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Presidential Documents

Title 3—

The President

Proclamation 9968 of November 27, 2019

Thanksgiving Day, 2019

By the President of the United States of America

A Proclamation

On Thanksgiving Day, we remember with reverence and gratitude the bountiful blessings afforded to us by our Creator, and we recommit to sharing in a spirit of thanksgiving and generosity with our friends, neighbors, and families.

Nearly four centuries ago, determined individuals with a hopeful vision of a more prosperous life and an abundance of opportunities made a pilgrimage to a distant land. These Pilgrims embarked on their journey across the Atlantic at great personal risk, facing unforeseen trials and tribulations, and unforetold hardships during their passage. After their arrival in the New World, a harsh and deadly winter took the lives of nearly half their population. Those who survived remained unwavering in their faith and foresight of a future rich with liberty and freedom, enduring every impediment as they established one of our Nation's first settlements. Through God's divine providence, a meaningful relationship was forged with the Wampanoag Tribe, and through their unwavering resolve and resilience, the Pilgrims enjoyed a bountiful harvest the following year. The celebration of this harvest lasted 3 days and saw Pilgrims and Wampanoag seated together at the table of friendship and unity. That first Thanksgiving provided an enduring symbol of gratitude that is uniquely sewn into the fabric of our American spirit.

More than 150 years later, it was in this same spirit of unity that President George Washington declared a National Day of Thanksgiving following the Revolutionary War and the ratification of our Constitution. Less than a century later, that hard-won unity came under duress as the United States was engaged in a civil war that threatened the very existence of our Republic. Following the Battle of Gettysburg in 1863, in an effort to unite the country and acknowledge ''the gracious gifts of the Most High God,'' President Abraham Lincoln asked the American people to come together and ''set apart and observe the last Thursday of November next as a Day of Thanksgiving and Praise to our beneficent Father who dwelleth in the heavens.'' Today, this tradition continues with millions of Americans gathering each year to give their thanks for the same blessings of liberty for which so many brave patriots have laid down their lives to defend during the Revolutionary War and in the years since.

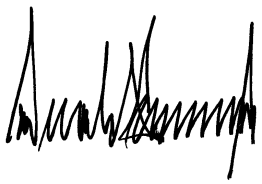
Since the first settlers to call our country home landed on American shores, we have always been defined by our resilience and propensity to show gratitude even in the face of great adversity, always remembering the blessings we have been given in spite of the hardships we endure. This Thanksgiving, we pause and acknowledge those who will have empty seats at their table. We ask God to watch over our service members, especially those whose selfless commitment to serving our country and defending our sacred liberty has called them to duty overseas during the holiday season. We also pray for our law enforcement officials and first responders as they carry out their duties to protect and serve our communities. As a Nation, we owe a debt of gratitude to both those who take an oath to safeguard us and

our way of life as well as to their families, and we salute them for their immeasurable sacrifices.

As we gather today with those we hold dear, let us give thanks to Almighty God for the many blessings we enjoy. United together as one people, in gratitude for the freedoms and prosperity that thrive across our land, we acknowledge God as the source of all good gifts. We ask Him for protection and wisdom and for opportunities this Thanksgiving to share with others some measure of what we have so providentially received.

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 Thursday, November 28, 2019, as a National Day of Thanksgiving. I encourage all Americans to gather, in homes and places of worship, to offer a prayer of thanks to God for our many blessings.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of November, 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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Presidential Documents

Proclamation 9969 of November 27, 2019

National Impaired Driving Prevention Month, 2019

By the President of the United States of America

A Proclamation

Every day, lives are shattered and lost on our Nation's roadways as a result of alcohol, drugs, and distracted driving. The statistics are alarming: In 2018, impaired driving took more than 10,000 lives in the United States—almost 30 of our fellow Americans each day. During National Impaired Driving Prevention Month, we reaffirm our commitment to preventing tragedies from impaired driving by making the responsible decision to drive sober. We also remember the victims of impaired driving, pray for the grieving families of those whose lives have been taken, and honor the law enforcement professionals who work to keep our roads safe.

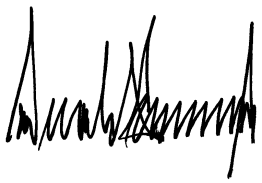
Irresponsible and impulsive choices that interfere with the ability to drive can irrevocably destroy hopes, dreams, and families. The influence of alcohol, illicit drugs, and some over-the-counter and prescription medications diminishes judgment, negatively impacts motor coordination, and decreases reaction time necessary to safely operate a motor vehicle. Innocent drivers, passengers, cyclists, and pedestrians are endangered when impaired individuals get behind the wheel. We can and must prevent this senseless loss of life and property.

My Administration will continue to raise awareness nationwide of the importance of personal responsibility and the dangers of driving while impaired by alcohol or other drugs, including marijuana, opioids, and certain medications. Since the first day of my Administration, addressing substance use disorder and helping the millions of Americans affected by addiction find pathways to recovery have been high priorities. We support health professionals treating Americans struggling with substance use disorder and faith-based and non-profit organizations that address this critical issue through outreach and support of individuals seeking recovery. By eliminating unnecessary and burdensome regulations, we are supporting the creation of innovative technologies that help to reduce impaired driving on our roads, such as ride-sharing services and Advanced Vehicle Technology. Additionally, we are improving data collection and toxicology practices and continuing to provide vital resources to our Nation's law enforcement officers and public safety professionals, bolstering their efforts to reduce the number of crashes, injuries, and fatalities caused by impaired driving.

Our Nation has lost too many lives to substance use, yet every day impaired drivers recklessly put others and themselves at risk. Driving sober is non-negotiable. This holiday season, and every day, I urge all Americans to choose wisely, act responsibly, drive sober, and implore friends and loved ones not to get behind the wheel while impaired. We must all commit to confronting this careless behavior, which inflicts unnecessary suffering and senseless loss, stealing the lives of our fellow 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 December 2019 as National Impaired Driving Prevention Month. I urge all Americans to make responsible decisions and take appropriate measures to prevent impaired driving.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of November, 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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Presidential Documents

Proclamation 9970 of November 27, 2019

World AIDS Day, 2019

By the President of the United States of America

A Proclamation

Our Nation unites on World AIDS Day to show support for people living with human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS). We also pause to solemnly remember those worldwide who have lost their lives to HIV and AIDS-related illnesses. As we mourn this tragic loss of life, we acknowledge the remarkable advancements in medical care, treatment, acceptance, and understanding surrounding the virus. While admirable progress has been made, it is not enough, and we must continue to work toward a vaccine and a cure. Today, we reaffirm our commitment to control this disease as a public health threat and end its devastating impact on families and communities worldwide.

Approximately 1.1 million people in the United States and 38 million around the world are living with HIV. While we have made tremendous strides through American ingenuity and innovation in combatting HIV/AIDS over more than three decades, infections unfortunately persist. Thankfully, due to the availability of antiretroviral therapy, HIV is now considered a manageable chronic condition rather than a fatal diagnosis. New laboratory and epidemiological techniques allow us to identify where HIV infections are spreading most rapidly so health officials can respond with resources to stop the further spread of new infections. Proven interventions, including pre-exposure prophylaxis (PrEP) and syringe services programs, are assisting in preventing new HIV transmissions. Still, a combination of prevention and treatment approaches is needed to integrate and implement our most effective biomedical and socio-behavioral tools. In addition, increased efforts are necessary to reach those populations disproportionately affected by HIV.

To strengthen our response to the HIV/AIDS crisis, my Administration launched an unprecedented initiative, *Ending the HIV Epidemic: A Plan for America,* to eliminate at least 90 percent of new HIV infections in the United States within 10 years by focusing on diagnosis, treatment, prevention, and response. Through this initiative, we will continue to lead the charge in applying the latest science to better diagnose, treat, care for, and save the lives of individuals living with HIV by focusing on the cities and States most impacted by the disease. The Department of Health and Human Services is coordinating this cross-agency initiative to include efforts from the Centers for Disease Control and Prevention, the National Institutes of Health, the Health Resources and Services Administration, and the Indian Health Service to bring us closer than ever to ending the HIV epidemic.

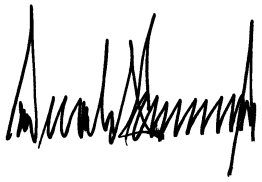
American leadership in the global response to HIV/AIDS is clear and as strong as ever through the President's Emergency Plan for AIDS Relief (PEPFAR). The United States has invested more than $85 billion in the global HIV/AIDS response—the largest commitment made by any nation to address a single disease. Overseen by the Department of State, PEPFAR's life-saving work in more than 50 countries is made possible through our country's unwavering commitment to the program and the American people's compassion and generosity. These efforts have saved more than 18 million lives, prevented millions of new HIV infections, and moved the HIV/AIDS pandemic from crisis toward control—community by community. Several

PEPFAR-supported countries have either approached or exceeded targets for HIV/AIDS epidemic control, putting them on pace to reach this critical milestone by 2020. For millions of men, women, and children around the world, PEPFAR has replaced death and despair with vibrant life and hope.

On World AIDS Day, we are reminded that no challenge can defeat the unyielding American spirit. As a Nation, we must come together to remove the stigma surrounding HIV and to address disparities facing people living with this disease. Our success is contingent upon collaboration across all levels of government here in the United States and around the world, community interaction and outreach to people with HIV and at-risk populations, and a citizenry motivated by compassion for the suffering of humankind and hope for the future. Together, we will continue to make progress in our efforts to find a cure for HIV/AIDS and to ensure that all Americans live healthier and happier lives.

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 December 1, 2019, as World AIDS Day. I urge the Governors of the States and the Commonwealth of Puerto Rico, officials of the other territories subject to the jurisdiction of the United States, and all Americans to join me in appropriate activities to remember those who have lost their lives to AIDS and to provide support and compassion to those living with HIV.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of November, 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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Rules and Regulations

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN 3245–AG97

Streamlining and Modernizing Certified Development Company Program (504 Loan Program) Corporate Governance Requirements

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule streamlines and updates the operational and organizational requirements for Certified Development Companies (CDCs) in order to improve efficiencies and reduce costs without unduly increasing risk in the 504 Loan Program. The changes include streamlining the requirements that apply to the corporate governance of CDCs, and updating the requirements that apply to professional services contracts entered into by CDCs, the requirements related to the audit and review of a CDC's financial statements, and the requirements related to the balance that a Premier Certified Lender Program (PCLP) CDC must maintain in its Loan Loss Reserve Fund.

DATES: This rule is effective on January 3, 2020.

FOR FURTHER INFORMATION CONTACT: Linda Reilly, Chief, 504 Program Branch, Office of Financial Assistance, U.S. Small Business Administration, 409 3rd Street SW, Washington, DC 20416; telephone: (202) 205–9949; email: *linda.reilly@sba.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The 504 Loan Program is a U.S. Small Business Administration (SBA) financing program authorized under Title V of the Small Business Investment Act of 1958, 15 U.S.C. 695 *et seq.* The core mission of the 504 Loan Program is to provide long-term financing to small businesses for the purchase or improvement of land, buildings, and major equipment in an effort to facilitate the creation or retention of jobs and local economic development. Under the 504 Loan Program, loans are made to small businesses by Certified Development Companies (CDCs), which are certified and regulated by SBA to promote economic development within their community. In general, a project in the 504 Loan Program (a 504 Project) is financed with: A loan obtained from a private sector lender with a senior lien covering at least 50 percent of the project cost (the Third Party Loan); a loan obtained from a CDC (the 504 Loan) with a junior lien covering up to 40 percent of the total cost (backed by a 100 percent SBA-guaranteed debenture sold in private pooling transactions); and a contribution from the Borrower of at least 10 percent equity.

On April 15, 2019, SBA published a proposed rule in the **Federal Register** to simplify, streamline, and update SBA's regulations relating to CDC operational and organizational requirements in order to improve efficiencies and achieve cost savings without compromising performance in the 504 Loan Program. *See* 84 FR 15147. The comment period was open until June 14, 2019. SBA received a total of 100 comments from 58 CDCs, 18 individuals who are employed by or otherwise associated with a CDC, 11 other individuals, 2 trade associations, 4 banks (SBA received two comments from the same bank for a total of 5 comments from banks), 3 from other private companies, and 3 from anonymous sources. The comments are summarized and addressed below.

II. Summary of Comments Received

A. Section 120.818 Applicability to Existing For-Profit CDCs

SBA proposed to amend § 120.818 to reinstate the prohibition, which was inadvertently eliminated from the regulations in 2014, against any person or entity owning or controlling more than ten percent of a for-profit CDC's voting stock. The purpose of the 10 percent limit on stock ownership was to ensure that no one person or entity can control a for-profit CDC. SBA received 55 comments on § 120.818; all but one of the commenters supported reinstating this requirement. One of the commenters who supported reinstating an ownership limit argued that the 10 percent limit is lower than needed to prevent control by a person or entity and recommended a 20 percent limit instead.

The one opposing commenter argued that there is no rational basis for the 10 percent limit and that imposing this limit on for-profit CDCs is inconsistent with the intent behind 13 CFR 120.818 that for-profit and non-profit CDCs be subject to the same regulations. The commenter also argued that SBA must either compensate the stockholders who would have to divest as a result of the 10 percent limit or phase in the requirement over the course of a number of years to allow recovery on the investment; otherwise, the commenter argued, the 10 percent limit would be subject to challenge as a regulatory ''taking.'' In addition, the commenter disagreed with SBA's conclusion that this change will not have a significant impact on a substantial number of small entities and contended that this change requires SBA to conduct an initial regulatory flexibility analysis under 5 U.S.C. 603.

SBA has considered these comments and has decided to adopt the proposed changes to the ownership and control requirements with two revisions: (1) The 10 percent limit on the ownership of stock by any one person or entity will be raised to 25 percent; and (2) for non-profit CDCs with a Board of Directors elected or appointed by the CDC's membership, no person or entity can control more than 25 percent of the voting membership of the CDC.

With respect to the first revision, SBA reviewed the current ownership percentages for each of the four for-profit CDCs and determined that the largest stock ownership by any one shareholder is just under 24 percent. (SBA notes that a CDC's corporate (or treasury) stock should not be included in the calculation of the ownership percentage of the CDC's voting stock.) With the increase of the limit to 25 percent, no person or entity currently owning any stock in a for-profit CDC will be required to divest any portion of their stock ownership and, thus, there will be no significant economic impact on any small entity as a result of this provision.

With respect to the second revision, SBA agrees with the commenter that for-

profit and non-profit CDCs should be subject to the same standards governing control of a CDC. Almost half of non-profit CDCs have chosen to continue to have memberships since the membership requirement was eliminated in 2014 and, under the bylaws of many of these CDCs, the members appoint or elect directors to the CDC's Board. To ensure that no one individual or entity can control the voting membership of a CDC when the members elect or appoint directors to the Board, the 25 percent limit should apply to these non-profit CDCs in the same manner that the 25 percent limit will apply to for-profit CDCs. Accordingly, in response to the comments, SBA is revising § 120.816 by adding a paragraph (d) to provide that, if a non-profit CDC's membership elects or appoints the voting directors to the CDC's Board of Directors, no one person or entity can control more than 25 percent of the voting membership of the CDC.

These two revisions will reinstate what has long been a feature of SBA's development company programs—that no one person or entity can control a CDC. Before the 10 percent limit was inadvertently removed from the regulations in 2014, it had been SBA's policy since 1982, nearly from the beginning of the 503 Development Company Program,[1] to limit the ownership or control that any one person or entity could have over a development company to 10 percent. *See* 13 CFR 108.503–1(c)(1) (1983) (''No member or stockholder [of a 503 company] may own or control more than ten percent of the development company's stock or voting membership''). In addition, as early as 1973, SBA prohibited any shareholder or member of a development company participating in the 502 Local Development Company Program (which is no longer funded) from owning in excess of 25 percent of the voting control in the development company under certain circumstances. *See* 13 CFR 108.2(d)(2) (1974).

The limitation on ownership and control was carried over into the 504 Loan Program in 1986, with the former § 108.503–1(d)(1) (1987) requiring a CDC to have at least 25 members (if non-profit) and 25 stockholders (if for-profit) and prohibiting any one person or entity from owning or controlling more than 10 percent of the CDC's stock or voting membership. With the Board of a nonprofit CDC chosen from the CDC's membership, and the Board of a for-profit CDC chosen by the CDC's stockholders, it was necessary to prohibit any one person or entity from controlling the voting membership or stock of the CDC to avoid any one person or entity from being able to control the Board. Thus, SBA has consistently applied the same ownership and control standards to both for-profit and non-profit CDCs and is continuing that practice in this final rule.

The opposing commenter also argued that fewer owners of a for-profit CDC generally means a greater investment by those owners and that, with a greater investment, the owners have more to lose from non-performing loans and more incentive to comply with SBA's Loan Program Requirements. SBA notes that all CDCs are required to comply with SBA's Loan Program Requirements, and the commenter provided no evidence to support the view that permitting a greater financial stake in a CDC by individual owners would increase the likelihood of such compliance. In any event, SBA believes that a greater financial stake by an individual shareholder should not be necessary to ensure such compliance or to motivate the CDC to make successful loans. As reflected in the long regulatory history of the program, the primary purpose of the 504 Loan Program (and its predecessor development company programs) is to foster economic development, and SBA has long emphasized the *pro bono publico* nature of the 504 Loan Program over the profit incentive and that the program was not intended to be a profit center for owners. *See, e.g.,* 13 CFR 108.2 (1995) (Definition of ''Development company'') (''*the primary objective of the development company must be the benefit to the community* as measured by increased employment, payroll, business volume . . . rather than monetary profits to its shareholders or members; *any monetary profits or other benefits which flow to the shareholders or members of the local development company must be merely incidental thereto*'') (emphasis added); *see also* 51 FR 20764, 20765 (June 6, 1986) (''The nature of the 503 company is to be a catalyst in fostering economic development, and not a profit center for owners or members'').

SBA believes that the public purpose of the 504 Loan Program is best achieved when the profit motive is not amplified by allowing the control of a for-profit CDC to be concentrated in any one person or entity. Moreover, SBA believes that economic development is best fostered by having a wider range of views and interests represented in the CDC's decision-making and that, by not allowing the ownership or control of a CDC to be concentrated in any one individual or entity, it is more likely that the economic benefits of the 504 Loan Program will be dispersed throughout the community. Therefore, after consideration of the comments, SBA is finalizing the proposal with the two changes described above.

B. Section 120.823 CDC Board of Directors

SBA proposed to amend § 120.823 by:

(1) Revising paragraph (a) to lower the minimum number of directors required for the CDC's Board from nine to seven, which reduces the number needed for a quorum from five to four. For consistency with this change, SBA also proposed to amend § 120.823(d)(4)(ii)(B) to reduce the number of members needed for a quorum of the CDC's Loan Committee from five to four;

(2) removing the provision in § 120.823(a) that recommends that a CDC have no more than 25 directors;

(3) clarifying in paragraphs (a) and (d)(4)(ii)(E) that Board and Loan Committee members are required ''to live or work in the CDC's State of incorporation''. SBA proposed to use this simpler phrase instead of the current language—which states that members are required ''to live or work in the Area of Operations of the State where the 504 project they are voting on is located''—because today the minimum Area of Operations for each CDC is the State in which the CDC is incorporated. SBA also proposed to allow Board members to live or work in an area that would meet the definition of a Local Economic Area (LEA) for the CDC. For consistency, the rule proposed to apply this same standard to Loan Committee members;

(4) deleting the requirement in § 120.823(a) that CDCs must have at least one voting director who only represents the economic, community, or workforce development fields, and adding ''the economic, community, or workforce development fields'' to the five other areas of expertise identified in the current § 120.823(a) that must be represented on the Board; and

(5) removing § 120.823(c)(4), which limits the number of directors in the commercial lending field to less than 50 percent of the Board of Directors.

SBA received 58 comments on the above changes, with 56 commenters supporting all of the changes and two commenters opposing a few of the changes. One CDC opposed deleting the requirement that the Board have at least

[1] The 503 Development Company Program was authorized by § 113 of Public Law 96–392, approved July 2, 1980 (94 Stat. 833). This program was the predecessor program to the 504 Loan Program.

one voting director to represent the economic, community, or workforce development fields (described in paragraph (4) above). The commenter stated that the CDC has benefited from having a director devoted to the economic field, and that this expertise has proven invaluable to lending in rural areas. The commenter believes that it would be a loss from a national perspective to eliminate the requirement. SBA appreciates the commenter's perspective, but points out that, with this change, the CDC would still be required to have the economic, community or workforce development fields represented on the Board. The difference is that the Board member would be able to represent more than one area of expertise and not only the economic, community or workforce development fields.

The same commenter also opposed removing the requirement that limits the number of directors in the commercial lending field to less than 50 percent of the Board (described in paragraph (5) above). The commenter stated that this change could result in a Board composed of all commercial lenders, which may not serve the 504 Loan Program's purpose of promoting economic development. However, as noted in the proposed rule, the regulation will continue to require that the Board include members with background and expertise in the five other identified areas, including the economic, community or workforce development fields; internal controls; financial risk management; legal issues relating to commercial lending; and corporate governance. SBA believes that this requirement will ensure an appropriate level of diversity of experience on the Board.

Another commenter wrote in opposition to the change described in paragraph (3) above. This commenter argued that requiring Board members to live or work in the CDC's Area of Operations is a new legal requirement that provides no benefit to the program and deprives CDCs of the assistance of individuals who own second homes in the State or temporarily reside outside the State for work or other reasons while retaining a strong connection to the State. However, as noted in the proposed rule, it has long been SBA's policy to require Board members to live or work in the CDC's Area of Operations (today, the minimum Area of Operations for each CDC is the State in which the CDC is incorporated and, therefore, it is more accurate to use the phrase ''State of incorporation'' instead of ''Area of Operations'' in connection with this policy). This requirement to live or work in the CDC's State of incorporation furthers the local nature of the 504 Loan Program, obligates Board members to have more than a temporary or tenuous connection to the CDC's State of incorporation, and ensures that the CDC is under the control of individuals with a vested and demonstrable interest in the community in which the CDC is investing. In addition, members who live or work in the CDC's State of incorporation will have a better knowledge of the Area's economic environment. By reducing the required number of Board members from 9 to 7, SBA is also making it less difficult for CDCs to find individuals to serve on the Board.

SBA is adopting all of the changes to § 120.823 as proposed. In addition, to conform § 120.823(d)(4)(i)(B) to the change described in paragraph (1) above, SBA is reducing the minimum number of voting members who must be present to conduct business on the CDC's Executive Committee (if established) from five to four.

C. Section 120.824 Professional Management and Staff

1. Professional Services Contracts Between CDCs

SBA proposed to amend § 120.824 to permit a CDC to contract with another CDC for marketing, packaging, processing, closing, servicing, or liquidation functions under the following conditions:

(1) A CDC may enter into a professional services contract with another CDC even if the arrangement would give rise to an affiliation between the CDCs based on an ''identity of interest'', as defined under 13 CFR 121.103(f); [2]

(2) the contract between the CDCs must be pre-approved by the Director of the Office of Financial Assistance (D/FA) (or designee), in consultation with the Director of the Office of Credit Risk Management (D/OCRM) (or designee), who will determine in his or her discretion that such approval is in the best interests of the 504 Loan Program and that the contract includes terms and conditions satisfactory to SBA. (The proposed rule also provided that a contract for management services with another CDC may be entered into only in accordance with redesignated § 120.824(a)(1)(ii) and with the prior approval of the D/FA (or designee), in consultation with the D/OCRM (or designee));

(3) the CDCs entering into the contract must be located either in the same SBA Region or, if not in the same SBA Region, must be located in contiguous States;

(4) a CDC may provide assistance to only one CDC per State;

(5) no CDC may provide assistance to another CDC in its State of incorporation or in any State in which the CDC has Multi-State authority;

(6) the Board of Directors for each CDC entering into the contract must be separate and independent and may not include any common directors, whether voting or non-voting. In addition, if either of the CDCs is for-profit, neither CDC may own any stock in the other CDC (notwithstanding § 120.820(d), which allows a CDC to invest in or finance another CDC with the prior written approval of SBA officials). The CDCs are also prohibited from comingling any funds;

(7) the CDCs and the contract must comply with the other requirements for professional services contracts set forth in the proposed § 120.824(a) (which are now set forth in the final rule in § 120.824(c));

(8) a contract between CDCs may not include services for either independent loan reviews or management services (except rural CDCs could continue to contract for management services with another CDC as described in the current § 120.824(a)(2)); and

(9) affiliation between CDCs based on grounds other than identity of interest, including but not limited to, through ownership or common management under § 121.103(c) and (e), respectively, would continue to be prohibited.

SBA received a total of 63 comments on some or all of the above changes. Most expressed general support for the flexibility that the above changes would provide with respect to the contracts between CDCs, but nearly all expressed opposition to the following two changes: (A) The geographic restrictions on contracts between CDCs (paragraphs (3), (4), and (5) above), and (B) the prohibition against CDCs conducting independent loan reviews for each other (paragraph 8 above).

(A) Geographic Restrictions on Contracts Between CDCs

SBA received 62 comments on the changes described in paragraphs (3), (4), and (5) above which place geographic limits on these contracts, with one commenter writing to generally support

[2] Under 13 CFR 121.103(f), an identity of interest is created when the CDCs have identical or substantially identical business or economic interests or are economically dependent through contractual or other relationships. For example, under § 121.103(f), if all or most of the CDC's key functions (including 504 and non-504 functions in the aggregate) are performed by staff that is obtained under contract with another CDC, the two CDCs may be affiliated based on an identity of interest.

the geographic restrictions and the remaining 61 commenters writing to oppose them. Nearly all of the opposing commenters argued that these contracts should be evaluated primarily on the quality of the CDC service provider, not on geography. They contended that permitting a CDC to contract with another CDC outside its SBA Region would allow a CDC to select from a larger and more competitive field of qualified providers and avoid concerns about sharing market and customer data with a potential competitor. Some also objected to applying this restriction to contracts currently in place, and state that SBA's concerns can be addressed through the current contract review process.

In addition, four commenters suggested that a CDC should not be able to provide services to more than three other CDCs in its SBA Region (one of the commenters suggested that the limit should be two), arguing that this limit would prevent CDCs from essentially becoming regional through these agreements, and that it would ensure that the assisting CDC continues to focus on its primary area of operation. Two commenters stated that a CDC should be allowed to service another CDC only if the CDC has demonstrated its first responsibility to its primary market by making an average of 10 or more loans in its primary State during the previous 3 years.

SBA has considered these comments and has decided to adopt the geographic restrictions on these contracts as proposed, with exceptions for liquidation services and independent loan reviews as described below. SBA's decision to not allow CDCs to contract outside their SBA Region or a contiguous State is based on its commitment to maintaining a balance among three factors: The local nature of the 504 Loan Program, SBA's interest in helping smaller CDCs obtain assistance from their larger counterparts when needed to function in the best interests of the 504 Loan Program, and SBA's current regulatory framework that allows CDCs to expand their Area of Operations only under certain prescribed conditions, *e.g.,* Multi-State and Local Economic Area expansions under § 120.835. SBA has long been concerned about CDCs using these contracts to circumvent the established expansion standards and to encroach into areas far beyond their established Area of Operations. In balancing these factors, SBA continues to conclude that CDCs should be able to contract with each other even if the arrangement gives rise to an affiliation based on identity of interest, but only under the conditions described above, including that the CDCs must be located within the same SBA Region or in a contiguous State. SBA also believes that the proposed geographic restrictions taken together—including that CDCs entering into the contract must be located either in the same SBA Region or in a contiguous State, that a CDC may provide assistance to only one CDC per State, and that no CDC may provide assistance to another CDC in its State of incorporation or in any State in which the CDC has Multi-State authority—will adequately protect against any one CDC dominating its SBA Region. SBA further expects that a CDC in need of assistance from another CDC will be motivated to contract only with those CDCs that have demonstrated their ability and capacity to perform effectively in their primary market.

With respect to the comments that object to applying the geographic restrictions to any contract currently in place between CDCs, SBA begins by noting that current § 120.820(a) requires CDCs to be independent (with exceptions for certain types of affiliations). To ensure that contracts between CDCs would not undermine the intent of this regulation, SBA has required since 2015 that contracts between CDCs be limited in time and scope and have a transition phase leading to contract termination. *See* SOP 50 10 5(H), Subpart A, Chapter 3, ¶ II.A.7.(e)(ii). (To provide more certainty with respect to the permitted duration for these contracts, SBA added a 5-year limit to the SOP in January 2018. *See* SOP 50 10 5(J), Subpart A, Chapter 3, ¶ II.A.8.d)(ii)). Any CDC that currently contracts with another CDC outside its SBA Region has, therefore, been on notice for several years that SBA policy prohibited its contract from continuing indefinitely. There are four CDCs that currently have contracts with five other CDCs outside their SBA Region. As stated in the proposed rule, these CDCs will be permitted to continue these contracts until the current term of the contract expires, giving them the opportunity to make the changes necessary to comply with the final rule.

As indicated above, SBA is adopting an exception to the geographic restriction for contracts for liquidation services. (The second exception for independent loan reviews is discussed in paragraph (B) below.) SBA believes that it will be beneficial to the 504 Loan Program to allow a CDC to assist another CDC with liquidation services when needed, regardless of the location of the CDCs. Because liquidation services are provided at the final stage of a 504 loan, there is no risk of a CDC using a liquidation services contract as a means to expand its 504 operations into other SBA Regions. Accordingly, SBA is revising the rule to allow a CDC to contract with another CDC outside its SBA Region for liquidation services.

(B) Independent Loan Reviews

SBA received a total of 54 comments on the prohibition in paragraph (8) against a CDC contracting with another CDC for services for independent loan reviews. One commenter supported this prohibition due to the potential conflict of interest problems that could arise, and the remaining 53 opposed the prohibition (except that one of these commenters argued that two CDCs should not be able to conduct reviews for each other). The opposing commenters observed that CDCs are currently allowed to perform these reviews internally if they use staff that are independent from the function being reviewed and, therefore, they argued that CDCs should be able to provide this service to each other. The commenters recognized that SBA would need to carefully monitor the contracts between CDCs and that CDCs would also need to carefully consider potential conflicts of interest. They argued that SBA would have the opportunity to evaluate the quality of these reviews when they are submitted with the CDC's Annual Report.

Based on these comments, SBA has decided to allow a CDC to contract with another CDC for independent loan review services without any geographic restriction subject to the following two conditions. First, to avoid any possibility of a quid-pro-quo, the CDCs may not review each other's portfolios or exchange any other services, nor may they enter into any other arrangement with each other that could appear to bias the outcome or integrity of the independent loan review. Second, due to the potential conflicts of interest that may arise, the contracts between CDCs for independent loan reviews must be pre-approved by the D/FA (or designee) in consultation with the D/OCRM (or designee).

2. Other Changes That Would Apply to All Professional Services Contracts

SBA proposed the following changes to § 120.824 that would apply to all professional services contracts (including professional services contracts between CDCs):

(1) SBA's prior approval would be required for co-employment contracts that a CDC wants to enter into with a third party, such as a professional employer organization, to obtain employee benefits, such as retirement

and health benefits, for the CDC's staff. These contracts must provide that the CDC retains the final authority to hire and fire the CDC's employees;

(2) Services for information technology and independent loan reviews would be added to the list of the types of contracts that CDCs may enter into without obtaining prior SBA approval (except, as discussed above, the proposed rule prohibited CDCs from contracting with another CDC for independent loan reviews);

(3) SBA proposed to make the following clarifying and technical changes to § 120.824:

(a) Under the current § 120.824(c) (to be redesignated in the final rule as § 120.824(c)(2)(ii)), the contracts must clearly identify terms and conditions satisfactory to SBA that permit the CDC to terminate the contract prior to its expiration date on a reasonable basis. To give CDCs procuring services maximum flexibility, SBA proposed to revise the standard under which the CDC procuring the services may terminate the contract to ''with or without cause'';

(b) Under the current § 120.824(d), the CDC must provide copies of these contracts to SBA for review annually. SBA proposed to revise this provision (to be redesignated in the final rule as § 120.824(c)(4)) to clarify that the CDC procuring the services must provide a copy of all executed contracts to SBA as part of the CDC's Annual Report submitted under § 120.830(a) unless the CDC certifies that it has previously submitted an identical copy of the executed contract to SBA;

(c) Under the current § 120.824(e)(1), the CDC's Board must demonstrate to SBA that ''the compensation under the [professional services] contract is only from the CDC''. For clarity, SBA proposed to revise this provision (to be redesignated in the final rule as § 120.824(c)(2)(i)) to state that ''the compensation under the contract is paid only by the CDC'';

(d) Under the current § 120.824(e)(3), the CDC's Board must demonstrate that the contracts do not ''evidence'' any actual or apparent conflict of interest or self-dealing. For clarity, SBA proposed to revise this provision (to be redesignated as § 120.824(c)(2)(iii)) to require the Board to demonstrate that there is no actual or apparent conflict of interest or self-dealing in the negotiation, approval or implementation of the contract;

(e) Under the current § 120.824(f) (to be redesignated in the final rule as § 120.824(c)(3)), no contractor or Associate of a contractor may be a voting or non-voting member of the CDC's Board. The term ''Associate'' is generally defined in § 120.10 with respect to a lender, CDC or small business, but not with respect to a contractor of a CDC. SBA proposed to replace the phrase ''Associate of a contractor'' with text that is consistent with the definition of Associate in § 120.10: ''Neither the contractor nor any officer, director, 20 percent or more equity owner, or key employee of a contractor may be a voting or non-voting member of the CDC's Board.''

SBA received no comments opposing these changes and is adopting the changes to § 120.824 as proposed except that, as discussed above in SBA's response to the comments on the geographic limits on contracts between CDCs, the D/FA (or designee), in consultation with the D/OCRM (or designee), must pre-approve contracts between CDCs for independent loan reviews.

In addition, SBA is reorganizing this section to make it simpler and clearer. Specifically, in the final rule, subsection (a) of 120.824 now addresses the management requirements that apply to CDCs and under what circumstances a CDC may request a waiver of the requirement that the CDC directly employ the CDC manager and obtain management services through a contract; subsection (b) now addresses the functions that the professional staff of the CDC must be capable of performing; subsection (c) now addresses the requirements that apply when a CDC obtains services through a professional services contract; and subsection (d) now addresses the additional requirements that apply to professional services contracts between CDCs. The reorganization of this section is not intended to make any substantive changes to the content of the rule other than as described above in this section C.

D. Section 120.826 Basic Requirements for Operating a CDC

SBA proposed to increase the dollar threshold that triggers an annual audit of the CDC's financial statements under § 120.826 from $20 million to $30 million. Under the rule as proposed, for loan portfolio balances of less than $30 million, the CDC would be able to submit a financial statement that is reviewed by an independent certified public accountant in accordance with generally accepted accounting principles (GAAP) instead of an audited financial statement. There are currently 60 CDCs with a portfolio balance under $20 million and the increase to $30 million would add 19 CDCs to the number of CDCs that may submit reviewed financial statements, for a total of 79 CDCs that would save the difference in cost between an audited financial statement and a reviewed financial statement. SBA estimates the cost savings to be $15,000 annually for each CDC. As noted in the proposed rule, a CDC with a portfolio balance of less than $30 million may be required to provide audited financial statements at the discretion of the D/OCRM when the CDC is in material noncompliance with SBA's Loan Program Requirements (defined in § 120.10), such as with requirements related to financial solvency or business integrity.

SBA received 62 comments on the proposed changes to § 120.826, and all 62 comments supported the proposal but requested that SBA increase the amount that triggers the annual audit requirement to $50 million instead of $30 million. SBA considered these comments but, due to the inherent risks of a larger portfolio and due to the fact that SBA is already raising the amount that triggers the audit by 50 percent, SBA believes that it would not be prudent to raise the amount further. SBA is adopting the changes to § 120.826 as proposed.

E. Section 120.835 Application To Expand an Area of Operations

SBA proposed to amend paragraph (c) of § 120.835 to offer the following alternative to establishing a Loan Committee in each State into which the CDC expands as a Multi-State CDC: If the CDC has established a Loan Committee in its State of incorporation, then when voting on a Project in the additional State, the CDC must include at least two individuals who live or work in that State on the CDC's Loan Committee. To make it clear that the two individuals added to the Loan Committee are permitted to vote only on the Projects located in the additional State into which the CDC expands and would not be eligible to participate in voting on Projects in the CDC's State of incorporation, SBA proposed to add the term ''only'' after ''[c]onsist'' in § 120.823(d)(4)(ii)(E). If the CDC has not established a Loan Committee in its State of incorporation, the alternative would allow two individuals who live or work in the additional State to be included on the CDC's Board of Directors when voting on a Project in that State. SBA also proposed to amend three other provisions to conform the rules to this amendment, including adding a reference about the alternative in § 120.823(d)(4)(ii)(E), removing the reference to § 120.839 in § 120.823(d)(4)(ii)(E), and using the phrase ''live or work in the CDC's State of incorporation'' instead of ''live or

work in the Area of Operations of the State where the 504 project they are voting on is located''.

SBA received a total of 57 comments on this proposed change. There were no opposing comments, though two commenters submitted differing points of view with respect to whether the two individuals added to the Loan Committee or Board should only be able to vote on Projects located in the additional State. One commenter requested that the two individuals be able to vote on all of the CDC's Projects, and the second commenter argued that the two members who represent the additional State on the CDC's Loan Committee or Board should be different persons than those serving on the Loan Committee or Board in the CDC's State of incorporation.

The latter commenter's suggestion is consistent with SBA's intent in providing this alternative option and is the reason why SBA proposed to revise § 120.823(d)(4)(ii)(E) to require that the Loan Committee consist only of members who live or work in the CDC's State of incorporation or in an area that would qualify as an LEA. The purpose behind this change was to give CDCs an alternative that would be less costly to creating a separate Loan Committee in the additional State, and not to expand the area from which a CDC could choose the members for its Board or Loan Committee in its State of incorporation.

Based on the comments, SBA believes that it can be made clearer that the two individuals who are added to either the Board or the Loan Committee under the alternative option may vote only on Projects in the additional State and, accordingly, SBA is adding the following sentence at the end of § 120.835(c)(2): ''These two members may vote only on Projects located in the additional State.''

SBA is adopting the rule as proposed with this revision.

F. Section 120.839 Case-By-Case Application To Make a 504 Loan Outside of a CDC's Area of Operations

SBA proposed to expand paragraph (a) of § 120.839 to allow a CDC to apply to make a 504 loan outside its Area of Operations if the CDC has previously assisted either the business ''or its affiliate(s).'' SBA received a total of 57 comments in support of this change. One commenter requested that SBA allow a CDC to make loans outside its Area of Operations based on a Third Party Lender's prior lending relationship with a business. However, what is important to SBA is that the CDC have the prior lending relationship with the business or its affiliates and, thus, SBA will not expand the change to allow CDCs to make loans outside their Area of Operations based on the prior relationship of a Third Party Lender. SBA is adopting the changes to § 120.839 as proposed.

G. Section 120.847 Requirements for the Loan Loss Reserve Fund (LLRF)

SBA proposed to revise paragraph (b) of this section to allow PCLP CDCs to maintain a balance in the LLRF equal to one percent of the current principal amount, instead of one percent of the original principal amount, of the PCLP Debenture after the loan is seasoned for 10 years. However, SBA proposed that a CDC may not use the declining balance methodology: (1) With respect to any PCLP Debenture that has been purchased, in which case the CDC must restore the balance maintained in the LLRF with respect to that Debenture to one percent of the original principal amount within 30 days after purchase; or (2) with respect to any other PCLP Debenture if SBA notifies the CDC in writing that it has failed to satisfy the requirements in paragraphs (e), (f), (h), (i) or (j) of § 120.847. In the latter case, the CDC would not be required to restore the balance maintained in the LLRF to one percent of the original principal amount of the Debenture but must base the amount maintained in the LLRF on one percent of the principal amount of the Debenture as of the date of notification. The CDC may not begin to use the declining balance methodology again until SBA notifies the CDC in writing that SBA has determined, in its discretion, that the CDC has corrected the noncompliance and has demonstrated its ability to comply with these requirements. In paragraph (g), SBA also proposed to change the official to whom withdrawal requests should be forwarded from the Lead SBA Office to the D/OCRM (or designee).

SBA received a total of 55 comments supporting the proposed changes to § 120.847. There were no opposing comments. SBA is adopting the changes to § 120.847 as proposed, except that, upon further consideration, SBA has decided to retain the Lead SBA Office as the office to which the PCLP CDC must forward requests for withdrawals.

III. Compliance With Executive Orders 12866, 13563, 12988, 13771, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) determined that this rule is not a ''significant'' regulatory action for the purposes of Executive Order 12866. In addition, this is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Executive Order 13563

The Agency coordinated outreach efforts to engage stakeholders before proposing this rule. The 504 Loan Program operates through the Agency's lending partners, which for this program are CDCs. The Agency has participated in lender conferences and trade association meetings and received feedback from CDCs, a trade association, and third-party lenders that provided valuable insight to SBA.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13771

This final rule is an E.O. 13771 deregulatory action with an annualized savings of $273,515 and a net present value of $3,907,360 in savings, both in 2016 dollars.

This rule is expected to produce $15,000 of savings for each of the 19 CDCs that currently have 504 loan portfolio balances between $20 million and $30 million and will no longer be required to provide audited financial statements. This estimate of savings is based on conversations with CDCs. In addition, SBA is decreasing the number of members that a CDC is required to appoint to its Board of Directors from nine to seven and reducing the amount that PCLP CDCs need to maintain in the Loan Loss Reserve Fund. While it is difficult to quantify the benefits of these changes, they are meant to provide more flexibility and options to CDCs.

Any costs to CDCs due to changes in this rule are difficult to quantify but are likely to be insignificant.

Executive Order 13132

SBA has determined that this final rule 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. Therefore, for the purposes of Executive Order 13132, SBA has determined that this final rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that, while this final rule will not impose new reporting or recordkeeping requirements, some of the regulatory amendments require changes to SBA Form 1253 to clarify existing requirements, such as the type of contracts that CDCs must report to SBA, and to remove certain reporting requirements that are no longer applicable as a result of the rule changes. Accordingly, SBA Form 1253, Certified Development Company (CDC) Annual Report Guide (OMB Approval 3245–0074), will be revised to clarify or add information that CDCs are required to submit with their Annual Report, including:

(a) With respect to the information required to be submitted in the Operating Report (Tab 2A) related to the members of the CDC's Board of Directors and the Loan Committee, in the event that a Multi-State CDC chooses the option created under the new § 120.835(c)(2), the form will be revised to inform CDCs to provide information on the two additional members who are appointed to the Board or to the Loan Committee, if established, to vote on Projects in the State into which the CDC expanded.

(b) With respect to the information that the CDC is required to provide in the Operating Report (Tab 2C) related to contracts requiring SBA's prior written approval, the form currently instructs the CDC to submit a copy of all contracts for management and/or staff in place during the reporting period. The form currently identifies examples of the types of contracts subject to this requirement. It will be revised to add co-employment contracts (which SBA proposed to add in the proposed rule) and contracts for independent loan reviews between CDCs (which SBA has added to this final rule in response to comments received) to the list. However, as stated in the proposed rule, SBA determined that, as currently written, the requirement to submit a copy of all contracts with the Annual Report could result in duplicative reporting since CDCs should have provided SBA with a fully executed copy of any contract after obtaining SBA's prior approval. As a result, SBA is revising the instruction in the form to make it clear that CDCs would no longer be required to submit a copy of these contracts with the Annual Report if a copy of the current and executed contract was previously submitted to SBA. The CDC will be required to provide a certification with its Annual Report that it has previously submitted a copy of the executed contract to SBA and that no changes have been made to it. The certification will also need to state to whom and on what date the contract was provided to SBA.

In addition, the form will be changed to no longer require the CDC to provide a copy of other documents that SBA already has in its possession, including SBA's approval of each contract or management waiver, a copy of the Board's resolution approving the contract, or a copy of the Board's explanation for why it believes that it is in the best interest of the CDC to enter into the contract.

(c) With respect to the information required to be submitted in the Operating Report (Tab 2F) related to the Independent Loan Review Package, as noted above, the final rule will allow a CDC to contract with another CDC to perform the independent loan review but only with SBA's prior written approval, and the form will be revised to reflect this change.

(d) With respect to the Financial Report (Tab 3) of the form, a CDC is currently allowed to submit a reviewed financial statement instead of an audited financial statement if it has a 504 loan portfolio balance of less than $20 million. This final rule raises this threshold to $30 million and, therefore, it will be necessary to revise the instruction in the form accordingly. The substance of the information that would be collected is not being changed, only that fewer CDCs would need to submit audited financial statements.

SBA invited comments on the proposed changes to the underlying regulations that would impact Form 1253. SBA received five comments on Form 1253. The commenters requested that CDCs only be required to include in the Annual Report information related to Board minutes, financial statements, tax returns, and jobs and other economic development activity. This change would eliminate several items from the Annual Report, including information related to the Board of Directors, Executive Committee, Loan Committee, professional staff, contracts, affiliations, legal certifications, and compensation. The commenters argued that, with the changes planned in SBA's electronic records system, SBA will have ready access to the information currently provided with the Annual Report. However, SBA has concluded that all of the information that will be submitted with this form continues to be needed to support SBA's efforts to maintain quality control in the 504 Loan Program.[3]

SBA has determined that the changes needed for the form described above are non-substantive in nature and do not need to be submitted to OMB for approval.

Regulatory Flexibility Act, 5 U.S.C. 601–612

When an agency issues a final rulemaking, section 604 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires the agency to ''prepare and make available for public comment a final regulatory flexibility analysis'' which will ''describe the impact of the final rule on small entities, significant issues raised by the public about the impact on small entities and the steps that the agency has taken to minimize the significant economic impact on small entities.'' Section 605 of the RFA allows an agency to certify a rule in lieu of preparing an analysis, if the rule will not have a significant economic impact on a substantial number of small entities. Although the rulemaking will impact all 210 CDCs (all of which are small), SBA continues to believe the economic impact will not be significant. The final rule will streamline the operational and organizational requirements that CDCs must satisfy and reduce their costs.

For example, under the final rule, the 19 CDCs that currently have 504 loan portfolio balances between $20 million and $30 million will no longer be required to provide audited financial statements but may submit reviewed financial statements instead. As noted above, SBA estimates that the elimination of the audited review for these CDCs will save each CDC approximately $15,000 per year. This estimate is based on conversations with CDCs.

In addition, SBA is reducing the regulatory requirements imposed on CDCs related to corporate governance. For example, SBA is decreasing the number of members that a CDC is required to appoint to its Board of Directors from nine to seven. This change will also make it easier for a CDC to meet the quorum requirements for conducting its business. In addition, SBA is: (1) Expanding the area in which

[3] Under the proposed rule, SBA gave notice that SBA Form 2233 would be revised to change the office to which this form is submitted from the ''Lead SBA Office'' to the ''Office of Credit Risk Management''. SBA received no comments on this form. Form 2233 will no longer need to be revised because the final rule will retain the Lead SBA Office as the office to which PCLP CDCs must submit requests for withdrawal from the Loan Loss Reserve Fund.

Board and Loan Committee members may work or live; (2) removing the limit on the number of members that may serve on the Board from the commercial lending fields; (3) allowing CDCs in need of assistance to contract for services with another CDC under certain circumstances even if the CDCs would become affiliated as a result; (4) eliminating the requirement that CDCs establish a separate Loan Committee in each State into which the CDC expands as a Multi-State CDC; (5) expanding the criteria under which a CDC may make a 504 loan outside its Area of Operations; and (6) allowing a CDC to contract with another CDC to perform the required independent loan reviews under certain circumstances and with SBA's prior written approval.

Another change is the reduction in the amount that PCLP CDCs need to maintain in the Loan Loss Reserve Fund. By allowing PCLP CDCs to utilize a declining balance methodology for the LLRF after a Debenture has been outstanding for 10 years, more cash will be available to support the CDC's operations or to invest in other economic development activities without unduly increasing risk.

In addition, SBA received one comment opposing the certification of the proposed rule because of the proposal to prohibit any person or entity from owning or controlling more than 10 percent of a for-profit CDC's voting stock. As discussed above, this final rule provides that an individual or entity will be limited to owning no more than 25 percent of a CDC's stock. With this change, no individual or entity will be required to divest any stock because no stockholder of any for-profit CDC currently owns more than 25 percent of the CDC's stock and, thus, SBA concludes that the 25 percent limit will not have a significant economic impact on any small entities. Similarly, this final rule applies the 25 percent limit to membership interests in a non-profit CDC. Applying the 25 percent limit to non-profit CDCs would not have a significant economic impact on any small entity because a membership interest in a CDC has no economic value to the member. A membership interest in a non-profit CDC does not entitle the member to receive any distribution of income or assets from the CDC.

Except for the change in the audit requirements discussed above, the total costs to CDCs due to the other changes in this rule are difficult to quantify. However, based on the nature of the changes, SBA believes that CDCs are likely to experience cost reductions if there is any cost impact at all. SBA believes that this final rule is the Agency's best available means for facilitating American job preservation and creation by removing unnecessary regulatory requirements. The preamble sections above provide additional detailed explanations regarding how and why this final rule will reduce regulatory burdens and responsibly increase program participation flexibility and discusses the high level of public support for these changes.

For these reasons, SBA has determined that the final rule will not have a significant economic impact on a substantial number of small entities and certifies this rule as such.

List of Subjects in 13 CFR Part 120

Community development, Equal employment opportunity, Loan programs—business, Reporting and recordkeeping requirements, Small business.

For the reasons stated in the preamble, SBA is amending 13 CFR part 120 as follows:

PART 120—BUSINESS LOANS

■ 1. The authority for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h) and note, 636(a), (h) and (m), 650, 687(f), 696(3) and (7), and 697(a) and (e); Pub. L. 111–5, 123 Stat. 115, Pub. L. 111–240, 124 Stat. 2504.

■ 2. Amend § 120.816 by adding paragraph (d) to read as follows:

§ 120.816 CDC non-profit status and good standing.

* * * * *

(d) If a non-profit CDC has a membership and the members are responsible for electing or appointing voting directors to the CDC's Board of Directors, no person or entity can control more than 25 percent of the CDC's voting membership.

■ 3. Amend § 120.818 by designating the undesignated paragraph as paragraph (a) and adding paragraph (b) to read as follows:

§ 120.818 Applicability to existing for-profit CDCs.

* * * * *

(b) No person or entity can own or control more than 25 percent of a for-profit CDC's stock.

■ 4. Amend § 120.823 by:
■ a. Revising paragraph (a);
■ b. Removing paragraph (c)(4) and redesignating paragraph (c)(5) as paragraph (c)(4);
■ c. In paragraph (d)(4)(i)(B), by removing ''five'' and adding ''four'' in its place;
■ d. In paragraph (d)(4)(ii)(B), by removing ''five (5)'' and adding ''four'' in its place; and
■ e. Revising paragraph (d)(4)(ii)(E).

The revisions read as follows:

§ 120.823 CDC Board of Directors.

(a) The CDC, whether for-profit or non-profit, must have a Board of Directors with at least seven (7) voting directors who live or work in the CDC's State of incorporation or in an area that is contiguous to that State that meets the definition of a Local Economic Area for the CDC. The Board must be actively involved in encouraging economic development in the Area of Operations. The initial Board may be created by any method permitted by applicable State law. At a minimum, the Board must have directors with background and expertise in internal controls, financial risk management, commercial lending, legal issues relating to commercial lending, corporate governance, and economic, community or workforce development. Directors may be either currently employed or retired.

* * * * *

(d) * * *
(4) * * *
(ii) * * *

(E) Consist only of Loan Committee members who live or work in the CDC's State of incorporation or in an area that meets the definition of a Local Economic Area for the CDC, except that, for Projects that are financed under a CDC's Multi-State authority, the CDC must satisfy the requirements of either § 120.835(c)(1) or (2) when voting on that Project.

* * * * *

■ 5. Revise § 120.824 to read as follows:

§ 120.824 Professional management and staff, and contracts for services.

(a) *Management.* A CDC must have full-time professional management, including an executive director or the equivalent (CDC manager) to manage daily operations. This requirement is met if the CDC has at least one salaried professional employee that is employed directly (not a contractor or an officer, director, 20 percent or more equity owner, or key employee of a contractor) on a full-time basis to manage the CDC. The CDC manager must be hired by the CDC's Board of Directors and subject to termination only by the Board. A CDC may obtain, under a written contract, management services provided by a qualified individual under the following circumstances:

(1) The CDC must submit a request for the D/FA (or designee) to approve, in consultation with the D/OCRM (or designee), a waiver of the requirement

that the manager be employed directly by the CDC. In its request, the CDC must demonstrate that:

(i) Another non-profit entity (that is not a CDC) that has the economic development of the CDC's Area of Operations as one of its principal activities will provide management services to the CDC and, if the manager is also performing services for the non-profit entity, the manager will be available to small businesses interested in the 504 program and to 504 loan borrowers during regular business hours; or

(ii) The CDC submitting the request for the waiver is rural, has insufficient loan volume to justify having management employed directly by the CDC, and is requesting to contract with another CDC located in the same general area to provide the management.

(2) The CDC must submit a request for the D/FA (or designee), in consultation with the D/OCRM (or designee), to pre-approve the contract for management services. This contract must comply with paragraphs (c)(2) through (4) and, if applicable, paragraph (d) of this section.

(b) *Professional staff.* The CDC must have a full-time professional staff qualified by training and experience to market the 504 Loan Program, package and process loan applications, close loans, service, and, if authorized by SBA, liquidate the loan portfolio, and to sustain a sufficient level of service and activity in the Area of Operations.

(c) *Professional services contracts.* Through a written contract with qualified individuals or entities, a CDC may obtain services for marketing, packaging, processing, closing, servicing, or liquidation functions, or for other services (*e.g.,* legal, accounting, information technology, independent loan reviews, and payroll and employee benefits), provided that:

(1) The contract must be pre-approved by the D/FA (or designee), subject to the following exceptions:

(i) CDCs may contract for legal, accounting, and information technology services without SBA approval, except for legal services in connection with loan liquidation or litigation.

(ii) CDCs may contract for independent loan review services with non-CDC entities without SBA approval. Contracts between CDCs for independent loan reviews must be pre-approved by SBA in accordance with paragraph (d) of this section.

(2) If the contract requires SBA's prior approval under paragraph (c)(1) of this section, the CDC's Board must explain to SBA why it is in the best interest of the CDC to obtain services through a contract and must demonstrate that:

(i) The compensation under the contract is paid only by the CDC obtaining the services, is reasonable and customary for similar services in the Area of Operations, and is only for actual services performed;

(ii) The full term of the contract (including options) is necessary and appropriate and the contract permits the CDC procuring the services to terminate the contract prior to its expiration date with or without cause; and

(iii) There is no actual or apparent conflict of interest or self-dealing on the part of any of the CDC's officers, management, or staff, including members of the Board and Loan Committee, in the negotiation, approval or implementation of the contract.

(3) Neither the contractor nor any officer, director, 20 percent or more equity owner, or key employee of a contractor may be a voting or non-voting member of the CDC's Board.

(4) The CDC procuring the services must provide a copy of all executed contracts requiring SBA prior approval to SBA as part of the CDC's Annual Report submitted under § 120.830(a) unless the CDC certifies that it has previously submitted an identical copy of the executed contract to SBA.

(5) With respect to any contract under which the CDC's staff are deemed co-employees of both the CDC and the contractor (*e.g.,* contracts with professional employer organizations to obtain employee benefits, such as retirement and health benefits, for the CDC's staff), the contract must provide that the CDC retains the final authority to hire and fire the CDC's employees.

(6) If the contract is between CDCs, the CDCs and the contract must also comply with paragraph (d) of this section.

(d) *Professional Services Contracts between CDCs.* Notwithstanding the prohibition in 13 CFR 120.820(d) against a CDC affiliating with another CDC, a CDC may obtain services through a written contract with another CDC for managing, marketing, packaging, processing, closing, servicing, independent loan review, or liquidation functions, provided that:

(1) The contract between the CDCs must be pre-approved by the D/FA (or designee), in consultation with the D/OCRM (or designee), who determines in his or her discretion that such approval is in the best interests of the 504 Loan Program and that the terms and conditions of the contract are satisfactory to SBA. For management services, a CDC may contract with another CDC only in accordance with paragraph (a)(1)(ii) of this section.

(2) Except for contracts for liquidation services and independent loan reviews:

(i) The CDCs entering into the contract must be located in the same SBA Region or, if not located in the same SBA Region, must be located in contiguous States. For purposes of this provision, the location of a CDC is the CDC's State of incorporation;

(ii) A CDC may provide assistance to only one CDC per State; and

(iii) No CDC may provide assistance to another CDC in its State of incorporation or in any State in which it has Multi-State authority.

(3) The Board of Directors for each CDC entering into the contract must be separate and independent and may not include any common directors. In addition, if either of the CDCs is for-profit, neither CDC may own any stock in the other CDC. The CDCs are also prohibited from comingling any funds.

(4) With respect to contracts for independent loan reviews, CDCs may not review each other's portfolios or exchange any other services, nor may they enter into any other arrangement with each other that could appear to bias the outcome or integrity of the independent loan review.

(5) The contract must satisfy the requirements set forth in paragraphs (c)(2) through (4) of this section.

§ 120.826 [Amended]

■ 6. Amend § 120.826 in paragraph (c) by:

■ a. Removing the term ''$20 million'' wherever it appears and adding the term ''$30 million'' in its place; and

■ b. Removing the period at the end of the last sentence and adding '', except that the D/OCRM may require a CDC with a portfolio balance of less than $30 million to submit an audited financial statement in the event the D/OCRM determines, in his or her discretion, that such audit is necessary or appropriate when the CDC is in material noncompliance with Loan Program Requirements.''

■ 7. Amend § 120.835 by:

■ a. Adding a subject heading to paragraph (c);

■ b. Revising the last sentence of paragraph (c); and

■ c. Adding paragraphs (c)(1) and (2).

The additions read as follows:

§ 120.835 January 3, 2020 Application to expand an Area of Operations.

* * * * *

(c) *Multi-State expansion.* * * * A CDC may apply to be a Multi-State CDC only if the State the CDC seeks to expand into is contiguous to the State of the CDC's incorporation and either:

(1) The CDC establishes a Loan Committee in the additional State consisting only of members who live or work in that State and that satisfies the other requirements in § 120.823(d)(4)(ii)(A) through (D); or

(2) For any Project located in the additional State, the CDC's Board or Loan Committee (if established in the CDC's State of incorporation) includes at least two members who live or work in that State when voting on that Project. These two members may vote only on Projects located in the additional State.

§ 120.839 [Amended]

■ 8. Amend § 120.839 by adding the words ''or its affiliate(s)'' after ''business'' in paragraph (a).

■ 9. Amend § 120.847 by revising the third and fourth sentences in paragraph (b) and adding paragraphs (b)(1) and (2) to read as follows:

§ 120.847 Requirements for the Loan Loss Reserve Fund (LLRF).

* * * * *

(b) * * * For each PCLP Debenture a PCLP CDC issues, it must establish and maintain an LLRF equal to one percent of the original principal amount of the PCLP Debenture. The amount the PCLP CDC must maintain in the LLRF for each PCLP Debenture remains the same even as the principal balance of the PCLP Debenture is paid down over time except that, after the first 10 years of the term of the Debenture, the amount maintained in the LLRF may be based on one percent of the current principal amount of the PCLP Debenture (the declining balance methodology), as determined by SBA. All withdrawals must be made in accordance with the requirements of paragraph (g) of this section. A CDC may not use the declining balance methodology:

(1) With respect to any Debenture that has been purchased. Within 30 days after purchase, the CDC must restore the balance maintained in the LLRF for the Debenture that was purchased to one percent of the original principal amount of that Debenture; or

(2) With respect to any other Debenture if SBA notifies the CDC in writing that it has failed to satisfy the requirements in paragraph (e), (f), (h), (i), or (j) of this section. In such case, the CDC will not be required to restore the balance maintained in the LLRF to one percent of the original principal amount of the Debenture but must base the amount maintained in the LLRF on one percent of the principal amount of the Debenture as of the date of notification. The CDC may not begin to use the declining balance methodology again until SBA notifies the CDC in writing that SBA has determined, in its discretion, that the CDC has corrected the noncompliance and has demonstrated its ability to comply with these requirements.

* * * * *

Dated: November 25, 2019.

Christopher M. Pilkerton,

Acting Administrator.

[FR Doc. 2019–26042 Filed 12–3–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

[SATS No. AK–007–FOR; Docket ID No. OSM–2011–0017; S1D1S SS08011000 SX064A000 201S180110; S2D2S SS08011000 SX064A000 20XS501520]

Alaska Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment with four exceptions.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving, with four exceptions and six additional requirements, an amendment to the Alaska regulatory program (the Alaska program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment was submitted by Alaska to address changes made at its own initiative and in response to the required program amendment concerning postmining land use. Alaska intends to revise its program to be consistent with the corresponding Federal regulations and to conform to the drafting manual for the State of Alaska.

DATES: Effective January 3, 2020.

FOR FURTHER INFORMATION CONTACT: Howard Strand, Manager, Denver Field Branch, Telephone: 303–293–5026. Email address: *hstrand@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Alaska Program
II. Submission of the Proposed Amendment
III. OSMRE's Findings
IV. Summary and Disposition of Comments
V. OSMRE's Decision
VI. Statutory and Executive Order Reviews

I. Background on the Alaska Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior approved the Alaska program effective on May 2, 1983. You can find background information on the Alaska program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Alaska program in the March 23, 1983, **Federal Register** (48 FR 12274). You can also find later actions concerning Alaska's program and program amendments at 30 CFR 902.10, 902.15, and 902.16.

II. Submission of the Proposed Amendment

By letter dated September 8, 2011 (Document ID No. OSM–2011–0017–0002), Alaska sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Alaska sent the amendment to include changes made at its own initiative and in response to the required program amendment at 30 CFR 902.16(a)(14), requiring consistency with the provisions of 30 CFR 816.116(b)(3)(i), concerning postmining land use. The amendment package submitted by Alaska primarily concerns editorial revisions to AK–006–FOR, an amendment OSMRE approved after Alaska's submission on May 11, 2004, and revised on April 1, 2005. OSMRE approved the revised rules in the **Federal Register** on November 29, 2005 (70 FR 71383) (Document Identification Number (Docket ID No.) OSM–2011–0017–0013).

Alaska explained that the September 8, 2011, proposed revisions were made at the request of the Alaska Department of Law, to conform to the State of Alaska ''Drafting Manual for Administrative Regulations'' (17th Edition, August 2007). The provisions of the program that Alaska submitted for amendment on September 8, 2011, are: 11 Alaska Administrative Code (AAC) 90.043(b), water quality analyses; 11 AAC 90.045(a), (b), (c), and (d), description of geology; 11 AAC 90.057(a) and (b), fish and wildlife information; 11 AAC 90.057(c) and 11 AAC 90.423(h), fish and wildlife information; 11 AAC 90.085(a), (a)(5) and (e), plans for protection of the hydrologic balance; 11 AAC 90.089(a)(1), construction plans for ponds, impoundments, dams, and embankments; 11 AAC 90.101(a) through (f), subsidence control plans and the definition of material damage; 11 AAC 90.173(b)(2), eligibility for

assistance under the small operator assistance program; 11 AAC 90.179(a)(3), (a)(4) and (a)(5), data collection that would be covered by the small operator assistance program; 11 AAC 90.185(a) and (a)(4), applicant liability under the small operator assistance program; 11 AAC 90.201(d), requirements pertaining to incremental reclamation bonds; 11 AAC 90.211(a), bond release procedures and criteria; 11 AAC 90.321(d), (e), (f), (f)(1) and (f)(2), replacement of water supplies affected by underground mining activities; 11 AAC 90.323(a) and (c), water quality standards; 11 AAC 90.323(b), sediment control measures; 11 AAC 90.325(b) and (c) and 11 AAC 90.327(b)(2), stream channel diversions; 11 AAC 90.331(d)(1), sedimentation ponds; 11 AAC 90.331(e), removal of siltation structures; 11 AAC 90.331(h)(1) and (2), design of other treatment facilities; 11 AAC 90.336(a), (b)(1) and (2), (f), and (g), impoundment design and construction; 11 AAC 90.337(a), impoundment inspection; 11 AAC 90.345(e), requirements for surface water monitoring; 11 AAC 90.349, discharges of water or coal mine waste into an underground mine working; 11 AAC 90.375(f) and (g), public notice of blasting; 11 AAC 90.391(n) and (t), disposal of excess spoil or coal mine waste; 11 AAC 90.395(a), general requirements for coal mine waste; 11 AAC 90.397(a), inspections of disposal areas for excess spoil, underground development waste or coal processing waste; 11 AAC 90.401(a)(1), (b), (d), (e), and (f), construction plans for coal mine waste refuse piles; 11 AAC 90.407(c)(1) and (2) and (f), coal mine waste dams or embankments; 11 AAC 90.443(a)(2), (k)(2), (l)(2), and (m)(2), requirements for backfilling and grading; 11 AAC 90.444(a) and (b), requirements for backfilling and grading where there is thick or thin overburden; 11 AAC 90.447(c)(1), requirements for auger mining; 11 AAC 90.461, repeal of provisions which provided for rebuttable presumption of causation by subsidence; 11 AAC 90.461(b) and (b)(1) through (3), (g) and (g)(1) through (5), (h) and (h)(1) through (3), (i) and (i)(1) through (3), (j), (k), and (l)(1) through (3), subsidence control; 11 AAC 90.491(f)(1), (f)(2)(E), (f)(2)(E)(iii), (f)(3), and (f)(4), requirements for construction and maintenance of roads; 11 AAC 90.601(h), (i) and (j), definition of and inspections of abandoned sites; 11 AAC 90.629(a), procedures for assessment conference; 11 AAC 90.631(a), requests for a hearing on the fact of a violation or civil penalty; 11 AAC 90.635(a) and (b), when an individual civil penalty may be assessed; 11 AAC 90.637(a) and (b), amounts of individual civil penalty; 11 AAC 90.639(a), (b), and (c), procedures for assessment of an individual civil penalty; 11 AAC 90.641(a), (b), (c), and (d), payments of an individual civil penalty; 11 AAC 90.652 through 11 AAC 90.669, requirements for incidental mining of coal; 11 AAC 90.701(a), (b), and (c), filing of a petition to designate lands as unsuitable for surface coal mining operations; 11 AAC 90.901(a), applicability of Alaska's rules to all coal exploration and surface coal mining and reclamation operations; 11 AAC 90.911(125), definition of ''community or institutional building;'' 11 AAC 90.911(126), definition of ''cumulative impact area;'' 11 AAC 90.911(128), definition of ''other minerals;'' 11 AAC 90.911(129), definition of ''other treatment facility;'' 11 AAC 90.911(130), definition of ''precipitation event;'' 11 AAC 90.911(133), definition of ''registered professional engineer;'' 11 AAC 90.911(134), definition of ''registered professional land surveyor;'' and 11 AAC 90.911(135), definition of ''siltation structure.''

In the September 8, 2011, submission, Alaska also submitted substantive revisions of 11 AAC 90.457(c)(3), concerning standards for revegetation success in areas intended for fish and wildlife habitat. Alaska submitted these revisions in response to OSMRE's required program amendment codified at 30 CFR 902.16(a)(14).

We announced receipt of the proposed amendment in the November 2, 2011, **Federal Register** (76 FR 67635). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Document ID No. OSM–2011–0017–0001). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on December 2, 2011. We received comments from two Federal agencies and one State agency.

During our review of the amendment, we initially identified: (1) Minor editorial concerns in three rules about subsidence control plans, data requirements for the probable hydrologic consequences in a small operator assistance program, and replacement of lost, contaminated, diminished, or interrupted water supplies; (2) the need for Alaska to include standards for revegetation success in a guideline (rather than as promulgated rules in the Alaska program); and (3) deficiencies in two rules about assessment of civil penalties.

We notified Alaska of these concerns by letter dated January 23, 2012 (Document ID No. OSM–2011–0017–0009).

Alaska responded with a letter dated February 9, 2012, requesting an extension of time to respond to our concerns (Document ID No. OSM–2011–0017–0010). We approved the extension of time by letter dated February 13, 2012 (Document ID No. OSM–2011–0017–0011).

Alaska responded to OSMRE by sending us a revised amendment (Document ID No. OSM–2011–0017–0012), on March 6, 2012. In response to our concerns, Alaska proposed non-substantive minor editorial revisions of 11 AAC 90.101(e), concerning a subsidence control plan, and 11 AAC 90.321(e), concerning replacement of water supplies. In addition, Alaska withdrew from its proposed amendment the proposed revisions of 11 AAC 90.637(a)(1) through (4) and 11 AAC 90.637(b), concerning civil penalties. Alaska then committed to include these proposed rule revisions as part of another forthcoming program amendment proposal concerning its ownership and control rules. That amendment proposal will be submitted in response to changes in the Federal program, which necessitated changes to the Alaska program to ensure that the State continues to meet the minimum requirements established under SMCRA and its implementing regulations. OSMRE informed Alaska of these required changes by an October 2, 2009, letter sent under the authority of 30 CFR 732.17. The State resubmitted proposed revisions to 11 AAC 90.637(a)(1) through (4) and 11 AAC 90.637(b) for OSMRE's informal review on December 4, 2014. That amendment proposal is currently undergoing OSMRE's informal review process under SATS No. AK–008–INF.

Finally, Alaska also committed to: (1) Develop a general guideline for revegetation success standards and sampling techniques for mined lands in Alaska and a list of husbandry practices used in Alaska for forestry and agricultural purposes and (2) pursue legislation for an Alaska statutory revision of Alaska Statute 27.21.220, in which Alaska will add a new provision concerning prompt replacement of water supplies affected by underground mining operations.

We did not reopen the public comment period for the March 6, 2012, proposed revisions because Alaska did not propose new substantive changes. Instead, the State: (1) Withdrew proposed rules concerning civil penalties; (2) committed to separately

develop a general guideline concerning revegetation success standards and sampling techniques as well as a list of normal husbandry practices; (3) committed to submit a statutory revision concerning replacement of water supplies; and (4) proposed only non-substantive, minor, editorial revisions of rules that did not alter their meaning or Alaska's intent.

In 2017, we conducted a second review of Alaska's proposed amendment and identified additional concerns pertaining to subsidence control plan requirements for planned subsidence scenarios and two instances where the State proposed to shorten timeframes for requesting administrative review of an agency decision on incidental mining exceptions from 30 days to 20 days. We verbally discussed these concerns with the State on February 21, 2018. The State indicated that it preferred to address all remaining concerns with this amendment after publication of the final rule. For that reason, we are publishing this final rule approving the amendments with a total of four specific exceptions and six additional required amendments, as described below.

III. OSMRE's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment with exceptions and additional requirements as described below.

A. Minor Revisions to Alaska's Rules

Alaska proposed minor wording, editorial, punctuation, grammatical, and recodification changes to the following previously approved rules. In some cases, the provisions are the same or similar to the corresponding Federal provisions. In other cases, the provisions may differ from, but are no less effective than, the corresponding Federal provisions.

The minor wording, editorial, punctuation, grammatical, and recodification changes being addressed in this finding are non-substantive, editorial revisions made upon promulgation of rules previously approved by OSMRE as no less effective than the corresponding Federal provisions. The following list provides the applicable portion of the Alaska Administrative Code followed by the corresponding Federal regulation (including the surface and underground mining provisions where applicable):

- 11 AAC 90.085(a), 30 CFR 780.21(f)(1) and 784.14(e)(1), determination of the probable hydrologic consequences;
- 11 AAC 90.201(d), 30 CFR 800.11(b)(1) through (4), incremental bonding;
- 11 AAC 90.211(a), 30 CFR 800.40(a)(1) and (3), bond release procedures and criteria;
- 11 AAC 90.331(h)(1), 30 CFR 30 CFR 816.46(d)(1) and (2), water treatment facility design;
- 11 AAC 90.375(f) and (g), 30 CFR 816.64(a)(1) and (b), distribution and public notice of blasting schedules;
- 11 AAC 90.395(a), 30 CFR 816.81(a) and 817.81(a), coal mine waste, general requirements;
- 11 AAC 90.401(a)(1), (d) and (e), 30 CFR 816.83 and 817.83, coal mine waste refuse piles;
- 11 AAC 90.407(f), 30 CFR 816.84(f), coal mine waste dams and embankments;
- 11 AAC 90.443(a)(2), (k)(2), (l)(2), and (m)(2), 30 CFR 816.102(a)(2), (d)(2) and (3) and (k)(1) and (2), backfilling and grading;
- 11 AAC 90.461(b) and (b)(1) through (3), 30 CFR 817.121(a)(1) and (a)(2), prevention or minimization of subsidence damage or planned subsidence;
- 11 AAC 90.461(h) and (h)(1) through (3), 30 CFR 817.121(c)(5), performance bond for subsidence repair;
- 11 AAC 90.461(i)(1) through (3), 30 CFR 817.121(c)(5), no performance bond for subsidence repair needed for repairs made within 90 days;
- 11 AAC 90.461(j), 30 CFR 817.121(c)(4)(v), use of available information for subsidence determination;
- 11 AAC 90.491(f)(1), 30 CFR 816.151(a) and 817.151(a), construction of roads, certification of plans and drawings;
- 11 AAC 90.491(f)(3) and (f)(4), 30 CFR 816.151 (d)(5) and (6) and 817.151(d)(5) and (6), approval for relocation of stream channels, and structures for crossing intermittent or perennial streams;
- 11 AAC 90.629(a), 30 CFR 845.18(a), concerning procedures for assessment conference;
- 11 AAC 90.631(a), 30 CFR 845.19(a) and 846.17(b)(1), concerning requests for a hearing on the fact of a violation or civil penalty;
- 11 AAC 90.635(b), 30 CFR 846.12(b), when an individual civil penalty may be assessed;
- 11 AAC 90.639(a), (b) and (c), 30 CFR 846.17(a) through (c), procedure for assessment of individual civil penalty;
- 11 AAC 90.701(b) and (b)(1) through (b)(5), 30 CFR 764.13(c)(1) and (c)(2), content requirements for petitions to terminate designation of lands as unsuitable for surface coal mining operations;
- 11 AAC 90.701(c) and (c)(1) through (c)(3), 30 CFR 764.13(c)(1), content requirements for petitions to terminate designation of lands unsuitable for surface coal mining operations;
- 11 AAC 90.901(a)(1), (2) and (3), 30 CFR 700.11(a)(1),(2), and (4), applicability of regulations;
- 11 AAC 90.911(125), 30 CFR 761.5, definition for ''community or institutional building;''
- 11 AAC 90.911(135), 30 CFR 701.5, definition for ''siltation structure;''
- 11 AAC 90.911, 30 CFR 795.3 and 795.10, deletion of definition for ''qualified laboratory,'' and 11 AAC 90.181, insertion of definition for ''qualified laboratory'';
- 11 AAC 90.911, 30 CFR 816.104(a) and 816.105(a), deletion of definitions for ''thick overburden'' and ''thin overburden,'' and 11 AAC 90.444, insertion of definitions for ''thick overburden'' and ''thin overburden''; and
- 11 AAC 90.911, 30 CFR 701.5, deletion of definitions for ''drinking, domestic, or residential water supply,'' ''material damage,'' ''non-commercial building,'' ''occupied residential dwelling and structures related thereto,'' and ''replacement of water supply,'' and 11 AAC 90.461, insertion of definitions of ''drinking, domestic, or residential water supply,'' ''material damage,'' ''non-commercial building,'' ''occupied residential dwelling and structures related thereto,'' and ''replacement of water supply''.

Because these changes to the Alaska program are minor and primarily editorial in nature, we find that they are no less effective than the corresponding Federal regulations, and we approve them.

B. Revisions to Alaska's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

Alaska proposed revisions to the following rules containing language that is the same as or similar to the corresponding sections of the Federal regulations. The following list provides the applicable portion of the Alaska Administrative Code followed by the corresponding Federal regulation (including the surface and underground mining provisions where applicable):

- 11 AAC 90.043(b), 30 CFR 780.21(a), hydrology and geology;
- 11 AAC 90.045(a) through (d), 30 CFR 780.22(b) through (d), geology description;
- 11 AAC 90.057(a) and (b), 30 CFR 780.16(a)(1), fish and wildlife information;

• 11 AAC 90.057(c) and deletion of duplicative provision at 11 AAC 90.423(h), 30 CFR 780.16(c), fish and wildlife information;
• 11 AAC 90.085(a)(5), 30 CFR 30 CFR 784.14(e)(3)(iv), plan for protection of the hydrologic balance;
• 11 AAC 90.085(e), 30 CFR 784.14(f)(1), probable hydrologic consequences and cumulative hydrologic impacts;
• 11 AAC 90.089(a)(1), 30 CFR 780.25(a)(1)(i) and 784.16(a)(1)(i), certification by a qualified, registered professional engineer (PE) or other qualified professional of plans for siltation structures, impoundments, coal mine waste dams, or embankments;
• 11 AAC 90.101(a) through (f), 30 CFR 701.5, 784.20(a) and (b), subsidence control plan;
• 11 AAC 90.179(a)(3), (a)(4) and (a)(5), 30 CFR 795.9(a) and (b)(1) through (6), small operator assistance program and probable hydrologic consequences data requirements;
• 11 AAC 90.185(a) and (a)(4), 30 CFR 795.12(a)(2), small operator assistance program, applicant liability;
• 11 AAC 90.321(f), (f)(1) and (f)(2), 30 CFR 701.5, definition of ''replacement of water supply;''
• 11 AAC 90.325(b) and (c), 30 CFR 816.43(c)(3) and 817.43(c)(3), diversions and conveyance of flow;
• 11 AAC 90.327(b)(2), 30 CFR 816.43(b)(2) and (3), stream channel diversions, precipitation (design) events;
• 11 AAC 90.331(d)(1), 30 CFR 816.46(c)(1)(iii)(C), sedimentation pond design capacity;
• 11 AAC 90.336(a), 30 CFR 780.25(a)(1)(i) and 816.49(a)(3), impoundment design and construction;
• 11 AAC 90.336(b)(1) and (2), 30 CFR 816.49(a)(9)(ii)(B) and (C), impoundment spillway design;
• 11 AAC 90.336(f) and (g), 30 CFR 816.49(a)(1), impoundment design;
• 11 AAC 90.337(a), 30 CFR 816.49(a)(11), impoundment inspection;
• 11 AAC 90.345(e), 30 CFR 780.21(j)(1), 784.14(i)(2)(i), surface- and ground-water monitoring plans;
• 11 AAC 90.349, 30 CFR 816.41(i) and 30 CFR 817.41(h), discharge of water or coal mine waste into an underground mine;
• 11 AAC 90.391(n) and (t), 30 CFR 816.72(a) and 817.72(a), drainage control on valley fills;
• 11 AAC 90.391(t), 816.83(c)(2) and 817.83(c)(2), refuse pile configuration;
• 11 AAC 90.397(a), 816.71(h), 30 CFR 816.83(d), 817.71(h), and 817.83(d), coal mine waste disposal area inspections;
• 11 AAC 90.401(b) and (f), 30 CFR 816.81 and 816.83, coal mine waste refuse piles;
• 11 AAC 90.407(c)(1) and (2), 30 CFR 816.84(d) and 817.84(d), coal mine waste dams and embankments;
• 11 AAC 90.423(h), 30 CFR 780.16(c), protection of fish and wildlife;
• 11 AAC 90.444(a) and (b), 30 CFR 816.104(a) and 816.105(a), backfilling and grading, thick and thin overburden;
• 11 AAC 90.447(c)(1), 30 CFR 819.15(b)(1), requirements for auger mining;
• 11 AAC 90.461, 30 CFR 817.121(c)(4), repeal of provisions providing for rebuttable presumption of causation by subsidence;
• 11 AAAC 90.461(g) and (g)(1) through (5), 30 CFR 817.121(g), detailed plan of underground workings;
• 11 AAC 90.461(k), 30 CFR 817.121(c)(5), bond calculation for replacement of water supply;
• 11 AAC 90.461(l)(1)(A) through (C), 30 CFR 701.5, definition of ''material damage;''
• 11 AAC 90.461(l)(2), 30 CFR 30 CFR 701.5, definition of ''non-commercial building;''
• 11 AAC 90.461(l)(3)(A) and (B), 30 CFR 701.5, definition of ''occupied residential dwelling and related structures;''
• 11 AAC 90.491(f)(2)(E) and (f)(2)(E)(iii), 30 CFR 816.151(d)(2) and 817.151(d)(2), construction and maintenance of roads, transportation and support facilities, and utility installations;
• 11 AAC 90.601(h), (i) and (j), 30 CFR 840.11(g), and (h), definition and inspection of abandoned sites;
• 11 AAC 90.635(b), 30 CFR 846.12(b), assessment of individual civil penalties;
• 11 AAC 90.701(a) and (a)(1) through (a)(6), 30 CFR 764.13(a) and (b), content requirements for petitions to designate lands unsuitable for surface coal mining operations;
• 11 AAC 90.911(126), 30 CFR 701.5 and 740.5(a), definition of ''cumulative impact area;''
• 11 AAC 90.911(128), 30 CFR 702.5, definition of ''other minerals;''
• 11 AAC 90.911(129), 30 CFR 701.5, definition of ''other treatment facility;'' and
• 11 AAC 90.911(130), 30 CFR 701.5, definition of ''precipitation event.''

