be material for investors and in what manner should they be provided? Would providing this information result in a significant undue cost or burden?

77. Should we require the proposed disclosures to be included in the notes to the financial statements? What would be the benefits and costs of requiring the proposed disclosure in the financial statements? For example, how would such a requirement affect search costs for investors or compliance burdens for registrants?

78. Should we require the proposed disclosures to be provided in a structured format, such as XBRL or Inline XBRL to facilitate investor discovery, access reuse, analysis, and comparison across registrants? Should all or a subset of the proposed disclosures be structured? If a subset, which disclosure elements and why? Is XBRL or Inline XBRL preferable and why? What would be the costs, burdens, and benefits associated with structuring this information? Would the costs and burdens be disproportionately high for any group of issuers?

We request and encourage any interested person to submit comments on any aspect of the proposals, other matters that might have an impact on the amendments and any suggestions for additional changes. Comments are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis, particularly quantitative information as to the costs and benefits, and by alternatives to the proposals where appropriate. Where alternatives to the proposals are suggested, please include information as to the costs and benefits of those alternatives.

VI. Economic Analysis

A. Introduction

The Commission is proposing to rescind Guide 3 and to update and codify into a new Subpart 1400 of

Regulation S–K certain Guide 3 disclosures that do not overlap with disclosures required by Commission rules, U.S. GAAP, or IFRS, while adding to that Subpart certain credit ratio disclosure requirements. New Subpart 1400 would apply to banks, bank holding companies, savings and loan associations, and savings and loan holding companies. Disclosure within the banking industry may be valuable for investors;²⁹³ however, it could be costly for registrants. The proposed rules aim to streamline bank and savings and loan registrants' compliance efforts and may decrease their costs. At the same time, the proposed rules may enhance comparability across issuers—both foreign and domestic—which may benefit investors.

We are mindful of the costs imposed by, and the benefits obtained from, our rules. In this section, we analyze potential economic effects stemming from the proposed rules relative to the economic baseline, as well as reasonable alternatives to the proposed rules. The baseline consists of the current regulatory framework and current market practices. In this economic analysis, we consider the potential economic impact on affected registrants, investors, and other users of Commission filings, as well as potential effects on efficiency, competition, and capital formation.²⁹⁴ We also analyze the potential costs and benefits of reasonable alternatives to the proposed rules.

Where possible, we have attempted to quantify the economic effects expected to result from the proposed rules. In many cases, however, we are unable to quantify these economic effects. Some of the primary economic effects, such as the effect on investors' search costs, are inherently difficult to quantify. In many instances, we lack the information or data necessary to provide reasonable

²⁹³ For a discussion of the benefits of bank disclosure to investors, see, e.g., Ursel Baumann & Erland Nier, *Disclosure, Volatility, and Transparency: An Empirical Investigation into the Value of Bank Disclosure*, *Econ. Pol'y Rev.*, Sept. 2004, at 31; Anne Beatty & Scott Liao, *Financial Accounting in the Banking Industry: A Review of the Empirical Literature*, 58 *J. Acct. & Econ.* 339 (2014).

²⁹⁴ Securities Act Section 2(a) and Exchange Act Section 3(f) require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Further, Exchange Act Section 23(a)(2) requires us, when proposing rules under the Exchange Act, to consider the impact that any new rule would have on competition and to not adopt any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

estimates for the economic effects of the proposed rules. Where we cannot quantify the relevant economic effects, we discuss them in qualitative terms. In addition, the broader economic effects of the proposed rules, such as those related to efficiency, competition, and capital formation, are difficult to quantify with any degree of certainty. The proposed rules simultaneously codify certain disclosures, add new credit ratio disclosures, and rescind disclosures that overlap with Commission rules, U.S. GAAP, or IFRS. As such, it is difficult to quantitatively attribute the overall effects on efficiency, competition, and capital formation to specific aspects of the proposed rules.

B. Baseline

Our baseline consists of the disclosures currently called for by Guide 3, as well as those provided under current market practices.

i. Regulation

Guide 3 applies to registration statements and annual reports filed by BHC registrants.²⁹⁵ In addition, other registrants that have material amounts of lending and deposit-taking activities provide Guide 3 disclosures to the extent applicable.²⁹⁶ In general, Guide 3 calls for disclosures related to interest-earning assets and interest-bearing liabilities. More specifically, Item I calls for disclosure of average balance sheets and analyses of net interest earnings. Item II calls for disclosures related to a registrant's investment portfolio. Items III and IV call for disclosures related to the registrant's loan portfolio and loan loss experience, respectively. Item V calls for disclosures related to deposits. Item VI calls for registrants to report measures of return on equity and assets. Finally, Item VII calls for disclosures related to short-term borrowings.

Since the last substantive revision of Guide 3 in 1986, certain U.S. GAAP and IFRS disclosure requirements have changed for registrants engaged in the activities addressed in Guide 3, which has resulted in some overlap between the Guide 3 disclosures and other disclosures. For example, Item II.A calls for disaggregated disclosure of book value of investments as of the end of each reported period. U.S. GAAP and IFRS require similar disclosure about both the amortized cost basis and fair value of investments as of the balance sheet date. Such overlapping disclosures may impose compliance costs on registrants without providing

²⁹⁵ See *supra* note 4.

²⁹⁶ See *supra* note 32.

additional material information to investors.

Guide 3 applies to both domestic and foreign registrants, including most foreign private issuers,²⁹⁷ but does not apply to Form 40–F filers.²⁹⁸ As discussed above in Section II.B, the staff has observed that foreign bank and savings and loan registrants typically provide Guide 3 disclosures.

Guide 3 currently calls for five years of loan portfolio and loan loss experience data and for three years of all other data. This timeframe goes beyond the financial statement periods specified in Commission rules,²⁹⁹ which generally require two years of balance sheets and three years of income

statements for registrants other than EGCs and SRCs. Guide 3 currently provides that registrants with less than \$200 million of assets or less than \$10 million of net worth may present only two years of information. However, the scaled disclosure regimes in Commission rules for SRCs and EGCs are based on other thresholds, such as public float, total annual revenues, or a combination of both. As such, SRCs and EGCs may not qualify for scaled disclosure under Guide 3.

ii. Affected Registrants

We define the scope of Guide 3 as the population of registrants that may be currently following Guide 3. To estimate

this population, we first identify registrants that meet the definition of a BHC in Rule 1–02(e) of Regulation S–X³⁰⁰ or that are BHCs under the Bank Holding Company Act.³⁰¹ We also identify certain other financial services registrants³⁰² that have both lending and deposit-taking activities and are not BHCs, as these registrants may be following Guide 3 as a result of their activities.³⁰³ Table 1 below shows the estimated number of registrants within the Guide 3 scope, along with their cumulative assets by type and domestic/foreign status.³⁰⁴

TABLE 1—REGISTRANTS WITHIN THE GUIDE 3 SCOPE

Type	Domestic		Foreign		Total	
	#	Assets, \$Bln	#	Assets, \$Bln	#	Assets, \$Bln
BHCs	387	17,371	22	18,830	409	36,201
Financial services registrants with lending and deposit-taking activities:	66	1,842	12	3,649	78	5,491
Savings and Loan Holding Companies ³⁰⁵	51	606	0	0	51	606
Banks	13	1,199	10	3,177	23	4,377
Other ³⁰⁶	2	37	2	472	4	509
Total	453	19,213	34	22,479	487	41,692

We estimate that, among registrants identified as being within the scope of Guide 3, 84% are BHCs that in aggregate hold 87% of total Guide 3 registrants' assets. We also estimate that, among the registrants within the scope of Guide 3,

93% are domestic registrants that in aggregate hold 46% of total assets. Although the number of foreign registrants is much smaller than the number of domestic registrants, foreign registrants in aggregate hold

approximately 54% of total assets, as shown by the total assets in Table 1.

Table 2 below shows the estimated number of registrants within the scope of Guide 3 that qualify for scaled Guide 3 disclosures, as well as the number of

²⁹⁷ Instructions to Item 4 of Form 20–F indicate that the information specified in any industry guide that applies to the registrant should be furnished.

²⁹⁸ The staff has observed that Form 40–F filers that are banking institutions typically provide the disclosures called for by Guide 3.

²⁹⁹ See Articles 3 and 8 of Regulation S–X.

³⁰⁰ To estimate the number of BHC registrants, staff reviewed Commission filings by registrants in the following Standard Industrial Classification ("SIC") codes to determine if the registrant met the definition of a BHC under Rule 1–02(e) of Regulation S–X: 6021, 6022, 6029, 6035, and 6036.

³⁰¹ Data on holding companies subject to the Bank Holding Company Act was obtained from Reporting Form FR Y–9C for holding companies as of Q4 2018. For purposes of this economic analysis, we only considered holding companies that are within the following SIC codes: 6021, 6022, 6029, 6035, 6036, 6099, 6111, 6141, 6153, 6159, 6162, 6163, 6172, 6199, 6200, 6211, 6221, 6282, 6311, 6321, 6324, 6331, 6351, 6361, 6399, 6411, 6500, 6510, 6519, 6798, and 7389. We note that registrants with SIC codes other than those specified may be holding companies subject to the Bank Holding Company Act. As such, the population of BHCs may be underestimated.

³⁰² For purposes of this economic analysis, we assume that a registrant is a financial services registrant if its type of business is identified as one of the following SIC codes: 6021, 6022, 6029, 6035, 6036, 6099, 6111, 6141, 6153, 6159, 6162, 6163,

6172, 6199, 6200, 6211, 6221, 6282, 6311, 6321, 6324, 6331, 6351, 6361, 6399, 6411, 6500, 6510, 6519, 6798, and 7389. We note that registrants with SIC codes other than those specified may be providing financial services and some registrants with these SIC codes may not be providing financial services. As such, the population of financial services registrants may be under- or overestimated.

³⁰³ For purposes of this economic analysis, we define this subset of registrants as those financial services registrants that have any amounts of loans and deposits reported in Commission filings. We note that amount of loans and deposits may not be material for some registrants in the subset. Therefore, the number of registrants that may be currently following Guide 3 due to their activities may be overestimated.

To estimate the number of registrants with lending and deposit-taking activities, the staff analyzed the most recent Form 10–K and Form 20–F filed as of May 1, 2019. This analysis is based on data from XBRL filings and staff review of filings for financial services registrants that did not submit XBRL filings. To identify financial services registrants that have both lending and deposit-taking activities, we used XBRL tags commonly used for loans and deposits. Staff reviewed the financial statements of identified registrants to determine whether the tags were related to the type of activities described in Guide 3 and excluded those with unrelated activities. We note that some registrants may use non-standard or custom XBRL tags to identify their lending or deposit-taking

activities. As such, the number of financial services registrants with lending and deposit-taking activities may be underestimated.

We also note that registrants with SIC codes other than those specified in *supra* note 302 may have lending and deposit-taking activities. For example, based on data from XBRL filings, staff identified 11 registrants that report both holdings of loans and deposit-taking activities and may be affected by Guide 3.

³⁰⁴ For purposes of this economic analysis, we define domestic registrants as those that file Form 10–K and foreign registrants as those that file Form 20–F.

The estimate for total assets of registrants is based on these registrants' most recent filings of Form 10–K or Form 20–F during the 12 month period ended May 1, 2019. The analysis was based on data from XBRL filings and staff review of filings for financial services registrants that did not submit XBRL filings. For foreign registrants that report total assets in local currency, we used exchange rates as of December 31, 2018 to convert their reported value to U.S. dollars.

³⁰⁵ We only identified savings and loan holding companies and did not identify any savings and loan associations within the population of financial services registrants with lending and deposit-taking activities.

³⁰⁶ These are financial services registrants that do not fit under a definition of SLHC, bank, or SLA.

registrants that qualify for SRC and/or EGC status.³⁰⁷

TABLE 2—SCALED DISCLOSURE THRESHOLDS FOR REGISTRANTS WITHIN THE GUIDE 3 SCOPE

Scaled disclosure threshold	Qualifying registrants	
	#	Total assets, \$bln
Guide 3 scaled threshold registrants	12	1
SRC registrants	165	176
EGC registrants	61	120

Among the 487 registrants that may be following Guide 3, 36% are either SRCs or EGCs.³⁰⁸ However, only 2% currently qualify for the scaled disclosure in Guide 3. All of the registrants that qualify for scaled Guide 3 disclosures are either an SRC or an EGC, or both.

C. Economic Effects

The economic effects of the proposed rules primarily stem from changes to the substance and reporting periods of the Guide 3 disclosures, including, among other things, the addition of certain new credit ratio disclosures. As a result, the affected bank and savings and loan registrants would experience changes in their compliance costs. In particular, affected registrants would experience a decrease in compliance costs stemming from a removal of overlapping disclosures and reduced reporting periods. However, this reduction may be partially offset by an increase in costs stemming from the proposed new credit ratio disclosures and more disaggregated disclosures. We first discuss the economic effects stemming from the proposed changes to the substance and reporting periods of the disclosures, followed by a discussion of the proposed scope, applicability, location, and format of the disclosures.

i. Not Codified Disclosures

The proposed rule would not codify Guide 3 disclosures that overlap with Commission rules, U.S. GAAP, or IFRS. As such, the following disclosures in Items II, III, IV, and VII would not be codified:

- Short-term borrowing disclosures called for by Item VII.1 and 2;
- Book value information, the maturity analysis of book value information, and the disclosures related to investments exceeding 10% of

stockholders' equity called for by Item II;

- Loan category disclosure, the loan portfolio risk elements disclosure, and the other interest-bearing assets disclosure called for by Item III;

- The analysis of loss experience disclosure called for by Item IV.A;

- The breakdown of the allowance disclosures called for by Item IV.B for IFRS registrants; and

- General Instruction 6 to Guide 3.

The proposed rule also would not codify the disclosure called for by Item VI related to ROA, ROE, dividend payout, and equity to assets ratios, as these ratios are not specific to bank and savings and loan registrants. Because we are proposing to rescind Guide 3, we do not anticipate affected registrants would provide any Guide 3 disclosures not codified in new subpart 1400, unless required by other Commission rules,³⁰⁹ U.S. GAAP, or IFRS. Additionally, registrants may continue to voluntarily provide these disclosures.

a. Costs and Benefits

To the extent that the disclosures we propose not to codify are reasonably similar to disclosures required under Commission rules, U.S. GAAP, or IFRS, not codifying these disclosures would facilitate bank and savings and loan registrants' compliance efforts by reducing the need to replicate disclosures or reconcile overlapping disclosures, and decrease the reporting burdens for the 487 registrants that may be currently following Guide 3. To the extent that these costs are currently passed along to customers and shareholders, the cost reductions associated with the proposed rule may flow through to customers in the form of more advantageous interest rates, and

to shareholders in the form of higher earnings.

Investors should not be adversely affected by the proposal not to codify the aforementioned disclosures, given that the overlapping disclosures required by Commission rules, U.S. GAAP, or IFRS elicit reasonably similar information. For example, U.S. GAAP and Article 9 of Regulation S-X require certain registrants to disclose certain categories of borrowings. As such, we believe the proposal not to codify the short-term borrowing disclosures called for by Item VII of Guide 3 would not result in a loss of information material to an investment decision.

To the extent that the Guide 3 disclosures provide incremental information to investors, not codifying these disclosures could marginally increase information asymmetries and investor search costs. For example, unlike U.S. GAAP, which requires maturity analysis of investment securities, IFRS requires the maturity analysis of financial instruments like debt securities only if the information is necessary for evaluating the nature and extent of liquidity risk. However, a maturity analysis of debt securities could be useful for other things, such as measurement of interest rate risk. Therefore, not codifying the maturity analysis disclosure may result in a loss of information with respect to affected IFRS registrants if they were to determine that a maturity analysis of a portfolio of debt securities was not necessary for an investor to evaluate the nature and extent of liquidity risk. To the extent that some affected IFRS registrants come to this determination and the maturity analysis is considered material to an investment decision with respect to these registrants, investors may perceive them as more opaque or

³⁰⁷ To estimate the number of registrants that meet the Guide 3 scaled disclosure threshold, the staff analyzed the most recent Form 10-K or Form 20-F filed as of May 1, 2019. The analysis was based on data from XBRL filings and staff review of filings for those registrants that did not submit their filings in XBRL format. The estimates for the number of affected registrants that are SRCs are

based on information from their most recent annual filing, as of April 29, 2019. The estimates for the number of affected registrants that are EGCs are based on their most recent periodic filings as of April 29, 2019.

³⁰⁸ We note that 37 affected registrants are both SRCs and EGCs.

³⁰⁹ For example, a registrant may be required to provide certain of these disclosures pursuant to Exchange Act Rule 12b-20 in order to make any required statements, in light of the circumstances under which they were made, not misleading. See *supra* note 81.

risky compared to other registrants, resulting in a higher cost of capital for these registrants. In addition, potential loss of material information to investors could hypothetically arise if the disclosures that overlap with U.S. GAAP or IFRS are not codified and at some point in the future are no longer required by U.S. GAAP or IFRS.

Item VI ratios are not specific to the financial activities specified in the proposed rules and would not provide additional information about those activities or the risks associated with them. In addition, codification of these ratios could be viewed as duplicative because key performance measures, when used to manage the business and are material to investors, are required to be disclosed under Item 303 of Regulation S-K.³¹⁰ Finally, the ratios can be calculated using financial information already disclosed in Commission filings. Therefore, not codifying these ratios should not result in the loss of information material to an investment decision.

The Commission believes that the proposal not to codify General Instruction 6 to Guide 3—the undue burden accommodation for foreign registrants—would not result in an increase in compliance costs, as the purpose of the instruction overlaps with the general accommodation in Securities Act Rule 409 and Exchange Act Rule 12b-21. In addition, the proposed rules would link the specific categories of debt securities and loans that should be disclosed with those required by U.S. GAAP and IFRS and would explicitly exclude certain disclosures that are inapplicable to IFRS. This linkage to the categories used in the financial statements rather than U.S. banking categories should further reduce the need for foreign registrants to seek regulatory accommodations with respect to the proposed disclosure requirements.³¹¹

b. Alternatives

As an alternative, we could codify all of the Guide 3 disclosures. Codifying these disclosures would help ensure that relevant information about material financial activities is provided in a consistent and comparable format for investors, even though that format may be different from the presentation in the financial statements. Given the overlapping nature of certain Guide 3 disclosures and other disclosures required by Commission rules, U.S. GAAP, or IFRS, we believe that codifying all of the Guide 3 disclosures

would result in inefficiencies for affected registrants and would not provide additional information material to an investment decision.

ii. Codified Disclosures

We propose to codify certain Guide 3 disclosures that do not significantly overlap with disclosures required by Commission rules, U.S. GAAP, and IFRS. In addition, we propose to modify some of these disclosures to better align them with other existing reporting practices or to provide additional information that may be material to an investment decision.

a. Costs and Benefits

We propose to codify all of the disclosures called for by Item I and the majority of disclosures called for by Item V, with some revisions. We also propose to codify the weighted average yield disclosure called for by Item II.B, the loan maturity and sensitivity to interest rate disclosures called for by Item III.B, and the allocation of the allowance for loan loss disclosure called for by Item IV.B for U.S. GAAP registrants. In addition, the proposed rules would codify the ratio of net charge-offs disclosure called for by Item IV.A, although on a disaggregated basis for each of the U.S. GAAP or IFRS loan categories presented in the registrant's financial statements.

Codifying these items under new Subpart 1400 of Regulation S-K would provide a single source of disclosure requirements about the specified financial activities, which may facilitate compliance and lead to better comparability among bank and savings and loan registrants to the extent that centralization makes it easier for registrants to understand their disclosure obligations. In addition, this proposal would eliminate the uncertainty resulting from the existing disclosure structure for BHCs and registrants with material lending and deposit-taking activities under Guide 3.³¹² It also may decrease uncertainty on the part of registrants as to whether specific disclosures are required given Guide 3's status as staff guidance. However, codifying these disclosures in Regulation S-K may cause affected registrants to expend additional resources to produce the disclosures, as the status of the disclosures would be elevated from guidance to a rule, and could result in additional costs. To the extent that such effect is present, the

resulting cost increase may be passed on to shareholders and customers.

We also propose to align the investment categories in Item II.B and loan categories in Items III.B, IV.A, and IV.B of Guide 3 with the respective debt security and loan categories required to be disclosed in the registrant's U.S. GAAP or IFRS financial statements. Currently Guide 3 indicates that registrants may present loan categories other than the ones outlined in Item III.B and IV.A if they consider them to be a more appropriate presentation. Therefore, we expect the proposed alignment of the loan categories to have minimal impact on those registrants that already use U.S. GAAP or IFRS loan categories. However, the registrants that currently apply Guide 3 loan categories may incur switching costs. Revising the debt security categories to conform to the financial statement categories would promote comparability and consistency of disclosures for investors and reduce the preparation burden and related costs imposed on affected registrants. However, to the extent that Guide 3 loan and investment categories provide information incremental to financial statement categories and bank and savings and loan registrants currently provide these disclosures based on the Guide 3 categories, investors may lose this information, which could impact their investment decisions.

In addition, the proposed rules would disaggregate the categories of interest-earning assets and interest-bearing liabilities in the Item I disclosures that we propose to codify. For example, it would codify the short-term borrowing categories specified in Item VI. More disaggregated categories of assets and liabilities may provide investors with insight into the drivers of changes in the affected registrant's net interest income. As another example, the majority of the Item V deposits disclosures would be codified and additional categories of deposits would be required to be disclosed. The proposed disclosure, by avoiding specific reference to existing dollar limits, would better accommodate future changes in the FDIC insurance limit and provide more information on uninsured deposits. As such, these revised categories of deposits could provide greater transparency with respect to the affected registrant's sources of funding and risks related to these particular types of funding.

The proposed rules also would require disclosure of the net charge-off ratio on a disaggregated basis, based on the U.S. GAAP or IFRS loan categories. More disaggregated net charge-off ratio data may be information material to an investment decision as it could help

³¹⁰ See *supra* note 264.

³¹¹ See *supra* note 52.

³¹² See letters from CAQ; Crowe; Deloitte; EY; KPMG; and PWC.

investors better understand drivers of the changes in a bank and savings and loan registrant's charge-offs and the related provision for loan losses. It also would supplement the financial statement disclosures with credit information, which could help investors interpret the various credit disclosures. As a result of increased transparency from these proposed disclosures, investors may be able to make more informed investment decisions and bank and savings and loan registrants' cost of capital may decrease.³¹³ However, the need to provide disaggregated information would increase costs for affected registrants to the extent that some bank and savings and loan registrants may not be currently compiling such disaggregated data, which could ultimately affect shareholders and customers if the cost increases are passed on to them in the form of reduced earnings or increased prices.

iii. New Credit Ratios Disclosures

The proposed rules would require disclosure of three additional credit ratios for bank and savings and loan registrants, along with each of the components used in the ratios' calculation and a discussion of the factors that led to material changes in the ratios or related components. The ratios would be required for the last five years in initial registration statements and initial Regulation A offering statements, after which the reporting period for the ratios would be aligned with the reporting periods for financial statements. The proposed rules would also include an instruction stating that affected IFRS registrants do not have to provide either of the nonaccrual ratios as there is no concept of nonaccrual in IFRS.

a. Costs and Benefits

Generally, the components of each proposed ratio are already required disclosures in bank and savings and loan registrants' financial statements. As such, the benefit to investors of requiring these additional credit ratios may be modest, mostly in the form of decreased search costs stemming from reduced time and effort to calculate the relevant credit ratios from other information. At the same time, since many registrants with holdings of loans already provide some of these ratios in their filings, we believe that the

additional compliance burden for the proposed credit ratio disclosures would not be significant for such bank and savings and loan registrants.

New bank and savings and loan registrants may experience higher costs due to the proposed requirement to provide five years instead of two years of credit ratios in initial registration statements and initial Regulation A offering statements. However, this effect would be somewhat mitigated by Securities Act Rule 409 and Exchange Act Rule 12b-21, which, if certain conditions are met, allow a registrant to omit required information if it is unknown and not reasonably available to the registrant. In addition, the added transparency of an extended history of credit ratios may provide beneficial information to investors, increasing information efficiency and lowering the cost of capital for new bank and savings and loan registrants.³¹⁴

iv. Reporting Periods

Guide 3 currently calls for five years of loan portfolio and summary of loan loss experience data and three years for all other information. However, under Guide 3, registrants with less than \$200 million of assets or \$10 million of net worth may present only two years of the information. The proposed rule would align the reporting periods for the proposed disclosures with the periods required by Commission rules for financial statements rather than the longer periods called for by Guide 3, except for the proposed credit ratios disclosure.³¹⁵

a. Costs and Benefits

The proposal would reduce compliance costs for registrants currently following Guide 3, other than the small number of registrants eligible for scaled disclosure under Guide 3, as shown in Table 2 above. In addition, alignment of the proposed rules' reporting periods with those required for financial statements would make it easier for both investors and bank and savings and loan registrants to determine which periods should be disclosed and why they are disclosed. Since prior period information for existing registrants is publicly available on EDGAR, scaling the number of reporting periods presented in a particular filing should not have a

significant adverse impact on investors. However, outside of the proposed credit ratio disclosures, historical information for new bank and savings and loan registrants may not be available beyond the required disclosure period. As such, to the extent that investors and other users of Commission filings rely on Guide 3 information that covers a longer period of time than the proposed reporting periods, the loss of this information may result in higher search costs and more uncertainty about certain activities of new bank and savings and loan registrants. We do not have data to quantify the magnitude of the expected cost reductions for affected registrants or search cost increases for investors and other users of Commission filings as a result of the proposed reporting periods.

b. Alternatives

As an alternative, we considered codifying the current Guide 3 reporting periods. Under this alternative, all bank and savings and loan registrants with total assets over \$200 million or net worth over \$10 million, including SRCs and EGCs, would provide the proposed loan and allowance for credit losses disclosures for five years and the rest of the disclosures for three years. As such, the data would be required for a longer period of time than Commission rules require for financial statements. The additional historical periods would benefit investors in new bank and savings and loan registrants, as historical information is not publicly available for them. However, under this alternative, the majority of SRCs and EGCs would not realize the benefits of scaled disclosure, which would impose higher compliance costs for these registrants.

v. Proposed Scope

a. Costs and Benefits

The proposed rules would apply to bank and savings and loan registrants. We estimate that this approach would not subject any additional registrants to the proposed rules, as our analysis preliminarily indicates that the population identified in Table 1 includes all bank and savings and loan registrants within the financial services industry. At the same time, the proposed scope would provide more certainty to registrants with lending and deposit-taking activities because they would no longer need to assess the applicability of Guide 3 based on materiality of their activities and, instead, would be explicitly required to provide disclosure based on the type of their business.

³¹³ For a discussion of the benefits of loan loss disclosure for public banks, see, e.g., D. Craig Nichols, James M. Wahlen, & Matthew M. Wieland, *Publicly Traded versus Privately Held: Implications for Conditional Conservatism in Bank Accounting*, 14 Rev. Acct. Stud. 88 (2009).

³¹⁴ See *infra* Section VII for a discussion of our estimates—for PRA purposes—of the burdens and costs associated with providing the proposed credit ratio disclosures.

³¹⁵ The reporting period for the proposed credit ratios disclosure would be the last five years for initial registration statements and initial Regulation A offering statements.

However, as shown in Table 1, this approach may result in four registrants not being included in the population of registrants that would have to provide the proposed disclosures because these registrants do not fall under a definition of a BHC, bank, savings and loan holding company, or savings and loan association, even though these registrants conduct deposit-taking and lending activities. To the extent that the lending and deposit-taking activities of these registrants are material, investors may lose information about these activities and comparability among registrants with lending and deposit-taking activities may decrease. However, if the primary business of registrants that do not fall under the definition of a BHC, bank, savings and loan holding company, or savings and loan association is considerably different from that of bank and savings and loan registrants, the information provided in response to Guide 3 may not be as relevant for investors. In addition, we

note that, even if a registrant would not be subject to the proposed rules, other Commission disclosure requirements, such as MD&A, may elicit certain disclosure about financial activities of these registrants to the extent they are material, or registrants may voluntarily provide disclosures not being codified.

b. Alternatives

As an alternative to the proposed scope, the Commission considered a scope that would not be limited to bank and savings and loan registrants, but would encompass all financial services registrants that conduct the activities addressed in the proposed rules. Given that the financial services industry has evolved significantly since the last substantive revision of Guide 3 in 1986, a wider range of registrants now engage in the activities addressed in Guide 3. Under the proposal, other registrants that provide similar financial services, such as lending, would not be required to provide the same disclosure because

they do not fit the definition of a BHC, bank, savings and loan holding company, or savings and loan association, thereby making it more difficult to compare those registrants' disclosures to those provided by bank and savings and loan registrants. In addition, to the extent that registrants that conduct one of the activities addressed by the proposed rules would not be within the proposed scope, and to the extent that these registrants currently have a competitive advantage over registrants providing the Guide 3 disclosures due to lower costs, the alternative may decrease this disparity.

Table 3 below shows the estimated number of financial services registrants³¹⁶ that conduct the activities addressed in the proposed rules: (1) Holding debt securities, (2) holding loans, and (3) deposit-taking. It also provides a breakdown of those registrants that are within the scope of Guide 3 and those that are not.

TABLE 3—ACTIVITIES OF FINANCIAL SERVICES REGISTRANTS

Financial services registrants	Holding debt securities ³¹⁷		Holding loans		Deposit-taking	
	#	Assets, \$bln	#	Assets, \$bln	#	Assets, \$bln
Within Guide 3 scope	485	41,691	487	41,692	486	41,692
Not within Guide 3 scope	468	18,278	264	15,860	0	0
Total	953	59,969	751	57,552	486	41,692

We estimate that, out of 953 financial services registrants that hold debt securities, 485 registrants that in aggregate hold approximately 69.5% of assets among financial services registrants with debt securities may be currently following Guide 3. Similarly, out of 751 financial services registrants that hold loans, 487 registrants that in aggregate hold approximately 72.4% of assets among all financial services registrants with holdings of loans may be currently following Guide 3. In contrast, all financial services registrants with deposit-taking activities may be currently applying Guide 3. We estimate that there are 566 additional

financial services registrants that in aggregate hold approximately 31.1% of assets, conduct at least one of the three activities, and are not within the Guide 3 population identified in Table 1. Among these registrants, 166 have holdings of both debt securities and loans, 98 have holdings of loans only, and 302 have holdings of debt securities only.