Because these proposed rules contain language that is identical to or is substantially similar to the corresponding Federal regulations, we find that Alaska's proposed amendments are no less effective than the corresponding Federal regulations, and approve them with one additional requirement about subsidence control plans. As proposed, 11 AAC 90.101(e) omits counterpart language to 30 CFR 784.20(b)(7). This provision pertains to subsidence control plan requirements related to minimizing damage to non-commercial buildings and occupied residential dwellings in planned subsidence scenarios. OSMRE conditionally approves the current revisions to 11 AAC 90.101(e), with the addition of a new required amendment at 30 CFR 902.16 requiring Alaska to add the omitted provision.

C. Revisions to Alaska's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. 11 AAC 90.173(b)(2), Eligibility for the Small Operator Assistance Program (SOAP)

Alaska proposed language at 11 AAC 90.173(b)(2), which requires all coal produced by a parent company and all of its subsidiaries to be attributed to the applicant of a SOAP grant. This is no less effective than the counterpart Federal regulation at 30 CFR 795.6(a)(2)(i) and (ii). The Federal regulation requires production to be attributed to the SOAP applicant when a proportional ratio of coal produced by operations that the applicant owns more than 10 percent, the proportional share of other operations owned by persons who own more than 10 percent of the applicant's operation, and operations owned by persons who directly or indirectly control the applicant by reason of direction of the management, and operations owned by members of the applicant's family and the applicant's relatives unless it is established that there is no direct or indirect business relationship. Alaska has proposed deletion of rules previously approved by OSMRE that were substantively identical to the Federal provisions of 30 CFR 795.6(a)(2)(i) and (ii). Alaska's rule now determines eligibility based on *all* coal produced under a parent company rather than proportional amounts of coal produced under proportional ownership. Under the proposed Alaska regulations, more coal would be attributed to the small operator acting under a parent company, which owns or controls other coal mines, thereby reducing the number of applicants who would qualify for SOAP assistance. The proposed Alaska rule is also consistent with the overriding statute at AS 27.21.120.

30 CFR 795.6(b) allows States to adopt alternate criteria or procedures for determining eligibility for SOAP,

provided that those criteria will not provide a basis for more grant requests than would be authorized under Federal requirements.

Alaska stated in its Statement of Basis and Purpose, submitted with the proposed amendment, that the adoption of the new language results in the Alaska rule being more stringent than the corresponding Federal regulation by limiting the number of eligible applicants.

OSMRE agrees and finds no evidence that the proposed Alaska provision would provide a basis for more grant requests than would be authorized under Federal requirements. Therefore, OSMRE finds that Alaska's proposed 11 AAC 90.173(b)(2), concerning the eligibility of a SOAP applicant, is no less effective than the counterpart Federal regulations at 30 CFR 795.6(a)(2)(i) and (ii) and 30 CFR 795.6(b), and approves it.

2. 11 AAC 90.321(d), Hydrologic Balance, Prevention or Minimization of Pollution and Operation of Water Treatment Facilities

Alaska proposed to revise 11 AAC 90.321(d), concerning the requirement to conduct surface coal mining operations to prevent or minimize water pollution. Alaska proposed to remove the discretion of the Alaska Commissioner to discontinue operation of necessary water treatment facilities. In other words, Alaska's proposed rule would now require the operation of necessary water treatment facilities for as long as treatment is required under the program.

The requirement for treatment to satisfy water quality standards is inherent throughout the Federal program and more specifically required in the Federal regulations at 30 CFR 816.41(a) and 816.42. Those regulations require operations to be conducted to minimize disturbance of the hydrologic balance and all discharges to be made in compliance with all applicable State and Federal water quality laws and regulations. Therefore, OSMRE finds that Alaska's proposed deletion of the Alaska Commissioner's discretionary authority serves to ensure that the requirement 11 AAC 90.321(d) is no less effective in protecting the hydrologic balance than the counterpart Federal regulations at 30 CFR 816.41(a) and 816.42, and approves it.

3. 11 AAC 90.321(e), Hydrologic Balance, Prevention or Minimization of Pollution and Replacement of Damaged Water Supplies

Alaska proposed to revise 11 AAC 90.321(e)(1) and (2), concerning the replacement of a water supply of an owner of interest in real property, who obtains all or part of the owner's supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source. Alaska proposed the revision to ensure that the rule applies if the water supply had been contaminated, diminished, or interrupted by surface or underground mining activities conducted after October 24, 1992, and if the affected water supply was in existence before the date the Alaska Commissioner received the permit application for the activities affecting and requiring replacement of the water supply. These changes are intended to satisfy certain requirements of the Energy Policy Act, which was passed on October 24, 1992, and codified as section 720 of SMCRA, 30 U.S.C. 1309a, as well as additional requirements within OSMRE's regulations. The counterpart Federal regulation at 30 CFR 817.41(j) requires the replacement of certain drinking, domestic or residential water supplies that are contaminated, diminished, or interrupted by underground mining activities. The Federal regulation at 30 CFR 701.5 defines ''drinking, domestic or residential water supply'' as water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or house hold use. Excluded from this definition are wells and springs that serve only agricultural, commercial, or industrial enterprises, unless the water supply is for direct human consumption or human sanitation, or domestic use.

By revising 11 AAC 90.321(e) to apply to not only underground mining activities, but also to surface mining activities, the counterpart Federal regulation for surface mining also applies. This counterpart Federal regulation at 30 CFR 816.41(h) requires the replacement of certain water supplies for domestic, agricultural, industrial, or other legitimate use that are contaminated, diminished, or interrupted by surface mining activities. By revising 11 AAC 90.321(e) to apply to certain water supplies for domestic, agricultural, industrial, or other legitimate use, rather than certain drinking, domestic, or residential water supplies, Alaska has expanded the scope of the rule to protect more types of water supplies than protected under the counterpart Federal regulation at 30 CFR 817.41(j), if the water supply was contaminated, diminished, or interrupted by underground mining activities. Therefore, proposed 11 AAC 90.321(e) is more stringent than the counterpart Federal regulations at 30 CFR 817.41(j) and 816.41(h), as to the type of water supply to be protected. Therefore, in this context, OSMRE finds that the Alaska regulations is no less effective than the applicable Federal counterpart.

In addition, proposed 11 AAC 90.321(e) is no less effective than 30 CFR 817.41(j) and 816.41(h) in requiring replacement of water supplies affected by underground and surface mining activities conducted *after* October 24, 1992, as required by 30 U.S.C. 1309a.

However, proposed 11 AAC 90.321(e) is less effective than 30 CFR 816.41(h), with respect to protecting water supplies affected by surface mining activities to the extent that it does not protect those water supplies affected by surface mining activities conducted *on or before* October 24, 1992.

With the exception that proposed 11 AAC 90.321(e) does not protect those water supplies affected by surface mining activities conducted on or before October 24, 1992, OSMRE finds that 11 AAC 90.321(e) is no less effective than 30 CFR 817.41(j) and 816.41(h). However, with respect to protecting water supplies affected by surface mining activities on or before October 24, 1992, OSMRE does not approve the phrase ''conducted after October 24, 1992'' proposed for addition under 11 AAC 90.321(e)(1) as it relates to surface coal mining activities. 11 AAC 90.321(e) therefore requires further revision to ensure protection of water supplies affected by surface coal mining activities on or before October 24, 1992. To address this issue, OSMRE approves the current revisions, with this one exception and the addition of a required amendment at 30 CFR 902.16, that, in accordance with 30 CFR 816.41(h), Alaska must further revise 11 AAC 90.321(e) to ensure protection of water supplies affected by surface coal mining activities conducted on or before October 24, 1992.

In addition, following passage of the Energy Policy Act of 1992, OSMRE issued a Notice of Decision that required Alaska, among other states, to implement its requirements codified in section 720 of SMCRA (30 U.S.C. 1309a) (60 FR 38482, 38483, July 27, 1995). Alaska indicated it would amend its statute at AS 27.21.220 to add subsection (c) requiring prompt repair or compensation for material damage resulting from subsidence, and prompt replacement of water supplies affected by underground mining operations. In Alaska's March 6, 2012, response to OSMRE's January 23, 2012, concern letter, Alaska committed to amending its statute concerning replacement of water

supplies during the 2012 legislative session. But Alaska's response was silent with respect to the requirement that Alaska revise its statute to require prompt repair or compensation for material damage resulting from subsidence. Alaska did not revise its statute during the 2012 legislative session. Because this statutory authority is necessary to implement the required changes to 11 AAC 90.321(e), OSMRE is conditioning approval of that part upon Alaska's submission of a state program amendment to AS 27.21.220. Therefore, OSMRE is adding another required amendment at 30 CFR 902.16, that requires, in accordance with the Energy Policy Act enacted on October 24, 1992, Alaska to submit, no later than the end of the 2019 legislative session, a statutory revision requiring prompt repair or compensation for material damage resulting from subsidence, and prompt replacement of water supplies affected by underground mining operations.

4. 11 AAC 90.323(a), (b) and (c), Treatment of Disturbed Surface Drainage To Meet Water Quality Laws and Regulations

Alaska, at 11 AAC 90.323(a), proposed revisions to require that all discharges of water from areas disturbed by surface and underground mining activities must be made in compliance with all applicable federal water quality laws and regulations, with all applicable provisions of AS 46.03 and regulations in effect under that chapter, and with the effluent limitations for coal mining promulgated by the United States Environmental Protection Agency (EPA) set out in 40 CFR part 434, adopted by reference in 11 AAC 90.001(b). In doing so, Alaska proposed deletion from 11 AAC 90.323(a) of the requirement that, with certain exceptions, such discharges must pass through one or more siltation structures before leaving the permit area.

The Federal regulations at 30 CFR 816.42 require that discharges of water from areas disturbed by surface mining activities must be made in compliance with all applicable State and Federal water quality laws and regulations and with the effluent limitations for coal mining promulgated by the EPA set forth in 40 CFR part 434.

Effective December 22, 1986, OSMRE suspended the Federal counterpart language at 30 CFR 816.46(b)(2) requiring that all discharges pass through a siltation structure. *See* Finding No. 16 at 51 FR 41957 (Nov. 20, 1986). OSMRE suspended this requirement in response to a remand by the court in *In Re: Permanent Surface Mining Regulation Litigation,* No. 79–1144 (D.D.C. 1985*).* The remaining Federal rules governing water quality for discharges from disturbed areas are those found at 30 CFR 816.42, 816.45, and 816.46(b)(1). In relevant part, those regulations require that sediment be controlled using the best technology currently available (BTCA).

OSMRE no longer defines BTCA as being siltation structures as we previously did in the now-suspended 30 CFR 816.46(b)(2). Instead, OSMRE concludes that the regulatory authority must determine on a case-by-case basis what constitutes BTCA consistent with the definition of the term found at 30 CFR 701.5. Although OSMRE anticipates that sedimentation ponds or some other siltation structure will most likely be the BTCA; a specific determination should be made by the regulatory authority. Therefore, OSMRE approves Alaska's proposed deletion of this language from 11 AAC 90.323(a) with the understanding that the case-by-case analysis of BTCA is performed by Alaska.

Alaska's proposed 11 AAC 90.323(a) contains requirements that are the same as or similar to the counterpart Federal regulation at 30 CFR 816.42, concerning protection of the hydrologic balance.

Alaska proposed to revise 11 AAC 90.323(b), concerning the allowance for other sediment control measures after disturbed areas have been regraded, topsoil replaced, and stabilized against erosion, if the Alaska Commissioner and the EPA have approved the use of best management practices as the effluent limitation. Alaska proposed to replace ''EPA'' with the State agency now delegated EPA's authority, the Alaska Department of Environmental Conservation. This proposed rule revision clarifies the Alaska program without changing the meaning or intent of the rule. The proposed rule is otherwise consistent with the Federal counterpart regulation at 30 CFR 816.45 concerning the use of appropriate sediment control measures.

Alaska proposed to delete from its program the requirement, at 11 AAC 90.323(c), that the operator must meet all applicable Federal and State water quality laws and regulations for the mixed drainage from the permit area when there is mixing of drainage from disturbed, reclaimed, and undisturbed areas. This requirement is redundant of the requirements proposed at paragraph 11 AAC 90.323(a) and discussed above. Therefore, based on the discussion above, OSMRE finds that Alaska's proposed 11 AAC 90.923(a) and (b), with the proposed deletion of 11 AAC 90.923(c), are no less effective than the counterpart Federal regulations at 30 CFR 816.42, 816.45 and 816.46. Therefore, we approve these portions of the Alaska program amendment.

5. 11 AAC 90.331(e), Maintenance, Removal and Retention of Siltation Structures

Alaska proposed editorial revisions at 11 AAC 90.331(e), concerning maintenance, removal and retention of siltation structures, added specificity or clarified grammar without changing the meaning of the rule. In addition, Alaska proposed to reference the requirements of 11 AAC 90.321(a) through (d) and 11 AAC 90.323, rather than 11 AAC 90.323(b), for the Alaska Commissioner's authority to authorize removal of siltation structures.

With one exception, Alaska's proposed rule is the same as or substantially similar to the counterpart Federal regulation at 30 CFR 816.46(b)(5), which requires siltation structures to be maintained until removal is authorized by the regulatory authority and the disturbed area has been stabilized and revegetated and that, in no case, will the structure be removed sooner than two years after the last augmented seeding.

The exception is that Alaska's proposed rule references the requirements of 11 AAC 90.321(a) through (d) and 11 AAC 90.323 for the Alaska Commissioner's authority to authorize removal of siltation structures, while the counterpart Federal regulation states only that removal must be authorized by the regulatory authority. Alaska's referenced rules at 11 AAC 90.321(a) through (d) and 11 AAC 90.323 pertain to, respectively, requirements for protection of the hydrologic balance and the requirement that discharges of water from areas disturbed by surface and underground mining activities must be made in compliance with all applicable Federal and State water quality statues and regulations. Alaska's proposed reference to these rules provides specificity and clarification. Therefore, based on the above discussion, OSMRE finds that proposed 11 AAC 90.331(e) is the same as or substantially similar to, and no less effective than the counterpart Federal regulation at 30 CFR 816.46(b)(4), and we approve it.

6. 11 AAC 90.331(h)(2), Other Treatment Facilities

Alaska proposed non-substantive editorial revisions at 11 AAC 90.331(h)(2), concerning design of other treatment facilities. In addition, Alaska proposed to revise 11 AAC 90.331(h)(2) to require other treatment facilities to be

designed in accordance with ''11 AAC 90.336 and 11 AAC 90.338'' rather than ''the applicable requirements of this section.''

The counterpart Federal regulations at 30 CFR 816.46(d)(1) and (2) require that other treatment facilities must be designed: (1) To treat the 10-year, 24-hour precipitation event, unless a lesser design event is approved by the regulatory authority based on terrain, climate, other site-specific conditions and a demonstration by the operator that the effluent limitations of 30 CFR 816.42 will be met; and (2) in accordance with the applicable requirements of 30 CFR 816.46(c), specifically discussing sedimentation ponds.

Alaska's proposed rule at 11 AAC 90.331(h)(2) requires other treatment facilities to be designed in accordance with 11 AAC 90.336 and 11 AAC 90.338 where the counterpart Federal regulations require design in accordance with 30 CFR 816.46(c). The referenced rules, at 11 AAC 90.336 and 11 AAC 90.338, pertain to, respectively, temporary and permanent impoundment design and construction and permanent impoundment criteria. Alaska's referenced rules provide design criteria while the counterpart Federal regulations at 30 CFR 816.46(c) provide performance standards. Both pertain to the design of sedimentation ponds. Alaska's design criteria are more specific than, and no less effective than, the counterpart Federal performance standards. Therefore, based on the above discussion, OSMRE finds that Alaska's proposed rule at 11 AAC 90.331(h)(2), concerning design of other treatment facilities, is no less effective than the counterpart Federal regulation concerning other treatment facilities at 30 CFR 816.46(d)(2), and approves the changes.

7. 11 AAC 90.635(a), When an Individual Civil Penalty May Be Assessed

At existing paragraph (a) of 11 AAC 90.635, Alaska states that a civil penalty may be assessed against a corporate director, officer, or agent of the corporate permittee when the individual knowingly and willfully authorizes, orders, or carries out a violation, ''failure or refusal.'' Alaska proposed to revise this paragraph to delete the quoted phrase and state that it may assess an individual civil penalty when there is a violation ''of AS 27.21, this chapter, or a permit condition.'' Referenced AS 27.21 is the Alaska Surface Coal Mining Control and Reclamation Act. ''[T]his chapter'' is Chapter 90, Surface Coal Mining, of the Alaska Administrative Code.

The federal counterpart requirement of paragraph (a) of 30 CFR 846.12 addresses the same individuals and types of actions by these individuals. This regulation explains that an individual civil penalty may be assessed when there is a ''violation, failure or refusal.'' The Federal regulations at 30 CFR 701.5 define ''violation, failure or refusal'' and ''violation.'' Alaska does not have counterpart definitions for these terms in its program, although it committed to proposing them by September 2013 in a rulemaking package in response to OSMRE's October 2, 2009, 30 CFR part 732 letter, concerning ownership and control. The State submitted its proposed definitions for OSMRE's informal review on December 4, 2014. That amendment proposal is currently undergoing the informal review process under SATS No. AK–008–INF.

By proposing to insert in 11 AAC 90.635(a) the phrase ''of AS 27.21, this chapter, or a permit condition'' in place of the phrase ''failure or refusal,'' Alaska would consider all violations of any part of AS 27.21, which is the Alaska Surface Coal Mining Control and Reclamation Act; all violations of any part of 11 AAC Chapter 90, which is the chapter containing all of the Alaska Department of Natural Resource's regulations governing coal mining; and violations of any conditions the Alaska Department of Natural Resources imposes when it issues a permit. These violations of the Alaska program include those encompassed by the 30 CFR 846.12(a) phrase ''violation, failure or refusal'' and the 30 CFR 701.5 definitions of the terms ''violation, failure or refusal'' and ''violation.''

Therefore, based on the above discussion, OSMRE finds that the proposed individual civil penalty requirements of 11 AAC 90.635(a) are no less effective than the corresponding requirements of 30 CFR 846.12(a), and we approve it.

8. 11 AAC 90.641(a), (b), (c) and (d), Payment of Individual Civil Penalties

Alaska proposed revisions of 11 AAC 90.641(a) to require that, with exceptions in (b) and (c), individual civil penalties must be paid within 30 days of the issuance of a notice of proposed individual civil penalty assessment. This effectively gives the individual 30 days to either pay (thereby rendering the proposed penalty final) or contest the penalty (with payment due upon issuance of the final written decision). The counterpart Federal regulation at 30 CFR 846.18(a) requires that these penalties are due upon issuance of the final order.

Alaska proposed revisions of 11 AAC 90.641(b) to require that, if the individual contests the amount of the penalty or the fact of the violation, in accordance with AS 27.21.250(b) and 11 AAC 90.639(b), the penalty is due upon issuance of a final written decision (rather than administrative order) affirming, increasing, or decreasing the proposed penalty.

In paragraph (b), Alaska references 11 AAC 90.639(b) and AS 27.21.250(b) for contesting individual civil penalties. Revised 11 AAC 90.639(b) requires the notice of proposed individual civil penalty assessment to become a final decision 30 days after service, unless the individual contests the amount of the penalty or the fact of the violation, in accordance with AS 27.21.250(b), or Alaska agrees to a plan and schedule for abatement or correction of the violation. Alaska Statute 27.21.250(b) provides information on how an individual contests the amount of the penalty or the facts of the violation. These references are correct and appropriate.

Proposed 11 AAC 90.641(a) and (b) are similar to, and no less effective than, the counterpart Federal regulation at 30 CFR 846.18(a) and (b), which provides that, if an individual named in a notice of proposed individual civil penalty assessment files a petition for review in accordance with 43 CFR 4.1300 *et seq.,* the penalty will be due upon issuance of a final administrative order affirming, increasing, or decreasing the proposed penalty.

Proposed 11 AAC 90.641(c) is no less effective than its Federal counterpart at 30 CFR 846.18(c), which requires that, when a written agreement or plan for abatement or compliance of an order is reached, the individual may postpone payment until receiving either a final order that payment is due or written notification that the penalty has been withdrawn. The proposed Alaska provision does not discuss postponement of payment or withdrawal of penalties. Because these options are implicit in the Alaska Commissioner's and individual's ability to agree upon a schedule or plan for the abatement or correction of the violation, Alaska's proposed 11 AAC 90.641(c) requires that the penalty is due only when the abatement or correction has not been satisfactory and a final written decision of the penalty amount has been issued.'

Alaska proposed to delete, from 11 AAC 90.641(d), language concerning the accrual of interest and late charges with references to the U.S. Department of Treasury. The language proposed for

deletion reflects requirements placed on OSMRE by the Debt Collection Act of 1982 (97 Pub. L. 365), which applies only to debts owed to the Federal government. Alaska is not bound by these obligations and it does not need to adopt similar language. Therefore, OSMRE can approve the deletion of OSMRE-specific language proposed at 11 AAC 90.641(d).

Alaska also proposed editorial revisions of 11 AAC 90.641(d)(1) through (5), concerning overdue payments of civil penalties. These revisions add specificity and do not substantively revise the actions that the Alaska Commissioner may take if the penalty is not paid. Therefore, OSMRE finds that Alaska's proposed 11 AAC 90.641(d)(1) through (5) adds specificity, but has the same effect as the Federal regulations at 30 CFR 870.23(a) through (f), which are referenced in the counterpart Federal regulation at 30 CFR 846.18(d). Therefore, Alaska's proposed 11 AAC 90.641(d), concerning overdue payments of civil penalties, is no less effective than the counterpart Federal regulations at 30 CFR 846.18(d) and 30 CFR 870.23(a) through (f).

Based on the above discussion, OSMRE finds that proposed 11 AAC 90.641(a), (b), (c) and (d) are no less effective than the counterpart Federal regulations at 30 CFR 846.18 and 870.23, and we approve them.

9. 11 AAC 90.652, 654, 656, 658, 660, 662, 664, 666 and 669, Exemption for Coal Extraction Incidental to the Extraction of Other Minerals.

Alaska, with four exceptions, has proposed at 11 AAC 90.652, 654, 656, 658, 660, 662, 664, 666 and 669, recodification, non-substantive editorial revisions and editorial revisions that add specificity without changing the meaning or implementation of Alaska's rules concerning the exemption for extraction of coal incidental to the mining of other minerals. The exceptions are 11 AAC 90.652(d) concerning public notice requirements, 11 AAC 90.652(g)(1) concerning the timeframe for requesting administrative review of an agency decision, 11 AAC 90.656 concerning the public availability of information, and 11 AAC 90.664(c) concerning the timeframe for requesting administrative review of an agency decision. These exceptions are discussed below.

11 AAC 90.652(d), Public Notice Requirements. Alaska has proposed to delete the requirement, at 11 AAC 90.654, that the applicant provide evidence of public notice in an application for incidental mining (previously codified as 11 AAC 90.652(i)). In place of the deleted provision, Alaska, at 11 AAC 90.652(d), proposed to require that the Alaska Commissioner provide public notice and receive comment on an application for an incidental mining exemption, in accordance with 11 AAC 90.907.

The counterpart Federal regulation, 30 CFR 702.12(i), requires that the applicant provide evidence of public notice in a newspaper of general circulation in the county of the mining area. Although Alaska's program at proposed 11 AAC 90.652(d) requires that the Alaska Commissioner provide notice of the application for mining of coal incidental to the mining of other minerals, Alaska's proposed 11 AAC 90.652(d) is no less effective than the Federal regulations at 30 CFR 702.12(i), which requires that the applicant publish notice. The public will be provided effective notice and an opportunity to comment, for a period of no less than 30 days, as required in the Federal regulations at 30 CFR 702.11(d).

11 AAC 90.652(g)(1), Administrative Review of an Application for an Incidental Mining Exemption. Alaska proposed to shorten the timeframe for an adversely affected person to request administrative review of an agency decision regarding an incidental mining exemption from 30 days to 20 days. This change is inconsistent with and less effective in providing the opportunity to seek appeal than the counterpart Federal regulation at 30 CFR 702.11(f)(1). The Federal regulation allows for a 30-day period to seek administrative review of such determination according to the Federal or State procedures, whichever are applicable.

11 AAC 90.656, Public Availability of Information. Alaska proposed, in the initial paragraph of 11 AAC 90.656, to require that, except as provided in AS 27.21.100(c), all information submitted to the Alaska Commissioner under 11 AAC 90.652 through 11 AAC 90.669, will be made immediately available for public inspection and copying at the Alaska Commissioner's office and at the regional office of the Department closest to the location of the coal mining operation. Alaska proposed to delete the requirements (previously codified at 11 AAC 90.653(a)) that (1) the information be available for a minimum period of 3 years after expiration of the period during which the subject mining area is active, and (2) the discretion of the Alaska Commissioner to hold information concerning trade secrets or privileged commercial or financial information of the persons intending to conduct the operations, confidential, if requested in writing at the time the application is made. The counterpart Federal requirements to the requirements that Alaska proposed to delete are 30 CFR 702.13(a), (b) and (c).

Alaska's statute at AS 27.21.100(c) specifies requirements concerning confidentiality of information in applications that are similar to and no less effective than the Federal regulations at 30 CFR 702.13(b) and (c). Therefore, Alaska's proposed 11 AAC 90.656, which includes a reference to AS 27.21.100(c) in place of language identical to 30 CFR 702.13(b) and (c), is no less effective than the Federal regulations concerning information that may be held as confidential. However, the counterpart Federal regulation at 30 CFR 702.13(a) requires, except for information approved as confidential, that all information submitted to the regulatory authority must be made immediately available for public inspection and copying at the local offices of the regulatory authority having jurisdiction over the mining operations claiming exemption until *at least three years after expiration of the period during which the subject mining area is active* (emphasis added).

Alaska's proposed 11 AAC 90.656 is the same as the counterpart Federal regulation at 30 CFR 702.13(a), with the exception that Alaska proposed to remove the requirement that the information must be available for three years after expiration of operations. OSMRE notes that Alaska's general provisions governing public availability of information at 11 AAC 90.907(j) requires information to be available for at least five years after expiration of the period during which the mining operation is active or is covered by any portion of a reclamation bond, whichever is later. However, operations extracting coal incidental to mining are exempt from these general provisions, if the exemption is approved by the Alaska Commissioner. *See* 11 AAC 90.901(a)(3). Therefore, Alaska's proposed deletion from 11 AAC 90.656 of the requirement that information must be available for three years after expiration of operations is less effective at providing public availability of certain information than the counterpart Federal regulation at 30 CFR 702.13(a).

11 AAC 90.664(c), Administrative Review of a Revocation of an Incidental Mining Exemption. Alaska proposed to shorten the timeframe for an adversely affected person to request administrative review of an agency decision regarding revocation of an incidental mining exemption from 30 days to 20 days. This change is inconsistent with and less effective in

providing the opportunity to seek appeal than the counterpart Federal regulation at 30 CFR 702.17(c)(2). That regulation allows for a 30-day period to seek administrative review of such determination according to the Federal or State procedures, whichever are applicable.

Therefore, based on the above discussion, with three exceptions within 11 AAC 90.652, 11 AAC 656, and 11 AAC 90.664, OSMRE finds that Alaska's proposed rules at 11 AAC 90.652, 654, 656, 658, 660, 662, 664, 666 and 669, concerning the exemption for coal extraction incidental to the extraction of other minerals, are the same as or similar to the counterpart Federal regulations at 30 CFR part 702, and we approve them.

We find, however, that the proposed reduction of time for an adversely affected person to request administrative review of an agency decision about an application for an incidental mining exemption at 90.652(g)(1) is inconsistent with and less effective than the counterpart Federal regulation at 30 CFR 702.11(f)(1). Therefore, we do not approve it.

Likewise, OSMRE finds that Alaska's proposed deletion from 11 AAC 90.656 of the requirement that information must be available for three years after expiration of operations is less effective than the counterpart Federal regulation at 30 CFR 702.13(a), and we do not approve it.

OSMRE also finds that the proposed reduction of time for an adversely affected person to request administrative review of an agency decision about revocation of an incidental mining exemption at 90.664(c) is inconsistent with and less effective than the counterpart Federal regulation at 30 CFR 702.17(c)(1). Therefore, OSMRE does not approve it.

Accordingly, OSMRE is adding required amendments, at 30 CFR 902.16, that Alaska further amend 11 AAC 90.652(g)(1) and 90.664(c) to restore the 30-day timeframes for requesting administrative review of agency decisions regarding incidental mining exemptions, and 11 AAC 90.656, concerning public availability of information in an application for an exemption of coal incidental to the extraction of other minerals, to restore the requirement that the information, unless approved as confidential, must be made available for public inspection and copying until at least three years after expiration of the period during which the subject mining area is active.

10. 11 AAC 90.911(133) and (134), Definitions of ''Registered Professional Engineer'' and ''Registered Professional Land Surveyor''

Alaska proposed, at 11 AAC 90.911(133) and (134), definitions of ''registered professional engineer'' and ''registered professional land surveyor.'' OSMRE's regulations in several locations allow either a ''qualified, registered, professional engineer'' or a ''qualified registered professional land surveyor'' to certify certain design plans; however, OSMRE does not define the terms. Alaska defines these terms by reference to the body of law governing registered professionals in the State of Alaska.

Alaska's proposed inclusion of definitions of ''registered professional engineer'' and ''registered professional land surveyor'' serves to clarify its rules where these terms are used. *See* 11 AAC 90.089(a)(1) and 90.336(a), concerning preparation and certification of design plans for siltation structures, impoundments, and coal mine waste dams; 11 AAC 90.491(f)(1), concerning preparation and certification of design plans for primary roads; and 11 AAC 90.337(a), concerning inspections of permanent or temporary impoundments. These rules are clarified by the proposed definitions and remain no less effective than the counterpart Federal regulations, which use the same terms (see Federal regulations at 30 CFR 780.37(b), 816.49(a)(3) and 816.49(a)(11), concerning preparation and certification of plans and drawings for primary roads, siltation structures, impoundments, and coal mine waste dams, and inspections of impoundments). The proposed definitions serve to clarify its program and to demonstrate that Alaska provides for registration of both professional engineers and land surveyors.

Therefore, based on the above discussion, OSMRE approves Alaska's proposed definitions of ''registered professional engineer'' and ''registered professional land surveyor'' at 11 AAC 90.911(133) and (134).

D. Revisions to Alaska's Rules or Other Explanations Submitted in Response to Required Amendments Codified at 30 CFR 902.16(a) (See 57 FR 37410, August 19, 1992, Administrative Record No. AK–C–31)

1. 30 CFR 902.16(a)(14), Minimum Stocking and Planting Arrangements for Areas Developed for Fish and Wildlife Habitat, Recreation, Shelter Belts or Forest Products at 11 AAC 90.457(c)(3).

OSMRE required at 30 CFR 902.16(a)(14) that Alaska revise 11 AAC 90.457(c)(3) to require consultation with and approval by the State forestry and wildlife agencies with regard to the minimum stocking and planting arrangements for areas developed for fish and wildlife habitat, recreation, shelter belts or forest products postmining land use as required at 30 CFR 816.116(b)(3)(i) (finding 16, 57 FR 37410, 37416, August 19, 1992).

Alaska proposed revisions of 11 AAC 90.457(c)(3) so that it is now substantively identical to the counterpart Federal regulations at 30 CFR 816.116(b)(3).

Therefore, OSMRE finds that proposed 11 AAC 90.457(c)(3) is no less effective than the Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3), approves it, and removes the required amendment at 30 CFR 902.16(a)(14).

2. 30 CFR 902.16(a)(15), Standards for Revegetation Success

OSMRE required at 30 CFR 902.16(a)(15) that Alaska resubmit standards for revegetation success per the requirements at 30 CFR 816.116(a)(1) (finding 18, 57 FR 37410, 37417, August 19, 1992).

On August 30, 2006, OSMRE revised the Federal regulations at 30 CFR 816.116(a)(1) by eliminating the requirement that revegetation success standards and statistically valid sampling techniques must be included in approved State regulatory programs. *See* 71 FR 51684, 51688. We are therefore removing the required amendment at 30 CFR 902.16(a)(15). The revised current regulation continues to require that standards for success and sampling techniques for measuring success must be selected by the regulatory authority and must be described in writing and made available to the public to ensure that all interested parties can readily find all the options available in their jurisdiction for evaluating revegetation success.

OSMRE approval is still required for any normal husbandry practices that Alaska may elect to include as part of its written revegetation success standards. The September 7, 1988 **Federal Register** notice (53 FR 34641) states that OSMRE ''would consider, on a practice-by-practice basis, the administrative record supporting each practice proposed by a regulatory authority as normal husbandry practice[,]'' and that the regulatory authority ''would be expected to demonstrate (1) that the practice is the usual or expected state, form, amount or degree of management performed habitually or customarily to prevent exploitation, destruction or neglect of the resource and maintain a prescribed

level of use or productivity of similar unmined lands and (2) that the proposed practice is not an augmentative practice prohibited by section 515(b) (20) of [SMCRA].''

The Federal regulations at 30 CFR 816.116(c)(1) for surface mining operations and 817.116(c)(1) for underground mining operations require that the period of extended responsibility for successful revegetation must begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the regulatory authority in accordance with 30 CFR 816.116(c)(4) and 817.116(c)(4).

The Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c) (4) require that a regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from OSMRE that the practices are normal husbandry practices, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent vegetation success. Approved practices must be normal husbandry practices within the region for unmined land having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding, and transplanting specifically necessitated by such actions.

State regulatory authorities may only approve the use of specific normal husbandry practices within any permit after receiving prior review and approval for the practice from OSMRE. Alaska has not proposed any normal husbandry practices for OSMRE review and approval. As such, normal husbandry practices may not currently be incorporated into any coal mining permit in Alaska. If Alaska intends to allow for any normal husbandry practices to be used during the period required for demonstration of revegetation success standards, Alaska must submit an amendment of its program to demonstrate that each practice is one that is customarily performed on similar un-mined lands and otherwise are consistent with and no less effective than 30 CFR 816.116(c)(4) and 30 CFR 817.116(c)(4). Alaska would also have to list, at 11 AAC 90.457(d), the acceptable practices.

Alaska stated in its March 6, 2012, response to OSMRE's January 23, 2012, concern letter, that, due to climatic and environmental differences between different mine sites and proposed mine sites in Alaska, rather than developing state-wide revegetation success standards and sampling techniques, Alaska has approved standards that determine vegetative success and the methods used to quantify the success of revegetation in each individual permit. Alaska stated that the standard is developed from local baseline conditions and is reviewed by both the Alaska Departments of Natural Resources (DNR), Fish and Game (ADFG) and their respective divisions, such as the DNR Division of Agriculture and the ADFG Division of Habitat.

Although it is appropriate for Alaska to review and approve revegetation success standards and sampling techniques in each individual permit, the Federal program, 30 CFR 816.116(a)(1) and 30 CFR 817.116(a)(1), requires the regulatory authority to first select all standards for success and statistically valid sampling techniques, which are available within the jurisdiction, describe them in writing, and make them publicly available. *See* August 30, 2006, **Federal Register** (71 FR 51684, 51690–91). The manner in which the regulatory authority selects success standards and sampling techniques that it will allow operators to use in evaluating revegetation success is up to the regulatory authority. It may do so in consultation with operators and/or with assistance from academia. However, selected standards and sampling techniques must meet the requirements of 30 CFR 816.116(a) and (b) and 30 CFR 817(a) and (b), and they must be put in writing and made available to the public. It is from this set of identified success standards and sampling techniques that the operators must choose the specific standards and techniques to include in their individual permit applications.

In accordance with the requirements at 30 CFR 816.116(a)(1) and 817.116(a)(1), OSMRE finds that Alaska must clarify its program to acknowledge the selection of all revegetation success standards and statistically valid sampling techniques available to operators within the state will be put in writing and made available to the public. Therefore, OSMRE is adding a new, required program amendment at 30 CFR 902.16(c)(6) to require that Alaska revise 11 AAC 90.457 to indicate that all available revegetation success standards and sampling techniques approved by the Alaska Commissioner will be put in writing and made publicly available. Additionally, this required amendment will note that if Alaska intends to allow the use of normal husbandry practices to be used during the period required for demonstration of revegetation success, it must submit an amendment of its program to demonstrate that each practice is one that is customarily performed on similar un-mined lands and list, at 11 AAC 90.457(d), the acceptable practices.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Document ID No. OSM–2011–0017–0001), but received none.

Federal Agency Comments

On November 3, 2011, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA (30 U.S.C. 1253), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Alaska program (Document ID No. OSM–2011–0017–0003). We received two responses indicating the respective agencies did not have any comments.

On November 18, 2011, the U.S. Bureau of Reclamation responded with an email stating that it had no comments (Document ID No. OSM–2011–0017–0006).

On November 18, 2011, the U.S. Forest Service responded with an email stating that it had no comments (Document ID No. OSM–2011–0017–0008).

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Alaska proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, under 30 CFR 732.17(h)(11)(i), OSMRE requested comments on the amendment from EPA (Document ID No. OSM–2011–0017–0015). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On November 3, 2011, we

requested comments on Alaska's amendment (Document ID No. OSM–2011–0017–0004). The ACHP did not respond to our request. However, on November 9, 2011, the SHPO responded with a letter stating they had no objections to the amendment (Document ID No. OSM–2011–0017–0007).

V. OSMRE's Decision

Based on the above findings, we are approving, with four exceptions and six additional required amendments, the Alaska amendment that was submitted on September 8, 2011, as revised on March 6, 2012.

The exceptions, which OSMRE does not approve, are that: (1) 11 AAC 90.321(e) excludes water supplies affected by surface coal mining activities conducted on or before October 24, 1992, from water supply replacement requirements, (2) 11 AAC 90.652(g)(1) proposes a reduced timeframe of 20 days to request administrative review of an agency decision regarding an incidental mining exemption, (3) 11 AAC 90.656 does not require that information in an application for an exemption of coal incidental to the extraction of other minerals will be made available for public inspection and copying until at least three years after expiration of the period during which the subject mining area is active, and (4) 11 AAC 90.664(c) proposes a reduced timeframe of 20 days to request administrative review of an agency decision to revoke an incidental mining exemption. All revisions proposed by Alaska on September 8, 2011, had been approved through the State's legislative process prior to their submission to OSMRE as a formal program amendment. To ensure Alaska corrects its regulations to accurately reflect the changes that OSMRE is not approving, we are adding three required amendments at 902.16. These requirements will ensure protection of water supplies affected by surface coal mining activities conducted on or before October 24, 1992, restore both 30-day timeframes for requesting administrative review of agency decisions, and ensure information in an application for an exemption of coal incidental to the extraction of other minerals will be made available for public inspection and copying until at least three years after expiration of the period during which the subject mining area is active.

OSMRE's approval of revisions to 11 AAC 90.101(e) is conditioned upon the State submitting additional language corresponding to 30 CFR 784.20(b)(7). The language, which was omitted from Alaska's current amendment, pertains to subsidence control plan requirements related to minimizing damage to non-commercial buildings and occupied residential dwellings in planned subsidence scenarios. We are placing a new required amendment at 30 CFR 902.16 to reflect this required addition.

OSMRE's approval of revisions to 11 AAC 90.321(e) is conditioned upon the State submitting statutory revisions to AS 27.21.220 that will provide statutory authority to implement the new regulatory language, consistent with the Energy Policy Act of 1992. We are placing a new required amendment at 30 CFR 902.16 to reflect this required statutory addition.

OSMRE is also removing and reserving the current requirement at 30 CFR 902.16(a)(15). The existing required amendment is no longer necessary due to changes in the Federal program at 30 CFR 816.116(a)(1). Alaska must have revegetation success standards, which are consistent with 30 CFR 816.116(a) and (b); however, the success standards may be in a guideline, which does not need to be approved as a state program amendment. Such standards must be in writing and available to the public. We are, therefore, adding a new required amendment at 30 CFR 902.16(c)(6) to state that Alaska must indicate revegetation success criteria are available to the public in written form. Additionally, Alaska has indicated to OSMRE that it is working to develop a list of normal husbandry practices, which could be employed without restarting the revegetation responsibility period prior to bond release. Because 30 CFR 816.116(c)(4) requires normal husbandry practices to be processed as a state program amendment, we are adding a required amendment at 30 CFR 902.16(c)(6) that, if Alaska will allow for any normal husbandry practices to be used during the period required for demonstration of revegetation success, the State must submit an amendment of its program to demonstrate that each practice is one that is customarily performed on similar un-mined lands and list, at 11 AAC 90.457(d), the acceptable practices.

To implement this decision, we are amending the Federal regulations, at 30 CFR part 902, that codify decisions concerning the Alaska program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency of State and Federal standards.

Effect of OSMRE's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSMRE for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSMRE. In the oversight of the Alaska program, we will recognize only the statutes, regulations, and other materials we have approved, together with any consistent implementing policies, directives, and other materials. We will require Alaska to enforce only approved provisions.

VI. Statutory and Executive Order Reviews

Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule would not effect a taking of private property or otherwise have taking implications that would result in public property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

Executive Order 12866—Regulatory Planning and Review and 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of state program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

State program amendments are not regulatory actions under Executive Order 13771 because they are exempt from review under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has reviewed this rule as required by section 3(a) of Executive Order 12988. The Department has determined that this

Federal Register notice meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency reviews its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency writes its legislation and regulations to minimize litigation, and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the State regulatory program or to the program amendment that the State of Alaska drafted.

Executive Order 13132—Federalism

This rule is not a ''[p]olicy that [has] Federalism implications'' as defined by Section 1(a) of Executive Order 13132 because it does not have ''substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government.'' Instead, this rule approves an amendment to the Alaska program submitted and drafted by that State. OSMRE reviewed the submission with fundamental federalism principles in mind as set forth in Sections 2 and 3 of the Executive Order and with the principles of cooperative federalism, as set forth in SMCRA. *See, e.g.,* 30 U.S.C. 1201(f). Specifically, pursuant to Section 503(a)(1) and (7) (30 U.S.C. 1253(a)(1) and (7)), OSMRE reviewed the program amendment to ensure that it is ''in accordance with'' the requirements of SMCRA and ''consistent with'' the regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Tribes or on the distribution of power and responsibilities between the Federal government and Tribes. Therefore, consultation under the Department's tribal consultation policy is not required. The basis for this determination is that our decision is on the Alaska program, which does not include Tribal lands or regulation of activities on Tribal lands. Tribal lands are regulated independently under the applicable, approved Federal program.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

This rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866; and this action does not address environmental health or safety risks disproportionately affecting children.

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(A), state program amendments are not major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 3701 *et seq.*) directs OSMRE to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. (OMB Circular A–119 at p. 14). This action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with SMCRA.

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

This rule 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.*). The State submittal, which is the subject of this rule, is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 902

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 23, 2019.

David Berry

Regional Director, Western Region.

For the reasons set out in the preamble, 30 CFR part 902 is amended as set forth below:

PART 902—ALASKA

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Add § 902.12 to read as follows:

§ 902.12 Regulatory program and proposed program amendments not approved.

(a) We do not approve the following provisions of the proposed program amendment Alaska submitted on September 8, 2011, as revised on March 6, 2012:

(1) Proposed addition of the phrase ''* * * conducted on or before October 24, 1992 * * *'' in 11 AAC 90.321(e)(1).

(2) Proposed reduction of timeframe from 30 to 20 days to request administrative review of an agency decision regarding an incidental mining exemption under 11 AAC 90.652(g)(1),

(3) Proposed deletion of the phrase ''* * * until at least three years after expiration of the period during which the subject mining area is active * * *'' under 11 AAC 90.656.

(4) Proposed reduction of timeframe from 30 to 20 days to request administrative review of an agency decision to revoke an incidental mining exemption under 11 AAC 90.664(c).

■ 3. Amend § 902.15 by adding an entry to the table in chronological order by ''Date of Final Publication'' to read as follows:

§ 902.15 Approval of Alaska regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
September 8, 2011, as revised on March 6, 2012.	December 4, 2019	11 Alaska Annotated Code (AAC) 90.043(b); 11 AAC 90.045(a), (b), (c), and (d); 11 AAC 90.057(a), (b) and (c); 11 AAC 90.085(a), (a)(5) and (e); 11 AAC 90.089(a)(1); 11 AAC 90.101(a) through (f); 11 AAC 90.173(b)(2); 11 AAC 90.179(a)(3), (a)(4) and (a)(5); 11 AAC 90.185(a) and (a)(4); 11 AAC 90.201(d); 11 AAC 90.211(a); 11 AAC 90.321(d), (e), (f), (f)(1) and (f)(2); 11 AAC 90.323(a), (b) and (c); 11 AAC 90.325(b) and (c); 11 AAC 90.327(b)(2); 11 AAC 90.331(d)(1), (e), and (h)(1) and (2); 11 AAC 90.336(a), (b)(1) and (2), (f), and (g); 11 AAC 90.337(a); 11 AAC 90.345(e); 11 AAC 90.349; 11 AAC 90.375(f) and (g); 11 AAC 90.391(n) and (t); 11 AAC 90.395(a); 11 AAC 90.397(a); 11 AAC 90.401(a)(1), (b), (d), (e), and (f); 11 AAC 90.407(c)(1) and (2) and (f); 11 AAC 90.423(h); 11 AAC 90.443(a)(2), (k)(2), (l)(2), and (m)(2); 11 AAC 90.444(a) and (b); 11 AAC 90.447(c)(1); 11 AAC 90.457(c)(3); 11 AAC 90.461; 11 AAC 90.461(b) and (b)(1) through (3) , (g) and (g)(1) through (5), (h) and (h)(1) through (3), (i) and (i)(1) through (3), (j), (k), and (l)(1) through (3); 11 AAC 90.491(f)(1), (f)(2)(E), (f)(2)(E),(f)(3), (f)(4), and (f)(2)(E) and (E)(iii); 11 AAC 90.601(h), (i) and (j); 11 AAC 90.629(a); 11 AAC 90.631(a); 11 AAC 90.635(a) and (b); 11 AAC 90.639(a), (b), and (c); 11 AAC 90.641(a), (b), (c), and (d); 11 AAC 90.652 through 11 AAC 90.669; 11 AAC 90.701(a), (b), and (c); 11 AAC 90.901(a); and 11 AAC 90.911(125), (126), (128), (129), (130), (133), (134) and (135).

■ 4. Amend § 902.16 by removing and reserving paragraphs (a)(14) and (15) and by adding paragraph (c).

The additions read as follows:

§ 902.16 Required program amendments.

* * * * *

(c) By February 3, 2020, Alaska must amend its program as follows:

(1) At 11 AAC 90.101(e), in accordance with the requirements at 30 CFR 784.20(b)(7), Alaska must submit a program amendment (or description of the amendment with a timetable for submission) to adopt subsidence control plan requirements at 11 AAC 90.101(e) for planned subsidence scenarios. Such plans must describe the methods to be employed to minimize damage to non-commercial buildings and occupied residential dwellings and related structures or written consent from the owner of the structure or facility that minimization measures not be taken, or unless the damage would constitute a threat to health or safety, a demonstration that the costs of minimizing damage exceed anticipated costs of repair.

(2) At 11 AAC 90.321(e)(1), in accordance with 30 CFR 816.41(h), Alaska must submit a program amendment (or description of the amendment with a timetable for submission) to revise 11 AAC 90.321(e)(1) to ensure protection of water supplies affected by surface coal mining activities conducted on or before October 24, 1992.

(3) At 11 AAC 90.652(g)(1) and 11 AAC 90.664(c), in accordance with the requirements at 30 CFR 702.11(f)(1) and 702.17(c)(2), Alaska must submit a program amendment (or description of the amendment with a timetable for submission) to restore the 30-day time frames under 11 AAC 90.652(g)(1) and 11 AAC 90.664(c) for an adversely affected person to request administrative review of the agency's decisions regarding incidental mining exemptions.

(4) At 11 AAC 90.656, in accordance with the requirements at 30 CFR 702.13(a), Alaska must submit a program amendment (or description of the amendment with a timetable for submission) to revise 11 AAC 90.656, concerning public availability of information in an application for an exemption of coal incidental to the extraction of other minerals. The amendment or its description must include the requirement that the information, unless approved as confidential, will be made available for public inspection and copying until at least three years after expiration of the period during which the subject mining area is active.

(5) At AS 27.21.220, in accordance with the October 24, 1992, Energy Policy Act, Alaska must submit a statutory revision requiring prompt repair or compensation for material

damage resulting from subsidence, and prompt replacement of water supplies affected by underground mining operations.

(6) At 11 AAC 90.457(d), in accordance with the requirements at 30 CFR 816.116(a)(1) and 817.116(a)(1), Alaska must submit a program amendment (or description of the amendment with a timetable for submission) to clarify its program by revising 11 AAC 90.457 to indicate that all selected revegetation success standards and sampling techniques which may be incorporated into individual permits will be put in writing and made available to the public. If Alaska will allow for any normal husbandry practices to be used during the period required for demonstration of revegetation success, in accordance with 30 CFR 816.116(c)(4), Alaska must submit an amendment of its program to demonstrate that each practice is one that is customarily performed on similar un-mined lands and list, at 11 AAC 90.457(d), the acceptable practices.

[FR Doc. 2019–26128 Filed 12–3–19; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[SATS No: WY–046–FOR; Docket ID: OSM–2014–0007; S1D1S SS08011000 SX064A000 201S180110; S2D2S SS08011000 SX064A000 20XS501520]

Wyoming Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Wyoming regulatory program (Wyoming program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Wyoming proposes both revisions of and additions to its coal rules and regulations concerning valid existing rights and individual civil penalties, as well as ownership and control provisions. Wyoming also proposes to revise a provision concerning periodic monitoring of blasting. Wyoming revised its program to address deficiencies we previously identified, which are now consistent with the corresponding Federal regulations and SMCRA.

DATES: The effective date is January 3, 2020.

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Chief, Denver Field Division, Telephone: 307–261–6550, email address: *jfleischman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program
II. Submission of the Proposed Amendment
III. OSMRE's Findings
IV. Summary and Disposition of Comments
V. OSMRE's Decision
VI. Statutory and Executive Order Reviews

I. Background on the Wyoming Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Tribal lands within its borders by demonstrating that its State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Wyoming program on November 26, 1980. You can find background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Wyoming program in the November 26, 1980, **Federal Register** (45 FR 78637). You can also find later actions concerning Wyoming's program and program amendments at 30 CFR 950.12, 950.15, 950.16, and 950.20.

II. Submission of the Proposed Amendment

By letter dated September 30, 2014 (Administrative Record Docket ID No. OSM–2014–0007), Wyoming sent OSMRE an amendment to its program under SMCRA. Wyoming submitted the amendment to address deficiencies that OSMRE previously identified during its review of Wyoming's program related to valid existing rights determination requests, as discussed more fully below, and individual civil penalties (WY–044–FOR; Docket ID No. OSM–2013–0001) and ownership and control (WY–045–FOR; Docket ID No. OSM–2013–0002) amendments. The amendment also revises a provision about periodic monitoring of blasting in response to a concern that the Casper Area Office identified during its annual oversight review of the Wyoming program.

We announced receipt of the proposed amendment in the November 12, 2014, **Federal Register** (79 FR 67116). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record Document ID No. OSM–2014–0007). OSMRE did not hold a public hearing or meeting, as neither were requested. The public comment period ended on December 12, 2014. We received comments from two Federal agencies (discussed below in section ''IV. Summary and Disposition of Comments''.

III. OSMRE's Findings

The following are the findings we made about the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below.

A. Minor Revisions to Wyoming's Rules

Wyoming proposed minor grammatical changes to several previously approved rules. Wyoming did not propose any substantive changes to the text of these regulations. Because the proposed revisions to these previously approved rules are minor and result in no substantive changes to the Wyoming program, we are approving the changes and find that they are no less effective than the corresponding Federal regulations at 30 CFR parts 700 through 887. The specific, minor revisions to the Code of Wyoming Rules and the Federal regulation counterparts are as follows:

- Chapter 1, Section 2(co), related to *Notice of violation,* [30 CFR 701.5];
- Chapter 2, Section 2(a)(ii)(A)(II), related to *Adjudication Requirements,* [30 CFR 778.14(a)(2)];
- Chapter 2, Section 2(a)(ii)(B), related to *Adjudication Requirements,* [30 CFR 778.14(c)];
- Chapter 6, related to *Blasting for Surface Coal Mining Operations,* [30 CFR 816.61 and 817.61]
- Chapter 12, Section 1(a)(vii)(A), related to *VER submission requirements and procedures,* [30 CFR 761.16(b)];
- Chapter 12, Section 1(a)(vii)(B)(IV), related to *VER submission requirements and procedures,*[30 CFR 761.16(c)(4)];
- Chapter 12, Section 1(a)(vii)(E), related to *VER submission requirements and procedures,* [30 CFR 761.16(f)];
- Chapter 12, Section 1(a)(x), related to *VER submission requirements and procedures,* [30 CFR 773.12];
- Chapter 12, Section 1(a)(xiv)(D)(II), related to *VER submission requirements and procedures,* [30 CFR 774.11(g)(2)];
- Chapter 16, Section 2(h), related to *Enforcement,* [30 CFR 774.12a]; and

• Chapter 16, Section 4(c)(i), related to *Individual Civil Penalties,* [30 CFR 846.14(a)(1)].

B. Revisions to Wyoming's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

1. Minor Wyoming Additions and Revisions That Mirror SMCRA and the Federal Regulations

Wyoming proposes additions and revisions to several regulations containing language that is the same as or substantially similar to the corresponding sections of the Federal regulations and/or SMCRA. Therefore, we are approving them.

In particular, Wyoming is revising Chapter 6, Section 4(b)(i)(A); *Blasting for Surface Coal Mining Operations; Blasting Standards,* after OSMRE identified an inconsistency in this provision in its Annual Oversight Report for Evaluation Year 2013. Wyoming's revision makes the provision consistent with the corresponding language at 30 CFR 816.67(b)(2)(i).

The specific citations to Wyoming additions and revisions that have the same meaning as the corresponding provisions of the Federal regulations, along with the applicable Federal counterpart, are as follows:

• Chapter 2, Section 2(a)(ii)(A)(I); *Permit Application Requirements;* adjudication requirements and statement of compliance; [30 CFR 778.14(a)(1)];

• Chapter 6, Section 4(b)(i)(A); *Blasting for Surface Coal Mining Operations; Blasting Standards;* periodic monitoring of blasting; [30 CFR 816.67(b)(2)(i)];

• Chapter 12, Section 1(a)(x)(D)(I); *Permitting Procedures;* unanticipated events or conditions at remining sites; [30 CFR 773.13(a)(2)]; and

• Chapter 16, Section 4(c)(i)(A); *Individual Civil Penalties;* amount of civil penalty; [30 CFR 846.14(a)(1)].

2. Chapter 1, Section 2(aa); Definition of ''Control or Controller''

In a letter to Wyoming dated October 2, 2009, OSMRE identified several required rule changes under 30 CFR 732.17(c) (''732 letter'') concerning ownership and control. Item A.2 of the 732 letter required Wyoming to adopt a State counterpart to the Federal definition of ''Control or Controller'' at 30 CFR 701.5 (OSMRE's 2000 Rule, 65 FR 79852, 79594 (Dec. 19, 2000) and OSMRE's 2007 Rule, 72 FR 68000, 68003 (December 3, 2007)).

In response, Wyoming proposed to define the term ''Control or Controller'' at Chapter 1, Section 2(aa) in a previous rulemaking action (WY–045–FOR) as a State counterpart to the Federal regulations at 30 CFR 701.5. OSMRE replied in a letter dated April 9, 2013, (Administrative Record Document ID. No. WY–50–09) that in order to maintain consistency with its own rules and be no less effective than the corresponding Federal regulations at 30 CFR 701.5, Wyoming must include the term ''surface'' in its newly proposed definition of ''Control or Controller'' at Chapter 1, Section 2(aa). In addition, we required Wyoming to reinsert the phrase ''For Surface Coal Mining Operations'' in the title for Chapter 2 that was simply entitled, ''Permit Application Requirements.'' As a result, we did not approve Wyoming's newly proposed rule at Chapter 1, Section 2(aa) in a December 7, 2017, **Federal Register** document (82 FR 57664, 57668).

In response, Wyoming now proposes to include the term ''surface'' in its newly proposed definition of ''Control or Controller'' at Chapter 1, Section 2(aa). In addition, Wyoming reinserts the phrase ''For Surface Coal Mining Operations'' in the title for Chapter 2 concerning permit application requirements. Wyoming's proposed revisions are consistent with and no less effective than the corresponding Federal regulations at 30 CFR 701.5. Accordingly, we are approving the aforementioned rule changes.

3. Chapter 2, Section 2(a)(i)(B); Providing Permit History Information

Item K.3 of OSMRE's October 2, 2009, 732 letter instructs the reader to ''*See* LQD [Land Quality Division] Rules and Regulations, Chapter 1, Section 2 and Chapter 2, Section 2'' about counterpart rules to the Federal requirements for providing applicant and operator permit history information at 30 CFR 778.12. The 732 letter indicates that the requirement for an applicant to provide the permit history information for the operator was newly added in OSMRE's 2000 rule, and it was constructed from provisions in previous 30 CFR 778.13.

In response, Wyoming proposed in a previous rulemaking action (WY–045–FOR) to revise its rules at Chapter 2, Section 2(a)(i)(B), to require permit applicants to identify additional organizational members in an application for a surface coal mining permit, including owners of record of ten (10) percent or more of the business entity in question, as required under 30 CFR 778.11(b).

Wyoming's proposed rule at Chapter 2, Section 2(a)(i)(B), includes counterpart provisions to 30 CFR 778.11(b)(1)–(3). In addition, the counterpart language to 30 CFR 778.11(b)(4) was found in proposed subsection (D). As a result, OSMRE determined that the language in these provisions, taken together, are consistent with and no less effective than the Federal regulations at 30 CFR 778.11(b). However, Wyoming's existing rule language in subsection (B) warranted the inclusion of additional clarifying language to be consistent with and no less effective than both the Federal counterpart rule at 30 CFR 778.12(a) and its rule language in subsection (F) regarding operator's permit history information. Consequently, we did not approve Wyoming's proposed revisions to Chapter 2, Section 2(a)(i)(B), and we published that decision in a December 7, 2017, **Federal Register** document (82 FR 57664, 57668).

In response, Wyoming now proposes to further revise subsection (B) by providing additional language that requires permit applicants to provide permit history information for the operator. Specifically, Wyoming proposes to revise Chapter 2, Section 2(a)(i)(B), to be consistent with the Federal regulations at 30 CFR 778.12(a) by requiring that a complete identification of interests must include a list of all the names under which the applicant, the applicant's partners or principal shareholders, and the operator and the operator's partners or principal shareholders operates or previously operated a surface coal mining operation in the United States within the five years period preceding the date of submission of the application. Based on the discussion above, we find that Wyoming's newly proposed rule at Chapter 2, Section 2(a)(i)(B), is consistent with and no less effective than the counterpart Federal regulations at 30 CFR 778.12(a), and satisfies the requirement specified in Item K.3 of OSMRE's October 2, 2009, 732 letter. Accordingly, we approve it.

4. Chapter 12, Section 1(a)(vii)(F); Availability of Records

In a letter to Wyoming dated April 2, 2001, OSMRE identified several required rule changes under 30 CFR 732.17(c) concerning valid existing rights. Item G–4 of the 732 letter required Wyoming to submit State counterpart provisions to 30 CFR 761.16(g) about availability of records requirements.

In response, Wyoming proposed to revise its rules at Chapter 12, Section 1(a)(vii)(F), in a previous rulemaking action (WY–040–FOR) by requiring that the Division or agency responsible for processing a valid existing rights (VER)

request must make a copy of the request and related materials available to the public. OSMRE subsequently did not approve proposed subsection (F) in a February 14, 2013, **Federal Register** document (78 FR 10512, 10517) because Wyoming did not specify in the heading that the rule pertains to ''Availability of records'' and did not provide counterpart language to the Federal requirements in 30 CFR 761.16(g) explaining that, in addition to the VER request and related materials, records associated with any subsequent VER determination must also be made available to the public. As a result, we required Wyoming to revise its proposed rule language at Chapter 12, Section 1(a)(vii)(F), by making the aforementioned changes.

In response to the February 14, 2013, **Federal Register** document, Wyoming proposed to further revise its rules at Chapter 12, Section 1(a)(vii)(F), by specifying that the rule pertains to ''Availability of records'' (WY–044–FOR). Wyoming also proposed language explaining that, in addition to the valid existing rights request and related materials, records associated with any subsequent valid existing rights determination under subsection (D) of its rules shall be made available to the public in accordance with the requirements and procedures of W.S. section 35–11–1101. Once again, OSMRE did not approve proposed subsection (F) in a March 31, 2014, **Federal Register** document (79 FR 17863, 17865). In that document, OSMRE stated that while referenced statute, W.S. section 35–11–1101, satisfies some of the requirements of 30 CFR 840.14, it fails to satisfy all of them. In particular, OSMRE explained that 30 CFR 840.14(b) specifies that the regulatory authority must make copies of all records immediately available to the public in the area of mining until at least five years after the expiration of the period during which the operation is active or is covered by any portion of a reclamation bond. Because W.S. section 35–11–1101 failed to include a similar provision, Wyoming's reference to the statute did not satisfy the requirements of 30 CFR 840.14, as referenced in 30 CFR 761.16(g), and newly proposed subsection (F) remained less effective than the Federal regulations at 30 CFR 761.16(g).

Title 30 CFR 761.16(g) requires the agency responsible for processing valid existing rights determination requests to make a copy of the request available to the public in the same manner as it makes permit applications available under 30 CFR 773.6(d). The responsible agency must also make records associated with the valid existing rights request and any subsequent determination available to the public in accordance with the requirements and procedures of 30 CFR 840.14 or 30 CFR 842.16.

Wyoming now proposes to revise Subsection (F) by providing additional statutory and regulatory citations to clarify that valid existing rights related documents are subject to the same public availability requirements as are permit applications. Specifically, Wyoming references its statutory provisions about the availability of records to the public and confidentiality at W.S. section 35–11–1101, and the requirements for public inspection of mining permit applications at W.S. section 35–11–406(d) in the Wyoming Environmental Quality Act. Wyoming also references its Public Records Act at W.S. sections 16–4–201 through 16–4–205, as well as the Division's rules and regulations related to public review and participation.

Lastly, Wyoming proposes language requiring, at a minimum, that copies of records associated with valid existing rights requests must be made immediately available to the public in the area of mining until at least five years after the expiration of the period during which the operation is active or is covered by any portion of a reclamation bond so that they are conveniently available to residents of that area in compliance with the Federal regulations at 30 CFR 840.14 (b), (c), and (d).

Wyoming's statutory counterpart to 30 CFR 840.14(a) concerning the availability of all documents relating to applications for and approvals of surface coal mining and reclamation operation permits and inspection and enforcement actions to the OSMRE Director upon request is found at W.S. section 35–11–1101(b). Wyoming's regulatory counterpart to 30 CFR 773.6(d)(1) about public availability of permit applications is found at Chapter 12, Section 1(b), and requires, in pertinent part, that all procedural requirements of the Act and the regulations relating to review, public participation, and approval or disapproval of permit applications, and permit term and conditions must, unless otherwise provided, apply to permit revisions, amendments, renewals and permit transfer, assignment or sale of permit rights.

In its Statement of Principal Reasons for Adoption (SOPR), Wyoming explains that, with the exception of references to the State requirements, the additional clarifying language is a mirror of the Federal language and is intended to ensure that the minimum Federal requirements in 30 CFR 840.14 are met. Taken together, Wyoming's references to its statutes, rules, and the Federal regulations regarding public availability of records meet the requirements of 30 CFR 840.14, as referenced in 30 CFR 761.16(g). We find that newly proposed Chapter 12, Section 1(a)(vii)(F), is consistent with and no less effective than the counterpart Federal regulations at 30 CFR 761.16(g), and satisfies the requirements specified in Item G–4 of OSMRE's April 2, 2001, 732 letter. Accordingly, we approve it.

5. Chapter 12, Section 1(a)(viii)(B); Final AVS Compliance Review

Item E.4 of OSMRE's October 2, 2009, 732 letter required Wyoming to adopt a State counterpart to the Federal requirements for reviewing an applicant's or operator's permit history at 30 CFR 773.10 (OSMRE's 2000 Rule, 65 FR 79582, 79664 and OSMRE's 2007 Rule, 72 FR 68000, 68029). The preamble discussion of the 2007 rule states that the provision for an additional review was retained to determine if there are undisclosed controllers when an applicant or operator is determined to have no previous mining experience.

In response to the 732 letter, Wyoming revised its rules at Chapter 12, Section 1(a)(viii)(B), in a previous rulemaking action (WY–045–FOR) to include State counterpart language to the Federal regulations at 30 CFR 773.10(a)-(c) that address an applicant's or operator's permit history. OSMRE determined that Wyoming's newly proposed rule language is consistent with and no less effective than the Federal regulations at 773.10(a) and (b).

However, Wyoming's proposed rule at subsection (B) warranted the inclusion of additional clarifying language with respect to conducting additional ownership and control investigations to be consistent with and no less effective than the Federal counterpart rule at 30 CFR 773.10(c). As a result, we did not approve Wyoming's newly proposed rule at Chapter 12, Section 1(a)(viii)(B), in a December 7, 2017, **Federal Register** document (82 FR 57664, 57669).

In response, Wyoming now proposes to revise subsection (B) by including a provision for additional review to determine if there are undisclosed controllers when an applicant or operator is determined to have no previous mining experience. Specifically, Wyoming revises proposed Chapter 12, Section 1(a) (viii) (B), to be consistent with the Federal regulations at 30 CFR 773.10(c) by stating that

additional ownership and control investigations may be conducted under subsection (ix)(E) to determine if someone else with mining experience controls the mining operation if the applicant or operator does not have any previous mining experience. Subsection (ix)(E) of Wyoming's rules includes counterpart language to 30 CFR 774.11(f), which is referenced in 30 CFR 773.10(c). Wyoming also replaces the term ''regulatory authority'' with ''Division'' in order to maintain consistency throughout its rules.

Based on the discussion above, we find that Wyoming's newly proposed rule at Chapter 12, Section 1(a)(viii)(B), is consistent with and no less effective than the counterpart Federal regulations at 30 CFR 773.10, and satisfies the requirements specified in Item E.4 of OSMRE's October 2, 2009, 732 letter. Accordingly, we approve it.

6. Chapter 12, Section 1(a)(xiv)(C); Challenges to Ownership or Control Listings in AVS

On December 3, 2007, OSMRE published a new Ownership and Control; Permit and Application Information; and Transfer, Assignment, or Sale of Permit rights Federal rulemaking (72 FR 6800). The new Federal regulation at 30 CFR 773.26(e) allowed a person who is unsure why he or she is shown in OSMRE's Applicant Violator System (AVS) as an owner or controller of a surface coal mining operation to request an informal explanation from OSMRE's AVS office. The provision also required a response to such a request within 14 days. The preamble discussion of the 2007 Rule clarified at 30 CFR 773.26(e) that a person listed in the AVS may request an informal explanation from OSMRE's AVS office at any time and should expect a response within 14 days. Item F.2 of OSMRE's October 2, 2009, 732 letter indicated that Wyoming did not have a State counterpart to 30 CFR 773.26(e). In response, Wyoming revised its rules at Chapter 12, Section 1(a)(xiv)(C), in a previous rulemaking action (WY–045–FOR) to include a State counterpart provision to the Federal regulations at 30 CFR 773.26(e). During OSMRE's review of the amendment, we found that while Wyoming's newly proposed rule language clarifies that a person listed in AVS may request an informal explanation from the AVS office at any time, it did not include language requiring a response to such a request within 14 days. Consequently, we did not approve Wyoming's newly proposed rule at Chapter 12, Section 1(a)(xiv)(C), in a December 7, 2017, **Federal Register** document (82 FR 57664, 57670).

In response, Wyoming now proposes additional clarifying language that references the Federal regulations at 30 CFR 773.26(e), which states that within 14 days of a request for an informal explanation, the AVS Office will provide a response describing why a person is listed in AVS.

In its SOPR, Wyoming explains that it decided to include a citation to the Federal regulations to account for the many variables that may affect the timing of a response if the State were to provide one. For example, OSMRE's AVS Office noted that Wyoming may not have access to documents that cause an entry into AVS if the operator has operations in multiple jurisdictions.

Based on the discussion above, we find that Wyoming's newly proposed rule at Chapter 12, Section 1(a)(xiv)(C), is consistent with and no less effective than the Federal regulations at 30 CFR 773.26(e), and satisfies the requirement specified in Item F.2 of OSMRE's October 2, 2009, 732 letter. Accordingly, we approve it.

7. Chapter 12, Section 1(a)(xiv)(F); Written Agency Decision on Challenges to Ownership and Control Listings or Findings

Item F.4 of OSMRE's October 2, 2009, 732 letter required Wyoming to adopt a State counterpart to the Federal requirements about written agency decisions on challenges to ownership and control listings or findings at 30 CFR 773.28 (OSMRE's 2000 Rule, 65 FR 79852, 79666 and OSMRE's 2007 Rule, 72 FR 68000, 68030). In response, Wyoming proposed new rules at Chapter 12, Section 1(a)(xiv)(F), in a previous rulemaking action (WY–045–FOR) to include State counterpart provisions to the Federal regulations at 30 CFR 773.28(a)–(f) that address the requirements for written agency decisions on challenges to ownership and control listings or findings.

Although OSMRE found that Wyoming's newly proposed rule language was consistent with and no less effective than the Federal regulations at 30 CFR 773.28(a)–(d), additional clarifying language was required with respect to appeals of written decisions to be consistent with and no less effective than the Federal counterpart rule at 30 CFR 773.28(e). Wyoming's proposed language merely stated that ''appeals of written decisions will be administered under the Department's Rules of Practice and Procedure.'' Wyoming also failed to include a counterpart provision to 30 CFR 773.28(f) concerning required updates to the AVS following the Wyoming Land Quality Division's (Division) written decision or any decision by a reviewing administrative or judicial tribunal.

Finally, the last sentence of proposed subsection (F) was very general and only stated that ''AVS shall be revised as necessary to reflect these decisions.'' As a result, we did not approve Wyoming's newly proposed rule at Chapter 12, Section 1(a)(xiv)(F), in a December 7, 2017, **Federal Register** document (82 FR 57664, 57670).

In response, Wyoming proposes to further revise subsection (F) to require that all administrative remedies must be exhausted before seeking judicial review of an ownership and control decision and to add the requirement that the Division must update the AVS, as appropriate, to be consistent with 30 CFR 773.28(e) and (f), respectively. Specifically, Wyoming revises proposed Chapter 12, Section 1(a)(xiv)(F), to be consistent with the Federal regulations at 30 CFR 773.28(e) by requiring that all administrative remedies must be exhausted under the procedures of the Wyoming Environmental Quality Act, the Department's Rules of Practice and Procedure, the Wyoming Administrative Procedure Act and Chapter 12 of the Rules and Regulations before seeking judicial review. Newly proposed subsection (F) also includes counterpart language to 30 CFR 773.28(f) that requires the Division to review the information in the AVS following its written decision or any decision by a reviewing administrative or judicial tribunal about a challenge to ownership or control listings or findings to determine if it is consistent with the decision. If it is not, the Division must promptly revise the information to reflect the decision.

Based on the discussion above, we find that Wyoming's newly proposed rule at Chapter 12, Section 1(a)(xiv)(F), is consistent with and no less effective than the counterpart Federal regulations at 30 CFR 773.28(a)–(f), and satisfies the requirements specified in Item F.4 of OSMRE's October 2, 2009, 732 letter. Accordingly, we approve it.

8. Chapter 12, Section 1(b)(ii); Transfer, Assignment or Sale of Permit Rights

Item I. of OSMRE's October 2, 2009, 732 letter instructs the reader to ''*See* W.S. § 35–11–408'' about transfer, assignment, or sale of permit rights (TAS). The 732 letter states that the 2007 Rule clarifies, at (a) and (d) of 30 CFR 774.17, that at the regulatory authority's discretion, a prospective successor in interest, with sufficient bond coverage, may continue to mine

during the TAS process. This recognizes that an acquiring entity becomes the successor in interest to the rights granted under the permit (under 30 CFR 701.5) only after the regulatory authority approves the transfer, assignment, or sale.

In response, Wyoming proposed to revise its existing rule at Chapter 12, Section 1(b), in a previous rulemaking action (WY–045–FOR) to apply all procedural requirements of the Act and the regulations relating to review, public participation, and approval or disapproval of permit applications, and permit term and conditions to permit transfer, assignment or sale of permit rights. Similarly, Wyoming proposed to revise subsection (b)(ii) by applying the requirements imposed by W.S. section 35–11–408 about procedures for permit transfers to the assignment or sale of permit rights. Wyoming also revised subsection (b)(ii)(B) by adding a cross reference to its rules at Chapter 2, Section 2(a)(i) through (iii), which is the counterpart to 30 CFR part 778 regarding permit application requirements for all legal, financial, compliance and related information. Finally, Wyoming added language to require that a potential transferee's statement of qualifications must include the name, address and permit number of the existing permit holder, which is the counterpart to 30 CFR 774.17(b)(1)(i).

OSMRE subsequently approved Wyoming's proposed revision to Chapter 12, Section 1(b), in a December 7, 2017, **Federal Register** document (82 FR 57664, 57671). However, we did not approve Wyoming's proposed revisions to subsection (b)(ii) because they did not address many of the specific application approval requirements for a transfer, assignment, or sale of permit rights at 30 CFR 774.17. For example, the proposed rule changes did not include counterpart provisions to 30 CFR 774.17(b)(2) about advertisement requirements for newly filed applications; subsection (d) about criteria for approval by the regulatory authority that allows a permittee to transfer, assign, or sell permit rights to a successor; and subsection (e) about notification requirements.

In addition, the language in W.S. section 35–11–408 and subsections (b)(ii)(A) and (B) of Wyoming's rules all refer to a ''potential transferee'' and do not address the assignment or sale of permit rights. OSMRE noted that Wyoming neither defines ''potential transferee'' in its rules nor has a counterpart to the Federal definition of ''successor in interest'' at 30 CFR 701.5 as it relates to TAS in 30 CFR 774.17. As a result, we required Wyoming to submit counterpart provisions to the specific TAS requirements at 30 CFR 774.17(a)–(f) (OSMRE's 2000 Rule, 65 FR 79852, 79668 (Dec. 19, 2000) and OSMRE's 2007 Rule, 72 FR 68000, 68030), as well as a counterpart to the Federal definition of ''successor in interest'' at 30 CFR 701.5.

In response, Wyoming proposes counterpart rules to the specific TAS requirements at 30 CFR 774.17(a)–(f). Wyoming's existing rule at Chapter 12, Section 1(b), the revisions which were approved in the December 7, 2017, **Federal Register** document, is the counterpart provision to 30 CFR 774.17(b) about application requirements for approval of the transfer, assignment, or sale of permit rights. Chapter 12, Section 1(b), states, in pertinent part, that all procedural requirements of the Act and the regulations relating to approval or disapproval of permit applications must, unless otherwise provided, apply to permit transfer, assignment, or sale of permit rights. In addition, Wyoming's general permit application requirements at Chapter 2, Section 1(a), state that all applications must be filed in a format required by the Administrator of the Land Quality Division and must include, at a minimum, all information required by the Act. Further, subsection (b) requires that information set forth in the application must be current and must be presented clearly and concisely. OSMRE interprets these existing State rules, taken together, as being counterpart provisions to the Federal regulations at 30 CFR 774.17(b)(1)(ii), which require an applicant for approval of the transfer, assignment, or sale of permit rights to provide the regulatory authority with an application that includes a brief description of the proposed action requiring approval.

Wyoming next proposes to revise Chapter 12, Section 1(b)(ii), to be consistent with the Federal regulations at 30 CFR 774.17(a) by applying the requirements imposed by W.S. section 35–11–408 and the section to a permit transfer, assignment, or sale of permit rights. Revised Section 1(b)(ii) also includes a definition for the previously undefined term ''potential transferee,'' the language for which is identical to the Federal definition of ''successor in interest.''

Wyoming's existing regulation at Chapter 12, Section 1(b)(ii)(A), is the counterpart to 30 CFR 774.17(b)(3), which requires an applicant [potential transferee] for approval of the transfer, assignment, or sale of permit rights to obtain appropriate performance bond coverage in an amount sufficient to cover the proposed operations. As it did in the previous rulemaking action (WY–045–FOR), Wyoming again proposes to revise its rules at Chapter 12, Section 1(b)(ii)(B), for applications for a permit transfer, assignment, or sale of permit rights by adding a cross reference to Wyoming's regulations at Chapter 2, Section 2(a)(i) through (iii), which is the counterpart to 30 CFR part 778 about permit application requirements for all legal, financial, compliance, and related information. Wyoming also adds language requiring that a potential transferee's statement of qualifications must include the name, address and permit number of the existing permit holder. Wyoming's proposed revisions to Chapter 12, Section 1(b)(ii)(B), are consistent with the TAS application requirements set forth at 30 CFR 774.17(b)(1)(i) and (iii).

In addition, Wyoming proposes new substantively identical State counterpart provisions to the Federal regulations in the Code of Wyoming Rules at Chapter 12, Section 1(b)(ii)(C), pertaining to advertisement requirements for newly filed permit transfer, assignment or sale of permit rights applications found at 30 CFR 774.17(b)(2); subsection (D) regarding public participation requirements allowing any person having an interest, which is or may be adversely affected by a decision on TAS, to submit written comments on the application, similar to the provisions in 30 CFR 774.17(c); subsections (E)(I)–(III) concerning criteria for approval by the regulatory authority that allows a permittee to transfer, assign, or sell permit rights to a successor in interest [potential transferee] similar to the provisions in 30 CFR 774.17(d)(1)–(3); subsections (F)(I)–(II) pertaining to notification requirements as they apply to applications for TAS, similar to the provisions in 30 CFR 774.17(e)(i)–(ii); and subsection (G) regarding continued operation under existing permit that requires a successor in interest [potential transferee] to assume the liability and reclamation responsibilities of the existing permit and to conduct the surface coal mining and reclamation operations in full compliance with the Act, the regulatory program, and the terms and conditions of the existing permit, unless the applicant has obtained a new or revised permit under the Environmental Quality Act and the Division's rules and regulations similar to the provisions in 30 CFR 774.17(f).

Wyoming's revised and newly proposed rules at Chapter 12, Section 1(b)(ii)(B), (E), (F), and (G), use the previously discussed State term ''potential transferee,'' rather than the Federal term ''successor in interest.'' In addition, the terms ''Division'' and

''Administrator'' are used instead of the term ''regulatory authority'' in the revised and newly proposed State rules at Chapter 12, Section 1(b)(ii)(D), (E), and (F). Otherwise, Wyoming's proposed rule language is substantively identical to the aforementioned counterpart Federal provisions.

Based on the discussion above, we are approving Wyoming's proposed definition of ''potential transferee'' at Chapter 12, Section 1(b)(ii), as the State counterpart to the identical Federal definition of ''successor in interest.'' We also find that Wyoming's proposed revisions to its existing rules at Chapter 12, Section 1(b)(ii)(B), as well as the newly proposed rules at subsections (C) through (G) are consistent with and no less effective than the Federal regulations at 30 CFR 774.17(a)–(f), and satisfy the requirements specified in Item I of OSMRE's October 2, 2009, 732 letter. Accordingly, we are approving them.

IV. Summary and Disposition of Comments

Public Comments

OSMRE asked for public comments on the amendment (Administrative Record Document ID No. OSM–2014–0007). OSMRE did not receive any public comments or a request to hold a public meeting or public hearing.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA (30 U.S.C. 1253), we requested comments on the amendment from various Federal agencies concerned with or having special expertise relevant to the Wyoming program amendment (Administrative Record No. WY–51–03). We received comments from two Federal Agencies.