To the extent that certain types of registrants outside the Guide 3 population identified in Table 1 provide financial services and conduct activities similar to bank and savings and loan registrants, such as lending, this alternative approach could help

investors to better compare registrants that conduct similar activities, which in turn could help investors make more efficient investment decisions. Further, this approach could facilitate investors' analysis of securities, potentially resulting in improved earnings estimates. Table 4 below lists financial services registrants that engage in at least one of the activities addressed by the proposed disclosures (holding loans, deposit-taking, or holding debt securities) by type of business.³¹⁸

³¹⁶ See *supra* note 303.
³¹⁷ For purposes of this economic analysis, we define financial services registrants holding debt securities as those that have any investment securities reported in their financial statements. To estimate the number of these registrants, the staff analyzed the most recent Form 10-K or Form 20-F filed as of May 1, 2019 for financial services registrants. The analysis was based on data from XBRL filings and staff review of filings for financial services registrants that did not submit XBRL filings. To the extent that the estimate includes financial services registrants that hold equity and not debt securities or that the holdings in debt securities are not material, the number of financial

services registrants with holdings of debt securities may be overestimated. To the extent that some financial services registrants may use non-standard or custom XBRL tags to identify their investment activities or that there are financial services registrants outside of the SIC codes specified in note 301, *supra*, the number of financial services registrants with holdings of debt securities may be underestimated.
³¹⁸ We use SIC codes 6021, 6022, 6029, 6035, and 6036 to identify banks and saving institutions; SIC codes 6111, 6141, 6153, 6159, 6162, 6172, and 6199 to identify credit and finance services registrants; SIC codes 6163, 6200, 6211, and 6221 to identify brokers, dealers, and exchanges; SIC code 6282 to

identify investment advisers; SIC codes 6311, 6321, 6324, 6331, 6351, 6361, 6399, and 6411 to identify insurance services companies; SIC codes 6500, 6510, 6519, and 6798 to identify real estate registrants; and SIC codes 6099 and 7389 to identify registrants that provide other financial services. We note that there are 27 registrants outside of the SIC codes 6021, 6022, 6029, 6035, and 6036 (and thus not included in the 456 banking and savings registrants) that are either identified as BHCs under the BHC Act or under Rule 1-02(e) of Regulation S-X, or identified as banks or savings and loan holding companies.

TABLE 4—FINANCIAL SERVICES REGISTRANTS BY TYPE

Type of financial services	Within guide 3 scope		Not within guide 3 scope		Total	
	#	Assets, \$bln	#	Assets, \$bln	#	Assets, \$bln
Banking and saving	456	36,569	1	0	457	36,569
Credit and finance	19	1,643	60	6,357	79	8,000
Brokers, dealers, and exchanges	7	3,293	89	763	96	4,056
Investment advice	1	137	37	214	38	352
Insurance	1	11	138	9,716	139	9,727
Real estate	0	0	192	1,386	192	1,386
Other financial services	3	39	49	426	52	465
Total	487	41,692	566	18,862	1053	60,554

Under the alternative to the proposed scope, these registrants would be newly subject to the proposed rules and would experience an increase in compliance costs as a result of new disclosure obligations. Given that many of these registrants may not currently provide the disclosures we propose to codify, these increased costs may be significant. Moreover, even if a registrant would not be subject to disclosure under the proposed rules, other Commission disclosure requirements, such as MD&A, or investors' demand may elicit certain disclosure about financial activities of these registrants to the extent they are material.

vi. Applicability of Disclosures

a. Costs and Benefits

Guide 3 calls for disclosure about each of its specified activities, regardless of the materiality of these activities, except for the few disclosures that include bright-line disclosure thresholds. The proposed rules would codify the bright-line disclosure threshold for deposit disclosures and would not specify disclosure thresholds, similar to current Guide 3, for any of the other proposed disclosures. As such, we do not expect this aspect of the proposal to result in meaningful economic effects for registrants and investors as compared to the baseline.

b. Alternatives

As an alternative, the Commission considered requiring disclosures based on the materiality of the relevant financial activities to the registrant's business or financial statements. On the one hand, a materiality-based approach may result in a more tailored compliance regime and allow these registrants to use firm-specific information to determine whether certain activities are material. However, if registrants and investors have different perceptions about what activities are material, investors may have less information than they desire

in making investment decisions. In addition, under this alternative approach, a banking registrant could make an incorrect judgment about the materiality of a certain activity, potentially subjecting the registrant to increased litigation risk. As such, bank and savings and loan registrants may respond by expending more resources on materiality determinations. In addition, under this alternative, comparability across registrants may decrease.

As another alternative, the Commission could have proposed using a bright-line threshold for all proposed disclosures. Such an approach may be easier to apply as it would not require judgment and would reduce bank and savings and loan registrants' uncertainty about whether they need to provide disclosures. However, a bright-line threshold may be under- or over-inclusive, especially for bank and savings and loan registrants with a level of activities just below or over the specified threshold. As a result, registrants that fall just below the threshold would not be comparable to registrants above the threshold, despite conducting similar activities. In addition, under this alternative, some bank and savings and loan registrants may be incentivized to actively manage their activity to the level just below the threshold such that they would not have to provide the disclosures for specified activities, even though those activities could be material to their business. In this instance, the bright-line approach would be under-inclusive.

vii. Location and Format of Disclosures

The proposed rules would continue to provide bank and savings and loan registrants with flexibility to determine where in the filing the required information should be presented.³¹⁹ As

³¹⁹ Based on the staff's review of financial services registrants' annual reports that contain Guide 3 disclosures, there currently is diversity in location of the disclosures, with some registrants

such, we do not expect this aspect of the proposal to result in meaningful economic effects for registrants and investors as compared to the baseline.

a. Alternatives

Investors and other users of Commission filings may process information located in different places within a registrant's filing differently. As an alternative, we could have proposed to require the disclosure to be located in the footnotes to the financial statements. The annual financial statements are required to be audited and tagged in a structured data format (*i.e.*, Inline XBRL),³²⁰ which could enable investors and other users of Commission filings to locate specific proposed disclosures more easily and make comparisons across registrants faster, thereby decreasing investors' search costs. In addition, to the extent that investors may rely more on audited information, requiring the disclosure to be located in the footnotes to financial statements could decrease information asymmetries between investors and bank and savings and loan registrants, consequently decreasing cost of capital for these registrants. On the other hand, a requirement to include the proposed disclosures in the financial statements would increase bank and savings and loan registrants' compliance costs. Moreover, prescribing a specific

providing the disclosures in the Business section and others providing it in MD&A.

³²⁰ For academic research on the benefits and costs of XBRL, *see, e.g.*, Yi Dong, Oliver Zhen Li, Yupeng Lin, & Chenkai Ni, *Does Information-Processing Cost Affect Firm-Specific Information Acquisition? Evidence from XBRL Adoption*, 51 J. Fin. & Quantitative Analysis 435 (2016); Elizabeth Blankespoor, *The Impact of Investor Information Processing Costs on Firm Disclosure Choice: Evidence from the XBRL Mandate*, 57 J. Acct. Res. 919 (2019); Chunhui Liu, Tawei Wang, & Lee J. Yao, *XBRL's Impact on Analyst Forecast Behavior: an Empirical Study*, 33 J. Acct. & Pub. Pol'y 69 (2014); Yu Cong, Jia Hao, & Lin Zou, *The Impact of XBRL Reporting on Market Efficiency*, J. Info. Sys., Fall 2014, at 181; Elizabeth Blankespoor, Brian P. Miller, & Hal D. White, *Initial Evidence on the Market Impact of the XBRL Mandate*, 19 Rev. Acct. Stud. 1468 (2014).

location for the disclosures could diminish bank and savings and loan registrants' ability to present the information in the context in which it is most relevant and understandable for investors.

D. Effects on Efficiency, Competition, and Capital Formation

The proposed codification of certain Guide 3 disclosures and new credit ratio disclosures may increase the quality and availability of information about bank and savings and loan registrants' activities, which could promote efficiency, competition, and capital formation. In addition, the new credit ratio disclosures may reduce information asymmetries between bank and savings and loan registrants and their investors and promote transparency, which may reduce the cost of capital for these registrants. Codification may also promote comparability and avoid uncertainty about when the proposed disclosures are required, further reducing information asymmetries and allowing investors to achieve better allocation efficiency. This, in turn, may increase the demand for securities offerings, reduce costs of capital, and enhance capital formation.

The effect of proposing not to codify the disclosures that overlap with Commission rules, U.S. GAAP, and IFRS on informational efficiency depends on the balance of two effects. On the one hand, the clarity of information presented in Commission filings may increase, which would reduce search costs for investors who do not use computerized search tools for locating data and lead to more efficient information processing. Given that investors may have limited attention and limited information processing capabilities,³²¹ elimination of such information should facilitate more efficient investment decision-making. Not codifying the Guide 3 disclosures that overlap with U.S. GAAP and IFRS would reduce the number of disclosures that bank and savings and loan registrants need to consider and prepare, and consequently simplify their compliance regime. To the extent that the overlapping disclosures are substantially the same as those provided in response to Guide 3, not codifying certain Guide 3 disclosures would not adversely affect investors and other users of Commission filings. Some academic research suggests that individuals may invest more in firms

with more concise disclosures.³²² Thus, to the extent that the proposed rescission of Guide 3 does not affect the completeness of disclosures, it could enhance the informational and allocative efficiency of the market and facilitate capital formation. The potential adverse effects of the proposed rules are likely to be limited as investors would continue to receive substantially similar information from bank and savings and loan registrants under U.S. GAAP and IFRS disclosure requirements.

On the other hand, not codifying certain Guide 3 disclosures could lead to increased information asymmetries between investors and bank and savings and loan registrants. To the extent that some of the Guide 3 disclosures (e.g., those that overlap with, but are not entirely duplicative of, U.S. GAAP or IFRS disclosures) would no longer be called for by an industry guide, bank and savings and loan registrants may be less likely to voluntarily disclose such information, when applicable. For example, the Guide 3 disclosure of maturity analysis of investment categories that we propose not to codify applies only in certain instances under IFRS. Moreover, even if some IFRS bank and savings and loan registrants disclose this information, it may be difficult for investors to assess the relative quality of those registrants without the same disclosure for every IFRS bank and savings and loan registrant. This impact may be heightened for smaller registrants and first time entrants, as these types of registrants may exhibit more information asymmetries due to less historical information being available for investors. However, elimination of overlapping disclosures may reduce bank and savings and loan registrants' compliance costs, particularly for smaller registrants for which fixed costs are a higher portion of revenue.

The proposed rules may have effects on competition. First, to the extent that compliance costs may increase for bank and savings and loan registrants under the proposed rules, these costs may be passed on to their customers, in contrast to private banking companies not subject to the proposed disclosures or current Guide 3. Therefore, private banking companies may gain additional competitive advantage from not incurring such increased costs. Further,

to the extent that certain costs related to disclosures are fixed, these burdens may have a larger impact on smaller bank and savings and loan registrants, potentially reducing their ability to offer banking products and terms that would enable them to better compete with their larger peers.

Second, the cost savings from proposing not to codify all of the Guide 3 disclosures may be larger for IFRS bank and savings and loan registrants as they often face particular challenges in presenting the Guide 3 disclosures that presume a U.S. GAAP presentation.³²³ For example, the TDR and nonaccrual concepts do not exist under IFRS. To the extent that IFRS bank and savings and loan registrants experience greater cost savings compared to U.S. GAAP bank and savings and loan registrants and the costs are currently passed through to their customers and shareholders, shareholders and customers may experience larger increases in earnings or larger decreases in service costs, respectively, which may allow IFRS registrants to better compete for investors as compared to U.S. GAAP registrants.³²⁴ Although we request comment on the extent of any such competitive advantage, we preliminarily do not anticipate this effect to be substantial.

E. Request for Comment

We request comment on the economic analysis set forth in this release. To the extent possible, we request 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 rules or any reasonable alternatives. We also are interested in comments on the alternatives presented in this release as well as any additional alternatives to the proposed amendments that should be considered. In addition, we are interested in views regarding the costs and benefits for particular types of covered registrants, such as SRCs and EGCs.

In addition, we ask commenters to consider the following questions:

79. What additional qualitative or quantitative information should we consider as part of the baseline for the economic analysis of the proposed rules?

80. What additional data or methodologies can we use to estimate

³²² See, e.g., Alastair Lawrence, *Individual Investors and Financial Disclosure*, 56 J. Acct. & Econ. 130 (2013); Michael S. Drake, Jeffrey Hales, & Lynn Rees, *Disclosure Overload? A Professional User Perspective on the Usefulness of General Purpose Financial Statement*, Contemp. Acct. Res. (forthcoming 2019).

³²¹ See, e.g., David Hirshleifer & Siew Hong Teoh, *Limited Attention, Information Disclosure, and Financial Reporting*, 36 J. Acct. & Econ. 337 (2003).

³²³ See letters from CAQ; EY; Deloitte; and PWC.

³²⁴ Based on the staff's review of IFRS registrants' annual reports that include Guide 3 disclosures, most do not provide the TDR and nonaccrual loan disclosures called for by Guide 3.

the costs and benefits of implementing the proposed rules?

81. Have we considered all relevant costs of the proposed rules? Are the estimated costs of the proposed rules reasonable? If not, please explain in detail why the cost estimates should be higher or lower than those provided. Please identify any costs associated with the proposed rules that we have not identified.

82. Have we considered all relevant benefits of the proposed rules? Have we accurately described the benefits of the proposed rules? Why or why not? Please identify any other benefits associated with the proposed rules in detail.

83. What are the current compliance costs related to Guide 3 disclosure for U.S. GAAP and IFRS registrants, including SRCs and EGCs? Are the costs different for U.S. GAAP and IFRS registrants? Are these costs significantly higher/lower than the compliance costs of registrants that are not currently within the Guide 3 scope identified in Table 1? How will the proposed rules change the compliance costs for U.S. GAAP and IFRS registrants? Would there be any differences in costs for U.S. GAAP and IFRS registrants?

84. Would the proposed new credit ratio disclosures impose significant costs for bank and savings and loan registrants? Do registrants currently provide these disclosures? If so, can the costs of providing these disclosures be quantified?

85. We invite comment on the nature of any resulting compliance costs. In particular, to what extent are the compliance costs fixed versus variable? Are there scale advantages or disadvantages in the compliance costs, both in terms of activity size or registrant size? To what extent are the compliance costs one-time set-up costs versus recurring variable costs?

86. We are interested in comments and data related to any potential competitive effects from the proposed rules. In particular, we are interested in evidence and views on the current competitive situation of U.S. bank and savings and loan registrants as well as the attractiveness of U.S. securities markets for foreign banking companies. To what extent does the current Guide 3 disclosure regime affect this competitive situation, if at all? To what extent would the proposed rules change competition between U.S. and foreign bank and savings and loan registrants? To what extent would the proposed rules change competition between U.S. GAAP and IFRS registrants?

87. Would expanding the scope of the proposed rules to all financial services

registrants impose significant costs on registrants that do not currently provide Guide 3 disclosures? If so, can these costs be quantified? How would expanding the proposed scope to all financial services registrants affect the competitive situation among registrants that conduct activities addressed in this proposal?

88. Would expanding the scope to all financial services registrants provide significant benefits to investors and other users of Commission filings? How would expanding the scope to all financial services registrants affect the efficiency of capital markets?

VII. Paperwork Reduction Act

A. Background

Certain provisions of the proposed rules contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).³²⁵ The Commission is submitting the proposed rules to the Office of Management and Budget (“OMB”) for review in accordance with the PRA.³²⁶ The hours and costs associated with preparing and filing forms and reports that include the disclosure called for by the proposed rules constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid OMB control number. Compliance with the information collections is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the information disclosed. The titles for the affected collections of information are:

- Regulation S-K (OMB Control No. 3235-0073);³²⁷
- Form S-1³²⁸ (OMB Control No. 3235-0065);
- Form S-3³²⁹ (OMB Control No. 3235-0073);³³⁰

³²⁵ 44 U.S.C. 3501 *et seq.*

³²⁶ 44 U.S.C. 3507(d) and 5 CFR 1320.11.

³²⁷ The paperwork burden from Regulation S-K is imposed through the forms that are subject to the requirements in that regulation and is reflected in the analysis of those forms. To avoid a PRA inventory reflecting duplicative burdens and for administrative convenience, we assign a one-hour burden to Regulation S-K.

³²⁸ 17 CFR 239.11.

³²⁹ 17 CFR 239.13.

³³⁰ The paperwork burdens for Form S-3 and Form F-3 that would result from the proposed rules are imposed through the forms from which they are incorporated by reference and reflected in the analysis of those forms.

- Form S-4³³¹ (OMB Control No. 3235-0324);

- Form F-1³³² (OMB Control No. 3235-0258);

- Form F-3³³³ (OMB Control No. 3235-0256);

- Form F-4³³⁴ (OMB Control No. 3235-0325);

- Form 10³³⁵ (OMB Control No. 3235-0064);

- Form 10-K (OMB Control No. 3235-0064);

- Form 10-Q³³⁶ (OMB Control No. 3235-0070);

- Form 20-F (OMB Control No. 3235-0063); and

- Regulation A³³⁷ (Form 1-A)³³⁸ (OMB Control No. 3235-0286).

The regulations and forms listed above were adopted under the Securities Act or the Exchange Act. The regulations and forms set forth the disclosure requirements for registration statements, offering statements, and periodic reports filed by registrants and issuers to help investors make informed investment decisions. A description of the proposed rules, including the need for the information and its proposed use, as well as a description of the likely respondents, can be found in Sections II through V above, and a discussion of the economic effects of the proposed rules can be found in Section VI above.

B. Burden and Cost Estimates Related to the Proposed Rules

i. Affected Registrants and Forms

We estimate that, currently, approximately 487 bank and savings and loan registrants provide the disclosures set forth in Guide 3. These registrants would have to provide the disclosures required by the proposed rules in Securities Act registration statements filed on Forms S-1, S-3, S-4, F-1, F-3, and F-4, Exchange Act registration statements on Forms 10 and 20-F, Exchange Act annual reports on Forms 10-K and 20-F, Exchange Act quarterly reports on Form 10-Q, and Regulation A offering statements on Form 1-A. We refer to these registrants in this PRA analysis as “affected registrants.”

³³¹ 17 CFR 239.25.

³³² 17 CFR 239.31.

³³³ 17 CFR 239.33.

³³⁴ 17 CFR 239.34.

³³⁵ 17 CFR 249.210.

³³⁶ 17 CFR 249.308a.

³³⁷ 17 CFR 230.251 through 17 CFR 230.263.

³³⁸ 17 CFR 239.90.

The proposed rules would codify certain disclosures called for by Guide 3 and eliminate other Guide 3 disclosures that overlap with Commission rules, U.S. GAAP, or IFRS. Although the disclosure Items in Guide 3 are not Commission rules, under existing practice, affected registrants currently provide many of these disclosures in response to the Guide 3 items. Therefore, the burdens associated with these disclosures are already included in the current burden hours and costs for the affected forms. As such, for PRA purposes, we are only revising the burdens and costs of the affected forms to reflect changes to the existing Guide 3 disclosures in the proposed rules.

For example, as discussed in greater detail below,³³⁹ we do not propose to codify in proposed Item 1403 the disclosures under existing Item II of Guide 3 that substantially overlap with U.S. GAAP and IFRS disclosure requirements, and those we propose to codify in proposed Item 1403 are consistent with the current disclosures in Item II. Therefore, we estimate that there would be no change to the burdens and costs of an affected registrant as a result of proposed Item 1403 because the Item would include disclosures that are already included in Guide 3. In contrast, as discussed below,³⁴⁰ proposed Item 1404 would, in addition to codifying the loan disclosures in Item III of Guide 3 that do not overlap with Commission rules, U.S. GAAP, or IFRS, also require certain interest rate disclosure that is not currently a Guide 3 disclosure. Therefore, we estimate that the proposed Item 1404 would increase the burden to an affected registrant.

Additionally, for PRA purposes, the burden and costs estimates related to the proposed rules should primarily affect annual reports on Forms 10-K and 20-F. We do not believe the proposed rules should affect the burdens and costs of a registrant filing

its quarterly reports on Form 10-Q, as the registrant would be required to collect and disclose almost the same information related to the proposed rules cumulatively in its annual report as in each of its prior quarterly reports. Therefore, including the burden and cost estimates in both annual and quarterly reports would result in a PRA inventory reflecting duplicative burdens.

Further, as with quarterly reports on Form 10-Q, a registrant would be required to collect and disclose almost the same information related to the proposed rules in a registration or offering statement as it would in an annual report. However, we recognize that there could be some additional burdens and costs associated with a registration or offering statement that may not apply to an annual report. Therefore, we are assigning a small incremental increase in burdens and costs to all affected registration and offering statements, including Forms 20-F, S-1, S-4, F-1, F-4, 10, and 1-A.

Also, as discussed below,³⁴¹ a new affected registrant would be required to provide more years of credit ratio and related disclosures in its initial registration or offering statement than it would be required to provide in any subsequent registration or offering statement. Therefore, we are assigning additional burdens and costs to a registration or offering statement that can be filed as an initial registration or offering statement, including Forms 20-F, S-1, F-1, 10, and 1-A.

ii. Standard Estimated Burden Allocation for Specified Forms

For purposes of the PRA, total burden is to be allocated between internal

burden hours and outside professional costs. A registrant's internal burden is estimated in internal burden hours and its outside professional costs are estimated at \$400 per hour.³⁴² Table 5 below sets forth the percentage estimates we typically use for the burden allocation for each form.

TABLE 5—STANDARD ESTIMATED BURDEN ALLOCATION FOR SPECIFIED FORMS

Form type	Internal (percent)	Outside professionals (percent)
Form 10-K	75	25
Form 20-F	25	75
Form S-1	25	75
Form S-4	25	75
Form F-1	25	75
Form F-4	25	75
Form 10	25	75
Form 1-A	75	25

iii. Burden Change for Specific Portions of the Proposed Rules

a. Proposed Disclosure Related to Distribution of Assets, Liabilities, and Stockholders' Equity; and Interest Rate and Interest Differential (Item I of Guide 3/Proposed Item 1402)

Proposed Item 1402 would require additional disaggregation to include the categories under Item VII of Guide 3 and certain other categories in Article 9 of Regulation S-X. Therefore, we estimate that the burdens and costs of an affected annual report would increase by two hours per year and the burdens and costs of an affected registration or offering statement would increase by one hour per year. Table 6 below shows the resulting estimated change in an affected registrant's internal burden hours and costs for outside professionals due to the proposed disclosure related to the distribution of assets, liabilities, and stockholders' equity and interest rate and interest differential.

³³⁹ See Section VII.B.iii.b below.

³⁴⁰ See Section VII.B.iii.c below.

³⁴¹ See Section VII.B.iii.h.

³⁴² We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs will be an average of \$400 per hour. This estimate is based on consultations with several registrants, law firms and other persons who regularly assist registrants in preparing and filing reports with the Commission.

TABLE 6—ESTIMATED INCREASE IN INTERNAL BURDEN HOURS AND COSTS FOR PROFESSIONALS FROM THE PROPOSED DISCLOSURE RELATED TO DISTRIBUTION OF ASSETS, LIABILITIES, AND STOCKHOLDERS' EQUITY; AND INTEREST RATE AND INTEREST DIFFERENTIAL

[Item I of guide 3/proposed item 1402]

Form (A)	Number of affected filings (B)	Increase in internal burden hours per registrant (C)	Total proposed increase in internal burden hours (D) [(B) * (C)]	Increase in outside professional cost per registrant (E)	Total proposed increase in outside professional cost (F) [(B) * (E)]
Annual Reports = +2 hours					
Form 10-K	453	³⁴³ 1.5	679.5	³⁴⁴ \$200	\$90,600
Form 20-F	34	³⁴⁵ 0.5	17	³⁴⁶ 600	20,400
Registration and Offering Statements = +1 hour					
Form 20-F	1	³⁴⁷ 0.25	0.25	³⁴⁸ 300	300
Form S-1	24	³⁴⁹ 0.25	6	³⁵⁰ 300	7,200
Form S-4	93	³⁵¹ 0.25	23.25	³⁵² 300	27,900
Form F-1	1	³⁵³ 0.25	0.25	³⁵⁴ 300	300
Form F-4	2	³⁵⁵ 0.25	0.5	³⁵⁶ 300	600
Form 10	2	³⁵⁷ 0.25	0.5	³⁵⁸ 300	600
Form 1-A	5	³⁵⁹ 0.75	3.75	³⁶⁰ 100	500

b. Proposed Disclosure Related to Investment Portfolios (Item II of Guide 3/Proposed Item 1403)

The disclosures under existing Item II of Guide 3 that we do not propose to codify in proposed Item 1403 substantially overlap with U.S. GAAP and IFRS disclosure requirements, and those we propose to codify in proposed Item 1403 are consistent with the current disclosures in Item II of Guide 3. Therefore, we estimate that there would be no change to the burdens and

costs of an affected annual report or registration or offering statement as a result of this aspect of the proposed rules.

c. Proposed Disclosure Related to Loan Portfolios (Item III of Guide 3/Proposed Item 1404)

Proposed Item 1404 would codify the loan disclosures in Item III of Guide 3 that do not overlap with Commission rules, U.S. GAAP, or IFRS. However, because proposed Item 1404 would require additional disclosure regarding

interest rates for all loan categories, we estimate that the burdens and costs of an affected annual report would increase by three hours per year and the burdens and costs of an affected registration or offering statement would increase by one hour per year. Table 7 below shows the resulting estimated change in an affected registrant's internal burden hours and costs for outside professionals due to the proposed disclosure related to loan portfolios.

TABLE 7—ESTIMATED CHANGE IN INTERNAL BURDEN HOURS AND COSTS FOR OUTSIDE PROFESSIONALS FROM THE PROPOSED DISCLOSURE RELATED TO LOAN PORTFOLIOS

[Item III of guide 3/proposed item 1404]

Form (A)	Number of affected filings (B)	Increase in internal burden hours per registrant (C)	Total proposed increase in internal burden hours (D) [(B) * (C)]	Increase in outside professional cost per registrant (E)	Total proposed increase in outside professional cost (F) [(B) * (E)]
Annual Reports = +3 hours					
Form 10-K	453	³⁶¹ 2.25	1,019.25	³⁶² \$300	\$135,900
Form 20-F	34	³⁶³ 0.75	25.5	³⁶⁴ 900	30,600

³⁴³ Two hours × 0.75 = 1.5 hours.³⁴⁴ (Two hours × 0.25) × \$400 = \$200.³⁴⁵ Two hours × 0.25 = 0.5 hours.³⁴⁶ (Two hours × 0.75) × \$400 = \$600.³⁴⁷ One hour × 0.25 = 0.25 hours.³⁴⁸ (One hour × 0.75) × \$400 = \$300.³⁴⁹ One hour × 0.25 = 0.25 hours.³⁵⁰ (One hour × 0.75) × \$400 = \$300.³⁵¹ One hour × 0.25 = 0.25 hours.³⁵² (One hour × 0.75) × \$400 = \$300.³⁵³ One hour × 0.25 = 0.25 hours.³⁵⁴ (One hour × 0.75) × \$400 = \$300.³⁵⁵ One hour × 0.25 = 0.25 hours.³⁵⁶ (One hour × 0.75) × \$400 = \$300.³⁵⁷ One hour × 0.25 = 0.25 hours.³⁵⁸ (One hour × 0.75) × \$400 = \$300.³⁵⁹ One hour × 0.75 = 0.75 hours.³⁶⁰ (One hour × 0.25) × \$400 = \$100.³⁶¹ Three hours × 0.75 = 2.25 hours.³⁶² (Three hours × 0.25) × \$400 = \$300.³⁶³ Three hours × 0.25 = .75 hours.³⁶⁴ (Three hours × 0.75) × \$400 = \$900.

TABLE 7—ESTIMATED CHANGE IN INTERNAL BURDEN HOURS AND COSTS FOR OUTSIDE PROFESSIONALS FROM THE PROPOSED DISCLOSURE RELATED TO LOAN PORTFOLIOS—Continued
[Item III of guide 3/proposed item 1404]

Form	Number of affected filings	Increase in internal burden hours per registrant	Total proposed increase in internal burden hours	Increase in outside professional cost per registrant	Total proposed increase in outside professional cost
(A)	(B)	(C)	(D) [(B) * (C)]	(E)	(F) [(B) * (E)]
Registration and Offering Statements = +1					
Form 20-F	1	³⁶⁵ 0.25	0.25	³⁶⁶ 300	300
Form S-1	24	³⁶⁷ 0.25	6	³⁶⁸ 300	7,200
Form S-4	93	³⁶⁹ 0.25	23.25	³⁷⁰ 300	27,900
Form F-1	1	³⁷¹ 0.25	0.25	³⁷² 300	300
Form F-4	2	³⁷³ 0.25	0.5	³⁷⁴ 300	600
Form 10	2	³⁷⁵ 0.25	0.5	³⁷⁶ 300	600
Form 1-A	5	³⁷⁷ 0.75	3.75	³⁷⁸ 100	500

d. Proposed Disclosure Related to Allowance for Credit Losses (Item IV of Guide 3/Proposed Item 1405(c))

The disclosures under existing Item IV of Guide 3 that we do not propose to

codify in proposed Item 1405(c) substantially overlap with U.S. GAAP and IFRS disclosure requirements, and those we propose to codify in proposed Item 1405(c) are consistent with the current disclosures in Item IV of Guide 3. Therefore, we estimate that there would be no change to the burdens and costs of an affected annual report or registration or offering statement as a result of this aspect of the proposed rules.

e. Proposed Disclosure Related to Deposits (Item V of Guide 3/Proposed Item 1406)

Proposed Item 1406 would codify the majority of the disclosures currently called for by Item V of Guide 3, with

some revisions. Based on differences from the current Item V disclosures and the proposed requirements, we estimate that burdens and costs of an affected annual report would increase by three burden hours per year and the burdens and costs of an affected registration or offering statement would increase by one hour per year. Table 8 below shows the resulting estimated change in an affected registrant's internal burden hours and costs for outside professionals due to the proposed disclosure related to deposits.

³⁶⁵ One hour × 0.25 = 0.25 hours.

³⁶⁶ (One hour × 0.75) × \$400 = \$300.

³⁶⁷ One hour × 0.25 = 0.25 hours.

³⁶⁸ (One hour × 0.75) × \$400 = \$300.

³⁶⁹ One hour × 0.25 = 0.25 hours.

³⁷⁰ (One hour × 0.75) × \$400 = \$300.

³⁷¹ One hour × 0.25 = 0.25 hours.

³⁷² (One hour × 0.75) × \$400 = \$300.

³⁷³ One hour × 0.25 = 0.25 hours.

³⁷⁴ (One hour × 0.75) × \$400 = \$300.

³⁷⁵ One hour × 0.25 = 0.25 hours.

³⁷⁶ (One hour × 0.75) × \$400 = \$300.

³⁷⁷ One hour × 0.75 = 0.75 hours.

³⁷⁸ (One hour × 0.25) × \$400 = \$100.