The National Park Service (NPS) commented in a November 3, 2014, email response (Administrative Record Document ID No. OSM–2014–0007–0006), and the Mine Safety and Health Administration (MSHA) commented in a November 7, 2014, letter (Administrative Record Document ID No. OSM–2014–0007–0005). The NPS responded that it had reviewed the project and did not find it necessary to comment at this time. MSHA responded that it reviewed the formal State program amendment and had no comments to the proposed changes to the State's statute as written.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to seek the views of the EPA on the program amendment and obtain the written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). Under 30 CFR 732.17(h)(11)(i), OSMRE requested comments on the amendment from the EPA (Administrative Record No. WY–51–03). EPA did not respond to our request. Because the amendment does not relate to air or water quality standards, written concurrence from the EPA is not necessary.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. Although the amendment will not have an effect on historic properties, on October 8, 2014, we requested comments on Wyoming's amendment from the SHPO and ACHP (Administrative Record Nos. WY–51–04 and WY–51–05), but neither responded to our request.

V. OSMRE's Decision

Based on the above findings, we approve Wyoming's September 30, 2014, amendment.

To implement this decision, we are amending the Federal regulations, at 30 CFR part 950, which codify decisions concerning the Wyoming program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA (30 U.S.C. 1253) requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency of State and Federal standards.

VI. Statutory and Executive Order Reviews

Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule would not have effect a taking of private property or otherwise have taking implications that would result in public property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

Executive Order 12866—Regulatory Planning and Review and 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of state program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

State program amendments are not regulatory actions under Executive Order 13771 because they are exempt from review under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has reviewed this rule as required by Section 3 of Executive Order 12988. The Department determined that this **Federal Register** document meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct, rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the State regulatory program or to the program amendment that the State of Wyoming drafted.

Executive Order 13132—Federalism

This rule is not a ''[p]olicy that [has] Federalism implications'' as defined by section 1(a) of Executive Order 13132 because it does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Instead, this rule approves an amendment to the Wyoming program submitted and

drafted by that State. OSMRE reviewed the submission with fundamental federalism principles in mind, as set forth in sections 2 and 3 of the Executive order, and with the principles of cooperative federalism set forth in SMCRA. *See, e.g.,* 30 U.S.C. 1201(f). As such, pursuant to section 503(a)(1) an (7) (30 U.S.C. 1253(a)(1) and (7)), OSMRE reviewed the program amendment to ensure that it is ''in accordance with'' the requirements of SMCRA and is ''consistent with'' the regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175, and have determined that it has no substantial direct effects on federally recognized Tribes or on the distribution of power and responsibilities between the Federal Government and Tribes. Therefore, consultation under the Department's tribal consultation policy is not required. The basis for this determination is that our decision is on the Wyoming program that does not include Tribal lands or regulation of activities on Tribal lands. Tribal lands are regulated independently under the applicable, approved Federal program.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect the Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866, and is not a significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

This rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866; and this action does not address environmental health or safety risks disproportionately affecting children.

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(A), State program amendments are not major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 3701 *et seq.*) directs OSMRE to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. (OMB Circular A–119 at p. 14). This action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with SMCRA.

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

This rule 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.*). The State submittal, which is the subject of this rule, is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than $100 million per year. This rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 24, 2019.

David A. Berry,

Regional Director, Western Region.

For the reasons set out in the preamble, 30 CFR part 950 is amended as set forth below:

PART 950—WYOMING

■ 1. The authority citation for part 950 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 950.15 is amended in the table by adding an entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 950.15 Approval of Wyoming regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* *	* * *
September 30, 2014	December 4, 2019	Chap. 1, Sec. 2(aa)(i)–(iii), definition of control or controller; Chap. 1, Sec. 2(co), notice of violations; Chap. 2 (Title); Chap. 2, Sec. 2(a)(i)(B), related to adjudication requirements; Chap. 2, Sec. 2(a)(ii)(A)(I), related to adjudication requirements; Chap. 2, Sec. 2(a)(ii)(A)(II), related to adjudication requirements; Chap. 2, Sec. 2(a)(ii)(B), related to adjudication requirements; Chap. 6 (Title); Chap. 6, Sec. 4(b)(i)(A), related to blasting standards; Chap. 12, Sec. 1(a)(vii)(A), related to permitting procedures; Chap. 12, Sec. 1(a)(vii)(B)(IV), related to permitting procedures; Chap. 12, Sec. 1(a)(vii)(E), related to permitting procedures; Chap. 12, Sec. 1(a)(vii)(F), related to permitting procedures; Chap. 12, Sec. 1(a)(x), related to permitting procedures; Chap. 12, Sec. 1(a)(x)(D)(I), related to permitting procedures; Chap. 12, Sec. 1(a)(xiv)(C) related to permitting procedures; Chap. 12, Sec. 1(a)(xiv)(D)(II), related to permitting procedures; Chap. 12, Sec. 1(a)(xiv)(F), related to permitting procedures; Chap. 12, Sec. 1(b)(ii), related to permitting procedures; Chap. 16, Sec. 2(h), related to enforcement; Chap. 16, Sec. 4(c)(i), related to individual civil penalties; Chap. 16, Sec. 4(c)(i)(A), related to individual civil penalties; and also all minor grammatical changes.

[FR Doc. 2019–26132 Filed 12–3–19; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2019–0337; FRL–10000–20–Region 7]

Air Plan Approval; Missouri; Revisions to Cross-State Air Pollution Rule Annual Trading Program and Rescission of Clean Air Interstate Rule

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a State Implementation Plan (SIP) revision submitted on January 15, 2019, and two revisions submitted on March 7, 2019, by the State of Missouri. The January 15, 2019, revision requests EPA remove from the Missouri SIP the regulations that established state trading programs under the Clean Air Interstate Rule (CAIR). The EPA is only finalizing the removal of the CAIR annual nitrogen oxides (NO_X) and sulfur dioxide (SO_2) trading program rules. The EPA will act on the revisions to the State's CAIR seasonal NO_X trading program in a separate action. The March 7, 2019, submissions request EPA approve into the SIP Missouri's Cross-State Air Pollution Rule (CSAPR) state trading program rules for SO_2, annual NO_X, and ozone season NO_X. This approval automatically terminates Missouri EGUs' requirements to participate in the corresponding CSAPR Federal trading programs. Like the Federal trading programs being replaced, the state trading programs approved in this SIP revision fully satisfy Missouri's good neighbor obligations with respect to the 1997 and 2006 fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS) and the 1997 ozone NAAQS and at least partially satisfy the State's good neighbor obligations with respect to the 2008 ozone NAAQS. This revision will not have an adverse effect on air quality. The EPA's approval of this rule revision is being done in accordance with the requirements of the Clean Air Act (CAA) and the regulations governing approval of CSAPR SIPs.

DATES: This final rule is effective on January 3, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2019–0337. 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, *i.e.,* 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 information.

FOR FURTHER INFORMATION CONTACT: Lachala Kemp, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551–7214; email address *kemp.lachala@epa.gov.*

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

Table of Contents

I. Background
II. What is being addressed in this document?
III. Have the requirements for approval of a SIP revision been met?
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I. Background

Starting January 1, 2015, large electricity generating units (EGUs) in Missouri were required under a Federal Implementation Plan (FIP) to participate in CSAPR Federal trading programs for SO_2 and annual NO_X emissions to address Missouri's obligations under CAA section 110(a)(2)(D)(i)(I) (the good neighbor provision) with respect to the 1997 and 2006 $PM_{2.5}$ NAAQS. At the same time, the EPA stopped administering Missouri's previous CAIR state trading programs for SO_2 and annual NO_X. *See* 76 FR 48208 (August 8, 2011).

The CSAPR regulations at 40 CFR 52.38 and 52.39 allow states to adopt either ''abbreviated'' CSAPR SIP revisions that modify emission allowance allocations but leave the

CSAPR FIPs in place or ''full'' CSAPR SIP revisions that contain complete CSAPR state trading program rules. Approval of a full CSAPR SIP revision (but not an abbreviated CSAPR SIP revision) results in automatic withdrawal of the corresponding CSAPR FIP requirements and satisfies the State's good neighbor obligations to the same extent as the FIP requirements being replaced. *See, e.g.,* 40 CFR 52.38(b)(10)(i). On June 28, 2016, the EPA approved an abbreviated CSAPR SIP revision for Missouri adopting State-determined allocation methodologies for emission allowances under the CSAPR Federal SO_2 and annual NO_X trading programs but otherwise leaving the Federal trading programs in place. *See* 81 FR 41838 (June 28, 2016).

Starting May 1, 2017, pursuant to a FIP issued under the CSAPR Update, large EGUs in Missouri were required to participate in a new CSAPR Federal trading program for ozone season NO_X emissions to at least partially address Missouri's good neighbor obligation with respect to the 2008 ozone NAAQS. These FIP requirements also fully addressed Missouri's good neighbor obligation with respect to the 1997 ozone NAAQS that had previously been partially addressed by the EGUs' participation in an earlier CSAPR Federal trading program. *See* 81 FR 74504 (October 26, 2016).[1]

On July 30, 2019, the EPA proposed approval of revisions to the Missouri SIP in the **Federal Register** to remove from the SIP the State's CAIR trading program rules for SO_2 and annual NO_X. The EPA did not propose action on the State's request to also remove from the SIP the State's CAIR trading program rule for ozone season NO_X. In the same **Federal Register** document, EPA also proposed to approve Missouri's full CSAPR SIP revision adopting complete CSAPR state trading program rules for SO_2, annual NO_X, and ozone season NO_X to replace the CSAPR Federal trading program rules. *See* 84 FR 36859. The EPA solicited comments on the proposed revision to Missouri's SIP, and received no comments.

II. What is being addressed in this document?

The EPA is approving a revision to Missouri's SIP by approving the State's request to remove 10 CSR 10–6.362 Clean Air Interstate Rule Annual NO_X Trading Program and 10 CSR 10–6.366 Clean Air Interstate Rule Annual SO_2 Trading Program, which implemented the State's CAIR annual NO_X and SO_2 trading programs. The EPA is also finalizing approval of Missouri's revisions to 10 CSR 10–6.372 Cross-State Air Pollution Rule NO_X Annual Trading Program and 10 CSR 10–6.376 Cross-State Air Pollution Rule SO_2 Group 1 Trading Program that add to the State's previously approved allocation provisions all the other provisions necessary for complete state trading programs. Finally, the EPA is also finalizing approval of Missouri's addition of 10 CSR 10–6.374 Cross-State Air Pollution Rule NO_X Ozone Season Group 2 Trading Program.

A discussion of the CSAPR regulations at 40 CFR 52.38 and 52.39 governing full and abbreviated CSAPR SIP revisions can be found in the EPA's June 28, 2016 approval of Missouri's previous abbreviated CSAPR SIP revision for SO_2 and annual NO_X. *See* 81 FR 41838. A detailed discussion of Missouri's current SIP revision was provided in the EPA's July 30, 2019, proposed rule. *See* 84 FR 36859.

III. Have the requirements for approval of a SIP revision been met?

The State's SIP revision meets the requirements for approval of full CSAPR SIPs under 40 CFR 52.38 and 52.39. Missouri's CSAPR state trading program rules incorporate by reference the corresponding provisions of the CSAPR Federal trading program rules at 40 CFR part 97, subparts AAAAA, CCCCC, and EEEEE, with two exceptions. First, the State has retained the allocation provisions for SO_2 and annual NO_X allowances from the State's previous abbreviated CSAPR SIP instead of adopting the default Federal allocation provisions for those allowances. Second, consistent with the CSAPR SIP approval criteria, the State's rules do not incorporate the Federal rule provisions governing allocation of allowances to new units in Indian country. Missouri's CSAPR state trading program rules are complete, and the State has not adopted any other substantive changes to the CSAPR Federal trading program regulations.

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on the March 7, 2019, SIP revisions from August 24, 2018 to October 4, 2018 and received seven comments from the EPA during the Regulatory Impact Review. The EPA's comments are in the docket for this action. Missouri amended the rule in response to the comments and the EPA did not comment further. In addition, as explained above, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

IV. What action is the EPA taking?

We are taking final action to approve the removal of 10 CSR 10–6.362 Clean Air Interstate Rule Annual NO_X Trading Program and 10 CSR 10–6.366 Clean Air Interstate Rule Annual SO_2 Trading Program from the SIP. The EPA is also taking final action to approve into the SIP the revisions to 10 CSR 10–6.372 CSAPR NO_X Annual Trading Program and 10 CSR 10–6.376 CSAPR SO_2 Group 1 Trading Program and the addition of 10 CSR 10–6.374 CSAPR NO_X Ozone Season Group 2 Trading Program. As a result of this approval, the FIP requirements for Missouri EGUs to participate in the corresponding CSAPR Federal trading programs are automatically terminated. Approval of this SIP revision fully satisfies Missouri's good neighbor obligations with respect to the 1997 and 2006 $PM_{2.5}$ NAAQS and the 1997 ozone NAAQS and at least partially satisfies Missouri's good neighbor obligations with respect to the 2008 ozone NAAQS.

V. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Missouri Regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in

[1] In September 2019, the U.S. Court of Appeals for the D.C. Circuit issued an opinion remanding the CSAPR Update to the EPA to address the court's holding that the rule unlawfully allows upwind states' significant contributions to air quality problems in downwind areas to continue past the downwind areas' attainment deadlines. *Wisconsin* v. *EPA,* 983 F.3d 303 (D.C. Cir. 2019). Relatedly, in October 2019, the D.C. Circuit issued a judgment vacating a December 2018 EPA determination that compliance with the CSAPR Update's emissions reduction requirements fully, rather than partially, satisfied good neighbor obligations with respect to the 2008 ozone NAAQS for 20 states, including Missouri. *New York* v. *EPA,* No. 19–1019, 2019 WL 5394069 (D.C. Cir. October 1, 2019). However, neither of these court actions invalidated the EPA's conclusions in the CSAPR Update that compliance with the rule's emissions reduction requirements fully addresses Missouri's good neighbor obligations with respect to the 1997 ozone NAAQS and at least partially addresses the state's good neighbor obligations with respect to the 2008 ozone NAAQS.

the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[2]

Also, in this document, as described in the amendments to 40 CFR part 52 set forth below, the EPA is removing provisions of the EPA-Approved Missouri Regulations and Statutes from the Missouri State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

VI. Statutory and Executive Order Reviews

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

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

In addition, 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. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 3, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 26, 2019.

James Gulliford,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

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 A—General Provisions

§ 52.38 [Amended]

■ 2. Section 52.38 is amended by:

■ a. In paragraph (a)(8)(iii), adding the word ''Missouri,'' after the word ''Indiana,''; and

■ b. In paragraph (b)(13)(iv), removing the words ''Alabama and Indiana'' and adding in its place the words ''Alabama, Indiana, and Missouri''.

§ 52.39 [Amended]

■ 3. Section 52.39 is amended in paragraph (l)(3) by removing the word ''Indiana'' and adding in its place the words ''Indiana and Missouri''.

Subpart AA—Missouri

■ 4. In § 52.1320, the table in paragraph (c) is amended by:

■ a. Removing entries ''10–6.362'' and ''10–6.366'';

■ b. Revising the entry ''10–6.372'';

■ c. Adding entry ''10–6.374'' in numerical order; and

■ d. Revising the entry ''10–6.376''.

The revisions and addition read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

[2] 62 FR 27968 (May 22, 1997).

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.372	Cross-State Air Pollution Rule NO_X Annual Trading Program.	3/30/2019	12/4/2019, [insert **Federal Register** citation].	
10–6.374	Cross-State Air Pollution Rule NO_X Ozone Season Group 2 Trading Program.	3/30/2019	12/4/2019, [insert **Federal Register** citation].	
10–6.376	Cross-State Air Pollution Rule SO_2 Group 1 Trading Program.	3/30/2019	12/4/2019, [insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2019–26102 Filed 12–3–19; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1115

RIN 3135–AA34; 3136–AA40; 3137–AA28

Privacy Act Regulations

AGENCY: National Endowment for the Arts, National Endowment for the Humanities, Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Final rule.

SUMMARY: This document removes the National Foundation on the Arts and the Humanities' (the ''Foundation'') regulations implementing the Privacy Act of 1974. These regulations are obsolete because each of the Foundation's constituent agencies—the National Endowment for the Arts (''NEA''), the National Endowment for the Humanities (''NEH''), the Institute of Museum and Library Services (''IMLS''), and the Federal Council on the Arts and the Humanities (''FCAH'')—either have adopted their own, agency-specific regulations, or are not required to implement Privacy Act regulations.

DATES: Effective December 4, 2019.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Deputy General Counsel, National Endowment for the Humanities, (202) 606–8322; *gencounsel@neh.gov.*

SUPPLEMENTARY INFORMATION:

1. Background

The Foundation operates under the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*), and consists of NEA, NEH, IMLS, and FCAH (collectively, the ''Foundation's constituent agencies''). The Privacy Act regulations published at part 1115 within Subchapter A of 45 CFR Chapter XI apply to the entire Foundation.

As of August 19, 2019, however, the Foundation's Privacy Act regulations are obsolete because NEA, NEH, and IMLS have each adopted their own, agency-specific regulations, and FCAH is not required to implement Privacy Act regulations. On that date, NEH added NEH-specific Privacy Act regulations to 45 CFR Chapter XI, Subchapter D (45 CFR part 1169), replacing the Foundation's Privacy Act regulations with respect to NEH. NEA and IMLS had previously added NEA- and IMLS-specific Privacy Act regulations to 45 CFR, subchapters B and E (45 CFR parts 1159 and 1182), respectively, which replaced the Foundation's Privacy Act regulations with respect to NEA and IMLS. FCAH relies upon NEA and NEH for its administration and does not maintain any systems of records of its own; thus, it has no need or obligation to publish Privacy Act regulations. *See* 5 U.S.C. 552a(f) (requiring that only an agency that ''maintains a system of records shall promulgate rules'' implementing the Privacy Act).

Because the Foundation's Privacy Act regulations are now obsolete, NEA, NEH, and IMLS are issuing this joint final rule to remove them.

2. Public Notice and Comment

Consistent with the Administrative Procedure Act (APA), the Foundation's constituent agencies find that there is ''good cause'' to remove the Foundation's obsolete Privacy Act regulations without public notice and comment. *See* 5 U.S.C. 553(b)(3)(B). Public notice and comment is unnecessary because this final rule is a minor, non-controversial technical amendment that is unlikely to attract public comment. Moreover, NEA, NEH, and IMLS previously issued their own Privacy Act regulations subject to public notice and comment, and at that time they indicated that the Foundation's regulations would no longer apply to their specific agency. *See* 84 FR 34788 (July 19, 2019); 65 FR 46371 (July 28, 2000); and 71 FR 6374 (February 8, 2006).

In addition, the Foundation's constituent agencies find ''good cause'' to issue this final rule without a delayed effective date. *See* 5 U.S.C. 553(d)(8). A delayed effective date is not necessary in this instance because NEA's, NEH's, and IMLS's agency-specific regulations are already in effect, and thus the public does not need advance notice to prepare for the removal of the Foundation's obsolete regulations.

3. Regulatory Analyses

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.

Executive Order 13771: 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.

Paperwork Reduction Act of 1995 (''PRA'')

This action does not impose an information collection burden under the PRA. This action contains no provisions constituting a collection of information under the PRA.

Regulatory Flexibility Act of 1980 (''RFA'')

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.

Unfunded Mandates Reform Act of 1995 (''UMRA'')

This action does not contain any unfunded mandate as described in the UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments.

Executive Order 13132 (Federalism)

This final rule 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.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This final rule does not have tribal implications as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

List of Subjects in 45 CFR Part 1115

Administrative practice and procedure, Privacy.

PART 1115—[REMOVED]

■ For the reasons stated in the preamble, and under the authority of 5 U.S.C. 552a(f), NEA, NEH (for itself and on behalf of FCAH, for which NEH provides legal counsel), and IMLS amend 45 CFR chapter XI, subchapter D by removing part 1115.

India Pinkney,

General Counsel, National Endowment for the Arts.

Michael P. McDonald,

General Counsel, National Endowment for the Humanities.

Nancy E. Weiss,

General Counsel, Institute of Museum and Library Services.

[FR Doc. 2019–25929 Filed 12–3–19; 8:45 am]

BILLING CODE 7536–01–P

SURFACE TRANSPORTATION BOARD

49 CFR Part 1152

[Docket No. EP 749 (Sub-No. 1); Docket No. EP 753]

Limiting Extensions of Trail Use Negotiating Periods; Rails-to-Trails Conservancy—Petition for Rulemaking

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board or STB) is adopting a final rule amending its regulations related to the National Trails System Act to: (1) Provide that the initial term for Certificates or Notices of Interim Trail Use or Abandonment will be one year (instead of the current 180 days); (2) permit up to three one-year extensions of the initial period if the trail sponsor and the railroad agree; and (3) permit additional one-year extensions if the trail sponsor and the railroad agree and extraordinary circumstances are shown.

DATES: This rule is effective on February 2, 2020.

ADDRESSES: Requests for information or questions regarding this final rule should reference Docket No. EP 749 (Sub-No. 1) *et al.,* and be submitted either via e-filing or in writing addressed to Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Sarah Fancher at (202) 245–0355. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On June 14, 2018, the National Association of Reversionary Property Owners (NARPO) filed a petition requesting that the Board consider issuing three rules related to 16 U.S.C. 1247(d), the codification of section 8(d) of the National Trails System Act (Trails Act), Public Law 90–543, section 8, 82 Stat. 919, 925 (1968) (codified, as amended, at 16 U.S.C. 1241–1251). Specifically, NARPO asked that the Board open a proceeding to consider rules that would: (1) Limit the number of 180-day extensions of a trail use negotiating period to six; (2) require a rail carrier or trail sponsor negotiating an interim trail use agreement to send notice of the issuance of a Certificate of Interim Trail Use or Abandonment (CITU) or Notice of Interim Trail Use or Abandonment (NITU) [1] to landowners adjacent to the right-of-way covered by the CITU or NITU; and (3) require all entities, including government entities, filing a request for a CITU or NITU, or extension thereof, to pay a filing fee. After considering NARPO's petition for rulemaking and the comments received, the Board granted the petition in part as it pertained to NARPO's first request and instituted a rulemaking proceeding in *Limiting Extensions of Trail Use Negotiating Periods,* Docket No. EP 749 (Sub-No. 1), to propose modifications to 49 CFR 1152.29 that would limit the number of 180-day extensions of the interim trail use/railbanking negotiating period to a maximum of six extensions, absent extraordinary circumstances. *Nat'l Ass'n of Reversionary Prop. Owners—Pet. for Rulemaking* (*NPR*), EP 749 *et al.,* (STB served Oct. 2, 2018) (83 FR 50,326). The Board, however, denied NARPO's petition with regard to its other requests.

On March 22, 2019, after the comment period closed in Docket No. EP 749 (Sub-No. 1), Rails-to-Trails Conservancy (RTC) petitioned the Board in *Rails-to-Trails Conservancy—Petition for Rulemaking,* Docket No. EP 753, to institute a rulemaking proceeding to further revise section 1152.29 to establish a one-year period for any initial interim trail use negotiating period and codify the Board's authority to grant extensions of the negotiating period for good cause shown. Because Docket Nos. EP 479 (Sub-No. 1) and EP 753 both pertain to the same regulation, section 1152.29, and concern procedures for the extension of interim trail use negotiation/railbanking negotiating periods, the Board consolidated the two proceedings. After carefully reviewing all the comments on the *NPR* and the RTC petition, the Board, in a supplemental notice of proposed rulemaking, proposed to establish a one-year period for any initial interim trail use/railbanking negotiating period, permit up to three

[1] NARPO's proposed rules only refer to NITUs, but, presumably, NARPO intended to propose the same changes to CITU procedures as there are no substantive differences between CITUs (issued in an abandonment application proceeding) and NITUs (issued in an abandonment exemption proceeding).

one-year extensions if the trail sponsor and railroad agree, and provide that requests for additional one-year extensions (beyond three extensions of the initial period) would not be favored but may be granted if the trail sponsor and railroad agree and good cause is shown. *Limiting Extensions of Trail Use Negotiating Periods* (*SNPR*), EP 749 (Sub-No. 1) *et al.,* slip op. at 6, 8–9 (STB served June 6, 2019) (84 FR 26,387).

The Board received comments from over 100 parties in response to the *SNPR.* After consideration of the comments, the Board is adopting a final rule amending its regulations related to the Trails Act as explained below.

Background

Pursuant to the Trails Act, the Board must ''preserve established railroad rights-of-way for future reactivation of rail service'' by prohibiting abandonment where a trail sponsor agrees to assume certain responsibilities for the right-of-way for use in the interim as a trail. 16 U.S.C. 1247(d); *Nat'l Wildlife Fed'n* v. *ICC,* 850 F.2d 694, 699–702 (D.C. Cir. 1988). The statute expressly provides that ''if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for [any] purposes . . . as an abandonment.'' section 1247(d). Instead, the right-of-way is ''railbanked,'' [2] which means that the railroad is relieved of the current obligation to provide service over the line but that the railroad (or any other approved rail service provider,[3] in appropriate circumstances) may reassert control over the right-of-way to restore service on the line in the future. *See Birt,* 90 F.3d at 583; *Iowa Power—Const. Exemption—Council Bluffs, Iowa,* 8 I.C.C.2d 858, 866–67 (1990); 49 CFR 1152.29.[4]

The Trails Act is invoked when a prospective trail sponsor files a request with the Board to railbank a line that a rail carrier has proposed to abandon. The request must include a statement of willingness to assume responsibility for management of, legal liability for, and payment of taxes on, the right-of-way and an acknowledgement that interim trail use/railbanking is subject to possible future reconstruction and reactivation of rail service at any time. 49 CFR 1152.29(a).[5] If the railroad indicates its willingness to negotiate an interim trail use/railbanking agreement for the line, the Board will issue a CITU or NITU. 49 CFR 1152.29(c)(1), (d)(1). Currently, pursuant to the Board's regulations, a CITU or NITU grants parties a 180-day period (which can be extended by Board order) to negotiate an interim trail use/railbanking agreement. *Id.; Birt,* 90 F.3d at 583, 588–90 (affirming the agency's authority to grant reasonable extensions of the Trails Act negotiating period). *See also Grantwood Vill.* v. *Mo. Pac. R.R.,* 95 F.3d 654, 659 (8th Cir. 1996) (stating that the ICC ''was free to extend [the 180-day CITU or NITU] time period for an agreement'').

If parties reach an agreement during the interim trail use/railbanking negotiating period, the CITU or NITU automatically authorizes interim trail use/railbanking. *Preseault,* 494 U.S. at 7 n.5. If no interim trail use/railbanking agreement is reached by the expiration of the CITU or NITU 180-day negotiation period (and any extension thereof), the CITU or NITU authorizes the railroad to exercise its option to ''fully abandon'' the line by consummating the abandonment, without further action by the agency, provided that there are no legal or regulatory barriers to consummation. *Birt,* 90 F.3d at 583; *see also* 49 CFR 1152.29(c)(1), (d)(1), (e)(2); *Consummation of Rail Line Abans. That Are Subject to Historic Pres. & Other Envtl. Conditions,* EP 678, slip op. at 3–4 (STB served Apr. 23, 2008).[6]

Duration of the Initial Interim Trail Use/Railbanking Negotiating Period

As noted above, RTC petitioned the Board to institute a rulemaking proceeding to revise 49 CFR 1152.29 to establish a one-year period for any initial interim trail use negotiating period and codify the Board's authority to grant extensions of the negotiating period for good cause shown. RTC states that, since 1987, it has tracked all abandonment filings by the Board-assigned docket number and filing and decision dates, and has included in its database, among other things, information on whether the Board issued a CITU or NITU to allow interim trail use/railbanking negotiations between a prospective trail sponsor and a railroad. (RTC Pet. 2.) RTC further notes that, as of November 2018, its database contained records for 718 issued CITUs/NITUs dating from 1987. (*Id.* at 6.) RTC asserts that, of the 718 CITUs/NITUs, at least 393 corridors—representing 5,895.53 miles of right-of-way—were successfully railbanked and remain railbanked today. (*Id.* at 7.) RTC further asserts that, of the 370 railbanked corridors for which its database indicated the length of negotiations,[7] 289 railbanking agreements (78.1%) required more than 180 days to negotiate, while approximately half (183 of the 370 corridors) were negotiated within one year. (RTC Pet. 7.) RTC, therefore, argues that its data supports the conclusion that an initial railbanking negotiating period of one year, rather than 180 days, would more closely reflect the actual length of time required to complete railbanking negotiations. (*Id.*) After considering the comments filed in response to the Board's *NPR,* and the comments filed in response to RTC's petition, the Board issued the *SNPR,* proposing a rule establishing a one-year initial period for interim trail use/railbanking negotiations.

Most of the parties commenting on the *SNPR*[8] support the Board's proposal, asserting that the proposal effectively balances the interests of all affected parties and stakeholders. Many agree that establishing a one-year interim trail use/railbanking negotiating

[2] If a line is railbanked and designated for interim trail use, any reversionary interests that adjoining landowners might have under state law upon abandonment are not activated. 16 U.S.C. 1247(d); *Preseault* v. *ICC,* 494 U.S. 1, 8 (1990); *Birt* v. *STB,* 90 F.3d 580, 583 (D.C. Cir. 1996).

[3] *See King Cty., Wash.—Acquis. Exemption—BNSF Ry.,* FD 35148, slip op. at 3–4 (STB served Sept. 18, 2009).

[4] The Board and its predecessor, the Interstate Commerce Commission (ICC), have promulgated, modified, and clarified rules to implement the Trails Act a number of times. *See, e.g., Nat'l Trails System Act & R.R. Rights-of-Way,* EP 702 (STB served Apr. 30, 2012); *Aban. & Discontinuance of Rail Lines & Rail Transp. Under 49 U.S.C. 10903,* 1 S.T.B. 894 (1996); *Policy Statement on Rails to Trails Conversions,* EP 274 (Sub-No. 13B) (ICC served Jan. 29, 1990); *Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures,* 4 I.C.C.2d 152 (1987); *Rail Abans.—Use of Rights-of-Way as Trails,* 2 I.C.C.2d 591 (1986).

[5] The prospective trail sponsor's request must also include a map depicting, and an accurate description of, the right-of-way, or portion thereof (including mileposts), proposed to be acquired or used for interim trail use/railbanking. 49 CFR 1152.29(a)(1).

[6] The Board retains jurisdiction over a rail line throughout the interim trail use/railbanking negotiating period, any period of interim trail use/railbanking, and any period during which rail service is restored. The Board's jurisdiction is terminated once the CITU or NITU is no longer in effect and the railroad has fully abandoned the line by filing a notice of consummation under 49 CFR 1152.29(e)(2). *See* 16 U.S.C. 1247(d); *Hayfield N. R.R.* v. *Chi. & N. W. Transp. Co.,* 467 U.S. 622, 633 (1984); *Honey Creek R.R.—Pet. for Declaratory Order,* FD 34869 et al., slip op. at 5 (STB served June 4, 2008). Upon such occurrence, the right-of-way is no longer part of the national transportation system and will revert to any reversionary landowner. *Preseault,* 494 U.S. at 5, 8.

[7] RTC states that its database lacks information on the length of railbanking negotiations for 23 railbanked corridors. (RTC Pet., Decl. Griffen 2.)

[8] The Board notes that comments regarding the *SNPR* were due by July 8, 2019, and replies were due by July 26, 2019. A number of comments, however, were filed late. In the interest of having a more complete record, all pleadings received as of the date of issuance of this decision will be accepted into the record.

period would reduce burdens on prospective trail sponsors and railroads related to the filing of extension requests, reduce the number of filings requiring Board action (thereby conserving Board resources), and more closely reflect the actual time needed to complete interim trail use/railbanking negotiations. (*See, e.g.,* Hunter Area Trail Coalition Comments 1, July 8, 2019, EP 749 (Sub-No. 1) et al.; City of St. Charles Comments 1, July 3, 2019, EP 749 (Sub-No. 1) et al.)

Few commenters oppose this aspect of the Board's *SNPR* proposal. One commenter argues that negotiations should be open-ended to allow parties more time to finalize their agreements, (*see* Stimson Comments 1, July 8, 2019, EP 749 (Sub-No. 1) *et al.*), but, as discussed below, the Board seeks to bring administrative finality to the interim trail use/railbanking negotiating process. Two commenters express general concerns that extended interim trail use/railbanking negotiations and trail use harm property owners, and, without further explanation beyond those general concerns, also seem to oppose the Board's proposal to establish one-year negotiating periods. (*See* Pennsylvania Transit Expansion Coalition Comments 1, July 8, 2019, EP 749 (Sub-No. 1) *et al.*; Presnell Comments 1, June 19, 2019, EP 749 (Sub-No. 1) *et al.*) The Board, however, is taking action here to protect against unduly protracted interim trail use/railbanking negotiating periods and is unpersuaded by the few comments that raise general concerns about the Board's proposed one-year initial trail use/railbanking negotiating period.

In light of the data from RTC and for the reasons cited in the many comments received in support of the Board's *SNPR* proposal, the Board will adopt its proposed rule changing the duration of the initial interim trail use/railbanking negotiating period to one year. This change would reduce burdens on parties before the Board, conserve Board resources, and reflect more closely the actual length of time in which many interim trail use/railbanking negotiations are completed.

Extensions of the Interim Trail Use/Railbanking Negotiating Period

In the *SNPR,* EP 749 (Sub-No. 1) *et al.,* slip op. at 8–9, the Board sought comment on whether it should limit the number of extensions of an interim trail use/railbanking negotiating period to three one-year extensions, unless good cause for additional extension(s) is shown.

Most commenters support the Board's proposed rule that would permit up to three one-year extensions of the interim trail use/railbanking negotiating period. Commenters, however, disagree as to whether a ''good cause'' standard of review or an ''extraordinary circumstances'' standard should apply to additional one-year extensions requested beyond the first three. Landowners and related interested parties generally oppose any rule that would extend the interim trail use/railbanking negotiating period for ''good cause'' and would prefer an ''extraordinary circumstances'' standard.[9] (*See, e.g.,* Rahmer Comments 1, July 8, 2019, EP 749 (Sub-No. 1) *et al.*; Borek Comments 1, July 8, 2019, EP 749 (Sub-No. 1) *et al.*; West Comments 1, June 27, 2019, EP 749 (Sub-No. 1) *et al.*) Many of these commenters argue that a ''good cause'' standard of review is too vague, lenient, subjective, or broad. (*See, e.g.,* Falcsik Comments 1, July 3, 2019, EP 749 (Sub-No. 1) *et al.,* Watt Comments 1, June 27, 2019, EP 749 (Sub-No. 1) *et al.*; Pennsylvania Transit Expansion Coalition Comments 1, July 8, 2019, EP 749 (Sub-No. 1) *et al.*) Many commenters that support an ''extraordinary circumstances'' standard also support the inclusion of language stating that requests for extensions are not favored. (*See, e.g.,* Falcsik Comments 2, July 3, 2019, EP 749 (Sub-No. 1) *et al.*)

Trail proponents, which include government entities, individuals, and other interested parties, support the Board's proposal, which was sought by RTC to require a showing of ''good cause'' for extensions beyond the first three. (*See, e.g.,* Alabama Trails Commission Comments 1, July 8, 2019, EP 749 (Sub-No. 1) *et al.*; Humboldt Trails Council Comments 1, July 8, 2019, EP 749 (Sub-No. 1) *et al.*; Capps Comments 1, July 8, 2019, EP 749 (Sub-No. 1) *et al.*; City of Chicago Comments 1, July 5, 2019, EP 749 (Sub-No. 1) *et al.*) Most trail proponents urge the Board to adopt the regulations proposed in the *SNPR,* including the ''good cause'' standard for granting extensions beyond the first three, but request that the Board eliminate the proposed language that more than three extensions are ''not favored.'' According to some, the inclusion of this language would undermine the purposes of the Trails Act based on what they characterize as ''vague and unsubstantiated concerns about reducing 'uncertainty for some property owners.''' (*See, e.g.,* Alabama Trails Commission Comments 1, July 8, 2019, EP 749 (Sub-No. 1) *et al.*; Hummingbird Trail Alliance Comments 1, June 27, 2019, EP 749 (Sub-No. 1) *et al.*) RTC also argues that the ''not favored'' language is not supported by any demonstrated need to discourage extension requests, would create a higher standard governing extensions of ordinary regulatory deadlines that is unprecedented in the Board's regulations, and would create uncertainty and invite baseless challenges that could delay and discourage railbanking negotiations. (RTC Comments 1, July 8, 2019, (filing ID 248138) EP 749 (Sub-No. 1).)

The Board has considered the comments received following issuance of the *NPR* and the *SNPR,* and it continues to conclude that reasonably limiting the number of extensions of the interim trail use/railbanking negotiating period would foster administrative efficiency, clarity, and finality. *See NPR,* EP 749 *et al.,* slip op. at 5. Moreover, having reviewed all the comments with respect to the different standards of review for extension requests beyond three, the Board finds the ''extraordinary circumstances'' standard originally proposed in the *NPR*—together with the proposed language in the *SNPR* that more than three extensions are ''not favored''—to be more consistent with the Board's intent than the ''good cause'' standard of review proposed in the *SNPR.* The Board desires to bring more efficiency, clarity, and finality to the interim trail use/railbanking process as Trails Act negotiations at times have gone on for many years. *NPR,* EP 749 *et al.,* slip op. at 5. An ''extraordinary circumstances'' standard would achieve this goal more effectively than a more permissive ''good cause'' standard by making clear that extensions beyond the third would be unusual and by giving participants in Trails Act proceedings a clear understanding of the appropriate timeframe for reaching an interim trail use/railbanking agreement, as well as a more definitive deadline under which to work.[10]

Advocates of the ''good cause'' standard assume that the more stringent ''extraordinary circumstances'' standard would result in legitimate, diligently pursued negotiations being truncated, preventing consummation of trail use

[9] One commenter further asserts that a more acceptable and reasonable standard by which to provide NITU extensions would be ''extraordinary circumstances'' limited to ''circumstances beyond a party's control that normal prudence and experience could not foresee, anticipate or provide for.'' (Falcsik Comments 1, July 3, 2019, EP 749 (Sub-No. 1) *et al.*)

[10] The Board notes that courts have held that the issuance of a CITU or NITU and the duration of the interim trail use negotiation period can impact takings claims cases. *See Ladd* v. *United States,* 630 F.3d 1015, 1024–25 (Fed. Cir. 2010); *Caldwell* v. *United States,* 391 F.3d 1226, 1233 (Fed. Cir. 2004).

agreements and frustrating the policy of the Trails Act to encourage railbanking. (*See, e.g.,* RTC Comments 5–6, 9–10, July 8, 2019, (filing ID 248138) EP 749 (Sub-No. 1)). Similarly, many of the commenters who oppose language stating that additional extensions beyond three ''are not favored'' argue that such language suggests an unnecessary presumption against granting additional extensions. (*See, e.g.,* Friends of the Cheat Comments 1–2, July 16, 2019, EP 749 (Sub-No. 1) *et al.*; Transportation for America Comments 1; June 21, 2019, EP 749 (Sub-No. 1) *et al.*) Indeed, these commenters appear to support a ''good cause'' standard precisely because that standard would be liberal and would allow for potentially open-ended extensions. (*See, e.g.,* RTC Pet. 10–12.)

However, adopting a more liberal standard would undercut the Board's goals in this rulemaking. The Board must balance the need to allow parties enough time to complete their negotiations and finalize an interim trail use/railbanking agreement with the need to conclude the Trails Act process within a reasonable amount of time. Four years is a significant amount of time to reach an interim trail use/railbanking agreement. Based on the record here, the Board does not anticipate that the ''extraordinary circumstances'' standard will impair the ability of prospective trail sponsors and railroads, operating diligently and in good faith, to successfully conclude interim trail use/railbanking agreements. The record supports the conclusion that an ''extraordinary circumstances'' standard would be implicated in only a relatively small percentage of cases. Based on RTC's data, 327 out of 370 negotiated Trails Act agreements (approximately 88%) have been reached within four years—that is, before an ''extraordinary circumstances'' requirement would even apply under the rule adopted here. (*See* RTC Pet., Decl. Griffen 2.) Therefore, in the vast majority of cases, parties who have reached an interim trail use/railbanking agreement have been able to do so within a four-year period such as that established by this final rule (a one-year initial negotiation period followed by three one-year extensions). The Board anticipates that, with a clearer understanding of the deadlines that will apply under the final rule, parties would be better incentivized to conclude their negotiations and enter into an agreement in a more timely manner, which would both give landowners more certainty by providing a timeline for the conclusion of negotiations and conserve Board resources. Moreover, where, due to extraordinary circumstances, parties are unable to finalize an agreement within four years, they will retain the ability to demonstrate those extraordinary circumstances to the Board and obtain further extensions. Given that the Board does not anticipate this rule would impair the ability of trail sponsors and railroads to successfully conclude interim trail use/railbanking agreements, the final rule is consistent with the underlying purposes of the Trails Act: To preserve established railroad rights-of-way for future reactivation of rail service and encourage their use in the interim as recreational trails. *Preseault,* 494 U.S. at 17–18.

RTC argues that there is little precedent in the Board's regulations or regulatory practice to adopt a standard that strongly disfavors extensions, regardless of ''any good cause for the requests.'' (RTC Comments 11, Nov. 21, 2018, EP 749 (Sub-No. 1).) According to RTC, the Board routinely waives its regulatory deadlines for other stakeholders based on ''good cause shown.'' (*Id.* (citing *Buckingham Branch R.R.—Change in Operators Exemption—Cassatt Mgmt., LLC,* FD 36202 (STB served July 31, 2018).) However, based on the Board's experience with Trails Act negotiations, some of which have gone on for more than a decade, the Board finds that a different, ''extraordinary circumstances'' standard of review for such cases is warranted and appropriate. As noted above, the Board believes that this standard will improve the efficiency, clarity, and finality of the Trails Act process while balancing the objectives of trail proponents, landowners, railroads, and the agency. It has been long recognized that agencies have broad discretion to manage and control their own dockets and proceedings. *See Neighborhood TV Co.* v. *FCC,* 742 F.2d 629, 636 (D.C. Cir. 1984) (''There is a general principle that '[i]t is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business when in a given case the ends of justice require it.'''') (quoting *Am. Farm Lines* v. *Black Ball Freight Serv.,* 397 U.S. 532, 539 (1970)).[11] Therefore, the Board may, in its discretion, modify its Trails Act procedures to accomplish the goals set forth in the *NPR* and *SNPR.*[12]

Finally, in jointly filed comments in response to both the *NPR* and *SNPR,* Madison County Mass Transit District and the Iowa Natural Heritage Foundation (MCTD/INHF) argue that the Board's sole basis for any limitation on the CITU or NITU negotiation period is dicta in *Birt,* 90 F.3d at 589, which notes that NITU extensions ''ad infinitum'' could have the undesirable effect of ''allowing the railroad to stop service without either relinquishing its rights to the easement or putting the right-of-way to productive use.'' (MCTD/INHF Comments 6–7, Oct. 25, 2018, EP 749 *et al.*); MCTD/INHF Comments 6–7, July 5, 2019, EP 749 (Sub-No. 1) *et al.*) MCTD/INHF asserts that there is no authority in 16 U.S.C. 1247(d) or in rail transportation policy generally to impose any limitations on the NITU negotiating period. (MCTD/INHF Comments 11, Oct. 25, 2018, EP 749 *et al.*) Similarly, the Missouri Central Railroad Company (MCRR) argues that the Board's proposal is unnecessary given that the Board can and does evaluate extension requests on a case-by-case basis. (MCRR Comments 2, Nov. 1, 2018, EP 749 (Sub-No. 1); MCRR Comments 1, July 2, 2019, EP 749 (Sub-No. 1) *et al.*) Nevertheless, MCRR states that it understands the need for administrative finality. (MCRR Comments 1, July 2, 2019, EP 749 (Sub-No. 1) *et al.*)

MCTD/INHF misinterpret *Birt.* The court in *Birt* found that the Board's predecessor, the Interstate Commerce Commission (ICC), could, in its discretion, interpret 16 U.S.C. 1247(d) to allow it to grant reasonable extensions of the Trails Act negotiating period. *See* 90 F.3d at 588–89. That holding is entirely consistent with the Board's determination in the final rule here. Nothing in *Birt* or the rest of MCTD/INHF's comments provides support for the proposition that the Board may not impose reasonable restrictions on the number of extensions it grants. As noted above, agencies have the discretion to modify procedural rules ''when in a given case the ends of justice require it.'' *See Neighborhood TV,* 742 F.2d at 636. Here, as discussed above, adoption of a

[11] *See also GTE Serv. Corp.* v. *FCC,* 782 F.2d 263, 273–74 & n.12 (D.C. Cir. 1986) (affirming agencies' inherent power to control their own dockets); *Ass'n of Buss. Advocating Tariff Equity* v. *Hanzlik,* 779 F.2d 697, 701 & n.6 (D.C. Cir. 1985) (same); *FTC* v. *Owens-Corning Fiberglas Corp.,* 626 F.2d 966, 975 (D.C. Cir. 1980) (same); *Nat. Res. Def. Council, Inc.* v. *SEC,* 606 F.2d 1031, 1056 (D.C. Cir. 1979) (same).

[12] In any event, ''extraordinary'' circumstances is not an uncommon standard and is used in a variety of regulatory and procedural contexts, including in the Board's own regulations. *See, e.g., Allied Chem. Corp.* v. *Daiflon, Inc.,* 449 U.S. 33 (1980) (*per curiam*) (mandamus); *City of Orville* v. *FERC,* 147 F.3d 979 (D.C. Cir. 1998) (timeliness of intervention); 43 CFR 4.403 (reconsideration of final decision); 5 CFR 185.110 (late filing of answer); 49 CFR 1002.2(e)(2) (Board will accept requests for fee waivers in extraordinary situations).

rule establishing a one-year initial negotiating period, allowing three one-year extensions, and permitting additional one-year extensions if extraordinary circumstances are shown is reasonable and strikes an appropriate balance between the interests of landowners, trail proponents, railroads, and the agency. The final rule will lead to more efficiency, clarity, and finality in the Trails Act process, reducing burdens on parties, conserving Board resources, and providing greater overall certainty, while also providing a reasonable amount of time (at least four years) for railroads and prospective trail sponsors to negotiate voluntary agreements for interim trail use/railbanking.[13]

Other Issues

In its petition, NARPO requested that the Board require a rail carrier or trail sponsor to ''send notice'' to adjoining landowners following the issuance of a CITU or NITU. (NARPO Pet. 4.) In the *NPR,* the Board found that NARPO had not provided a sufficient basis for altering the existing notice requirements. *NPR,* EP 749 et al., slip op. at 6–7. In its comments in response to the *NPR,* NARPO asks the Board to further consider NARPO's request to require rail carriers to provide ''due process notice'' to property owners. (NARPO Reply 1–2, Nov. 20, 2018, EP 749 (Sub-No. 1)). As stated in the *NPR,* the Board, and its predecessor, the ICC, have repeatedly considered similar notice proposals by NARPO and declined to adopt such a rule. *See Nat'l Ass'n of Reversionary Prop. Owners* v. *STB,* 158 F.3d 135 (D.C. Cir. 1998); *Nat'l Trails System Act & R.R. Rights-of-Way,* EP 702, slip op. at 7–8 (STB served Feb. 16, 2011); *Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures,* EP 274 (Sub-No. 13) (ICC served July 28, 1994). NARPO has provided the Board no basis for altering that position.

NARPO also argues that the Board should ''rein in the games the railroads are playing'' with NITU extensions and the Section 106 process of the National Historic Preservation Act, 54 U.S.C. 306108. (NARPO Reply 6, Nov. 20, 2018, EP 749 (Sub-No. 1)). According to NARPO, rail carriers use the need to complete the Section 106 process and comply with certain other types of environmental conditions imposed during the environmental review process to extend the time available to consummate abandonments under 49 CFR 1152.29(e)(2)—with the goal that prospective trail sponsors, during such time, can raise the necessary capital to acquire rights-of-way for interim trail use/railbanking. (*Id.*)

Similarly, certain landowners collectively filed comments arguing that the Board's *SNPR* omits ''a necessary corollary concern to extensions of temporary and permanent trail use negotiating periods.'' (Nelson et al. Comments 1, June 28, 2019, EP 749 (Sub-No. 1) et al.) These landowners assert that, if there are limits on the number of extensions of the CITU or NITU negotiating period, there, likewise, ''should be a concurrent amendment pertaining to the limitation of consummation of abandonment after these newly enlarged negotiation periods, and the likelihood of the termination/vacation of a NITU.'' (*Id.* at 4.) They propose four amendments to the Board's regulations at section 1152.29(e), governing notices of consummation of abandonments; these proposed changes include a proposal that ''a railroad's consummation of abandonment shall automatically occur 180 days after the expiration or vacation of a NITU.'' (*Id.* at 5.)

A notice of consummation is required in every abandonment case in which a railroad decides to exercise its authority to abandon a rail line and thereby terminate the Board's jurisdiction—not just in abandonment proceedings where a trail use condition has been imposed. 49 CFR 1152.29(e)(2); *Honey Creek,* FD 34869 et al., slip op. at 5. Moreover, certain other conditions commonly imposed in abandonment proceedings to implement provisions of law unrelated to the Trails Act can affect the timing and permissibility of a railroad's filing a notice consummating an abandonment. *See Consummation of Rail Line Abans. that are Subject to Historic Pres. & Other Envtl. Conditions,* EP 678 (STB served Apr. 23, 2008). Any proposal that would alter or otherwise impact how and when consummation of abandonment can take place is beyond the scope of this proceeding, which relates only to restrictions on the negotiating periods for interim trail use/railbanking, not the broader issues implicated in the consummation of abandonments in general. Thus, the Board declines to address the comments and proposals relating to the filing of a consummation notice under section 1152.29(e).

Final Rule

For the reasons discussed above, and as set forth in the Appendix, the Board is adopting a final rule to amend its regulations to: (1) Provide that the initial term for CITUs or NITUs will be one year (instead of the current 180 days); (2) permit up to three one-year extensions of the initial period if the trail sponsor and the railroad agree; and (3) permit additional one-year extensions if the trail sponsor and the railroad agree and extraordinary circumstances are shown. Requests for additional extensions will not be favored but may be granted if the trail sponsor and railroad agree and ''extraordinary circumstances'' are shown.[14] A showing of ''extraordinary circumstances'' will depend on the specific facts of each case but might include, for example, specific evidence that necessary financing is imminent or specific evidence of problems or complications demonstrably beyond the negotiators' control that arise in connection with an unusually lengthy, multi-jurisdictional trail. It is unlikely that issues within negotiators' control, such as insurance coverage, title review, appraisal issues, or personnel turnover, will constitute extraordinary circumstances.

The aspect of the final rule establishing a one-year duration for any initial interim trail use/railbanking negotiating period will apply to any new CITU or NITU requested on or after the effective date of the rule. Parties in negotiations under existing CITUs or NITUs on the effective date of these rules who wish to extend their negotiating period will be required to seek extensions of one year, rather than 180 days as is the current common practice (or any other duration). The aspect of the final rule that limits the number of one-year extensions of an interim trail use/railbanking negotiating period to three will apply both to new CITUs or NITUs requested on or after the rule's effective date and to cases where a CITU or NITU was requested before the final rule took effect. In the latter instance, a showing of extraordinary circumstances will be required for any request that would extend the interim trail use/railbanking negotiating period to a date after the four-year anniversary of the issuance of the CITU or NITU (including cases where the existing CITU or NITU already extends beyond that anniversary), unless the request is eligible for the transitional measure described below.

In the *NPR,* the Board stated that it may more liberally provide additional

[13] As noted above, based on RTC's data, approximately 88% of voluntary interim trail use/railbanking agreements have been reached within four years. (*See* RTC Pet., Decl. Griffen 2.)

[14] In addition to the changes described here, the Appendix includes other non-substantive changes to the rules in section 1152.29 (*e.g.,* adding paragraph headings).

extensions for extraordinary circumstances in certain instances in which a CITU or NITU is pending when this rule takes effect. *NPR,* EP 749 *et al.*, slip op. at 8. The Board clarifies now that, as a transitional measure, parties engaged in negotiations under an existing CITU or NITU that was originally issued before February 2, 2017, may request one additional extension of one year, beyond the four-year anniversary of the issuance of the CITU or NITU, without showing extraordinary circumstances.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. Section 601–604. In its final rule, the agency must either include a final regulatory flexibility analysis, section 604(a), or certify that the proposed rule would not have a ''significant impact on a substantial number of small entities,'' section 605(b). The impact must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the proposed rule. *White Eagle Coop.* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

In the *SNPR,* the Board certified under 5 U.S.C. 605(b) that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.[15] The Board explained that its proposed changes to its regulations would improve the efficiency, clarity, and finality of its interim trail use/railbanking procedures and would not mandate the conduct of small entities. Indeed, the changes proposed are largely procedural and would not have a significant economic impact on Class III rail carriers or prospective trail sponsors (whether as small businesses, not-for-profits, or small governmental jurisdictions) to which the RFA applies. The proposed rules would lengthen, from 180 days to one year, the duration of the initial voluntary interim trail use/railbanking negotiating period and the current typical extension periods, reducing the frequency with which trail sponsors and railroads would need to file extension requests and replies. The Board, therefore, noted that the impact of the proposed rule would be a reduction in the paperwork burden for small entities. Further, the Board asserted that the economic impact of the reduction in paperwork, if any, would be minimal and entirely beneficial to small entities as such entities would have reduced filing burdens associated with negotiating an interim trail use/railbanking agreement. Therefore, the Board certified under 5 U.S.C. 605(b) that these proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

The final rule adopted here revises the rules proposed in the *SNPR;* however, the same basis for the Board's certification of the proposed rule applies to the final rule. Therefore, the Board again certifies under 5 U.S.C. 605(b) that the final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. A copy of this decision will be served upon the Chief Counsel for Advocacy, Offices of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

Paperwork Reduction Act

In this proceeding, the Board is modifying an existing collection of information that is currently approved by the Office of Management and Budget (OMB) through September 30, 2021, under the collection of Preservation of Rail Service (OMB Control No. 2140–0022). In the *SNPR,* the Board sought comments pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3549, and OMB regulations at 5 CFR 1320.8(d)(3) regarding: (1) Whether the collection of information, as modified in the proposed rule in the Appendix, is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. No comments were received pertaining to the collection of this information under the PRA.

This modification to an existing collection will be submitted to OMB for review as required under the PRA, 44 U.S.C. 3507(d), and 5 CFR 1320.11.

Congressional Review Act

Pursuant to the Congressional Review Act, 5 U.S.C. 801–808, the Office of Information and Regulatory Affairs has designated this rule as a non-major rule, as defined by 5 U.S.C. 804(2).

List of Subjects in 49 CFR Part 1152

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements, Uniform System of Accounts.

It is ordered:

1. The Board adopts the final rule set forth in this decision. Notice of the final rule will be published in the **Federal Register**.

2. All pleadings received by the Board as of the date of issuance of this decision are accepted into the record.

3. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

4. This decision is effective on February 2, 2020.

Decided: November 27, 2019.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Jeffrey Herzig,

Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board amends part 1152 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

■ 1. The authority citation for part 1152 continues to read as follows:

Authority: 11 U.S.C. 1170; 16 U.S.C. 1247(d) and 1248; 45 U.S.C. 744; and 49 U.S.C. 1301, 1321(a), 10502, 10903–10905, and 11161.

■ 2. Amend § 1152.29 by:

■ a. In paragraph (a), adding a paragraph heading;

■ b. In paragraph (b), adding a paragraph heading;

■ c. In paragraph (b)(1)(ii), removing the words ''§ 1152.29(a)'' and adding in its

[15] For the purpose of RFA analysis for rail carriers subject to Board jurisdiction, the Board defines a ''small business'' as only including those rail carriers classified as Class III rail carriers under 49 CFR 1201.1–1. *See Small Entity Size Standards Under the Regulatory Flexibility Act,* EP 719 (STB served June 30, 2016) (with Board Member Begeman dissenting). Class III carriers have annual operating revenues of $20 million or less in 1991 dollars, or $39,194,876 or less when adjusted for inflation using 2018 data. Class II rail carriers have annual operating revenues of less than $250 million but in excess of $20 million in 1991 dollars, or $489,935,956 and $39,194,876 respectively, when adjusted for inflation using 2018 data. The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds in decisions and on its website. 49 CFR 1201.1–1; *Indexing the Annual Operating Revenues of R.Rs.,* EP 748 (STB served June 14, 2019).

place the words ''paragraph (a) of this section'';
■ d. In paragraph (c), revising the paragraph heading;
■ e. Revising paragraph (c)(1);
■ f. In paragraph (c)(3), removing the words ''49 CFR part 1150'' and adding in its place the words ''part 1150 of this title'';
■ g. In paragraph (d), revising the paragraph heading;
■ h. Revising paragraph (d)(1);
■ i. In paragraph (d)(3), removing ''49 CFR part 1150'' and adding in its place the words ''part 1150 of this title'';
■ j. In paragraph (e), adding a paragraph heading;
■ k. In paragraph (f), adding a paragraph heading;
■ l. In paragraph (g), adding a paragraph heading and removing the words ''180 days'' and adding in its place the words ''one year'';
■ m. In paragraph (h), adding a paragraph heading.

The revisions and additions read as follows:

§ 1152.29 Prospective use of rights-of-way for interim trail use and railbanking.

(a) *Contents of request for interim trail use.* * * *

(b) *When to file.* * * *

(c) *Abandonment application proceedings.* (1) In abandonment application proceedings, if continued rail service does not occur pursuant to 49 U.S.C. 10904 and § 1152.27, and a railroad agrees to negotiate an interim trail use/railbanking agreement, then the Board will issue a CITU to the railroad and to the interim trail sponsor for that portion of the right-of-way as to which both parties are willing to negotiate.

(i) The CITU will permit the railroad to discontinue service, cancel any applicable tariffs, and salvage track and material consistent with interim trail use and railbanking, as long as such actions are consistent with any other Board order, 30 days after the date the CITU is issued; and permit the railroad to fully abandon the line if no interim trail use agreement is reached within one year from the date on which the CITU is issued, subject to appropriate conditions, including labor protection and environmental matters.

(ii) Parties may request a Board order to extend, for one-year periods, the interim trail use negotiation period. Up to three one-year extensions of the initial period may be granted if the trail sponsor and the railroad agree. Additional one-year extensions, beyond three extensions of the initial period, are not favored but may be granted if the trail sponsor and the railroad agree and extraordinary circumstances are shown.

* * * * *

(d) *Abandonment exemption proceedings.* (1) In abandonment exemption proceedings, if continued rail service does not occur under 49 U.S.C. 10904 and § 1152.27, and a railroad agrees to negotiate an interim trail use/railbanking agreement, then the Board will issue a Notice of Interim Trail Use or Abandonment (NITU) to the railroad and to the interim trail sponsor for the portion of the right-of-way as to which both parties are willing to negotiate.

(i) The NITU will permit the railroad to discontinue service, cancel any applicable tariffs, and salvage track and materials, consistent with interim trail use and railbanking, as long as such actions are consistent with any other Board order, 30 days after the date the NITU is issued; and permit the railroad to fully abandon the line if no interim trail use agreement is reached within one year from the date on which the NITU is issued, subject to appropriate conditions, including labor protection and environmental matters.

(ii) Parties may request a Board order to extend, for one-year periods, the interim trail use negotiation period. Up to three one-year extensions of the initial period may be granted if the trail sponsor and railroad agree. Additional one-year extensions, beyond three extensions of the initial period, are not favored but may be granted if the trail sponsor and railroad agree and extraordinary circumstances are shown.

* * * * *

(e) *Late-filed requests; notices of consummation.* * * *

(f) *Substitution of trail user.* * * *

(g) *Consent after Board decision or notice.* * * *

(h) *Notice of interim trail use agreement reached.*

* * * * *

[FR Doc. 2019–26221 Filed 12–3–19; 8:45 am]

BILLING CODE 4915–01–P

Proposed Rules

Federal Register
Vol. 84, No. 233
Wednesday, December 4, 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 ENERGY

10 CFR Part 431

[EERE–2018–BT–STD–0003]

Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Cancellation of Public Meetings for the Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps Working Group To Negotiate a Notice of Proposed Rulemaking for Test Procedures and Energy Conservation Standards

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

ACTION: Notice of cancellation of public meetings and webinars.

SUMMARY: The U.S. Department of Energy (DOE or the Department) hereby cancels the remaining public meetings and webinars previously scheduled for the variable refrigerant flow multi-split air conditioners and heat pumps (VRF multi-split systems) working group. The Federal Advisory Committee Act (FACA) requires that agencies publish notice of an advisory committee meeting in the **Federal Register**. The working group has completed its work, and, therefore, no other meetings or webinars are necessary.

DATES: This document cancels the schedule of meetings announced in the **Federal Register** on October 24, 2019.

ADDRESSES: U.S. Department of Energy, Office of Building Technologies (EE–5B), 950 L'Enfant Plaza SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mr. John Cymbalsky, U.S. Department of Energy, Office of Building Technologies (EE–5B), 950 L'Enfant Plaza SW, Washington, DC 20024. Telephone: (202) 287–1692. Email: *ASRAC@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: On January 10, 2018, the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) met and passed the recommendation to form a VRF multi-split systems working group to meet and discuss and, if possible, reach a consensus on proposed Federal test procedures and energy conservation standards for VRF multi-split systems. On April 11, 2018, DOE published a notice of intent to establish a working group for VRF multi-split systems to negotiate a notice of proposed rulemaking for test procedures and energy conservations standards. The notice also solicited nominations for membership to the working group. 83 FR 15514.

On August 22, 2019, DOE published a notice announcing public meetings for the VRF working group. 84 FR 43731. On October 24, 2019, DOE published another notice announcing new public meetings/webinars and modifying the dates for the previously scheduled public meetings/webinars for the VRF working group. 84 FR 56949.

On October 1, 2019, the VRF working group voted to approve a test procedure term sheet for VRF equipment. On November 5, 2019, the VRF working group voted to approve an energy conservation standards term sheet for VRF equipment. The working group has concluded its work, and, therefore, no further public meetings are necessary. Accordingly, this notice cancels the remaining public meetings/webinars for the VRF multi-split systems working group announced in the **Federal Register** on October 24, 2019. 84 FR 56949.

Public Participation

Docket

The docket is available for review at: *https://www.regulations.gov/docket?D=EERE-2018-BT-STD-0003,* including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *http://www.regulations.gov* index. However, not all documents listed in the index may be publically available, such as information that is exempt from public disclosure.

Signed in Washington, DC, on November 18, 2019.

Alexander N. Fitzsimmons

Acting Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2019–26019 Filed 12–3–19; 8:45 am]

BILLING CODE 6450–01–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

RIN 3142–AA15

Jurisdiction—Nonemployee Status of University and College Students Working in Connection With Their Studies; Extension of Comment Period

AGENCY: National Labor Relations Board.

ACTION: Notice of extension of time to submit comments.

SUMMARY: The National Labor Relations Board (the Board) published a Notice of Proposed Rulemaking in the **Federal Register** on September 23, 2019, seeking comments from the public regarding its proposed rule concerning the Nonemployee Status of University and College Students Working in Connection with their Studies. On October 16, 2019, the date to submit comments to the Notice of Proposed Rulemaking was extended for 60 days. The date to submit comments to the Notice is now extended an additional 30 days.

DATES: Comments to the Notice of Proposed Rulemaking must be received by the Board on or before January 15, 2020. Comments replying to the comments submitted during the initial comment period must be received by the Board on or before January 29, 2020.

ADDRESSES:

Internet—Federal eRulemaking Portal. Electronic comments may be submitted through *http://www.regulations.gov.*

Delivery—Comments should be sent by mail or hand delivery to: Roxanne Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570–0001. Because of security precautions, the Board continues to experience delays in U.S. mail delivery. You should take this into consideration when preparing to meet the deadline for submitting comments. The Board encourages electronic filing. It is not necessary to send comments if they have been filed electronically with *regulations.gov.* If you send comments, the Board recommends that you confirm receipt of your delivered comments by contacting (202) 273–1940 (this is not a toll-free number). Individuals with hearing impairments may call 1–866–315–6572 (TTY/TDD).

Only comments submitted through *http://www.regulations.gov,* hand delivered, or mailed will be accepted; ex parte communications received by the Board will be made part of the rulemaking record and will be treated as comments only insofar as appropriate. Comments will be available for public inspection at *http://www.regulations.gov* and during normal business hours (8:30 a.m. to 5 p.m. EST) at the above address.

The Board will post, as soon as practicable, all comments received on *http://www.regulations.gov* without making any changes to the comments, including any personal information provided. The website *http://www.regulations.gov* is the Federal eRulemaking portal, and all comments posted there are available and accessible to the public. The Board requests that comments include full citations or internet links to any authority relied upon. The Board cautions commenters not to include personal information such as Social Security numbers, personal addresses, telephone numbers, and email addresses in their comments, as such submitted information will become viewable by the public via the *http://www.regulations.gov* website. It is the commenter's responsibility to safeguard his or her information. Comments submitted through *http://www.regulations.gov* will not include the commenter's email address unless the commenter chooses to include that information as part of his or her comment.

FOR FURTHER INFORMATION CONTACT: Roxanne Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570–0001, (202) 273–1940 (this is not a toll-free number), 1–866–315–6572 (TTY/TDD).

Dated: November 27, 2019.

Roxanne Rothschild,

Executive Secretary.

[FR Doc. 2019–26177 Filed 12–3–19; 8:45 am]

BILLING CODE 7545–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Chapter II

[Docket No. 2019–7]

Online Publication

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notification of inquiry.

SUMMARY: The U.S. Copyright Office is undertaking an effort to provide additional guidance regarding the determination of a work's publication status for registration purposes. To aid this effort, the Office is seeking public input on this topic, including feedback regarding issues that require clarification generally, as well specific suggestions about how the Office may consider amending its regulations and, as appropriate, effectively advise Congress regarding possible changes to the Copyright Act. Based on this feedback, the Office may solicit further written comments and/or schedule public meetings before moving to a rulemaking process.

DATES: Initial written comments must be received no later than 11:59 p.m. Eastern Time on February 3, 2020. Written reply comments must be received no later than 11:59 p.m. Eastern Time on March 3, 2020.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through regulations.gov. Specific instructions for submitting comments are available on the Copyright Office website at *https://www.copyright.gov/rulemaking/online-publication/.* If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office, using the contact information below, for special instructions.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, *regans@copyright.gov;* Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice, *rkas@copyright.gov;* or Jordana S. Rubel, Assistant General Counsel, *jrubel@copyright.gov.* They can be reached by telephone at 202–707–3000.

SUPPLEMENTARY INFORMATION: The Copyright Act requires an applicant for a copyright registration to state, among other things, whether a work has been published, along with the date and nation of its first publication. 17 U.S.C. 409(8). Over time, the Office has increasingly provided various group registration options that permit an applicant to register groups of works with one application and filing fee. *See, e.g.,* 37 CFR 202.3(b)(1)(iv), (b)(4) through (5), 202.4(c) through (i) and (k). Currently, however, no group registration option allows published and unpublished works to be registered using the same application. As a result, applicants must determine the publication status of a work or group of works in order to complete a proper copyright application.

This requirement places some burden on copyright applicants. Although the Office may provide some general guidelines on relevant legal requirements,[1] it cannot give specific legal advice as to whether a particular work has been published. U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices* sec. 1904.1 (3d ed. 2017) (''*Compendium* (*Third*)''). Thus, the applicant must determine independently, or potentially based on the advice of its own legal counsel, whether a work is published. Various individuals and groups have repeatedly expressed frustration to the Office regarding difficulty in determining whether a work has been published when completing copyright application forms.[2] Commenters to the Office have indicated that the distinction between published and unpublished works is ''so complex and divergent from an intuitive and colloquial understanding of the terms that it serves as a barrier to registration, especially with respect to works that are disseminated online.'' [3] A perceived lack of consensus among courts about what constitutes online publication only increases applicants' uncertainty, as applicants, most of whom have no legal training, may feel bound to reconcile conflicting judicial opinions before they can file an application to register their copyrights.[4]

[1] For example, the Copyright Office provides guidelines on legal requirements such as publication in its Compendium of U.S. Copyright Office Practices and in various Circulars.

[2] *See, e.g.,* National Press Photographers Association (''NPPA''), Comments Submitted in Response to Public Draft of Compendium of U.S. Copyright Office Practices at 7–11 (May 31, 2019) (''We continue to find that our members are confused by the definition of published vs. unpublished.''); Coalition of Visual Artists (''CVA''), Comments Submitted in Response to Notice of Inquiry Regarding Registration Modernization, at 35 (Jan. 15, 2019) (''No issue frustrates and confounds visual creators more than the statutory requirement that the registration application include whether an applicant's works have been published, and if published, the date and nation of first publication.''); Professional Photographers of America (''PPA''), Comments Submitted in Response to the U.S. Copyright Office's Apr. 24, 2015 Notice of Inquiry at 7 (July 22, 2015); American Society of Media Photographers (''ASMP''), Comments Submitted in Response to the U.S. Copyright Office's Apr. 24, 2015 Notice of Inquiry at 13 (July 23, 2015) (noting that ''[t]he most vocal complaint about the current system is the time-consuming and expensive process of distinguishing between published and unpublished works in the registration process'').

[3] Copyright Alliance, Comments Submitted in Response to Notice of Inquiry Regarding Registration Modernization, at 5 (Jan. 15, 2019).

[4] *See, e.g.,* CVA, Comments Submitted in Response to Notice of Inquiry Regarding

Based on these comments, and recognizing a relative lack of consensus among courts, the Office believes that additional guidance regarding the definition of publication in the modern context will help ensure the smooth functioning of the registration process. As noted, the requirement to designate the publication status of works on registration applications is currently mandated by statute, and the Copyright Act includes a definition of ''publication.'' However, the Office may act under its existing regulatory authority to determine how to apply this statutory definition of publication for purposes of administering the copyright registration system; and the Office may also provide guidance materials to users of that system. Depending on the public comments received in response to this inquiry, the Office may also choose to provide recommendations to Congress on specific statutory language to further clarify this issue. This inquiry is directed at the current statute and the existing structure of the copyright registration system; any legislative changes to the Copyright Act could affect the subjects of inquiry and the topics on which users of the copyright registration system would require guidance.

The Office is issuing this Notice of Inquiry to seek public comments regarding possible areas of consensus, and may subsequently notice a proposed rule to codify guidance it develops regarding the definition of publication as a result of this process.[5]

I. Background

(A) Statutory and Regulatory Usage of ''Publication''

The Copyright Act defines publication as ''the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending.'' 17 U.S.C. 101. Publication includes the actual distribution of such copies or phonorecords or the offer to distribute such copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, however a ''public performance or display of a work does not of itself constitute publication.'' *Id.* While the definition of ''publication'' may have provided sufficient clarity when the Copyright Act was enacted in 1976, adapting this definition to the modern electronic era has proven challenging. Congress could not have anticipated the technological changes in the ensuing four decades that have enabled copyright owners to make copies of their works accessible to the general public worldwide with a single keystroke.[6]

(1) Published Versus Unpublished Works

Applying the statutory definition of ''publication'' to works that have been posted online is particularly important because publication is a central concept in copyright law from which many significant legal consequences flow:[7]

(1) Whether a work is published and, if so, the date of first publication can have far-reaching consequences for a work. For example, registration of a work before publication or within five years of first publication constitutes *prima facie* evidence of the validity of the copyright and the facts stated on the certificate. 17 U.S.C. 410(c).[8]

(2) A copyright owner is generally eligible to recover attorneys' fees and statutory damages, rather than having to prove actual damages or entitlement to defendant's profits, only if it has registered its copyright before the alleged infringement commenced. Congress provided an exception to this rule in the form of a three month grace period for published works, allowing copyright owners to recover attorneys' fees and statutory damages for pre-registration infringement when registration is made within three months of first publication. 17 U.S.C. 412.[9]

(3) Although omission of a copyright notice from published copies of a work on or after March 1, 1989 no longer results in copyright forfeiture, a defendant who had access to a copy of the work that includes a copyright notice cannot typically claim that any infringement of that work was innocent. 17 U.S.C. 401(d).

(4) The term of copyright for works made for hire, anonymous works, and pseudonymous works is the shorter of ninety-five years from the date of publication or one hundred twenty years from the date of creation. 17 U.S.C. 302(c).

(5) Authors or their heirs have a right to terminate transfers of copyright that cover the right of publication and were effected after January 1, 1978 during a five-year period that begins at the earlier of thirty-five years from the date of first publication or forty years from the date of the transfer. 17 U.S.C. 203(a)(3).

(6) One factor in the fair use analysis is the ''nature of the work,'' which contemplates, in part, whether the work had previously been published, with the scope of fair use being narrower with respect to unpublished works in recognition of an author's right to control the date of first publication. 17 U.S.C. 107.[10]

(2) Location of Publication

The locations in which a work has been published can also have important legal consequences with respect to copyright issues. First, a work's eligibility for copyright protection under U.S. law may depend in part on whether it is published and, if so, the country of first publication. Unpublished works that are original works of authorship fixed in a tangible medium of expression are eligible for U.S. copyright protection, regardless of the author's nationality or domicile or where the work was created. 17 U.S.C. 102(a),104(a). In contrast, published original works of authorship are only subject to U.S. copyright law under

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Registration Modernization, at 35 (Jan. 15, 2019) (citing *Elliott* v. *Gouverneur Tribune Press, Inc.,* 2014 WL 12598275, at *3 (N.D.N.Y. Sept. 29, 2014) to highlight conflicting opinions on the question of whether publication on the internet constitutes ''publication'' for the purposes of registering images as published or unpublished; providing an Appendix of frequently asked questions of the CVA that relate to publication).

[5] The Office previously indicated this notice was forthcoming in various public documents. Letter from Karyn A. Temple, Acting Register of Copyrights and Dir., U.S. Copyright Office to Lindsey Graham, Chairman, Comm. on the Judiciary, U.S. Senate, and Dianne Feinstein, Ranking Member, Comm. on the Judiciary, U.S. Senate (Jan. 18, 2019) at 11, *https://www.copyright.gov/policy/visualworks/senate-letter.pdf;* Letter from Karyn A. Temple, Acting Register of Copyrights and Dir., U.S. Copyright Office to Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, and Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives (Jan. 18, 2019) at 11, *https://www.copyright.gov/policy/visualworks/house-letter.pdf;* 84 FR 3693, 3696 (Feb. 13, 2019); Letter from Karyn A. Temple, Acting Register of Copyrights and Dir., U.S. Copyright Office to Thom Tillis, Chairman, Subcomm. on Intellectual Property, U.S. Senate, and Christopher A. Coons, Ranking Member, Subcomm. on Intellectual Property, U.S. Senate (May 31, 2019) at 41–42, *https://www.copyright.gov/laws/hearings/response-to-march-14-2019-senate-letter.pdf;* Letter from Karyn A. Temple, Acting Register of Copyrights and Dir., U.S. Copyright Office to Jerrold Nadler, Chairman, Comm. on the Judiciary, U.S. House of Representatives, and Doug Collins, Ranking Member, Comm. on the Judiciary, U.S. House of Representatives (May 31, 2019) at 41–42, *https://www.copyright.gov/laws/hearings/response-to-april-3-2019-house-letter.pdf.*

[6] The Digital Millennium Copyright Act did not amend the definition of ''publication'' or otherwise comment on online publication. Pub. L. 105–304, 112 Stat. 2860 (1998).

[7] Under the 1909 Copyright Act, state copyright law generally governed protection for unpublished works. Copyright owners could secure federal copyright protection for certain types of unpublished works by registering them with the Copyright Office, and federal copyright law also applied if the work was published with a notice of copyright. Copyright Act of 1909, ch. 320, sec. 9, 35 Stat. 1075, 1077 (repealed 1976). Publication of a work without the requisite formalities resulted in the loss of copyright protection. Under the 1976 Act, federal copyright law governs all original works fixed in a tangible medium of expression whether they are published or not. 17 U.S.C. 102(a).

[8] A court may exercise its discretion to determine how much evidentiary weight to accord to a work not registered within five years of first publication.

[9] Exceptions to this rule apply for authors claiming violations of their moral rights and for infringement actions involving preregistered works. *See* 17 U.S.C. 408(f), 412.

[10] *See, e.g., Harper & Row Publishers, Inc.* v. *Nation Enters.,* 471 U.S. 539, 564 (1985) (holding that publication of excerpts from unreleased manuscript was not fair use).

certain circumstances.[11] 17 U.S.C. 104(b).

Second, and separate from whether a work is eligible for copyright protection under U.S. law, before a copyright owner can commence an action for infringement of a United States work, the Copyright Office must either register the claim to copyright or else refuse to register the claim. 17 U.S.C. 411(a); *Fourth Estate Public Benefit Corp.* v. *Wall-Street.com,* 586 U.S. –, 203 L.Ed. 2d 147 (2019). Therefore, access to court may depend on whether a work is considered a United States work or a foreign work, and publication is a key concept in making that determination. *See, e.g., UAB* ''*Planner5D*'' v. *Facebook, Inc.,* 2019 WL 6219223 (N.D. Cal. Nov. 21, 2019) (dismissing copyright infringement claims where plaintiff failed to allege adequately that its work was a registered United States work or exempted from registration requirement as a foreign work). An unpublished work is a United States work if all of the authors of the work are nationals, domiciliaries, or habitual residents of the United States. 17 U.S.C. 101 (definition of ''United States work''). Whether a published work is a United States work, however, depends largely on the country in which the work was first published. *Id.*[12]

Third, whether a work is published and the country of first publication also influence whether a work whose copyright was lost due to lack of compliance with formalities or lack of national eligibility may be eligible for restoration under U.S. law. *See* 17 U.S.C. 104A.

Fourth, a copyright owner must deposit two copies of most works that are published in the United States with the Library of Congress, but this obligation does not attach to non-U.S. works or unpublished works. 17 U.S.C. 407(a)–(b).[13]

(3) Treatment of Publication Status in the Copyright Registration Process

As noted, the Copyright Act requires an applicant for a copyright registration to state, among other things, whether a work has been published, along with the date and nation of its first publication. 17 U.S.C. 409(8). While the Register has regulatory authority to modify certain registration requirements, *compare* 17 U.S.C. 407(c) (permitting Register to exempt certain categories of material from statutory deposit requirements), the Office may not waive this statutory requirement under section 409(8). The Copyright Act also requires the Register of Copyrights to create a group registration option for works by the same individual author that are first published as contributions to periodicals within a twelve month period, in connection with which applicants are required to identify each work and its date of first publication. 17 U.S.C. 408(c)(2).[14]

Other copyright regulations relating to the registration process also require applicants to determine whether a work or group of works has been published. For example, groups of up to 750 *unpublished* photographs created by the same author for whom the copyright claimant is the same can be registered with one application and filing fee. 37 CFR 202.4(h). Similarly, groups of up to 750 *published* photographs created by the same author and for whom the copyright claimant is the same can be registered with one application and filing fee. 37 CFR 202.4(i). Due to the technical constraints of the Office's current registration system and the statutory requirement of section 409(8), there is no group registration option that allows published and unpublished photographs to be registered together within the same application. Similarly, groups of up to ten unpublished works in certain categories may be registered with one application and filing fee if the author and claimant information is the same for all of the works. 37 CFR 202.4(c). And a group of serials or newspaper issues that are all-new collective works that were not published prior to the publication of that issue may be registered with one application under certain circumstances. 37 CFR 202.4(d) through (e). Like photographs, there are currently no methods for registering published and unpublished works in these categories in one group application.

A recent Ninth Circuit case illustrates the consequences an applicant may face if it incorrectly indicates on an application for a copyright registration that the work at issue is unpublished. In *Gold Value International Textile, Inc.* v. *Sanctuary Clothing, LLC,* 925 F.3d 1140 (9th Cir. 2019), the court affirmed the district court's finding that a copyright registration was invalid with respect to the work at issue where the application stated the work was unpublished despite the applicant's knowledge at the time of facts that the court determined constituted publication. Unlike other cases in which the Register has responded to requests pursuant to 17 U.S.C. 411(b), a supplementary registration could not have corrected the error in this case because the registration at issue covered a collection of unpublished works, and a published work could not be registered as part of an unpublished collection.[15] *Id.* at 1148. The court affirmed dismissal of the complaint based on the lack of a valid registration, as well as the award of over $120,000 in attorneys' fees to defendants as the prevailing parties. *Id.* at 1148–49.