TABLE 8—ESTIMATED CHANGE IN INTERNAL BURDEN HOURS AND COSTS FOR OUTSIDE PROFESSIONALS FROM THE PROPOSED DISCLOSURE RELATED TO DEPOSITS
[Item V of guide 3/proposed item 1406]

Form (A)	Number of affected filings (B)	Increase in internal burden hours per registrant (C)	Total proposed increase in internal burden hours (D) [(B) * (C)]	Increase in outside professional cost per registrant (E) (F) [(B) * (E)]	Total proposed increase in outside professional cost
Annual Reports = +3 hours					
Form 10-K	453	³⁷⁹ 2.25	1,019.25	³⁸⁰ \$300	\$135,900
Form 20-F	34	³⁸¹ 0.75	25.5	³⁸² 900	30,600
Registration and Offering Statements = +1					
Form 20-F	1	³⁸³ 0.25	0.25	³⁸⁴ 300	300
Form S-1	24	³⁸⁵ 0.25	6	³⁸⁶ 300	7,200
Form S-4	93	³⁸⁷ 0.25	23.25	³⁸⁸ 300	27,900
Form F-1	1	³⁸⁹ 0.25	0.25	³⁹⁰ 300	\$300
Form F-4	2	³⁹¹ 0.25	0.5	³⁹² 300	600
Form 10	2	³⁹³ 0.25	0.5	³⁹⁴ 300	600
Form 1-A	5	³⁹⁵ 0.75	3.75	³⁹⁶ 100	500

f. Proposed Disclosure Related to Return on Equity and Assets (Item VI of Guide 3)

The proposed rules would not codify the disclosures in Item VI of Guide 3.

Therefore, we estimate that the burdens and costs of an affected annual report would decrease by two burden hours per year and the burdens and costs of an affected registration or offering statement would decrease by one hour

per year. Table 9 below shows the resulting estimated change in an affected registrant's internal burden hours and costs for outside professionals due to this aspect of the proposed rules.

TABLE 9—ESTIMATED DECREASE IN INTERNAL BURDEN HOURS AND COSTS FOR OUTSIDE PROFESSIONALS FROM THE PROPOSED DISCLOSURE RELATED TO RETURN ON EQUITY AND ASSETS
[Item VI of guide 3]

Form (A)	Number of affected filings (B)	Increase in internal burden hours per registrant (C)	Total proposed increase in internal burden hours (D) [(B) * (C)]	Increase in outside professional cost per registrant (E)	Total proposed increase in outside professional cost (F) [(B) * (E)]
Annual Reports = -2 hours					
Form 10-K	453	³⁹⁷ (1.5)	(679.5)	³⁹⁸ (\$200)	(\$90,600)
Form 20-F	34	³⁹⁹ (0.5)	(17)	⁴⁰⁰ (600)	(20,400)
Registration and Offering Statements = -1 hour					
Form 20-F	1	⁴⁰¹ (0.25)	(0.25)	⁴⁰² (300)	(\$300)
Form S-1	24	⁴⁰³ (0.25)	(6)	⁴⁰⁴ (300)	(7,200)
Form S-4	93	⁴⁰⁵ (0.25)	(23.25)	⁴⁰⁶ (300)	(27,900)
Form F-1	1	⁴⁰⁷ (0.25)	(0.25)	⁴⁰⁸ (300)	(300)
Form F-4	2	⁴⁰⁹ (0.25)	(0.5)	⁴¹⁰ (300)	(600)
Form 10	2	⁴¹¹ (0.25)	(0.5)	⁴¹² (300)	(600)

³⁷⁹ Three hours × 0.75 = 2.25 hours.

³⁸⁰ (Three hours × 0.25) × \$400 = \$300.

³⁸¹ Three hours × 0.25 = 0.75 hours.

³⁸² (Three hours × 0.75) × \$400 = \$900.

³⁸³ One hour × 0.25 = 0.25 hours.

³⁸⁴ (One hour × 0.75) × \$400 = \$300.

³⁸⁵ One hour × 0.25 = 0.25 hours.

³⁸⁶ (One hour × 0.75) × \$400 = \$300.

³⁸⁷ One hour × 0.25 = 0.25 hours.

³⁸⁸ (One hour × 0.75) × \$400 = \$300.

³⁸⁹ One hour × 0.25 = 0.25 hours.

³⁹⁰ (One hour × 0.75) × \$400 = \$300.

³⁹¹ One hour × 0.25 = 0.25 hours.

³⁹² (One hour × 0.75) × \$400 = \$300.

³⁹³ One hour × 0.25 = 0.25 hours.

³⁹⁴ (One hour × 0.75) × \$400 = \$300.

³⁹⁵ One hour × 0.75 = 0.75 hours.

³⁹⁶ (One hour × 0.25) × \$400 = \$100.

³⁹⁷ Two hours × 0.75 = 1.5 hours.

³⁹⁸ (Two hours × 0.25) × \$400 = \$200.

³⁹⁹ Two hours × 0.25 = 0.5 hours.

⁴⁰⁰ (Two hours × 0.75) × \$400 = \$600.

⁴⁰¹ One hour × 0.25 = 0.25 hours.

⁴⁰² (One hour × 0.75) × \$400 = \$300.

⁴⁰³ One hour × 0.25 = 0.25 hours.

⁴⁰⁴ (One hour × 0.75) × \$400 = \$300.

⁴⁰⁵ One hour × 0.25 = 0.25 hours.

⁴⁰⁶ (One hour × 0.75) × \$400 = \$300.

⁴⁰⁷ One hour × 0.25 = 0.25 hours.

⁴⁰⁸ (One hour × 0.75) × \$400 = \$300.

⁴⁰⁹ One hour × 0.25 = 0.25 hours.

⁴¹⁰ (One hour × 0.75) × \$400 = \$300.

⁴¹¹ One hour × 0.25 = 0.25 hours.

⁴¹² (One hour × 0.75) × \$400 = \$300.

TABLE 9—ESTIMATED DECREASE IN INTERNAL BURDEN HOURS AND COSTS FOR OUTSIDE PROFESSIONALS FROM THE PROPOSED DISCLOSURE RELATED TO RETURN ON EQUITY AND ASSETS—Continued

[Item VI of guide 3]

Form (A)	Number of affected filings (B)	Increase in internal burden hours per registrant (C)	Total proposed in- crease in internal burden hours (D) [(B) * (C)]	Increase in outside professional cost per reg- istrant (E)	Total proposed increase in outside profes- sional cost (F) [(B) * (E)]
Form 1-A	5	⁴¹³ (0.75)	(3.75)	⁴¹⁴ (100)	(500)

g. Proposed Disclosure Related to Short-Term Borrowings (Item VII of Guide 3/ Proposed Item 1402)

The proposed rules would codify the average amount outstanding and interest paid disclosures in Item VII of Guide 3 as part of Proposed Rule 1402, and the

remaining disclosures in Item VII would not be proposed for codification.

Therefore, we estimate that the burdens and costs of an affected annual report would decrease by four burden hours per year and the burdens and costs of an affected registration or offering statement would decrease by one hour

per year. Table 10 below shows the resulting estimated change in an affected registrant's internal burden hours and costs for outside professionals due to the proposed disclosure related to short-term borrowings.

TABLE 10—ESTIMATED DECREASE IN INTERNAL BURDEN HOURS AND COSTS FOR OUTSIDE PROFESSIONALS FROM THE PROPOSED RULE RELATED TO SHORT-TERM BORROWINGS

[Item VII of guide 3/proposed item 1402]

Form (A)	Number of affected filings (B)	Increase in internal burden hours per registrant (C)	Total proposed increase in internal burden hours (D) [(B) * (C)]	Increase in out- side professional cost per registrant (E)	Total proposed increase in outside professional cost (F) [(B) * (E)]
Annual Reports = -4 hours					
Form 10-K	453	⁴¹⁵ (3)	(1,359)	⁴¹⁶ (\$400)	(\$181,200)
Form 20-F	34	⁴¹⁷ (1)	(34)	⁴¹⁸ (1,200)	(40,800)
Registration and Offering Statements = -1					
Form 20-F	1	⁴¹⁹ (0.25)	(0.25)	⁴²⁰ (300)	(300)
Form S-1	24	⁴²¹ (0.25)	(6)	⁴²² (300)	(7,200)
Form S-4	93	⁴²³ (0.25)	(23.25)	⁴²⁴ (300)	(27,900)
Form F-1	1	⁴²⁵ (0.25)	(0.25)	⁴²⁶ (300)	(300)
Form F-4	2	⁴²⁷ (0.25)	(0.5)	⁴²⁸ (300)	(600)
Form 10	2	⁴²⁹ (0.25)	(0.5)	⁴³⁰ (300)	(600)
Form 1-A	5	⁴³¹ (0.75)	(3.75)	⁴³² (100)	(500)

h. Proposed Disclosure Related to Credit Ratios (Proposed Items 1405(a) and (b))

For all filings other than initial registration and offering statements,

including annual reports and registration or offering statements that are not initial registration or offering statements, the proposed credit ratios and related disclosures would be required for the same periods that financial statements for those filings are required by our rules, which would be less than five years. For an affected registrant that would be required under the proposed rules to provide its credit ratios and related disclosures for less than five years, we estimate that the burdens and costs of an annual report would increase by six burden hours per

year and the burdens and costs of a registration or offering statement that is not an initial registration or offering statement would increase by one hour per year.

An affected registrant filing its initial registration or offering statement would be required under the proposed rules to provide its credit ratios and related disclosures for each of the last five years. We estimate that providing the additional years of credit ratios and related disclosures that go beyond what would be required in an annual report or a registration or offering statement that is not an initial registration or offering statement would increase the burdens and costs for an initial

⁴¹³ One hour $\times$ 0.75 = 0.75 hours.

⁴¹⁴ (One hour $\times$ 0.25) $\times$ \$400 = \$100.

⁴¹⁵ Four hours $\times$ 0.75 = 3 hours.

⁴¹⁶ (Four hours $\times$ 0.25) $\times$ \$400 = \$400.

⁴¹⁷ Four hours $\times$ 0.25 = 1 hours.

⁴¹⁸ (Four hours $\times$ 0.75) $\times$ \$400 = \$1,200.

⁴¹⁹ One hour $\times$ 0.25 = 0.25 hours.

⁴²⁰ (One hour $\times$ 0.75) $\times$ \$400 = \$300.

⁴²¹ One hour $\times$ 0.25 = 0.25 hours.

⁴²² (One hour $\times$ 0.75) $\times$ \$400 = \$300.

⁴²³ One hour $\times$ 0.25 = 0.25 hours.

⁴²⁴ (One hour $\times$ 0.75) $\times$ \$400 = \$300.

⁴²⁵ One hour $\times$ 0.25 = 0.25 hours.

⁴²⁶ (One hour $\times$ 0.75) $\times$ \$400 = \$300.

⁴²⁷ One hour $\times$ 0.25 = 0.25 hours.

⁴²⁸ (One hour $\times$ 0.75) $\times$ \$400 = \$300.

⁴²⁹ One hour $\times$ 0.25 = 0.25 hours.

⁴³⁰ (One hour $\times$ 0.75) $\times$ \$400 = \$300.

⁴³¹ One hour $\times$ 0.75 = 0.75 hours.

⁴³² (One hour $\times$ 0.25) $\times$ \$400 = \$100.

registration or offering statement by six
burden hours per year.

Table 11 below shows the resulting
estimated change in an affected
registrant's internal burden hours and

costs for outside professionals due to
the proposed disclosure related to credit
ratios.

**TABLE 11—ESTIMATED INCREASE IN INTERNAL BURDEN HOURS AND COSTS FOR OUTSIDE PROFESSIONALS FROM THE
PROPOSED DISCLOSURE RELATED TO CREDIT RATIOS**
[Proposed items 1405(a) and (b)]

Form (A)	Number of affected filings (B)	Increase in internal burden hours per registrant (C)	Total proposed increase in internal burden hours (D) [(B) * (C)]	Increase in out side professional cost per registrant (E)	Total proposed increase in outside professional cost (F) [(B) * (E)]
Annual Reports = +6 hours					
Form 10-K	453	⁴³³ 4.5	2,038.5	⁴³⁴ \$600	\$271,800
Form 20-F	34	⁴³⁵ 1.5	51	⁴³⁶ 1,800	61,200
Not Initial Registration and Offering Statements = +1 hours					
Form 20-F	1	⁴³⁷ 0.25	0.25	⁴³⁸ \$300	\$300
Form S-1	24	⁴³⁹ 0.25	6	⁴⁴⁰ 300	7,200
Form S-4	93	⁴⁴¹ 0.25	23.25	⁴⁴² 300	27,900
Form F-1	1	⁴⁴³ 0.25	0.25	⁴⁴⁴ 300	300
Form F-4	2	⁴⁴⁵ 0.25	0.5	⁴⁴⁶ 300	600
Form 10	2	⁴⁴⁷ 0.25	0.5	⁴⁴⁸ 300	600
Form 1-A	5	⁴⁴⁹ 0.75	3.75	⁴⁵⁰ 100	500
Initial Registration and Offering Statements = +6 hours					
Form 20-F	1	⁴⁵¹ 1.5	1.5	⁴⁵² 1,800	1,800
Form S-1	20	⁴⁵³ 1.5	30	⁴⁵⁴ 1,800	36,000
Form F-1	1	⁴⁵⁵ 1.5	1.5	⁴⁵⁶ 1,800	1,800
Form 10	1	⁴⁵⁷ 1.5	1.5	⁴⁵⁸ 1,800	1,800
Form 1-A	4	⁴⁵⁹ 4.5	18	⁴⁶⁰ 600	2,400

iv. Aggregated Change in Burden for Specific Portions of the Proposed Rules

Table 12 below shows the resulting
estimated change in an affected

⁴³³ Six hours $\times$ 0.75 = 4.5 hours.

⁴³⁴ (Six hours $\times$ 0.25) $\times$ \$400 = \$600.

⁴³⁵ Six hours $\times$ 0.25 = 1.5 hours.

⁴³⁶ (Six hours $\times$ 0.75) $\times$ \$400 = \$1,800.

⁴³⁷ One hour $\times$ 0.25 = 0.25 hours.

⁴³⁸ (One hour $\times$ 0.75) $\times$ \$400 = \$300.

⁴³⁹ One hour $\times$ 0.25 = 0.25 hours.

⁴⁴⁰ (One hour $\times$ 0.75) $\times$ \$400 = \$300.

⁴⁴¹ One hour $\times$ 0.25 = 0.25 hours.

⁴⁴² (One hour $\times$ 0.75) $\times$ \$400 = \$300.

⁴⁴³ One hour $\times$ 0.25 = 0.25 hours.

⁴⁴⁴ (One hour $\times$ 0.75) $\times$ \$400 = \$300.

⁴⁴⁵ One hour $\times$ 0.25 = 0.25 hours.

⁴⁴⁶ (One hour $\times$ 0.75) $\times$ \$400 = \$300.

⁴⁴⁷ One hour $\times$ 0.25 = 0.25 hours.

⁴⁴⁸ (One hour $\times$ 0.75) $\times$ \$400 = \$300.

⁴⁴⁹ One hour $\times$ 0.75 = 0.75 hours.

⁴⁵⁰ (One hour $\times$ 0.25) $\times$ \$400 = \$100.

⁴⁵¹ Six hours $\times$ 0.25 = 1.5 hours.

⁴⁵² (Six hours $\times$ 0.75) $\times$ \$400 = \$1,800.

registrant's internal burden hours and
costs for outside professionals
aggregated for each portion of the
proposed rules.

⁴⁵³ Six hours $\times$ 0.25 = 1.5 hours.

⁴⁵⁴ (Six hours $\times$ 0.75) $\times$ \$400 = \$1,800.

⁴⁵⁵ Six hours $\times$ 0.25 = 1.5 hours.

⁴⁵⁶ (Six hours $\times$ 0.75) $\times$ \$400 = \$1,800.

⁴⁵⁷ Six hours $\times$ 0.25 = 1.5 hours.

⁴⁵⁸ (Six hours $\times$ 0.75) $\times$ \$400 = \$1,800.

⁴⁵⁹ Six hours $\times$ 0.75 = 4.5 hours.

⁴⁶⁰ (Six hours $\times$ 0.25) $\times$ \$400 = \$600.

TABLE 12—ESTIMATED CHANGE IN INTERNAL BURDEN HOURS AND COSTS FOR OUTSIDE PROFESSIONALS FROM THE AGGREGATED PORTIONS OF THE PROPOSED RULES

Form	Number of affected forms	Existing Guide 3 item	Total burden hour change per form	Internal burden hour change per form	Total proposed change in internal burden hours	Outside professional costs change per form	Total proposed change in outside professional cost
Annual Reports							
Form 10-K	453	Item I	2	1.5	679.5	\$200	\$90,600
		Item II	0	0	0	0	0
		Item III	3	2.25	1,019.25	300	135,900
		Item IV	0	0	0	0	0
		Item V	3	2.25	1,019.25	300	135,900
		Item VI	(2)	(1.5)	(679.5)	(200)	(90,600)
		Item VII	(4)	(3)	(1,359)	(400)	(181,200)
		Credit Ratios	6	4.5	2,038.5	600	271,800
<i>Subtotals</i>			8	6	2,718	800	362,400
Form 20-F	34	Item I	2	0.5	17	600	20,400
		Item II	0	0	0	0	0
		Item III	3	0.75	25.5	900	30,600
		Item IV	0	0	0	0	0
		Item V	3	0.75	25.5	900	30,600
		Item VI	(2)	(0.5)	(17)	(600)	(20,400)
		Item VII	(4)	(1)	(34)	(1,200)	(40,800)
		Credit Ratios	6	1.5	51	1,800	61,200
<i>Subtotals</i>			8	2	68	2,400	81,600
Not Initial Registration and Offering Statements							
Form 20-F	1	Item I	1	0.25	0.25	300	300
		Item II	0	0	0	0	0
		Item III	1	0.25	0.25	300	300
		Item IV	0	0	0	0	0
		Item V	1	0.25	0.25	300	300
		Item VI	(1)	(0.25)	(0.25)	(300)	(300)
		Item VII	(1)	(0.25)	(0.25)	(300)	(300)
		Credit Ratios	1	0.25	0.25	300	300
<i>Subtotals</i>			2	0.5	0.5	600	600
Form S-1	24	Item I	1	0.25	6	300	7,200
		Item II	0	0	0	0	0
		Item III	1	0.25	6	300	7,200
		Item IV	0	0	0	0	0
		Item V	1	0.25	6	300	7,200
		Item VI	(1)	(0.25)	(6)	(300)	(7,200)
		Item VII	(1)	(0.25)	(6)	(300)	(7,200)
		Credit Ratios	1	0.25	6	300	7,200
<i>Subtotals</i>			2	0.5	12	600	14,400
Form S-4	93	Item I	1	0.25	23.25	300	27,900
		Item II	0	0	0	0	0
		Item III	1	0.25	23.25	300	27,900
		Item IV	0	0	0	0	0
		Item V	1	0.25	23.25	300	27,900
		Item VI	(1)	(0.25)	(23.25)	(300)	(27,900)
		Item VII	(1)	(0.25)	(23.25)	(300)	(27,900)
		Credit Ratios	1	0.25	23.25	300	27,900
<i>Subtotals</i>			2	0.5	46.5	600	55,800
Form F-1	1	Item I	1	0.25	0.25	300	300
		Item II	0	0	0	0	0
		Item III	1	0.25	0.25	300	300
		Item IV	0	0	0	0	0
		Item V	1	0.25	0.25	300	300
		Item VI	(1)	(0.25)	(0.25)	(300)	(300)
		Item VII	(1)	(0.25)	(0.25)	(300)	(300)
		Credit Ratios	1	0.25	0.25	300	300
<i>Subtotals</i>			2	0.5	0.5	600	600
Form F-4	2	Item I	1	0.25	0.5	300	600
		Item II	0	0	0	0	0
		Item III	1	0.25	0.5	300	600

TABLE 12—ESTIMATED CHANGE IN INTERNAL BURDEN HOURS AND COSTS FOR OUTSIDE PROFESSIONALS FROM THE AGGREGATED PORTIONS OF THE PROPOSED RULES—Continued

Form	Number of affected forms	Existing Guide 3 item	Total burden hour change per form	Internal burden hour change per form	Total proposed change in internal burden hours	Outside professional costs change per form	Total proposed change in outside professional cost
		Item IV	0	0	0	0	0
		Item V	1	0.25	0.5	300	600
		Item VI	(1)	(0.25)	(0.5)	(300)	(600)
		Item VII	(1)	(0.25)	(0.5)	(300)	(600)
		Credit Ratios	1	0.25	0.5	300	600
<i>Subtotals</i>			2	0.5	1	600	1,200
Form 10	2	Item I	1	0.25	0.5	300	600
		Item II	0	0	0	0	0
		Item III	1	0.25	0.5	300	600
		Item IV	0	0	0	0	0
		Item V	1	0.25	0.5	300	600
		Item VI	(1)	(0.25)	(0.5)	(300)	(600)
		Item VII	(1)	(0.25)	(0.5)	(300)	(600)
		Credit Ratios	1	0.25	0.5	300	600
<i>Subtotals</i>			2	0.5	1	600	1,200
Form 1-A	5	Item I	1	0.75	3.75	100	500
		Item II	0	0	0	0	0
		Item III	1	0.75	3.75	100	500
		Item IV	0	0	0	0	0
		Item V	1	0.75	3.75	100	500
		Item VI	(1)	(0.75)	(3.75)	(100)	(500)
		Item VII	(1)	(0.75)	(3.75)	(100)	(500)
		Credit Ratios	1	0.75	3.75	100	500
<i>Subtotals</i>			2	1.5	7.5	200	1,000
Initial Registration or Offering Statements							
Form 20-F	1	Credit Ratios	6	1.5	1.5	1,800	1,800
Form S-1	20	Credit Ratios	6	1.5	30	1,800	36,000
Form F-1	1	Credit Ratios	6	1.5	1.5	1,800	1,800
Form 10	1	Credit Ratios	6	1.5	1.5	1,800	1,800
Form 1-A	4	Credit Ratios	6	4.5	18	600	2,400

v. Total Change in Burden Per Form as a Result of the Proposed Rules

Table 13 below shows the resulting estimated change in an affected

registrant's internal burden hours and costs for outside professionals per form as a result of the proposed rules

regardless of the purpose for which the form is used.

TABLE 13—ESTIMATED TOTAL INCREASE IN INTERNAL BURDEN HOURS AND COSTS FOR OUTSIDE PROFESSIONAL AS A RESULT OF THE PROPOSED RULES

Form	Total number of affected forms	Internal burden hour change per form	Total proposed change in internal burden hours	Outside professional costs change per form	Total proposed change in outside professional cost
Form 10-K	453	6	2,718	\$800	\$362,400
Form 20-F					
Form 20-F	34	2	68	2,400	81,600
Form 20-F	1	0.5	0.5	600	600
Form 20-F	1	1.5	1.5	1,800	1,800
	36	4	70	4,800	84,000
Form S-1					
Form S-1	24	0.5	12	600	14,400
Form S-1	20	1.5	30	1,800	36,000
	44	2	42	2,400	50,400
Form S-4	93	0.5	46.5	600	55,800
Form F-1					
Form F-1	1	0.5	0.5	600	600
Form F-1	1	1.5	1.5	1,800	1,800
	2	2	2	2,400	2,400

TABLE 13—ESTIMATED TOTAL INCREASE IN INTERNAL BURDEN HOURS AND COSTS FOR OUTSIDE PROFESSIONAL AS A RESULT OF THE PROPOSED RULES—Continued

Form	Total number of affected forms	Internal burden hour change per form	Total proposed change in internal burden hours	Outside professional costs change per form	Total proposed change in outside professional cost
Form F-4	2	0.5	1	600	1,200
Form 10					
Form 10	2	0.5	1	600	1,200
Form 10	1	1.5	1.5	1,800	1,800
	3	2	2.5	2,400	3,000
Form 1-A					
Form 1-A	5	1.5	7.5	200	1,000
Form 1-A	4	4.5	18	600	2,400
	9	6	25.5	800	3,400
Total	642	23	2,908	14,800	562,600

vi. Total Paperwork Burden Under the Proposed Rules costs for outside professional under the proposed rules.

Table 14 below shows the total estimated internal burden hours and

TABLE 14—TOTAL PAPERWORK BURDEN UNDER THE PROPOSED RULES

	Current annual responses	Current burden hours	Current cost burden	Proposed change in internal registrant burden hours	Proposed change in outside professional costs	Proposed burden hours for affected responses	Proposed costs for affected responses
	(A)	(B)	(C)	(D)	(E)	(F) [(B) + (D)]	(G) [(C) + (E)]
10-K	8,137	14,220,652	\$1,898,891,869	2,718	\$362,400	14,223,370	\$1,899,254,269
20-F	725	479,784	577,479,600	70	84,000	479,854	577,563,600
S-1	901	148,556	182,048,700	42	50,400	148,598	182,099,100
S-4	551	563,216	678,291,204	⁴⁶¹ 47	55,800	563,263	678,347,004
F-1	63	26,815	32,445,300	2	2,400	26,817	32,447,700
F-4	39	14,076	17,106,000	1	1,200	14,077	17,107,200
10	216	12,072	14,356,888	⁴⁶² 3	3,000	12,075	14,359,888
1-A	179	98,396	13,111,912	⁴⁶³ 26	3,400	98,422	13,115,312

C. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;

- Evaluate the accuracy of our assumptions and estimates of the burden of the proposed collection of information;

- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;

- Evaluate whether there are ways to minimize the burden of the collection of

information on those who respond, including through the use of automated collection techniques or other forms of information technology; and

- Evaluate whether the proposed rules would have any effects on any other collection of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct their comments to the Office of Management and Budget, Attention: Desk Officer for the U.S. Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy to, Vanessa A. Countryman, Secretary, U.S. Securities and Exchange Commission, 100 F Street

NE, Washington, DC 20549, with reference to File No. S7-02-17. Requests for materials submitted to OMB by the Commission with regard to the collection of information requirements should be in writing, refer to File No. S7-02-17 and be submitted to the U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549. OMB is required to make a decision concerning the collection of information requirements between 30 and 60 days after publication of the proposed rule. Consequently, a comment to OMB is best assured of having its full effect if the OMB receives it within 30 days of publication.

VIII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of

⁴⁶¹ Rounded to 47.

⁴⁶² Rounded to three.

⁴⁶³ Rounded to 26.

1996 (“SBREFA”),⁴⁶⁴ the Commission must advise OMB as to whether the proposed rules constitute a “major” rule. Under SBREFA, a rule is considered “major” where, if adopted, it results or is likely to result in:

- An annual effect on the economy of \$100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposed rule would be a “major rule” for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect 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.

IX. Regulatory Flexibility Act Certification

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (“RFA”) ⁴⁶⁵ requires the Commission to prepare and make available for public comment an Initial Regulatory Flexibility Analysis (“IRFA”) that will describe the impact of the proposed rule on small entities.⁴⁶⁶ Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.⁴⁶⁷

The proposed amendments would update and streamline our disclosure requirements for banks, bank holding companies, savings and loan associations, and savings and loan holding companies. These registrants currently provide many disclosures in response to the items set forth in Guide 3, which are not Commission rules. The proposed rules would rescind Guide 3; update and codify certain Guide 3 disclosures into new Subpart 1400 of Regulation S–K; eliminate other Guide 3 disclosures that overlap with Commission rules, U.S. GAAP, or IFRS; and add certain credit ratio disclosure requirements. The reasons for, and objectives of, the proposed rules are

discussed in more detail in Sections II through IV above.

The RFA defines “small entity” to mean “small business,” “small organization,” or “small governmental jurisdiction.”⁴⁶⁸ For purposes of the RFA, under our rules, a registrant, other than an investment company, is a “small business” or “small organization” if it had total assets of \$5 million or less on the last day of its most recent fiscal year and is engaged or proposing to engage in an offering of securities that does not exceed \$5 million.⁴⁶⁹ We estimate the proposed amendments would affect one issuer that files with the Commission, other than investment companies, which may be considered a small entity and is potentially subject to the proposed rule.⁴⁷⁰ Accordingly, the Commission hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed amendments, if adopted, would not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

Request for Comment:

We request comment on this certification. In particular, we solicit comment on the following: Do commenters agree with the certification? If not, please describe the nature of any impact of the proposed amendments on small entities and provide empirical data to illustrate the extent of the impact. Such comments will be considered in the preparation of the final rules (and in a Final Regulatory Flexibility Analysis if one is needed) and, if the proposed amendments are adopted, will be placed in the same public file as comments on the proposed rules themselves.

X. Statutory Authority and Text of Proposed Rules

We are proposing the rules contained in this document pursuant to Sections 3(b), 7, 10, 19(a), and 28 of the Securities Act and Sections 3(b), 12, 13, 15(d), 23(a), and 36(a) of the Exchange Act.

List of Subjects

17 CFR Part 210

Accountants, Accounting, Banks, Banking, Employee benefit plans, Holding companies, Insurance companies, Investment companies, Oil and gas exploration, Reporting and recordkeeping requirements, Securities, Utilities.

17 CFR Parts 229

Reporting and recordkeeping requirements, Securities.

17 CFR Part 249

Brokers, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

For the reasons stated in the preamble, the Commission is proposing to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

- 1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 78c, 78j–1, 78l, 78m, 78n, 78o(d), 78q, 78u–5, 78w, 78ll, 78mm, 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202 and 7262, and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012), unless otherwise noted.

- 2. Revise § 210.9–01 to read as follows:

§ 210.9–01 Application of §§ 210.9–01 to 210.9–07

The consolidated financial statements filed for bank holding companies, savings and loan holding companies, and the financial statements of banks and savings and loan associations, must apply the guidance in this article in filings with the Commission.

- 3. Amend § 210.9–03 by:
 - a. removing and reserving paragraphs 7(a) through (c); and
 - b. revising paragraph 7(e)(2).
- The revisions to read as follows:

§ 210.9–03 Balance sheets.

* * * * *

7. * * *

(e) * * *

(2) If a significant portion of the aggregate amount of loans outstanding at the end of the fiscal year disclosed pursuant to (e)(1)(i) of this section relates to loans that are disclosed as past due, nonaccrual or troubled debt restructurings in the consolidated financial statements, so state and disclose the aggregate amounts of such loans along with such other information necessary to an understanding of the

⁴⁶⁴ Public Law 104–121, tit. II, 110 Stat. 857 (1996).

⁴⁶⁵ 5 U.S.C. 601 *et seq.*

⁴⁶⁶ 5 U.S.C. 603(a).

⁴⁶⁷ 5 U.S.C. 605(b).

⁴⁶⁸ 5 U.S.C. 601(6).

⁴⁶⁹ See 17 CFR 230.157 under the Securities Act and 17 CFR 240.0–10(a) under the Exchange Act.

⁴⁷⁰ This estimate is based on staff analysis. See *supra* notes 300 to 303 above.

effects of the transactions on the financial statements.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

■ 4. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j-3, 78l, 78m, 78n, 78n-1, 78o, 78u-5, 78w, 78ll, 78mm, 80a-8, 80a-9, 80a-20, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a), 80a-39, 80b-11 and 7201 *et seq.*; 18 U.S.C. 1350; sec. 953(b), Pub. L. 111-203, 124 Stat. 1904 (2010); and sec. 102(c), Pub. L. 112-106, 126 Stat. 310 (2012).