(B) The Meaning of ''*Publication*''

(1) Legislative History

The 1976 Copyright Act House Report notes that, although publication would play a less central role in copyright law under the 1976 Act than it had under the 1909 Act, ''the concept would still have substantial significance under provisions throughout the bill. . . .'' H.R. Rep. No. 94–1476, at 138 (1976). The legislative history of the 1976 Copyright Act also provides guidance regarding Congress' interpretation of the statutory definition of the term ''publication.'' The 1976 Copyright Act House Report explains that under the definition included in the Act, a work would be considered published if ''one or more copies or phonorecords embodying it are distributed to the public—that is generally to persons under no explicit or implicit restrictions with respect to disclosure of its contents—without regard to the manner

[11] Such circumstances include: (1) If one or more of the authors is a national or domiciliary of the United States or a country that is a party to a copyright treaty to which the United States is a party (a ''treaty party''), (2) if the work is first published in the United States or in a foreign nation that is a treaty party, or (3) if within 30 days after first publication in a non-treaty party, the work is published in the United States or in a foreign nation that is a treaty party. 17 U.S.C. 104(b).

[12] Specifically, a published work is considered a U.S. work if it was first published (i) in the United States; (ii) simultaneously in the United States and a treaty party whose law grants a term of copyrighted protection that is not shorter than the term provided under U.S. law; (iii) simultaneously in the United States and a foreign nation that is not a treaty party; or (iv) in a foreign nation that is not a treaty party and all of the authors of the work are nationals, domiciliaries or habitual residents of the United States. 17 U.S.C. 101 (definition of ''United States work'').

[13] Works published in the United States that are available only online are generally exempted by regulation from the mandatory deposit requirements of section 407(a).

[14] The regulations that were subsequently established for this group option can be found at 37 CFR 202.4(g).

[15] The option to register a collection of unpublished works was subsequently discontinued and replaced by a group registration option for unpublished works, which allows registration of up to ten unpublished works in the same administrative class created by the same author or authors, who must also be the copyright claimants, and for which the authorship statement for each author is the same. *See* 37 CFR 202.4(c).

in which the copies or phonorecords changed hands.'' H.R. Rep. No. 94–1476, at 138 (1976).[16] The House Report also explains that the distinction between the public distribution of a work, which constitutes publication, and the performance or display of a work, which does not constitute publication, is based upon whether a material object would change hands. *Id.* (referencing definition of ''publication'' in 17 U.S.C. 101). The definition of ''publication'' was intended to clarify that ''any form of dissemination in which a material object does not change hands—performances or displays on television, for example—is not a publication no matter how many people are exposed to the work.'' [17] *Id.*

The House Report also notes that Congress provided the right ''to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending'' as one of the exclusive rights of a copyright owner in section 106 of the Copyright Act. *Id.* at 62 (referencing 17 U.S.C. 106(3)). The Report describes this exclusive right as ''the right to control the first public distribution of an authorized copy or phonorecord of his work'' and explains that any unauthorized public distribution of copies would be an infringement. *Id.*

(2) Case Law: Electronic Works

It is well-settled that electronic files are capable of being published as defined by the Copyright Act. To the extent that publication requires transferring or offering to transfer a material object, electronic files saved on a server, hard drive or disk constitute material objects, such that they meet the ''copies'' requirement inherent in the definition of publication. Courts have routinely found that electronic transmission of a work constitutes distribution.[18] Because the Copyright Act defines publication to include the distribution of copies or phonorecords to the public, it follows that the electronic transmission of copies of a work constitutes publication of that work if the other requirements of publication were satisfied.

Judicial opinions addressing the definition of publication in the online context are not uniform. Some courts have held that merely posting a work on a publicly accessible website constitutes publication. For example, in *Getaped.com, Inc.* v. *Cangemi,* 188 F. Supp. 2d 398, 402 (S.D.N.Y. 2002), the court held that the posting of content on a website constituted publication because ''merely by accessing a web page, an internet user acquires the ability to make a copy of that web page, a copy that is, in fact, indistinguishable in every part from the original. Consequently, when a website goes live, the creator loses the ability to control either duplication or further distribution of his or her work.'' The court reasoned that unlike a public display or performance, the public has the ability to download a file from a website and gain a possessory interest in it. *Id.* at 401–02. Other courts have adopted *Getaped*'s holding that the act of posting a work to a website constitutes publication.[19] These courts have not addressed, however, whether a rule that bases publication solely on the technical ability of users to duplicate or further distribute a work posted on the internet is inconsistent with the established principle that publication requires the copyright owner's authorization. *See Compendium (Third)* sec. 1902. Indeed, copying or distributing such a work without the copyright owner's permission would (absent a defense) constitute infringement—a result that is difficult to reconcile with the notion that the copyright owner published the work merely by posting it online.[20]

In contrast, other courts have taken the position that merely posting a digital file on the internet does not constitute publication. For example, in *Einhorn* v. *Mergatroyd Productions,* the court held that posting a digital file of a performance of a theatrical production on the internet did not amount to publication because it did not involve a transfer of ownership, rental, lease or lending. 426 F. Supp. 2d 189, 197 (S.D.N.Y. 2006). Another court in the same district held that allegations that a collection of drawings were posted on a website were insufficient to plead that the drawings were published under the Copyright Act. *McLaren* v. *Chico's FAS, Inc.,* 2010 WL 4615772, at *4 (S.D.N.Y. Nov. 9, 2010). Likewise, in *Moberg* v. *33T, LLC,* the court determined that a Swedish photographer's posting of copyrighted works on a German website did not constitute simultaneous, global publication as a matter of law and the work could not be considered a ''United States work'' that was subject to the registration requirement of section 411(a) prior to filing suit. 666 F. Supp. 2d 415, 422 (D. Del. 2009). The court reasoned that treating the uploading of a work on a website to be simultaneous publication in every jurisdiction in which the website is accessible would effectively subject copyright owners from other countries to the formalities of U.S. copyright law, contrary to the purpose of the Berne Convention. *Id.* at 422–23.

Rather than endorsing a bright line test, the Eleventh Circuit, the only Circuit Court to rule specifically on the issue, opined that publication is a fact-specific inquiry. In *Kernal Records Oy* v. *Mosley,* the court held that determining whether a work has been published requires an examination of ''the method, extent, and purpose of the alleged distribution,'' and determining whether a work was first published outside the United States requires an examination of ''both the timing and geographic extent of the first publication.'' 694 F.3d 1294, 1304 (11th Cir. 2012). The court explained that a copyright owner can make a work available ''online'' in many ways, including by sending the work to specific recipients through email, as well as posting it on a restricted website, a peer-to-peer network, or a public website, and each of the methods raises different wrinkles as to whether the work has been published. *Id.* at 1305. Because the evidence presented by the defendant established only that the work had been posted in an ''internet publication'' and an ''online magazine,'' from which it was not evident that the work had been made available on a public website or that it had been simultaneously published in Australia and the United States,

[16] *See also* H.R. Rep. No. 94–1476, at 61 (1976) (noting that ''[t]he reference to 'copies or phonorecords,' although in the plural, are intended here and throughout the bill to include the singular'').

[17] This language distinguished distribution and publication (which allow for possession of a copy of a work) from performance or display (which allow only for a work to be perceived). It does not reflect a requirement that an ''actual'' distribution of a work occur to constitute publication.

[18] *See, e.g., New York Times Co.* v. *Tasini,* 533 U.S. 483 (2001) (stating that placement of electronic copies of articles in a database constituted distribution of copies of those articles as defined by the Copyright Act); *Metro–Goldwyn–Mayer* v. *Grokster,* 545 U.S. 913 (2005) (noting that ''peer-to-peer networks are employed to store and distribute electronic files'' and that peer-to-peer software ''enable[d] users to reproduce and distribute the copyrighted works in violation of the Copyright Act.''); *London–Sire Records, Inc.* v. *Doe 1,* 542 F. Supp. 2d 153, 170–72 (D. Mass. 2008) (''[a]n electronic file transfer is plainly within the sort of transaction that § 106(3) [the distribution right] was intended to reach.'').

[19] *See, e.g., UAB ''Planner5D''* v. *Facebook, Inc.,* 2019 WL 6219223, at *7 (N.D. Cal. Nov. 21, 2019) (holding that plaintiff failed to plead adequately that works posted on a website were merely displayed and therefore unpublished where it had not alleged facts that show that the website contained features that prevented users from copying the works); *New Show Studios, LLC* v. *Needle,* 2016 WL 5213903, at *7 (C.D. Cal. Sept. 20, 2016); *William Wade Waller Co.* v. *Nexstar Broad., Inc.,* 2011 WL 2648584, at *2 (E.D. Ark. July 6, 2011).

[20] Modern technology may also prevent users' practical ability to make copies of certain web pages. *See* 17 U.S.C. 1201(a).

disputed issues of fact prevented summary judgment as to whether the work was a ''United States work.'' *Id.* at 1306–07. Similarly, in *Rogers* v. *Better Business Bureau of Metropolitan Housing, Inc.,* the Southern District of Texas held that the fact intensive nature of the publication inquiry precluded the court from finding as a matter of law that the plaintiff distributed copies of the works at issue when he uploaded them to the internet. 887 F. Supp. 2d 722, 730 (S.D. Tex. 2012). ''Absent binding law or even a clear consensus in case law directly related to the posting of a website online,'' the court stated it was reluctant to find, as a matter of law, that the plaintiff distributed copies of the websites when he uploaded them to the internet, which was a determination it recognized ''would have wide-ranging effects on the rights of authors and users, including copyright duration, country of publication, time limits, deposit requirements with the Library of Congress, and fair use.'' *Id.* at 731–32, n.34.

(3) Copyright Office Guidance

The Copyright Office ''will accept the applicant's representation that website content is published or unpublished, unless that statement is implausible or is contradicted by information provided elsewhere in the registration materials or in the Office's records or by information that is known to the registration specialist.'' *Compendium (Third)* sec. 1008.3(F). To aid applicants in determining whether a work has been published, the Copyright Office provides guidance on a variety of issues relating to the issue of publication based on the statutory definition and the Copyright Act's legislative history. Consistent with the law, the Office does not consider a work to be published if it is merely displayed or performed online. *Compendium (Third)* sec. 1008.3(C). The *Compendium* provides that publication occurs when one or more copies or phonorecords are distributed to a member of the public who is not subject to any restrictions concerning the disclosure of the content of the work. *Compendium (Third)* sec. 1905.1. Consistent with the statutory definition, the *Compendium* provides that publication can be accomplished through transfer of ownership of the work or rental, lease, or lending of copies of the work, or by offering to distribute copies of a work to a group of persons for the purpose of further distribution, public performance or public display. *Compendium (Third)* sec. 1905.2, 1906.

The 1976 Copyright Act ''recognized for the first time a distinct statutory right of first publication.'' *Harper & Row, Publishers, Inc.* v. *Nation Enterprises,* 471 U.S. 539, 552 (1985). This right allows the copyright owner to decide when, where and in what form to first publish a work, or whether to publish it at all. *Id.* at 553; *see also,* H.R. Rep. No. 94–1476, at 61 (''The exclusive rights accorded to a copyright owner under section 106 are 'to do and to authorize' any of the activities specified in the five numbered clauses.''). Thus, the *Compendium* recognizes that publication only occurs if the distribution or offer to distribute copies is made ''by or with the authority of the copyright owner.'' *Compendium (Third)* sec. 1902. The Office therefore does not consider a work to be published if it is posted online without authorization from the copyright owner. *Compendium (Third)* sec. 1008.3(F).

The Office considers a work published if it is made available online and the copyright owner authorizes the end user to retain copies of that work. *Compendium (Third)* sec. 1008.3(B). ''A critical element of publication is that the distribution of copies or phonorecords to the public must be authorized by the copyright owner. . . . To be considered published, the copyright owner must expressly or impliedly authorize users to make retainable copies or phonorecords of the work, whether by downloading, printing, or by other means.'' *Compendium (Third)* sec. 1008.3(C). For instance, a work that is expressly authorized for download by members of the public by including a ''Download Now'' button, is considered published. *Compendium (Third)* sec. 1008.3(F). If the website on which a work is posted contains an obvious notice, including in the terms of service, indicating that a work cannot be downloaded, printed or copied, the work may be deemed unpublished. *Id.*

The Copyright Office also considers a work published if the owner makes copies available online and offers to distribute them to intermediaries for further distribution, public performance, or public display. *Compendium (Third)* sec. 1008.3(B); *see also,* H.R. Rep. No. 94–1476, at 138 (''On the other hand, the definition also makes clear that, when copies or phonorecords are offered to a group of wholesalers, broadcasters, motion pictures, etc., publication takes place if the purpose is 'further distribution, public performance, or public display.' ''). For instance, a sound recording that has been offered by the copyright owner for distribution to multiple online streaming services and a photograph that has been offered by the copyright owner to multiple stock photo companies for purposes of further distribution would be considered published. *Compendium (Third)* sec. 1008.3(B).

(4) Commentary

Several copyright treatises opine on how to apply the statutory definition of publication to modern circumstances. David Nimmer explains that although the statutory definition of the term ''publication'' does not explicitly state that the copyright owner must authorize the distribution of the copies or phonorecords, such authorization can be implied because ''Congress could not have intended that the various legal consequences of publication under the current Act would be triggered by the unauthorized act of an infringer or other stranger to the copyright.'' David Nimmer & Melville Nimmer, *1 Nimmer on Copyright* sec. 4.03 (2019). Nimmer does not take a definitive position on whether works that have been posted on the internet have been published—but asserts that this question must be considered within the context that the *sine qua non* of publication is allowing members of the public to acquire a possessory interest in tangible copies of a work. *Id.* at 4.07.

William Patry states that the Section 411(a) registration requirement raises ''tricky questions'' concerning first publication for works posted on the internet. William F. Patry, *3 Patry on Copyright* sec. 6:55.40 (2019). Patry notes that the Berne Convention is non-self-executing, and that the Copyright Act does not define simultaneous publication; therefore, it is up to the courts to decide what ''simultaneous publication'' means, so long as their definition is consonant with the general definition of ''publication'' outlined in the Copyright Act. *Id.* Patry agrees with the general approach the Eleventh Circuit took in *Kernal Records* of focusing on the ''particular factual distribution'' as opposed to crafting a rule that ''all 'internet' publication is a global general publication.'' *Id.*

In his treatise, Paul Goldstein argues that dissemination over the internet without limits on copying should be held to constitute publication. Paul Goldstein, *Goldstein on Copyright* sec. 3.3.3 (3d ed. 2016). Goldstein points to several reasons that counsel in favor of this result. First, because the copyright term for works made for hire is 95 years from publication, or 120 years from creation, to treat internet works as ''unpublished'' would effectively extend copyright protection for many internet

works for an additional 25 years. *Id.* Second, considering internet works to be ''unpublished'' would dilute incentives to early and regular registration of claims to copyright. *Id.* Finally, one reason that Congress deemed broadcast performances or other traditional performances and displays not to constitute publication was that they could not be readily or accurately reproduced at the time when the 1976 Copyright Act was drafted. In contrast, a vast array and quantity of content can be cheaply and accurately downloaded from the internet. *Id.*

Others have opined on matters relating to publication. For example, Thomas F. Cotter recommends that Congress consider whether there is a different date, for example the date of creation, that may be preferable to trigger some or all of the consequences that currently flow from publication. Thomas F. Cotter, *Toward a Functional Definition of Publication in Copyright Law,* 92 Minn. L. Rev. 1724, 1789 (2008). In the meantime, he suggests that courts apply a broad definition of publication to trigger time periods that begin to run on the date of first publication and for the purpose of a fair use analysis but a narrower definition of publication for imposing a duty to deposit and determining a work's country of origin and place of first publication. *Id.* at 1793.

(C) Illustrative Challenges in Applying Statutory Definition to Modern Context

In the online environment, each new feature or application can raise additional wrinkles regarding publication. For example, the Office regularly receives questions regarding whether works that have been transmitted by email, link, and/or through streaming are distributions of a work that transfer ownership, such that they constitute publication, or are more closely akin to public performance or display of a work, which does not of itself constitute publication.

Consider the ubiquitous ability to post works on traditional websites or social media, such as posting a photograph to a Facebook page or Instagram account. Must the photographer actively demonstrate his/her authorization to copying, printing, downloading or further distribution of a work for the photograph to be considered published? Is an affirmative statement permitting users to copy, print, download or further distribute the work required for a work posted on a public website to be considered published, or can we infer consent of the author to these actions absent an explicit statement prohibiting copying, printing, downloading or distribution of the work? Similarly, does the posting of a work on a public website that assists users in some manner in downloading, printing, copying, or transmitting the work constitute publication, or can we infer from the posting of a work without any safeguards to prevent such actions that the owner consents to these actions such that work is published? Is it sufficient for a copyright owner to have generally authorized the posting of the work on the public website or must the copyright owner have specifically authorized downloading, printing, copying and/or further distribution of the work?

Online Terms of Service also raise questions about whether a copyright owner has authorized copying, printing, downloading or distribution of its works. For example, does joining a social media platform whose terms of service provide that the social media platform or its users obtain a license to download, copy, print, and/or further distribute any content posted on the platform constitute authorization to other users to download, copy, print and/or redistribute any works subsequently posted on that platform? Where a social media platform provides tools for redistributing content (*e.g.* Twitter's ''retweet'' button, Facebook's ''share'' button, or Instagram's ''add post to your story'' button), have all members of that platform authorized the further distribution of works they post on that platform such that those works should be considered published?

The ability to transmit works widely with the click of a single button raises still other questions. If the posting of a work on a public website constitutes publication in certain circumstances, is the work simultaneously published in all jurisdictions from which the work is accessible? Does the concept of limited publication apply in the context of online publication? Is there a threshold number of people who must be able to access an online work for the work to be considered published? For example, is a work that is posted on a beta site that is being tested by a select group, or on a closed or private social media group published? How might a Facebook user's choice to allow only friends, or friends of friends, or the general public to access materials posted on their profile affect the analysis of whether a posted work has been published?

II. Subjects of Inquiry

The Office invites written comments on the general subjects below. The Office seeks to propose a regulation interpreting the statutory definition of publication for registration purposes and to provide enhanced policy guidance, such as in revisions to the *Compendium* and/or Copyright Office circulars. Where possible, comments should be tailored to actions that are within the purview of the Office's regulatory authority, within the scope of the existing Copyright Act. If a party is proposing an action beyond the Office's authority, such as a statutory amendment or change to existing statutory language, the comment should explicitly so state. A party choosing to respond to this notice of inquiry need not address every subject, but the Office requests that responding parties clearly identify and separately address each subject for which a response is submitted. In responding, please identify your particular interest in and experience with these issues.

1. Section 409(8) of the Copyright Act requires applicants to indicate the date and nation of first publication if the work has been published. What type of regulatory guidance can the Copyright Office propose that would assist applicants in determining whether their works have been published and, if so, the date and nation of first publication for the purpose of completing copyright applications? In your response, consider how the statutory definition of publication applies in the context of digital on-demand transmissions, streaming services, and downloads of copyrighted content, as well as more broadly in the digital and online environment.

2. Specifically, should the Copyright Office propose a regulatory amendment or provide further detailed guidance that would apply the statutory definition of publication to the online context for the purpose of guiding copyright applicants on issues such as:

i. How a copyright owner demonstrates authorization for others to distribute or reproduce a work that is posted online;

ii. The timing of publication when copies are distributed and/or displayed electronically;

iii. Whether distributing works to a client under various conditions, including that redistribution is not authorized until a ''final'' version is approved, constitutes publication and the timing of such publication;

iv. Whether advertising works online or on social media constitutes publication; and/or

v. Any other issues raised in section I(C) above.

3. Can and should the Copyright Office promulgate a regulation to allow copyright applicants to satisfy the registration requirements of section 409

by indicating that a work has been published ''online'' and/or identifying the nation from which the work was posted online as the nation of first publication, without prejudice to any party subsequently making more specific claims or arguments regarding the publication status or nation(s) in which a work was first published, including before a court of competent jurisdiction? [21]

4. Applicants cannot currently register published works and unpublished works in the same application. Should the Copyright Office alter its practices to allow applicants who pay a fee to amend or supplement applications to partition the application into published and unpublished sections if a work (or group of works) the applicant mistakenly represented was either entirely published or unpublished in an initial application is subsequently determined to contain both published and unpublished components? What practical or administrative considerations should the Office take into account in considering this option?

5. For certain group registration options, should the Copyright Office amend its regulations to allow applicants in its next generation registration system to register unpublished and published works in a single registration, with published works marked as published and the date and nation of first publication noted? What would the benefits of such a registration option be, given that applicants will continue to be required to determine whether each work has been published prior to submitting an application? What practical or administrative considerations should the Office take into account in considering this option?

7. Is there a need to amend section 409 so that applicants for copyright registrations are no longer required to identify whether a work has been published and/or the date and nation of first publication, or to provide the Register of Copyrights with regulatory authority to alter section 409(8)'s requirement for certain classes of works?

8. Is there a need for Congress to take additional steps with respect to clarifying the definition of publication in the digital environment? Why or why not? For example, should Congress consider amending the Copyright Act so that a different event, rather than publication, triggers some or all of the consequences that currently flow from a work's publication? If so, how and through what provisions?

9. The Copyright Office invites comment on any additional considerations it should take into account relating to online publication.

Dated: November 26, 2019.

Regan A. Smith,

General Counsel and Associate Register of Copyrights.

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BILLING CODE 1410–30–P

[21] *Compare* 37 CFR 201.4(g) (''The fact that the Office has recorded a document is not a determination by the Office of the document's validity or legal effect. Recordation of a document by the Copyright Office is without prejudice to any party claiming that the legal or formal requirements for recordation have not been met, including before a court of competent jurisdiction.'').

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2019–0329; FRL–10002–76–Region 4]

Air Plan Approval; GA; 2010 1-Hour SO_2 NAAQS Transport Infrastructure

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve Georgia's January 9, 2019, State Implementation Plan (SIP) submission pertaining to the ''good neighbor'' provision of the Clean Air Act (CAA or Act) for the 2010 1-hour sulfur dioxide (SO_2) National Ambient Air Quality Standard (NAAQS). The good neighbor provision requires each state's implementation plan to address the interstate transport of air pollution in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of a NAAQS in any other state. In this action, EPA is proposing to determine that Georgia will not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO_2 NAAQS in any other state. Therefore, EPA is proposing to approve the January 9, 2019, SIP revision as meeting the requirements of the good neighbor provision for the 2010 1-hour SO_2 NAAQS.

DATES: Written comments must be received on or before January 3, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2019–0329 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Notarianni can be reached via phone number (404) 562–9031 or via electronic mail at *notarianni.michele@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Infrastructure SIPs

On June 2, 2010, EPA promulgated a revised primary SO_2 NAAQS with a level of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. *See* 75 FR 35520 (June 22, 2010). Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This particular type of SIP submission is commonly referred to as an ''infrastructure SIP.'' These submissions must meet the various requirements of CAA section 110(a)(2), as applicable.

Section 110(a)(2)(D)(i)(I) of the CAA requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. The two clauses of this section are referred to as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance of the NAAQS).

On January 9, 2019, the Georgia Department of Natural Resources, through the Georgia Environmental Protection Division (GA EPD), submitted a revision to the Georgia SIP addressing only prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO_2 NAAQS.[1] EPA is proposing to approve GA EPD's January 9, 2019, SIP submission because the State demonstrated that Georgia will not contribute significantly to nonattainment, or interfere with maintenance, of the 2010 1-hour SO_2 NAAQS in any other state. All other elements related to the infrastructure requirements of section 110(a)(2) for the 2010 1-hour SO_2 NAAQS for Georgia were addressed in separate rulemakings.[2]

B. 2010 1-Hour SO_2 NAAQS Designations Background

In this action, EPA has considered information from the 2010 1-hour SO_2 NAAQS designations process, as discussed in more detail in section III.C of this notice. For this reason, a brief summary of EPA's designations process for the 2010 1-hour SO_2 NAAQS is included here.[3]

After the promulgation of a new or revised NAAQS, EPA is required to designate areas as ''nonattainment,'' ''attainment,'' or ''unclassifiable,'' pursuant to section 107(d)(1) of the CAA. The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d) of the CAA. The CAA requires EPA to complete the initial designations process within two years of promulgating a new or revised standard. If the Administrator has insufficient information to make these designations by that deadline, EPA has the authority to extend the deadline for completing designations by up to one year.

EPA promulgated the 2010 1-hour SO_2 NAAQS on June 2, 2010. *See* 75 FR 35520 (June 22, 2010). EPA completed the first round of designations (''round 1'')[4] for the 2010 1-hour SO_2 NAAQS on July 25, 2013, designating 29 areas in 16 states as nonattainment for the 2010 1-hour SO_2 NAAQS. *See* 78 FR 47191 (August 5, 2013).

On August 21, 2015 (80 FR 51052), EPA separately promulgated air quality characterization requirements for the 2010 1-hour SO_2 NAAQS in the Data Requirements Rule (DRR). The DRR required state air agencies to characterize air quality, through air dispersion modeling or monitoring, in areas associated with sources that emitted 2,000 tons per year (tpy) or more of SO_2, or that have otherwise been listed under the DRR by EPA or state air agencies. In lieu of modeling or monitoring, state air agencies, by specified dates, could elect to impose federally-enforceable emissions limitations on those sources restricting their annual SO_2 emissions to less than 2,000 tpy, or provide documentation that the sources have been shut down. EPA expected that the information generated by implementation of the DRR would help inform designations for the 2010 1-hour SO_2 NAAQS that must be completed by December 31, 2020 (''round 4'').[5] EPA signed **Federal Register** notices of promulgation for round 2 designations[6] on June 30, 2016 (81 FR 45039 (July 12, 2016)), and on November 29, 2016 (81 FR 89870 (December 13, 2016)), and round 3 designations[7] on December 21, 2017 (83 FR 1098 (January 9, 2018)).

Currently, there are no nonattainment areas for the 2010 1-hour SO_2 NAAQS in Georgia. One area in Floyd County, Georgia, will be designated in round 4.[8] The remaining counties in Georgia were designated as attainment/unclassifiable in rounds 2 and round 3.

II. Relevant Factors Used To Evaluate 2010 1-Hour SO_2 Interstate Transport SIPs

Although SO_2 is emitted from a similar universe of point and nonpoint sources as is directly emitted fine particulate matter ($PM_{2.5}$) and the precursors to ozone and $PM_{2.5}$, interstate transport of SO_2 is unlike the transport of $PM_{2.5}$ or ozone because SO_2 emissions sources usually do not have long range SO_2 impacts. The transport of SO_2 relative to the 2010 1-hour SO_2 NAAQS is more analogous to the transport of lead (Pb) relative to the Pb NAAQS in that emissions of SO_2 typically result in 1-hour pollutant impacts of possible concern only near the emissions source. However, ambient 1-hour concentrations of SO_2 do not decrease as quickly with distance from the source as do 3-month average concentrations of Pb, because SO_2 gas is not removed by deposition as rapidly as are Pb particles and because SO_2 typically has a higher emissions release height than Pb. Emitted SO_2 has wider ranging impacts than emitted Pb, but it does not have such wide-ranging impacts that treatment in a manner similar to ozone or $PM_{2.5}$ would be appropriate. Accordingly, while the approaches that EPA has adopted for ozone or $PM_{2.5}$ transport are too regionally focused, the approach for Pb transport is too tightly circumscribed to the source. SO_2 transport is therefore a unique case and requires a different approach. In SO_2 transport analyses, EPA focuses on a 50 kilometer (km)-wide zone because the physical properties of SO_2 result in relatively localized pollutant impacts near an emissions source that drop off with distance.

In its July 31, 2019, SIP submission, GA EPD identified a distance threshold to reflect the transport properties of SO_2. GA EPD selected a spatial scale with dimensions from four to 50 km from point sources—the ''urban scale''—as appropriate in assessing trends in both

[1] In an October 22, 2013, SIP submission, as supplemented on July 25, 2014, GA EPD submitted SIP revisions addressing all infrastructure elements with respect to the 2010 1-hour SO_2 NAAQS with the exception of prongs 1 and 2 of CAA 110(a)(2)(D)(i)(I).

[2] EPA acted on the other elements of Georgia's October 22, 2013, SIP submission, as supplemented on July 25, 2014, for the 2010 1-hour SO_2 NAAQS on April 28, 2016 (81 FR 25355).

[3] While designations may provide useful information for purposes of analyzing transport, particularly for a more source-specific pollutant such as SO_2, EPA notes that designations themselves are not dispositive of whether or not upwind emissions are impacting areas in downwind states. EPA has consistently taken the position that as to impacts, CAA section 110(a)(2)(D) refers only to prevention of 'nonattainment' in other states, not to prevention of nonattainment in designated nonattainment areas or any similar formulation requiring that designations for downwind nonattainment areas must first have occurred. *See e.g.,* Clean Air Interstate Rule, 70 FR 25162, 25265 (May 12, 2005); Cross-State Air Pollution Rule, 76 FR 48208, 48211 (Aug. 8, 2011); Final Response to Petition from New Jersey Regarding SO_2 Emissions From the Portland Generating Station, 76 FR 69052 (Nov. 7, 2011) (finding facility in violation of the prohibitions of CAA section 110(a)(2)(D)(i)(I) with respect to the 2010 1-hour SO_2 NAAQS prior to issuance of designations for that standard).

[4] The term ''round'' in this instance refers to which ''round of designations.''

[5] Consent Decree, *Sierra Club* v. *McCarthy,* Case No. 3:13–cv–3953–SI (N.D. Cal. Mar. 2, 2015). This March 2, 2015, consent decree requires EPA to sign for publication in the **Federal Register** notices of the Agency's promulgation of area designations for the 2010 1-hour SO_2 NAAQS by three specific deadlines: July 2, 2016 (''round 2''); December 31, 2017 (''round 3''); and December 31, 2020 (''round 4'').

[6] EPA and state documents and public comments related to the round 2 final designations are in the docket at *regulations.gov* with Docket ID No. EPA–HQ–OAR–2014–0464 and at EPA's website for SO_2 designations at *https://www.epa.gov/sulfur-dioxide-designations.*

[7] EPA and state documents and public comments related to round 3 final designations are in the docket at *regulations.gov* with Docket ID No. EPA–HQ–OAR–2017–0003 and at EPA's website for SO_2 designations at *https://www.epa.gov/sulfur-dioxide-designations.*

[8] *See Technical Support Document: Chapter 10: Final Round 3 Area Designations for the 2010 1-Hour SO_2 Primary National Ambient Air Quality Standard for Georgia* at *https://www.epa.gov/sites/production/files/2017-12/documents/10-ga-so2-rd3-final.pdf. See also Technical Support Document: Chapter 10: Proposed Round 3 Area Designations for the 2010 1-Hour SO_2 Primary National Ambient Air Quality Standard for Georgia* at *https://www.epa.gov/sites/production/files/2017-08/documents/10_ga-so2-rd3-final.pdf.*

area-wide air quality and the effectiveness of large-scale pollution control strategies at such point sources. GA EPD supported this choice of transport distance threshold with references to the March 1, 2011, EPA memorandum titled ''Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-hour NO_2 National Ambient Air Quality Standard,'' and noted that GA EPD believes that this guidance memorandum can be applied to 1-hour SO_2 analyses.[9] In its January 9, 2019, SIP submission, GA EPD included a quote from page 16 of this March 1, 2011, EPA memorandum: ''Even accounting for some terrain influences on the location and gradients of maximum 1-hour concentrations, these considerations suggest that the emphasis on determining which nearby sources to include in the modeling analysis should focus on the area within about 10 kilometers of the project location in most cases. The routine inclusion of all sources within 50 kilometers of the project location, the nominal distance for which the American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD) is applicable, is likely to produce an overly conservative result in most cases.'' In addition, the State indicated that GA EPD conducted modeling for the DRR which showed that the highest impacts from sources are typically within 2–5 km from the source and that the impacts past 10 km are ''insignificant.'' GA EPD believes that based on EPA's March 11, 2011, guidance memorandum and GA EPD's SO_2 modeling, an appropriate transport distance for SO_2 from Georgia to neighboring states is 10 km. However, GA EPD stated that Georgia ''will use an extremely conservative transport distance of 50 km in this demonstration to match the distance for which AERMOD is applicable.'' [10]

Given the properties of SO_2, EPA preliminarily agrees with Georgia's selection of the urban scale to assess trends in area-wide air quality that might impact downwind states.[11] As discussed further in section III.B, EPA believes that Georgia's selection of the urban scale is appropriate for assessing trends in both area-wide air quality and the effectiveness of large-scale pollution control strategies at SO_2 point sources. EPA's notes that Georgia's selection of this transport distance for SO_2 is consistent with 40 CFR 58, Appendix D, Section 4.4.4(4) ''Urban scale,'' which states that measurements in this scale would be used to estimate SO_2 concentrations over large portions of an urban area with dimensions from four to 50 km. AERMOD is EPA's preferred modeling platform for regulatory purposes for near-field dispersion of emissions for distances up to 50 km. *See* Appendix W of 40 CFR part 51. Thus, EPA is proposing to concur with Georgia's application of the 50-km threshold to evaluate emission source impacts into neighboring states and to assess air quality monitors within 50 km of the State's border, which is discussed further in section III.C.[12]

As discussed in sections III.C and III.D, EPA first reviewed Georgia's analysis to assess how the State evaluated the transport of SO_2 to other states, the types of information used in the analysis, and the conclusions drawn by the State. EPA then conducted a weight of evidence analysis based on a review of the State's submission and other available information, including SO_2 air quality and available source modeling for monitors and sources in Georgia and in neighboring states within 50 km of the Georgia border.[13]

III. Georgia's SIP Submission and EPA's Analysis

A. State Submission

On January 9, 2019, GA EPD submitted a revision to the Georgia SIP addressing prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO_2 NAAQS. Georgia conducted a weight of evidence analysis to examine whether SO_2 emissions from the State adversely affect attainment or maintenance of the 2010 1-hour SO_2 NAAQS in downwind states.

GA EPD reviewed the following information to support its conclusion that Georgia does not significantly contribute to nonattainment or interfere with maintenance of the 2010 1-hour SO_2 NAAQS in downwind states: Annual SO_2 99th percentile values (2015, 2016, and 2017) and 2017 design values (DVs) [14] at monitors in Georgia and adjacent states within 50 km of Georgia's border; SO_2 emissions trends in Georgia and adjacent states from 1990 to 2017; the fact that EPA designated all counties within 50 km of Georgia's border as attainment/unclassifiable with the exception of Haywood County in North Carolina and a portion of Nassau County in Florida [15] (GA EPD's analysis of Haywood County, North Carolina, and Nassau County, Florida, is described in section III.C.3.a of this notice); and established federal and State control measures which reduce SO_2 emissions in the present and future. Based on this weight of evidence analysis, the State concluded that emissions within Georgia will not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO_2 NAAQS in any other state. EPA's evaluation of Georgia's submission is detailed in sections III.B, C, and D.

B. EPA's Evaluation Methodology

EPA believes that a reasonable starting point for determining which sources and emissions activities in Georgia are likely to impact downwind air quality in other states with respect to the 2010 1-hour SO_2 NAAQS is by using information in EPA's National

[9] EPA's March 1, 2011, memorandum, *Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-hour NO_2 National Ambient Air Quality Standard,* is available at: *https://www.epa.gov/sites/production/files/2015-07/documents/appwno2_2.pdf.*

[10] See page 3 of Georgia's January 9, 2019, SIP submission in the docket for this action.

[11] For the definition of spatial scales for SO_2, please see 40 CFR part 58, Appendix D, section 4.4 (''Sulfur Dioxide (SO_2) Design Criteria''). For further discussion on how EPA applies these definitions with respect to interstate transport of SO_2, *see* EPA's notice of proposed rulemaking on Connecticut's SO_2 transport SIP. 82 FR 21351, 21352, 21354 (May 8, 2017).

[12] Because EPA concurs with Georgia's application of the 50-km threshold, EPA is not addressing Georgia's assertion that impacts of SO_2 beyond 10 km are insignificant.

[13] This proposed approval action is based on the information contained in the administrative record for this action, and does not prejudge any future EPA action that may make other determinations regarding the air quality status in Georgia and downwind states. Any such future action, such as area designations under any NAAQS, will be based on their own administrative records and EPA's analyses of information that becomes available at those times. Future available information may include, and is not limited to, monitoring data and modeling analyses conducted pursuant to EPA's DRR and information submitted to EPA by states, air agencies, and third-party stakeholders such as citizen groups and industry representatives.

[14] A ''Design Value'' is a statistic that describes the air quality status of a given location relative to the level of the NAAQS. The DV for the primary 2010 1-hour SO_2 NAAQS is the 3-year average of annual 99th percentile daily maximum 1-hour values for a monitoring site. The interpretation of the primary 2010 1-hour SO_2 NAAQS including the data handling conventions and calculations necessary for determining compliance with the NAAQS can be found in Appendix T to 40 CFR part 50. The 2017 DV is calculated based on the three year average from 2015–2017.

[15] On April 24, 2019, EPA approved Florida's request, submitted on June 7, 2018, to redesignate the Nassau County area to attainment for the 2010 1-hour SO_2 NAAQS and the accompanying SIP revision containing the maintenance plan for the area. *See* 84 FR 17085. EPA's redesignation of the Nassau Area was based, in part, on a modeled attainment demonstration that included permanent and enforceable SO_2 controls and emissions limits at the Rayonier and WestRock facilities showing attainment of the 2010 SO_2 standard by the statutory deadline.

Emissions Inventory (NEI).[16] The NEI is a comprehensive and detailed estimate of air emissions for criteria pollutants, criteria pollutant precursors, and hazardous air pollutants from air emissions sources that is updated every three years using information provided by the states and other information available to EPA.

EPA evaluated data from the 2014 NEI (version 2), the most recently available, complete, and quality assured dataset of the NEI. As shown in Table 1, the majority of SO_2 emissions in Georgia originate from fuel combustion at point sources.[17] In 2014, SO_2 emissions from point sources [18] in Georgia comprised approximately 91 percent of the total SO_2 emissions in the State, with 81 percent of the State's total SO_2 emissions coming from fuel combustion point sources. Because emissions from the other listed source categories are more dispersed throughout the State, those categories are less likely to cause high ambient concentrations when compared to a point source on a ton-for-ton basis. In addition, EPA considered 2017 statewide SO_2 emissions data in Georgia's SIP submission, which showed that fuel combustion by electric generating units (EGUs) and industrial processes comprised approximately 57 percent of the State's SO_2 emissions in 2017.[19] Based on EPA's analysis of the 2014 NEI and GA EPD's evaluation of 2017 statewide SO_2 emissions data by certain source categories, EPA believes that it is appropriate to focus the analysis on SO_2 emissions from Georgia's larger point sources (*i.e.,* emitting over 100 tpy of SO_2 in 2017), including fuel combustion point sources, which are located within the ''urban scale,'' *i.e.,* within 50 km of one or more state borders.

TABLE 1—SUMMARY OF 2014 NEI (VERSION 2) SO_2 DATA FOR GEORGIA BY SOURCE TYPE

Category	Emissions (tpy)	Percent of total SO_2 emissions
Fuel Combustion: EGUs (All Fuel Types)	65,464.40	64
Fuel Combustion: Industrial Boilers/Internal Combustion Engines (All Fuel Types)	14,152.46	14
Fuel Combustion: Commercial/Institutional (All Fuel Types)	2,833.38	3
Fuel Combustion: Residential (All Fuel Types)	140.30	0
Industrial Processes (All Categories)	10,789.15	11
Mobile Sources (All Categories)	3,077.47	3
Fires (All Types)	4,772.53	5
Waste Disposal	919.03	1
Solvent Processes	0.28	0
Miscellaneous (Non-Industrial)	5.57	0
SO_2 Emissions Total	102,154.57	100

As explained in Section II, because the physical properties of SO_2 result in relatively localized pollutant impacts near an emissions source that drop off with distance, in SO_2 transport analyses, EPA focuses on a 50 km-wide zone. Thus, EPA focused its evaluation on Georgia's point sources of SO_2 emissions located within approximately 50 km of another state and their potential impact on neighboring states.

As discussed in section I.B., EPA's current implementation strategy for the 2010 1-hour SO_2 NAAQS includes the flexibility to characterize air quality for stationary sources subject to the DRR via either data collected at ambient air quality monitors sited to capture the points of maximum concentration, or air dispersion modeling (hereinafter referred to as the ''DRR monitor''). EPA's assessment of SO_2 emissions from Georgia's point sources located within approximately 50 km of another state and their potential impacts on neighboring states (section III.C.1. of this notice) and SO_2 air quality data at monitors within 50 km of the Georgia border (section III.C.3. of this notice) is informed by all available data at the time of this rulemaking.[20]

As described in Section III, EPA proposes to conclude that an assessment of Georgia's satisfaction of the prong 1 and 2 requirements under section 110(a)(2)(D)(i)(I) of the CAA for the 2010 1-hour SO_2 NAAQS may be reasonably based upon evaluating the downwind impacts of SO_2 emissions from Georgia's point sources, including fuel combustion sources, located within approximately 50 km of another state and upon any regulations intended to address Georgia's point sources.

C. EPA's Prong 1 Evaluation—Significant Contribution to Nonattainment

Prong 1 of the good neighbor provision requires states' plans to prohibit emissions that will significantly contribute to nonattainment of a NAAQS in another state. GA EPD confirms in its submission that Georgia sources will not contribute significantly to nonattainment in any other state with respect to the 2010 1-hour SO_2 standard. To evaluate Georgia's satisfaction of prong 1, EPA assessed the State's implementation plan with respect to the following factors: (1) Potential ambient impacts of SO_2 emissions from certain facilities in Georgia on neighboring states based on available air dispersion modeling results; (2) SO_2 ambient air quality and emissions trends for Georgia and neighboring states; (3) SIP-approved regulations that address SO_2 emissions; and (4) federal regulations that reduce SO_2 emissions. A detailed discussion of Georgia's SIP submission with respect to each of these factors follows.[21] EPA proposes that these factors, taken together, support the Agency's proposed

[16] EPA's NEI is available at *https://www.epa.gov/air-emissions-inventories/national-emissions-inventory.*

[17] Residential fuel combustion is considered a nonpoint source, and thus, residential fuel combustion data is not included in the point source fuel combustion data and related calculations.

[18] Georgia's point sources listed in Table 1, for the purposes of this action, are comprised of all of the ''Fuel Combustion'' categories and ''Industrial Processes (All Categories).''

[19] See Table 2 on p.7 of Georgia's July 31, 2019, SIP submission.

[20] EPA notes that the evaluation of other states' satisfaction of section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO_2 NAAQS can be informed by similar factors found in this proposed rulemaking but may not be identical to the approach taken in this or any future rulemaking for Georgia, depending on available information and state-specific circumstances.

[21] EPA has reviewed Georgia's submission, and where new or more current information has become available, is including this information as part of the Agency's evaluation of this submission.

determination that Georgia will not significantly contribute to nonattainment of the 2010 1-hour SO_2 NAAQS in another state. EPA also notes that the Agency does not have information indicating that there are violations of the 2010 1-hour SO_2 NAAQS in the surrounding states. Also, 2017 SO_2 emissions for Georgia's non-DRR sources emitting over 100 tons of SO_2 within 50 km of another state are at distances or emit levels of SO_2 that make it unlikely that these SO_2 emissions could interact with SO_2 emissions from the neighboring states' sources in such a way as to contribute significantly to nonattainment in these states. In addition, the downward trends in SO_2 emissions and DVs for air quality monitors in the State, the fact that the highest annual 99th percentile daily maximum 1-hour SO_2 concentration values observed at the only DRR monitor within 50 km of the Georgia border were well below the 2010 1-hour SO_2 NAAQS in 2017 and 2018, combined with federal and State SIP-approved regulations affecting SO_2 emissions of Georgia's sources, further support EPA's proposed conclusion.

1. SO_2 Designations Air Dispersion Modeling

a. State Submission

In its SIP revision, GA EPD references modeling done by the State for the DRR when discussing SO_2 transport. Regarding source-specific modeling under the DRR, EPA evaluated and summarized the modeling results for Georgia's DRR sources within 50 km of the State's border in Table 2 of section III.C.1.b.

b. EPA Analysis

EPA evaluated available DRR modeling results for sources in Georgia and in the adjacent states that are within 50 km of the Georgia border.[22] The purpose of evaluating modeling results in adjacent states within 50 km of the Georgia border is to ascertain whether any nearby sources in Georgia are impacting a violation of the 2010 1-hour SO_2 NAAQS in another state.[23]

Table 2 provides a summary of the modeling results for the modeled DRR sources[24] in Georgia which are located within 50 km of another state: Georgia-Pacific Consumer Products—Savannah River Mill (Savannah River Mill); Georgia Power Company—Plant Bowen (Plant Bowen); Georgia Power Company—Plant McIntosh (Plant McIntosh); Georgia Power Company—Plant Wansley (Plant Wansley); and International Paper—Savannah. The modeling analysis resulted in no modeled violations of the 2010 1-hour SO_2 NAAQS within the modeling domain for each facility.

TABLE 2—GEORGIA SOURCES WITH DRR MODELING LOCATED WITHIN 50 km OF ANOTHER STATE

DRR source	County	Approximate distance from source to adjacent state (km)	Other facilities included in modeling	Modeled 99th percentile daily maximum 1-hour SO_2 concentration (ppb)	Model grid extends into another state?
International Paper—Savannah.	Chatham	<5 (SC)	None	66.0 *(based on 2011–2013 actual and allowable/potential-to-emit (PTE) emissions)*.	Yes—into SC (western portion of Jasper County, SC).
Plant Bowen	Bartow	45 (AL)	None	57.6 *(based on 2014–2016 actual emissions)*.	No.
Plant McIntosh *(Modeled with Savannah River Mill)*.	Effingham	<5 (SC)	Effingham County Power, LLC facility (GA); GA Pacific—Savannah River Mill (GA);* South Carolina Electric & Gas (SCE&G) Jasper Generating Station (SC) *(based on allowable/PTE emissions for Effingham County Power and Jasper Generating Station)*.	71.6 for both Plant McIntosh and Savannah River Mill *(based on 2012–2014 actual emissions for the steam generating unit at Plant McIntosh; combustion turbines at Plant McIntosh were modeled at PTE)*.	Yes—extends into western portion of Jasper County, SC.

[22] As discussed in section I.B., Georgia used air dispersion modeling to characterize air quality in the vicinity of certain SO_2 emitting sources to identify the maximum 1-hour SO_2 concentrations in ambient air which informed EPA's round 3 SO_2 designations. EPA's preferred modeling platform for regulatory purposes is AERMOD (Appendix W of 40 CFR part 51). In these DRR modeling analyses using AERMOD, the impacts of the actual emissions for one or more of the recent 3-year periods (*e.g.,* 2012–2014, 2013–2015, 2014–2016) were considered, and in some cases, the modeling was of currently effective limits on allowable emissions in lieu of or as a supplement to modeling of actual emissions. The available air dispersion modeling of certain SO_2 sources can support transport related conclusions about whether sources in one state are potentially contributing significantly to nonattainment or interfering with maintenance of the 2010 1-hour SO_2 standard in other states. While AERMOD was not designed specifically to address interstate transport, the 50-km distance that EPA recommends for use with AERMOD aligns with the concept that there are localized pollutant impacts of SO_2 near an emissions source that drop off with distance. Thus, EPA believes that the use of AERMOD provides a reliable indication of air quality for transport purposes.

[23] EPA established a non-binding technical assistance document to assist states and other parties in their efforts to characterize air quality through air dispersion modeling for sources that emit SO_2 titled, ''SO_2 NAAQS Designations Modeling Technical Assistance Document.'' This draft document was first released in spring 2013. Revised drafts were released in February and August of 2016 (*see https://www.epa.gov/sites/production/files/2016-06/documents/so2modelingtad.pdf*).

[24] The DRR modeling results for Georgia's DRR sources may be found in the proposed and final round 3 technical support documents at: *https://www.epa.gov/sites/production/files/2017-08/documents/10_ga-so2-rd3-final.pdf* and *https://www.epa.gov/sites/production/files/2017-12/documents/10-ga-so2-rd3-final.pdf.* Georgia Power Company—Plant Kraft is a DRR source in Georgia located less than 5 km from the South Carolina border which has shut down as of October 13, 2015, and its operating permit was formally revoked on November 9, 2016. Georgia Power—Plant Yates (Plant Yates) is a DRR source in Georgia located approximately 34 km from the Alabama border. Plant Yates accepted a federally enforceable emissions limit as its pathway to satisfy the DRR. Units 1–5 at Plant Yates were permanently shut down on April 15, 2015, and units 6 and 7 were converted from coal-fired to natural gas-fired by the same date, in accordance with an April 29, 2014, title V permit revision to comply with the Mercury and Air Toxics Rule. The facility then added permit condition 3.2.1, restricting all fuel burning to natural gas, in its title V operating permit effective January 10, 2017.

TABLE 2—GEORGIA SOURCES WITH DRR MODELING LOCATED WITHIN 50 km OF ANOTHER STATE—Continued

DRR source	County	Approximate distance from source to adjacent state (km)	Other facilities included in modeling	Modeled 99th percentile daily maximum 1-hour SO_2 concentration (ppb)	Model grid extends into another state?
Plant Wansley	Heard	17 (AL)	Plant Yates, Municipal Electric Authority of Georgia, Chattahoochee Energy, and Wansley Combined-Cycle Generating Plant (GA).	15 *(based on 2012–2014 actual emissions for Plant Wansley and allowable/PTE emissions for the nearby sources).*	No.
Savannah River Mill *(Modeled with Plant McIntosh).*	Effingham	<5 (SC)	Effingham County Power, LLC facility (GA); Plant McIntosh (GA);* SCE&G Jasper Generating Station (SC) *(based on allowable/PTE emissions for Effingham County Power and Jasper Generating Station).*	71.6 for both Plant McIntosh and Savannah River Mill* *(based on 2012–2014 actual emissions for the steam generating unit at Plant McIntosh; combustion turbines at Plant McIntosh were modeled at PTE).*	Yes—extends into western portion of Jasper County, South Carolina.

*Savannah River Mill's 2010 1-hour SO_2 modeled DV is based on 2012–2014 actual emissions for three primary power boilers and allowable/PTE emissions for 13 emissions units at Savannah River Mill. For more details, see pp. 67–68 of EPA's *Technical Support Document: Chapter 10 Proposed Round 3 Area Designations for the 2010 1-Hour SO_2 Primary National Ambient Air Quality Standard for Georgia* located at *https://www.epa.gov/sites/production/files/2017-08/documents/10_ga-so2-rd3-final.pdf.*

Table 3 provides a summary of the modeling results for the modeled DRR sources in neighboring states which are located within 50 km of Georgia: [25] Continental Carbon Company—Phenix City Plant (Continental Carbon) in Alabama and JEA—Northside/St. Johns River Power Park (SJRPP); [26] WestRock CP, LLC—Fernandina Beach Mill (WestRock); and White Springs Agricultural Chemical—Swift Creek Chemical Complex (White Springs) in Florida.

TABLE 3—OTHER STATES' SOURCES WITH DRR MODELING LOCATED WITHIN 50 km OF GEORGIA

DRR source	County (state)	Approximate distance from source to Georgia border (km)	Other facilities included in modeling	Modeled 99th percentile daily maximum 1-hour SO_2 concentration (ppb)	Model grid extends into another state?
Continental Carbon.	Russell (AL).	1	IIG MinWool LLC (AL)	60.63 *(based on PTE emissions)*	Yes, into GA (the southwestern portion of Muscogee County, GA, and the northwestern portion of Chattahoochee County, GA).
SJRPP	Duval (FL).	35	Cedar Bay/Generating Plant, Renessenz Jacksonville Facility, Anchor Glass Jacksonville Plant, and IFF Chemical Holdings (FL).	56.22 *(based on 2012–2014 actual emissions for SJRPP and Renessenz Jacksonville Facility; PTE rates for Cedar Bay, Anchor Glass, and IFF Chemical facilities).*	No.
WestRock [27].	Nassau (FL).	<5	Rayonier Performance Fibers (FL).	66.09 *(based on 2012–2014 actual emissions for WestRock and Rayonier; three minor sources at WestRock were modeled based on PTE).*	Yes (approximately 3 km into a portion of southern Georgia).
White Springs.	Hamilton (FL).	16	PCS Suwannee River Plant* (FL).	56.34 *(based on 2012–2014 actual emissions for White Springs sulfuric acid plants E & F and permitted allowable emissions for PCS Suwanee River Plant and the remaining sources at White Springs).*	No.

*The PCS Suwannee River Plant shut down most of its operations in 2014.

[25] Two DRR sources in adjacent states within 50 km of the Georgia border were not modeled. Tennessee Valley Authority (TVA)—Widows Creek Fossil Plant, located in Alabama, has shut down. Therefore, Alabama did not characterize this source via monitoring or modeling pursuant to the DRR. Duke Energy Carolinas LLC—W.S. Lee Steam Station (Lee Station), located in South Carolina 42 km from the Georgia border, accepted federally-enforceable permit limits to exempt out of the DRR requirements. The station closed two coal-fired units at the facility in 2014 and converted a coal-fired unit to natural gas in 2015. *See, e.g.,* EPA, *Technical Support Document: Final Round 3 Area Designations for the 2010 1-Hour SO_2 Primary National Ambient Air Quality Standard* (Dec. 2017), pp. 62 and 64, available at Docket ID No. EPA–HQ–OAR–2017–0003–0611 at *www.regulations.gov.*

[26] Units 1 and 2 at Florida's DRR source, St. John River Power Park, shut down effective December 31, 2017.

[27] As discussed in footnote 15, EPA's redesignation of the Nassau Area was based, in part, on a modeled attainment demonstration that included permanent and enforceable SO_2 controls and emissions limits at the Rayonier and WestRock facilities showing attainment of the 2010 1-hour SO_2 standard.

EPA believes that the modeling results summarized in Tables 2 and 3, weighed along with the other factors in this notice, support EPA's proposed conclusion that sources in Georgia will not significantly contribute to nonattainment of the 2010 1-hour SO_2 NAAQS in any other state. Furthermore, EPA does not have any evidence of any modeled 2010 1-hour SO_2 violations in the neighboring states due to SO_2 emissions from Georgia.

2. SO_2 Emissions Analysis

a. State Submission

As discussed above, GA EPD provided 2017 statewide SO_2 emissions data by certain source categories, which showed that fuel combustion by EGUs and industrial processes comprised approximately 57 percent of the State's SO_2 emissions in 2017. In addition, GA EPD provided in Georgia's January 9, 2019, submission in Appendix A and displayed in a figure SO_2 emission trends in Georgia from 1990 to 2017 and notes that SO_2 emissions decreased by 95 percent during that time period.[28] GA EPD also analyzed and displayed in a figure in Georgia's January 9, 2019, submission SO_2 emission trends in the adjacent states of Alabama, Florida, North Carolina, South Carolina, and Tennessee from 1990 to 2017.[29] From the State's analysis of these emissions data, GA EPD concludes that there has been a significant reduction in SO_2 emissions in Georgia and its neighboring states from 2007 to 2017.

b. EPA Analysis

EPA reviewed the SO_2 emissions data from 1990 to 2017 for Georgia and the adjacent states of Alabama, Florida, North Carolina, South Carolina, and Tennessee.[30] Georgia's statewide SO_2 emissions decreased from 985,445 tons in 1990 to 50,606 tons in 2017. EPA agrees that statewide SO_2 emissions for these six states, including Georgia, have decreased significantly over this time period and notes that these reductions show a similar downward trend.[31] EPA also notes that SO_2 emissions from fuel combustion at Georgia EGUs decreased from 875,451 tons in 1990 to 13,794 tons in 2017 and that SO_2 emissions from fuel combustion due to industrial processes in Georgia declined from 54,570 tons in 1990 to 14,706 tons in 2017.[32]

As discussed in section III.B, EPA finds that it is appropriate to examine the impacts of SO_2 emissions from stationary sources emitting greater than 100 tons of SO_2 in Georgia in distances ranging from zero km to 50 km from the sources. Therefore, in addition to the sources addressed in section III.C.1.b of this notice, EPA also assessed the potential impacts of SO_2 emissions from stationary sources not subject to the DRR and located up to 50 km from Georgia's borders using 2017 emissions data and to evaluate whether the SO_2 emissions from these sources could interact with SO_2 emissions from the nearest source in a neighboring state in such a way as to impact a violation of the 2010 1-hour SO_2 NAAQS in that state. Table 4 lists sources in Georgia not subject to the DRR that emitted greater than 100 tpy of SO_2 in 2017 and are located within 50 km of the State's border.

Currently, EPA does not have monitoring or modeling data suggesting that the states of Alabama, Florida, and South Carolina are impacted by SO_2 emissions from the nine Georgia sources listed in Table 4. All 10 Georgia sources are located over 50 km from the nearest non-DRR sources in another state emitting over 100 tons of SO_2. EPA believes that the distances greater than 50 km between sources make it unlikely that SO_2 emissions from the 10 Georgia sources could interact with SO_2 emissions from these out-of-state sources in such a way as to contribute significantly to nonattainment in Alabama, Florida, or South Carolina.

TABLE 4—GEORGIA NON-DRR SO_2 SOURCES WITHIN 50 km OF THE GEORGIA BORDER EMITTING GREATER THAN 100 TPY NEAR NEIGHBORING STATES

Georgia source	2017 Annual SO_2 emissions (tons)	Approximate distance to Georgia border (km)	Closest neighboring state	Approximate distance to nearest neighboring state SO_2 source (km)	Nearest neighboring state non-DRR SO_2 source & 2017 emissions (>100 tons SO_2)
Brunswick Cellulose LLC	281.4	50	Florida	88	Symrise (824.9 tons).
Georgia-Pacific Cedar Springs LLC.	511.6	<5	Alabama	75	Mineral Manufacturing Corporation (182.3 tons).
Graphic Packaging International, LLC (formerly International Paper—Augusta Mill).	253.3	<5	South Carolina	88	SCE&G Cope Station (1,165.6 tons).
Imperial-Savannah, L.P	191.0	<5	South Carolina	130	Showa Denko Carbon Inc. (241.0 tons).
PCA Valdosta Mill	471.1	7	Florida	76	Foley Cellulose LLC (1,537.6 tons).
Savannah Acid Plant LLC	163.0	<5	South Carolina	130	Showa Denko Carbon Inc. (241.0 tons).
Southern States Phosphate & Fertilizer.	581.4	<5	South Carolina	130	Showa Denko Carbon Inc. (241.0 tons).
Thermal Ceramics	1,150.2	<5	South Carolina	90	SCE&G Cope Station (1,165.6 tons).
Weyerhaeuser NR Port Wentworth	524.1	<5	South Carolina	130	Showa Denko Carbon Inc. (241.0 tons).

[28] See Figures 3 and 4 on p.6 and 7, respectively, of Georgia's submission which includes statewide SO_2 emission trends in Georgia from 1990 to 2017.

[29] See Figure 4 on p.7 of Georgia's submission which includes statewide SO_2 emission trends in Georgia and the adjacent states of Alabama, Florida, North Carolina, South Carolina, and Tennessee from 1990 to 2017.

[30] State annual emissions trends for criteria pollutants of Tier 1 emission source categories from 1990 to 2017 are available at: *https://www.epa.gov/air-emissions-inventories/air-pollutant-emissions-trends-data.*

[31] See Figure 4 on p.7 of Georgia's submission.

[32] See Appendix A of Georgia's submission. This data is also available at: *https://www.epa.gov/air-emissions-inventories/air-pollutant-emissions-trends-data.*

Based on the declining SO_2 emissions trends statewide in Georgia and the adjacent states of Alabama, Florida, North Carolina, South Carolina, and Tennessee, and the Agency's analysis of the Georgia sources in Table 4, EPA believes that Georgia's potential for contributing significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in a nearby state is reduced substantially.

3. SO_2 Ambient Air Quality

a. State Submission

In its SIP submission, GA EPD included a table showing that the six SO_2 monitors in Georgia and six monitors in the adjacent states of Florida and South Carolina within 50 km of Georgia's border with complete, valid DVs for the 2015–2017 time period have 2017 DVs of 52 ppb or less, well below the 2010 1-hour SO_2 NAAQS.[33] GA EPD also summarized EPA's round 3 designations for the 2010 1-hour SO_2 NAAQS for Georgia and adjacent states. GA EPD notes that EPA designated all counties within 50 km of Georgia's border as attainment/unclassifiable in round 3 with the exception of Haywood County in North Carolina and a small portion of Nassau County in Florida.

With respect to Haywood County, North Carolina, GA EPD explains that Haywood County will be designated in round 4. The only SO_2 source in Georgia within 50 km [34] of Haywood County, North Carolina, is Multitrade Rabun Gap. According to the State, the 2014 SO_2 emissions from this facility were 25.1 tpy.[35] In the January 9, 2019, SIP submission, GA EPD concluded that Multitrade Rabun Gap will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in Haywood County, North Carolina, due to the amount of these emissions and the distance from Haywood County.

With respect to Nassau County, Florida, GA EPD summarized the status of this area as follows. On August 5, 2013,[36] EPA designated an area in Nassau County, Florida, as nonattainment for the 2010 1-hour SO_2 NAAQS based on ambient SO_2 monitoring data in the area over the three-year period 2009–2011. Florida submitted an attainment demonstration for Nassau County on April 3, 2015, and EPA fully approved this demonstration on July 3, 2017. GA EPD notes that the SO_2 monitor in Nassau County has a 2017 SO_2 DV of 43 ppb. Florida submitted a redesignation request and maintenance plan for the Nassau County SO_2 nonattainment area on June 7, 2018. Thus, GA EPD concluded that because Nassau County currently has a 3-year DV well below the 2010 1-hour SO_2 NAAQS and, at the time of Georgia's SIP development, was in the process of being redesignated to attainment for the 2010 1-hour SO_2 NAAQS, SO_2 emission sources in Georgia do not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in Nassau County, Florida.[37]

b. EPA Analysis

Since the time of development of Georgia's SIP submission, certified monitoring data from EPA's Air Quality System (AQS) [38] (''AQS monitors'') have become available for Georgia and the surrounding states. EPA has summarized the DVs from 2013 to 2018 for AQS monitors in Georgia within 50 km of another state in Table 5 and AQS monitors in neighboring states within 50 km of Georgia in Table 6 using relevant data from EPA's AQS DV reports for recent and complete 3-year periods. The 2010 1-hour SO_2 standard is violated at an ambient air quality monitoring site (or in the case of dispersion modeling, at an ambient air quality receptor location) when the 3-year average of the annual 99th percentile of the daily maximum 1-hour average concentrations exceeds 75 ppb, as determined in accordance with Appendix T of 40 CFR part 50.

TABLE 5—TREND IN 1-HOUR SO_2 DVS (PPB) FOR AQS MONITORS IN GEORGIA WITHIN 50 km OF ANOTHER STATE

County	AQS Site code (ID)	2011–2013	2012–2014	2013–2015	2014–2016	2015–2017	2016–2018	Approximate distance to Georgia border (km)
Chatham	13–051–0021	66	*ND	*ND	*ND	32	32	7.1 (SC).
Chatham	13–051–1002	79	78	70	52	48	45	2.8 (SC).
Floyd	13–115–0003	67	46	35	42	*ND	*ND	12.6 (AL).
Richmond	13–245–0091	*ND	*ND	61	60	52	52	6.2 (SC).

*ND indicates ''No Data'' due to monitor startup or shutdown (operated less than three years), data quality issues, or incomplete data.
** The Floyd County, Georgia monitor (AQS ID: 13–115–0003) was discontinued in 2016.

As shown in Table 5, DVs for the four non-DRR monitoring sites in Georgia within 50 km of another state's border have remained well below the 2010 1-hour SO_2 NAAQS for the 2011–2013 through 2016–2018 time periods.[39] The monitor located in Floyd County maintained 2010 1-hour SO_2 NAAQS DVs well below the NAAQS for the 2011–2013 through 2014–2016 time periods, and was then relocated to a nearby site in 2016 to characterize the area pursuant to the DRR; therefore, no DVs are available for this monitor after the 2014–2016 time period.[40]

[33] Table 1 of Georgia's SIP submission also presents 2015, 2016, and 2017 annual 99th percentile SO_2 concentrations in ppb (appears as ''ppm'' in the submission) for four monitors within 50 km of Georgia's border which do not have complete valid data to calculate a DV.

[34] EPA notes that Multitrade Rabun Gap is located approximately 55 km from Haywood County.

[35] EPA notes that Multitrade Rabun Gap emitted 28.1 tons of SO_2 in 2017.

[36] *See* 78 FR 47191 (effective October 4, 2013).

[37] As discussed in footnote 15, EPA has redesignated the Nassau County area to attainment for the 2010 1-hour SO_2 NAAQS.

[38] EPA's AQS contains ambient air pollution data collected by EPA, state, local, and tribal air pollution control agencies. This data is available at *https://www.epa.gov/air-trends/air-quality-design-values.*

[39] The Muscogee County, Georgia monitor (AQS ID: 13–215–008) is not shown in Table 5 because it was discontinued in 2012, and therefore, has no DVs for the 2011–2013 through the 2016–2018 time periods.

[40] The Floyd County, Georgia monitor (AQS ID: 13–115–0003) shown in Table 5 of this notice was relocated in January 2017 to the opposite side of the International Paper-Rome facility to characterize the area of expected maximum 1-hour SO_2 concentration near the source pursuant to the DRR. This DRR monitor in Floyd County, Georgia (AQS ID: 13–115–0006), is shown in Table 7 of this notice and does not have a valid 2015–2017 DV because the monitor was relocated. The data from the original monitor (AQS ID: 13–115–0003) and the relocated monitor (AQS ID: 13–115–0006) were not combined to calculate a DV because the relocated monitor (AQS ID: 13–115–0006) was installed to characterize the air quality in the area under the DRR.

There is one AQS monitor in South Carolina and six AQS monitors in Florida that are located within 50 km of Georgia. As shown in Table 6, the DVs from 2013 to 2018 for these monitors are generally trending downward, and the 2018 DVs are well below the 2010 1-hour SO_2 NAAQS, with the exception of the Hamilton County, Florida monitor which has no data for the 2016–2018 DV time period. The Hamilton County monitor has 2012 and 2013 DVs of 23 and 25 ppb, respectively, and incomplete data for the remaining DV time periods (2014–2018).

TABLE 6—2010 1-HOUR SO_2 DVS (PPB) FOR AQS MONITORS WITH COMPLETE, VALID DATA WITHIN 50 km OF GEORGIA IN ADJACENT STATES

State	County	AQS ID	2011–2013	2012–2014	2013–2015	2014–2016	2015–2017	2016–2018	Approximate distance to Georgia border (km)
Florida	Duval	12–031–0032	17	17	16	16	16	18	39
Florida	Duval	*12–031–0080	11	17	17	17	10	**ND	37
Florida	Duval	12–031–0081	29	27	23	20	12	11	38
Florida	Duval	*12–031–0097	21	21	23	18	14	**ND	43
Florida	Hamilton ..	12–047–0015	25	**ND	**ND	**ND	**ND	**ND	19
Florida	Nassau	12–089–0005	70	57	58	51	43	37	6
South Carolina.	Oconee ...	45–073–0001	**ND	**ND	3	2	2	2	3
Alabama ..	*No AQS monitors within 50 km of Georgia,*								
North Carolina.	*No AQS monitors within 50 km of Georgia.*								

*EPA approved the shutdown of two SO_2 monitors in Duval County (AQS IDs: 12–031–0080 and 12–031–0097) in 2018.
**ND indicates ''No Data'' due to monitor startup or shutdown (operated less than three years), data quality issues, or incomplete data.

EPA also evaluated monitoring data provided to date for DRR monitors either located in Georgia within 50 km of another state's border or in other states within 50 km of the Georgia border that were established to characterize the air quality around specific sources subject to EPA's DRR to inform the Agency's future round 4 designations for the 2010 1-hour SO_2 NAAQS in lieu of modeling. There are no DRR monitors located in other states within 50 km of the Georgia border. There is one DRR monitor in Georgia which is within 50 km of the border, and it is located approximately 12 km from Alabama in Floyd County, Georgia (AQS ID: 13–115–0006) and is sited in the vicinity of the International Paper—Rome facility, a DRR source. Table 7 lists the 2017 and 2018 99th percentile SO_2 concentration data for this DRR monitor in Floyd County, Georgia.[41]

TABLE 7—ANNUAL 99TH PERCENTILE OF 1-HOUR DAILY MAXIMUM SO_2 CONCENTRATIONS FOR ROUND 4 DRR MONITORS IN GEORGIA WITHIN 50 km OF ANOTHER STATE'S BORDER

County (state)	Round 4 monitored source	AQS ID	2017 99th percentile concentration (ppb)	2018 99th percentile concentration (ppb)	Approximate distance to Alabama (km)
Floyd (GA)	International Paper—Rome	13–115–0006	22	15	12

Although the annual 99th percentile daily maximum 1-hour SO_2 concentrations shown in Table 7 are not directly comparable to a DV for the 2010 1-hour SO_2 NAAQS, which is in the form of the 3-year average of the 99th percentile of daily maximum 1-hour values, EPA notes that the highest annual 99th percentile daily maximum 1-hour values observed at the Floyd County DRR monitor in 2017 and 2018 were 22 ppb and 15 ppb, respectively, which are well below the 2010 1-hour SO_2 NAAQS. The Floyd County DRR monitor did not measure any daily exceedances of the 2010 1-hour SO_2 NAAQS during 2017 or 2018.

After careful review of the State's assessment and all available monitoring data, EPA believes that the AQS monitoring data and the preliminary data from the Floyd County DRR monitor (AQS ID: 13–115–0006) further support EPA's proposed conclusion that Georgia will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in neighboring states.

4. SIP-Approved Regulations Addressing SO_2 Emissions

a. State Submission

Georgia identified the following SIP-approved measures which help ensure that SO_2 emissions in the State do not significantly contribute to nonattainment of the 2010 1-hour SO_2 NAAQS in any other state. Georgia Rules for Air Quality Control 391–3–1-.03.—*Permits. Amended,* contains provisions addressing construction permits (391–3–1-.03(1)); operating permits (391–3–1-.03(2)); new source review (NSR) (391–3–1-.03(8)(c) and

[41] The Floyd County, Georgia DRR monitor (AQS ID: 13–115–0006) does not have three or more years of complete data to establish DVs.

(g)); permit by rule (391–3–1-.03(11)); and generic permits (391–3–1-.03(12)). Georgia Rules for Air Quality Control 391–3–1-.02(7) addresses Prevention of Significant Deterioration (PSD) requirements, which apply to all new major sources and major modifications in attainment, unclassifiable, or undesignated areas.[42] Georgia Rules for Air Quality Control 391–3–1-.02(2)(g)—*Sulfur Dioxide* and 391–3–1-.02(13)—*Cross State Air Pollution Rule* SO_2 *Annual Trading Program* also reduce SO_2 emissions.

In addition, GA EPD listed the following State-enforceable rules not approved into the Georgia SIP which control SO_2 emissions: Georgia Rules for Air Quality Control 391–3–1-.02(2)(sss)—*Multipollutant Control for Electric Utility Steam Generating Units* and 391–3–1-.02(2)(uuu)—*SO_2* Emissions from Electric Utility Steam Generating Units.

b. EPA Analysis

EPA believes that Georgia's SIP-approved measures which establish emission limits, permitting requirements, and other control measures for SO_2 effectively address emissions of SO_2 from sources in the State. For the purposes of ensuring that SO_2 emissions at new major sources or major modifications at existing major sources in Georgia do not contribute significantly to nonattainment of the NAAQS, the State has a SIP-approved major NSR program. Georgia Rules for Air Quality Control 391–3–1-.03.—*Permits. Amended,* which includes NSR requirements under 391–3-l-.03(8)(c) and (g), regulates the construction of any new major stationary source or any modification at an existing major stationary source in an area designated as nonattainment, attainment, or unclassifiable. The State's SIP-approved PSD regulation, 391–3–1-.02.—*Provisions. Amended,* which includes PSD requirements under 391–3–1-.02(7), applies to the construction of any new major stationary source or major modification at an existing major stationary source in an area designated as attainment or unclassifiable or not yet designated. SIP-approved Georgia Rules for Air Quality Control 391–3–1-.03(1)—*Construction (SIP) Permit* governs the preconstruction permitting of minor modifications and the construction of minor stationary sources. These major and minor NSR rules ensure that SO_2 emissions due to major modifications at existing major stationary sources, modifications at minor stationary sources, and the construction of new major and minor sources subject to these rules will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in neighboring states.

5. Federal Regulations Addressing SO_2 Emissions in Georgia

a. State Submission

GA EPD did not identify any specific federal regulations that address SO_2 emissions in its SIP submission. Thus, EPA lists in section III.C.5.b several federal regulations which have reduced SO_2 emissions in Georgia and will continue to do so in the future.

b. EPA Analysis

The following federal control measures reduce SO_2 emissions from various sources: 2007 Heavy-Duty Highway Rule; Acid Rain Program; Cross-State Air Pollution Rule; Mercury Air Toxics Rule; National Emission Standards for Hazardous Air Pollutants; New Source Performance Standards; Nonroad Diesel Rule; and Tier 1 and 2 Mobile Source Rules. EPA believes that these federal measures will lower SO_2 emissions, which, in turn, are expected to continue to support EPA's proposed conclusion that SO_2 emissions from Georgia will not significantly contribute to nonattainment of the 2010 1-hour SO_2 NAAQS in another state.

6. Conclusion

EPA proposes to determine that Georgia's January 9, 2019, SIP submission satisfies the requirements of prong 1 of CAA section 110(a)(2)(D)(i)(I). This proposed determination is based on the following considerations: Modeling for the six Georgia DRR sources within 50 km of another state's border shows that the areas around these facilities are not exceeding the level of the 2010 1-hour SO_2 NAAQS; DVs for 2013 through 2018 for the four currently operating non-DRR monitoring sites in Georgia within 50 km of another state's border have remained well below the 2010 1-hour SO_2 NAAQS; 2017 and 2018 99th percentile SO_2 concentrations at the DRR monitor in Floyd County, Georgia, are well below the 2010 1-hour SO_2 NAAQS; the DVs for five of the six non-DRR monitors in Florida[43] and the one non-DRR monitor South Carolina that are located within 50 km of Georgia are trending downward overall and have remained below the level of the 2010 1-hour SO_2 NAAQS from the 2011–2013 to 2016–2018 time periods; SO_2 emissions from Georgia sources not subject to the DRR emitting over 100 tons of SO_2 in 2017 are not likely interacting with SO_2 emissions from the nearest out-of-state source in a bordering state in such a way as to contribute significantly to nonattainment in Alabama, Florida, or South Carolina; downward SO_2 emissions trends in Georgia and the Agency's analysis of the non-DRR Georgia sources emitting over 100 tpy in 2017 in Table 4 suggest that Georgia's potential for contributing significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in a nearby state is reduced substantially; and current Georgia SIP-approved measures and federal emissions control programs adequately control SO_2 emissions from sources within Georgia.

Based on the analysis provided by Georgia in its SIP submission and EPA's analysis of factors described in section III.C, EPA proposes to find that sources within Georgia will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in any other state.

D. EPA's Prong 2 Evaluation—Interference With Maintenance of the NAAQS

Prong 2 of the good neighbor provision requires state plans to prohibit emissions that will interfere with maintenance of a NAAQS in another state.

1. State Submission

In its January 9, 2019, SIP submission, GA EPD confirms that Georgia will not interfere with maintenance of the 2010 1-hour SO_2 NAAQS in any other state. GA EPD bases its conclusion for prong 2 on the following: Annual SO_2 99th percentile values (2015, 2016, and 2017) and the 2015–2017 DVs at monitors in Georgia and within 50 km of Georgia's border; SO_2 emissions trends in Georgia and adjacent states from 1990 to 2017; and the SIP-approved measures discussed in sections III.C.4.a of this notice.

2. EPA Analysis

In *North Carolina* v. *EPA,* the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) explained that the regulating authority must give prong 2 ''independent significance'' from prong 1 by evaluating the impact of upwind state emissions on downwind areas that, while currently in attainment, are at risk of future nonattainment. *North Carolina* v. *EPA,* 531 F.3d 896, 910–11 (D.C. Cir.

[42] There are currently no nonattainment areas for the 2010 1-hour SO_2 NAAQS in Georgia.

[43] The Hamilton County, Florida monitor (AQS ID: 12–047–0015) has no data to calculate DVs for the 2012–2014 through the 2016–2018 time periods due to invalidated data for those years.

2008). EPA interprets prong 2 to require an evaluation of the potential impact of a state's emissions on areas that are currently measuring clean data, but that may have issues maintaining that air quality. Therefore, in addition to the analysis presented by Georgia, EPA has also reviewed additional information on SO_2 air quality and emission trends to evaluate the State's conclusion that Georgia will not interfere with maintenance of the 2010 1-hour SO_2 NAAQS in downwind states. This evaluation builds on the analysis regarding significant contribution to nonattainment (prong 1).

For the prong 2 analysis, EPA evaluated the emissions trends provided by Georgia for the State, evaluated air quality data, and assessed how future sources of SO_2 are addressed through existing SIP-approved and federal regulations. Given the continuing trend of decreasing SO_2 emissions from sources within Georgia and the fact that all areas in other states within 50 km of the Georgia border have DVs attaining the 2010 1-hour SO_2 NAAQS (with the exception of Florida's Duval County monitor (AQS ID: 12–031–0080) which does not have a 2018 DV), EPA believes that evaluating whether these decreases in emissions can be maintained over time is a reasonable criterion to ensure that sources within Georgia do not interfere with its neighboring states' ability to maintain the 2010 1-hour SO_2 NAAQS.

With respect to air quality data trends, the 2018 DVs for AQS SO_2 monitors both in Georgia within 50 km of another state's border and in adjacent states within 50 km of Georgia's border are below the 2010 1-hour SO_2 NAAQS. Further, modeling results for DRR sources both within the State and in neighboring states within 50 km of Georgia's border demonstrate attainment of the 2010 1-hour SO_2 NAAQS, and thus, demonstrate that Georgia's largest point sources of SO_2 are not expected to interfere with maintenance of the 2010 1-hour SO_2 NAAQS in another state.

As discussed in sections III.C.4 and III.C.5, EPA believes that federal and SIP-approved State regulations that both directly and indirectly reduce emissions of SO_2 in Georgia help ensure that the State does not interfere with maintenance of the NAAQS in another state. SO_2 emissions from future major modifications and new major sources will be addressed by Georgia's SIP-approved major NSR regulations described in section III.C.4. In addition, Georgia's SIP approved Air Quality Control Rule 391–3–1-.03(1)—*Construction (SIP) Permit* governs the preconstruction permitting of modifications, construction of minor stationary sources, and minor modifications of major stationary sources. The permitting regulations contained within these programs ensure that emissions from these activities do not interfere with maintenance of the 2010 1-hour SO_2 NAAQS in the State or in any other state.

3. Conclusion

EPA proposes to determine that Georgia's January 9, 2019, SIP submission satisfies the requirements of prong 2 of CAA section 110(a)(2)(D)(i)(I). This determination is based on the following considerations: Modeling for DRR sources within 50 km of Georgia's border both within the State and in neighboring states demonstrate that Georgia's largest point sources of SO_2 are not expected to interfere with maintenance of the 2010 1-hour SO_2 NAAQS in another state; SO_2 emissions statewide from 1990 to 2017 in Georgia have declined significantly and, weighed along with the Agency's analysis of the Georgia non-DRR sources emitting greater than 100 tpy in 2017 listed in Table 4 of this notice, indicate that Georgia's potential for interfering with maintenance of the 2010 1-hour SO_2 NAAQS in a nearby state is reduced substantially; current Georgia SIP-approved measures and federal emissions control programs adequately control SO_2 emissions from sources within Georgia, including Georgia's SIP-approved NSR permit programs which address future large and small SO_2 sources in the State; DVs for the 2011–2013 through 2016–2018 time periods for AQS SO_2 monitors both in Georgia within 50 km of another state's border and in adjacent states within 50 km of Georgia's border are well below the level of the 2010 1-hour SO_2 NAAQS and trending downward; and the relatively low 99th percentile of 1-hour daily maximum SO_2 concentrations for 2017 and 2018 at the Floyd County, Georgia, DRR monitor. Based on the analysis provided by Georgia in its SIP submission and EPA's supplemental analysis of the factors described in section III.C and III.D of this notice, EPA proposes to find that emission sources within Georgia will not interfere with maintenance of the 2010 1-hour SO_2 NAAQS in any other state.