■ 5. Amend § 229.404 by revising Instruction 4.c under “Instructions to Item 404(a)” to read as follows:

§ 229.404 (Item 404) Transactions with Related Persons, Promoters and Certain Control Persons

* * * * *

Instructions to Item 404(a)

* * * * *

4. * * *

c. If the lender is a bank, savings and loan association, or broker-dealer extending credit under Federal Reserve Regulation T (12 CFR part 220) and the loans are not disclosed as past due, nonaccrual or troubled debt restructurings in the consolidated financial statements, disclosure under paragraph (a) of this Item may consist of a statement, if such is the case, that the loans to such persons:

- i. Were made in the ordinary course of business;
- ii. Were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable loans with persons not related to the lender; and
- iii. Did not involve more than the normal risk of collectibility or present other unfavorable features.

* * * * *

§ 229.801 [Amended]

■ 6. Amend § 229.801 by reserving paragraph (c).

§ 229.802 [Amended]

■ 7. Amend § 229.802 by reserving paragraph (c).

■ 8. Add Subpart 229.1400, consisting of §§ 229.1401 through 229.1406, to read as follows:

Subpart 229.1400—Disclosure by Bank and Savings and Loan Registrants

Sec.

- 229.1401 (Item 1401) General instructions.
- 229.1402 (Item 1402) Distribution of assets, liabilities and stockholders' equity; interest rates and interest differential.
- 229.1403 (Item 1403) Investments in debt securities.
- 229.1404 (Item 1404) Loan portfolio.
- 229.1405 (Item 1405) Allowance for Credit Losses.
- 229.1406 (Item 1406) Deposits.

§ 229.1401 (Item 1401) General instructions.

(a) A bank, bank holding company, savings and loan association, or savings and loan holding company (“bank and savings and loan registrants”) must provide the disclosure required by this subpart.

(b) When the term “reported period” is used in this subpart, it refers to each of the periods described below:

(1) Each annual period required by 17 CFR part 210 (“Regulation S-X”) or 17 CFR 239.90 (“Form 1-A”) for bank and savings and loan registrants, except as is provided in paragraph (2) below;

(2) With respect to the disclosures required by § 229.1405(a), each of the last five fiscal years for initial public offering registration statements under the Securities Act, registration statements for an initial registration of a class of securities under Section 12(b) or 12(g) of the Exchange Act, and initial offering statements under Regulation A, and

(3) Any additional interim period subsequent to the most recent fiscal year end if a material change in the information or the trend evidenced thereby has occurred.

(c) In this subpart, registrants are required to use daily averages unless otherwise indicated. Registrants may use weekly or month-end averages where the collection of data on a daily average basis would involve unwarranted or undue burden or expense; provided that such averages are representative of the registrant's operations. Registrants must disclose the basis used for presenting averages.

(d) In various provisions throughout this subpart, registrants are required to disclose information relating to certain foreign financial activities. For purposes of this subpart, registrants are only required to present this information if the registrant meets the threshold to make separate disclosures concerning its foreign activities in its consolidated financial statements pursuant to the test set forth in § 210.9-05 of Regulation S-X.

§ 229.1402 (Item 1402) Distribution of assets, liabilities and stockholders' equity; interest rates and interest differential.

(a) For each reported period, present average balance sheets containing the information specified below. The format of the average balance sheets may be condensed from consolidated financial statements, provided that the condensed average balance sheets indicate the significant categories of assets and liabilities, including all major categories of interest-earning assets and interest-bearing liabilities. Major categories of interest-earning assets must include, at a minimum, loans, taxable investment securities, non-taxable investment securities, interest bearing deposits in other banks, federal funds sold, securities purchased with agreements to resell, and other short-term investments. Major categories of interest-bearing liabilities must include, at a minimum, savings deposits, other time deposits, federal funds purchased, securities sold under agreements to repurchase, commercial paper, other short-term debt, and long-term debt.

(b) For each reported period, present an analysis of net interest earnings as follows:

(1) For each major category of interest-earning asset and each major category of interest-bearing liability, the average amount outstanding during the period and the interest earned or paid on such amount.

(2) The average yield for each major category of interest-earning asset.

(3) The average rate paid for each major category of interest-bearing liability.

(4) The average yield on all interest-earning assets and the average effective rate paid on all interest-bearing liabilities.

(5) The net yield on interest-earning assets (net interest earnings divided by total interest-earning assets, with net interest earnings equaling the difference between total interest earned and total interest paid).

(6) The registrant may, at its option, present its analysis in connection with the average balance sheet required by paragraph (a) of this section.

(c) For the interest rates and interest differential analysis:

(1) Present for each comparative reporting period:

(i) The dollar amount of change in interest income; and

(ii) The dollar amount of change in interest expense.

(2) For each major category of interest-earning asset and interest-bearing liability, segregate the changes presented pursuant to paragraph (c)(1)

of this section into amounts attributable to:

- (i) Changes in volume (change in volume times old rate);
- (ii) Changes in rates (change in rate times old volume); and
- (iii) Changes in rates and volume (change in rate times the change in volume).

(3) The rates and volume variances presented pursuant to paragraph (c)(2) of this section must be allocated on a consistent basis between rates and volume variances, and the basis of allocation disclosed in a note to the table.

Instruction 1 to § 229.1402. If material, disclose how non-accruing loans have been treated for purposes of the analyses required by paragraph (b) of this section.

Instruction 2 to § 229.1402. In the calculation of the changes in the interest income and interest expense required by paragraph (c) of this section, exclude any out-of-period items and adjustments and disclose the types and amounts of items excluded in a note to the table.

Instruction 3 to § 229.1402. If material loan fees are included in the interest income computation, disclose the amount of such fees.

Instruction 4 to § 229.1402. If tax-exempt income is calculated on a tax equivalent basis, describe the extent of recognition of exemption from Federal, state, and local taxation and the combined marginal or incremental rate used in a brief note to the table.

Instruction 5 to § 229.1402. If disclosure regarding foreign activities is required pursuant to § 229.1401(d), the information required by paragraphs (a), (b) and (c) of this section must be further segregated between domestic and foreign activities for each significant category of assets and liabilities disclosed pursuant to paragraph (a) of this section. In addition, for each reported period,

present separately, on the basis of averages, the percentage of total assets and total liabilities attributable to foreign activities.

§ 229.1403 (Item 1403) Investments in debt securities.

(a) As of the end of the latest reported period, state the weighted average yield of each category of debt securities not carried at fair value through earnings for which disclosure is required in the financial statements and is due:

- (1) In one year or less;
- (2) After one year through five years;
- (3) After five years through ten years;

and

- (4) After ten years.

(b) Disclose how the weighted average yield has been calculated. Additionally, state whether yields on tax-exempt obligations have been computed on a tax-equivalent basis (see Instruction 4 to § 229.1402). Discuss any major changes in the tax-exempt portfolio.

§ 229.1404 (Item 1404) Loan portfolio.

(a) As of the end of the latest reported period, present separately the amount of loans in each category for which disclosure is required in the financial statements that are due:

- (1) In one year or less;
 - (2) After one year through five years;
- and
- (3) After five years.

(b) For each loan category for which disclosure is provided in response to paragraph (a), present separately the total amount of all loans in such loan category that are due after one year that:

- (1) Have predetermined interest rates; and
- (2) Have floating or adjustable interest rates.

Instruction 1 to § 229.1404. Report scheduled repayments in the maturity category in which the payment is due.

Instruction 2 to § 229.1404. Report demand loans, loans having no stated schedule of repayments and no stated

maturity, and overdrafts as due in one year or less.

Instruction 3 to § 229.1404.

Determinations of maturities shall be based upon contractual terms. However, to the extent that non-contractual rollovers or extensions are included for purposes of measuring the allowance for credit losses under U.S. GAAP or IFRS, consider such non-contractual rollovers or extensions for purposes of the maturities classification and briefly discuss this methodology.

§ 229.1405 (Item 1405) Allowance for Credit Losses.

(a) For each reported period, disclose the following credit ratios, along with each component of the ratio's calculation. For initial public offering registration statements under the Securities Act, registration statements for an initial registration of a class of securities under Section 12(b) or 12(g) of the Exchange Act, and initial offering statements under Regulation A, provide the following ratios for the last five fiscal years:

(1) Allowance for credit losses to total loans outstanding at each period end.

(2) Nonaccrual loans to total loans outstanding at each period end.

(3) Allowance for credit losses to nonaccrual loans at each period end.

(4) Net charge-offs during the period to average loans outstanding during the period. Provide this ratio for each loan category for which disclosure is required in the financial statements.

(b) Provide a discussion of the factors that drove material changes in the ratios in (a) above, or the related components, during the periods presented.

(c) At the end of each reported period, provide a breakdown of the allowance for credit losses by each loan category for which disclosure is required by U.S. GAAP as set forth in the following template:

ALLOCATION OF THE ALLOWANCE FOR CREDIT LOSSES

Balance at end of period applicable to:	Reported period	
	Amount	Percent of loans in each category to total loans
Each loan category required by U.S. GAAP	\$X	X
		100

Instruction 1 to § 229.1405. A foreign private issuer that prepares its financial statements in accordance with IFRS as issued by the IASB does not need to provide disclosure responsive to

§ 229.1405(a)(2), (a)(3) and paragraph (c) of this section.

Instruction 2 to § 229.1405. Net charge-offs must be based on current

period net charge-offs for each loan category.

§ 229.1406 (Item 1406) Deposits.

(a) For each reported period, present separately the average amount of and the average rate paid on each of the following deposit in bank office categories that are in excess of 10 percent of average total deposits:

(1) Noninterest bearing demand deposits.

(2) Interest-bearing demand deposits.

(3) Savings deposits.

(4) Time deposits.

(5) Other.

(b) If the registrant believes other categories more appropriately describe the nature of the deposits, those categories may be used.

(c) If material, separately present domestic deposits and foreign deposits for all amounts reported under paragraph (a) of this section. Foreign deposits as used here means deposits from depositors who are not in the registrant's country of domicile.

(d) If material, the registrant must disclose separately the aggregate amount of deposits by foreign depositors in domestic offices. Registrants are not required to identify the nationality of the depositors.

(e) As of the end of each reported period, present separately the amount of uninsured deposits. For registrants that are U.S. federally insured depository institutions, uninsured deposits are individual deposits in U.S. offices of amounts exceeding the Federal Deposit Insurance Corporation insurance limit, and investment products such as mutual funds, annuities, or life insurance policies. Foreign banking or savings and loan institutions must disclose the definition of uninsured deposits

appropriate for their country of domicile.

(f) As of the end of the latest reported period, state the amount outstanding of:

(1) U.S. time deposits in excess of the Federal Deposit Insurance Corporation insurance limit; and

(2) Time deposits that are otherwise uninsured (including for example, U.S. time deposits in uninsured accounts, non-U.S. time deposits in uninsured accounts, or non-U.S. time deposits in excess of any country-specific insurance fund), by time remaining until maturity of:

(i) 3 months or less;

(ii) Over 3 through 6 months;

(iii) Over 6 through 12 months; and

(iv) Over 12 months.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 9. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; 12 U.S.C. 5461 *et seq.*; 18 U.S.C. 1350; Sec. 953(b) Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112–106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112–106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114–94, 129 Stat. 1312 (2015), unless otherwise noted.

■ 10. Amend Form 20–F (referenced in § 249.220f) by:

■ a. adding Instruction 4 to Item 4; and

■ b. revising Instruction 2 to Item 7.B.

The addition and revisions to read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

United States, Securities and Exchange Commission, Washington, DC 20549**Form 20–F**

* * * * *

Part I

* * * * *

Instructions to Item 4: * * *

4. If you are bank, bank holding company, savings and loan association or savings and loan holding company, provide the information specified in Subpart 1400 of Regulation S–K (§ 229.1400 *et seq.* of this chapter).

* * * * *

Instructions to Item 7.B: * * *

2. In response to Item 7.B.2, if the lender is a bank, savings and loan association, or broker dealer extending credit under Federal Reserve Regulation T, and the loans are not disclosed as past due, nonaccrual or troubled debt restructurings in the consolidated financial statements, your response may consist of a statement, if true, that the loans in question (A) were made in the ordinary course of business, (B) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons, and (C) did not involve more than the normal risk of collectibility or present other unfavorable features.

* * * * *

By the Commission.

Dated: September 17, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–20491 Filed 10–2–19; 8:45 am]

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Part III

The President

Proclamation 9936—National Breast Cancer Awareness Month, 2019

Proclamation 9937—National Cybersecurity Awareness Month, 2019

Proclamation 9938—National Disability Employment Awareness Month, 2019

Proclamation 9939—National Energy Awareness Month, 2019

Proclamation 9940—National Substance Abuse Prevention Month, 2019

Presidential Documents

Title 3—

Proclamation 9936 of September 30, 2019

The President

National Breast Cancer Awareness Month, 2019

By the President of the United States of America

A Proclamation

During National Breast Cancer Awareness Month, our Nation honors the courage and strength of the over 3.4 million Americans who are battling this terrible disease and remembers loved ones whose lives have been affected by breast cancer. In memory of those we have lost, we pledge never to waver from our ongoing search for effective and innovative medical advancements to treat and prevent this disease.

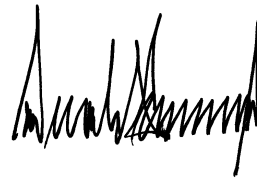
In the United States, more than 268,000 women and approximately 2,600 men are diagnosed with breast cancer annually. While deaths from breast cancer have declined over time, it remains the second most common form of cancer and the second leading cause of cancer death overall among American women, with a staggering 41,000 lives lost each year. For this reason, Melania and I urge our fellow Americans, especially those who have a family history or may be at increased risk, to consult with their healthcare providers about the individual likelihood of developing breast cancer. Early detection and regular screening mammograms, followed by timely treatment upon diagnosis, can significantly improve a patient's chance of survival.

My Administration continues to support the cutting-edge research needed to develop treatments that may save the lives of breast cancer patients. Since my first day in office, I have eliminated burdensome regulations, allowing researchers to more easily develop new drugs that can be approved quickly by the Food and Drug Administration (FDA). Just this year, the FDA has approved several new therapies for the treatment of breast cancer. Additionally, last year, I signed into law the Federal "Right to Try" legislation, which allows those diagnosed with a terminal illness greater access to lifesaving drugs. The expanded options for patients also allow researchers to better understand the safety and effectiveness of new approaches to treatment, bringing us closer to defeating breast cancer completely.

This month, and throughout the year, we join together in support of our fellow Americans diagnosed with breast cancer, those who are in remission, and those who have lost loved ones to this disease. We also commend the skilled medical professionals and dedicated researchers who provide quality treatment and care to women and men across our country. As one Nation, we will continue to strive for a future in which every American may enjoy a long, healthy life free from the threat of cancer.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2019 as National Breast Cancer Awareness Month. I encourage citizens, government agencies, private businesses, nonprofit organizations, the media, and other interested groups to increase awareness of how Americans can fight breast cancer. I also invite the Governors of the States and Territories and officials of other areas subject to the jurisdiction of the United States to join me in recognizing National Breast Cancer Awareness Month.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of September, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-fourth.

A handwritten signature in black ink, appearing to be "Donald Trump", located in the lower right quadrant of the page.

[FR Doc. 2019-21760

Filed 10-2-19; 11:15 am]

Billing code 3295-F0-P

Presidential Documents

Proclamation 9937 of September 30, 2019

National Cybersecurity Awareness Month, 2019

By the President of the United States of America

A Proclamation

During National Cybersecurity Awareness Month, we recognize that protecting cyberspace is essential to our national security and economic stability. We also underscore the responsibility individuals have to secure and safeguard their personal devices, technology, and networks from cyber threats.

My Administration is taking decisive action to prevent our adversaries from compromising our information and communications infrastructure. Last year, I released the first comprehensive National Cyber Strategy in more than 15 years. By identifying and implementing the priorities related to our Nation's cybersecurity objectives, this strategy ensures the Federal Government will be better equipped to protect the American people, homeland, and way of life. Additionally, in November of 2018, I signed into law the Cybersecurity and Infrastructure Security Agency Act, establishing the Cybersecurity and Infrastructure Security Agency (CISA) within the Department of Homeland Security (DHS). Since its creation, CISA has worked with Federal, State, local, and private partners to provide incident response services and assessment capabilities for a more secure and resilient cyber infrastructure.

As technology advances, so do the tactics used by malicious cyber actors to obtain personal information and threaten our networks. To maximize our Nation's cybersecurity and mitigate risks, all levels of government must strengthen their partnerships with the private sector to better exchange information, build greater trust, and enhance the resilience of our country's cyber infrastructure. In May of 2019, I issued an Executive Order on America's Cybersecurity Workforce to provide more access to cybersecurity skills training, identify the most-skilled cybersecurity workers, and advance career opportunities in the public and private sectors. This action also established the annual President's Cup Cybersecurity Competition. The goal of this competition is to identify and encourage outstanding cybersecurity talent within the Federal workforce. My Administration is also placing a renewed focus on Science, Technology, Engineering, and Mathematics (STEM) curriculums that embrace courses such as computer science, so that the next generation will have the technical skills needed to defend our critical infrastructure and fellow citizens.

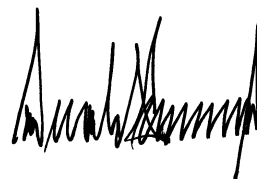
All Americans have a responsibility to defend their sensitive data stored on devices and in the cloud. DHS's "Own IT. Secure IT. Protect IT." campaign and the National Institute of Standards and Technology's Cybersecurity Framework provide guidance for securing personal information and devices. From browsing social media sites to managing online banking accounts, practicing a few simple steps can make a substantial difference in keeping you and your online data secure. To be better protected at home, school, or work, DHS recommends individuals limit the amount of personal information they share online, regularly update devices and software, and utilize complex passwords and authentication methods.

As we continue working to fortify our country's cybersecurity infrastructure, it is imperative that all Americans use best practices in online security. During National Cybersecurity Awareness Month, I urge all citizens to spread

awareness on ways they can mitigate risks, safeguard personal and professional data, and contribute to the safety and prosperity of our Nation.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2019 as National Cybersecurity Awareness Month. I call upon the people, companies, and institutions of the United States to recognize the importance of cybersecurity and to observe this month through events, training, and education to further our country's national security and resilience.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of September, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-fourth.



Presidential Documents

Proclamation 9938 of September 30, 2019

National Disability Employment Awareness Month, 2019

By the President of the United States of America

A Proclamation

National Disability Employment Awareness Month is a time to celebrate the contributions of Americans with disabilities to our country's workforce and economic strength. We also reaffirm our commitment to fostering opportunity for Americans of all abilities to apply their skills and talents in the workplace as they pursue their dreams.

Thanks to my Administration's economic policies, we have seen the creation of more than 6.3 million new jobs since the election, providing tremendous opportunities for job seekers nationwide. In April, the national unemployment rate dropped to a near half-century low, and the unemployment rate for Americans with disabilities reached the lowest level on record. It is essential that we continue creating an environment in which Americans with disabilities have access to full participation in our economy and the ability to experience the benefits of employment.

My Administration is working to expand opportunities to empower men and women with disabilities through apprenticeships. In March, the Department of Labor (DOL) announced the Apprenticeship Inclusion Model (AIM) initiative to expand career pathways leading to family-sustaining wages for individuals with disabilities. These efforts help Americans earn paychecks while also earning credentials and degrees. Together with employers, unions, and apprenticeship programs, AIM will improve the recruitment and retention of individuals with disabilities and support the expansion of inclusive apprenticeship programs.

States are in the best position to create real, lasting, and quantifiable change through solutions tailored to the economic and employment realities within their communities, especially for Americans with disabilities. Through the State Exchange on Employment and Disability initiative, we are helping States develop, implement, and promote policies to improve workforce inclusion for persons with disabilities, including veterans with service-related disabilities. Last year alone, this initiative engaged policymakers in 29 States to help advance employment opportunities and ensure that workforce development, transportation, and technology are disability-inclusive.

Employers, both public and private, are critical to our nationwide efforts to promote workplace access for individuals with disabilities. My Administration has launched a major initiative to encourage Federal contractors to take proactive steps to recruit, hire, retain, and advance people with disabilities. Additionally, two DOL programs, the Employer Assistance and Resource Network on Disability Inclusion and the Job Accommodation Network, have helped tens of thousands of employers implement effective organizational policies and individual accommodation solutions that keep American workers on the job and contributing to our workplaces and economy. Automation and technology are changing the way in which work is organized and performed—and who can perform it. Many jobs will be open to new populations, particularly individuals with disabilities.

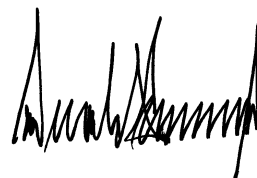
This month, we renew our dedication to furthering the participation of Americans with disabilities in the workforce. We are grateful to all of our Nation's employers who hire individuals with disabilities, giving them the

opportunity to excel as they provide for themselves and their families. By supporting the aspirations of all Americans who want to work, we will strengthen our workplaces, economy, and communities.

The Congress, by Joint Resolution approved August 11, 1945, as amended (36 U.S.C. 121), has designated October of each year as “National Disability Employment Awareness Month.”

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, do hereby proclaim October 2019 as National Disability Employment Awareness Month. I call upon government and labor leaders, employers, and the great people of the United States to recognize the month with appropriate programs, ceremonies, and activities across our land.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of September, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-fourth.



Presidential Documents

Proclamation 9939 of September 30, 2019

National Energy Awareness Month, 2019

By the President of the United States of America

A Proclamation

Throughout the United States, we are seeing a revitalization of our country's energy sector, which is lighting up homes, powering factories, fueling vehicles, strengthening commerce, and driving economic prosperity. From large cities to rural communities, Americans are reaping the benefits of reduced energy costs and enjoying a renewed sense of energy security. During National Energy Awareness Month, we recognize the role the energy industry has played in our Nation's success, and we look forward to continued energy developments that will help our economy and the American people.

Since my inauguration, our country has experienced an energy revolution. American crude oil production grew by nearly 20 percent last year, and the United States is now the largest crude oil producer in the world. For the first time in six decades, we are also a net exporter of natural gas, and in 2018, we supplied liquefied natural gas to more than 36 countries on 5 different continents. Since 2016, annual coal exports have increased more than 90 percent, and by next year, we are set to become a net energy exporter for the first time since 1953. My Administration will continue to build on our country's energy dominance by pursuing policies that fully unleash America's vast energy resources and capabilities while promoting responsible stewardship of the environment.

For the first time in decades, the Department of Energy is operating test facilities to develop new and better emissions-free nuclear reactor technology. My Administration will continue to collaborate with industry and academia to focus research and development on the next generation of energy production. By leveraging the collective strength of America's brightest researchers and entrepreneurs, we will produce the energy technologies of tomorrow, including advanced small modular nuclear reactors, transformational coal technologies, more efficient semiconductors for solar cells, and improved battery and storage technology.

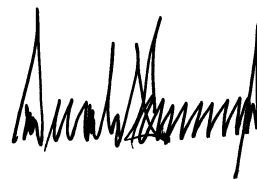
Maintaining and enhancing a modern and secure network of electric power lines, oil and natural gas pipelines, and energy storage facilities is essential to keeping energy accessible, affordable, and reliable for American businesses and American consumers. To accomplish this, we must continue to promote growth across all sectors of our country's energy industry by approving new pipelines, strengthening grid security and resilience, removing restrictions on sensible oil and gas exploration and development, supporting clean coal technologies, and using innovative approaches through the application of artificial intelligence. This coordination and research will provide energy security, both at home and abroad, and ensure environmental stewardship of our Nation's land, water, and air.

This month, we highlight our Nation's abundant energy resources and pay tribute to America's energy workforce, which has ushered in a new era of American energy dominance. At the forefront of the American energy revolution are men and women whose tenacity and resolve are undeniable and unbreakable and whose commitment to innovation has transformed the global energy landscape. These groups include the North America's Building Trades Unions, the International Union of Operating Engineers,

and the International Brotherhood of Boilermakers, whose members work tirelessly to build, operate, and maintain facilities, infrastructure, and equipment that allow the American people to reap the benefits of our abundant energy resources. This is a consequential time for the American energy sector, and we will continue to help lay the foundation for our Nation's next generation of energy technologies and ensure a more secure and prosperous future for all Americans.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2019 as National Energy Awareness Month.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of September, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-fourth.



Presidential Documents

Proclamation 9940 of September 30, 2019

National Substance Abuse Prevention Month, 2019

By the President of the United States of America

A Proclamation

Across our country, far too many families and communities have felt the devastation wrought by substance abuse. As we observe National Substance Abuse Prevention Month, we remember all who have been lost to this affliction and reaffirm our commitment to ensuring the health and safety of our fellow Americans. Together, we will overcome this tragic crisis gripping our Nation and guarantee that future generations know the blessings of a drug-free life.

One of the most pressing challenges we are facing is how to overcome the opioid crisis in our Nation. From 1999 to 2017, our national family lost more than 399,000 loved ones to opioid overdoses. I am heartened to share that recent data shows a projected decrease of 4 percent in overdose deaths in the United States from 2017 to 2018, and many of our hardest-hit States and counties may see even more significant declines. While we have made progress in our fight, the illicit opioids, heroin, fentanyl, and methamphetamine flooding our communities continue to fuel addiction and destroy the lives of countless Americans.

My Administration is unwavering in our mission to reverse the negative consequences of drug trafficking and abuse, save American lives, and set our Nation on a path to becoming stronger, healthier, and drug-free. In January, we released the *National Drug Control Strategy*, which focused largely on prevention. The *Strategy* details a multifaceted approach that will reduce abuse by educating the public, increasing the availability of treatment programs, and halting the influx of these poisons into our communities. As President, I will never waver from my sacred duty to defend our Nation and will continue fighting to protect our citizens from the scourge of addiction.

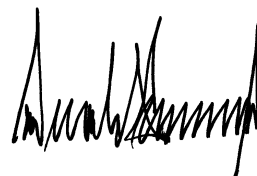
To better enable all communities to overcome the grip of addiction, we are allocating critical resources to fight this epidemic on the front lines. Just last month, my Administration distributed nearly \$2 billion in funding to State and local partners across America to assist in their response to the crisis. We have established grants to help schools implement more effective prevention programs and invested more than ever before in our 731 Drug-Free Community coalitions across all 50 States, bringing together partners to help prevent youth drug abuse. Additionally, my Administration's Fiscal Year 2020 National Drug Control Budget requests a record \$34.6 billion for counter-drug efforts, a \$1.3 billion increase from the previous year. These resources enable States, localities, and tribal communities to provide innovative and important services to prevent and combat substance abuse.

This month, we renew our resolve to prevent the further loss of life and prosperity caused by these problems and to finally eliminate the blight of addiction from America. Together, we will guarantee our resilient country emerges from this crisis into a future free from substance abuse.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2019 as

National Substance Abuse Prevention Month. Through our united efforts to prevent the damaging effects of substance abuse, we will ensure a happier, healthier, and more prosperous future. I call on parents, educators, mentors, employers, healthcare professionals, law enforcement officials, faith and community leaders, and all Americans to join me in the fight to finally resolve this crisis.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of September, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-fourth.



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Federal Register

Vol. 84, No. 192

Thursday, October 3, 2019

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FEDERAL REGISTER PAGES AND DATE, OCTOBER

51937-52356.....	1
52357-52746.....	2
52747-52992.....	3

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

9933.....	52737
9934.....	52739
9935.....	52741
9936.....	52983
9937.....	52985
9938.....	52987
9939.....	52989
9940.....	52991

Executive Orders:

13811 (superseded in part by 13889).....	52743
13888.....	52355
13889.....	52743

Administrative Orders:

Memorandums:	
Memorandum of September 24, 2019.....	52353

5 CFR

185.....	51937
----------	-------

7 CFR

1.....	51938
51.....	51939

Proposed Rules:

205.....	52041
273.....	52809
922.....	52384
966.....	52042

8 CFR

103.....	52357
212.....	52357
213.....	52357
214.....	52357
245.....	52357
248.....	52357

9 CFR

301.....	52300
309.....	52300
310.....	52300

10 CFR

72.....	52747
Proposed Rules:	
72.....	52815
429.....	52817
430.....	52817, 52818
431.....	52386
810.....	52819

12 CFR

201.....	52752
204.....	52753
701.....	51942

Proposed Rules:

327.....	52826
----------	-------

390.....	52387, 52827, 52834
----------	---------------------

14 CFR

39.....	51952, 51955, 51957, 51960, 52754
71.....	51963, 51964, 52757
97.....	51965, 51967, 51970, 51971

Proposed Rules:

25.....	52392
27.....	52392
29.....	52392
39.....	52044, 52047
71.....	52049, 52051
91.....	52392
121.....	52392
125.....	52392
135.....	52392

15 CFR

Proposed Rules:

922.....	52053
----------	-------

16 CFR

Proposed Rules:

425.....	52393
----------	-------

17 CFR

Proposed Rules:

210.....	52936
229.....	52936
249.....	52936

21 CFR

Proposed Rules:

573.....	52055
----------	-------

26 CFR

Proposed Rules:

1.....	52398, 52410, 52835
--------	---------------------

31 CFR

1010.....	51973
-----------	-------

Proposed Rules:

800.....	52411
----------	-------

32 CFR

316.....	51974
637.....	52363
887.....	51974

33 CFR

100.....	51975
165.....	51975, 52763

Proposed Rules:

100.....	52411
165.....	52835

37 CFR

1.....	51977
2.....	52363
7.....	52363

42.....	51977
39 CFR	
111.....	51982
40 CFR	
52	51983, 51986, 51988,
	52001, 52003, 52005, 52364,
	52368, 52766
180	52369, 52771, 52775,
	52778
282.....	52783
Proposed Rules:	
52.....	52838
60.....	52055

63.....	52419
180.....	52850
282.....	52852
48 CFR	
Proposed Rules:	
2.....	52420
9.....	52420
12.....	52425
13.....	52420, 52425
14.....	52428
15.....	52425, 52428
16.....	52420, 52425
19.....	52420
22.....	52420
25.....	52420

30.....	52428
37.....	52425
52.....	52420, 52428
49 CFR	
190.....	52015
191.....	52180
192.....	52180
195.....	52260
383.....	52029
384.....	52029
580.....	52664
Proposed Rules:	
29.....	52706
385.....	52432

50 CFR	
17.....	52598, 52791
216.....	52372
300.....	52035, 52800
622.....	52036
635.....	52806
648.....	52039
679.....	52039
Proposed Rules:	
17.....	52058
300.....	52852
600.....	52852
622.....	52438, 52864
679.....	52442, 52852

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H.R. 1058/P.L. 116-60

Autism Collaboration, Accountability, Research, Education, and Support Act of 2019. (Sept. 30, 2019; 133 Stat. 1110)

H.R. 4285/P.L. 116-61

Department of Veterans Affairs Expiring Authorities Act of 2019 (Sept. 30, 2019; 133 Stat. 1116)

Last List October 2, 2019

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