IV. Proposed Action

Based on the above analysis, EPA is proposing to determine that Georgia will not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO_2 NAAQS in any other state. Therefore, EPA is proposing to approve the January 9, 2019, SIP revision as meeting the requirements of the good neighbor provision for the 2010 1-hour SO_2 NAAQS.

V. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate Matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: November 21, 2019.

Mary S. Walker,

Regional Administrator, Region 4.

[FR Doc. 2019–26037 Filed 12–3–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0439; FRL–10002–89–Region 9]

Air Plan Approval; California; Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rules.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Mojave Desert Air Quality Management District (MDAQMD) portion of the California State Implementation Plan (SIP). These revisions concern emissions of volatile organic compounds (VOC) from Metal Parts and Products Coating Operations, and Polyester Resin Operations.

We are proposing to approve two local rules to regulate these emission sources under the Clean Air Act (CAA or the Act) as well as proposing to approve negative declarations for three subcategories of control techniques guidelines (CTG) sources in the MDAQMD.

In addition, we are proposing to convert the partial conditional approval of the District's reasonably available control technology (RACT) SIPs for the 1997 and 2008 ozone standards, as it applies to these two rules, to a full approval.

We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by January 3, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2019–0439 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 *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Arnold Lazarus, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3024 or by email at *Lazarus.Arnold@epa.gov.*

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

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I. The State's Submittal

A. What did the State submit?

Table 1 lists the rules and the negative declarations addressed by this proposal with the dates that they were amended/adopted by the local air agency and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULE AND NEGATIVE DECLARATIONS

Local agency	Document title	Amended/adopted	Submitted
MDAQMD	Rule 1115 Metal Parts and Products Coating Operations	01/22/2018	05/23/2018
MDAQMD	Rule 1162 Polyester Resin Operations	04/23/2018	07/16/2018
MDAQMD	Federal Negative Declarations for Two Control Techniques Guidelines Source Categories.	04/23/2018	07/16/2018
MDAQMD	Federal Negative Declaration for One Control Techniques Guidelines Source Category (Motor Vehicle Materials).	10/22/2018	12/07/2018

On November 23, 2018, the submittal for MDAQMD Rule 1115 was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review. On January 16, 2019, the submittal for Rule 1162 was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V. On January 16, 2019, the submittal for Federal Negative Declarations for Two Control Techniques Guidelines Source Categories was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V. On June 7, 2019, the submittal for Federal Negative Declaration for One Control Techniques Guidelines Source Category (Motor Vehicle Materials) was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V.

B. Are there other versions of these rules and negative declarations?

We approved an earlier version of Rule 1115 into the SIP on December 23, 1997 (62 FR 67002). There are no previous versions of the negative declarations in the MDAQMD portion of the California SIP for the 1997 and 2008 8-hour ozone national ambient air quality standards (NAAQS). We approved an earlier version of Rule 1162 into the SIP on November 24, 2008 (73 FR 70883). The MDAQMD adopted revisions to the SIP-approved version of Rule 1162 on August 28, 2017, and CARB submitted the revised rule to us on October 3, 2017. We have not yet acted on the October 3, 2017 submittal. In its July 16, 2018 submittal, the District states that it expects that its submittal will ''supersede the submission of the August 28, 2017 amendment of Rule 1162.'' We consider the July 16, 2018 submittal to supersede this earlier submittal and therefore are proposing to take action only on the July 16, 2018 submittal.

C. What is the purpose of the submitted rules?

Emissions of VOC contribute to ground-level ozone, smog, and particulate matter (PM), which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control emissions of VOC. Rule 1115 controls VOC emitted from coating operations associated with metal parts and products, and Rule 1162 controls VOC emitted from polyester resin operations, including fiberglass boat manufacturing. The EPA's technical support documents (TSDs) have more information about these rules, negative declarations, and the EPA's evaluations thereof.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the submissions?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require RACT for each category of sources covered by a CTG document as well as each major source of VOCs in ozone nonattainment areas classified as Moderate or above (see CAA section 182(b)(2)). The MDAQMD regulates an ozone nonattainment area classified as Severe for the 1997 and 2008 8-hour ozone NAAQS (40 CFR 81.305). Therefore, these rules must implement RACT.

States should also submit for SIP approval negative declarations for those source categories for which they have not adopted CTG-based regulations (because they have no sources above the CTG-recommended applicability threshold), regardless of whether such negative declarations were made for an earlier SIP.[1] To do so, the submittal should provide reasonable assurance that no sources subject to the CTG requirements currently exist in the portion of the ozone nonattainment area that is regulated by the MDAQMD.

Additionally, the EPA is evaluating Rule 1115 and Rule 1162 to determine whether the updated rules meet the District's commitment to cure the deficiencies identified in the February 12, 2018 partial conditional approval of the District's RACT SIP[2] with respect to these two rules. Rules 1115 and 1162 did not meet RACT because two CTGs pertaining to these rules were issued in 2008 and the rules were written and entered into the SIP before the issuance of the 2008 CTGs. The rules were updated to meet the current CTG requirements and the MDAQMD made valid negative declarations where it was appropriate.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. ''Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VI: Surface Coating of Miscellaneous Metal Parts and Products'' (EPA–450/2–78–15, June 1978).
5. ''Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings'' (EPA–453/R–08–003, September 2008).
6. ''Control Techniques Guidelines for Fiberglass Boat Manufacturing Materials'' (EPA–453/R–08–004, September 2008).
7. 40 CFR part 63 Subpart VVVV—National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing.
8. 40 CFR part 63 Subpart WWWW—National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production.

B. Do the submissions meet the evaluation criteria?

These rules are consistent with CAA requirements and relevant guidance regarding enforceability, RACT, and SIP revisions. Additionally, the updates to Rules 1115 and 1162 cure the deficiencies identified in the partial conditional approval of the District's RACT SIP with respect to these two rules. Moreover, the negative declarations satisfy the certification requirement, and the EPA's independent research yielded no indication of sources in the MDAQMD portion of the nonattainment area that would be subject to the CTG subcategories. As explained in more detail in our TSDs, the EPA's approval of these rules and negative declarations would satisfy the District's RACT requirements for the following three CTGs: ''Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VI: Surface Coating of Miscellaneous Metal Parts and Products'' (EPA–450/2–78–15), ''Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings'' (EPA–453/R–08–003), and ''Control Techniques Guidelines for Fiberglass Boat Manufacturing Materials'' (EPA–453/R–08–004). The TSDs have more information on our evaluations.

C. EPA Recommendations To Further Improve the Rules

The TSDs include recommendations for the next time the local agency modifies the rules.

D. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rules and the negative declarations because they fulfill all relevant requirements. In addition, we propose to convert the partial conditional approval of the District's RACT SIP with respect to Rule 1115 and Rule 1162 as found in 40 CFR 52.248(d)(1), to a full approval. We will accept comments from the public on this proposal until January 3, 2020. If we take final action to approve the submitted rules, our final action will incorporate these rules into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory

[1] 57 FR 13498, 13512 (April 16, 1992).

[2] 83 FR 5921 (February 12, 2018).

text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the MDAQMD rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- 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 disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, 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. In those areas of Indian country, the rules do not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, PM, Reporting and recordkeeping requirements, VOC.

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

Dated: November 19, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2019–26155 Filed 12–3–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2019–0467; FRL–10002–82–Region 5]

Air Plan Approval; Michigan; Second Limited Maintenance Plans for 1997 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Michigan. On July 24, 2019, the state submitted the 1997 ozone National Ambient Air Quality Standard (NAAQS) Limited Maintenance Plans (LMPs) for the Benzie County, Flint (Genesee and Lapeer Counties), Grand Rapids (Ottawa and Kent Counties), Huron County, Kalamazoo-Battle Creek (Calhoun, Kalamazoo, and Van Buren Counties), Lansing-East Lansing (Clinton, Eaton, and Ingham Counties), and Mason County areas. EPA proposes to approve these Michigan LMPs because they provide for the maintenance of the 1997 ozone NAAQS through the end of the second 10-year portion of the maintenance period. Approval will make certain commitments related to maintenance of the 1997 ozone NAAQS in these areas are federally enforceable as part of the Michigan SIP.

DATES: Comments must be received on or before January 3, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2019–0467 at *http://www.regulations.gov*, or via email to *blakley.pamela@epa.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*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, 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://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What action is EPA taking?
II. What is the background for these actions?
III. What is EPA's evaluation of Michigan's submission?
1. Attainment Emissions Inventory
2. Maintenance Demonstration
3. Monitoring Network and Verification of Continued Attainment

4. Contingency Plan
IV. Does the plan show transportation conformity?
V. What action is proposed?
VI. Statutory and Executive Order Reviews

I. What action is EPA taking?

Under the CAA, EPA is proposing to approve the 1997 ozone NAAQS LMPs for the Benzie County, Flint, Grand Rapids, Huron County, Kalamazoo-Battle Creek, Lansing-East Lansing, and Mason County areas, submitted by Michigan on July 24, 2019. The LMPs for these areas are designed to maintain the 1997 ozone NAAQS through the end of the second 10-year portion of the 20-year maintenance period. EPA reviewed Michigan's submission and found the LMPs meet all applicable requirements under CAA sections 110 and 175A. Therefore, EPA is proposing to approve the LMPs.

II. What is the background for these actions?

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-road 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 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 section 109 of the CAA, EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm), averaged over a 1-hour period. 44 FR 8202 (February 8, 1979). On July 18, 1997, EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period. 62 FR 38856 (July 18, 1997).[2] EPA established the 8-hour ozone NAAQS 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 NAAQS was set. EPA determined that the 1997 ozone standard would be more protective of human health, especially for children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On April 30, 2004, EPA designated the Michigan areas as nonattainment for the 1997 ozone NAAQS, and the designations became effective on June 15, 2004. Under the CAA, states are also required to adopt and submit SIPs to implement, maintain, and enforce the NAAQS in designated nonattainment areas and throughout the state.

When a nonattainment area has three years of complete, certified air quality data that has been determined to attain the 1997 8-hour ozone NAAQS, and the area has met other required criteria described in section 107(d)(3)(E) of the CAA, the state can submit to EPA a request to be redesignated to attainment, referred to as a ''maintenance area''.[3] One of the criteria for redesignation is to have an approved maintenance plan under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the standard for a period extending 10 years after redesignation and contain such additional measures as necessary to ensure maintenance and such contingency provisions as necessary to assure that violations of the standard will be promptly corrected. At the end of the eighth year after the effective date of the redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the standard for an additional 10 years. See CAA section 175A.

EPA has published long-standing guidance for states on developing maintenance plans.[4] The Calcagni memo provides that states may generally demonstrate maintenance by either performing air quality modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (*i.e.,* attainment year inventory). *See* Calcagni memo at 9. EPA clarified in three subsequent guidance memos that certain nonattainment areas could meet the CAA section 175A requirement to provide for maintenance by demonstrating that the area's design value[5] was well below the NAAQS and that the historical stability of the area's air quality levels showed that the area was unlikely to violate the NAAQS in the future.[6] EPA refers to this streamlined demonstration of maintenance as a LMP. EPA has interpreted CAA section 175A as permitting this option because section 175A of the CAA defines few specific content requirements for maintenance plans, and in EPA's experience implementing the various NAAQS, areas that qualify for a LMP and have approved LMPs have rarely, if ever, experienced subsequent violations of the NAAQS. As noted in the LMP guidance memoranda, states seeking a LMP must still submit the other maintenance plan elements outlined in the Calcagni memo, including: An attainment emissions inventory, provisions for the continued operation of the ambient air quality monitoring

[1] See ''Fact Sheet, Proposal to Revise the National Ambient Air Quality Standards for Ozone,'' January 6, 2010 and 75 FR 2938 (January 19, 2010).

[2] In March 2008, EPA completed another review of the primary and secondary ozone standards and tightened them further by lowering the level for both to 0.075 ppm. 73 FR 16436 (March 27, 2008). Additionally, in October 2015, EPA completed a review of the primary and secondary ozone standards and tightened them by lowering the level for both to 0.70 ppm. 80 FR 65292 (October 26, 2015).

[3] Section 107(d)(3)(E) of the CAA sets out the requirements for redesignation. They include attainment of the NAAQS, full approval under section 110(k) of the applicable SIP, determination that improvement in air quality is a result of permanent and enforceable reductions in emissions, demonstration that the state has met all applicable section 110 and part D requirements, and a fully approved maintenance plan under CAA section 175A.

[4] Calcagni, John, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards, ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' September 4, 1992 (Calcagni memo).

[5] The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone nonattainment area is the highest design value of any monitoring site in the area.

[6] See ''Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas'' from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas'' from Joseph Paisie, OAQPS, dated October 6, 1995; and ''Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas'' from Lydia Wegman, OAQPS, dated August 9, 2001.

network, verification of continued attainment, and a contingency plan in the event of a future violation of the NAAQS. Moreover, states seeking a LMP must still submit their section 175A maintenance plan as a revision to their state implementation plan, with all attendant notice and comment procedures.

While the LMP guidance memoranda was originally written with respect to certain NAAQS,[7] EPA has extended the LMP interpretation of section 175A to other NAAQS and pollutants not specifically covered by the previous guidance memos.[8] In this case, EPA is proposing to approve the Michigan LMPs, because the state has made a showing, consistent with EPA's prior LMP guidance, that each of the Michigan area's ozone concentrations are well below the 1997 ozone NAAQS and have been historically stable. Michigan has submitted LMPs for the areas of Benzie County, Flint (Genesee and Lapeer Counties), Grand Rapids (Ottawa and Kent Counties), Huron County, Kalamazoo-Battle Creek (Calhoun, Kalamazoo, and Van Buren Counties), Lansing-East Lansing (Clinton, Eaton, and Ingham Counties), and Mason County to fulfill the second 1997 ozone NAAQS maintenance plan requirement in the CAA. EPA's evaluation of these 1997 ozone NAAQS LMPs is presented in section III.

Under CAA section 175A(b), states must submit a revision to the first maintenance plan eight years after redesignation to provide for maintenance of the NAAQS for 10 additional years following the end of the first 10-year period. EPA's final implementation rule for the 2008 ozone NAAQS revoked the 1997 ozone NAAQS and stated that one consequence of revocation was that areas that had been redesignated to attainment (*i.e.,* maintenance areas) for the 1997 standard no longer needed to submit second 10-year maintenance plans under CAA section 175A(b).[9] In *South Coast Air Quality Management District* v. *EPA,* the D.C. Circuit vacated EPA's interpretation that, because of the revocation of the 1997 ozone standard, second maintenance plans were not required for ''orphan maintenance areas,'' *i.e.,* areas that had been redesignated to attainment for the 1997 ozone NAAQS maintenance areas and were designated attainment for the 2008 ozone NAAQS. *South Coast,* 882 F.3d 1138 (D.C. Cir. 2018). Thus, states with these ''orphan maintenance areas'' under the 1997 ozone NAAQS must submit maintenance plans for the second maintenance period. Accordingly, on July 24, 2019, Michigan submitted a second maintenance plan in the form of a LMP for the areas of Benzie County, Flint (Genesee and Lapeer Counties), Grand Rapids (Ottawa and Kent Counties), Huron County, Kalamazoo-Battle Creek (Calhoun, Kalamazoo, and Van Buren Counties), Lansing-East Lansing (Clinton, Eaton, and Ingham Counties), and Mason County. These LMPs show that each area is expected to remain in attainment of the 1997 ozone NAAQS through the end of the last year of the second 10-year maintenance period, *i.e.,* through the end of the full 20-year maintenance period.

III. What is EPA's evaluation of Michigan's submission?

EPA has reviewed the 1997 ozone LMPs, which are designed to maintain the 1997 ozone NAAQS within the Benzie County, Flint (Genesee and Lapeer Counties), Grand Rapids (Ottawa and Kent Counties), Huron County, Kalamazoo-Battle Creek (Calhoun, Kalamazoo, and Van Buren Counties), Lansing-East Lansing (Clinton, Eaton, and Ingham Counties), and Mason County through the end of the 20-year maintenance period beyond redesignation, as required by under CAA section 175A(b). A summary of EPA's interpretation of the requirements [10] and EPA's evaluation of how each requirement is met follows.

1. Attainment Emissions Inventory

For maintenance plans, a state should develop a comprehensive, accurate inventory of actual emissions for an attainment year to identify the level of emissions which is sufficient to maintain the NAAQS. A state should develop this inventory consistent with EPA's most recent guidance on emissions inventory development. For ozone, the inventory should be based on typical summer day emissions of VOCs and NO_X, as these pollutants are precursors to ozone formation.

TABLE 1—TYPICAL 2014 SUMMER DAY VOC AND NO_X EMISSIONS

[Tons/day]

Maintenance area	VOC emissions	NO_X emission
Benzie County	647	374
Flint	6,361	4,834
Grand Rapids	12,584	11,220
Huron County	1,080	1,558
Kalamazoo-Battle Creek	6,913	5,495
Lansing-East Lansing	5,680	5,403
Mason County	1,004	706

Michigan used 2014 summer season (May through September) emissions from ''the EPA 2014 version 7.0'' modeling platform as the basis for the attainment inventory. These data are based on the 2014 National Emissions Inventory version 2.

Based on our review of the methods, models, and assumptions used by Michigan to develop the VOC and NO_X estimates, EPA proposes to find that the Michigan 1997 ozone NAAQS LMP areas include a comprehensive, reasonably accurate inventory of actual ozone precursor emissions in attainment year 2014, and propose to conclude that the plan's inventory is acceptable for the purposes of a subsequent maintenance plan under CAA section 175A(b).

2. Maintenance Demonstration

The maintenance plan demonstration requirement is considered to be satisfied

[7] The prior memos addressed: Unclassifiable areas under the 1-hour ozone NAAQS, nonattainment areas for the PM_{10} (particulate matter with an aerodynamic diameter less than 10 microns) NAAQS, and nonattainment areas for the carbon monoxide (CO) NAAQS.

[8] See, *e.g.,* 79 FR 41900 (July 18, 2014) (Approval of second ten-year LMP for Grant County 1971 sulfur dioxide maintenance area).

[9] *See* 80 FR 12315 (March 6, 2015).

[10] See Calcagni memo.

in a LMP if the state can provide sufficient weight of evidence indicating that air quality in the area is well below the level of the standard, that past air quality trends have been shown to be stable, and that the probability of the area experiencing a violation over the second 10-year maintenance period is low.[11] These criteria are evaluated below with regard to the Michigan areas.

a. Evaluation of Ozone Air Quality Levels

To attain the 1997 8-hour ozone NAAQS, the three-year average of the fourth-highest daily maximum 8-hour average ozone concentrations (design value) at each monitor within an area must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, appendix I, the standard is attained if the design value is 0.084 ppm or below. Consistent with prior guidance, EPA believes that if the most recent air quality design value for the area is at a level that is well below the NAAQS (*e.g.,* below 85% of the standard, or in this case below 0.071 ppm), then EPA considers the state to have met the section 175A requirement for a demonstration that the area will maintain the NAAQS for the requisite period. Such a demonstration assumes continued applicability of Prevention of Significant Deterioration requirements, any control measures already in the SIP, and Federal measures will remain in place through the end of the second 10-year maintenance period, absent a showing consistent with section 110(l) that such measures are not necessary to assure maintenance.

Table 2 presents the design values for each monitor site in the subject areas over the 2015–2017 period to address whether the entire area is at or below 85 percent of the NAAQS. These monitoring sites have been well below the level of the 1997 ozone NAAQS over the entire first 10-year maintenance period. As shown on the table, the most current design value for all sites continues to be below the level of 85% of the NAAQS, consistent with prior LMP guidance.

TABLE 2—1997 OZONE NAAQS DESIGN VALUES

[Part per million]

Maintenance area	County	AQS Site ID	Design value (DV) 2015–2017	DV <0.071 ppm eligible LMP
Benzie County	Benzie	26–019–0003	0.067	Yes.
Flint	Genesee	26–049–2001	0.067	Yes.
	Lapeer	26–049–0021	0.067	Yes.
Grand Rapids	Kent	26–081–0020	0.068	Yes.
	Kent	26–081–0022	0.067	Yes.
	Ottawa	26–139–0005	0.068	Yes.
Huron County	Huron	26–063–0007	0.067	Yes.
Kalamazoo-Battle Creek	Kalamazoo	26–077–0008	0.069	Yes.
Lansing-East Lansing	Ingham	26–037–0001	0.062	Yes.
	Ingham	26–065–0012	0.067	Yes.
Mason County	Mason	26–105–0007	0.068	Yes.

Therefore, the Benzie County, Flint, Grand Rapids, Huron County, Kalamazoo-Battle Creek, Lansing-East Lansing, and Mason County areas are eligible for the LMP option, and EPA proposes to find that the long record of monitored ozone concentrations that attain the NAAQS, together with the continuation of existing VOC and NO_X emissions control programs, adequately provide for the maintenance of the 1997 ozone NAAQS in the Michigan areas through the second 10-year maintenance period and beyond.

Additional supporting information that these areas are expected to continue to maintain the standard can be found in EPA modeling projections of future year design values. This modeling was completed to assist states with development of interstate transport SIPs for the 2015 ozone NAAQS. Those projections, made for the year 2023, show design values for the Michigan areas that are well below the 1997 8-hour ozone NAAQS. See Table 3.

TABLE 3—2023 PROJECTED OZONE DESIGN VALUES

Maintenance area	Highest projected design value for the maintenance areas (ppm)
Benzie County	0.061
Flint	0.060
Grand Rapids	0.062
Huron County	0.059
Kalamazoo-Battle Creek	0.060
Lansing-East Lansing	0.057
Mason County	0.061

3. Monitoring Network and Verification of Continued Attainment

EPA periodically reviews the ozone monitoring network that Michigan operates and maintains, in accordance with 40 CFR part 58. This network is consistent with the ambient air monitoring network assessment and plan developed by Michigan that is submitted annually to EPA and that follows a public notification and review process. Michigan has committed to continue to maintain a network in accordance with EPA requirements.

4. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency

[11] ''Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas'' from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas'' from Joseph Paisie, OAQPS, dated October 6, 1995; and ''Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas'' from Lydia Wegman, OAQPS, dated August 9, 2001.

measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all pollution control measures that were contained in the SIP before redesignation of the area to attainment. See section 175A(d) of the CAA.

Michigan adopted the list of contingency measures from its first maintenance plan with one revision. The Cross-State Air Pollution Control rule replaces the Clean Air Interstate rule.

Contingency measures to be considered will be selected from a comprehensive list of measures deemed appropriate and effective at the time the selection is made. Listed below are example measures that may be considered. The selection of measures will be based upon cost-effectiveness, emission reduction potential, economic and social considerations or other factors that Michigan deems appropriate. Michigan will solicit input from all interested and affected persons in the maintenance area prior to selecting appropriate contingency measures. The listed contingency measures are potentially effective or proven methods of obtaining significant reductions of ozone precursor emissions. Because it is not possible at this time to determine what control measure will be appropriate at an unspecified time in the future, the list of contingency measures outlined below is not exhaustive. Michigan's potential contingency measures:

1. Lower Reid Vapor Pressure gasoline program
2. Reduced VOC content in Architectural, Industrial, and Maintenance coatings rule
3. Auto body refinisher self-certification audit program
4. Reduced VOC degreasing/solvent cleaning rule
5. Transit improvements
6. Diesel retrofit program
7. Reduced VOC content in commercial and consumer products
8. Cross-State Air Pollution Control rule reductions
9. Tier II reductions including low sulfur fuel and vehicle standards
10. Reduce idling program
11. Portable fuel container replacement rule
12. Reduced VOC content for emulsified asphalt rule
13. Stage II vapor recovery rule for marinas

EPA proposes to find that Michigan's contingency measures, as well as the commitment to continue implementing any SIP requirements, satisfy the pertinent requirements of CAA section 175A.

IV. Does the plan show transportation conformity?

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS (CAA 176(c)(1)(B)). EPA's conformity rule at 40 CFR part 93 requires that transportation plans, programs and projects conform to SIPs and establish the criteria and procedures for determining whether or not they conform. The conformity rule generally requires a demonstration that emissions from the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with the motor vehicle emissions budget (MVEB) contained in the control strategy SIP revision or maintenance plan (40 CFR 93.101, 93.118, and 93.124). A MVEB is defined as ''that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions (40 CFR 93.101).

Under the conformity rule, LMP areas may demonstrate conformity without a regional emission analysis (40 CFR 93.109(e)). Michigan confirmed that its LMP areas are considered to have already satisfied the regional emissions analysis and budget test requirements in 40 CFR part 93.

However, because LMP areas are still maintenance areas, certain aspects of transportation conformity determinations still will be required for transportation plans, programs and projects. Specifically, for such determinations, RTPs, TIPs and transportation projects still will have to demonstrate that they are fiscally constrained (40 CFR 93.108), meet the criteria for consultation (40 CFR 93.105) and Transportation Control Measure implementation in the conformity rule provisions (40 CFR 93.112 and 40 CFR 93.113, respectively). Additionally, conformity determinations for RTPs and TIPs must be determined no less frequently than every four years, and conformity of plan and TIP amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104. In addition, for projects to be approved they must come from a currently conforming RTP and TIP (40 CFR 93.114 and 93.115).

V. What action is proposed?

Under sections 110(k) and 175A of the CAA, for the reasons set forth above, EPA is proposing to approve the LMPs for the Benzie County, Flint (Genesee and Lapeer Counties), Grand Rapids (Ottawa and Kent Counties), Huron County, Kalamazoo-Battle Creek (Calhoun, Kalamazoo, and Van Buren Counties), Lansing-East Lansing (Clinton, Eaton, and Ingham Counties), and Mason County areas in Michigan for the 1997 ozone NAAQS. Michigan submitted these LMPs on July 24, 2019. EPA finds that the 1997 ozone NAAQS LMPs are sufficient to provide for maintenance of the 1997 ozone NAAQS in these areas through the second 10-year portion of the maintenance period.

VI. Statutory and Executive Order Reviews

Under section 175A of the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described

in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: November 20, 2019.

Cathy Stepp,

Regional Administrator, Region 5.

[FR Doc. 2019–26144 Filed 12–3–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2019–0419; FRL–10002–37–Region 8]

Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2015 Ozone National Ambient Air Quality Standards; Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On October 1, 2015, the Environmental Protection Agency (EPA) promulgated the 2015 ozone NAAQS, revising the standard to 0.070 parts per million. Whenever a new or revised National Ambient Air Quality Standard (NAAQS) is promulgated, the Clean Air Act (CAA or Act) requires each state to submit a State Implementation Plan (SIP) revision for the implementation, maintenance and enforcement of the new standard. This submission is commonly referred to as an infrastructure SIP. In this action we are proposing to act on multiple elements of the Wyoming infrastructure SIP submission with respect to infrastructure requirements for the 2015 ozone NAAQS, which was submitted to the EPA on January 3, 2019.

DATES: Written comments must be received on or before January 3, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2019–0419, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Division, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Clayton Bean, (303) 312–6143, *bean.clayton@epa.gov.* Mail can be directed to the Air and Radiation Division, U.S. EPA, Region 8, Mail-code 8ARD–QP, 1595 Wynkoop Street, Denver, Colorado, 80202–1129.

SUPPLEMENTARY INFORMATION: Throughout this document, ''reviewing authority,'' ''we,'' ''us,'' and ''our'' refer to the EPA.

I. Background

On March 12, 2008, the EPA promulgated a new NAAQS for ozone, revising the levels of the primary and secondary 8-hour ozone standards from 0.08 parts per million (ppm) to 0.075 ppm (73 FR 16436). More recently, on October 1, 2015, the EPA promulgated and revised the NAAQS for ozone, further strengthening the primary and secondary 8-hour standards to 0.070 ppm (80 FR 65292) (referred to as the ''2015 ozone NAAQS''). This revision triggered the CAA requirement for states to submit SIPs addressing basic infrastructure elements required to implement, maintain and enforce the 2015 ozone NAAQS. *See* CAA section 110(a)(1) and (2); see also ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2),'' September 13, 2013 (2013 Memo).

What infrastructure elements are required under Sections 110(a)(1) and (2)?

CAA section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. These infrastructure elements include requirements such as modeling, monitoring and emissions inventories, which are designed to ensure attainment and maintenance of the NAAQS. The elements that are the subject of this action are listed below.

- *110(a)(2)(A):* Emission limits and other control measures.
- *110(a)(2)(B):* Ambient air quality monitoring/data system.
- *110(a)(2)(C):* Program for enforcement of control measures.
- *110(a)(2)(D):* Interstate transport.

- *110(a)(2)(E):* Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- *110(a)(2)(F):* Stationary source monitoring and reporting.
- *110(a)(2)(G):* Emergency powers.
- *110(a)(2)(H):* Future SIP revisions.
- *110(a)(2)(J):* Consultation with government officials; public notification; and PSD and visibility protection.
- *110(a)(2)(K):* Air quality modeling/data.
- *110(a)(2)(L):* Permitting fees.
- *110(a)(2)(M):* Consultation/participation by affected local entities.

A detailed discussion of each of these elements is contained in section III. The EPA's Evaluation of the State Submittal.

How did Wyoming address the infrastructure elements of Sections 110(a)(1) and (2)?

The Wyoming 2015 ozone NAAQS infrastructure SIP submission demonstrates how the State, where applicable, has plans in place that meet the requirements of section 110 for the 2015 ozone NAAQS. The State submittal is available within the electronic docket for today's proposed action at *www.regulations.gov.*

The Wyoming Department of Environmental Quality (WDEQ) submitted a certification of Wyoming's infrastructure SIP for the 2015 ozone NAAQS on January 3, 2019. The submission references the Wyoming Air Quality Standards and Regulations (WAQSR) and Wyoming Statutes. The statutes referenced in this submittal are publicly available at *http://sosswy.state.wy.us/Rules/default.aspx* and *http://legisweb.state.wy.us/LSOWEB/wyStatues.aspx.* Wyoming's approved SIP can be found at CFR 52.2620.

II. EPA's Approach To Review of Infrastructure SIP Submissions

Due to ambiguity in some of the language of CAA section 110(a)(2), the EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. The EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.[1] Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, the EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.[2] The EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.[3]

III. The EPA's Evaluation of the State Submittal

(a) Emission limits and other control measures: Section 110(a)(2)(A) requires SIPs to include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of the Act.

The State's submission and the EPA's analysis: The State's submission for the 2015 ozone NAAQS infrastructure requirements cites three non-regulatory documents (*e.g.,* Control Strategy, Source Surveillance, and Compliance Schedule) which were approved by the EPA (37 FR 10842, May 31, 1972). The State's submissions also cite regulatory documents included in Chapters 1, 3, 4, 8, 10 and 13 of the WAQSR that have been approved into the SIP. The approved state air quality regulations within the WAQSR and cited in Wyoming's certifications provide enforceable emission limitations, and other control measures, means of techniques, and schedules for compliance, and other related matters necessary to meet the requirements of the CAA section 110(a)(2)(A) for the 2015 ozone NAAQS subject to the following clarification.

First, this infrastructure element does not require the submittal of regulations or emission limitations developed specifically for attaining the 2015 ozone NAAQS. Second, the EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D of Title I of the CAA to be governed by the submission deadline of CAA section 110(a)(1). Accordingly, Wyoming's submission (contained within this docket) listing provisions and enforceable control measures within its SIP which regulate ozone and its precursors through various programs, including Wyoming's stationary source permit program, suffices to meet the requirements of section 110(a)(2)(A) for the 2015 ozone NAAQS.

(b) Ambient air quality monitoring/data system: Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems and procedures necessary to ''(i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.''

(i) State's submission: Wyoming references the following non-regulatory documents as the provisions for air quality episode monitoring, data compilation and reporting, public availability of information and annual network reviews:

- Air Quality Surveillance Document, approved by the EPA (37 FR 10842, May 31, 1972).
- Air Quality Surveillance Network Document, approved by the EPA (47 FR 5892, February 9, 1982).
- Implementation Plan for Lead, approved by the EPA (49 FR 39843, October 11, 1984).
- Wyoming Ambient Air Monitoring Annual Network Plan, submitted to the EPA on June 26, 2018, approved, except for Section 5.1—Permitted Industrial Monitors, by the EPA on October 23, 2018.
- Wyoming Ambient Air Monitoring Annual Network Plan, approved by the EPA on November 7, 2017.

Wyoming also included a Performance Partnership Agreement (PPA) with the EPA as Appendix A of the state's submission. The PPA contains a work plan that addresses the state's commitment to maintain an ambient monitoring network in accordance with 40 CFR part 58 and to submit air quality data to the Air Quality System (AQS) database.

(ii) The EPA's analysis: In accordance with 40 CFR 58.10, Wyoming submits an annual monitoring network plan (AMNP) to the EPA, summarizing the State's monitoring efforts to ensure full compliance with the NAAQS. Following Wyoming's SIP submittal, the State submitted its 2019 AMNP to the EPA on June 28, 2019, which was subsequently approved by the EPA on October 11, 2019 (Wyoming's 2019 AMNP and EPA's approval letter are available within the docket). Additionally, Wyoming submits monitoring data to the AQS database in accordance with 40 CFR 58.16. Accordingly, we find that

[1] The EPA explains and elaborates on these ambiguities and its approach to address them in its 2013 Memo (available at *https://www3.epa.gov/airquality/urbanair/sipstatus/docs. Guidance on Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf*), as well as in numerous agency actions, including EPA's prior action on South Dakota's infrastructure SIP to address 1997 and 2006 $PM_{2.5}$, 2008 Lead, 2008 Ozone, and 2010 NO_2 NAAQS (79 FR 71040, (December 1, 2014)).

[2] *See Montana Environmental Information Center* v. *EPA,* 902 F.3d 971 (9th Cir. 2018).

[3] *Id.*

Wyoming's SIP and practices are adequate for the ambient air quality monitoring and data system requirements for the 2015 ozone NAAQS, and, therefore, propose to approve the submission for this element.

(c) CAA § 110(a)(2)(C): Program for Enforcement of Control Measures: CAA section 110(a)(2)(C) requires each state to have a program that provides for the following three sub-elements: Enforcement; state-wide regulation of new and modified minor sources and minor modifications of major sources; and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the 2015 ozone NAAQS as required by CAA title I part C (*i.e.,* the major source PSD program).

(i) State's submission: The Wyoming submission refers to the following regulatory and non-regulatory documents which address and provide for meeting all requirements of CAA section 110(a)(2)(C):

- WAQSR Chapter 6, Section 2, Permit requirements for construction, modification and operation.
- WAQSR Chapter 6, Section 4, Prevention of significant deterioration.
- WAQSR Chapter 6, Section 13, Nonattainment permit requirements.
- Legal Authority Document; approved by the EPA (37 FR 10832, May 31, 1972).
- Source Surveillance Document; approved by the EPA (37 FR 10832, May 31, 1972).
- Review of New Sources and Modifications Document; approved by the EPA (37 FR 10832, May 31, 1972).

The submission also notes that the PSD program as approved by the EPA covers all regulated pollutants, including greenhouse gases (GHGs).

(ii) The EPA's analysis: With regard to the sub-element requirement to have a program providing for enforcement of all SIP measures, we are proposing to find that Wyoming's Rule (02) II, Legal Authority Document, which the EPA approved into the Wyoming SIP,[4] shows the State has the authority to enforce applicable laws, regulations and standards; to seek injunctive relief; and to prevent construction, modification, or operation of any stationary source at any location where emissions from such source will prevent the attainment or maintenance of a national standard or interfere with PSD requirements.

Turning to the second sub-element of the state-wide regulation of new and modified minor sources and minor modifications of major sources, Wyoming has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act. The minor NSR program is found in Chapter 6, Section 2 of the WAQSR. The EPA previously approved Wyoming's minor NSR program into the SIP (at that time as Chapter 1, Section 21), and over the years, the EPA has subsequently approved revisions to this program as consistent with the CAA and Federal minor NSR requirements codified at 40 CFR 51.160 through 40 CFR 51.164. The State and the EPA have relied on the State's existing minor NSR program to assure that new and modified sources not captured by the major NSR permitting program do not interfere with attainment and maintenance of the NAAQS. We propose to determine that this program regulates construction of new and modified minor sources of ozone precursors for purposes of the 2015 ozone NAAQS.

Lastly, to generally meet the requirements of CAA section 110(a)(2)(C) with regard to the sub-element of preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C, a state is required to have PSD, NNSR and minor NSR permitting programs adequate to implement the 2015 ozone NAAQS.

With respect to Elements (C) and (J), the EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS demonstrating that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of Element D(i)(II) prong 3 may also be satisfied by demonstrating the air agency has a complete PSD permitting program that applies to all regulated NSR pollutants. Wyoming has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including GHGs.

On July 25, 2011 (76 FR 44265), we approved a revision to the Wyoming PSD program that addressed the PSD requirements of the Phase 2 Ozone Implementation Rule promulgated on November 29, 2005 (70 FR 71612). We most recently approved revisions to Wyoming's PSD program on September 20, 2018 (84 FR 18991), in which Wyoming incorporated the 2015 ozone NAAQS into their SIP in Chapter 2, Section 6 (Ambient Standards for Ozone). Wyoming's SIP approved PSD program is codified in WAQSR Chapter 6, to include Sections 2, 4 and 13. As a result, the approved Wyoming PSD program meets the current requirements for ozone.

With respect to GHGs, on June 23, 2014, the United States Supreme Court addressed the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S.Ct. 2427 (2014). The Supreme Court held that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also held that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, (anyway sources) contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In accordance with the Supreme Court decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) in *Coalition for Responsible Regulation* v. *EPA,* 606 F. App'x. 6, at * 7–8 (D.C. Cir. April 10, 2015), issued an amended judgment vacating the regulations that implemented Step 2 of the EPA's PSD and Title V Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by the EPA, the application of the BACT requirement to GHG emissions from Step 1 or ''anyway sources.'' [5] With respect to Step 2 sources, the D.C. Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v), ''to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification.'' The EPA subsequently revised our PSD regulations to remove the vacated provisions. 80 FR 50199 (Aug. 19, 2015).

At present, the EPA has determined that Wyoming's SIP is sufficient to satisfy Elements (C), (D)(i)(II) prong 3 and (J) with respect to GHGs. This is

[4] *See* 40 CFR 52.2620(e), Rule No. (02) II; 41 FR 36652 (Aug. 31, 1976) (approving Wyoming's revisions to its SIP).

[5] See 77 FR 41066 (July 12, 2012) (rulemaking for definition of ''anyway'' sources).

because the PSD permitting program previously approved by the EPA into the SIP continues to require that PSD permits issued to ''anyway sources'' contain limitations on GHG emissions based on the application of BACT. The approved Wyoming PSD permitting program still contains some provisions regarding Step 2 sources that are no longer necessary in light of the Supreme Court decision and D.C. Circuit's amended judgment. Nevertheless, the presence of these provisions in the previously-approved plan does not render the infrastructure SIP submission inadequate to satisfy Elements (C), (D)(i)(II) prong 3 and (J). The SIP contains the PSD requirements for applying the BACT requirement to greenhouse gas emissions from ''anyway sources'' that are necessary at this time. The application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of Step 2 sources. Accordingly, the Supreme Court decision and subsequent D.C. Circuit judgment do not prevent the EPA's approval of Wyoming's infrastructure SIP as to the requirements of Elements (C), (D)(i)(II) prong 3, and (J).

Finally, we evaluate the PSD program with respect to current requirements for $PM_{2.5}$. In particular, on May 16, 2008, the EPA promulgated the rule, ''Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)'' (73 FR 28321) (2008 Implementation Rule). On October 20, 2010 the EPA promulgated the rule, ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$) Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (75 FR 64864). The EPA regards adoption of these $PM_{2.5}$ rules as a necessary requirement when assessing a PSD program for the purposes of Element (C).

On January 4, 2013, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013), issued a judgment that remanded the EPA's 2007 and 2008 rules implementing the 1997 $PM_{2.5}$ NAAQS. The court ordered the EPA to ''repromulgate these rules pursuant to Subpart 4 consistent with this opinion.'' *Id.* at 437. Subpart 4 of part D, Title 1 of the CAA establishes additional provisions for particulate matter nonattainment areas.

The 2008 Implementation Rule addressed by *Natural Resources Defense Council,* ''Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$),'' (73 FR 28321, May 16, 2008), promulgated NSR requirements for implementation of $PM_{2.5}$ in nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of Subpart 4 only pertain to nonattainment areas, the EPA does not consider the portions of the 2008 Implementation Rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. Moreover, the EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 Implementation Rule in order to comply with the court's decision. Accordingly, the EPA's proposed approval of Wyoming's infrastructure SIP as to Elements (C), (D)(i)(II) prong 3, and (J) with respect to the PSD requirements promulgated by the 2008 Ozone Implementation rule does not conflict with the court's opinion.

The court's decision with respect to the NNSR requirements promulgated by the 2008 Implementation Rule also does not affect the EPA's action on the present infrastructure action. The EPA interprets the Act to exclude nonattainment area requirements, including requirements associated with a NNSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

The second PSD requirement for $PM_{2.5}$ is contained in the EPA's October 20, 2010 rule, ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (75 FR 64864). The EPA regards adoption of the $PM_{2.5}$ increments as a necessary requirement when assessing a PSD program for the purposes of Element (C). On July 25, 2011 (76 FR 44265), the EPA approved SIP revisions that revised Wyoming's PSD program which incorporated the 2008 Implementation Rule. The EPA approved revisions to reflect the 2010 $PM_{2.5}$ Increment Rule on December 6, 2013 (78 FR 73445). Therefore, Wyoming's SIP approved PSD program meets current requirements for $PM_{2.5}$.

Therefore, the EPA is proposing to approve Wyoming's infrastructure SIP for the 2015 ozone NAAQS with respect to the requirement in section 110(a)(2)(C) to include a PSD permitting program in the SIP that covers the requirements for all regulated NSR pollutants as required by part C of the Act.

The State has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act. The minor NSR program is found in Chapter 6, Section 2 of the WAQSR. The EPA previously approved Wyoming's minor NSR program into the SIP (at that time as Chapter 1, Section 21), and has subsequently approved revisions to the program, and at those times there were no objections to the provisions of this program. (See, for example, 47 FR 5892, February 9, 1982). Since then, the State and the EPA have relied on the State's existing minor NSR program to assure that new and modified sources not captured by the major NSR permitting program do not interfere with attainment and maintenance of the NAAQS.

Therefore, based on the foregoing, the EPA is proposing to approve Wyoming's infrastructure SIP for the 2015 ozone NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the enforcement of control measures in the SIP, and the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved.

(d) Interstate Transport: CAA section 110(a)(2)(D)(i) consists of four separate elements, or ''prongs.'' CAA section 110(a)(2)(D)(i)(I) requires SIPs to contain adequate provisions prohibiting emissions which will contribute significantly to nonattainment of the NAAQS in any other state (prong 1), and adequate provisions prohibiting emissions which will interfere with maintenance of the NAAQS by any other state (prong 2). CAA section 110(a)(2)(D)(i)(II) requires SIPs to contain adequate provisions prohibiting emissions which will interfere with any other state's required measures to prevent significant deterioration of its air quality (prong 3), and adequate provisions prohibiting emissions which will interfere with any other state's required measures to protect visibility (prong 4). This proposed action will not address the prongs 1 and 2 portions of the Wyoming 2015 ozone infrastructure SIP. We will act on these portions of Wyoming's infrastructure SIP in a separate rulemaking action.

The prong 3 (PSD) requirement of CAA section 110(a)(2)(D)(II) may be met for all NAAQS by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to

a comprehensive EPA-approved PSD permitting program in the SIP that applies to all regulated NSR pollutants and that satisfies the requirements of the EPA's PSD implementation rule(s).[6]

To meet the prong 4 (visibility) requirement of CAA section 110(a)(2)(D)(i)(II) under the 2015 ozone NAAQS, a SIP must address the potential for interference with visibility protection caused by ozone, including precursors. An approved regional haze SIP that fully meets the regional haze requirements in 40 CFR 51.308 satisfies the 110(a)(2)(D)(i)(II) requirement for visibility protection as it ensures that emissions from the state will not interfere with measures required to be included in other state SIPs to protect visibility. In the absence of a fully approved regional haze SIP, a state can still make a demonstration that satisfies the visibility requirement section of 110(a)(2)(D)(i)(II).[7]

CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). CAA section 126 requires notification to neighboring states of potential impacts from a new or modified major stationary source and specifies how a state may petition the EPA when a major source or group of stationary sources in a state is thought to contribute to certain pollution problems in another state. CAA section 115 governs the process for addressing air pollutants emitted in the United States that cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare in a foreign country.

(i) State's submission: To address prong 3 (PSD) for the 2015 ozone NAAQS, Wyoming references relevant portions of the Wyoming SIP. Specifically, the State references WAQSR Chapter 6, sections 4 (Prevention of significant deterioration), 2 (Permit requirements for construction, modification, and operation) and 13 (Nonattainment permit requirements). On the basis of these SIP-approved provisions, Wyoming concludes that its SIP is sufficient to meet the prong 3 requirements of CAA section 110(a)(2)(D)(i)(II).

To address prong 4 (visibility) for the 2015 ozone NAAQS, Wyoming's January 3, 2019 submission pointed to both its regional haze SIP and WAQSR Chapter 9, Section 2, ''Visibility,'' to certify that the State meets the prong 4 requirements of section 110(a)(2)(D)(i)(II). As explained below, this information is relevant in determining whether Wyoming's SIP will achieve the emission reductions that the Western Regional Air Partnership (WRAP) states mutually agreed are necessary to avoid interstate visibility impacts in Class I areas.[8]

To address CAA section 110(a)(2)(D)(ii), Wyoming states that no sources within the State are the subject of an active finding under CAA section 126, and that there are no final findings under CAA section 115 against Wyoming with respect to the 2015 8-hour ozone NAAQS. For these reasons, Wyoming asserts that its infrastructure SIP meets the requirements of CAA section 110(a)(2)(D)(ii) for the 2015 8-hour ozone NAAQS.

(ii) The EPA's analysis:

Prong 3: Interference with PSD measures.

As noted, the PSD portion of section 110(a)(2)(D)(i)(II) may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a comprehensive EPA-approved PSD permitting program in the SIP that applies to all regulated NSR pollutants and that satisfies the requirements of the EPA's PSD implementation rule(s).[9] As discussed in Section III.(c)(ii) of this proposed action, Wyoming has such a program, and the EPA is therefore proposing to approve Wyoming's SIP for the 2015 ozone NAAQS with respect to the requirement in section 110(a)(2)(C) to include a permit program in the SIP as required by part C of the CAA.

As stated in the 2013 Memo, in-state sources not subject to PSD for any one or more of the pollutants subject to regulation under the CAA because they are in a nonattainment area for a NAAQS related to those particular pollutants may also have the potential to interfere with PSD in an attainment or unclassifiable area of another state. One way a state may satisfy prong 3 with respect to these sources is by citing EPA-approved nonattainment new source review (NNSR) provisions addressing any pollutants for which the state has designated nonattainment areas. Wyoming has a SIP-approved NNSR program that ensures regulation of major sources and major modifications in nonattainment areas.[10]

As Wyoming's SIP meets PSD requirements for all regulated NSR pollutants, and contains a fully approved NNSR program, the EPA is proposing to approve the infrastructure SIP submission as meeting the applicable requirements of prong 3 of section 110(a)(2)(D)(i) for the 2015 ozone NAAQS.

Prong 4: Interference with measures to protect visibility.

On January 12, 2011, and April 19, 2012, Wyoming submitted to the EPA SIP revisions to address the requirements of the regional haze program. The EPA approved Wyoming's April 19, 2012 submittal and partially approved Wyoming's January 12, 2011 submittal in a final action published December 12, 2012 (77 FR 73926). This included the EPA's approval of Wyoming's best available retrofit technology (BART) alternative for SO_2, which relied on the State's participation in the backstop SO_2 trading program under 40 CFR 51.309.[11] In a separate action, the EPA partially approved and partially disapproved the remainder of Wyoming's January 12, 2011 SIP revision (79 FR 5032, Jan. 30, 2014). In that action, the EPA disapproved the following portions of the submittal: Wyoming's NO_X BART determinations for five units at three facilities; the State's reasonable progress goals; monitoring, recordkeeping and reporting requirements; portions of the long-term strategy, and; the provisions necessary to review reasonably attributable visibility improvement. *Id.* at 5038. The EPA also promulgated a final FIP to address these deficiencies. *Id.*

The 2013 Memo states that section 110(a)(2)(D)(i)(II)'s prong 4 requirements can be satisfied by approved SIP provisions that the EPA has found to adequately address a state's contribution to visibility impairment in other states. The EPA interprets prong 4 to be pollutant-specific, such that the infrastructure SIP submission need only address the potential for interference with protection of visibility caused by the pollutant (including precursors) to which the new or revised NAAQS applies. *See* 2013 Memo at 33.

The 2013 Memo lays out two ways in which a state's infrastructure SIP submittal may satisfy prong 4. As explained above, one way is through a state's confirmation in its infrastructure SIP submittal that it has an EPA-approved regional haze SIP in place.

[6] See 2013 Memo.

[7] See 2013 Memo. In addition, the EPA approved the visibility requirement of 110(a)(2)(D)(i) for the 1997 Ozone and $PM_{2.5}$ NAAQS for Colorado before taking action on the State's regional haze SIP. 76 FR 22036 (April 20, 2011).

[8] See 2013 Memo at 34.

[9] *See* 2013 Memo at 31.

[10] *See* WAQSR Chapter 6, Section 13, and also 81 FR 35273, June 2, 2016.

[11] Wyoming's ''Western Backstop Sulfur Dioxide Trading Program'' can be found in Wyoming Air Quality Standards and Regulations (WAQSR) Chapter 14, Section 2.

This approval option is not available in this case due to the disapproval and FIP of portions of the Wyoming Regional Haze SIP, as discussed previously. Alternatively, in the absence of a fully approved regional haze SIP, a state can make a demonstration in its infrastructure SIP submittal that emissions within its jurisdiction do not interfere with other states' plans to protect visibility. Such a submittal should point to measures in the SIP that limit visibility-impairing pollutants and ensure that the resulting reductions conform to any mutually agreed emission reductions under the relevant regional haze Regional Planning Organization (RPO) process.[12]

WDEQ worked through its RPO, the WRAP, to develop strategies to address regional haze. To help states in establishing reasonable progress goals for improving visibility in Class I areas, the WRAP modeled future visibility conditions based on the mutually agreed emissions reductions from each state. The WRAP states then relied on this modeling in setting their respective reasonable progress goals. If the emissions reductions from measures in Wyoming's SIP were to conform with the level of emission reductions the State agreed to include in the WRAP modeling, this would be sufficient for the Wyoming SIP to meet the prong 4 visibility requirement of CAA section 110(a)(2)(D)(i)(II). However, the EPA cannot rely on the emissions reductions from sources subject to BART and reasonable progress that are in the FIP rather than the Wyoming SIP. For this reason, the emission reductions in the Wyoming SIP are less than those included in the WRAP modeling, and therefore the EPA does not consider the State's participation in the RPO process as satisfying the prong 4 requirements.

The EPA is proposing to disapprove Wyoming's prong 4 infrastructure SIP for the 2015 ozone NAAQS. The EPA's disapproval of Wyoming's NO_X BART determination in our January 30, 2014 final rulemaking included the specific disapproval of the NOx control measures the State submitted for PacifiCorp Dave Johnston Unit 3, PacifiCorp Wyodak Unit 1, and Basin Electric Laramie River Units 1, 2 and 3 (*See* 79 FR 5038). The EPA recently updated the BART determination and associated emission limits for Laramie River Units 1, 2 and 3 for the Wyoming regional haze FIP. (*See* 84 FR 22711). However, because this BART determination remains in the FIP rather than in Wyoming's SIP, the EPA cannot rely on any of these emissions reductions for the purposes of finding that the Wyoming SIP satisfies the requirements of prong 4.

As noted, Wyoming referenced both its Regional Haze SIP and WAQSR Chapter 9, Section 2 as justification for the approvability of prong 4 for the 2015 ozone NAAQS. Because the WDEQ did not provide an alternative demonstration that its SIP contains measures to limit NO_X emissions in accordance with the emission reductions it agreed to under the WRAP,[13] the EPA's disapproval of portions of Wyoming's NO_X BART determination means that Wyoming's SIP does not include measures needed to ensure that its emissions will not interfere with other states' plans to protect visibility from the effects of NAAQS pollutants impacted by NO_X. Specifically, NO_X is a precursor of ozone, and is also a term which refers to both nitrogen oxide (NO) and nitrogen dioxide (NO_2). The EPA is therefore proposing to disapprove prong 4 of Wyoming's infrastructure SIP with regard to the 2015 ozone NAAQS.

If the EPA disapproves an infrastructure SIP for prong 4, as we are proposing, a FIP obligation will be created. However, as noted previously, the EPA has promulgated a FIP for Wyoming that corrects all regional haze SIP deficiencies (79 FR 5032, January 30, 2014). Therefore, there will be no additional practical consequences from the disapproval for WDEQ, the sources within its jurisdiction, or the EPA, and the EPA will not be required to take further action with respect to these prong 4 disapprovals, if finalized, because the FIP already in place would satisfy the requirements with respect to prong 4 (*See* 2013 Memo at 34–35). Additionally, since the infrastructure SIP submission is not required under part D of title I or in response to a SIP call under CAA section 110(k)(5), mandatory sanctions under CAA section 179 would not apply.

110(a)(2)(D)(ii): Interstate and international transport provisions.

In the EPA's assessment of CAA section 110(a)(2)(D)(ii), we reviewed the information presented by Wyoming in its 2015 Ozone infrastructure SIP submission, as well as relevant portions of the EPA-approved Wyoming SIP. As required by 40 CFR 51.166(q)(2)(iv), Wyoming's SIP-approved PSD program requires major new or modified sources to provide notice to states whose air quality may be impacted by the emissions of sources subject to PSD.[14] This suffices to meet the notice requirement of section 126(a). Wyoming also has no pending obligations under sections 126(c) or 115(b) of the CAA. Therefore, the Wyoming SIP currently meets the requirements of those sections. For these reasons, the EPA is proposing to find that the Wyoming SIP meets the requirements of CAA section 110(a)(2)(D)(ii) for the 2015 ozone NAAQS.

(e) *Adequate resources:* Section 110(a)(2)(E)(i) requires states to provide necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of federal or state law from carrying out the SIP or portion thereof). Section 110(a)(2)(E)(ii) requires each state to comply with the requirements respecting state boards under CAA section 128. Section 110(a)(2)(E)(iii) requires states to ''provide necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any [SIP] provision, the State has responsibility for ensuring adequate implementation of such [SIP] provision.''

The State's submission and the EPA's analysis:

Sub-elements (i) and (iii): Adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues.

The provisions contained in Articles 1 and 2 of the Wyoming Environmental Quality Act (WEQA) (Chapter 11, Title 35 of the Wyoming Statutes) give the State adequate authority to carry out its SIP obligations with respect to the 2015 ozone NAAQS.

With respect to funding, the State receives sections 103 and 105 grant funds through its PPA along with required state matching funds to provide the funding necessary to carry out Wyoming's SIP requirements. Wyoming's PPA (available within this docket) with the EPA documents resources needed to carry out agreed upon environmental program goals, measures, and commitments, including developing and implementing appropriate SIPs for all areas of the State. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. Furthermore, WAQSR Chapter 6, Section 2(a)(v), Permit for construction, modification, operation,

[12] *See id*. at 34, and also 76 FR 22036 (April 20, 2011) containing EPA's approval of the visibility requirement of 110(a)(2)(D)(i)(II) based on a demonstration by Colorado that did not rely on the Colorado Regional Haze SIP.

[13] The Visibility section of WAQSR Chapter 9, Section 2 does not address NOx emissions reductions.

[14] See WAQSR Chapter 6, Section 2.

requires the owner and operator of each new major source or major modification to pay a fee sufficient to cover the cost of reviewing and acting on permit applications. Collectively, these rules and commitments provide evidence that the WDEQ has adequate personnel (see non-regulatory document, Resource Document, cited in Wyoming's certifications), funding and legal authority to carry out the State's Implementation Plan and related issues.

With respect to section 110(a)(2)(E)(iii), the State does not rely upon any other local or regional government, agency, or instrumentality for implementation of the SIP. Therefore, we propose to approve Wyoming's SIP as meeting the requirements of section 110(a)(2)(E)(i) and (E)(iii) for the 2015 ozone NAAQS.

Sub-element (ii): State boards.

Section 110(a)(2)(E)(ii) requires each state's SIP to contain provisions that comply with the requirements of section 128 of the CAA. Section 128 requires SIPs to contain two explicit requirements: (i) That any board or body which approves permits or enforcements orders under the CAA shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to such permits and enforcement orders; and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.''

On May 31, 2016, the EPA received a submission from the State of Wyoming to address the requirements of section 128 by adopting revisions to Chapter 1, Section 16 of the WDEQ's General Rules of Practice and Procedure. The Wyoming Environmental Quality Council approved these revisions on March 2, 2016. These rules address board composition and conflict of interest requirements of section 128(a)(1) and (2). We approved this new rule language as meeting the requirements of section 128 for the reasons explained in more detail in the notice proposing our approval.[15]

Based on our prior approval of Wyoming's section 128 submission, we propose to approve Wyoming's infrastructure SIP with respect to the requirements of Section 110(a)(2)(E)(ii) for 2015 ozone NAAQS.

(f) Stationary source monitoring system: Section 110(a)(2)(F) requires the SIP to require, as may be prescribed by the EPA: (i) The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources; (ii) Periodic reports on the nature and amounts of emissions and emissions-related data from such sources; and (iii) Correlation of such reports by the state agency with any emission limitations or standards established pursuant to the Act, which reports shall be available at reasonable times for public inspection.

The State's submission and the EPA's analysis: Wyoming's SIP approved monitoring provision cited by Wyoming in its certifications (WAQSR Chapter 6, Section 2, Permit requirements for construction, modification, and operation), pertains to its program of periodic emission testing and plant inspections of stationary sources, and related testing requirements and protocols (including periodic reporting) to assure compliance with emissions limits. WAQSR Chapter 7, Section 2 (Continuous Monitoring requirements for existing sources) requires certain sources to install and maintain continuous emission monitors to assure compliance with emission limitations. Furthermore, WAQSR Chapter 8, Section 5 (Ozone nonattainment emission inventory rule) pertains to facilities or sources operating in ozone nonattainment area(s) and requires each emission inventory to include specific reporting and recordkeeping requirements.

Furthermore, Wyoming is required to submit emissions data to the EPA for purposes of the National Emissions Inventory (NEI), as detailed above. Wyoming made its last update to the NEI in January 17, 2019. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the website *http://www.epa.gov/ttn/chief/eiinformation.html.*

Based on the analysis above, we propose to approve Wyoming's SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 2015 ozone NAAQS.

(g) Emergency powers: Section 110(a)(2)(G) of the CAA requires infrastructure SIPs to ''provide for authority comparable to that in [CAA Section 303] and adequate contingency plans to implement such authority.''

Under CAA section 303, the Administrator has authority to immediately restrain an air pollution source that presents an imminent and substantial endangerment to public health or welfare, or the environment. If such action may not practicably assure prompt protection, then the Administrator has authority to issue temporary administrative orders to protect the public health or welfare, or the environment, and such orders can be extended if the EPA subsequently files a civil suit.

The State's submission and the EPA's analysis: Wyoming's SIP certification with regard to the section 110(a)(2)(G) requirements cite the EPA approved provisions (WAQSR Chapter 12, Section 2, Air pollution emergency episodes) which establish a basis for the Division to issue notices to the public relating to levels of air pollution from ''alerts,'' ''warnings,'' and ''emergencies'' to prevent ''a substantial threat to the health of persons'' if ''such [pollution] levels are sustained or exceeded'' in places that are attaining or have attained such pollution levels. Sections 35–11–115(a) and (b) of the WEQA also provides the Director power to issue emergency orders ''to reduce or discontinue immediately the actions causing the condition of pollution'' and institute ''a civil action for immediate injunctive relief to halt any activity'' presenting an ''immediate and substantial danger to human or animal health or safety.''

Furthermore, as stated in Wyoming's 2015 ozone certification, WEQA Section 35–11–901(a) authorizes the WDEQ to seek a penalty or injunction from a court of competent jurisdiction for ''[a]ny person who violates, or any director, officer or agent of a corporate permittee who willfully and knowingly authorizes, orders or carries out the violation of any provision of this act, or any rule, regulation, standard or permit adopted hereunder or who violates any determination or order of the council pursuant to this act or any rule, regulation, standard permit, license or variance. . . .''

While no single Wyoming statute mirrors the authorities of CAA section 303, we propose to find that the combination of WEQA and WAQSR provisions previously discussed provide for authority comparable to section 303. Section 303 authorizes the Administrator to immediately bring suit to restrain and issue emergency orders when necessary, and to take prompt administrative action against any person causing or contributing to air pollution that presents an imminent and substantial endangerment to public health or welfare, or the environment.

Therefore, we propose that Wyoming's SIP submittals sufficiently meet the authority requirement of CAA section 110(a)(2)(G) because they demonstrate that Wyoming has

[15] EPA's proposed rule notice (81 FR 78536, Nov. 8, 2016) and EPA's final rule notice (82 FR 18992 Apr. 25, 2017).

authority comparable to CAA section 303.

States must also have adequate contingency plans adopted into their SIP to implement the air agency's emergency episode authority (as previously discussed). The requirements for contingency plans are set forth in 40 CFR part 51, subpart H. Wyoming currently has two regions classified as priority II for particulate matter: Cheyenne Intrastate and Casper Intrastate. *See* 40 CFR 52.2621; see also 37 FR 10842. None of the State's regions have been classified as a priority I region for any pollutant. *Id.* Wyoming's Emergency Episode Plan and air pollution emergency rules (WAQSR Chapter 12, Section 2, Air pollution emergency episodes) address PM_{10} and SO_2; establish stages of episode criteria; provide for public a proclamation whenever any episode stage has been determined to exist; and specify emission control actions to be taken at each episode stage. EPA approved Wyoming's Emergency Episode Plan and air pollution emergency rules on May 31, 1972 (37 FR 10842).

Based on the above analysis, we propose approval of Wyoming's SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2015 ozone NAAQS.

(h) Future SIP revisions: Section 110(a)(2)(H) requires that SIPs provide for revision of such plan: (i) From time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard; and (ii), except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under this [Act].

The State's submission and the EPA's analysis: The general provisions in section 35–11–109 and the particular provision in section 35–11–202 of the Wyoming Statutes, gives the Director sufficient authority to revise the SIP as specified by CAA section 110(a)(2)(H). Therefore, we propose to approve Wyoming's SIP as meeting the requirements of CAA section 110(a)(2)(H) for the 2015 ozone NAAQS.

(i) CAA § 110(a)(2)(I): Nonattainment Area Plan Revision Under Part D: There are two elements identified in CAA section 110(a)(2) not governed by the three-year submission deadline of CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are due on nonattainment area plan schedules pursuant to section 172 and the various pollutant-specific subparts 2 through 5 of part D. These are submissions required by: (i) CAA section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA; and (ii) section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. As a result, this action does not address CAA section 110(a)(2)(C) with respect to NNSR or CAA section 110(a)(2)(I).

(j) CAA § 110(a)(2)(J): Consultation with government officials, public notification, PSD and visibility protection: CAA section 110(a)(2)(J) requires states to provide a process for consultation with local governments and Federal Land Managers (FLMs) pursuant to CAA section 121. CAA section 110(a)(2)(J) further requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances pursuant to CAA section 127. Lastly, CAA section 110(a)(2)(J) requires states to meet applicable requirements of part C, title I of the CAA related to prevention of significant deterioration and visibility protection.

(i) *State's submission:* The Wyoming submission references the following laws and regulations relating to consultation with identified officials on certain air agency actions: public notification; prevention of significant deterioration; and visibility protection:

- Consultation SIP Document, approved by the EPA (44 FR 38473, July 2, 1979);
- Public Notification of Air Quality SIP Document, approved by the EPA (44 FR 38473, July 2, 1979);
- Wyoming SIP for Class I Visibility Protection SIP Document, approved by the EPA (54 FR 6912, February 15, 1989);
- WAQSR, Section 28, Visibility;
- WAQSR, Section 28, Visibility, Chapter 6, Section 4, Prevention of significant deterioration; and
- WAQSR, Section 28, Visibility, Chapter 9, Section 2, Visibility.

(ii) The EPA's analysis: Wyoming has demonstrated that it has the authority and rules in place to provide a process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any FLM having authority over federal land to which the SIP applies, consistent with the requirements of CAA section 121 (*see* (44 FR 38473, July 2, 1979); and Wyoming's non-regulatory document, Intergovernmental Cooperation (37 FR 10842, May 31, 1972). Moreover, the non-regulatory document, Public Notification of Air Quality, approved by the EPA on July 2, 1979 (44 FR 38473), meets the general requirements of CAA section 127 to notify the public when the NAAQS have been exceeded.

Addressing the requirement in CAA section 110(a)(2)(J) that the SIP meet the applicable requirements of part C, title I of the CAA, we have evaluated this requirement in the context of CAA section 110(a)(2)(C). The EPA most recently approved revisions to Wyoming's PSD program on October 12, 2016 (81 FR 70362), updating the program for current Federal requirements. Therefore, we are proposing to approve the Wyoming SIP as meeting the requirements of CAA section 110(a)(2)(J) with respect to PSD for the 2015 ozone NAAQS.

With regard to applicable visibility protection requirements, the EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the Act. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Consequently, we find that there is no new applicable requirement relating to visibility triggered under CAA section 110(a)(2)(J) when a new NAAQS becomes effective.

Based on the above analysis, we are proposing to approve the Wyoming SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2015 ozone NAAQS.

(k) CAA § 110(a)(2)(K): Air Quality and Modeling/Data: CAA section 110(a)(2)(K) requires that SIPs provide for (*i*) the performance of air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a NAAQS, and (*ii*) the submission, upon request, of data related to such air quality modeling to the Administrator.

The EPA's requirements for air quality modeling for criteria pollutants are found in 40 CFR part 51, Appendix W, Guideline on Air Quality Models. On January 17, 2017 (82 FR 5182), the EPA revised Appendix W, effective February 16, 2017. The **Federal Register** notice stated: ''For all regulatory applications covered under the Guideline, except for transportation conformity, the changes to the appendix A preferred models and revisions to the requirements and recommendations of the Guideline must be integrated into the regulatory processes of respective reviewing

authorities and followed by applicants by no later than January 17, 2018.''

(i) State's submission: The Wyoming submission refers to the following rules and regulations that provide for NAAQS pollutant air quality modeling and the submission of such data to the EPA:

- WAQSR, chapter 6, section 2, Permit requirements for construction, modification, and operation; and
- WAQSR, chapter 6, section 4, Prevention of significant deterioration.

(ii) The EPA's analysis: Wyoming's PSD program requires that estimates of ambient air concentrations are based on applicable air quality models specified in appendix W of 40 CFR part 51, and that modification or substitution of a model specified in appendix W must be approved by the Administrator (see WAQSR Chapter 6, Section 2(b)(iv)). Section 14 of Chapter 6, as last approved by the EPA on September 28, 2018 (83 FR 47564), specifies an incorporation by reference date of July 1, 2017 for all references to the CFR, including appendices, throughout Chapter 6. Thus, Wyoming's approved PSD program applies the recent revisions to Appendix W described above.

Additionally, WAQSR Chapter 6, Section 2(f)(iv) authorizes the AQD Administrator to impose any reasonable conditions upon an approval to construct, modify or operate, including modeling ''to determine the effect which emissions from a source may have, or is having, on air quality in any area which may be affected by emissions from such source.'' Additionally, WEQA 35–11–1101(b) and Wyoming's PPA with the EPA provide Wyoming the authority to submit air quality modeling data to the Administrator. As a result, the SIP provides for such air quality modeling as the Administrator has prescribed.

Based on the above information, we are proposing to approve the Wyoming SIP as meeting the requirements of CAA section 110(a)(2)(K) for the 2015 ozone NAAQS.

(l) CAA § 110(a)(2)(L): Permitting Fees: CAA section 110(a)(2)(L) directs SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit.

(i) State's submission: The Wyoming submission refers to the SIP, and the following WAQSR, and WEQA regulations as authority to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit:

- WAQSR, Chapter 6, Section 2; and
- WEQA, Section 35–11–211(a).

(ii) The EPA's analysis: The WAQSR Chapter 6 regulations, approved by the EPA on August 27, 2004 (69 FR 44965), provide for construction, modification, operation, and operating requirements, and include permit fee assessment provisions. Additionally, the WEQA regulations require that permit fees cover the direct and indirect costs of reviewing, acting upon, implementing and enforcing a permit; therefore, the EPA is proposing that Wyoming has satisfied the requirements of CAA section 110(a)(2)(L) for the 2015 ozone NAAQS.

(m) CAA § 110(a)(2)(M): Consultation/Participation by Affected Local Entities: CAA section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

(i) State's submission: Wyoming cited the following non-regulatory document, Intergovernmental Cooperation Document, approved by the EPA on May 31, 1972 (37 FR 10842) as state approved regulations that meet the requirements to provide for consultation and participation with local political subdivisions during SIP development.

(ii) The EPA's analysis: The document cited by Wyoming confers power to WDEQ to ''advise, consult, and cooperate with agencies of the United States, and political subdivisions of this state and industries and other effective groups in this state in furtherance of the proposals of this act.'' Therefore, we find that Wyoming's submittal meets the requirements of CAA Section 110(a)(2)(M) for the 2015 ozone NAAQS.

IV. Proposed Action

In today's rulemaking, we are proposing approval for multiple elements of the infrastructure SIP requirements for the 2015 ozone NAAQS for Wyoming's infrastructure SIP submittal. Our proposed actions by element of section 110(a)(2) are contained in Table 1 below.

The EPA is proposing to approve Wyoming's January 3, 2019 SIP submission for the following CAA section 110(a)(2) infrastructure elements for the 2015 ozone NAAQS: (A), (B), (C), (D)(i)(II) Prong 3 Interstate transport—prevention of significant deterioration, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). The EPA is not taking action at this time on (D)(i)(I) Prong 1 Interstate transport—significant contribution, and (D)(i)(I) Prong 2 Interstate transport—interference with maintenance; we intend to address (D)(i)(I) Prongs 1 and 2 in a separate, future action. The EPA is also proposing to disapprove (D)(i)(II) Prong 4 Interstate transport—visibility. As noted, finalization of the prong 4 disapproval would not have additional practical consequences for the State or the EPA because the FIP already in place would satisfy the prong 4 requirements for this NAAQS.

Table 1—Infrastructure Elements That the EPA Is Proposing to Act on

In the table below, the key is as follows:

A—*Approve.*

D—*Disapprove.*

NA—*No Action.* We intend to address the element in a separate rulemaking action.

2015 Ozone NAAQS infrastructure SIP elements	Wyoming
(A): Emission Limits and Other Control Measures.	A
(B): Ambient Air Quality Monitoring/Data System.	A
(C): Program for Enforcement of Control Measures.	A
(D)(i)(I): Prong 1 Interstate Transport—significant contribution.	NA
(D)(i)(I): Prong 2 Interstate Transport—interference with maintenance.	NA
(D)(i)(II): Prong 3 Interstate Transport—prevention of significant deterioration.	A
(D)(i)(II): Prong 4 Interstate Transport—visibility.	D
(D)(ii): Interstate and International Pollution Abatement.	A
(E): Adequate Resources	A
(F): Stationary Source Monitoring System.	A
(G): Emergency Episodes	A
(H): Future SIP revisions	A
(J): Consultation with Government Officials, Public Notification, PSD and Visibility Protection.	A
(K): Air Quality and Modeling/Data.	A
(L): Permitting Fees	A
(M): Consultation/Participation by Affected Local Entities.	A

V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under

Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide 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).

In addition, 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. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: November 26, 2019.

Gregory Sopkin,

Regional Administrator, EPA Region 8.

[FR Doc. 2019–26028 Filed 12–3–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2019–0162; FRL–10002–85–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Infrastructure Requirements for the 2015 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision formally submitted by the Commonwealth of Virginia. Whenever EPA promulgates a new or revised national ambient air quality standard (NAAQS or standard), the Clean Air Act (CAA) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. Virginia has formally submitted a SIP revision addressing the following infrastructure elements, or portions thereof, of section 110(a) of the CAA for the 2015 ozone NAAQS: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is proposing to approve Virginia's submittal addressing the infrastructure requirements for the 2015 ozone NAAQS in accordance with the requirements of section 110(a) of the CAA.

DATES: Written comments must be received on or before January 3, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2019–0162 at *https://www.regulations.gov,* or via email to *spielberger.susan@epa.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*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, 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 *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Sara Calcinore, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2043. Ms. Calcinore can also be reached via electronic mail at *calcinore.sara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under the CAA, EPA establishes NAAQS for criteria pollutants to protect human health and the environment. In response to scientific evidence linking ozone exposure to adverse health effects, EPA promulgated the first ozone NAAQS, the 0.12 parts per million (ppm) 1-hour ozone NAAQS, in 1979. 44 FR 8202 (February 8, 1979). The CAA requires EPA to review and reevaluate the NAAQS every five years in order to consider updated information regarding the effects of the criteria pollutants on human health and the environment. On July 18, 1997, EPA promulgated a revised ozone NAAQS, referred to as the 1997 ozone NAAQS, of 0.08 ppm averaged over eight hours. 62 FR 38855. This 8-hour ozone NAAQS was determined to be more protective of public health than the previous 1979 1-hour ozone NAAQS. In 2008, EPA strengthened the 8-hour ozone NAAQS from 0.08 to 0.075 ppm, referred to as the 2008 ozone NAAQS. See 73 FR 16436 (March 27, 2008). On October 26, 2015, EPA issued a final rule strengthening both the primary and secondary ozone NAAQS for ground-level ozone to 0.070 ppm, based on the fourth-highest maximum daily 8-hour ozone concentration per year, averaged over three years. 80 FR 65291.

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This particular type of SIP submission is commonly referred to as an ''infrastructure SIP.'' These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.[1] Unless otherwise noted below, EPA is following that existing approach in acting on Virginia's submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.[2] EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

II. Summary of SIP Revision and EPA Analysis

On January 28, 2019, the Commonwealth of Virginia formally submitted, through the Virginia Department of Environmental Quality (VADEQ), a SIP revision to satisfy the infrastructure requirements of CAA section 110(a) for the 2015 ozone NAAQS (referred to as ''Virginia's submittal''). Virginia's submittal addresses the following infrastructure elements, or portions thereof, for the 2015 ozone NAAQS: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

Virginia's January 28, 2019 submittal does not address the following elements of CAA section 110(a)(2): The portion of element (C) referring to permit programs known as nonattainment new source review (NNSR); sub-element (D)(i)(I) related to interstate transport; and element (I), which pertains to the nonattainment requirements of part D, title I of the CAA. According to EPA's 2013 Infrastructure Guidance, both element (I) and the portion of element (C) related to NNSR pertain to part D of title I of the CAA, which addresses SIP requirements and submission deadlines for areas designated nonattainment for a NAAQS. Both elements pertain to SIP revisions that are collectively referred to as nonattainment SIPs or attainment plans. Such SIP revisions are required if an area is designated nonattainment and, if required, would be due to EPA by the dates statutorily prescribed in CAA part D, subparts 2 through 5. Because the CAA directs states to submit these plan elements on a separate schedule, EPA does not believe it is necessary for states to include these elements in the infrastructure SIP submission due three years after adoption or revision of a NAAQS. Virginia's submittal also did not address CAA section 110(a)(2)(D)(i)(I) related to interstate transport for the 2015 ozone NAAQS. Therefore, EPA is not proposing any action related to Virginia's obligations under section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. EPA will take separate action on CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS once Virginia submits a SIP revision addressing this sub-element.

Based upon EPA's review of Virginia's January 28, 2019 SIP revision, EPA is proposing to determine that Virginia's submittal satisfies the infrastructure elements of CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for the 2015 ozone NAAQS.

A detailed summary of EPA's review and rationale for approving Virginia's submittal may be found in the technical support document (TSD) for this proposed rulemaking action included in the docket for this rulemaking action available at *www.regulations.gov,* Docket ID Number EPA–R03–OAR–2019–0162.

III. Proposed Action

EPA is proposing to find that Virginia's January 28, 2019 submittal satisfies the following infrastructure requirements of CAA section 110(a) for the 2015 ozone NAAQS: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M). As discussed previously, Virginia's submittal did not address the following infrastructure elements: The portion of CAA section 110(a)(2)(C) related to NNSR; CAA section 110(a)(2)(D)(i)(I) related to interstate transport; and CAA section 110(a)(2)(I) pertaining to the nonattainment requirements of part D, title I of the CAA. Therefore, EPA is not taking action on these elements. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . .'' The opinion concludes that ''[r]egarding

[1] EPA explains and elaborates on these ambiguities and its approach to address them in ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013 (also referred to as ''2013 Infrastructure Guidance''), included in the docket for this rulemaking action available at *www.regulations.gov,* Docket ID Number EPA–R03–OAR–2019–0162, as well as in numerous agency actions, including EPA's prior action on Virginia's infrastructure SIP to address the interstate transport requirements for the 2012 fine particulate matter NAAQS (83 FR 21233, May 9, 2018).

[2] See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center* v. *EPA,* No. 16–71933 (Aug. 30, 2018).

§ 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Statutory and Executive Order Reviews

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

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

The SIP is not proposed for approval to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule proposing to approve Virginia's submittal addressing the infrastructure requirements of CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for the 2015 ozone NAAQS does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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: November 21, 2019.

Diana Esher,

Acting Regional Administrator, Region III.

[FR Doc. 2019–26145 Filed 12–3–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2019–0635, FRL–10002–87–Region 10]

Air Plan Approval; Washington; Revised Public Notice Provisions and Other Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the general air quality regulations submitted by the Washington Department of Ecology. The four categories of revisions to the State Implementation Plan (SIP) proposed for approval in this action are: Revising the adoption by reference date for federal regulations cross referenced in the state regulations; revising the definition of volatile organic compounds (VOC) to match changes to the federal definition; updating public involvement procedures for the new source review air permitting program to reflect changes to the federal requirements, allowing greater use of electronic notice and electronic access to information; and correcting typographical errors and minor wording changes for clarity.

DATES: Comments must be received on or before January 3, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2019–0635 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not

consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, EPA Region 10, 1200 Sixth Avenue—Suite 155, Seattle, WA 98101, at (206) 553–0256, or *hunt.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

Table of Contents

I. Background
II. Analysis of Rule Updates
III. Proposed Action
IV. Incorporation by Reference
V. Statutory and Executive Orders Review

I. Background

Section 110 of the Clean Air Act (CAA) governs the process by which a state submits air quality requirements to the EPA for approval into the SIP. The SIP is a state's plan to implement, maintain, and enforce the national ambient air quality standards (NAAQS). Washington's general air quality regulations are set forth at Chapter 173–400 of the Washington Administrative Code (WAC). On November 5, 2019, the Washington Department of Ecology (Ecology) submitted a SIP revision titled *Revised Public Notice Provisions in Chapter 173–400 Washington Administrative Code and Other Miscellaneous Changes.* This SIP revision includes changes to the public notice process as well as several miscellaneous changes proposed for approval as described below. We note that Ecology's SIP revision also included miscellaneous changes to the statewide Chapter 173–405 WAC *Kraft Pulping Mills,* Chapter 173–410 WAC *Sulfite Pulping Mills,* and Chapter 173–415 WAC *Primary Aluminum Plants* regulations which we will address in a separate action.

II. Analysis of Rule Updates

A. WAC 173–400–025

WAC 173–400–025 *Adoption of Federal Rules,* last approved by the EPA on October 6, 2016, adopts by reference the federal air quality regulations as they existed on January 1, 2016 (81 FR 69385). As part of the current submittal, Ecology revised WAC 173–400–025 to include changes to the federal air quality regulations as of January 24, 2018. This includes, with certain exceptions, Ecology's adoption by reference of 40 CFR 52.21, which implements the Prevention of Significant Deterioration permitting program. The EPA is proposing to approve this change.

B. Definition of VOC

In several actions promulgated between 2012 and 2016, the EPA revised the federal definition of VOC in 40 CFR 51.100(s) to add ten compounds defined as VOC-exempt.[1] In our February 25, 2016, final rule (81 FR 9339), the EPA also eliminated recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements related to t-butyl acetate (also known as tertiary butyl acetate or TBAC; CAS Number: 540–88–5). As part of the current submittal, Ecology revised the definition for ''Volatile organic compound (VOC)'' in WAC 173–400–030(102) to include all federal updates as of Ecology's rule adoption.[2] The EPA is proposing to approve this change.

C. Permitting Public Involvement Requirements

On October 18, 2016, the EPA revised the public involvement requirements for federal, state, and local permitting programs, including the new source review permitting program (81 FR 71613). The EPA's final rule removed the mandatory requirement to provide public notice of a draft air permit through publication in a newspaper. Instead, the final rule allows for electronic notice (e-notice), including electronic access to the draft permit (e-access), as an option for permitting authorities implementing EPA-approved programs. The EPA anticipated that e-notice would enable permitting authorities to communicate permitting actions to the public more quickly and efficiently. The EPA further anticipated that e-access would expand access to permit-related documents. Ecology submitted revised versions of WAC 173–400–171 *Public Notice and Opportunity for Public Comment* and WAC 173–400–740 *Permitting Public Involvement Requirements* implementing these changes. A redline/strikeout analysis of the changes is included in the docket for this action. Ecology also added a definition in WAC 173–400–030(26) for the term ''electronic means'' to support the use of e-notice and e-access. The EPA is proposing to approve the submitted changes. We note that Ecology did not submit, and the EPA is not proposing to approve, WAC 173–400–171 subsections (3)(o), (12), and the portion of (3)(b) related to the regulation of toxic air pollutants, because these subsections are outside the scope of this current action.

D. Typographical Corrections and Stylistic Changes

As part of the *Revised Public Notice Provisions in Chapter 173–400 Washington Administrative Code and Other Miscellaneous Changes* submittal, Ecology submitted several non-substantive typographical and stylistic updates to WAC 173–400–030 *Definitions,* WAC 173–400–040 *General Standards for Maximum Emissions,* WAC 173–400–050 *Emission Standards for Combustion and Incineration Units,* WAC 173–400–060 *Emission Standards for General Process Units,* and WAC 173–400–105 *Records, Monitoring, and Reporting.* A redline/strikeout of the changes is included in the docket for this action. We note that Ecology did not submit all changes to Chapter 173–400 WAC as part of this current update. Specifically, Ecology submitted non-substantive revisions to WAC 173–400–030 subsections: (5), (13), (18), (29), (30), (35), (48), (53), (56), (59), (62), (72), (74), (82), (90), (91), (94), and (105). We note that Ecology renumbered many of the definitions contained in WAC 173–400–030 since our last approval (79 FR 59653, October 3, 2014). As noted in the proposed rulemaking for our October 3, 2014, final action, Ecology did not submit for approval the definition of 'Toxic air pollutant (TAP)' or 'toxic air contaminant' contained in WAC 173–400–030(91), because these pollutants are not criteria pollutants or EPA-identified precursors under section 110 of the CAA.[3] This definition was subsequently renumbered to WAC 173–400–030(96) and was again not submitted for approval. We also note that Washington did not submit as part of this SIP revision several new definitions added to WAC 173–400–030. Specifically, these definitions are WAC 173–400–030 subsections: (6), (45), (83), (89), (97), (100), (103) and (104). Ecology also did not submit as part of this SIP revision, changes to the definitions in

[1] See 77 FR 37610 (June 22, 2012), 78 FR 9823 (February 12, 2013), 78 FR 53029 (August 28, 2013), 78 FR 62451 (October 22, 2013), 79 FR 17037 (March 27, 2014), 81 FR 9339 (February 25, 2016), and 81 FR 50330 (August 1, 2016).

[2] On November 16, 2018, the EPA added HFO–1336mzz-Z to the list of compounds excluded from the regulatory definition of volatile organic compounds (83 FR 61127, November 28, 2018).

[3] 79 FR 39351, July 10, 2014, at page 39352.

subsubsections (30) and (36), subsequently renumbered to (32) and (38). Therefore, the EPA will retain the definitions last approved on October 3, 2014 (79 FR 59653). Similarly, Ecology submitted non-substantive changes to WAC 173–400–040 subsection (1) but did not submit the more substantive changes to subsection (2) as part of this update.[4] The EPA will retain the version of WAC 173–400–040(2) last approved on October 6, 2016 (81 FR 69386). We also note that our prior approval of WAC 173–400–040 did not include subsections (3) and (5), which were also not submitted as part of this update. Other non-substantive revisions submitted for approval include clarifying changes to WAC 173–400–050 subsection (1), WAC 173–400–060, and WAC 173–400–105, which are included in the docket for this action.

E. Benton Clean Air Agency

As discussed in our November 17, 2015 final approval, Benton Clean Air Agency (BCAA) generally uses Chapter 173–400 WAC for program implementation, with certain exceptions (80 FR 71695). Ecology requested that the EPA approve the Chapter 173–400 WAC revisions discussed above to apply within BCAA's jurisdiction, with one exception. BCAA does not implement WAC provisions related to the Prevention of Significant Deterioration permitting program under 173–400–700 through 173–400–750. Therefore, Ecology did not request approval of WAC 173–400–740 *Permitting Public Involvement Requirements* for BCAA's direct permitting jurisdiction. We also note that in our November 17, 2015, final approval, BCAA Regulation I, sections 4.01(A) and 4.01(B) replaced the WAC 173–400–030 definitions for ''fugitive dust'' and ''fugitive emissions.'' These two definitions were renumbered in the most recent rule revision to WAC 173–400–030(40) and (41), respectively. Similarly, in our prior approval, BCAA sections 4.02(B), 4.02(C)(1), and 4.02(C)(3) replaced WAC 173–400–040 subsections (4), (9)(a), and (9)(b), respectively. We are proposing to revise our approval of the Benton Clean Air Agency regulations accordingly.

We are also proposing to correct a typographical error from a previous approval. In our November 17, 2015 final approval, we approved WAC 173–400–081 (state effective April 1, 2011) to apply in BCAA's jurisdiction. In a subsequent final action published October 6, 2016 (81 FR 69389), our prior approval of WAC 173–400–081 was inadvertently deleted from 40 CFR 52.2470(c), Table 4—Additional Regulations Approved for Benton Clean Air Agency (BCAA) Jurisdiction. We are proposing to amend 40 CFR 52.2470 to correct this error.

III. Proposed Action

We are proposing to approve and incorporate by reference in the Washington SIP at 40 CFR 52.2470(c) the following revisions as shown in the table below. We are also proposing to correct 40 CFR 52.2470 for BCAA's jurisdiction, as discussed above.

State citation	Title/subject	State effective date	Explanations
40 CFR 52.2470(c), TABLE 2—ADDITIONAL REGULATIONS APPROVED FOR WASHINGTON DEPARTMENT OF ECOLOGY (ECOLOGY) DIRECT JURISDICTION			
Washington Administrative Code, Chapter 173–400—General Regulations for Air Pollution Sources			
173–400–025	Adoption of Federal Rules.	9/16/18	
173–400–030	Definitions	9/16/18	Except: 173–400–030(6); 173–400–030(32); 173–400–030(38); 173–400–030(45); 173–400–030(83); 173–400–030(89); 173–400–030(96); 173–400–030(97); 173–400–030(100); 173–400–030(103); 173–400–030(104).
173–400–040	General Standards for Maximum Emissions.	9/16/18	Except: 173–400–040(2); 173–400–040(3); 173–400–040(5).
173–400–050	Emission Standards for Combustion and Incineration Units.	9/16/18	Except: 173–400–050(2); 173–400–050(4); 173–400–050(5); 173–400–050(6).
173–400–060	Emission Standards for General Process Units.	11/25/18	
173–400–105	Records, Monitoring, and Reporting.	11/25/18	
173–400–171	Public Notice and Opportunity for Public Comment.	9/16/18	Except: The part of 173–400–171(3)(b) that says, • ''or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173–460 WAC''; 173–400–171(3)(o); 173–400–171(12).
173–400–740	PSD Permitting Public Involvement Requirements.	9/16/18	
40 CFR 52.2470(c), TABLE 4—ADDITIONAL REGULATIONS APPROVED FOR BENTON CLEAN AIR AGENCY (BCAA) JURISDICTION			
Washington Administrative Code, Chapter 173–400—General Regulations for Air Pollution Sources			
173–400–025	Adoption of Federal Rules.	9/16/18	
173–400–030	Definitions	9/16/18	Except: 173–400–030(6); 173–400–030(32); 173–400–030(38); 173–400–030(40); 173–400–030(41); 173–400–030(45); 173–400–030(83); 173–400–030(89); 173–400–030(96); 173–400–030(97); 173–400–030(100); 173–400–030(103); 173–400–030(104).

[4] Ecology also revised WAC 173–400–040 subsection (7), however the revised text was not part of the SIP.

State citation	Title/subject	State effective date	Explanations
173–400–040	General Standards for Maximum Emissions.	9/16/18	Except: 173–400–040(2); 173–400–040(3); 173–400–040(4); 173–400–040(5); 173–400–040(9).
173–400–050	Emission Standards for Combustion and Incineration Units.	9/16/18	Except: 173–400–050(2); 173–400–050(4); 173–400–050(5); 173–400–050(6).
173–400–060	Emission Standards for General Process Units.	11/25/18	
173–400–105	Records, Monitoring, and Reporting.	11/25/18	
173–400–171	Public Notice and Opportunity for Public Comment..	9/16/18	Except: The part of 173–400–171(3)(b) that says, • ''or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173–460 WAC''; 173–400–171(3)(o); 173–400–171(12).

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the regulations in section III above and correct the typographical error discussed in section II.E. in this preamble. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov.*

V. Statutory and Executive Orders Review

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- 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 this action does not involve technical standards; 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).

The SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted below and is also not approved to apply in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the *Puyallup Tribe of Indians Settlement Act of 1989,* 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area. Consistent with EPA policy, the EPA provided a consultation opportunity to the Puyallup Tribe in a letter dated March 21, 2018.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: November 22, 2019.

Chris Hladick,

Regional Administrator, Region 10.

[FR Doc. 2019–26147 Filed 12–3–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2019–0636: FRL–10002–84–Region 10]

Air Plan Approval; WA; Updates to Source-Category Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Washington State Implementation Plan (SIP) that were submitted by the Department of Ecology (Ecology). In 1991, Ecology established source-category regulations for kraft pulp mills, sulfite pulping mills, and primary aluminum plants. These source-category regulations contain requirements specific to these types of facilities. However, the source-category regulations also rely upon cross-references to the general air quality regulations to implement program

elements such as new source review permitting. Since 1991, many of the cross-references to the general regulations for air pollution sources have changed. In this action, the EPA is proposing to revise the SIP to update the cross-references and other miscellaneous changes.

DATES: Written comments must be received on or before January 3, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2019–0636 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, EPA Region 10, 1200 Sixth Avenue—Suite 155, Seattle, WA 98101, at (206) 553–0256, or *hunt.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA.

I. Background

In 1991, Washington established rules for kraft pulp mills, sulfite pulp mills, and primary aluminum plants and submitted the rules to the EPA for approval into the Washington SIP. The EPA approved Chapters 173–405 *Kraft Pulping Mills,* 173–410 *Sulfite Pulping Mills,* and 173–415 *Primary Aluminum Plants* Washington Administrative Code (WAC) on January 15, 1993 (58 FR 4578). These regulations established source-category specific requirements with cross-references to Chapter 173–400 WAC *General Regulations for Air Pollution Sources* to meet general requirements. Since the EPA's last approval in 1993, many of the cross-references contained in Chapters 173–405, 173–410, and 173–415 WAC have changed. On November 5, 2019, Ecology submitted updated portions of Chapters 173–405, 173–410, and 173–415 WAC for approval into the SIP.

II. Analysis of Rule Updates

Washington's SIP submission consists primarily of minor changes to the rules, with a few more substantive changes described below. The relatively minor changes to Chapters 173–405, 173–410, and 173–415 WAC include updating cross-references to the requirements in Chapter 173–400 WAC and making clarifying changes to definitions and supporting rule language. Redline/strikeout analyses of Ecology's 2019 rule revisions proposed for approval are included in the docket for this action. The more significant changes include revising WAC 173–405–072 *Monitoring Requirements* and 173–410–062 *Monitoring Requirements* to extend the timeframe for submission of source testing reports from fifteen days to sixty days for kraft and sulfite pulping mills. Ecology's SIP submission explains that the change was made to provide a more realistic timeframe to complete and submit a quality-assured performance test report. The sixty-day timeframe is the same as the federal performance report submission timeline established for the pulp and paper industry in 40 CFR part 63, subpart S. See 40 CFR. 63.455(h)(2). Similarly, Ecology revised WAC 173–415–060 *Monitoring Requirements* to extend the time allowed for submission of source testing reports from thirty to sixty days for primary aluminum plants. This sixty-day timeframe is the same as the federal performance report submission timeline for primary aluminum plants in 40 CFR pat 63, subpart LL. See 40 CFR 63.850(b) for primary aluminum plants.

In addition to the 2019 regulatory changes described above, effective September 23, 2005, Ecology revised Chapter 173–415 WAC, which was not submitted for SIP revision at that time. Specifically, Ecology revised WAC 173–415–020 *Definitions* and WAC 173–415–060 *Monitoring and Reporting* to better align with the federal definitions and requirements in 40 CFR part 63, subpart LL. Ecology also added WAC 173–415–015 *Applicability* that clarified the general provisions of Chapter 173–400 WAC apply to all emission sources, including all primary aluminum reduction plants. This revision allowed Ecology to repeal the redundant provisions of WAC 173–415–045 *Creditable Stack Height & Dispersion Techniques,* WAC 173–415–050 *New Source Review (NSR),* 173–415–051 *Prevention of Significant Deterioration (PSD),* and 173–415–080 *Emission Inventory,* which cited to older, subsequently revised provisions of Chapter 173–400 WAC. A copy of the 2005 changes (WSR 05–17–169) is included in the docket for this action. We are proposing to approve these changes. We also note, as described below, that Ecology's 2005 revisions related to the regulation of fluorides are outside the scope of Clean Air Act (CAA) section 110 requirements for SIPs.

Consistent with our January 15, 1993 approval, Ecology did not submit requirements related to total reduced sulfur, fluorides, or cross-references to toxic air pollutants regulated under Chapter 173–460 WAC, because they are outside the scope of CAA section 110 requirements for SIPs. Similarly, Chapters 173–405, 173–410, and 173–415 WAC cross-reference Chapter 173–400 WAC; however, not all provisions of Chapter 173–400 WAC are contained in the SIP.[1] Lastly, Ecology did not submit all revisions to Chapters 173–405, 173–410, and 173–415 WAC as part of the current SIP update. Please see Appendix A of Ecology's November 5, 2019, SIP revision request for a full listing of updates submitted for approval.

III. Proposed Action

We are proposing to approve and incorporate by reference the revisions to the Washington SIP shown in the table below. We are also proposing to remove from the SIP the outdated and subsequent repealed provisions of WAC 173–415–045, 173–415–050, 173–415–051, and 173–415–080.

[1] See 40 CFR 52.2470(c), Table 2—*Additional Regulations Approved for Washington Department of Ecology (Ecology) Direct Jurisdiction.*

State citation	Title/subject	State effective date	Explanations
Washington Administrative Code, Chapter 173–405—Kraft Pulping Mills			
173–405–021	Definitions	5/24/19	
173–405–072	Monitoring Requirements	5/24/19	Except 173–405–072(2).
173–405–086	New Source Review (NSR)	5/24/19	Except provisions related to WAC 173–400–114 and provisions excluded from our approval of WAC 173–400–110 through 173–400–113.
173–405–087	Prevention of Significant Deterioration (PSD).	5/24/19	Except 173–400–720(4)(a)(i through iv), 173–400–720(4)(b)(iii)(C), and 173–400–750(2) second sentence.
Washington Administrative Code, Chapter 173–410—Sulfite Pulping Mills			
173–410–021	Definitions	5/24/19	
173–410–062	Monitoring Requirements	5/24/19	
173–410–086	New Source Review (NSR)	5/24/19	Except provisions related to WAC 173–400–114 and provisions excluded from our approval of WAC 173–400–110 through 173–400–113.
173–410–087	Prevention of Significant Deterioration (PSD).	5/24/19	Except 173–400–720(4)(a)(i through iv), 173–400–720(4)(b)(iii)(C), and 173–400–750(2) second sentence.
Washington Administrative Code, Chapter 173–415—Primary Aluminum Plants			
173–415–015	Applicability	5/24/19	Except 173–415–015(3).
173–415–020	Definitions	5/24/19	Except 173–415–020(6).
173–415–060	Monitoring and Reporting	5/24/19	Except 173–415–060(1)(b).

IV. Incorporation by Reference

In this rule, the EPA is proposing to include, in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the regulatory changes described in section III above. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov.*

V. Statutory and Executive Orders Review

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- 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 this action does not involve technical standards; 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).

The SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted below and is also not approved to apply in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the *Puyallup Tribe of Indians Settlement Act of 1989,* 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area. Consistent with EPA policy, the EPA provided a consultation opportunity to the Puyallup Tribe in a letter dated May 16, 2019.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: November 22, 2019.

Chris Hladick,

Regional Administrator, Region 10.

[FR Doc. 2019–26146 Filed 12–3–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA–HQ–TRI–2019–0375; FRL–10002–70]

RIN 2070–AK51

Addition of Certain Per- and Polyfluoroalkyl Substances; Community Right-to-Know Toxic Chemical Release Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: In this advance notice of proposed rulemaking (ANPRM), EPA is soliciting information from the public as EPA considers proposing a future rule on adding certain per- and polyfluoroalkyl substances (PFAS) to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act (PPA). In this ANPRM, EPA outlines what PFAS are, why the Agency is considering adding certain PFAS to EPCRA section 313, what listing actions are being considered, who may be required to report, the current understanding of hazard concerns for PFAS, EPA's hazard assessments on PFAS, and other information available on these chemicals. In considering a chemical for addition to the EPCRA section 313 list, EPA bases its listing decision on the chemical's hazard (*i.e.,* toxicity), not the risk (*i.e.,* toxicity plus potential exposures) related to that chemical. EPA is requesting comment on which, if any, PFAS should be evaluated for listing, how to list them, and what would be appropriate reporting thresholds given their persistence and bioaccumulation potential. Lastly, EPA asks for any additional data to inform the Agency's evaluation and determination of which PFAS may meet the EPCRA section 313 listing criteria.

DATES: Comments must be received on or before February 3, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–TRI–2019–0375, 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:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 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/where-send-comments-epa-dockets#hq.*

All documents in the docket are listed on *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.* Additional instructions on visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets/commenting-epa-dockets.*

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

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

- Facilities included in the following NAICS manufacturing codes (corresponding to Standard Industrial Classification (SIC) codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211130*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512230*, 512250*, 519130*, 541713*, 541715* or 811490*. *Exceptions and/or limitations exist for these NAICS codes.
- Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (corresponds to SIC code 12, Coal Mining (except 1241)); or 212221, 212222, 212230, 212299 (corresponds to SIC code 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221118, 221121, 221122, 221330 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (corresponds to SIC codes 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (limited to facilities previously classified in SIC code 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC code 5171, Petroleum Bulk Terminals and Plants); or 562112 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC code 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*) (corresponds to SIC code 4953, Refuse Systems).
- Federal facilities.

A more detailed description of the types of facilities covered by the NAICS codes subject to reporting under EPCRA section 313 can be found at: *https://www.epa.gov/toxics-release-inventory-tri-program/tri-covered-industry-sectors.* To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations. Federal facilities are required to report under Executive Order 13834 (*https://www.govinfo.gov/content/pkg/FR-2018-05-22/pdf/2018-11101.pdf*) as explained in the Implementing Instructions from the Council on Environmental Quality (*https://www.sustainability.gov/pdfs/eo13834_instructions.pdf*). If you have

questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What action is under consideration by the Agency?

EPA is considering proposing a rule to add certain PFAS to the list of toxic chemicals subject to reporting under EPCRA section 313 and section 6607 of the PPA (more commonly known as the Toxics Release Inventory (TRI)). EPA is also considering establishing reporting thresholds for PFAS that are lower than the usual statutory thresholds (25,000 pounds for manufacturing or processing and 10,000 pounds for otherwise using listed chemicals) due to concerns for their environmental persistence and bioaccumulation potential.

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

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

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

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

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

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

In a final rule that added 286 chemicals and chemical categories to the TRI list, EPA published in the **Federal Register** of November 30, 1994 (59 FR 61432) (FRL–4922–2), a statement clarifying its interpretation of the EPCRA section 313(d)(2) criteria for modifying the EPCRA section 313 list of toxic chemicals. EPA's interpretation of the EPCRA section 313 listing criteria addressed a number of issues including EPA's authority to add chemical categories and EPA's policy on the use of exposure for chemicals that are toxic only at high doses/concentrations.

II. Background Information

A. What is TRI?

EPCRA section 313, 42 U.S.C. 11023, requires certain facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting threshold levels to report their environmental releases and other waste management quantities of such chemicals annually. These facilities must also report pollution prevention and recycling data for such chemicals, pursuant to Pollution Prevention Act section 6607, 42 U.S.C. 13106. Note that TRI does not cover all chemicals, facilities, or types of pollution.

TRI provides information about releases of toxic chemicals from covered facilities throughout the United States; however, TRI data do not reveal whether or to what degree the public is exposed to listed chemicals. TRI data can, in conjunction with other information, be used as a starting point in evaluating such exposures and the risks posed by such exposures. The determination of potential risk to human health and/or the environment depends upon many factors, including the toxicity of the chemical, the fate of the chemical in the environment, and the amount and duration of human or other exposure to the chemical.

For more information on TRI, visit the TRI website at *www.epa.gov/tri.* Additionally, via this website, EPA provides a *Factors to Consider When Using TRI Data document,* which helps explain some of the uses, as well as limitations, of data collected by TRI.

B. What are PFAS?

PFAS are synthetic organic compounds that do not occur naturally in the environment. PFAS contain an alkyl carbon chain on which the hydrogen atoms have been partially or completely replaced by fluorine atoms. The strong carbon-fluorine bonds of PFAS make them resistant to degradation and thus highly persistent in the environment (Refs. 1 and 2). Some of these chemicals have been used for decades in a wide variety of consumer and industrial products (Ref. 1). Some PFAS have been detected at high levels in wildlife indicating that at least some PFAS have the ability to bioaccumulate (Ref. 2). Some PFAS can accumulate in humans and remain in the human body for long periods of time (*e.g.,* months to years) (Refs. 1, 2, and 3). As noted in EPA's Action Plan (Ref. 1), because of the widespread use of PFAS in commerce and their tendency to persist in the environment, most people in the United States have been exposed to PFAS. As a result, several PFAS have been detected in human blood serum (Refs. 1, 2 and 4).

C. Why is EPA considering adding PFAS to the TRI?

Some PFAS may be toxic, persistent in the environment, and accumulate in wildlife and humans. Therefore, releases of some PFAS to the environment and potential human exposure may be of concern. One source of potential exposure to PFAS are releases from industrial facilities that manufacture, process, or otherwise use PFAS. Information on the releases and waste management quantities from such facilities could help EPA and the public identify some potential sources of exposure to PFAS. The TRI is a tool that EPA can use to collect such information. As noted in the EPA Action Plan:

''Currently, no PFAS chemicals are included on the list of chemicals required to report to TRI; however, the EPA is considering whether to add

PFAS chemicals. In considering listing, the EPA must determine whether data and information are available to fulfill the listing criteria and the extent and utility of the data that would be gathered. For example, hazard data required for TRI listing may be readily available for certain PFAS chemicals, but not others. In addition, in considering if TRI will provide useful information to stakeholders, the EPA also will consider if those PFAS are still active in commerce. The process for listing includes notice and comment rulemaking to list PFAS chemicals for reporting prior to adding these chemicals to the TRI for annual reporting.'' (Ref. 1)

As the first step in the process of adding certain PFAS to the TRI, EPA is issuing this ANPRM to allow all stakeholders the opportunity to comment on the various aspects of adding certain PFAS to the TRI toxic chemical list. Note that adding certain PFAS to the TRI could help inform discussions related to risks to human health and the environment but the information collected through TRI, as previously indicated, would not capture all sources of PFAS releases.

III. What TRI listing actions are being considered?

Currently, approximately 600 PFAS are manufactured (including imported) and/or used in the United States (Ref. 5). The two PFAS that have been studied the most are perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS). Due to a voluntary phaseout under the 2010/2015 PFOA Stewardship Program, PFOA and PFOS are no longer produced domestically by the companies participating in the Program. However, PFOA and PFOS may still be produced domestically, imported, and used by companies not participating in the PFOA Stewardship Program (Ref. 6). PFOA and PFOS may also be present in imported articles. PFAS such as hexafluoropropylene oxide (HFPO) dimer acid (Chemical Abstract Service Registry Number (CASRN) 13252–13–6) and its ammonium salt (CASRN 62037–80–3), both commonly referred to as GenX, and perfluorobutane sulfonic acid (PFBS) (CASRN 375–73–5) and its salt potassium perfluorobutane sulfonate (CASRN 29420–49–3)), are some examples of short-chain PFAS that have been developed to replace long-chain PFOA and PFOS, respectively. Compared to PFOA and PFOS, most replacement PFAS tend to have less information available about their potential toxicity to human and ecological populations. Through this ANPRM process, EPA is seeking information to determine which PFAS currently active in commerce have sufficient toxicity information available to meet the EPCRA section 313(d)(2) listing criteria. EPA is considering whether to add any PFAS currently active in commerce for which hazard assessments show that they meet the EPCRA section 313(d)(2) listing criteria. Note that one factor EPA considers when determining whether to add a chemical to the TRI list is whether reporting would occur on the chemical if it were to be added.

In addition, for any PFAS that meet the listing criteria, EPA is considering adding these compounds to the list of chemicals of special concern (§ 372.28) and establishing lower reporting thresholds. In the past EPA has lowered the reporting thresholds for persistent, bioaccumulative, and toxic (PBT) chemicals (October 29, 1999, 64 FR 58666 (FRL–6389–11)). For PBT chemicals, with one exception, EPA established two reporting thresholds, 100 pounds for PBT chemicals and 10 pounds for highly PBT chemicals (*i.e.,* those PBT chemicals with very high persistence and bioaccumulation values). Certain PFAS may have persistence and bioaccumulation properties similar to other PBT chemicals where even small amounts of release present a concern. To appropriately capture release information of PFAS, EPA is considering establishing reporting thresholds lower than the statutory thresholds of 25,000 pounds for manufacturing or processing and 10,000 pounds for otherwise using listed chemicals.

PFAS, that meet the ECPRA section 313 listing criteria, could be listed as individual chemicals or as members of PFAS chemical categories. For example, EPA's ''Health Effects Support Document for Perfluorooctane Sulfonate (PFOS)'' (Ref. 7) states that PFOS (CASRN 1763–23–1) is commonly produced as a potassium salt (CASRN 2795–39–3) and that, while the CASRN given is for linear PFOS, the toxicity studies are commonly based on a mixture of linear and branched PFOS. Therefore, the reference dose (RfD) derived in the 2016 Health Effects Support Document applies to the total linear and branched PFOS. For PFOS it would seem appropriate to create a TRI chemical category that includes all linear and branched isomers of PFOS and any salts of PFOS. PFOA has similar considerations, as may other PFAS that may warrant reporting as a category rather than as individually listed chemicals. EPA may also consider establishing a single chemical category for all PFAS, however, a single category would be of limited use since it would not provide any information about which PFAS are being released and/or managed as waste.

IV. What are the hazard concerns for PFAS?

Some PFAS are known to persist in the environment because they are resistant to degradation and have been shown to bioaccumulate in wildlife and humans (Refs. 1 and 2). There are also concerns that some PFAS may cause adverse human health effects, including reproductive, developmental, cancer, liver, immune, thyroid, and other effects (Refs. 1, 2, 8, and 9).

Based on their physicochemical properties and measured environmental concentrations, some PFAS are considered to be environmentally persistent chemicals (Refs. 1 and 2). In general, most PFAS are resistant to environmental degradation due to their strong carbon-fluorine bonds (Refs. 1 and 2). While PFAS chain length and chemical structure can have implications for environmental fate, PFAS are typically resistant to biodegradation, photooxidation, direct photolysis, and hydrolysis which is consistent with their persistence in soil and water (Ref. 2). Some PFAS, can also degrade or be metabolized to other PFAS such as PFOA or PFOS (Ref. 2). PFAS have been detected in air, surface water, groundwater, drinking water, soil, and food (Ref. 2). The presence of PFAS in many parts of the world, including the Arctic, indicate that long-range transport is possible (Ref. 2).

Under the TRI, bioaccumulation, to the extent it happens, is part of the hazard concerns and will be considered both in the listing criteria and in considering lower reporting thresholds. Bioconcentration factors (BCFs) estimated from an octanol-water partition coefficient (K_{ow}) or measured in aquatic tests, have typically been used to assess bioaccumulation potential. K_{ow} and the associated BCFs are based on the partitioning of organic chemicals into octanol or lipids. However, for PFAS such as PFOA and PFOS partitioning appears to be more related to their protein binding properties than to their lipophilicity (Refs. 8 and 9). Since K_{ow} does not provide a reliable estimate of bioaccumulation potential for these chemicals, field evidence of bioaccumulation is preferable. Field measured bioaccumulation factors (BAFs), and biomagnification factors (BMFs) or trophic magnification factors (TMFs) are considered more appropriate

indicators of the potential for PFAS, such as PFOA and PFOS, to accumulate in fish, other wildlife, and humans (Refs. 8, 9, 10, and 11). The trophic magnification data for PFOA and PFOS was deemed sufficient to consider them to be bioaccumulative by the Stockholm Convention Persistent Organic Pollutants Review Committee in 2015 (Ref. 12).

While the toxicity of PFOA and PFOS has been studied extensively, there is less data available for other PFAS (Ref. 2). Differences in PFAS chain length and chemical structure can have implications for environmental fate, bioaccumulation, metabolism, and toxicity (Ref. 1). As part of EPA's PFAS Action Plan, the Agency is continuing to collect, systematically review, and evaluate available toxicity data for other PFAS that may help determine whether exposure to structurally similar PFAS results in similar toxic effects (Ref. 1).

V. What EPA hazard assessments and other toxicity data are available for PFAS?

To date EPA has published two assessments of PFAS: (1) Health Effects Support Document for Perfluorooctane Sulfonate (PFOS) and (2) Health Effects Support Document for Perfluorooctanoic Acid (PFOA) (Refs. 7 and 13). These two documents could be used to determine whether PFOA, PFOS, and related chemicals (*e.g.,* their salts) meet the EPCRA section 313(d)(2) listing criteria. EPA has also developed two new draft PFAS assessments for public comment: (1) Human Health Toxicity Values for Hexafluoropropylene Oxide (HFPO) Dimer Acid and Its Ammonium Salt (CASRN 13252–13–6 and CASRN 62037–80–3) Also Known as ''GenX Chemicals'' and (2) Human Health Toxicity Values for Perfluorobutane Sulfonic Acid (CASRN 375–73–5) and Related Compound Potassium Perfluorobutane Sulfonate (PFBS) (CASRN 29420–49–3) (Refs. 14 and 15). Once these documents are finalized, EPA expects these assessments will provide a basis for determining whether GenX chemicals and PFBS meet the EPCRA section 313(d)(2) listing criteria.

In addition, EPA is working on hazard assessments for the following PFAS containing varying degrees of available toxicity information relevant for human health assessment purposes: Perfluorononanoic acid (PFNA), perfluorobutanoic acid (PFBA), perfluorodecanoic acid (PFDA), perfluorohexanoic acid (PFHxA), and perfluorohexane sulfonic acid (PFHxS) (Ref. 16). Once finalized, EPA expects these assessments will provide a basis for determining whether these chemicals meet the EPCRA section 313(d)(2) listing criteria.

EPA has also collected scientific literature on approximately 30 PFAS. This list of PFAS and the available scientific literature is posted at *https://hero.epa.gov/hero/index.cfm/litbrowser/public/#PFAS.* For some of these PFAS, there may be epidemiological and/or experimental animal toxicity data available for review and evaluation of suitability to inform potential human health effects.

Lastly, EPA is collaborating with the National Toxicology Program (NTP) to study individual PFAS and PFAS as a chemical class. Specifically, the NTP has conducted toxicology studies to evaluate and identify the adverse effects of certain PFAS chemicals including PFBS, PFHxS, PFOS, PFHxA, PFOA, PFNA, and PFDA (*https://www.niehs.nih.gov/health/topics/agents/pfc/index.cfm*). NTP continues to assess the potential health effects of PFAS through a large multi-faceted research effort (*https://ntp.niehs.nih.gov/results/areas/pfas/index.html*).

The Agency relies on EPA hazard assessments and externally peer-reviewed hazard assessments from other federal agencies in making determinations as to whether a chemical meets the EPCRA section 313 listing criteria. EPA will consider all PFAS assessments on the human health and environmental effects of PFAS that are available from all sources, including those being conducted by other federal agencies.

VI. What information is EPA requesting?

EPA is seeking comments on which of the approximately 600 PFAS currently active in U.S. commerce the Agency should consider evaluating for potential addition to the EPCRA section 313 list of toxic chemicals. EPA would also like to receive comments on whether there are data available to inform how to list PFAS, *i.e.,* as individual chemical listings, as a single category, as multiple categories or as a combination of individual listings and category listings. Note that when chemicals are listed as a category, the TRI reports submitted would include combined data for all members of the category, such that there are no data reported specific to any individual member of the category.

EPA is also seeking comments on the appropriate reporting thresholds for PFAS. Reporting thresholds should be set at an appropriate level to capture most of the releases of PFAS from the facilities that submit reports under EPCRA section 313. Finally, EPA would like to receive any additional information on human health and environmental toxicity, persistence, and bioaccumulation of PFAS that would help determine if they meet the EPCRA section 313 listing criteria.

VII. What are the next steps EPA will take?

EPA intends to carefully review all the comments and information received in response to this ANPRM, as well as previously collected and assembled studies. Once that review is completed, EPA may supplement the collected information with additional hazard assessments to determine whether some PFAS meet the EPCRA section 313(d)(2) criteria. Should EPA decide to move forward with this action, the next step will be to publish a proposed rule to add certain PFAS to the EPCRA section 313 toxic chemical list and set the appropriate reporting thresholds. At that time, the public will have the opportunity to comment on EPA's proposal.

VIII. References

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

1. USEPA. EPA's Per- and Polyfluoroalkyl Substances (PFAS) Action Plan. EPA 823R18004. U.S. Environmental Protection Agency, Washington, DC. February 2019. Available from: *https://www.epa.gov/pfas/epas-pfas-action-plan.*
2. ATSDR. Agency for Toxic Substances and Disease Registry. Toxicological Profile for Perfluoroalkyls—Draft for Public Comment. June 2018. Available from: *https://www.atsdr.cdc.gov/toxprofiles/tp200.pdf.*
3. USEPA. Basic Information on PFAS. U.S. Environmental Protection Agency, Washington, DC. Available from: *https://www.epa.gov/pfas/basic-information-pfas.*
4. Department of Health and Human Services, Centers for Disease Control and Prevention. Fourth National Report on Human Exposure to Environmental Chemicals. Pages 247–257, 2009. Available from: *https://www.cdc.gov/exposurereport/pdf/fourthreport.pdf.*
5. USEPA. Toxic Substances Control Act (TSCA) Chemical Substance Inventory. U.S. Environmental Protection Agency, Washington, DC. Available from: *https://www.epa.gov/tsca-inventory.*

6. USEPA. Fact Sheet: 2010/2015 PFOA Stewardship Program. Available from: *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/fact-sheet-20102015-pfoa-stewardship-program.*
7. USEPA. Health Effects Support Document for Perfluorooctane Sulfonate (PFOS). EPA 822–R–16–002. U.S. Environmental Protection Agency, Washington, DC. May 2016. Available from: *https://www.epa.gov/sites/production/files/2016-05/documents/pfos_hesd_final_508.pdf.*
8. USEPA. Drinking Water Health Advisory for Perfluorooctanoic Acid (PFOA). EPA 822–R–16–005. U.S. Environmental Protection Agency, Washington, DC. Available from: *https://www.epa.gov/sites/production/files/2016-05/documents/pfoa_health_advisory_final_508.pdf.*
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10. USEPA. Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000) Technical Support Document Volume 2: Development of National Bioaccumulation Factors. Office of Water, Office of Science and Technology. December 2003 (EPA–822–R–03–030). Available from: *https://www.epa.gov/sites/production/files/2018-10/documents/methodology-wqc-protection-hh-2000-volume2.pdf.*
11. Gobas, F.A.P.C., Watze de Wolf, W., Burkhard, L.P., Verbruggen, E., I and Plotzke, K. 2009. Revisiting Bioaccumulation Criteria for POPs and PBT Assessments. Integrated Environmental Assessment and Management—Volume 5, Number 4—pp. 624–637.
12. UNEP. Proposal to list pentadecafluorooctanoic acid (CAS No: 335–67–1, PFOA, perfluorooctanoic acid), its salts and PFOA-related compounds in Annexes A, B and/or C to the Stockholm Convention on Persistent Organic Pollutants. United Nations Environmental Program. 2015. Available from: *http://chm.pops.int/TheConvention/POPsReviewCommittee/Meetings/POPRC11/POPRC11Documents/tabid/4573/.*
13. USEPA. Health Effects Support Document for Perfluorooctanoic Acid (PFOA). EPA 822–R–16–003. U.S. Environmental Protection Agency, Washington, DC. May 2016. Available from: *https://www.epa.gov/sites/production/files/2016-05/documents/pfoa_hesd_final-plain.pdf.*
14. USEPA. Human Health Toxicity Values for Hexafluoropropylene Oxide (HFPO) Dimer Acid and Its Ammonium Salt (CASRN 13252–13–6 and CASRN 62037–80–3) Also Known as ''GenX Chemicals. Public Comment Draft. EPA–823–P–18–001. U.S. Environmental Protection Agency, Washington, DC. November 2018. Available from: *https://www.epa.gov/sites/production/files/2018-11/documents/genx_public_comment_draft_toxicity_assessment_nov2018-508.pdf.*
15. USEPA. Human Health Toxicity Values for Perfluorobutane Sulfonic Acid (CASRN 375–73–5) and Related Compound Potassium Perfluorobutane Sulfonate (CASRN 29420–49–3). Public Comment Draft. EPA–823–R–18–307. U.S. Environmental Protection Agency, Washington, DC. November 2018. Available from: *https://www.epa.gov/sites/production/files/2018-11/documents/pfbs_public_comment_draft_toxicity_assessment_nov2018-508.pdf.*
16. USEPA. IRIS Program Outlook. A Message from the IRIS Program (April 2019). U.S. Environmental Protection Agency, Washington, DC. Available from: *https://www.epa.gov/sites/production/files/2019-04/documents/iris_program_outlook_apr2019.pdf.*

IX. Statutory and Executive Order Reviews

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Any changes made in response to OMB recommendations have been documented in the docket for this action. Because this action does not propose or impose any requirements, and instead seeks comments and suggestions for the Agency to consider in possibly developing a subsequent proposed rule, the various statutes and Executive Orders that normally apply to rulemaking do not apply in this case. Should EPA subsequently determine to pursue a rulemaking, EPA will address the statutes and Executive Orders as applicable to that rulemaking.

List of Subjects in 40 CFR Part 372

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

Dated: November 25, 2019.

Andrew R. Wheeler,

Administrator.

[FR Doc. 2019–26034 Filed 12–3–19; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 84, No. 233
Wednesday, December 4, 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 COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Preliminary Results and Preliminary Intent To Rescind of Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Jiangsu Runchen Agricultural/Sideline Foodstuff Co., Ltd. (Runchen) did not make a *bona fide* sale of honey for the period of review (POR) December 1, 2017 through November 30, 2018. Therefore, Commerce preliminarily intends to rescind this administrative review. Interested parties are invited to comment on the preliminary results of this review.

DATES: Applicable December 4, 2019.

FOR FURTHER INFORMATION CONTACT: Jasun Moy or Kabir Archuletta, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8194 or (202) 482–2593, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 14, 2019, Commerce initiated an administrative review of the antidumping duty order on honey from the People's Republic of China (China) in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), with respect to three companies: Runchen; Inner Mongolia Komway Import & Export Co., Ltd.; and Shenzhen Long Sheng Shang Mao Ltd.[1] On June 24, 2019, Commerce rescinded its review of two of these companies, leaving Runchen as the sole mandatory respondent in this review.[2]

In accordance with 19 CFR 351.213(h)(1), the preliminary and final results deadlines in administrative reviews are calculated based on the ''last day of the anniversary month of the order or suspension agreement for which the administrative review was requested,'' which in this proceeding was December 31, 2018. Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019, by 40 days.[3] This review was therefore initiated on March 13, 2019.[4] As a result, the time period allotted to Commerce for conducting this administrative review overlapped the tolling period by 31 days. Accordingly, Commerce tolled all deadlines by 31 days for this review.[5] On September 19, 2019, pursuant to section 751(a)(3)(A) of the Act, Commerce determined that it was not practicable to complete the preliminary results of this review within the 245 days and extended the preliminary results by 61 days.[6] The revised deadline for the preliminary results in this review is now December 3, 2019.

Scope of the Order

The merchandise subject to this order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. For a full description of the scope, *see* the Preliminary Decision Memorandum.[7]

China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[8] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity in this review, the entity is not under review and the entity's rate (*i.e.,* $2.63 per kilogram) is not subject to change.[9]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics included in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and it is available to all parties in the Central Records Unit, room B8024 of the main Commerce building. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

[1] *See Honey from the People's Republic of China: Continuation of Antidumping Duty Order,* 83 FR 18277 (April 2, 2018); *see also Honey from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 77 FR 50464 (August 21, 2012); and *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 9297 (March 14, 2019) (*Initiation Notice*).

[2] *See Honey from the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 29498 (June 24, 2019).

[3] *See* Memorandum, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 31 days.

[4] *See Initiation Notice.*

[5] *See* Memorandum, ''December Order Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated August 7, 2019.

[6] *See* Memorandum, ''Honey from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated September 19, 2019.

[7] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Honey from the People's Republic of China; 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[8] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[9] *See Honey from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 80 FR 27633–34 (May 14, 2015).

Preliminary Rescission of the Administrative Review

As discussed in the Preliminary Decision Memorandum and as expounded upon in the *Bona Fide* Memorandum, Commerce preliminarily finds that the sale made by Runchen serving as the basis for this review is not a *bona fide* sale of honey.[10] Commerce reached this conclusion based on the totality of the record information surrounding Runchen's reported sale, including, but not limited to, the sales price and quantity, the profitability of the resold subject merchandise, the late payments, the limited number of sales (*i.e.,* one sale), and the importer/exporter experience and likelihood of future sales.

Because the non-*bona fide* sale was the only reported sale of subject merchandise during the POR, we find that Runchen had no reviewable transactions during this POR. Accordingly, we preliminarily intend to rescind this administrative review.[11] The factual information used in our *bona fides* analysis of Runchen's sale involves business proprietary information. *See* the *Bona Fide* Memorandum for a full discussion of the basis for our preliminary findings.

Public Comment

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments, filed electronically using ACCESS, within 30 days of the date of publication of this notice, pursuant to 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days after the due date for case briefs, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this review are requested to submit with each argument a statement of the issue, a summary of the argument not to exceed five pages, and a table of statutes, regulations, and cases cited, in accordance with 19 CFR 351.309(c)(2).

Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCES. An electronically filed document must be received successfully in its entirety by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.[12] If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a date and time to be determined.[13] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

If Commerce proceeds to a final rescission of this administrative review, the assessment rate to which Runchen's shipments are subject will not be affected by this review. If Commerce does not proceed to a final rescission of this administrative review, pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer-specific) assessment rates based on the final results of this review.

Cash Deposit Requirements

If Commerce proceeds to a final rescission of this administrative review, Runchen's cash deposit rate will continue to be the China-wide rate of $2.63 per kilogram. If Commerce issues final results for this administrative review, Commerce will instruct U.S. Customs and Border Protection to collect cash deposits, effective upon the publication of the final results, at the rates established therein.

Notification to Importers

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

Notification to Interested Parties

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: November 29, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
V. Recommendation

[FR Doc. 2019–26219 Filed 12–3–19; 8:45 am]

BILLING CODE 3510–DS–P

[10] *See* Memorandum, ''Preliminary *Bona Fide* Sales Analysis,'' dated concurrently with this notice (*Bona Fide* Memorandum).

[11] *See* 19 CFR 351.213(d)(3).

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

[13] *See* 19 CFR 351.310(d).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–881]

Malleable Cast Iron Pipe Fittings From the People's Republic of China: Continuation of Antidumping Duty Order

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

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) order on malleable cast iron pipe fittings from the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping and of material injury to an industry in the United States, Commerce is publishing this notice of continuation of the AD order.

DATES: Applicable December 4, 2019.

FOR FURTHER INFORMATION CONTACT: Laura Griffith or Brendan Quinn, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6430 or (202) 482–5848, respectively.

SUPPLEMENTARY INFORMATION: On July 1, 2019, Commerce published the notice of initiation of the third sunset review of

the AD *Order*[1] on malleable cast iron pipe fittings from China, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] Commerce conducted this sunset review on an expedited basis, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), because it received a complete timely and adequate response from domestic interested parties[3] but no substantive responses from respondent interested parties. As a result of its review, Commerce determined that revocation of the *Order* would likely lead to a continuation or recurrence of dumping. Commerce also notified the ITC of the magnitude of the dumping margins likely to prevail should the *Order* be revoked.[4]

On November 25, 2019, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the existing AD order on malleable cast iron pipe fittings from China would be likely to lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Order

The products covered by the *Order* are certain malleable iron pipe fittings, cast, other than grooved fittings, from the People's Republic of China. The merchandise is currently classifiable under item numbers 7307.19.30.60, 7307.19.30.85, 7307.19.90.30, 7307.19.90.60, 7307.19.90.80, and 7326.90.86.88 of the Harmonized Tariff Schedule of the United States (HTSUS). Excluded from the scope of this order are metal compression couplings, which are imported under HTSUS number 7307.19.90.80. A metal compression coupling consists of a coupling body, two gaskets, and two compression nuts. These products range in diameter from ½ inch to 2 inches and are carried only in galvanized finish. Although HTSUS subheadings are provided for convenience and customs purposes, Commerce's written description of the scope of this proceeding is dispositive.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the AD *Order* on malleable cast iron pipe fittings would be likely to lead to a continuation or recurrence of dumping, and material injury to an industry in the United States, pursuant to sections 751(c) and 751(d)(2) of the Act, Commerce hereby orders the continuation of the AD *Order* on malleable cast iron pipe fittings from China. U.S. Customs and Border Protection will continue to collect cash deposits of estimated antidumping duties at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next sunset review of the *Order* not later than 30 days prior to the fifth anniversary of the effective date of this continuation.

Notification to Interested Parties

This five-year sunset review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: November 25, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–26216 Filed 12–3–19; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping Duty Order: Certain Malleable Iron Pipe Fittings from the People's Republic of China,* 68 FR 69376 (December 12, 2003) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 84 FR 31304 (July 1, 2019).

[3] *See* Domestic Interested Parties' Letters, ''Malleable Cast Iron Pipe Fittings from China, Third Sunset Review: Notice of Intent to Participate,'' dated July 9, 2019; and ''Malleable Cast Iron Pipe Fittings from China, Third Sunset Review: Substantive Response to Notice of Initiation,'' dated July 31, 2019.

[4] *See Certain Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Expedited Third Sunset Review of Antidumping Duty Order,* 84 FR 58686 (November 1, 2019).

[5] *See Malleable Cast Iron Pipe Fittings from China,* 84 FR 64921 (November 25, 2019); *see also* USITC Publication 4993, November 2019 entitled *Malleable Iron Pipe Fittings from China (Inv. No. 731–TA–1021 (Third Review)).*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–814]

Chlorinated Isocyanurates From Spain: Final No Shipments Determination of Antidumping Duty Administrative Review; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) determines that Ercros S.A. (Ercros) had no shipments of subject merchandise during the period of review (POR), June 1, 2018 through May 31, 2019.

DATES: Applicable December 4, 2019.

FOR FURTHER INFORMATION CONTACT: Andrew Huston AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4261.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 2019, Commerce published the preliminary no shipments determination in the 2018–2019 administrative review of the antidumping duty order on chlorinated isocyanurates (chlorinated isos) from Spain.[1] No parties submitted comments on the *Preliminary Determination.*

Scope of the Order

The products covered by the order are chlorinated isocyanurates. Chlorinated isocyanurates are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isocyanurates: (1) Trichloroisocyanuric acid (Cl3(NCO)3), (2) sodium dichloroisocyanurate (dihydrate) (NaCl2(NCO)3 2H2O), and (3) sodium dichloroisocyanurate (anhydrous) (NaCl2(NCO)3). Chlorinated isocyanurates are available in powder, granular, and tableted forms. The order covers all chlorinated isocyanurates. Chlorinated isocyanurates are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, and 2933.69.6050 of the Harmonized Tariff Schedule of the United States (HTSUS). The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isocyanurates and other compounds including an unfused triazine ring. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Final Determination of No Shipments

Commerce preliminarily found that Ercros did not have any shipments of subject merchandise during the POR.[2] After the *Preliminary Determination* we received no comments or additional information with respect to this

[1] *See Chlorinated Isocyanurates from Spain: Preliminary No Shipments Determination of Antidumping Duty Administrative Review; 2018–2019,* 84 FR 51511 (September 30, 2019) (*Preliminary Determination*).

[2] *Id.*

company. Therefore, for these final results, we continue to find that Ercros had no shipments of subject merchandise during the POR. Consistent with our practice, we will issue appropriate instructions to U.S. Customs and Border Protection (CBP) based on these final results.

Analysis of Comments Received

As noted above, we received no comments on the *Preliminary Determination.*

Changes Since the Preliminary Results

As no parties submitted comments on the *Preliminary Determination,* Commerce has not modified its analysis from that presented in the *Preliminary Determination,* and no decision memorandum accompanies this **Federal Register** notice.

Assessment Rates

We have not calculated any assessment rates in this administrative review. Pursuant to Commerce's assessment practice, because we have determined that Ercros had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the all-others rate.[3] Commerce intends to issue appropriate assessment instructions to CBP 15 days after the publication date of the final results of this administrative review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Ercros will remain unchanged from the rate assigned to the company in the most recently completed review of that company; (2) for other manufacturers and exporters covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 24.83 percent, the all-others rate established in the investigation.[4] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

Administrative Protective Orders

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

We are issuing and publishing these final results and this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: November 29, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–26220 Filed 12–3–19; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

[4] *See Chlorinated Isocyanurates from Spain: Notice of Final Determination of Sales at Less Than Fair Value,* 70 FR 24506 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–115]

Certain Glass Containers From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

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

DATES: Applicable December 4, 2019.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Maliha Khan, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0193 or (202) 482–0895, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 15, 2019, the Department of Commerce (Commerce) initiated a countervailing duty (CVD) investigation of imports of certain glass containers (glass containers) from the People's Republic of China.[1] Currently, the preliminary determination is due no later than December 19, 2019.

Postponement of Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a CVD investigation within 65 days after the date on which Commerce initiated the investigation. However, section 703(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 130 days after the date on which Commerce initiated the investigation if: (A) The petitioner[2] makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless

[1] *See Certain Glass Containers from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 84 FR 56168 (October 21, 2019).

[2] The petitioner is the American Glass Packaging Coalition.

it finds compelling reasons to deny the request.

On November 19, 2019, the petitioner submitted a timely request that Commerce postpone the preliminary CVD determination.[3] The petitioner stated that it requests postponement because without the postponement Commerce will have insufficient time to select mandatory respondents, and Commerce, the petitioner, and interested parties will have insufficient time to analyze questionnaire responses.[4]

In accordance with 19 CFR 351.205(e), the petitioner has stated the reasons for requesting a postponement of the preliminary determination, and Commerce finds no compelling reason to deny the request. Therefore, in accordance with section 703(c)(1)(A) of the Act, Commerce is postponing the deadline for the preliminary determination to no later than 130 days after the date on which this investigation was initiated, *i.e.,* February 24, 2020.[5] Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination, unless postponed at a later date.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: November 27, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–26179 Filed 12–3–19; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See* Petitioner's Letter, ''Certain Glass Containers from the People's Republic of China: Request to Postpone Preliminary Determination,'' dated November 19, 2019.

[4] *Id.*

[5] Postponing the preliminary determination to 130 days after initiation would place the deadline on Saturday, February 22, 2020. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–932]

Certain Steel Threaded Rod From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On November 20, 2019, the United States Court of International Trade (the Court) sustained the final results of redetermination pertaining to the antidumping duty (AD) administrative review of certain steel threaded rod (STR) from the People's Republic of China (China) covering the period April 1, 2013 through March 31, 2014. The Department of Commerce (Commerce) is notifying the public that the final judgment in this case is not in harmony with the final results of the administrative review and that Commerce is amending the final results with respect to the separate rate status assigned to Gem-Year Industrial Co., Ltd. (Gem-Year).

DATES: Applicable November 30, 2019.

FOR FURTHER INFORMATION CONTACT: Jerry Huang, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–4047.

SUPPLEMENTARY INFORMATION:

Background

On November 12, 2015, Commerce published its *Final Results* of the 2013–2014 AD administrative review of STR from China.[1] On February 27, 2019, the Court remanded the *Final Results* to Commerce to reconsider its decision to reject Gem-Year's application for separate rate status and resulting treatment of Gem-Year as part of the China-wide entity.[2] On remand, Commerce issued its final results of redetermination in accordance with the Court's order, determining that Gem-Year had established its eligibility for a separate rate, and that the use of adverse facts available was warranted in determining Gem-Year's weighted-average dumping margin.[3] On November 20, 2019, the Court sustained Commerce's Final Remand Redetermination.[4]

Timken Notice

In its decision in *Timken,*[5] as clarified by *Diamond Sawblades,*[6] the Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The Court's November 20, 2019 judgment sustaining the Final Remand Redetermination constitutes a final decision of the Court that is not in harmony with Commerce's *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court decision, Commerce is amending its *Final Results* with respect to Gem-Year. Commerce finds that for the period April 1, 2013 through March 31, 2014 Gem-Year has demonstrated its eligibility for a separate rate as follows:

Producer/exporter	Weighted-average dumping margin
Gem-Year Industrial Co., Ltd	206.00

Accordingly, Commerce will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the Court's ruling is not appealed or, if appealed, upheld by the CAFC, Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on unliquidated entries of subject merchandise exported by Gem-Year using the assessment rate assigned by Commerce, as listed above.

[1] *See Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014,* 80 FR 69938 (November 12, 2015) (*Final Results*) and accompanying Issues and Decision Memorandum (IDM).

[2] *See Hubbell Power Systems, Inc.* v. *United States,* Court No. 15–00312, Slip Op. 19–25 (CIT February 27, 2019) (*Remand Order).*

[3] *See* Final Results of Redetermination Pursuant to Court Remand *Hubbell Power Systems, Inc.* v. *United States,* Court No. 15–00312, Slip Op. 19–25 (CIT February 27, 2019), dated May 20, 2019 (Final Remand Redetermination).

[4] *See Hubbell Power Systems, Inc.* v. *United States,* Court No. 15–00312, Slip Op. 19–145 (CIT November 20, 2019).

[5] *See Timken Co.,* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[6] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Cash Deposit Requirements

Because Gem-Year does not have a superseding cash deposit rate, *i.e.,* there have been no final results published in a subsequent administrative review for Gem-Year, Commerce will issue revised cash deposit instructions to CBP. Effective November 30, 2019, the cash deposit rate applicable to entries of subject merchandise exported by Gem-Year is 206.00 percent.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: November 27, 2019

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–26215 Filed 12–3–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR068]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Seabird Research Activities in Central California

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

ACTION: Notice; receipt of application for Letter of Authorization; request for comments and information.

SUMMARY: NMFS has received a request from Point Blue Conservation Science (Point Blue) for authorization to take small numbers of marine mammals incidental to seabird research activities in central California over the course of five years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of Point Blue's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on Point Blue's application and request.

DATES: Comments and information must be received no later than January 3, 2020.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Fowler@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401. An electronic copy of Point Blue's application may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined *negligible impact* in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term *take* means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines *harassment* as: Any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On September 17, 2019, NMFS received an application from Point Blue requesting authorization for take of marine mammals incidental to seabird research activities at three research sites in central California. We determined the application was adequate and complete on November 26, 2019. The requested regulations would be valid for five years, from July 7, 2020 through July 6, 2025. Point Blue plans to monitor and census seabird populations, observe seabird nesting habitat, restore nesting burrows, and resupply a field station. The proposed action may incidentally expose marine mammals occurring in the vicinity to human presence at pinniped haulouts, thereby resulting in incidental take, by Level B harassment only. Therefore, Point Blue requests authorization to incidentally take marine mammals.

NMFS has previously issued nine Incidental Harassment Authorizations (IHAs) to Point Blue for similar work from 2006 through 2018 (72 FR 71121, December 14, 2007; 73 FR 77011, December 18, 2008; 75 FR 8677, February 19, 2010; 77 FR 73989, December 7, 2012; 78 FR 66686, November 6, 2013; 80 FR 80321, December 24, 2015; 81 FR 34978, June 1, 2016; 82 FR 31759, July 7, 2017; 83 FR 31372, July 5, 2018). Point Blue complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHAs and their monitoring reports are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities.*

Specified Activities

The planned activities occur on Southeast Farallon Island (SEFI), Año Nuevo Island (ANO), and Point Reyes National Seashore (PRNS). Point Blue, along with partners Oikonos Ecosystem Knowledge and PRNS, have been conducting seabird research activities at these locations for over 30 years. This research is conducted under cooperative agreements with the U.S. Fish and Wildlife Service (USFWS) in consultation with the Gulf of the Farallones National Marine Sanctuary. Point Blue's research activities have the potential to harass California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), northern elephant seals (*Mirounga angustirostris*), northern fur seals (*Callorhinus ursinus*), Guadalupe fur seals (*Arctocephalus townsendi*), and Steller sea lions (*Eumetopias jubatus*).

Research on SEFI is conducted year round. At SEFI, seabird monitoring sites are visited ~ 1–3 times per day for a maximum of 500 visits per year. Most seabird monitoring visits are brief (~15 minutes), though seabird observers are present from 2–5 hours daily at North Landing from early April—early August each year to conduct observational studies on breeding common murres (*Uria aalge*). Boat landings to re-supply the field station, lasting 1–3 hours, are conducted once every two weeks. At ANI, research is conducted approximately once/week from April–August, with occasional intermittent visits made during the rest of the year. The maximum number of visits per year would be 20. Landings and visits to nest boxes are brief (~15 minutes). Research at PRNS is conducted year round, with an emphasis during the seabird nesting season with occasional intermittent visits the rest of the year. The maximum number of visits per year is 20. A component of the seabird research involves habitat restoration and monitoring which requires sporadic visits from September–November, between the seabird breeding season and the elephant seal pupping season.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning Point Blue's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by Point Blue, if appropriate.

Dated: November 27, 2019.

Angela Somma,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–26171 Filed 12–3–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 19–56]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 19–56 with attached Policy Justification and Sensitivity of Technology.

Dated: November 27, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

OCT 1 0 2019

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 19-56 concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Tunisia for defense articles and services estimated to cost $234 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 19–56

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(l) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Tunisia

(ii) *Total Estimated Value:*

Major Defense Equipment *	$115 million
Other	119 million
TOTAL	234 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE): Twelve (12) T–6C Texan Trainer Aircraft

Non-Major Defense Equipment (MDE): Also included in this sale are spare engines, cartridge actuated devices/propellant actuated devices operational flight trainer, spare parts, ground handling equipment, support equipment, software delivery and support, publications and technical documentation, clothing, textiles and individual equipment, aircraft ferry support, technical and logistical support services, site surveys, minor modifications/class IV support, personnel training and training equipment, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support.

(iv) *Military Department:* Air Force (TU–D–SAB)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached annex.

(viii) *Date Report Delivered to Congress:* October 10, 2019

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Tunisia—T–6C Texan Trainer Aircraft

The Government of Tunisia has requested a possible sale of twelve (12) T–6C Texan trainer aircraft, spare engines, cartridge actuated devices/propellant actuated devices operational flight trainer, spare parts, ground handling equipment, support equipment, software delivery and support, publications and technical documentation, clothing, textiles and individual equipment, aircraft ferry support, technical and logistical support services, site surveys, minor modifications/class IV support, personnel training and training equipment, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support. The estimated value is $234 million.

This proposed sale will support the foreign policy and national security of the United States by helping to improve the defense capabilities and capacity of a major non-NATO ally, which is an important force for political stability and economic progress in North Africa. This potential sale will provide additional opportunities for bilateral engagements and further strengthen the bilateral relationship between the United States and Tunisia.

The proposed sale will replace Tunisia's aging trainer fleet and allow Tunisia to continue training pilots to support Tunisia's counter-terrorism and border security missions. Tunisia will have no difficulty absorbing this aircraft into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Textron Aviation Defense LLC of Wichita, Kansas. There are no known offset agreement proposed with this potential sale. However, the purchaser typically requests offsets. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will require the assignment of nine U.S. Government and one contractor representative to Tunisia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 19–56

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The T–6C is a single engine turboprop trainer aircraft that includes a virtual no-drop scoring capability. Its primary purpose is to teach air to ground operations. No hard points or weapons can be carried on the T–6C.

2. A determination has been made that the recipient country can provide substantially the same degree of protection for the technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

3. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Tunisia.

[FR Doc. 2019–26167 Filed 12–3–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 19–59]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 19–59 with attached Policy Justification and Sensitivity of Technology.

Dated: November 27, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

NOV 19 2019

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 19-59, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of India for defense articles and services estimated to cost $1.0210 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 19–59

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of India

(ii) *Total Estimated Value:*

Major Defense Equipment *	$ .5614 billion
Other	.4596 billion
TOTAL	1.0210 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Up to thirteen (13) MK 45 5 inch/62 caliber (MOD 4) naval guns

Up to three thousand five hundred (3,500) D349 Projectile, BL&P 5″/54 MK 92 MOD 1 Ammunition

Non-MDE: Also included are other ammunition, spare parts, personnel training and equipment training, publications and technical data, transportation, U.S. Government and contractor technical assistance and other related logistics support.

(iv) *Military Department:* Navy (IN–P–LAU)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

(viii) *Date Report Delivered to Congress:* November 19, 2019

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

India—MK 45 Gun System

The Government of India has requested to buy up to thirteen (13) MK 45 5 inch/62 caliber (MOD 4) naval guns and three thousand five hundred (3,500) D349 Projectile, 5″/54 MK 92 MOD 1 Ammunition. Also included are other ammunition, spare parts, personnel training and equipment training, publications and technical data, transportation, U.S. Government and contractor technical assistance and other related logistics support. The total estimated cost is $1.0210 billion.

This proposed sale will support the foreign policy and national security of the United States by improving the security of a strategic regional partner.

The proposed sale will improve India's capability to meet current and future threats from enemy weapon systems. The MK–45 Gun System will provide the capability to conduct anti-surface warfare and anti-air defense missions while enhancing interoperability with U.S. and other allied forces. India will use the enhanced capability as a deterrent to regional threats and to strengthen its homeland defense.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be BAE Systems Land and Armaments, Minneapolis, Minnesota with gun manufacturing in Louisville, Kentucky. There are no known offset agreements proposed in connection with this potential sale. Any offset agreement required by India will be defined in negotiations between the purchaser and the contractor(s).

Implementation of this proposed sale will not require the assignment of additional U.S. Government and/or contractor representatives to India. However, U.S. Government or contractor personnel in country visits will be required on a temporary basis in conjunction with program technical oversight and support requirements.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 19–59

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The MK–45 Gun System is a U.S. naval artillery gun mount consisting of 127 mm (5 inch) L54 Mark 19 Gun on Mark 45 Mount. The highest level of release of the subsystem is UNCLASSIFIED. The highest level of information that could be disclosed by a proposed sale or by testing of the end item is UNCLASSIFIED; the highest level that must be disclosed for production, maintenance, or training is UNCLASSIFIED. Reverse engineering would not reveal venerable information.

2. A determination has been made that India can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary to further the U.S. foreign policy and national security objectives outlined in the Policy Justification.

3. All defense articles and services listed on this transmittal have been authorized for release and export to the Government of India.

[FR Doc. 2019–26163 Filed 12–3–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 19–0J]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 19–0J with attached Policy Justification.

Dated: November 27, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

OCT 0 1 2019

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 19-0J. This report relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 18-43 of November 27, 2018.

Sincerely,

for Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Regional Balance (Classified document provided under separate cover)

Transmittal No.: 19–0J

REPORT OF ENHANCEMENT OR UPGRADE OF SENSITIVITY OF TECHNOLOGY OR CAPABILITY (SEC. 36(B)(5)(C), AECA)

(i) *Prospective Purchaser:* Qatar

(ii) Sec. 36(b)(1), AECA Transmittal No.: 18–43

Date: 27 November 2018

Military Department: Air Force

(iii) *Description:* On November 27, 2018, Congress was notified by Congressional certification transmittal number 18–43 of the possible sale, under Section 36(b)(1) of the Arms Export Control Act, of forty (40) AIM–120C–7 Advanced Medium Range Air-to-Air Missiles (AMRAAM) and one (1) spare AIM–120C–7 AMRAAM Guidance Section. Also included were one (1) spare AIM–120C–7 control section, eight (8) AMRAAM Captive Air Training Missile (CATM–120C), missile containers, classified software for the AN/MPQ–64F1 Sentinel Radar, spare and repair parts, cryptographic and communication security devices, precision navigation equipment, other software, site surveys, weapons system equipment and computer software support, publications and technical documentation, common munitions and test equipment, repair and return services and equipment, personnel training and training equipment, integration support and test equipment, and U.S. Government and contractor, engineering, technical and logistics support services, and other related elements of logistical and program support. The estimated total cost was $215 million. Major Defense Equipment * (MDE) constituted $95 million of this total. This proposed sale was in support of Qatar's procurement of the National Advanced Surface to Air Missile System (NASAMS) via Direct Commercial Sale (DCS).

This transmittal reports the inclusion of up to eighty additional (80) AIM–120C–7 missiles, one hundred twenty (120) AIM–120C–7 ER missiles, thirteen (13) Multifunction Information Distribution System Low Volume Terminal (MIDS–LVT) Block Upgrade 2, and associated materiel, support, and services. These additional MDE items will result in an increase in MDE cost of $461 million, for a total MDE value of $556 million. Non-MDE cost will increase by $16 million. Total case value will increase to $692 million.

(iv) *Significance:* This notification is being provided as these additional missiles represent an increase in capability over what was previously notified. This equipment meets Qatar's requirements for a NASAMS capability providing a full range of protection from imminent hostile cruise missile, unmanned aerial vehicle, rotary wing, and fixed wing threats. The MIDS–LVT BU2 will contribute to the crypto capability of the NASAMS to enable Qatar's self-defense capabilities, and enhance its interoperability with the United States and regional partners.

(v) *Justification:* This proposed sale supports the foreign policy and national security objectives of the United States by helping improve the security of a key partner that has been, and continues to be, a significant host and member of coalition forces in the Middle East.

(vi) *Sensitivity of Technology:* The Sensitivity of Technology Statement contained in the original notification applies to the AIM–120C–7 missiles. The AIM–120C–7 ER missiles have the same capability and sensitivity of technology as the AIM–120C–7 but with a larger rocket motor to allow it to travel further. The MIDS LVT BU2 is classified CONFIDENTIAL and is a secure data and voice communication network using the Link-16 architecture. The system provides enhanced situational awareness, positive identification of participants within the network, and secure voice capability. The system provides the critical ground link for simultaneous coordination of air, land, and maritime forces.

(vii) *Date Report Delivered to Congress:* October 1, 2019

* As defined in Section 47(6) of the Arms Export Control Act.

[FR Doc. 2019–26166 Filed 12–3–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 19–67]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 19–67 with attached Policy Justification and Sensitivity of Technology.

Dated: November 27, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Billing Code 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

NOV 2 0 2019

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 19-67 concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Australia for defense articles and services estimated to cost $245 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

for Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Billing Code 5001–06–C

Transmittal No. 19–67

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Australia.

(ii) *Total Estimated Value:*

Major Defense Equipment *	$ 0 million
Other	245 million
TOTAL	245 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE): None.

Non-MDE: Up to eight hundred fifty (850) Joint Counter Radio-Controlled Improvised Explosive Device Electronic Warfare Increment 1 Block 1 (JCREW I1B1) Systems (533 vehicle mounted and 317 dismounted); spare and repair parts; support and test equipment; technical exchanges, publications and technical documentation; support equipment; engineering change proposals; classified software/loadsets; training; U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistics support.

(iv) *Military Department:* Navy (AT–P–LGA).

(v) *Prior Related Cases, if any:* AT–P–LFX.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

(viii) *Date Report Delivered to Congress:* November 20, 2019.

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Australia—JCREW Systems and Support

The Government of Australia has requested to buy up to eight hundred fifty (850) Joint Counter Radio-Controlled Improvised Explosive Device Electronic Warfare Increment 1 Block 1 (JCREW I1B1) Systems (533 vehicle mounted and 317 dismounted); spare and repair parts; support and test equipment; technical exchanges, publications and technical documentation; support equipment; engineering change proposals; classified software/loadsets; training; U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistics support. The total estimated cost is $245 million.

This proposed sale will support the foreign policy and national security objectives of the United States. Australia is one of our most important allies in the Western Pacific. The strategic location of this political and economic power contributes significantly to ensuring peace and economic stability in the region.

The proposed sale will provide Australia increased force protection from Radio-Controlled Improvised Explosive Device threats for its defense forces and vehicles. Australia is interested in procuring the dismounted and mounted variants that have a modular, open architecture and are upgradeable in order to maintain capability against evolving global threats. Australia will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Northrop Grumman Corporation, San Diego, California. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Australia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 19–67

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. Australia's requirement for 850 JCREW I1B1 systems could potentially include: (1) Expeditionary Warfare, Force Protection, (2) Techniques for the Defeat of Radio Controlled Improvised Explosive Devices, (3) Force Protection, Counter Unmanned Aircraft Systems, (4) Capabilities and Limitations of Electronic Warfare Systems, and, (5) Threat Assessment from Radio Controlled Improvised Explosive Devices.

2. The Counter Radio-Controlled Improvised Explosive Device Electronic Warfare technical insertion development may contain sensitive technology; however, defined requirements are not known at this time and will be assessed on a case-by-case basis.

3. A determination has been made that Australia can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary to further the U.S. foreign policy and national security objectives outlined in the Policy Justification.

4. All defense articles and services listed on this transmittal have been authorized for release and export to the Government of Australia.

[FR Doc. 2019–26160 Filed 12–3–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 19–52]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 19–52 with attached Policy Justification and Sensitivity of Technology.

Dated: November 27, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

OCT 1 0 2019

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 19-52 concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Kuwait for defense articles and services estimated to cost $281 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

for

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 19–52

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Kuwait

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$103 million
Other	178 million
Total	281 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* Purchase of new M88A2s and refurbishment/overhaul of Kuwait's existing inventory of fourteen (14) M88A2 and eight (8) M88A1 Recovery Vehicles.

Major Defense Equipment (MDE):

Nineteen (19) M88A2 Heavy Equipment Recovery Combat Utility Lifting Extraction System (HERCULES) Recovery Vehicles

Nineteen (19) .50 Caliber Machine Guns

Non-MDE:

Refurbishment/overhaul of existing fleet of M88Al/A2 recovery vehicles; M239 Smoke Grenade Launchers; AN/PVS–7D Night Vision Goggles; Driver Vision Enhancer DVE–CV (platform-

mounted Night Vision Device) for vehicles; Vehicle Intercom Set (VIC–3); Commander's Cupola gun shield assembly for vehicle crew chief; Remote Thermal Sights/kits (vehicle-mounted sights); SINCGARS AN–VRC92E Export Radio System and support; logistics support fielding packages; special tools and test equipment; spare and maintenance support parts for vehicles and machine guns; transportation services; Repair and Return services for vehicle components; de-processing team; contractor System Technical Support (STS) and Field Service Representatives (FSRs); training; and U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistical and program support.

(iv) *Military Department:* U.S Army (KU–B–UXC and KU–B–UXD).

(v) *Prior Related Cases, if any:* KU–B–UXA; KU–B–JAT; KU–B–ULX; KU–B–UKN; KU–B–UMK; KU–B–UKO; KU–B–UAI.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

(viii) *Date Report Delivered to Congress:* October 10, 2019.

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kuwait—M88A2 Recovery Vehicles and Related Equipment and Support

The Government of Kuwait has requested a possible sale of nineteen (19) M88A2 Heavy Equipment Recovery Combat Utility Lifting Extraction System (HERCULES) recovery vehicles and nineteen (19) .50 caliber machine guns. Also included is the refurbishment/overhaul of existing fleet of M88Al/A2 recovery vehicles; M239 Smoke Grenade Launchers; AN/PVS–7D Night Vision Goggles; Driver Vision Enhancer DVE–CV (platform-mounted Night Vision Device) for vehicles; Vehicle Intercom Set (VIC–3); Commander's Cupola gun shield assembly for vehicle crew chief; Remote Thermal Sights/kits (vehicle-mounted sights); SINCGARS AN–VRC92E Export Radio System and support; logistics support fielding packages; special tools and test equipment; spare and maintenance support parts for vehicles and machine guns; transportation services; Repair and Return services for vehicle components; de-processing team; contractor System Technical Support (STS) and Field Service Representatives (FSRs); training; and U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistical and program support. The total estimated program cost is $281 million.

The proposed sale will support the foreign policy and national security of the United States by helping to improve the security of a Major Non-NATO Ally that is an important force for political stability and economic progress in the Middle East.

The M88A2 HERCULES is a full tracked armored vehicle used to perform battlefield rescue and recovery missions. The M88A2 is essential to the long-term sustainability of Kuwait's new M1A2 tank fleet for national defense. Kuwait will have no difficulty absorbing this additional equipment and services.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors involved in this program are the BAE Systems—York, PA; US Ordnance—McCarran, NV; DRS Technologies—Arlington, VA; Harris Corp.—Tysons Corner, VA; Northrup Grumman—West Falls Church, VA; and Raytheon—McKinney, TX. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require five to seven U.S. Government or contractor representatives to travel to Kuwait for a period of 12 months for vehicle de-processing and training. If refurbishment/overhaul takes place in Kuwait, the estimated number of U.S. Government or contractors required is eight over an estimated 18-month period.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 19–52

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The M88Al/A2 Heavy Equipment Recovery Combat Utility Lift Evacuation System (HERCULES) Armored Recovery Vehicle (ARV) is a full-tracked armored vehicle used to perform battlefield recovery missions including towing, hoisting, and winching. It is fully capable of recovery support for Abrams series tanks and future heavy combat vehicles. The highest level of classified material required to be released for training, operation and maintenance is UNCLASSIFIED. Components considered to contain sensitive technology in the proposed case are as follows:

a. Driver's Vision Enhancer (DVE–CV–M88) platform-mounted night vision device (NVD) for vehicles—The DVE–CV–M88 is an un-cooled thermal imaging system developed for use while driving Combat Vehicles and Tactical Wheeled Vehicles. It allows for tactical vehicle movement in all environmental conditions and provides enhanced driving capability during limited visibility conditions. The highest level of classification is UNCLASSIFIED for hardware and software.

b. Remote Thermal Sight (vehicle-mounted)—The Remote Thermal Sight is a platform mounted and is not a standalone device. The highest level of classification associated with this system is UNCLASSIFIED.

c. AN/PVS–7D Night Vision Goggles (NVG)—AN/PVS–7D NVG will be included for vehicle crews. The highest level of classification associated with the NVG is UNCLASSIFIED.

d. AN/VRC–92E Export Version Single Channel Ground and Airborne radio System (SINCGARS) with GPS—SINCGARS provides both voice and data handling capability in support of command and control operations. It facilitates transmission of voice and/or data information, which allows for conducting missions across the operational continuum. The SINCGARS radio system to be provided for the M88A2 recovery vehicles is the export variant. The highest level of classification associated with the SINCGARS radio system is UNCLASSIFIED.

2. A determination has been made that Kuwait can provide substantially the same degree of protection of this technology as the U.S. Government. This proposed sale is necessary in furtherance of U.S. foreign policy and national security objectives outlined in the Policy Justification.

3. All defense articles and services listed in this transmittal are authorized for release and export to the Government of Kuwait.

[FR Doc. 2019–26165 Filed 12–3–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 19–54]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 19–54 with attached Policy Justification and Sensitivity of Technology.

Dated: November 27, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

OCT 0 1 2019

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 19-54 concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Japan for defense articles and services estimated to cost $140 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification

BILLING CODE 5001–06–C

Transmittal No. 19–54

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Japan.

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$0 million
Other	140 million
Total	140 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE): None.

Non-MDE: Follow-On Technical Support (FOTS) sustainment and services in support of eight (8) Japan AEGIS Destroyers consisting of four (4) KONGO Class Destroyers, two (2) ATAGO Class Destroyers, two (2) MAYA Class Destroyers and one (1) Japanese Computer Test Site (JCPTS). The sustainment efforts will include AEGIS software updates, system integration and testing, U.S. Government and contractor technical assistance, and other related elements of logistics and program support.

(iv) *Military Department:* Navy (JA–P–QFA).

(v) *Prior Related Cases, if any:* JA–P–LYJ, JA–P–LZU, and JA–P–LZW.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None.

(viii) *Date Report Delivered to Congress:* October 1, 2019.

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Japan—Follow-On Technical Support (FOTS) for AEGIS Destroyers

The Government of Japan has requested to buy Follow-On Technical Support (FOTS) sustainment and services in support of eight (8) Japan AEGIS Destroyers consisting of four (4) KONGO Class Destroyers, two (2) ATAGO Class Destroyers, two (2) MAYA Class Destroyers and one (1) Japanese Computer Test Site (JCPTS). The sustainment efforts will include AEGIS software updates, system integration and testing, U.S. Government and contractor technical assistance, and other related elements of logistics and program support. The estimated cost is $140 million.

This proposed sale will support the foreign policy and national security of the United States by improving the security of a major ally that is a force for political stability and economic progress in the Asia-Pacific region. It is vital to U.S. national interests to assist Japan in developing and maintaining a strong and effective self-defense capability.

The proposed follow-on technical support is critical to ensure Japan Maritime Self Defense Force's (JMSDF) Aegis Destroyer fleet and JCPTS remain ready to provide critical capabilities in the defense of Japan. Japan's AEGIS Destroyers provide ship-based ballistic missile defense capabilities and build upon a longstanding cooperative effort with the United States to provide enhanced capability with a valued partner in a geographic region of critical importance to Japan and the United States. Japan will have no difficulty absorbing this support into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Lockheed Martin, Moorestown, NJ. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of two contractor representatives to Japan to support the program.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2019–26164 Filed 12–3–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection Extension

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years an information collection request with the Office of Management and Budget.

DATES: Comments regarding this proposed information collection must be received on or before February 3, 2020. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments should include DOCKET # EERE–2019–VT–0XXX in the subject line of the message and be sent to: Mr. Dennis Smith, Office of Energy Efficiency and Renewable Energy (EE–3V), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0121, or by fax at 202–586–1600, or by email at *Dennis.Smith@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Smith at *Dennis.Smith@ee.doe.gov* or via 202–586–1791.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of DOE, including whether the information shall have practical utility; (b) the accuracy of DOE's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

The Department of Energy is proposing to extend an information collection pursuant to the Paperwork Reduction Act of 1995. The approved collection is being used for three Clean Cities programmatic efforts. The first initiative is the collection of information for a voluntary plug-in electric vehicle (PEV) questionnaire that assists communities and DOE Clean Cities coalitions in assessing the level of readiness of their communities for PEVs. The second effort is intended to develop information that enables DOE to review the progress of DOE's National Clean Fleets Partnership (Partnership). The third effort is referred to as ''Ride and Drive Surveys''. DOE is not proposing to expand the scope of these information collection efforts.

This information collection request contains: (1) *OMB No.:* 1910–5171; (2) *Information Collection Request Title:* Clean Cities Vehicle Programs; (3) *Type of Review:* Renewal; (4) *Purpose:* DOE's Clean Cities initiative has developed three voluntary mechanisms by which communities, certain fleets, and the purchasing public can get a better understanding of their readiness for plug-in electric vehicles (PEVs), and to help DOE's Clean Cities coalitions prepare for the adoption of these vehicles review their progress in doing so. The voluntary PEV Scorecard is intended to assist communities and the coalitions in assessing the level of readiness of their communities for PEVs. The principal objectives of the questionnaire are to provide

respondents with an objective assessment and estimate of their respective community's readiness for PEVs as well as understand the respective community's goals related to integrating these vehicles, and allow communities to assess the magnitude of gaps in their readiness to achieve their goals. DOE intends the questionnaire to be completed by a city/county/regional sustainability or energy coordinator. As the intended respondent may not be aware of every aspect of local or regional PEV readiness, coordination among local stakeholders to gather appropriate information may be necessary.

DOE expects a total respondent population of approximately 1,250 respondents. Selecting the multiple-choice answers in completing a questionnaire is expected to take under 30 minutes, although additional time of no more than 20 hours may be needed to assemble information necessary to be able to answer the questions, leading to a total burden of approximately 25,625 hours. Assembling information to update questionnaire answers in the future on a voluntary basis would be expected to take less time, on the order of 10 hours, as much of any necessary time and effort needed to research information would have been completed previously.

For the Clean Fleets Partnership information collection, the Partnership is targeted at large, private-sector fleets that own or have contractual control over at least 50 percent of their vehicles and have vehicles operating in multiple States. DOE expects approximately 50 fleets to participate in the Partnership and, as a result, DOE expects a total respondent population of approximately 50 respondents. Providing initial baseline information for each participating fleet, which occurs only once, is expected to take 60 minutes. Follow-up questions and clarifications for the purpose of ensuring accurate analyses are expected to take up to 90 minutes. The total burden is expected to be 125 hours.

For the DOE Clean Cities initiative that involves the ride-and-drive surveys, DOE has developed a three-part voluntary survey to assist its coalitions and stakeholders in assessing the level of interest, understanding, and acceptance of PEVs and alternative fuel vehicles (AFV) by the purchasing public. DOE intends the surveys to be completed by individuals who are participating in one of many ride-and-drive events. There are three phases to the Survey: (1) Pre Ride-and-Drive; (2) post Ride-and-Drive; and (3) a few months/some time later to discern if the respondent followed through with acquisition of a PEV or another AFV. Respondents provide answers in the first two phases through a user-friendly paper survey and on-line survey, and in the third phase they answer questions via an electronic interface, although a paper survey may be used for those lacking access to an electronic device or computer.

The Surveys' effort relies on responses to questions the respondent chooses to answer. The multiple-choice questions address the following topic areas: (1) Demographics; (2) Current vehicle background; (3) How they learned about ride and drive event; (3) Perceptions of PEVs before and after driving; (4) Post-drive vehicle experience; (5) Purchase expectations; (6) Follow-up survey regarding subsequent behaviors; (7) Purchase information; (8) Barriers; and (9) Future intentions. The survey is expected to take 30 minutes, leading to a total burden of approximately 28,250 hours (an increase 2,500 hours above the total burden in hours for the two currently approved collections).

(5) Type of Respondents: Public; (6) Annual Estimated Number of Respondents for all three information collections: 16,300; (7) Annual Estimated Number of Total Responses: 16,300; (7) Annual Estimated Number of Burden Hours: 28,250 (25,625 for PEV Scorecard, 125 for Clean Fleets Partnership, and 2,500 for the Ride and Drive Surveys); and (8) Annual Estimated Reporting and Recordkeeping Cost Burden: There is no cost associated with reporting and recordkeeping.

Statutory Authority: 42 U.S.C. 13233; 42 U.S.C. 13252 (a)–(b); 42 U.S.C. 13255.

Issued in Washington, DC, on: November 25, 2019.

David Howell,

Deputy Director, Vehicle Technologies Office, Energy Efficiency and Renewable Energy.

[FR Doc. 2019–26209 Filed 12–3–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

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

Docket Numbers: ER19–878–002.

Applicants: Enel Green Power Hilltopper Wind, LLC.

Description: Compliance filing: Compliance Filing for ER19–878 to submit updated tariff records to be effective 3/30/2019.

Filed Date: 11/26/19.

Accession Number: 20191126–5088.

Comments Due: 5 p.m. ET 12/17/19.

Docket Numbers: ER20–280–001.

Applicants: Skookumchuck Wind Energy Project, LLC.

Description: Supplement to November 1, 2019 Skookumchuck Wind Energy Project, LLC tariff filing.

Filed Date: 11/22/19.

Accession Number: 20191122–5145.

Comments Due: 5 p.m. ET 12/2/19.

Docket Numbers: ER20–459–000.

Applicants: WSPP Inc.

Description: § 205(d) Rate Filing: List of Members sections 4 and 6 2020 to be effective 1/25/2020.

Filed Date: 11/26/19.

Accession Number: 20191126–5006.

Comments Due: 5 p.m. ET 12/17/19.

Docket Numbers: ER20–460–000.

Applicants: ITC Midwest LLC.

Description: § 205(d) Rate Filing: Filing of 4th Amended and Restated Corn Belt-IPL IA to be effective 1/26/2020.

Filed Date: 11/26/19.

Accession Number: 20191126–5064.

Comments Due: 5 p.m. ET 12/17/19.

Docket Numbers: ER20–461–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA SA No. 5523; Queue No. AE1–162 to be effective 10/29/2019.

Filed Date: 11/26/19.

Accession Number: 20191126–5077.

Comments Due: 5 p.m. ET 12/17/19.

Docket Numbers: ER20–462–000.

Applicants: Indiana Michigan Power Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: AEPSC submits Interconnection Agreement, SA No. 1263 to be effective 10/17/2019.

Filed Date: 11/26/19.

Accession Number: 20191126–5086.

Comments Due: 5 p.m. ET 12/17/19.

Docket Numbers: ER20–463–000.

Applicants: Duke Energy Florida, LLC.

Description: § 205(d) Rate Filing: DEF–FMPA-Winter Park-FMPA Reimbursement Agreement (Rate Schedule No. 257) to be effective 1/1/2020.

Filed Date: 11/25/19.

Accession Number: 20191125–5260.

Comments Due: 5 p.m. ET 12/16/19.

Docket Numbers: ER20–464–000.

Applicants: Greenleaf Energy Unit 2 LLC.

Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 12/9/2019.

Filed Date: 11/25/19.
Accession Number: 20191125–5262.
Comments Due: 5 p.m. ET 12/16/19.
Docket Numbers: ER20–465–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: Revision to Lathrop Irrigation District Replacement IA and TFA (SA 366) to be effective 1/25/2020.
Filed Date: 11/26/19.
Accession Number: 20191126–5093.
Comments Due: 5 p.m. ET 12/17/19.
Docket Numbers: ER20–466–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–11–26_SA 3377 METC-Assembly Solar GIA (J796) to be effective 11/11/2019.
Filed Date: 11/26/19.
Accession Number: 20191126–5102.
Comments Due: 5 p.m. ET 12/17/19.
Docket Numbers: ER20–467–000.
Applicants: Ambit Northeast, LLC.
Description: § 205(d) Rate Filing: Normal 2019 to be effective 11/27/2019.
Filed Date: 11/26/19.
Accession Number: 20191126–5113.
Comments Due: 5 p.m. ET 12/17/19.
Docket Numbers: ER20–468–000.
Applicants: Duke Energy Ohio, Inc.
Description: Notice of Cancellation of Conforming Jurisdictional Agreements of Duke Energy Ohio, Inc.
Filed Date: 11/26/19.
Accession Number: 20191126–5122.
Comments Due: 5 p.m. ET 12/17/19.
Docket Numbers: ER20–469–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of WMPA SA No. 4392; Queue No. AA1–093 to be effective 12/23/2019.
Filed Date: 11/26/19.
Accession Number: 20191126–5124.
Comments Due: 5 p.m. ET 12/17/19.
Docket Numbers: ER20–470–000.
Applicants: Skylar Power Marketing, LLC.
Description: Baseline eTariff Filing: Skylar Power Marketing, LLC—Application for Market-Based Rate Authorization to be effective 11/27/2019.
Filed Date: 11/26/19.
Accession Number: 20191126–5130.
Comments Due: 5 p.m. ET 12/17/19.
Docket Numbers: ER20–471–000.
Applicants: Nevada Power Company.
Description: § 205(d) Rate Filing: Rate Schedule 158 Amended DesertLink OM to be effective 11/27/2019.
Filed Date: 11/26/19.
Accession Number: 20191126–5145.
Comments Due: 5 p.m. ET 12/17/19.
Docket Numbers: ER20–472–000.
Applicants: Duke Energy Progress, LLC.
Description: § 205(d) Rate Filing: DEP–NCEMPA NITSA and MSA (SA Nos. 268 & 380) to be effective 1/1/2020.
Filed Date: 11/26/19.
Accession Number: 20191126–5147.
Comments Due: 5 p.m. ET 12/17/19.
Docket Numbers: ER20–473–000.
Applicants: Avista Corporation.
Description: § 205(d) Rate Filing: Avista Corp FERC Rate Schedule T1152–BPA EI Letter Agreement to be effective 11/27/2019.
Filed Date: 11/26/19.
Accession Number: 20191126–5191.
Comments Due: 5 p.m. ET 12/17/19.
Docket Numbers: ER20–474–000.
Applicants: Hatchet Ridge Wind, LLC.
Description: § 205(d) Rate Filing: Notice of Non-Material Change in Status to be effective 11/27/2019.
Filed Date: 11/26/19.
Accession Number: 20191126–5197.
Comments Due: 5 p.m. ET 12/17/19.
Docket Numbers: ER20–475–000.
Applicants: Ocotillo Express LLC.
Description: § 205(d) Rate Filing: Notice of Non-Material Change in Status to be effective 11/27/2019.
Filed Date: 11/26/19.
Accession Number: 20191126–5199.
Comments Due: 5 p.m. ET 12/17/19.
Docket Numbers: ER20–476–000.
Applicants: Georgia Power Company.
Description: § 205(d) Rate Filing: GPCo 2019 PBOP Filing to be effective 1/1/2019.
Filed Date: 11/26/19.
Accession Number: 20191126–5247.
Comments Due: 5 p.m. ET 12/17/19.
Docket Numbers: ER20–477–000.
Applicants: Mississippi Power Company.
Description: § 205(d) Rate Filing: PBOP 2019 Filing to be effective 1/1/2019.
Filed Date: 11/26/19.
Accession Number: 20191126–5248.
Comments Due: 5 p.m. ET 12/17/19.
Docket Numbers: ER20–478–000.
Applicants: Southern Electric Generating Company.
Description: § 205(d) Rate Filing: SEGCo 2019 PBOP Filing to be effective 1/1/2019.
Filed Date: 11/26/19.
Accession Number: 20191126–5251.
Comments Due: 5 p.m. ET 12/17/19.
Docket Numbers: ER20–479–000.
Applicants: Little Bear Solar 1, LLC.
Description: Baseline eTariff Filing: MBR Application and Request for Expedited Treatment to be effective 1/10/2020.
Filed Date: 11/26/19.
Accession Number: 20191126–5262.
Comments Due: 5 p.m. ET 12/17/19.
Docket Numbers: ER20–480–000.
Applicants: AEP Indiana Michigan Transmission Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: AEPSC submits IMTCo and NIPSCO Interconnection Agreement SA No. 4247 to be effective 10/26/2019.
Filed Date: 11/26/19.
Accession Number: 20191126–5266.
Comments Due: 5 p.m. ET 12/17/19.
Docket Numbers: ER20–481–000.
Applicants: Little Bear Solar 3, LLC.
Description: Baseline eTariff Filing: MBR Application and Request for Expedited Treatment to be effective 1/10/2020.
Filed Date: 11/26/19.
Accession Number: 20191126–5267.
Comments Due: 5 p.m. ET 12/17/19.

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: November 26, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–26175 Filed 12–3–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–479–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization: Little Bear Solar 1, LLC

This is a supplemental notice in the above-referenced Little Bear Solar 1, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket

authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 17, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 27, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–26194 Filed 12–3–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IS20–90–000]

Notice of Tariff Filing: Enterprise TE Products Pipeline Company LLC

Take notice that on November 26, 2019, Enterprise TE Products Pipeline Company LLC (Enterprise TE) filed Tariff 54.49.0 to extend emergency transportation service of propane from Mont Belvieu, Texas to Monee, Illinois. Enterprise TE states it has received additional requests from third-party Shippers to continue propane service for a period of time beyond the original date on which Enterprise TE intended to terminate the propane service. Enterprise TE states in order to continue to assist in alleviating these conditions, and as agreed by Enterprise TE at the alternative dispute resolution procedures meeting convened by Commission Staff on November 25, 2019, Enterprise TE is filing to extend the availability of propane service on the segment. Enterprise TE seeks waiver pursuant to 18 CFR 341.14 of the notice requirements in section 6(3) of the Interstate Commerce Act to make the tariff effective December 13, 2019.

Notice is given that the deadline pursuant to 18 CFR 343.3 for filing protests to Enterprise TE filing is hereby shortened to and including December 4, 2019. The deadline for filing responses is shortened to and including December 6, 2019.

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

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

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

Protest Date: 5:00 p.m. Eastern time on December 4, 2019.

Response Date: 5:00 p.m. Eastern time on December 6, 2019.

Dated: November 27, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–26202 Filed 12–3–19; 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 exempt wholesale generator filings:

Docket Numbers: EG20–48–000.
Applicants: Little Bear Solar 1, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Little Bear Solar 1, LLC under EG20–48.
Filed Date: 11/26/19.
Accession Number: 20191126–5204.
Comments Due: 5 p.m. ET 12/17/19.

Docket Numbers: EG20–49–000.
Applicants: Little Bear Solar 3, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Little Bear Solar 3, LLC under EG20–49.
Filed Date: 11/26/19.
Accession Number: 20191126–5209.
Comments Due: 5 p.m. ET 12/17/19.

Docket Numbers: EG20–50–000.
Applicants: Little Bear Solar 4, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Little Bear Solar 4, LLC under EG20–50.
Filed Date: 11/26/19.
Accession Number: 20191126–5210.
Comments Due: 5 p.m. ET 12/17/19.

Docket Numbers: EG20–51–000.
Applicants: Little Bear Solar 5, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Little Bear Solar 5, LLC under EG20–51.
Filed Date: 11/26/19.
Accession Number: 20191126–5212.
Comments Due: 5 p.m. ET 12/17/19.

Docket Numbers: EG20–52–000.
Applicants: Greenleaf Energy Unit 2 LLC.
Description: Self-Certification of EG of Greenleaf Energy Unit 2 LLC under EG20–52.
Filed Date: 11/26/19.
Accession Number: 20191126–5292.
Comments Due: 5 p.m. ET 12/17/19.

Docket Numbers: EG20–53–000.
Applicants: Golden Fields Solar II, LLC.
Description: Notice Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 11/27/19.
Accession Number: 20191127–5074.
Comments Due: 5 p.m. ET 12/18/19.

Docket Numbers: EG20–54–000.
Applicants: Golden Fields Solar III, LLC.
Description: Notice Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 11/27/19.
Accession Number: 20191127–5075.
Comments Due: 5 p.m. ET 12/18/19.

Docket Numbers: EG20–55–000.
Applicants: Golden Fields Solar IV, LLC.
Description: Notice Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 11/27/19.
Accession Number: 20191127–5077.
Comments Due: 5 p.m. ET 12/18/19.

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

Docket Numbers: ER19–158–003.
Applicants: Ambit Northeast, LLC.
Description: Notice of Change in Status of Ambit Northeast, LLC.
Filed Date: 11/27/19.
Accession Number: 20191127–5151.
Comments Due: 5 p.m. ET 12/18/19.

Docket Numbers: ER19–2276–002.
Applicants: New York Independent System Operator, Inc.
Description: Tariff Amendment: Response to Second Deficiency Letter—DERs to be effective 12/31/9998.
Filed Date: 11/26/19.
Accession Number: 20191126–5207.
Comments Due: 5 p.m. ET 12/17/19.

Docket Numbers: ER20–482–000.
Applicants: Little Bear Solar 4, LLC.
Description: Baseline eTariff Filing: MBR Application and Request for Expedited Treatment to be effective 1/10/2020.
Filed Date: 11/26/19.
Accession Number: 20191126–5271.
Comments Due: 5 p.m. ET 12/17/19.

Docket Numbers: ER20–483–000.
Applicants: New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 205 re: Enhanced Credit Reporting Requirements and Remedies to be effective 1/27/2020.
Filed Date: 11/26/19.
Accession Number: 20191126–5272.
Comments Due: 5 p.m. ET 12/17/19.

Docket Numbers: ER20–484–000.
Applicants: Little Bear Solar 5, LLC.
Description: Baseline eTariff Filing: MBR Application and Request for Expedited Treatment to be effective 1/10/2020.
Filed Date: 11/26/19.
Accession Number: 20191126–5276.
Comments Due: 5 p.m. ET 12/17/19.

Docket Numbers: ER20–485–000.
Applicants: Midcontinent Independent System Operator, Inc. Ameren Transmission Company of Illinois, Wabash Valley Power Association, Inc.
Description: § 205(d) Rate Filing: 2019–11–27_Rate Schedule 54 AMMO–ATXI–Wabash JPZ Revenue Allocation Agreement to be effective 1/1/2020.
Filed Date: 11/27/19.
Accession Number: 20191127–5037.
Comments Due: 5 p.m. ET 12/18/19.

Docket Numbers: ER20–486–000.
Applicants: Golden Fields Solar III, LLC.
Description: § 205(d) Rate Filing: Application for Market-Based Rate Authorization and Request for Waivers to be effective 11/28/2019.
Filed Date: 11/27/19.
Accession Number: 20191127–5050.
Comments Due: 5 p.m. ET 12/18/19.

Docket Numbers: ER20–487–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of WMPA SA No. 5418; Queue No. AD2–049 to be effective 12/19/2019.
Filed Date: 11/27/19.
Accession Number: 20191127–5054.
Comments Due: 5 p.m. ET 12/18/19.

Docket Numbers: ER20–488–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: Installed Capacity Requirements, Hydro-Quebec Interconnection Capability Credits and Related Values for 2020/2021, 2021/2022 and 2022/2023 Annual Reconfiguration Auctions of ISO New England, Inc., et al.
Filed Date: 11/27/19.
Accession Number: 20191127–5070.
Comments Due: 5 p.m. ET 12/18/19.

Docket Numbers: ER20–489–000.
Applicants: Duke Energy Progress, LLC.
Description: § 205(d) Rate Filing: DEP-Fayetteville Public Works Commission PPSCA (Rate Schedule No. 184) Amendment to be effective 2/1/2020.
Filed Date: 11/27/19.
Accession Number: 20191127–5118.
Comments Due: 5 p.m. ET 12/18/19.

Docket Numbers: ER20–490–000.
Applicants: Hickory Run Energy, LLC.
Description: Initial rate filing: Reactive Power Tariff Filing to be effective 12/31/9998.
Filed Date: 11/27/19.
Accession Number: 20191127–5156.
Comments Due: 5 p.m. ET 12/18/19.

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

Docket Numbers: RR20–1–000.
Applicants: North American Electric Reliability Corporation.
Description: Joint Petition of the North American Electric Reliability Corporation and ReliabilityFirst Corporation for Approval of Amendments to ReliabilityFirst Corporation's Bylaws.
Filed Date: 11/27/19.
Accession Number: 20191127–5030.
Comments Due: 5 p.m. ET 12/18/19.

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: November 27, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–26200 Filed 12–3–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–470–000]

Skylar Power Marketing, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Skylar

Power Marketing, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 17, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 27, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–26195 Filed 12–3–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–481–000]

Little Bear Solar 3, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Little Bear Solar 3, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 17, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 27, 2019..

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–26206 Filed 12–3–19; 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:

Docket Number: PR20–12–000.

Applicants: Rocky Mountain Natural Gas LLC.

Description: Tariff filing per 284.123(b),(e)/: RMNG Revised SOC Filing to be effective 11/1/2019.

Filed Date: 11/21/19.

Accession Number: 201911215163.

Comments/Protests Due: 5 p.m. ET 12/12/19.

Docket Numbers: RP19–1291–003.

Applicants: Paiute Pipeline Company.

Description: Compliance filing 2019 Rate Case—Motion Rate Filing to be effective 12/1/2019.

Filed Date: 11/26/19.

Accession Number: 20191126–5100.

Comments Due: 5 p.m. ET 12/9/19.

Docket Numbers: RP19–257–009.

Applicants: Southwest Gas Storage Company.

Description: Compliance filing RP19–257–000 Settlement Compliance Filing to be effective 12/1/2019.

Filed Date: 11/26/19.

Accession Number: 20191126–5085.

Comments Due: 5 p.m. ET 12/9/19.

Docket Numbers: RP19–370–001.

Applicants: Gas Transmission Northwest LLC.

Description: Compliance filing Compliance to RP15–904–001 (Implement 501–G Settlement) Phase II Rates to be effective 1/1/2020.

Filed Date: 11/26/19.

Accession Number: 20191126–5005.

Comments Due: 5 p.m. ET 12/9/19.

Docket Numbers: RP19–414–002.

Applicants: Northern Border Pipeline Company.

Description: Compliance filing Amended Settlement Compliance Period 3 Eff. Jan 2020 to be effective 1/1/2020.

Filed Date: 11/26/19.

Accession Number: 20191126–5057.

Comments Due: 5 p.m. ET 12/9/19.

Docket Numbers: RP20–257–000.

Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—Boston Gas 511109 to Plymouth Rock 800706 to be effective 12/1/2019.
Filed Date: 11/26/19.
Accession Number: 20191126–5004.
Comments Due: 5 p.m. ET 12/9/19.
Docket Numbers: RP20–258–000.
Applicants: Gas Transmission Northwest LLC.
Description: Annual Fuel Charge Adjustment of Gas Transmission Northwest LLC under RP20–258.
Filed Date: 11/26/19.
Accession Number: 20191126–5056.
Comments Due: 5 p.m. ET 12/9/19.
Docket Numbers: RP20–259–000.
Applicants: Kern River Gas Transmission Company.
Description: § 4(d) Rate Filing: 2020 Leap Year Rates to be effective 1/1/2020.
Filed Date: 11/26/19.
Accession Number: 20191126–5072.
Comments Due: 5 p.m. ET 12/9/19.
Docket Numbers: RP20–260–000.
Applicants: Kern River Gas Transmission Company.
Description: § 4(d) Rate Filing: 2019 Calpine Amendment to be effective 12/1/2019.
Filed Date: 11/26/19.
Accession Number: 20191126–5089.
Comments Due: 5 p.m. ET 12/9/19.
Docket Numbers: RP20–262–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: New Negotiated Rate Agreements-Municipal Customers to be effective 12/1/2019.
Filed Date: 11/26/19.
Accession Number: 20191126–5092.
Comments Due: 5 p.m. ET 12/9/19.
Docket Numbers: RP20–263–000.
Applicants: Rover Pipeline LLC.
Description: § 4(d) Rate Filing: Summary of Negotiated Rate Capacity Release Agreements on 11–26–19 to be effective 12/1/2019.
Filed Date: 11/26/19.
Accession Number: 20191126–5105.
Comments Due: 5 p.m. ET 12/9/19.
Docket Numbers: RP20–264–000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) Rate Filing: Hess 2020 Tioga Usage Charge Filing to be effective 1/1/2020.
Filed Date: 11/26/19.
Accession Number: 20191126–5111.
Comments Due: 5 p.m. ET 12/9/19.
Docket Numbers: RP20–265–000.
Applicants: Cameron Interstate Pipeline, LLC.
Description: Compliance filing CIP Request for Tariff Waiver and Request for Shortened Comment Period.
Filed Date: 11/26/19.
Accession Number: 20191126–5137.
Comments Due: 5 p.m. ET 12/3/19.
Docket Numbers: RP20–266–000.
Applicants: Dauphin Island Gathering Partners.
Description: § 4(d) Rate Filing: Negotiated Rate Filing—Chevron 11–26–2019 to be effective 12/1/2019.
Filed Date: 11/26/19.
Accession Number: 20191126–5144.
Comments Due: 5 p.m. ET 12/9/19.
Docket Numbers: RP20–267–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—Boston Gas 510807 release to UGI 800743 eff 12–1–19 to be effective 12/1/2019.
Filed Date: 11/26/19.
Accession Number: 20191126–5158.
Comments Due: 5 p.m. ET 12/9/19.
Docket Numbers: RP20–268–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—Boston Gas 510798 releases eff 12–1–19 to be effective 12/1/2019.
Filed Date: 11/26/19.
Accession Number: 20191126–5161.
Comments Due: 5 p.m. ET 12/9/19.
Docket Numbers: RP20–269–000.
Applicants: LA Storage, LLC.
Description: § 4(d) Rate Filing: Filing of Negotiated Rate, Conforming IW Agreement (BP) to be effective 12/1/2019.
Filed Date: 11/26/19.
Accession Number: 20191126–5185.
Comments Due: 5 p.m. ET 12/9/19.
Docket Numbers: RP20–270–000.
Applicants: ANR Pipeline Company.
Description: § 4(d) Rate Filing: Prepayments to be effective 12/27/2019.
Filed Date: 11/26/19.
Accession Number: 20191126–5192.
Comments Due: 5 p.m. ET 12/9/19.
Docket Numbers: RP20–271–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rate—MC Global 911524 releases eff 12–1–19 to be effective 12/1/2019.
Filed Date: 11/26/19.
Accession Number: 20191126–5252.
Comments Due: 5 p.m. ET 12/9/19.
Docket Numbers: RP20–272–000.
Applicants: Equitrans, L.P.
Description: Compliance filing Copley Certificated Gathering Facilities Abandonment—Compliance Filing to be effective 12/31/2019.
Filed Date: 11/26/19.
Accession Number: 20191126–5270.
Comments Due: 5 p.m. ET 12/9/19.
Docket Numbers: RP20–273–000.
Applicants: Equitrans, L.P.
Description: Tariff Cancellation: Terminate Negotiated Rate Copley Gathering Agreement to be effective 12/31/2019.
Filed Date: 11/26/19.
Accession Number: 20191126–5274.
Comments Due: 5 p.m. ET 12/9/19.
Docket Numbers: RP20–274–000.
Applicants: Viking Gas Transmission Company.
Description: § 4(d) Rate Filing: Part 5.0 Correction Filing to be effective 11/1/2019.
Filed Date: 11/27/19.
Accession Number: 20191127–5000.
Comments Due: 5 p.m. ET 12/3/19.
Docket Numbers: RP20–275–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Rate Schedule S–2 Tracker Filing (ASA/PCB) eff 12/1/2019 to be effective 12/1/2019.
Filed Date: 11/27/19.
Accession Number: 20191127–5001.
Comments Due: 5 p.m. ET 12/9/19.
Docket Numbers: RP20–276–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: TETLP—Macquarie k911714 Negotiated Rate eff 12–1–19 to be effective 12/1/2019.
Filed Date: 11/27/19.
Accession Number: 20191127–5003.
Comments Due: 5 p.m. ET 12/9/19.
Docket Numbers: RP20–277–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Amendment to a Negotiated Rate Agreement-Macquarie Energy LLC to be effective 12/1/2019.
Filed Date: 11/27/19.
Accession Number: 20191127–5019.
Comments Due: 5 p.m. ET 12/9/19.

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 date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

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

Dated: November 27, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–26199 Filed 12–3–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL20–9–000]

Oxbow Creek Energy LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On November 26, 2019, the Commission issued an order in Docket No. EL20–9–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2018), instituting an investigation into whether Oxbow Creek Energy LLC's rate are just and reasonable. *Oxbow Creek Energy LLC,* 169 FERC ¶ 61,162 (2019).

The refund effective date in Docket No. EL20–9–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL20–9–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2019), within 21 days of the date of issuance of the order.

Dated: November 27, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–26197 Filed 12–3–19; 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:

Docket Numbers: RP20–252–000.

Applicants: Southern Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: SCRM Filing Nov 2019 to be effective 1/1/2020.

Filed Date: 11/25/19.

Accession Number: 20191125–5047.

Comments Due: 5 p.m. ET 12/9/19.

Docket Numbers: RP20–253–000.

Applicants: Colorado Interstate Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Non-Conforming Agreement Filing (CSU #216641–TIHPCIG) to be effective 1/1/2020.

Filed Date: 11/25/19.

Accession Number: 20191125–5080.

Comments Due: 5 p.m. ET 12/9/19.

Docket Numbers: RP20–254–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Pioneer Jan-Mar 2020) to be effective 1/1/2020.

Filed Date: 11/25/19.

Accession Number: 20191125–5081.

Comments Due: 5 p.m. ET 12/9/19.

Docket Numbers: RP20–255–000.

Applicants: National Fuel Gas Supply Corporation.

Description: Compliance filing TSCA—Informational Filing (11–25–19).

Filed Date: 11/25/19.

Accession Number: 20191125–5085.

Comments Due: 5 p.m. ET 12/9/19.

Docket Numbers: RP20–256–000.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: § 4(d) Rate Filing: Volume No. 2—South Jersey Resources SP100754 Neg-Non Conf Amend Exhibit A to be effective 12/1/2019.

Filed Date: 11/25/19.

Accession Number: 20191125–5097.

Comments Due: 5 p.m. ET 12/9/19.

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: November 26, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–26172 Filed 12–3–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–471–000]

Bluewater Gas Storage, LLC; Notice of Revised Schedule for Environmental Review of the Bluewater Compression Project

This notice identifies the Federal Energy Regulatory Commission staff's revised schedule for the completion of the environmental assessment (EA) for Bluewater Gas Storage, LLC's (Bluewater) Bluewater Compression Project. The first notice of schedule, issued on July 19, 2019 identified December 2, 2019 as the EA issuance date. Commission staff identified additional data required to assess alternatives, visual impacts, and other resources areas and issued data requests on November 6 and November 14, 2019. Bluewater filed responses on November 12 and November 22, 2019 and stated that updated exhibits would be filed the week of December 2, 2019. As a result, staff has revised the schedule for issuance of the EA. The revised schedule for the EA assumes Bluewater will meet its commitment to provide complete responses to outstanding data requests on the dates it has identified.

Schedule for Environmental Review

Issuance of Notice of Availability of the EA—January 17, 2020

90-day Federal Authorization Decision Deadline—April 17, 2020

If a schedule change becomes necessary, an additional notice will be provided to inform interested parties of the project's progress.

Additional Information

In order to receive notification of the issuance of the EA 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.,* CP19–471), and follow the

instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: November 27, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–26198 Filed 12–3–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited		
1. CP18–512–000	11–22–2019	FERC Staff.[1]
Exempt		
1. CP16–22–000	11–7–2019	Congressman Bob Gibbs.
2. P–14992–000, P–14994–000	11–7–2019	Arizona U.S. House of Representatives.
3. CP16–9–000	11–20–2019	U.S. Senate.[2]
4. CP19–7–000	11–20–2019	U.S. Senate.[3]

[1] Communication Summary regarding Cheniere Energy Inc. facilities.
[2] Senator Edward J. Markey and Senator Elizabeth Warren.
[3] Senator Edward J. Markey and Senator Elizabeth Warren.

Dated: November 26, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–26174 Filed 12–3–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–484–000]

Little Bear Solar 5, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Little Bear Solar 5, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 17, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 27, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–26204 Filed 12–3–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IS20–89–000]

ONEOK North System, L.L.C.; Notice of Tariff Filing

Take notice that on November 26, 2019, ONEOK North System, L.L.C. (ONEOK North System) filed multiple Tariffs [1] to update its Allocation Policy. ONEOK North System states that the changes to ONEOK North System's Allocation Policy are at the request of Shippers as a result of the alternative dispute resolution process initiated by the Commission, in order to provide immediate applicability in support of emergency shipments of propane in response to concerns over demand for propane in the region served by the ONEOK North System. ONEOK North System proposes to make changes to its allocation procedure to allow Shippers to transfer allocated capacity to another Shipper during the time period December 1, 2019 through December 31, 2019, and to receive credit to their allocation history for barrels moved by the replacement Shipper. ONEOK North System seeks waiver pursuant to 18 CFR 341.14 of the notice requirements in section 6(3) of the Interstate Commerce Act to make the tariff effective November 26, 2019.

Notice is given that the deadline pursuant to 18 CFR 343.3 for filing protests to Enterprise TE filing is hereby shortened to and including December 4, 2019. The deadline for filing responses is shortened to and including December 6, 2019. Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date.

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

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

Protest Date: 5:00 p.m. Eastern time on December 4, 2019.

Response Date: 5:00 p.m. Eastern time on December 6, 2019.

Dated: November 27, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–26203 Filed 12–3–19; 8:45 am]

BILLING CODE 6717–01–P

[1] ONEOK North System filed Tariffs 33.21.0, 34.18.0, 35.14.0, 37.15.0, 38.16.0, 39.20.0, 40.13.0, 42.31.0, 43.17.0, 44.15.0, 45.15.0, 47.8.0, and 48.1.0.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10887–030]

Notice of Meeting and Site Visit: Carthage Specialty Paperboard, Inc

On December 13, 2019, at 10:00 a.m. (EST), Commission staff will participate in a site visit, followed by a joint agency meeting, at the Carthage Paper Maker Mill Hydroelectric Project. The site visit and meeting will be hosted by Carthage Specialty Paperboard, Inc., the project licensee. All participants interested in attending the site visit or joint agency meeting should meet at the project's powerhouse located at 30 Champion Street, Carthage, New York. All participants attending the site visit should be prepared to provide their own transportation. Anyone with questions about the site visit or joint agency meeting (or directions) should contact Martin Weller, Corporate Project Engineer with Carthage Specialty Paperboard, Inc., at (304) 725–2076 ext. 4159, *mweller@oxindustries.com,* or Jim Gibson with HDR, Inc., at (315) 414–2202, *jim.gibson@hdrinc.com.*

Dated: November 27, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–26201 Filed 12–3–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–464–000]

Greenleaf Energy Unit 2 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Greenleaf Energy Unit 2 LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 17, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be

listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 27, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–26196 Filed 12–3–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12496–002]

Rugraw, LLC; Notice of Teleconference

a. *Project Name and Number:* Lassen Lodge Hydroelectric Project No. 12496.

b. *Date and Time of Meeting:* December 12, 2019; 1:00 p.m.–2:00 p.m. Eastern Time.

c. *FERC Contact:* Kenneth Hogan, *kenneth.hogan@ferc.gov.*

d. *Purpose of Meeting:* To discuss Commission staff's November 14, 2019 letter (Accession number: 20191114–3054), and the information needed to inform the Commission's dam safety review process.

e. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to attend; however, participation will be limited between the Commission's staff, Rugraw, LLC and its representatives. Please email the FERC contact noted above by December 10, 2019, to receive specific instructions on how to attend.

Dated: November 26, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–26173 Filed 12–3–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–482–000]

Little Bear Solar 4, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Little Bear Solar 4, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 17, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 27, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–26205 Filed 12–3–19; 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 December 12, 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: Parts of 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*
- November 14, 2019

B. *Reports*
- Quarterly Report on Economic Conditions and FCS Condition and Performance
- Semi-Annual Report on Office of Examination Operations
- Informational Briefing on YBS Reporting

C. *New Business*
- Proposed Rule: District Financial Reporting

Closed Session

- Office of Examination Quarterly Report [1]

Dated: December 2, 2019.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2019–26282 Filed 12–2–19; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request (OMB No. 3064–0200)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Agency information collection activities: Submission for OMB review; comment request.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collection described below (3064–0200).

DATES: Comments must be submitted on or before January 3, 2020.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *https://www.FDIC.gov/regulations/laws/federal.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On September 26, 2019, the FDIC requested comment for 60 days on a proposal to renew the information collections described below. No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of this collection, and again invites comment on its renewal.

Proposal to renew the following currently approved collection of information:

1. *Title:* Joint Standards for Assessing Diversity Policies and Practices.

OMB Number: 3064–0200.

Form: Diversity Self-Assessment of Financial Institutions Regulated by the FDIC. (Paper Form). Form No. 2710/05.

Diversity Self-Assessment of Financial Institutions Regulated by the FDIC. (Electronic Form). Form No. 2710/06.

Affected Public: Insured Financial institutions supervised by the FDIC.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Information collection (IC) description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated number of responses	Estimated time per response (hours)	Frequency of response	Total estimated annual burden (hours)
Joint Standards for Assessing the Diversity Policies and Practices—*Paper Form.*	Reporting	Voluntary	120	1	8	Annually	960
Joint Standards for Assessing the Diversity Policies and Practices—*Electronic Form.*	Reporting	Voluntary	60	1	7	Annually	420
Joint Standards for Assessing the Diversity Policies and Practices—*Own Submission.*	Reporting	Voluntary	15	1	12	Annually	180
Total Estimated Annual Burden Hours	.....	.....	.....	.....	.....	.....	1,560

General Description of Collection: This voluntary information collection applies to entities regulated by the FDIC for purposes of assessing their diversity policies and practices as described in the final Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies. The FDIC may use the information submitted by the entities it regulates to monitor progress and trends in the financial services industry with regard to diversity and inclusion in employment and contracting activities and to identify and highlight those policies and practices that have been successful. The FDIC will continue to reach out to the regulated entities and other interested parties to discuss diversity and inclusion in the financial services industry and share leading practices. The FDIC may also publish information disclosed by the entity, such as any identified leading practices, in a form that does not identify a particular institution or individual or disclose confidential business information. The current paper form and proposed electronic form can be reviewed at the following link:

Paper Form—*https://www.fdic.gov/regulations/laws/federal/2019/3064-0200/proposed-paper-form-f2710-05.pdf*

Electronic Form—*https://www.fdic.gov/regulations/laws/federal/2019/3064-0200/proposed-electronic-form-f2710-06.pdf*

[1] Session Closed-Exempt pursuant to 5 U.S.C. Section 552b(c)(8) and (9).

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; 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. All comments will become a matter of public record.

Dated at Washington, DC, on November 27, 2019.

Federal Deposit Insurance Corporation.

Annmarie H. Boyd,

Assistant Executive Secretary.

[FR Doc. 2019–26170 Filed 12–3–19; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

[Docket No. OP–1687]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has approved the private sector adjustment factor (PSAF) for 2020 of $18.9 million and the 2020 fee schedules for Federal Reserve priced services and electronic access. These actions were taken in accordance with the Monetary Control Act of 1980, which requires that, over the long run, fees for Federal Reserve priced services be established on the basis of all direct and indirect costs, including the PSAF.

DATES: The new fee schedules become effective January 2, 2020.

FOR FURTHER INFORMATION CONTACT: For questions regarding the fee schedules: David C. Mills, Deputy Associate Director, (202) 530–6265; Max Sinthorntham, Senior Financial Policy Analyst, (202) 452–2864; Amanda Holcombe, Financial Institution Policy Analyst, (202) 912–4625; Division of Reserve Bank Operations and Payment Systems. For questions regarding the PSAF: Casey Clark, Assistant Director/Manager, (202) 452–5232; Grace Milbank, Senior Financial Institution Policy Analyst, (202) 263–4828, Division of Reserve Bank Operations and Payment Systems. For users of Telecommunications Device for the Deaf (TDD) only, please call (202) 263–4869. Copies of the 2020 fee schedules for the check service are available from the Board, the Federal Reserve Banks, or the Reserve Banks' financial services website at *www.frbservices.org.*

I. Supplementary Information

Private Sector Adjustment Factor, Priced Services Cost Recovery, and Overview of 2020 Price Changes

A. Overview—Each year, as required by the Monetary Control Act of 1980, the Reserve Banks set fees for priced services provided to depository institutions.[1] These fees are set to recover, over the long run, all direct and indirect costs and imputed costs, including financing costs, taxes, and certain other expenses, as well as the return on equity (profit) that will have been earned if a private business firm provided the services. The imputed costs and imputed profit are collectively referred to as the private-sector adjustment factor (PSAF). From 2009 through 2018, the Reserve Banks recovered 102.6 percent of their total expenses (including imputed costs) and targeted after-tax profits or return on equity (ROE) for providing priced services.[2]

Table 1 summarizes 2018 actual, 2019 estimated, and 2020 budgeted cost-recovery rates for all priced services. Cost recovery is estimated to be 100.8 percent in 2019 and budgeted to be 100.2 percent in 2020.

TABLE 1—AGGREGATE PRICED SERVICES PRO FORMA COST AND REVENUE PERFORMANCE [a]

[Dollars in millions]

Year	Revenue	Total expense	Net income (ROE) [1–2]	Targeted ROE	Recovery rate after targeted ROE [1/(2 + 4)](%)
	1 [b]	2 [c]	3	4 [d]	5 [e f]
2018 (actual)	$442.5	$428.1	$14.4	$5.2	102.1
2019 (estimate)	442.4	433.4	9.0	5.4	100.8
2020 (budget)	443.1	436.3	6.7	5.9	100.2

[a] Calculations in this table and subsequent pro forma cost and revenue tables may be affected by rounding.

[b] Revenue includes imputed income on investments when equity is imputed at a level that meets minimum capital requirements and, when combined with liabilities, exceeds total assets (attachment 1). For 2020, the projected revenue assumes implementation of the fee changes.

[c] The calculation of total expense includes operating, imputed, and other expenses. Imputed and other expenses include taxes, Board of Governors' priced services expenses, the cost of float, and interest on imputed debt, if any. Credits or debits related to the accounting for pension plans under ASC 715 are also included.

[d] Targeted ROE is the after-tax ROE included in the PSAF.

[e] The recovery rates in this and subsequent tables do not reflect the unamortized gains or losses that must be recognized in accordance with ASC 715. Future gains or losses, and their effect on cost recovery, cannot be projected.

[f] For 2019 and 2020, credits or debits related to the accounting for pension plans under ASC 715 include service cost only with the adoption of ASU 2017–07 *Improving the Presentation of Net Periodic Pension Cost and Net Periodic Postretirement Benefit Cost* (Topic 715).

[1] On August 5, 2019, the Federal Reserve Board announced that the Reserve Banks will develop the FedNow℠ Service, an interbank real-time gross settlement (RTGS) service with integrated clearing functionality, to support the provision of end-to-end faster payment services. The Board anticipates the FedNow Service will be available in 2023 or 2024. Following the introduction of the FedNow Service, the Board will regularly disclose the service's cost recovery and will monitor progress toward matching revenues and costs.

[2] The 10-year recovery rate is based on the pro forma income statements for Federal Reserve priced services published in the Board's *Annual Report.* In accordance with Accounting Standards Codification (ASC) 715 *Compensation—Retirement Benefits,* the Reserve Banks recognized a cumulative reduction in equity related to the priced services' benefit plans. Including this cumulative reduction in equity from 2009 to 2018 results in cost recovery of 104.1 percent for the ten-year period. This measure of long-run cost recovery is also published in the Board's *Annual Report.*

Table 2 provides an overview of cost-recovery budgets, estimates, and performance for the 10-year period from 2009 to 2018, 2018 actual, 2019 budget, 2019 estimate, and 2020 budget by priced service.

TABLE 2—PRICED SERVICES COST RECOVERY

[Percent]

Priced service	2009–2018	2018 actual	2019 budget [a]	2019 estimate	2020 budget [b]
All services	102.6	102.1	100.8	100.8	100.2
Check	105.3	102.7	101.9	102.9	102.8
FedACH	98.3	99.2	101.3	98.6	100.3
Fedwire Funds and NSS	102.1	105.8	100.5	102.4	98.2
Fedwire Securities	101.8	98.7	95.1	96.8	98.6

[a] The 2019 budget figures reflect the final budgets as approved by the Board in December 2018.

[b] The 2020 budget figures reflect preliminary budget information from the Reserve Banks. The Reserve Banks will submit final budget data to the Board in November 2019, for Board consideration in December 2019.

1. *2019 Estimated Performance*—The Reserve Banks estimate that they will recover 100.8 percent of the costs of providing priced services in 2019, including total expense and targeted ROE, compared with a 2019 budgeted recovery rate of 100.8 percent, as shown in table 2. Overall, the Reserve Banks estimate that they will fully recover actual and imputed costs and earn net income of $9.0 million, compared with the targeted ROE of $5.4 million. The Reserve Banks estimate that the check service and the Fedwire® Funds and National Settlement Services will achieve full cost recovery; however, the Reserve Banks continue to estimate that the FedACH® Service and the Fedwire Securities Service will not achieve full cost recovery in 2019. Consistent with recent years, the FedACH Service will not achieve full cost recovery because of investment costs associated with the multiyear technology initiative to modernize its processing platform.[3] This investment is expected to enhance efficiency, the overall quality of operations, and the Reserve Banks' ability to offer additional services to depository institutions. The Reserve Banks estimate that the Fedwire Securities Service will not achieve full cost recovery because of investment costs associated with initiatives to promote operational efficiency.

2. *2020 Private-Sector Adjustment Factor*—The 2020 PSAF for Reserve Bank priced services is $18.9 million. This amount represents an increase of $1.1 million from the 2019 PSAF of $17.8 million. This increase is primarily the result of an increase in imputed return on equity and sales tax and partially offset by a decrease in Board of Governors expenses.

3. *2020 Projected Performance*—The Reserve Banks project a priced services cost recovery rate of 100.2 percent in 2020, with a net income of $6.7 million and targeted ROE of $5.9 million. The Reserve Banks project that the price changes will result in a 2.4 percent average price increase for customers. The Reserve Banks project that each of the individual service lines, other than the Fedwire Securities Service and the Fedwire Funds Service, will fully recover their costs for 2020. The Fedwire Services' underrecovery projections are largely driven by an anticipated decline in revenue due to a large Fedwire Funds participant's upcoming transition of its transfer origination activity off the Fedwire Funds Service, anticipated modest volume declines in certain product lines for the Fedwire Securities Service, and ongoing System investments in projects to increase technological resiliency. Both the Fedwire Funds Service and Fedwire Securities Service are projected to fully recover costs in the long run.[4]

The primary risks to the Reserve Banks' ability to achieve their targeted cost-recovery rates are unanticipated volume and revenue reductions and the potential for cost overruns from new and ongoing improvement initiatives. In light of these risks, the Reserve Banks will continue to refine their business and operational strategies to manage operating costs, to increase product revenue, and to capitalize on efficiencies gained from technology initiatives.

4. *2020 Pricing*—The following summarizes the Reserve Banks' changes in fee schedules for priced services in 2020:

Check

- The Reserve Banks will reassign the tier placement of 1,607 and 124 return endpoints in the FedForward® and FedReturn® products, respectively.[5] In addition, the Reserve Banks will adjust the frequency of endpoint tier reassignments from annual to every other year.
- The Reserve Banks will eliminate tier 0 for all FedForward® and FedReturn® Premium Daily deposit options.[6]
- The Reserve Banks will decrease per-item fees for the FedForward Premium Daily A deposit option by $0.004 for tier 1. The Reserve Banks will decrease per-item fees for the FedForward® Premium Daily B deposit option by $0.002 for tier 1. The Reserve Banks will decrease per-item fees for Premium Daily A, B, and C deposit options by $0.003 for tier 3 and tier 4.
- The Reserve Banks will increase the Retail Payments Premium Receiver (RPPR) FedForward® discount by $0.001.[7]
- The Reserve Banks will introduce 4:00 p.m. eastern time (ET) deposit deadlines for Standard FedReturn® and Premium FedReturn® and accompanying fee schedules, which include per-item fees and fixed per-cash letter fees, as detailed in table 9 and 10, respectively.
- The Reserve Banks will increase per-item fees for all other Standard FedReturn® deadlines (9:00 p.m. ET, 1:00 a.m. ET, and 12:30 p.m. ET) and Premium FedReturn® deadlines (1:00 a.m. ET and 12:30 p.m. ET) by $0.02.

[3] The Reserve Banks have been engaged in a multiyear technology initiative to modernize the FedACH processing platform capabilities. The implementation of this initiative has moved from 2019 to 2020.

[4] From 2011–2020, Fedwire Securities Service's projected ten-year average recovery rate is 101.6 percent and Fedwire Funds Service's projected ten-year average recovery rate is 102.4 percent.

[5] The Reserve Banks evaluate and set tier assignments annually based on changes in the volume of items received by endpoints.

[6] Tier 0 consists of financial institutions with less than 10 percent of their Reserve Bank return receipt volume deposited with the Reserve Banks by Premium Daily Fee depositors during the sample period.

[7] For eligible customers that deposit over two million items per month.

• The Reserve Banks will increase per-item fees for paper/legacy services between 10 to 17 percent, as detailed in table 11.

• The Reserve Banks will increase all fees for the FedImage® service 10 percent, as detailed in table 12.

• The Reserve Banks will implement a fixed monthly Check 21 participation fee of $25 per parent customer.

• The Reserve Banks will increase the per-item fee for the FedReceipt® Premium Delivery 8:00 a.m. ET Target by $0.003, per item fees for the Premium Delivery 10:00 a.m. Target by $0.002, and Premium Delivery 12:00 noon Target by $0.001.[8]

FedACH

• The Reserve Banks will keep prices at existing levels for all existing priced FedACH products.

Fedwire Funds

• The Reserve Banks will increase the per-transfer fee for originations and receipts from $0.820 to $0.840 for tier 1 transfers, from $0.245 to $0.25 for tier 2 transfers, and from $0.160 to $0.165 for tier 3 transfers.[9]

• The Reserve Banks will increase the discounted (volume-based) per-transfer fee for originations and receipts from $0.164 to $0.168 for tier 1 transfers, from $0.049 to $0.050 for tier 2 transfers, and from $0.032 to $0.033 for tier 3 transfers.[10]

National Settlement Service (NSS)

• The Reserve Banks will keep prices at existing levels for the priced NSS products.

Fedwire Securities

• The Reserve Banks will keep prices at existing levels for the priced Fedwire Securities products.

FedLine® Solutions

• The Reserve Banks will increase the FedMail Fax fee from $100 to $150.[11]

• The Reserve Banks will increase the FedMail Email (for customers with FedLine Web or above) fee from $20 to $40.[12]

• The Reserve Banks will increase the monthly fee for the legacy FedLine Direct Plus and Premier packages to $5,500 and $7,500, respectively. The Reserve Banks subsequently will increase prices for both packages to $10,000 in May and $20,000 in August.[13]

• The Reserve Banks will increase the monthly fee for Additional Legacy 256K and T1 Wide Area Network services connections to $3,500. The Reserve Banks subsequently will increase prices for these Additional Legacy connections to $5,000 in May and $10,000 in August.

• The Reserve Banks will increase the monthly fees for legacy Check 21 Large File Delivery (C21 LFD) 20 percent. The Reserve Banks subsequently will increase prices 50 percent in May and 100 percent in August.[14]

• The Reserve Banks will update the FedComplete packages to incorporate other pricing and product changes.[15]

B. *Private Sector Adjustment Factor*—The imputed debt financing costs, targeted ROE, and effective tax rate are based on a U.S. publicly traded firm market model.[16] The method for calculating the financing costs in the PSAF requires determining the appropriate imputed levels of debt and equity and then applying the applicable financing rates. In this process, a pro forma balance sheet using estimated assets and liabilities associated with the Reserve Banks' priced services is developed, and the remaining elements that would exist are imputed as if these priced services were provided by a private business firm. The same generally accepted accounting principles that apply to commercial-entity financial statements apply to the relevant elements in the priced services pro forma financial statements.

The portion of Federal Reserve assets that will be used to provide priced services during the coming year is determined using information about actual assets and projected disposals and acquisitions. The priced portion of these assets is determined based on the allocation of depreciation and amortization expenses of each asset class. The priced portion of actual Federal Reserve liabilities consists of postemployment and postretirement benefits, accounts payable, and other liabilities. The priced portion of the actual net pension asset or liability is also included on the balance sheet.[17]

The equity financing rate is the targeted ROE produced by the capital asset pricing model (CAPM). In the CAPM, the required rate of return on a firm's equity is equal to the return on a risk-free asset plus a market risk premium. The risk-free rate is based on the three-month Treasury bill; the beta is assumed to be equal to 1.0, which approximates the risk of the market as a whole; and the market risk premium is based on the monthly returns in excess of the risk-free rate over the most recent 40 years. The resulting ROE reflects the return a shareholder would expect when investing in a private business firm.

For simplicity, given that federal corporate income tax rates are graduated, state income tax rates vary, and various credits and deductions can apply, an actual income tax expense is not explicitly calculated for Reserve Bank priced services. Instead, the Board targets a pretax ROE that would provide sufficient income to fulfill the priced services' imputed income tax obligations. To the extent that performance results are greater or less than the targeted ROE, income taxes are adjusted using the effective tax rate.

Capital structure. The capital structure is imputed based on the imputed funding need (assets less liabilities), subject to minimum equity constraints. Short-term debt is imputed to fund the imputed short-term funding need. Long-term debt and equity are imputed to meet the priced services long-term funding need at a ratio based on the capital structure of the U.S. publicly traded firm market. The level of equity must meet the minimum equity constraints, which follow the FDIC requirements for a well-capitalized institution. The priced services must

[8] The 8:00 a.m. delivery target is expressed in eastern time, while the 10:00 a.m. and 12:00 noon targets are local time.

[9] Tiers are based on monthly total volume of originations and receipts. Tier 1 includes up to 14,000 transfers, tier 2 includes from 14,001 to 90,000 transfers, and tier 3 includes transfers over 90,000.

[10] The tiered pricing structure is complemented by a volume-based incentive mechanism that provides discounts to customers that meet certain volume thresholds.

[11] Limited to installed base only.

[12] All customers with a FedMail Email (for FedLine customers) have a FedLine connection today. This service allows institution with a FedLine Web or higher solution to use FedMail Email, in addition to their FedLine solution.

[13] The Reserve Banks will increase fees in mid-2020 for those customers who have not yet converted to new FedLine Direct network routers and circuits.

[14] The monthly fees for legacy C21 LFD fee ranges from $1,680 to $24,870 depending on the size, speed, and location of the connection. In order to avoid compounding increases, December 2019 will be the baseline for all 2020 price increases for any connection still needing to convert.

[15] FedComplete package pricing will be updated to include the Check participation fee and the 4:00 p.m. FedReturn® deadline. Additionally, the Reserve Banks will update the FedComplete Excess Volume and Receipt Surcharge to reflect the fee increase to Fedwire Origination and Receipt. FedComplete packages include a Fedwire Funds volume overage surcharge equivalent to the regular unit cost for originated items and one-tenth of the regular unit cost for received items.

[16] Data for U.S. publicly traded firms is from the Standard and Poor's Compustat® database. This database contains information on more than 6,000 U.S. publicly traded firms, which approximates information for the entirety of the U.S. market.

[17] The pension assets are netted with the pension liabilities and reported as a net asset or net liability as required by ASC 715 *Compensation—Retirement Benefits.*

maintain equity of at least 5 percent of total assets and 10 percent of risk-weighted assets.[18] Any equity imputed that exceeds the amount needed to fund the priced services' assets and meet the minimum equity constraints is offset by a reduction in imputed long-term debt. When imputed equity is larger than what can be offset by imputed debt, the excess is imputed as investments in Treasury securities; income imputed on these investments reduces the PSAF.

Application of the Payment System Risk (PSR) Policy to the Fedwire Funds Service. The Board's PSR policy incorporates the international standards for financial market infrastructures (FMIs) developed by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions in the *Principles for Financial Market Infrastructures.* The policy requires that the Fedwire Funds Service meet or exceed the applicable risk-management standards. Principle 15 states that an FMI should identify, monitor, and manage general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialize. Further, liquid net assets should at all times be sufficient to ensure a recovery or orderly wind-down of critical operations and services. The Fedwire Funds Service does not face the risk that a business shock would cause the service to wind down in a disorderly manner and disrupt the stability of the financial system. In order to foster competition with private-sector FMIs, however, the Reserve Banks' priced services will hold an amount equivalent to six months of the Fedwire Funds Service's current operating expenses as liquid financial assets and equity on the pro forma balance sheet.[19] Current operating expenses are defined as normal business operating expenses on the income statement, less depreciation, amortization, taxes, and interest on debt. Using the Fedwire Funds Service's preliminary 2020 budget, six months of current operating expenses would be $56.0 million. In 2020, $41.6 million of equity was imputed to meet the FDIC capital requirements; however, an additional $7.1 million of equity was imputed to meet the PSR policy requirement and is allocated solely to the Fedwire Funds Service.

Effective tax rate. Like the imputed capital structure, the effective tax rate is calculated based on data from U.S. publicly traded firms. The tax rate is the mean of the weighted average rates of the U.S. publicly traded firm market over the past 5 years.

Debt and equity financing. The imputed short- and long-term debt financing rates are derived from the nonfinancial commercial paper rates from the Federal Reserve Board's H.15 Selected Interest Rates release (AA and A2/P2) and the annual Merrill Lynch Corporate & High Yield Index rate, respectively. The equity financing rate is described above. The rates for debt and equity financing are applied to the priced services estimated imputed short-term debt, long-term debt, and equity needed to finance short- and long-term assets and meet equity requirements.

The 2020 PSAF is $18.9 million, compared with $17.8 million in 2019. The increase of $1.1 million is attributable to a net $0.7 million increase in the cost of capital and a $0.7 million increase in sales tax, offset by a $0.3 million decrease in the Board's costs. The net $0.7 million increase in cost of capital resulted from an incremental $1 million increase in return on imputed equity necessary for PSR Policy compliance partially offset by a $0.3 million decrease in the return on equity imputed to satisfy the FDIC requirements for a well-capitalized institution.

The PSAF expense of $18.9 million, detailed in table 5, reflects $7.9 million for capital funding, $6.7 million for BOG expense, and $4.4 million in sales tax expense.

As shown in table 3, 2020 total assets of $841.2 million decreased by $5.4 million from 2019. The net decrease in total assets reflects a $29.7 million decrease in long-term assets partially offset by a $24.3 million increase in short-term assets and imputed investments.

The net long-term asset decrease of $29.7 million primarily consists of a $23.6 million decrease in the net pension asset and a combined $9.2 million decrease in Furniture and equipment and Leasehold improvements and long-term prepayments. The net pension asset decrease reflects lower plan contributions over the past two years, down from $240 million in 2018 to $180 million in 2019 and 2020, respectively. The decreases in Furniture and equipment and Leasehold improvements and long-term prepayments are mainly due to a lower allocation of Reserve Bank assets to the Federal Reserve's priced services.

The increase in the short-term assets is primarily driven by the imputed investments in Treasury securities from imputed equity required to meet FDIC capital requirements for a well-capitalized institution and to comply with the PSR policy. The remaining net increases in short-term assets reflect a $34.1 million increase in items in process of collection resulting from relatively high balances in the value of foreign transactions offset by a $27.5 million decrease in imputed investments in Fed Funds.

The capital structure of the 2020 pro forma balance sheet, provided in table 4, is composed of equity of $56.0 million, or 11.4 percent of the 2020 risk weighted assets detailed in table 6, and no long-term debt. The 2020 capital structure is similar to that of 2019, which was composed of $51.8 million of equity. The 2020 imputed equity required to fund assets and meet the publicly traded firm model capital requirements is $31.2 million. Long-term debt of $10.4 million was imputed at the observed market ratio of 58.4 percent. To meet the FDIC capital requirements for a well-capitalized institution, the $10.4 million of imputed long-term debt was substituted for equity, and additional $31.2 million equity was imputed. The resulting $49 million total level of equity was not sufficient to satisfy the $56.0 million equity requirement for the PSR policy requirements. An additional $7.1 million was imputed to comply with the PSR requirement.

The net Accumulated Other Comprehensive Income loss is $625.2 million, compared with $624.3 million in 2019. The slight increase is primarily attributable to a higher discount rate. AOCI is in a net loss position and does not reduce the total imputed equity required to fund priced services assets or fulfill the FDIC equity requirements for a well-capitalized institution.

[18] The FDIC rule, which was adopted as final on April 14, 2014, requires that well-capitalized institutions meet or exceed the following standards: (1) Total capital to risk-weighted assets ratio of at least 10 percent, (2) tier 1 capital to risk-weighted assets ratio of at least 8 percent, (3) common equity tier 1 capital to risk-weighted assets ratio of at least 6.5 percent, and (4) a leverage ratio (tier 1 capital to total assets) of at least 5 percent. Because all of the Federal Reserve priced services' equity on the pro forma balance sheet qualifies as tier 1 capital, only requirements 1 and 4 are binding. The FDIC rule can be located at *https://www.fdic.gov/news/board/2014/2014-04-08_notice_dis_c_fr.pdf.*

[19] This requirement does not apply to the Fedwire Securities Service. There are no competitors to the Fedwire Securities Service that would face such a requirement, and imposing such a requirement when pricing the securities services could artificially increase the cost of these services.

TABLE 3—COMPARISON OF PRO FORMA BALANCE SHEETS FOR BUDGETED FEDERAL RESERVE PRICED SERVICES [a]

[Millions of dollars—projected average for year]

	2020	2019	Change
Short-term assets:			
Receivables	$37.1	$36.7	$0.4
Materials and supplies	0.5	0.6	(0.1)
Prepaid expenses	10.8	11.1	(0.3)
Items in process of collection [20]	129.1	95.0	34.1
Total short-term assets	177.5	143.4	34.1
Imputed investments: [21]			
Imputed investment in Treasury Securities	38.2	20.5	17.7
Imputed investment in Fed Funds	225.5	253.0	(27.5)
Total imputed investments	263.7	273.5	(9.8)
Long-term assets:			
Premises [22]	111.5	104.2	7.3
Furniture and equipment	30.2	32.8	(2.6)
Leasehold improvements and long-term prepayments	81.1	87.7	(6.6)
Net pension asset	.....	23.6	(23.6)
Deferred tax asset	177.2	181.4	(4.2)
Total long-term assets	400.0	429.7	(29.7)
Total assets	841.2	846.6	(5.4)
Short-term liabilities:			
Deferred credit items	354.6	348.0	6.6
Short-term debt	13.0	13.5	(0.5)
Short-term payables	35.5	34.9	0.6
Total short-term liabilities	403.1	396.4	6.7
Long-term liabilities:			
Pension liability	0.1	.....	0.1
Long-term debt	.....	.....	.....
Postemployment/postretirement benefits and net pension liabilities [23]	382.0	398.4	(16.4)
Total liabilities	785.2	794.8	(9.6)
Equity [24]	56.0	51.8	4.2
Total liabilities and equity	841.2	846.6	(5.4)

[a] Calculations in this table and subsequent PSAF tables may be affected by rounding.

TABLE 4—IMPUTED FUNDING FOR PRICED-SERVICES ASSETS

[Millions of dollars]

	2020	2019
A. Short-term asset financing:		
Short-term assets to be financed:		
Receivables	$37.1	$36.7
Materials and supplies	0.5	0.6
Prepaid expenses	10.8	11.1
Total short-term assets to be financed	48.4	48.4
Short-term payables	35.5	34.9
Net short-term assets to be financed	13.0	13.5

[20] Credit float, which represents the difference between items in process of collection and deferred credit items, occurs when the Reserve Banks debit the paying bank for transactions before providing credit to the depositing bank. Float is directly estimated at the service level.

[21] Consistent with the Board's PSR policy, the Reserve Banks' priced services will hold and amount equivalent to six months of the Fedwire Funds Service's current operating expenses as liquid net financial assets and equity on the pro forma balance sheet. Six months of the Fedwire Funds Service's projected current operating expenses is $56.0 million. In 2020, $41.6 million of equity was imputed to meet the regulatory capital requirements and $7.1 million of equity was imputed to satisfy PSR policy funding requirements.

[22] Includes the allocation of Board of Governors assets to priced services of $3.1 million for 2020 and $2.9 million for 2019.

[23] Includes the allocation of Board of Governors liabilities to priced services of $0.8 million for 2020 and $0.8 million for 2019.

[24] Includes an accumulated other comprehensive loss of $625.2 million for 2020 and $624.3 million for 2019, which reflects the ongoing amortization of the accumulated loss in accordance with ASC 715. Future gains or losses, and their effects on the pro forma balance sheet, cannot be projected. See table 5 for calculation of required imputed equity amount.

TABLE 4—IMPUTED FUNDING FOR PRICED-SERVICES ASSETS—Continued

[Millions of dollars]

	2020	2019
Imputed short-term debt financing [25]	13.0	13.5
B. Long-term asset financing:		
Long-term assets to be financed:		
Premises	111.5	104.2
Furniture and equipment	30.2	32.8
Leasehold improvements and long-term prepayments	81.1	87.7
Net pension asset	.....	23.6
Deferred tax asset	177.2	181.4
Total long-term assets to be financed	400.0	429.7
Postemployment/postretirement benefits and net pension liabilities	382.0	398.4
Net long-term assets to be financed	17.8	31.3
Imputed long-term debt [20]	.....	.....
Imputed equity [20]	56.0	51.8
Total long-term financing	56.0	51.8

TABLE 5—DERIVATION OF THE 2020 AND 2019 PSAF

[Dollars in millions]

	2020		2019	
	Debt	Equity	Debt	Equity
A. Imputed long-term debt and equity:				
Net long-term assets to finance	$17.8	$17.8	$31.3	$31.3
Capital structure observed in market	58.4%	41.6%	58.3%	41.7%
Pre-adjusted long-term debt and equity	$10.4	$7.4	$18.2	$13.1
Equity adjustments: [26]				
Equity to meet capital requirements	.....	49.0	.....	51.8
Adjustment to debt and equity funding given capital requirements [27]	(10.4)	10.4	(18.2)	18.2
Adjusted equity balance	.....	17.8	.....	31.3
Equity to meet capital requirements [28]	.....	31.2	.....	20.5
Total imputed long-term debt and equity	$	$49.0	$	$51.8
B. Cost of capital:				
Elements of capital costs:				
Short-term debt [29]	$13.0 × 2.3% =	$0.3	$13.5 × 2.3% =	$0.3
Long-term debt [29]	− × 4.0% =	.....	− × 3.9% =	.....
Equity [30]	49.0 × 13.3% =	6.6	51.8 × 13.3% =	6.8
		$6.9	.....	$7.1
C. Incremental cost of PSR policy:				
Equity to meet policy	$7.1 × 13.5% =	$1.0	$ − × 13.3% =	$
D. Other required PSAF costs:				
Sales taxes	$4.4	.....	$3.7	.....
Board of Governors expenses	6.7	.....	7.0	.....

[25] Imputed short-term debt financing is computed as the difference between short-term assets and short-term liabilities. As presented in table 5, the financing costs of imputed short-term debt, imputed long-term debt and imputed equity are the elements of cost of capital, which contribute to the calculation of the PSAF.

[26] If minimum equity constraints are not met after imputing equity based on the capital structure observed in the market, additional equity is imputed to meet these constraints. The long-term funding need was met by imputing long-term debt and equity based on the capital structure observed in the market (see tables 4 and 6). In 2020, the amount of imputed equity met the minimum equity requirements for risk-weighted assets.

[27] Equity adjustment offsets are due to a shift of long-term debt funding to equity in order to meet FDIC capital requirements for well-capitalized institutions.

[28] Additional equity in excess of that needed to fund priced services assets is offset by an asset balance of imputed investments in treasury securities.

[29] Imputed short-term debt and long-term debt are computed at table 4.

[30] The 2020 ROE is equal to a risk-free rate plus a risk premium (beta * market risk premium). The 2020 after-tax CAPM ROE is calculated as 2.16% + (1.0 * 8.34%) = 10.50%. Using a tax rate of 22.1%, the after-tax ROE is converted into a pretax ROE, which results in a pretax ROE of (10.50%/(1–22.1%)) = 13.48%. Calculations may be affected by rounding.

TABLE 5—DERIVATION OF THE 2020 AND 2019 PSAF—Continued

[Dollars in millions]

	2020		2019	
	Debt	Equity	Debt	Equity
		11.1		10.7
		$18.9		$17.8
E. Total PSAF:				
As a percent of assets		2.2%		2.1%
As a percent of expenses		3.4%		3.3%
F. Tax rates		22.1%		22.2%

TABLE 6—COMPUTATION OF 2020 CAPITAL ADEQUACY FOR FEDERAL RESERVE PRICED SERVICES

[Dollars in millions]

	Assets	Risk weight	Weighted assets
Imputed investments:			
1-Year Treasury securities [31]	$38.2		$
Federal funds [32]	225.5	0.2	45.1
Total imputed investments	263.7		45.1
Receivables	37.1	0.2	7.4
Materials and supplies	0.5	1.0	0.5
Prepaid expenses	10.8	1.0	10.8
Items in process of collection	129.1	0.2	25.8
Premises	111.5	1.0	111.5
Furniture and equipment	30.2	1.0	30.2
Leasehold improvements and long-term prepayments	81.1	1.0	81.1
Deferred tax asset	177.2	1.0	177.2
Total	841.2		489.7
Imputed equity:			
Capital to risk-weighted assets	11.4%		
Capital to total assets	6.7%		

C. *Check Service*—Table 7 shows the 2018 actual, 2019 estimated, and 2020 budgeted cost-recovery performance for the commercial check service.

TABLE 7—CHECK SERVICE PRO FORMA COST AND REVENUE PERFORMANCE

[Dollars in millions]

Year	Revenue	Total expense	Net income (ROE)	Targeted ROE	Recovery rate after targeted ROE (%)
	1	2	3 [1–2]	4	5 [1/(2 + 4)]
2018 (actual)	$132.9	$127.8	$5.1	$1.5	102.7
2019 (estimate)	126.7	121.6	5.2	1.5	102.9
2020 (budget)	119.4	114.8	4.6	1.3	102.8

1. *2019 Estimate*—The Reserve Banks estimate that the check service will recover 102.9 percent of total expenses and targeted ROE, compared with a 2019 budgeted recovery rate of 101.9 percent.

Through August, total commercial forward and total commercial return check volumes were 8.1 percent and 7.1 percent lower, respectively, than they were during the same period last year. Consistent with anticipated fourth-quarter declines, for full-year 2019, the Reserve Banks estimate that their total

[31] If minimum equity constraints are not met after imputing equity based on all other financial statement components, additional equity is imputed to meet these constraints. Additional equity imputed to meet minimum equity requirements is invested solely in Treasury securities. The imputed investments are similar to those for which rates are available on the Federal Reserve's H.15 statistical release, which can be located at *http://www.federalreserve.gov/releases/h15/data.htm.*

[32] The investments are imputed based on the amounts arising from the collection of items before providing credit according to established availability schedules.

forward check volume will decline 7.8 percent (compared with a budgeted decline of 7.6 percent) and their total return check volume will decline 6.6 percent (compared with a budgeted decline of 7.7 percent) from 2018 levels.[33] The Reserve Banks expect that check volumes will continue to decline, although uncertainty remains as to the rate of decline over the long term. In particular, the Reserve Banks' check volumes are expected to decrease because of competitive pressures in the check-clearing market, and substitution away from checks to other payment instruments. While these volume declines will affect budgeted total revenue, the Reserve Banks estimate that total expenses will also be lower given the decline in those expenses directly correlated with volumes as well as the continued realization of operational efficiencies. These factors have allowed for close alignment between budgeted and estimated 2019 cost recovery.

2. *2020 Pricing*—The Reserve Banks expect the check service to recover 102.8 percent of total expenses and targeted ROE in 2020. The Reserve Banks project revenue to be $119.4 million, a decline of 5.8 percent from the 2019 estimate. This decline is driven in part by an anticipated accelerating decline in the overall number of checks written, as well as by competition from correspondent banks, aggregators, and direct exchanges.[34] Total expenses for the check service are projected to be $114.8 million, a decrease of $6.8 million, or 5.6 percent, from 2019 expenses, primarily because of reduced operating costs, including cost savings associated with the Reserve Banks' customer support services.

The Reserve Banks will introduce a fixed participation fee, which will be charged to any customer that receives FedReceipt volume on a monthly basis. In light of ongoing volume declines, the participation fee is intended to support revenue stability by increasing the proportion of fixed to variable fees. Additionally, this fee introduction aligns the check service with other priced services that offer similar monthly participation fees, such as FedACH and the Fedwire Funds Service.

The Reserve Banks evaluate and set tier assignments annually based on changes in the volume of items received by endpoints. In 2020, the Reserve Banks will reassign the tier placement of 238 endpoints currently in tiers 1–4 to another tier.[35] In addition, the Reserve Banks will eliminate tier 0 for all Forward and Return Premium Daily deposit options, and reassign all remaining tier 0 customers.[36] This change is intended to reflect the fact that the Reserve Banks now have sufficient volume to appropriately assign the remaining 1,130 endpoints from tier 0 into tiers 1–4. In response to feedback from customers, the Reserve Banks will also evaluate and set tier assignments every other year instead of annually, to provide more certainty and price stability to the industry. As a result, the Reserve Banks will next reevaluate and set tier assignments in 2022.[37]

Based on the 2020 tier assignments and the elimination of tier 0, the Reserve Banks will include changes to FedForward Premium Daily Fees and the Retail Payments Premium Receiver (RPPR) discount structure. The Reserve Banks will lower the FedForward Premium Daily Fee A per item fees by $0.004 for tier 1, lower the FedForward Premium Daily Fee B per item fees by $0.002 for tier 1, and lower the FedForward Premium Daily Fee A, B, and C per item fees by $0.003 for tiers 3 and 4. The Reserve Banks also will include an increase to the RPPR discount of $0.001 for eligible customers that deposit over two million items per month. Table 8 shows the 2020 FedForward Premium Daily fees.

TABLE 8—FEDFORWARD PREMIUM DAILY DEPOSIT

[Applicable to Premium Daily Fee A, Premium Daily Fee B, and Premium Daily Fee C]

Tier[38]	Premium A	Premium B	Premium C
Deposit Deadline of 5:00 a.m. EST M–F			
0	N/A	N/A	N/A
1	$0.002	$0.002	$0.002
2	0.014	0.012	0.010
3	0.022	0.020	0.018
4	0.036	0.034	0.032
5	0.200	0.200	0.200
Deposit Deadline of 12:00 p.m. EST M–F			
0	N/A	N/A	N/A
1	0.012	0.012	0.012
2	0.024	0.022	0.020
3	0.032	0.030	0.028
4	0.046	0.044	0.042
5	0.200	0.200	0.200

In response to customer demand for intraday return options to match other clearing option capabilities, the Reserve Banks will introduce a new 4:00 p.m. ET FedReturn® deposit deadline. The deadline will accelerate the speed of

[33] Total Reserve Bank forward check volumes are expected to be 4.4 billion in 2019. Total Reserve Bank return check volumes are expected to be 27.1 million in 2019.

[34] The Reserve Banks estimate that total commercial forward check volumes in 2019 will decline 8.5 percent, to 4.0 billion, and total commercial return check volumes will decline 8.5 percent, to 24.8 million in 2019.

[35] The tiers for 2019 are available at *https://www.frbservices.org/resources/fees/check-2019.html.*

[36] Tier 0 was introduced as part of the Reserve Banks' 2016 restructured FedForward and FedReturn fee schedules and is composed of routing numbers for which the Reserve Banks currently receive little to no volume from the specified subset of Reserve Bank customers (and which therefore cannot currently be assigned to the other tiers with sufficient predictability). Tier 0 was only available for FedForward and Return Premium Daily deposit options.

[37] The tiers for 2020 are available at *https://www.frbservices.org/resources/fees/check-2020.html.*

[38] Tier 5 for FedForward Daily Deposit is also referred to as Substitute Check Endpoints.

payments by providing additional options for paying banks to return items earlier. The Reserve Banks will increase the tier pricing for the 9:00 p.m. ET, 1:00 a.m. ET, and 12:30 p.m. ET FedReturn deposit deadlines. Table 9 lists the fees for the Standard FedReturn® product, inclusive of current and new deposit deadlines. Table 10 lists the fees for the Premium FedReturn® product, inclusive of current and new deposit deadlines.

TABLE 9—STANDARD FEDRETURN IMAGE CASH LETTER

Tier[39]	4:00 p.m. ET	9:00 p.m. ET	1:00 a.m. ET	12:30 p.m. ET
1	$0.120	$0.170	$0.470	$0.170
2	0.180	0.230	0.530	0.230
3	0.590	0.640	0.940	0.640
4	0.790	0.840	1.140	0.840
5	1.000	1.050	1.350	1.050
6	1.500	1.500	1.500	1.500
Cash Letter	4.50	4.50	6.50	6.50

TABLE 10—PREMIUM FEDRETURN IMAGE CASH LETTER

Tier[39]	4:00 p.m. ET	1:00 a.m. ET	12:30 p.m. ET
0	N/A	N/A	N/A
1	$0.020	$0.070	$0.090
2	0.070	0.120	0.140
3	0.490	0.540	0.560
4	0.690	0.740	0.760
5	0.900	0.950	0.970
6	1.500	1.500	1.500
Daily Fixed Fee	400.00	400.00	400.00

The Reserve Banks will increase to the per-item fee for all paper-related products, as well as large-dollar return item notification (LDRIN), and returns reclear services by 10 to 17 percent.[40] The Reserve Banks will increase all FedImage® fees 10 percent. The Reserve Banks will continue increasing fees to encourage depositors to shift volume away from legacy paper-related products in light of today's electronic check-processing environment. Table 11 and 12 show these pricing changes.

TABLE 11—PAPER CHECK FORWARD AND RETURN COLLECTION

Paper services	Fixed fee	Per item fee
Canadian Items—U.S. Funds	$15.00	$5.50
Canadian Items—Canadian Funds	15.00	5.50
Canadian Cash Letter Correction Fee	.....	22.00
Canadian Amount Encoding	.....	1.65
Foreign Items—GBP and Euro	15.00	22.00
Foreign Items—All Other Items	15.00	22.00
Foreign Items—Collection Items	15.00	88.00
Mixed Forward Paper Deposits	15.00	4.00
LDRIN—FedLine Web access solution	.....	4.00
LDRIN—Telephone	.....	22.00
LDRIN—Physical Item	.....	28.00
Returns Item Reclear—Level 1	10.00	0.70
Returns Item Reclear—Level 2	10.00	0.80
Returns Item Reclear—Level 3	10.00	0.90
Returns Item Reclear—Level 4	10.00	1.00
Canadian Item—Return	.....	16.50
Foreign Item—Return	.....	44.00
Mixed Return Paper Deposits	15.00	7.00
Return Item Qualification	.....	8.25

TABLE 12—FEDIMAGE AND ELECTRONIC CHECK SERVICES AND FEES

	Fixed fee	Per item fee
Image Archive:		
Image Capture + 7 business day archive	$6.60	$0.010

[39] Tier 5 for FedReturn Daily Deposit is also referred to as PDF Endpoints. Tier 6 for FedReturn Daily Deposit is also referred to as Substitute Check Endpoints.

[40] LDRIN is a service in which the Reserve Banks, at the payor bank's request, notifies the bank of first deposit (BOFD) that an item of $5,000 or more is being returned to them, to satisfy the payor bank's Regulation CC requirement. Returns reclear is a service in which the Reserve Banks, at the BOFD's request, will make a second attempt to clear a check that has been returned during the first clearing attempt.

TABLE 12—FEDIMAGE AND ELECTRONIC CHECK SERVICES AND FEES—Continued

	Fixed fee	Per item fee
Image Capture On-Us Surcharge		0.0233
30 business day archive		0.0012
60 business day archive		0.0014
7-year archive/11-year archive		0.0022
Dual archive (Transition period up to 120 days)		0.0013
Extended dual archive (More than 120 days)		0.0133
Back File Conversion	$4.70	0.0133
Electronic On-Us Service	$4.70	0.0133
Extended RAID Storage		
61 days to 6 months		0.0011
61 days to 12 months		0.0026
61 days to 24 months		0.0067
Image Retrievals:		
Retrievals to view via FedLine Web® inquiry		0.4700
Retrievals to email via FedLine Web		
Request via FedLine Web inquiry		0.4700
Recurring request		0.4700
Image Access and Retrievals through a Gateway		0.4700
Subscription Retrievals		0.0029
Manual FedImage Requests (requests performed by FRB staff)		8.0000
Image Delivery:		
Physical Media		
CD–ROM Select Accounts Service—RAID	$20.00/CD–ROM	0.0210
CD–ROM—Tape	$20.00/CD–ROM	0.1300
Truncation:		
Image Enhanced Truncation	$7.25	0.0120
Return Item Retrieval—FedLine		1.4000

The Reserve Banks will increase the per-item fee for the FedReceipt® Premium Delivery 8:00 a.m. ET Target by $0.003 to $0.026, for the 10:00 a.m. Target by $0.002 to $0.017, and for the 12:00 noon Target by $0.001 to $0.012.[41] The fee increases are intended to maintain cost recovery of the Premium Delivery service in light of declining check volume.

The primary risks to the Reserve Banks' ability to achieve budgeted 2020 cost recovery for the check service include greater-than-expected declines in check volume due to the general reduction in check writing and increased competition from correspondent banks, aggregators, and direct exchanges, which would result in lower-than-anticipated revenue.

D. *FedACH Service*—Table 13 shows the 2018 actual, 2019 estimate, and 2020 budgeted cost-recovery performance for the commercial FedACH service.

TABLE 13—FEDACH SERVICE PRO FORMA COST AND REVENUE PERFORMANCE

[Dollars in millions]

Year	Revenue	Total expense	Net income (ROE)	Targeted ROE	Recovery rate after targeted ROE (%)
	1	2	3 [1–2]	4	5 [1/(2 + 4)]
2018 (actual)	$149.7	$149.1	$0.6	$1.9	99.2
2019 (estimate)	152.7	153.1	−0.4	1.9	98.6
2020 (budget)	157.6	155.3	2.3	1.9	100.3

1. *2019 Estimate*—The Reserve Banks estimate that the FedACH service will recover 98.6 percent of total expenses and targeted ROE, compared with a 2019 budgeted recovery rate of 101.3 percent. Through August, FedACH commercial origination and receipt volume was 5.4 percent higher than it was during the same period last year. For full-year 2019, the Reserve Banks estimate that FedACH commercial origination and receipt volume will increase 5.8 percent from 2018 levels, compared with a 2019 budgeted increase of 3.3 percent. However, investment costs associated with a multiyear technology initiative to modernize the FedACH processing platform continue to drive the overall underrecovery rate. Although FedACH is estimated to not fully recover its costs in 2019, the Reserve Banks are expected to fully recover FedACH costs following the finalization of the FedACH technology modernization project.

2. *2020 Pricing*—The Reserve Banks expect the FedACH service to recover 100.3 percent of total expenses and targeted ROE in 2020. FedACH commercial origination and receipt volume is projected to grow 4.2 percent, which is expected to contribute to an increase of $4.9 million in total revenue

[41] FedReceipt services consist of the electronic presentment of an image cash letter to the paying bank that consists of all forward items deposited electronically. The 8:00 a.m. delivery target is expressed in eastern time, while the 10:00 a.m. and 12:00 noon targets are local time.

from the 2019 estimate. Total expenses are projected to increase $2.2 million from 2019 expenses, primarily because of testing and implementation costs associated with the introduction of the new FedACH technology platform, which is now expected in 2020.

The Reserve Banks will not change fees for existing FedACH priced services. This is consistent with a multiyear strategy of providing price stability for customers in light of ongoing investments to upgrade the FedACH processing platform.

The primary risks to the Reserve Banks' ability to achieve budgeted 2020 cost recovery for the FedACH service are unanticipated cost overruns associated with the FedACH technology modernization project and unanticipated volume reductions.

E. *Fedwire Funds and National Settlement Services*—Table 14 shows the 2018 actual, 2019 estimate, and 2020 budgeted cost-recovery performance for the Fedwire Funds and National Settlement Services.

TABLE 14—FEDWIRE FUNDS AND NATIONAL SETTLEMENT SERVICES PRO FORMA COST AND REVENUE PERFORMANCE

[Dollars in millions]

Year	Revenue	Total expense	Net income (ROE)	Targeted ROE	Recovery rate after targeted ROE (%)
	1	2	3 [1–2]	4	5 [1/(2 + 4)]
2018 (actual)	$132.4	$123.6	$8.8	$1.5	105.8
2019 (estimate)	136.4	131.6	4.8	1.6	102.4
2020 (budget)	139.9	140.0	−0.1	2.4	98.2

1. *2019 Estimate*—The Reserve Banks estimate that the Fedwire Funds and National Settlement Services will recover 102.4 percent of total expenses and targeted ROE, compared with a 2019 budgeted recovery rate of 100.5 percent. Through August, Fedwire Funds Service online volume was 4.0 percent higher than it was during the same period last year. For full-year 2019, the Reserve Banks estimate that Fedwire Funds Services online volume will increase 4.5 percent from 2018 levels, compared with the 2.1 percent volume increase that had been budgeted. Through August, the National Settlement Service (NSS) settlement file volume was 4.8 percent lower than it was during the same period last year, and settlement entry volume was 4.2 percent lower. For the full year, the Reserve Banks estimate that settlement file volume will decrease 5.0 percent (slightly more than the budgeted decrease of 3.5 percent) and settlement entry volume will decrease 4.0 percent from 2018 levels (compared with a budgeted 3.0 percent decrease).

2. *2020 Pricing*—The Reserve Banks expect the Fedwire Funds and National Settlement Services to recover 98.2 percent of total expenses and targeted ROE. Revenue is projected to be $139.9 million, an increase of 2.6 percent from the 2019 estimate. The Reserve Banks project total expenses to be roughly $8.4 million higher than 2019 expenses, primarily reflecting investments in initiatives to improve resiliency and operational functionality.

The Reserve Banks will increase the per-transfer fee for originations and receipts from $0.820 to $0.840 for tier 1 transfers, from $0.245 to $0.250 for tier 2 transfers, and from $0.160 to $0.165 for tier 3 transfers.[42] Correspondingly, the discounted per-transfer fee for originations and receipts will increase from $0.164 to $0.168 for tier 1 transfers, from $0.049 to $0.050 for tier 2 transfers, and from $0.032 to $0.033 for tier 3 transfers.[43] The Reserve Banks will increase the per-transfer fee in order to offset an anticipated decline in revenue due to a large Fedwire Funds participant's upcoming transition of its transfer origination activity off the Fedwire Funds Service, which is set to occur in 2020. This shift in volume is coupled with ongoing project costs associated with resiliency and operational objectives and increased investments in System technology infrastructure. The price increase has been structured to affect tier 3 (that is, high-volume) customers proportionally more than lower-volume customers. The structure was chosen because the ongoing project costs incurred by the Fedwire Funds Service are expected to be of greater benefit to tier 3 customers. Overall Fedwire Funds participants will experience an average price increase of 3.7 percent.[44]

The Reserve Banks will not change NSS fees for 2020.

There are three primary risks to the Reserve Banks' ability to achieve budgeted 2020 cost recovery for these services. First, the Fedwire Funds Service could experience a potential overrun in costs from ongoing technology initiatives to improve resiliency and operational functionality. Second, the services could experience lower–than-expected volume related to unforeseen market trends. Finally, the Fedwire Funds Service is reevaluating its current resource commitments and portfolio goals in order to better support any necessary strategic and development work related to emerging Systemwide initiatives, in addition to revisiting project implementation timelines in response to industry feedback.[45] As a result, the Fedwire Funds Service future resource and project costs may shift and this may affect 2020 cost recovery.

F. *Fedwire Securities Service*—Table 15 shows the 2018 actual, 2019 estimate, and 2020 budgeted cost-

[42] Tiers are based on monthly total volume of originations and receipts. Tier 1 includes up to 14,000 transfers, Tier 2 includes from 14,001 to 90,000 transfers, and Tier 3 includes transfers over 90,000.

[43] The incentive discounts apply to the volume that exceeds 60 percent of a customer's historic benchmark volume. Historic benchmark volume is based on a customer's average daily activity over the previous five calendar years. If a customer has fewer than five full calendar years of previous activity, its historic benchmark volume is based on its daily activity for as many full calendar years of data as are available.

[44] The average price impact (increase) reflects both the price changes as well as an overall expected increase in the average benchmark volume required to receive discount pricing based on historic observed increases in customer benchmark volume year over year.

[45] In response to industry feedback, the Federal Reserve Banks have decided to put on hold Phase 1 of the Fedwire Funds Service's ISO 20022 migration strategy (originally scheduled for November 2020). The Federal Reserve will provide an update regarding its implementation plans after engaging with key stakeholders to reassess the Fedwire Funds Service's migration strategy. See official press release for additional details (*https://frbservices.org/news/press-releases/092319-fedwire-funds-migration-iso20022-messages.html*).

recovery performance for the Fedwire Securities Service.[46]

TABLE 15—FEDWIRE SECURITIES SERVICE PRO FORMA COST AND REVENUE PERFORMANCE

[Dollars in millions]

Year	Revenue	Total expense	Net income (ROE)	Targeted ROE	Recovery rate after targeted ROE (%)
	1	2	3 [1 − 2]	4	5 [1/(2 + 4)]
2018 (actual)	$27.5	$27.5	$0.0	$0.3	98.7
2019 (estimate)	26.6	27.1	−0.5	0.3	96.8
2020 (budget)	26.1	26.2	−0.1	0.3	98.6

1. *2019 Estimate*—The Reserve Banks estimate that the Fedwire Securities Service will recover 96.8 percent of total expenses and targeted ROE, compared with a 2019 budgeted recovery rate of 95.1 percent. The Reserve Banks estimate revenue to be $26.6 million, an increase of 0.8 percent from the 2019 budget. Total expenses are projected to be $27.1 million for full-year 2019, a decrease of 1.5 percent from the 2019 budget.

Through August, Fedwire Securities Service online agency transfer volume was 6.6 percent lower than it was during the same period last year. For full-year 2019, the Reserve Banks estimate that Fedwire Securities Service online agency transfer volume will decline 11.1 percent from 2018 levels, compared with a budgeted decline of 4.7 percent. This decrease in online agency transfer volume primarily reflects JP Morgan Chase's (JPMC) exiting the broker-dealer services business, which resulted in Bank of New York Mellon (BNYM) generally serving as the sole clearing bank for government securities. Activity between JPMC and BNYM that had previously settled over the Fedwire Securities Service is now concentrated within BNYM. The significant decline in agency transfer volume realized from JPMC's exit was partially offset by a reorganization of BNYM's broker-dealer activity and non-broker-dealer activity into separate securities accounts. This reorganization resulted in transfer activity that was previously conducted on BNYM's books shifting to the Fedwire Securities Service. The Reserve Banks do not expect that there will be further significant changes in 2020 in online agency transfer volume related to the JPMC exit.

For full-year 2019, volumes for the Fedwire Securities' two largest revenue-generating services—account maintenance and issue maintenance—are expected to decline from 2018 levels. Through August, account maintenance volume was 2.8 percent lower than it was during the same period last year. For full-year 2019, the Reserve Banks estimate that account maintenance volume will decline 2.8 percent from 2018 levels, compared with a budgeted decline of 5.8 percent. The account maintenance volume decline is largely the result of joint custody account closures. Through August, the number of agency issues maintained was 11.8 percent lower than it was during the same period last year. For full-year 2019, the Reserve Banks estimate that the number of agency issues maintained will decline 11.9 percent from 2018 levels, compared with a budgeted decline of 19.7 percent.

2. *2020 Pricing*—The Reserve Banks expect the Fedwire Securities Service to recover 98.6 percent of total expenses and targeted ROE in 2020. Revenue is projected to be $26.1 million, a decrease of 1.9 percent from the 2019 estimate. The Reserve Banks also project that 2020 expenses will remain relatively flat, decreasing by $0.9 million from the 2019 estimate. Significant drivers of 2020 operating costs include investments to advance initiatives to improve resiliency and operational functionality.

The Reserve Banks will not change Fedwire Securities Service fees for 2020. This is largely the result of a stable near-term volume outlook across Fedwire Securities' core products. Relevant cost drivers include ongoing project costs associated with resiliency and operational objectives and increased Systemwide investment in technology infrastructure. Of particular note, however, operating costs for the Fedwire Securities Service are expected to decrease in 2021, primarily due to Fedwire Securities Modernization Program-related costs being fully amortized.

The Reserve Banks project that online agency transfer volume will remain relatively flat, with a slight decrease of 1.4 percent in 2020. As interest rates decline, an expected increase in refinancing activity will likely lead to higher mortgage-backed securities (MBS) issuance and a corresponding higher level of online MBS transfers. Conversely, agency debt transfers will likely decrease since the Federal Housing Finance Agency (FHFA) has mandated a decline in government-sponsored enterprise retained portfolios. Thus, it is expected that there will be no significant volume changes in this category for 2020.

The volume of accounts maintained will likely decrease 3.7 percent, and the volume of agency issues maintained will likely decrease 0.5 percent.[47] Account maintenance volume is expected to continue to decline in 2020 because of ongoing joint custody account closures.

The primary risk to the Reserve Banks' ability to achieve budgeted 2020 cost recovery for these services is a potential overrun in costs from ongoing technology initiatives to improve resiliency and operational functionality

[46] The Reserve Banks provide transfer services for securities issued by the U.S. Treasury, federal government agencies, government-sponsored enterprises, and certain international institutions. The priced component of this service, reflected in this memorandum, consists of revenues, expenses, and volumes associated with the transfer of all non-Treasury securities. For Treasury securities, the U.S. Treasury assesses fees for the securities transfer component of the service. The Reserve Banks assess a fee for the funds settlement component of a Treasury securities transfer; this component is not treated as a priced service.

[47] The online transfer fee, monthly account maintenance fee, and monthly issue maintenance fee accounted for more than 94 percent of total Fedwire Securities Service revenue through August 2019.

or lower-than-expected volume related to unforeseen market trends.

G. *FedLine Solutions*—The Reserve Banks charge fees for the electronic connections that depository institutions use to access priced services and allocate the costs and revenues associated with this electronic access to the priced services.[48] There are currently six FedLine channels through which customers can access the Reserve Banks' priced services: FedMail, FedLine Exchange, FedLine Web, FedLine Advantage, FedLine Command, and FedLine Direct.[49] The Reserve Banks bundle these channels into eleven FedLine packages, described below, that are supplemented by a number of premium (or à la carte) access and accounting information options. In addition, the Reserve Banks offer FedComplete packages, which are bundled offerings of FedLine connections and a fixed number of FedACH, Fedwire Funds, and Check 21-enabled transactions.

Eight attended access packages offer manual access to critical payment and information services via a web-based interface. The FedMail package provides access to basic information services via email, while the two FedLine Exchange packages are designed to provide certain services, such as the E-Payments Routing Directory, to customers that otherwise do not use FedLine for any payment services. The two FedLine Web packages offer online attended access to a range of services, including cash services, FedACH information services, and Check services. Three FedLine Advantage packages expand upon the FedLine Web packages and offer attended access to critical transactional services: FedACH, Fedwire Funds, and Fedwire Securities.

Three unattended access packages are computer-to-computer, Internet Protocol (IP)-based interfaces. The FedLine Command package offers an unattended connection to FedACH as well as to most accounting information services. The two remaining options are FedLine Direct packages, which allow for unattended connections at multiple connection speeds to Check, FedACH, Fedwire Funds, and Fedwire Securities transactional and information services and to most accounting information services.[50]

In 2020, the Reserve Banks will increase the monthly fees for legacy FedLine Direct (FLD) Plus and Premier, Additional Legacy 256K and T1 Wide Area Network (WAN) services, and Check 21 Large File Delivery (C21 LFD). The fee for legacy FLD Plus (Legacy 256K) package will increase by $1,500, from $4,000 to $5,500, and FLD Premier (Legacy T1) will increase by $700, from $6,800 to $7,500. The Reserve Banks also will increase the à la carte monthly fee for the Additional Legacy 256K WAN by $1,000, from $2,500 to $3,500 and for the Additional Legacy T1 WAN by $300, from $3,200 to $3,500. In addition, the Reserve Banks will increase the C21 LFD fee by 20 percent.[51] Starting in mid-2020 the Reserve Banks will include additional fee increases for these packages, as shown in table 16, to encourage customers to move to more modern and secure technology that meets industry standards.[52] As previously announced, the Reserve Banks intend to sunset legacy FLD and C21 LFD services after all customers have converted to the new solution.

Table 16 provides a summary of the services and 2020 pricing for FLD and C21 LFD services:

TABLE 16—FEDLINE DIRECT AND CHECK 21 LARGE FILE DELIVERY LEGACY PRICE INCREASES

Services	2019 monthly fee	January 1, 2010 monthly fee	Fee structure	
			May 1, 2020 monthly fee	August 1, 2020 monthly fee
FedLine Direct Plus (Legacy 256K)	$4,000	$5,500 *(+37.5%)*	$10,000 *(+150.0%)*	$20,000 *(+400.0%)*
FedLine Direct Premier (Legacy T1)	6,800	$7,500 *(10.3%)*	$10,000 *(+47.1%)*	$20,000 *(+194.1%)*
Additional Legacy 256K WAN Connection	2,500	$3,500 *(+40.0%)*	$5,000 *(+100.0%)*	$10,000 *(+300.0%)*
Additional Legacy T1 WAN Connection	3,200	$3,500 *(+9.4%)*	$5,000 *(+56.3%)*	$10,000 *(+212.5%)*
Check 21 Large File Delivery[53]	Various	+20.0%	* +50.0%	* +100.0%

* (from Dec. 2019 fee).

In addition, the Reserve Banks will increase the price for FedMail Fax and FedMail Email (for customers with FedLine Web or above).[54] FedMail Fax will increase by $50, from $100 to $150. Additionally, FedMail Email (for customers with FedLine Web or above) will increase by $20, from $20 to $40. The price increases to FedMail Fax and FedMail Email are intended to move customers to more secure and contemporary solutions.

The Reserve Banks will also update the existing FedComplete 100 and 200 (Plus and Premier) packages to incorporate other pricing and product changes.[55] Although the Reserve Banks are not making changes to package fees, the content of the packages is being updated to reflect individual 2020 pricing and product changes. Specifically, the Reserve Banks will add the 2020 Check participation fee and the 4:00 p.m. FedReturn® deadline to FedComplete packages. The Reserve Banks will update the FedComplete Excess Volume and Receipt Surcharge to reflect the fee increase to Fedwire Origination and Receipt.

The Reserve Banks estimate that the price changes will result in a 2.9 percent average price increase for FedLine customers.

[48] FedLine Solutions provide customers with access to Reserve Bank priced services. As such, FedLine costs and revenue are allocated to the Reserve Banks' priced services on an expense ratio basis.

[49] FedMail, FedLine Exchange, FedLine Web, FedLine Advantage, FedLine Command, and FedLine Direct are registered trademarks of the Federal Reserve Banks.

[50] In 2019, the Reserve Banks began offering Check 21 Large File Delivery services as part of modernized FedLine Direct Plus and FedLine Direct Premier connections.

[51] The monthly fees for legacy C21 LFD fee ranges from $1,680 to $24,870 depending on the size, speed, and location of the connection. In order to avoid compounding increases, December 2019 will be the baseline for all 2020 price increases for any connection still needing to convert.

[52] The Reserve Banks will increase fees further in mid-2020 for those customers who have not yet converted to newer FedLine Direct network routers and circuits.

[53] To avoid compounding increases, the fee as of December 2019 will serve as the baseline for all 2020 price increases for any connection still needing to convert.

[54] FedMail Email is only available to FedLine Web, Advantage, Command, and Direct customers.

[55] FedComplete packages bundle certain payment services and are designed for institutions with lower transaction volumes that are interested in processing their own payments.

II. Analysis of Competitive Effect

All operational and legal changes considered by the Board that have a substantial effect on payment system participants are subject to the competitive impact analysis described in the March 1990 policy ''The Federal Reserve in the Payments System.'' [56] Under this policy, the Board assesses whether proposed changes would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services because of differing legal powers or constraints or because of a dominant market position deriving from such legal differences. If any proposed changes create such an effect, the Board must further evaluate the changes to assess whether the benefits associated with the changes—such as contributions to payment system efficiency, payment system integrity, or other Board objectives—can be achieved while minimizing the adverse effect on competition.

The 2020 fees, fee structures, and changes in service will not have a direct and material adverse effect on the ability of other service providers to compete effectively with the Reserve Banks in providing similar services. The proposed changes should permit the Reserve Banks to earn a ROE that is comparable to overall market returns and provide for full cost recovery over the long run.

III. 2020 Fee Schedules

FEDACH SERVICE 2020 FEE SCHEDULE

[Effective January 2, 2020. **Bold indicates changes from 2019 prices**]

	Fee
FedACH minimum monthly fee:	
Originating depository financial institution (ODFI) [57]	$50.00.
Receiving depository financial institution (RDFI) [58]	$40.00.
Origination (per item or record):	
Forward or return items	$0.0035.
SameDay Service—forward item [59]	$0.0010 surcharge.
Addenda record	$0.0015.
FedLine Web-originated returns and notification of change (NOC) [60]	$0.35.
Facsimile Exception Return/NOC [61]	$45.00.
SameDay Exception Return	$45.00.
Automated NOC	$0.20.
Volume discounts (based on monthly billed origination volume) [62] per item when origination volume is.	
750,001 to 1,500,000 items per month	$0.0008 discount.
more than 1,500,000 items per month	$0.0010 discount.
Volume discounts (based on monthly billed receipt volume) [63] per item when receipt volume is.	
10,000,001 to 15,000,000 items per month	$0.0002 discount.
more than 15,000,000 items per month	$0.0003 discount.
Receipt (per item or record):	
Forward Item	$0.0035.
Return Item	$0.0075.
Addenda record	$0.0015.
Volume discounts:	
Non-Premium Receivers [64] per item when volume is:.	
750,001 to 12,500,000 items per month [65]	$0.0017 discount.
more than 12,500,000 items per month [66]	$0.0019 discount.
Premium Receivers, Level One [67] per item when volume is:	
750,001 to 1,500,000 items per month [65]	$0.0017 discount.
1,500,001 to 2,500,000 items per month [66]	$0.0017 discount.
2,500,001 to 12,500,000 items per month [66]	$0.0018 discount.
more than 12,500,000 items per month [66]	$0.0020 discount.
Premium Receivers, Level Two [68] per item when volume is:	
750,001 to 1,500,000 items per month [65]	$0.0017 discount.
1,500,001 to 2,500,000 items per month [66]	$0.0017 discount.
2,500,001 to 12,500,000 items per month [66]	$0.0019 discount.
more than 12,500,000 items per month [66]	$0.0021 discount.
FedACH Bundled Package Pricing Discount:	
Monthly Bundled Service Package Discount [69]	$20.00 discount.
FedACH Risk® Management Services: [70]	
Monthly Package Fee (a single fee based on total number of criteria sets):	
For up to 5 criteria sets	$35.00.
For 6 through 11 criteria sets	$70.00.
For 12 through 23 criteria sets	$125.00.

[56] Federal Reserve Regulatory Service (FRRS) 9–1558.

[57] Any ODFI incurring less than $50 for the following fees will be charged a variable amount to reach the minimum: Forward value and non-value item origination fees, and FedGlobal ACH origination surcharges.

[58] Any RDFI not originating forward value and non-value items and incurring less than $40 in receipt fees will be charged a variable amount to reach the minimum. Any RDFI that originates forward value and nonvalue items incurring less than $50 in forward value and nonvalue item origination fees will only be charged a variable amount to reach the minimum monthly origination fee.

[59] This surcharge is assessed on all forward items that qualify for same-day processing and settlement and is incremental to the standard origination item fee.

[60] The fee includes the item and addenda fees in addition to the conversion fee.

[61] The fee includes the item and addenda fees in addition to the conversion fee. Reserve Banks also assess a $45 fee for every government paper return/NOC they process.

[62] Origination volumes at these levels qualify for a waterfall discount which includes all FedACH origination items.

[63] Origination discounts based on monthly billed receipt volume apply only to those items received by FedACH receiving points and are available only to Premium Receivers.

[64] RDFIs receiving through FedACH less than 90 percent of their FedACH-originated items.

[65] This per-item discount is a reduction to the standard receipt fees listed in this fee schedule.

[66] Receipt volumes at these levels qualify for a waterfall discount which includes all FedACH receipt items.

[67] RDFIs receiving through FedACH at least 90 percent of their FedACH-originated items, but less than 90 percent of all of their ACH items originated through any operator.

[68] RDFIs receiving through FedACH at least 90 percent of all of their ACH items originated through any operator.

[69] To qualify for the discount, a financial institution must meet all of the following criteria in a given month: (1) Be charged the minimum monthly fee—forward origination (57208); (2) subscribe to FedLine Web Plus or any higher FedLine® access solution; and (3) subscribe to the FedPayments Reporter service, the FedACH RDFI Alert service, or the FedACH Risk Origination Monitoring service.

[70] Criteria may be set for both the Origination Monitoring Service and the RDFI Alert Service. Subscribers with no criteria set up will be assessed the $35 monthly package fee.

[71] Premier reports generated on demand are subject to the package/tiered fees plus a surcharge.

[72] The fee applies to RTNs that have received or originated FedACH transactions during a month. Institutions that receive only U.S. government transactions or that elect to use a private-sector operator exclusively are not assessed the fee.

FEDACH SERVICE 2020 FEE SCHEDULE—Continued

[Effective January 2, 2020. **Bold indicates changes from 2019 prices**]

	Fee
For 24 through 47 criteria sets	$150.00.
For 48 through 95 criteria sets	$250.00.
For 96 through 191 criteria sets	$425.00.
For 192 through 383 criteria sets	$675.00.
For 384 through 584 criteria sets	$850.00.
For more than 584 criteria sets	$1,100.00.
Batch/Item Monitoring (based on total monthly volume):	
For 1 through 100,000 batches (per batch)	$0.007.
For more than 100,000 batches (per batch)	$0.0035.
Monthly FedPayments® Reporter Service:	
FedPayments Reporter Service monthly package includes the following reports	
ACH Received Entries Detail—Customer and Depository Financial Institution	
ACH Return Reason Report—Customer and Depository Financial Institution	
ACH Originated Entries Detail—Customer and Depository Financial Institution	
ACH Volume Summary by SEC Code—Customer	
ACH Customer Transaction Activity	
ACH Death Notification	
ACH International (IAT)	
ACH Notification of Change	
ACH Payment Data Information File	
ACH Remittance Advice Detail	
ACH Remittance Advice Summary	
ACH Return Item Report and File	
ACH Return Ratio	
ACH Social Security Beneficiary	
ACH Originator Setup	
ACH Report Delivery via FedLine Solution	
On Demand Report Surcharge [71]	$1.00.
Monthly Package Fee (counts reflect reports generated as well as delivered via a FedLine Solution):	
For up to 50 reports	$40.00.
For 51 through 150 reports	$60.00.
For 151 through 500 reports	$110.00.
For 501 through 1,000 reports	$200.00.
For 1,001 through 1,500 reports	$285.00.
For 1,501 through 2,500 reports	$460.00.
For 2,501 through 3,500 reports	$640.00.
For 3,501 through 4,500 reports	$820.00.
For 4,501 through 5,500 reports	$995.00.
For 5,501 through 7,000 reports	$1,225.00.
For 7,001 through 8,500 reports	$1,440.00.
For 8,501 through 10,000 reports	$1,650.00.
For more than 10,000 reports	$1,800.00.
Premier reports (per report generated): [71]	
ACH Volume Summary by SEC Code Report—Depository Financial Institution:	
For 1 through 5 reports	$10.00.
For 6 through 10 reports	$6.00.
For 11 or more reports	$1.00.
On Demand Surcharge	$1.00.
ACH Routing Number Activity Report:	
For 1 through 5 reports	$10.00.
For 6 through 10 reports	$6.00.
For 11 or more reports	$1.00.
On Demand Surcharge	$1.00.
ACH Originated Batch Report (monthly):	
For 1 through 5 reports	$10.00.
For 6 through 10 reports	$6.00.
For 11 or more reports	$1.00.
On Demand Surcharge	$1.00.
ACH Originated Batch Report (daily):	
Scheduled Report	$0.65.
On Demand Surcharge	$1.00.
On-us inclusion:	
Participation (monthly fee per RTN)	$10.00.
Per-item	$0.0030.
Per-addenda	$0.0015.
Report delivery via encrypted email (per email)	$0.20.
Other Fees and Discounts:	
Monthly fee (per RTN):	
FedACH Participation Fee [72]	$65.00.
SameDay Service Origination Participation Fee [73]	$10.00.
FedACH Settlement Fee [74]	$55.00.
FedACH Information File Extract Fee	$150.00.
IAT Output File Sort Fee	$75.00.
Fixed Participation Fee—Automated NOCs [75]	$5.00.
Non-Electronic Input/Output fee: [76]	
CD/DVD (CD or DVD)	$50.00.
Paper (file or report)	$50.00.
Fees and Credits Established by NACHA: [77]	
NACHA Same Day Entry fee (per item)	$0.052.
NACHA Same Day Entry credit (per item)	$0.052 (credit).
NACHA Unauthorized Entry fee (per item)	$4.50.
NACHA Unauthorized Entry credit (per item)	$4.50 (credit).
NACHA Admin Network fee (monthly fee per RTN)	$22.00.
NACHA Admin Network fee (per entry)	$0.000185.
FedGlobal® ACH Payments: [78]	
Fixed Monthly Fee (per RTN): [79]	
Monthly origination volume more than 500 items	$185.00.
Monthly origination volume between 161 and 500 items	$60.00.
Monthly origination volume less than 161 items	$20.00.
Per-item Origination Fee for Monthly Volume more than 500 Items (surcharge): [80]	
Canada service	$0.50.
Mexico service	$0.55.

FEDACH SERVICE 2020 FEE SCHEDULE—Continued

[Effective January 2, 2020. **Bold indicates changes from 2019 prices**]

	Fee
Panama service	$0.60.
Europe service	$1.13.
Per-item Origination Fee for Monthly Volume between 161 and 500 items (surcharge): [80]	
Canada service	$0.75.
Mexico service	$0.80.
Panama service	$0.85.
Europe service	$1.38.
Per-item Origination Fee for Monthly Volume less than 161 items (surcharge): [80]	
Canada service	$1.00.
Mexico service	$1.05.
Panama service	$1.10.
Europe service	$1.63.
Other FedGlobal ACH Payments Fees:	
Canada service:	
Return received from Canada [81]	$0.99 (surcharge).
Trace of item at receiving gateway	$5.50.
Trace of item not at receiving gateway	$7.00.
Mexico service:	
Return received from Mexico [81]	$0.91 (surcharge).
Item trace	$13.50.
Foreign currency to foreign currency (F3X) item originated to Mexico [80]	$0.67 (surcharge).
Panama service:	
Return received from Panama [81]	$1.00 (surcharge).
Item trace	$7.00.
NOC	$0.72.
Europe service:	
F3X item originated to Europe [80]	$1.25 (surcharge).
Return received from Europe [81]	$1.35 (surcharge).
Item trace	$7.00.
Exception Resolution Service:	
Fixed Fee per RTN [82] (monthly):	
Self-Managed Cases	$10.00.
Agent-Managed Cases	$10.00.
Offline Service Participant	$60.00.
Variable Case Open Monthly Fees per Case (applies to self-managed and agent-managed cases only at the parent RTN): [83]	
1–50 cases	$1.25.
51–100 cases	$1.00.
101–500 cases	$0.75.
501–1,000 cases	$0.50.
1,001–5,000 cases	$0.25.
5,001–10,000 cases	$0.20.
10,001–99,999,999 cases	$0.10.
Offline Service Participant—Case Fees: [84]	
Case Open Fee	$5.00.
Case Response Fee	$5.00.

[73] This surcharge is assessed to any RTN that originates at least one item meeting the criteria for same-day processing and settlement in a given month.

[74] The fee is applied to any RTN with activity during a month, including RTNs of institutions that elect to use a private-sector operator exclusively but also have items routed to or from customers that access the ACH network through FedACH. This fee does not apply to RTNs that use the Reserve Banks for only U.S. government transactions.

[75] Fee will be assessed only when automated NOCs are generated.

[76] Limited services are offered in contingency situations.

[77] The fees and credits listed are collected from the ODFI and credited to NACHA (admin network) or to the RDFI (same-day entry and unauthorized entry) in accordance with the *ACH Rules.*

[78] The international fees and surcharges vary from country to country as these are negotiated with each international gateway operator.

[79] A single monthly fee based on total FedGlobal ACH Payments origination volume.

[80] This per-item surcharge is in addition to the standard domestic origination fees listed in this fee schedule.

[81] This per-item surcharge is in addition to the standard domestic receipt fees listed in this fee schedule.

[82] Any financial institution that opens at least 1,000 Exception Resolution Service cases in a given month will receive a 50% discount on its Exception Resolution Service fixed fees for that month.

[83] The per case fees are rolled up to the parent RTN, such that a customer that opens a total of 100 cases per month under two separate RTNs would pay a total of $112.50 ($1.25 for the first 50 cases and $1.00 for the next 50 cases) in addition to the fixed fees.

[84] A depository institution may enroll in the Service as an offline Service Participant by designating the Reserve Bank to access and use the functionality of the application on behalf of the Offline Participant.

FEDWIRE FUNDS AND NATIONAL SETTLEMENT SERVICES 2020 FEE SCHEDULE

[Effective January 2, 2020. **Bold indicates changes from 2019 prices**]

	Fee
Fedwire Funds Service	
Monthly Participation Fee	$95.00
Basic volume-based pre-incentive transfer fee (originations and receipts)—per transfer for:	
Tier 1: The first 14,000 transfers per month	**0.840**
Tier 2: Additional transfers up to 90,000 per month	**0.250**
Tier 3: Every transfer over 90,000 per month	**0.165**
Volume-based transfer fee with the incentive discount (originations and receipts)—per eligible transfer for: [85]	
Tier 1: The first 14,000 transfers per month	**0.168**
Tier 2: Additional transfers up to 90,000 per month	**0.050**
Tier 3: Every transfer over 90,000 per month	**0.033**
Surcharge for Offline Transfers (Originations and Receipt)	65.00
Surcharge for End-of-Day Transfer Originations [86]	0.26
Monthly FedPayments Manager Import/Export fee [87]	50.00
Surcharge for high-value payments:	
>$10 million	0.14
>$100 million	0.36
Surcharge for Payment Notification:	
Origination Surcharge [88]	0.01
Receipt Volume [88 89]	N/A
Delivery of Reports—Hard Copy Reports to On-Line Customers	50.00
Special Settlement Arrangements (charge per settlement day) [90]	150.00
National Settlement Service	
Basic:	
Settlement Entry Fee	1.50
Settlement File Fee	30.00
Surcharge for Offline File Origination [91]	45.00
Minimum Monthly Fee [92]	60.00

FEDWIRE SECURITIES SERVICE 2020 FEE SCHEDULE (NON-TREASURY SECURITIES)

[Effective January 2, 2020. **Bold indicates changes from 2019 prices**]

	Fee
Basic Transfer Fee: [93]	
Transfer or reversal originated or received	$0.98
Surcharge: [94]	
Offline origination & receipt surcharge	80.00
Monthly Maintenance Fees: [93]	
Account maintenance (per account)	57.50
Issue maintenance (per issue/per account)	0.77
Claims Adjustment Fee [93 95]	1.00
GNMA Serial Note Stripping or Reconstitution Fee [96]	9.00
Joint Custody Origination Surcharge [93 97]	46.00
Delivery of Reports—Hard Copy Reports to On-Line Customers [93]	50.00

[85] The incentive discounts apply to the volume that exceeds 60 percent of a customer's historic benchmark volume. Historic benchmark volume is based on a customer's average daily activity over the previous five calendar years. If a customer has fewer than five full calendar years of previous activity, its historic benchmark volume is based on its daily activity for as many full calendar years of data as are available. If a customer has less than one year of past activity, then the customer qualifies automatically for incentive discounts for the year. The applicable incentive discounts are as follows: $0.672 for transfers up to 14,000; $0.200 for transfers 14,001 to 90,000; and $0.132 for transfers over 90,000.

[86] This surcharge applies to originators of transfers that are processed by the Reserve Banks after 5:00 p.m. eastern time.

[87] This fee is charged to any Fedwire Funds participant that originates a transfer message via the FedPayments Manager (FPM) Funds tool and has the import/export processing option setting active at any point during the month.

[88] Payment Notification and End-of-Day Origination surcharges apply to each Fedwire funds transfer message.

[89] Provided on billing statement for informational purposes only.

[90] This charge is assessed to settlement arrangements that use the Fedwire Funds Service to effect the settlement of interbank obligations (as opposed to those that use the National Settlement Service). With respect to such special settlement arrangements, other charges may be assessed for each funds transfer into or out of the accounts used in connection with such arrangements.

[91] Offline files will be accepted only on an exception basis when a settlement agent's primary and backup means of transmitting settlement files are both unavailable.

[92] Any settlement arrangement that accrues less than $60 during a calendar month will be assessed a variable amount to reach the minimum monthly fee.

[93] These fees are set by the Federal Reserve Banks.

[94] This surcharge is set by the Federal Reserve Banks. It is in addition to any basic transfer or reversal fee.

[95] The Federal Reserve Banks offer an automated claim adjustment process only for Agency mortgage-backed securities.

[96] This fee is set by and remitted to the Government National Mortgage Association (GNMA).

[97] The Federal Reserve Banks charge participants a Joint Custody Origination Surcharge for both Agency and Treasury securities.

FEDLINE 2020 FEE SCHEDULE

[Effective January 2, 2020. **Bold indicates changes from 2019 prices**]

	Fee
FedComplete Packages (monthly) [98] [99] [100]	
FedComplete 100A Plus	$825.00.
includes:	
FedLine Advantage Plus package	
FedLine subscriber 5-pack	
Check Participation Fee	
7,500 FedForward transactions	
46 FedForward Cash Letter items	
70 FedReturn transactions	
14,000 FedReceipt® transactions	
35 Fedwire Funds origination transfers	
35 Fedwire Funds receipt transfers	
Fedwire monthly participation fee	
1,000 FedACH origination items	
FedACH monthly minimum fee—Forward Origination	
7,500 FedACH receipt items	
FedACH monthly minimum fee—Receipt	
10 FedACH web-originated return/NOC	
500 FedACH addenda record originated	
1,000 FedACH addenda record received	
100 FedACH SameDay Service origination items	
FedACH Participation Fee	
FedACH settlement fee	
FedACH SameDay Service origination participation fee	
FedComplete 100A Premier	$900.00.
includes:	
FedLine Advantage Premier package	
Volumes included in the FedComplete 100A Plus package	
FedComplete 100C Plus	$1,375.00.
includes:	
FedLine Command Plus package	
Volumes included in the FedComplete 100A Plus package	
FedComplete 200A Plus	$1,350.00.
includes:	
FedLine Advantage Plus package	
FedLine subscriber 5-pack	
Check Participation Fee	
25,000 FedForward transactions	
46 FedForward Cash Letter items	
225 FedReturn transactions	
25,000 FedReceipt® transactions	
100 Fedwire Funds origination transfers	
100 Fedwire Funds receipt transfers	
Fedwire monthly participation fee	
2,000 FedACH origination items	
FedACH monthly minimum fee—Forward Origination	
25,000 FedACH receipt items	
FedACH monthly minimum fee—Receipt	
20 FedACH web-originated return/NOC	
750 FedACH addenda record originated	
1,500 FedACH addenda record received	
200 FedACH SameDay Service origination items	
FedACH Participation Fee	
FedACH settlement fee	
FedACH SameDay Service origination participation fee	
FedComplete 200A Premier	$1,425.00.
includes:	
FedLine Advantage Premier package	
Volumes included in the FedComplete 200A Plus package	
FedComplete 200C Plus	$1,900.00.
includes:	
FedLine Command Plus package	
Volumes included in the FedComplete 200A Plus package	
FedComplete Excess Volume and Receipt Surcharge: [101]	
FedForward [102]	$0.037/item.
FedReturn	$0.8200/item.
FedReceipt	$0.00005/item.
Fedwire Funds Origination	**$0.8400/item.**
Fedwire Funds Receipt	**$0.084/item.**
FedACH Origination	$0.0035/item.
FedACH Receipt	$0.00035/item.
FedComplete credit adjustment	various.
FedComplete debit adjustment	various.
FedLine Customer Access Solutions (monthly)	
FedMail [103]	$85.00.
includes:	

FEDLINE 2020 FEE SCHEDULE—Continued

[Effective January 2, 2020. **Bold indicates changes from 2019 prices**]

	Fee
FedMail access channel	
Check FedFoward, Fed Return and FedReceipt Services	
Check Adjustments	
FedACH Download Advice and Settlement Information	
Fedwire Funds Offline Advices	
Daily Statement of Account (Text)	
Daylight Overdraft Reports	
Monthly Statement of Service Charges (Text)	
Electronic Cash Difference Advices	
FedLine Exchange [103]	$40.00.
includes:	
E-Payments Directory (via manual download)	
FedLine Exchange Premier [103]	$125.00.
includes:	
FedLine Exchange package	
E-Payments Directory (via automated download)	
FedLine Web [104]	$110.00.
includes:	
FedLine Web access channel	
Services included in the FedLine Exchange package	
Check FedForward, FedReturn and FedReceipt services	
Check Adjustments	
FedACH Derived Returns and NOCs	
FedACH File, Batch and Item Detail Information	
FedACH Download Advice	
FedACH Settlement Information	
FedACH Customer Profile Information	
FedACH Returns Activity Statistics	
FedACH Risk RDFI Alert Service	
FedACH Risk Returns Reporting Service	
FedACH Exception Resolution Service	
FedCash® Services	
FedLine Web Plus [104]	$160.00.
includes:	
Services included in the FedLine Web package	
FedACH Risk Origination Monitoring Service	
FedACH FedPayments Reporter Service	
Check Large Dollar Return	
Check FedImage Services	
Account Management Information (AMI)	
Daily Statement of Account (PDF, Text)	
Daylight Overdraft Reports	
Monthly Account Services (SCRD) File	
Monthly Statement of Service Charges (PDF, Text)	
E-Payments Routing Directory (via automated download)	
FedLine Advantage [104]	$415.00.
includes:	
FedLine Advantage access channel	
One VPN device	
Services included in the FedLine Web package	
FedACH File Transmission To/From Federal Reserve	
FedACH Request Output File Delivery	
FedACH View File Transmission and Processing Status	
Fedwire Originate and Receive Funds Transfer	
Fedwire Originate and Receive Securities Transfer	
National Settlement Service Services	
Check Large Dollar Return	
Check FedImage Services	
Account Management Information with Intra-Day Download Search File	
Daily Statement of Account (PDF, Text)	
Daylight Overdraft Reports	
Monthly Account Services (SCRD) File	
Monthly Statement of Service Charges (PDF, Text)	
FedLine Advantage Plus [104]	$460.00.
includes:	
Services included in the FedLine Advantage package	
One VPN device	
FedACH Risk Origination Monitoring Service	
FedACH FedPayments Reporter Service	
Fedwire Funds FedPayments Manager Import/Export (less than or equal to 250 Fedwire transactions and one routing number per month)	
FedTransaction Analyzer® (less than 250 or equal to Fedwire transactions and one routing number per month)	
E-Payments Routing Directory (via automated download)	
FedLine Advantage Premier [104]	$570.00.
includes:	
FedLine Advantage Plus package	
Two VPN devices	
Fedwire Funds FedPayments Manager Import/Export (more than 250 Fedwire transactions or more than one routing number in a given month)	
FedTransaction Analyzer (more than 250 Fedwire transactions or more than one routing number per month)	
FedLine Command Plus	$1,035.00.

FEDLINE 2020 FEE SCHEDULE—Continued

[Effective January 2, 2020. **Bold indicates changes from 2019 prices**]

	Fee
includes:	
FedLine Command access channel	
Services included in the FedLine Advantage Plus package	
One VPN device	
Additional FedLine Command server certificates	
Fedwire Statement Services	
Fedwire Funds FedPayments Manager Import/Export	
FedTransaction Analyzer	
Intra-Day File with Transaction Details (up to six times daily)	
Statement of Account Spreadsheet File (SASF)	
Financial Institution Reconcilement Data (FIRD) File (machine readable)	
FedLine Direct Plus (Legacy 256K) [105]	**$5,500.00.**
includes:	
FedLine Direct access channel	
One VPN device	
256K Dedicated WAN Connection	
Services included in the FedLine Command Plus package	
Two FedLine Direct server certificates	
Daylight Overdraft Reports	
Treasury Check Information System (TCIS)	
FedLine Direct Plus [106]	**$5,500.00.**
includes:	
FedLine Direct access channel	
One VPN device	
2 Mbps Dedicated WAN Connection	
Services included in the FedLine Command Plus package	
FedLine Direct server certificates	
Treasury Check Information System (TCIS)	
Dual Vendors	
FedLine Direct Contingency Solution	
Check 21 Services	
FedLine Direct Premier (Legacy T1) [105]	**$7,500.00.**
includes:	
FedLine Direct Plus package (legacy)	
T1 dedicated WAN connection	
Two VPN devices	
FedLine Direct Premier [106]	**$10,500.00.**
includes:	
FedLine Direct Plus package (new)	
Two 2 Mbps dedicated WAN Connections	
One Network Diversity	
Two VPN devices	
A la carte options (monthly) [107]	
Electronic Access:	
FedMail—FedLine Exchange Subscriber 5-pack	$15.00.
FedLine Subscriber 5-pack (access to Web and Advantage)	$80.00.
Additional FedLine Direct Certificate [108]	$100.00.
Additional VPNs [109]	$100.00.
Additional WAN connections [106]	
256K (Legacy) [105]	**$3,500.00.**
T1 (Legacy) [105]	**$3,500.00.**
2 Mbps	$3,000.00.
WAN Connection Upgrade	
10 Mbps [110]	$1,700.00.
30 Mbps [110]	$3,000.00.
50 Mbps [110]	$4,000.00.
100 Mbps [110]	$7,000.00.
200 Mbps [110]	$11,000.00.
FedLine International Setup (one-time fee)	$5,000.00.
FedLine Custom Implementation Fee [111]	various.
Network Diversity	$2,500.00.
FedLine Direct Contingency Solution [112]	$1,000.00.
Check 21 Large File Delivery [113]	various.
FedMail Email (for customers with FedLine Web and above) [114]	**$40.00.**
FedMail Fax [115]	**$150.00.**
VPN Device Modification	$200.00.
VPN Device Missed Activation Appointment	$175.00.
VPN Device Expedited Hardware Surcharge	$100.00.
VPN Device Replacement or Move	$300.00.
E-Payments Automated Download (1–5 Add'l Codes) [116]	$75.00.
E-Payments Automated Download (6–20 Add'l Codes) [116]	$150.00.
E-Payments Automated Download (21–50 Add'l Codes) [116]	$300.00.
E-Payments Automated Download (51–100 Add'l Codes) [116]	$500.00.
E-Payments Automated Download (101–250 Add'l Codes) [116]	$1,000.00.
E-Payments Automated Download (>250 Add'l Codes) [116]	$2,000.00.
Accounting Information Services (monthly):	
Cash Management System (CMS) Plus—Own report—up to six files with [117]	
no respondent/sub-account activity	$60.00.

FEDLINE 2020 FEE SCHEDULE—Continued

[Effective January 2, 2020. **Bold indicates changes from 2019 prices**]

	Fee
less than 9 respondent and/or sub-accounts	$125.00.
10–50 respondent and/or sub-accounts	$250.00.
51–100 respondents and/or sub-accounts	$500.00.
101–500 respondents and/or sub-accounts	$750.00.
>500 respondents and/or sub-accounts	$1,000.00.
End-of-Day Financial Institution Reconcilement Data (FIRD) File [118]	$150.00.
Statement of Account Spreadsheet File [119]	$150.00.
Intra-day Download Search File (with AMI) [120]	$150.00.
Other:	
Software Certification	$0.00 to $8,000.00.
Vendor Pass-Through Fee	various.
Electronic Access Credit Adjustment	various.
Electronic Access Debit Adjustment	various.

By order of the Board of Governors of the Federal Reserve System, November 26, 2019.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–26228 Filed 12–3–19; 8:45 am]

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[98] FedComplete packages are all-electronic service options that bundle payment services with an access solution for one monthly fee.

[99] Packages with an ''A'' include the FedLine Advantage channel, and packages with ''C'' include the FedLine Command channel.

[100] FedComplete customers that use the email service would be charged the FedMail Email a la carte fee and for all FedMail-FedLine Exchange Subscriber 5-packs.

[101] Per-item surcharges are in addition to the standard fees listed in the applicable priced services fee schedules.

[102] FedComplete customers will be charged $4 for each FedForward cash letter over the monthly package threshold. This activity will appear under billing code 51998 in Service Area 1521 on a month-lagged basis.

[103] FedMail and FedLine Exchange packages do not include user credentials, which are required to access priced services and certain informational services. Credentials are sold separately in packs of five via the FedMail-FedLine Exchange Subscriber 5-pack.

[104] FedLine Web and Advantage packages do not include user credentials, which are required to access priced services and certain informational services. Credentials are sold separately in packs of five via the FedLine Subscriber 5-pack.

[105] Limited to installed base only. All customers with 256K or T1 connections will need to upgrade to a minimum 2Mbps Ethernet line speed connection associated with the FedLine Direct packages Effective May 1, 2020, package price will increase to $10,000 for FedLine Direct® Plus (Legacy 256K) and FedLine Direct Premier (Legacy T1). Effective August 1, 2020, package price will increase to $20,000 for FedLine Direct® Plus (Legacy 256K) and FedLine Direct Premier (Legacy T1).

[106] Early termination fees and/or expedited order fees may apply to all FedLine Direct packages and FedLine Direct a la carte options.

[107] These add-on services can be purchased only with a FedLine Solutions packages.

[108] Fee applies only to customers in a legacy FedLine Direct package. Server certificates are included in the monthly fee for customers in the new FedLine Direct packages.

[109] Additional VPNs are available for FedLine Advantage, FedLine Command, and FedLine Direct packages only.

[110] These upgrades are only available for the new FedLine Direct packages and the Add'l 2M WAN connection. Fee is in addition to the FedLine Direct package fees or additional WAN fees.

[111] The FedLine Custom Implementation Fee is $2,500 or $5,000 based on the complexity of the setup.

[112] Fee only applies to customers in a legacy FedLine Direct package. This feature is included in the monthly fee for customers in the new FedLine Direct packages.

[113] Limited to installed base only. The fee currently ranges from $1,400 to $20,725 depending on the size, speed, and location of the connection. All customers will eventually need to upgrade to a minimum 2 Mbps Ethernet line speed connection with the associated FedLine Direct package. Effective January 2, 2020, fees will increase by 20.0 percent for Check 21 Large File Delivery. Effective May 1, 2020, fees will increase by 50.0 percent for Check 21 Large File Delivery. Effective August 1, 2020, fees will increase by 100.0 percent for Check 21 Large File Delivery. To avoid compounding increases, the fee as of December 2019 will serve as the baseline for all 2020 price increases for any Check 21 Large File Delivery connection.

[114] Available only to customers with a priced FedLine package.

[115] Limited to installed base only.

[116] Five download codes are included at no cost in all Plus and Premier packages.

[117] Cash Management Service options are limited to plus and premier packages.

[118] The End of Day Reconcilement File option is available for FedLine Web Plus, FedLine Advantage Plus, and Premier packages. It is available for no extra fee in FedLine Command Plus and Direct packages.

[119] The Statement of Account Spreadsheet File option is available for FedLine Web Plus, FedLine Advantage Plus, and Premier packages. It is available for no extra fee in FedLine Command Plus and Direct packages.

[120] The Intra-day Download Search File option is available for the FedLine Web Plus package. It is available for no extra fee in FedLine Advantage and higher packages.

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the 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 Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than December 19, 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. *Oakworth Capital, Inc., Birmingham, Alabama;* to directly engage de novo in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, November 29, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–26218 Filed 12–3–19; 8:45 am]

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FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

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 paragraph 7 of the Act.

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 December 19, 2019.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *The Jack E. and Willie Rae Tregellas Revocable Trust, Perryton, Texas, Tim Tregellas, Azle, Texas, and William Mac Tregellas, Perryton, Texas, as co-trustees; Debra Tregellas, Azle, Texas; and the William and Rita Tregellas Revocable Trust dated February 15, 1997, Perryton, Texas, William Mac Tregellas and Rita Tregellas, Perryton, Texas, as co-trustees;* individually and as members of a group acting in concert with the Tregellas Family Control Group, to retain voting shares of Perryton Bancshares, Inc., and thereby indirectly retain voting shares of The Perryton National Bank, both of Perryton, Texas.

Additionally, The Jack E. Tregellas Family Trust—Perryton Bancshares Trust S, Perryton, Texas, Tim Tregellas, William Mac Tregellas, and Willie Rae Tregellas, Perryton, Texas, as co-trustees, individually and as members acting in concert with the Tregellas Family Control Group, to acquire voting shares of Perryton Bancshares, Inc., and The Perryton National Bank.

Board of Governors of the Federal Reserve System, November 29, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–26217 Filed 12–3–19; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

[OMB#0985–XXXX]

Agency Information Collection Activities; Submission for OMB Review; Public Comment Request; Adult Protective Services Client Outcome Study

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under the Paperwork Reduction Act of 1995. This 30-Day notice collects comments on the information collection requirements related to the ''Adult Protective Services Client Outcome Study'' (New Data Collection [ICR New]).

DATES: Comments on the collection of information must be submitted electronically by 11:59 p.m. (EST) or postmarked by January 3, 2020.

ADDRESSES: Submit written comments on the collection of information by:

(a) email to: *OIRA_submission@omb.eop.gov*, Attn: OMB Desk Officer for ACL;

(b) fax to 202.395.5806, Attn: OMB Desk Officer for ACL; or

(c) by mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Stephanie Whittier Eliason, Administration for Community Living, Washington, DC 20201, (202) 795–7467, *Stephanie.WhittierEliason@acl.hhs.gov.*

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

APS programs are provided by state and local governments nationwide and serve older adults and adults with disabilities in need of assistance due to maltreatment, which can include: Physical, emotional, and sexual abuse; financial exploitation; neglect; and self-neglect. APS is an important avenue through which maltreatment is reported to law enforcement or other agencies.

Additionally, APS programs are often the gateway for adults who experience

maltreatment to access additional community, social, health, behavioral health, and legal services to maintain independence in the settings in which they prefer to live. APS programs work closely with clients and a wide variety of allied professionals to maximize safety and independence, while respecting each client's right to self-determination. At this time, there is no single funding stream for APS nor a single set of rules and regulations that APS programs must follow. Building the evidence-base for APS programs and practices, promoting the use of evidence-based and promising practices, and developing guiding standards are key needs for the APS field.

The proposed new data collection will examine if and how APS programs make a difference in the lives of APS clients. Specifically, the data collection will help examine (1) what changes clients report as a result of receiving APS services; (2) how satisfied clients are with the APS services they receive; (3) to what extent clients report APS helps them achieve their goals; (4) to what extent clients report APS supports their right to self-determination; (5) to what extent APS programs affect client safety (risk of maltreatment); (6) how APS program intervene to reduce client risk of maltreatment; (7) what factors help or hinder APS efforts to reduce risk of maltreatment; (8) to what extent APS programs affect client well-being (*e.g.,* quality of life, financial, physical health, etc.); (9) how APS programs intervene to improve client-well-being; and (10) what factors help or hinder APS efforts to improve client well-being. The data collection will be conducted with three target populations: (1) APS clients, (2) APS caseworkers, and (3) APS leaders. APS leaders will consist of APS state and APS county leaders.

Data collection with these three target populations will include: A brief, anonymous APS client questionnaire, including a de-identified client data form; a semi-structured in-person interview with APS clients; a semi-structured in-person focus group with APS caseworkers; and a semi-structured interview with APS leaders.

The APS client questionnaire is designed to be as brief as possible, while examining key client outcome areas, identified in collaboration with a national expert panel consisting of federal experts, researchers, practitioners, and program leaders in APS. The outcomes areas focus on: Satisfaction with APS, safety, and well-being, and will be assessed with nine questions. The question statements examining these areas are designed to be short and easy to understand. The first item on the questionnaire provides a simple ''yes/no'' response option. For the remaining questions, APS clients or a proxy (respondents) are asked to rate the extent which they agree with each statement using a Likert-type rating scale ranging from 'strongly disagree' to 'strongly agree'. Respondents also have the option of sharing anything else about their experience with APS through an open-ended question at the end of the form. The questionnaire will be hand-delivered to the client or proxy respondent by the APS caseworker at case closure. The respondent will complete the questionnaire and mail it back to the research team by using a prepaid return envelope.

The client data form will be linked to the client questionnaire using a pre-populated eight-digit form number. The client data form is designed to capture de-identified, basic demographic information and additional details about APS clients and their cases.

These data points are expected to be among the information about clients, and their cases, that caseworkers already collect during normal APS processes. The form does not collect any personally identifiable information. The form will be completed online by APS caseworkers. If an APS program prefers another method of completing the form, hard copies can be provided and mailed back to the research team using a prepaid return envelope.

Individual interviews with APS clients are designed to gain more in-depth knowledge about the experiences and needs of APS clients along the key outcome areas assessed in the questionnaire. A standardized, semi-structured interview guide will be used to guide the interviews with clients who provide informed consent.

Focus groups with APS caseworkers will be conducted in person, using a standardized, semi-structured focus group guide. Individual interviews with APS leaders will be conducted either in-person or by phone with county and state leaders using a standardized, semi-structured, interview guide. Similar to client interviews, focus groups with APS caseworkers and interviews with APS leaders will focus on the identified outcome areas. Additional questions will be asked to gain insight into access and availability of services, collaboration and partnerships with other entities in the community, and barriers and facilitating factors that affect APS services and client outcomes. The interview guide for APS leaders also contains questions related to APS policies and procedures.

Comments in Response to the 60-Day Federal Register Notice

A notice was published in the **Federal Register** on August 20, 2019 (Vol. 84, Number 161; pp. 43137–43139). ACL received a total of three comments in response to the notice. None of the comments raised significant concerns about the proposed collection of information. The following table lists each comment, by data collection tool, and provides ACL's response.

Data collection tool(s)	Comment	ACL response
Client Data Form	The status at closing should include an additional option: Services knowingly refused by competent adult.	The level of client engagement item is designed to capture this information. However, the item wording should specify engagement with APS, including the investigation and services (specified separately). Competency can be determined using the respondent type item. The following changes are proposed: (1) Revise the item to read: ''Level of Client Engagement with APS:''; (2) Create table (similar to the item for type of maltreatment) or other revised formatting to capture level of client engagement with two separate aspects of APS: (a) the investigation, (b) services. No revisions are proposed to the response options for this item.

Data collection tool(s)	Comment	ACL response
Client Data Form	The above initiative will be of great benefit to the field of APS. Thank you for undertaking much needed work. Your approach is sound and we look forward to the results of this work. My comment regarding APS is of a broad general nature. What is an APS client in the USA? There is no unified definition on what is a person that needs APS services. Most states use a definition that includes a vulnerability. The person is 18+ and due to a permanent physical or mental disability is unable to provide for his or her own care and protection. However, many states (10 to 12 I believe) have an age demarcation on what is an APS client. Anyone 60+ or 65+ is an automatic client. This is misleading. As you know, ⅔ of the members of congress are over 60 or 65, not to mention our president and many of the democrats running for the presidency. Are those states telling us that just because you are 60 you cannot protect or provide for yourself and you need APS services? These states have laws that go back decades and they have not been updated. This creates an inconsistency in national data on abuse, neglect, exploitation a true vulnerable APS client. APS needs to focus on folks who are vulnerable. Not folks who happen to be 60+ and are caught in the pool. The US needs a consistent definition of what is an APS client so that the data can be more meaningful.	ACL recognizes that APS programs vary in terms of the criteria used to determine eligibility to receive APS. ACL further believes that this information is meaningful to the study. The following change is proposed: (1) Add new item to the client data form: ''How did the client qualify to receive APS services (check all that apply)?'' with check boxes for two response options: ''1) On the basis of old age''; ''2) On the basis of disability/vulnerability/etc''.
Interview Guide APS Leaders; Focus Group Guide APS Caseworkers.	Below are comments: • Applaud ACL for doing this study via a random sampling of clients, APS caseworkers and administrators at both the state and local level. • Questions seek to validate if client autonomy and engagement is honored (*i.e.,* client self-determination recognized by the APS investigator and the need for APS to balance Autonomy with Beneficence and Nonmaleficence.). • These surveys of clients, APS caseworkers and administrators ask open-ended, semi-structured questions around domains of client satisfaction, improved safety, and resource access, which is a nice approach. • Recommend one additional question for caseworkers and administrators, ''If you had an unlimited budget, what would you give to APS to improve their services delivery?'' Good luck with this important work.	The APS leader interview guide and APS caseworker focus group guide include an item that very closely matches the recommendation in the comment. For example, the ''Conclusion'' section, item ''A'' of the APS leader interview guide reads: ''If money and resources were unlimited, what would you change about [*name of APS program*] in order to do a better job of improving clients' lives?'' This item extends the focus of the question beyond service delivery to client outcomes, which is of primary interest for this study.

The proposed data collection tools may be found on the ACL website for review at *https://www.acl.gov/about-acl/public-input.*

Estimated Program Burden

ACL estimates the burden associated with this collection of information as follows:

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
Client Questionnaire	6,000	1	0.167	1,002
Client Data Form	6,000	1	0.167	1,002
Client Interview	24	1	0.75	18
APS Caseworker Focus Group	84	1	1.5	126
APS Leaders Interview	16	1	1	16
Total	12,124	.....	3.58	2,164

Dated: November 27, 2019.

Lance Robertson,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2019–26182 Filed 12–3–19; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–5119]

Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Oncologic Drugs Advisory Committee. This notice is being published less than 15 days prior to the date of the meeting. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on December 17, 2019, from 8 a.m. to 5 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2019–N–5119. The docket will close on December 16, 2019. Submit either electronic or written comments on this public meeting by December 16, 2019. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before December 16, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 16, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before December 10, 2019, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments 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–2019–N–5119 for ''Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- 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.'' FDA 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 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 the 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.

FOR FURTHER INFORMATION CONTACT: Lauren Tesh Hotaki, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *ODAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and

scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: During the morning session, the committee will discuss supplemental new drug application (sNDA) 208558/010 for LYNPARZA (olaparib) tablets, submitted by AstraZeneca Pharmaceuticals LP. The proposed indication (use) for this product is for the maintenance treatment of adult patients with deleterious or suspected deleterious g*BRCA*m metastatic adenocarcinoma of the pancreas whose disease has not progressed on first-line platinum-based chemotherapy.

During the afternoon session, the committee will discuss supplemental biologics license application (sBLA) 125514/066 for KEYTRUDA (pembrolizumab) for injection, submitted by Merck Sharpe & Dohme Corp. The proposed indication (use) for this product is for the treatment of patients with bacillus Calmette-Guérin-unresponsive, high-risk, non-muscle invasive bladder cancer with carcinoma in-situ with or without papillary tumors who are ineligible for or have elected not to undergo cystectomy.

FDA regrets that it was unable to publish this notice 15 days prior to the Oncologic Drugs Advisory Committee due to technical issues. Because the Agency believes there is a need to bring these issues to public discussion and qualified members of the committee were available at this time and already scheduled to participate in the meeting, the Agency concluded that it was in the public interest to hold this meeting without the customary 15-day public notice.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before December 10, 2019, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 10:30 a.m. to 11 a.m. and 3:30 p.m. to 4 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before December 5, 2019. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by December 6, 2019.

Persons attending FDA's advisory committee meetings are advised that FDA is not responsible for providing access to electrical outlets.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Lauren Tesh Hotaki (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 29, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–26222 Filed 11–29–19; 4:15 pm]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR18–108 NIDDK Exploratory Clinical Trials for Small Business (R44).

Date: December 9, 2019.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ann A. Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7119, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–2242, *jerkinsa@niddk.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK R44 Exploratory Clinical Trials in Kidney, Urology and Hematological Diseases.

Date: December 17, 2019.

Time: 11:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ann A. Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7119, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–2242, *jerkinsa@niddk.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 27, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–26176 Filed 12–3–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[19X.LLUTW01000.L14400000.ET0000, UTU–78501]

Public Land Order No. 7887; Extension of Public Land Order No. 7422, Diamond Fork System, Bonneville Unit of the Central Utah Project; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This Public Land Order (PLO) extends the duration of the withdrawal created by PLO No. 7422 for an additional 20-year term. PLO No. 7422 would otherwise expire on December 20, 2019. This extension is necessary to prevent incompatible uses from affecting the operation of the Diamond Fork System of the Central Utah Project, which supports Utah's use of Colorado River water for irrigation, municipal and industrial needs, hydroelectric power, conservation, and recreation. PLO No. 7422 withdrew approximately 2,795 acres of National Forest System lands from location and entry under the United States mining laws, but not from leasing under the mineral leasing laws. This Order corrects the acreage withdrawn from 2,795 acres to 2,714.22 acres with no change to the legal land description. The lands have been and will remain open to mineral leasing.

DATES: This PLO takes effect on December 21, 2019.

FOR FURTHER INFORMATION CONTACT: Allison Ginn, Assistant Field Manager, BLM Salt Lake Field Office, 801–977–4300, or by email *utslmail@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 reach the individual above. The FRS is available 24 hour 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: This Order extends the existing withdrawal to prevent incompatible uses from affecting the operation of the Diamond Fork System of the Central Utah Project, which supports Utah's use of Colorado River water for irrigation, municipal and industrial needs, hydroelectric power, conservation, and recreation.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, PLO No. 7422, (64 FR 71467, (1999)), which withdrew National Forest System lands from location and entry under the United States mining laws, but not from leasing under the mineral leasing laws, is hereby extended for an additional 20-year period to prevent incompatible uses from affecting the operation of the Diamond Fork System of the Central Utah Project.

2. The withdrawal extended by this Order will expire on December 20, 2039, unless as a result of a review conducted prior to the expiration date, pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be further extended.

Dated: November 25, 2019.

Timothy R. Petty,

Assistant Secretary for Water and Science.

[FR Doc. 2019–26212 Filed 12–3–19; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ920000.19X.L51010000.ER0000.LVRWA19A3240]

Notice of Availability of the Record of Decision for the Ten West Link 500 Kilovolt Transmission Line Project and Land Use Plan Amendments to the Yuma Field Office Resource Management Plan and the California Desert Conservation Area Plan; Maricopa and La Paz Counties, Arizona, and Riverside County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Ten West Link 500 Kilovolt Transmission Line Project and approved Resource Management Plan Amendments for the Yuma Field Office Resource Management Plan (RMP) and the California Desert Conservation Area (CDCA) Plan. The BLM Arizona and California State Directors signed the ROD on November 21, 2019. This constitutes the final decision of the BLM for the approved land use plan amendments and makes them effective immediately.

ADDRESSES: Interested persons may review the ROD on the project website at: *https://go.usa.gov/xU6Be.* Copies of the ROD are available for public review upon request from the BLM Yuma Field Office, 7341 East 30th Street, Suite A, Yuma, AZ 85365, the BLM Arizona State Office, One North Central Avenue, Suite 800, Phoenix, AZ 85004, and the BLM Palm Springs-South Coast Field Office, 1201 Bird Center Drive, Palm Springs, CA 92262.

FOR FURTHER INFORMATION CONTACT: Lane Cowger, Project Manager, telephone: 602–417–9612; address: BLM, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, AZ 85004; email: *blm_az_azso_10westlink@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 Mr. Cowger. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with Mr. Cowger. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: DCR Transmission submitted a request for a right-of-way (ROW) across public land to construct, operate, maintain, and decommission a 500 kilovolt (kV) transmission line between the Arizona Public Service Delaney substation near Tonopah, in Maricopa County, Arizona, and the Southern California Edison Colorado River Substation near Blythe in Riverside County, California. Portions of the Proposed Action and/or Action Alternatives were not in conformance with the Yuma RMP and the CDCA Plan. Therefore, the BLM considered amending these plans in connection with its consideration of the DCR Transmission ROW application.

The BLM analyzed impacts from the proposed ROW project and associated plan amendments in the Final Environmental Impact Statement (EIS) for the proposed Ten West Link 500 Kilovolt Transmission Line Project and proposed Amendments to the Yuma Field Office RMP and the CDCA Plan released on September 13, 2019. Based on the environmental analysis and input from stakeholders, cooperating agencies, and tribes, the BLM has identified the

125-mile Agency Preferred Alternative described in the Final EIS as the Selected Alternative in the ROD. The Selected Alternative will allow authorization of a ROW grant to the Applicant to use public land administered by the BLM for the Project for 50 years.

The Selected Alternative includes an amendment to the Yuma RMP to allow consideration of ROWs outside of designated BLM utility corridors based on project-specific analysis. The Selected Alternative also includes an amendment to the CDCA Plan to allow construction of the Ten West Link project, within 0.25-mile of occurrences of Harwood's eriastrum, a BLM-identified sensitive plant species.

Publication of the Notice of Availability of the Final EIS and Proposed Plan Amendments initiated a 30-day protest period for the plan amendments, which concluded on October 15, 2019. Simultaneously with the protest period, the Governors of Arizona and California conducted a 60-day consistency review of the Final EIS and Proposed land use plan amendments to identify any inconsistencies with State or local plans, policies, or programs.

During the 30-day protest period, the BLM Director received two protest letters. All protests were resolved prior to the issuance of the ROD. No comments regarding potential inconsistencies with State and local plans, programs, and policies were received from the Arizona or California Governor's Offices.

An errata sheet has been prepared to make minor corrections and clarifications to information presented in the Final EIS. This is included as an attachment to the ROD.

The decision to issue a ROW grant may be appealed to the Interior Board of Land Appeals (IBLA), Office of the Secretary, in accordance with regulations contained in 43 CFR, Part 4 and Form 1842–1. If an appeal is taken, your notice of appeal must be filed within 30 days from receipt of this decision. The appellant has the burden of showing the decision appealed is in error.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2, 43 CFR 1610.5)

Raymond Suazo,

State Director.

[FR Doc. 2019–26211 Filed 12–3–19; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO210000.20X.L16100000.PN0000; OMB Control Number 1004–0212]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Resource Management Planning; Control Number 1004–0212

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before January 3, 2020.

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 the BLM at U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 2134LM, Washington, DC 20240, Attention: Jean Sonneman; or by email to *jesonnem@blm.gov.* Please reference OMB Control Number 1004–0212 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Anthony Bobo by telephone at 202–912–7211 or by email at *a1bobo@blm.gov.* 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 4, 2019 (84 FR 25820), and the comment period ended on August 5, 2019. The BLM received no comments.

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 BLM; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BLM 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: This control number provides State Governors an opportunity to work with the BLM to resolve possible inconsistencies between BLM land use plans and State or local plans, policies, or programs; and authorizes protests of land use plans and plan amendments by the BLM.

Title of Collection: Resource Management Planning.

OMB Control Number: 1004–0212.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State, local, and tribal governments; individuals/households; businesses; and associations.

Total Estimated Number of Annual Respondents: 131.

Total Estimated Number of Annual Responses: 131.

Estimated Completion Time per Response: 15 hours.

Total Estimated Number of Annual Burden Hours: 1,965.

Respondent's Obligation: Required to Obtain or Maintain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB

control number. The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Jean Sonneman,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 2019–26214 Filed 12–3–19; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMP02000 L14400000 ET0000 NMNM52395]

Public Land Order 7888; Partial Revocation of Secretarial Order Dated December 22, 1928; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order (PLO).

SUMMARY: This Order revokes a withdrawal created by a Secretarial Order insofar as it affects 41.24 acres of public land withdrawn for use by the Bureau of Reclamation (BOR) in connection with the Carlsbad Project (Avalon Reservoir). The BOR no longer needs the land for project purposes. This Order opens the land to the operation of the public land laws subject to valid existing rights. The land has been and will remain open to mineral leasing and will remain closed to location and entry under the United States mining laws.

DATES: This PLO takes effect on January 3, 2020.

FOR FURTHER INFORMATION CONTACT: Debby Lucero, BLM, New Mexico State Office, 301 Dinosaur Trail, Santa Fe, New Mexico 87507, 505–954–2196, or via email at *dlucero@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. 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 BOR has determined that the land is excess to its project needs and has requested a partial revocation of the withdrawal.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. The withdrawal created by the Secretarial Order dated December 22, 1928, that reserved lands on behalf of the BOR in connection with the Carlsbad Project (Avalon Reservoir), is hereby revoked insofar as it affects the following described land:

New Mexico Principal Meridian

T. 21 S., R. 26 E.,
sec. 26, lot 1.

The area described contains 41.24 acres, in Eddy County.

2. At 9 a.m. on January 3, 2020, the land will be opened to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. The land will remain closed to operation of the United States mining laws. All valid applications received at or prior to 9 a.m. on January 3, 2020, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: November 25, 2019.

Timothy R. Petty,

Assistant Secretary for Water and Science.

[FR Doc. 2019–26213 Filed 12–3–19; 8:45 am]

BILLING CODE 4310–FB–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293; NRC–2016–0035]

Holtec Pilgrim, LLC; Holtec Decommissioning International, LLC

AGENCY: Nuclear Regulatory Commission.

ACTION: Director's decision under 10 CFR 2.206; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued a director's decision with regard to a petition dated June 24, 2015, filed by Mr. David Lochbaum on behalf of the Union of Concerned Scientists, along with seven co-petitioners, requesting that the NRC take action with regard to the Pilgrim Nuclear Power Station (Pilgrim or the licensee). The petitioner's requests and the director's decision are included in the **SUPPLEMENTARY INFORMATION** section of this document.

DATES: The director's decision was issued on November 25, 2019.

ADDRESSES: Please refer to Docket ID NRC–2016–0035 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–2016–0035. 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 individual 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.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The director's decision is available under ADAMS Accession No. ML19303C397.
- *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.

FOR FURTHER INFORMATION CONTACT: Booma Venkataraman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2934, email: *Booma.Venkataraman@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the director's decision is attached.

Dated at Rockville, Maryland, this 29th day of November, 2019.

For the Nuclear Regulatory Commission.

Booma Venkataraman,

Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Director's Decision DD–19–02

United States of America

Nuclear Regulatory Commission

Office of Nuclear Reactor Regulation

Ho K. Nieh, Director

In the Matter of Holtec Pilgrim, LLC, Holtec Decommissioning International, LLC, Pilgrim Nuclear Power Station

Docket No. 50–293
License No. DPR–35

Director's Decision Under 10 CFR 2.206

I. Introduction

By letter dated June 24, 2015,[1] Mr. David Lochbaum (''the petitioner''), on behalf of the Union of Concerned Scientists, along with seven co-petitioners (collectively ''the petitioners''), filed a petition pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 2.206, ''Requests for Action Under This Subpart,'' related to the Pilgrim Nuclear Power Station (Pilgrim). The petitioners requested that the U.S. Nuclear Regulatory Commission (NRC) ''take enforcement action to require that the current licensing basis for the Pilgrim Nuclear Power Station (PNPS) in Plymouth, Massachusetts explicitly includes flooding caused by local intense precipitation/probable maximum precipitation events.'' [2]

The petition references a letter from Entergy Nuclear Operations, Inc. (''Entergy'') [3] to the NRC dated March 12, 2015,[4] containing Pilgrim's flood hazard reevaluation report (FHRR). Entergy submitted the FHRR in response to the NRC's letter dated March 12, 2012, ''Request for Information Pursuant to Title 10 of the *Code of Federal Regulations* 50.54(f) Regarding Recommendations 2.1, 2.3, and 9.3 of the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident.'' [5] The NRC sent this request for information to power reactor licensees and holders of construction permits in active or deferred status to address one of the agency's recommendations in response to the accident at the Fukushima Dai-ichi nuclear power plant in Japan in March 2011. As the basis for the request, the petitioners state that Pilgrim's reevaluations in the FHRR show that as a result of heavy rainfall events, the site could experience flood levels nearly 10 feet higher than anticipated when the plant was originally licensed. Although existing doors installed at the site protect important equipment from being submerged and damaged by heavy rainfall events and flooding, the petitioners assert that neither regulatory requirements nor enforceable commitments exist that ensure the continued reliability of those doors. The petition states, in relevant part, ''the petitioners seek to rectify this safety shortcoming by revising the current licensing basis to include flooding caused by heavy rainfall events.'' [6]

On August 5, 2015, in a public teleconference,[7] the petitioners presented additional clarification and supplementary issues to the petition review board. The NRC staff considered this supplementary information during its evaluation.

In a letter dated February 11, 2016,[8] the NRC informed the petitioners that the portion of their request seeking enforcement action to require Pilgrim's current licensing basis to include flooding caused by local intense precipitation (LIP) or probable maximum precipitation events meets the acceptance criteria in NRC Management Directive 8.11, ''Review Process for 10 CFR 2.206 Petitions,'' revised October 25, 2000.[9] The letter noted that the NRC referred the petition to the Office of Nuclear Reactor Regulation (NRR) for appropriate action. This letter also informed the petitioners that the two supplementary issues raised in the August 5, 2015, teleconference do not meet the criteria for consideration under 10 CFR 2.206. The letter explained that the petitioners' concerns about the impact of precipitation events on safety-related submerged cables do not meet the criteria for review because this issue was reviewed and resolved in a previous 10 CFR 2.206 director's decision.[10] Furthermore, the letter noted that the request for an updated site plan of Pilgrim does not meet the criteria for review because it is outside the scope of the 10 CFR 2.206 process.

II. Discussion

Under 10 CFR 2.206(b), the Director of the NRC office with responsibility for the subject matter shall either institute the requested proceeding to modify, suspend, or revoke a license or advise the person who made the request in writing that no proceeding will be instituted, in whole or in part, with respect to the request and give the reason for the decision. The petitioners raised concerns about safety shortcomings related to flooding hazards caused by heavy rainfall events at Pilgrim based on the FHRR information submitted by Entergy on March 12, 2015. Referring to the FHRR, the petitioners noted that heavy rainfall events constitute a significantly greater flooding hazard at Pilgrim than the design-basis flood hazard posed by an extreme storm surge.

The NRC staff analyzed the petitioners' concerns, and the results of those analyses are discussed below. The decision of the Director of NRR is provided for each of these concerns. To provide clarity and context, this discussion provides definitions of commonly used terms in the analysis and relevant background information, followed by a response to the petitioners' concerns.

Definitions

The NRC staff uses the terms ''current licensing basis,'' ''design-basis events,'' and ''design bases'' throughout the document. These terms have different regulatory definitions and are not interchangeable. For clarity, a short definition of each of these terms is provided below.

The NRC defines ''current licensing basis'' in 10 CFR 54.3, ''Definitions.'' The current licensing basis of a plant is the ''set of NRC requirements applicable to a specific plant and a licensee's written commitments for ensuring compliance with and operation within applicable NRC requirements and the plant-specific design basis (including all modifications and additions to such commitments over the life of the license) that are docketed and in effect.'' The current licensing basis includes:

- Legally binding regulatory requirements on the licensee (*e.g.,* regulations, orders, license conditions)
- mandated documents and programs developed and maintained in accordance with regulatory requirements (*e.g.,* updated final safety analysis report)
- regulatory commitments provided by the licensee in official correspondence

The NRC defines the term ''design-basis events'' in 10 CFR 50.49, ''Environmental Qualification of Electric Equipment Important to Safety for Nuclear Power Plants.'' ''Design-basis events'' are those events that the NRC requires licensees to consider when identifying safety-related structures, systems, and components (SSCs) needed to provide key safety functions.

''Design bases'' information is an important subset of the current licensing basis and is defined in 10 CFR 50.2, ''Definitions.'' Design bases include the specific functions and reference bounds for the design of plant SSCs. The design bases of specific SSCs can include information related to design-basis events, beyond-design-basis events, or both.[11] Safety-related SSCs typically have associated technical specification requirements in accordance with 10 CFR 50.36(c)(2)(ii)(C). SSCs that address a beyond-design-basis regulatory obligation do not necessarily have associated technical specification requirements but are nevertheless expected to be functional in order to demonstrate a licensee's compliance with the underlying obligation.

The NRC staff also uses the term ''beyond-design-basis events'' throughout this document. The term ''beyond-design-basis events,'' is not defined in NRC regulations, however in the past, the NRC has adopted regulations requiring licensees and applicants to address certain events and accidents without considering them to be ''design-basis events.'' Examples include the NRC's regulations for station blackout in accordance with 10 CFR 50.63, ''Loss of All Alternating Current Power,'' and regulations for loss of large areas of the plant because of explosions or fires in accordance with 10 CFR 50.54(hh)(2).[12] The use of the term ''beyond-design-basis external events'' in this

[1] Agencywide Documents Access and Management System (ADAMS) Accession No. ML16029A407.

[2] Page 1 of the petition.

[3] The NRC approved the direct transfer of Entergy licensed authority to Holtec Decommissioning International, LLC (HDI) and the indirect transfer of control of Entergy Nuclear Generation Company's (ENGC) (to be known as Holtec Pilgrim, LLC) ownership interests in the facility licenses to Holtec International (Holtec) on August 22, 2019 (ADAMS Accession No. ML19170A265). By letter dated August 22, 2019 (ADAMS Accession No. ML19234A357), Entergy stated that following the license transfer, HDI will assume responsibility for all ongoing NRC regulatory actions and reviews underway for Pilgrim. On August 27, 2019, the NRC staff issued a conforming amendment to HDI and Holtec Pilgrim, LLC to reflect the license transfer (ADAMS Accession No. ML19235A050).

[4] ADAMS Accession No. ML15075A082.

[5] ADAMS Accession No. ML12073A348.

[6] Page 1 of the petition.

[7] Transcript available at ADAMS Accession No. ML15230A017.

[8] ADAMS Accession No. ML15356A735.

[9] ADAMS Accession No. ML041770328.

[10] ADAMS Accession No. ML13255A191.

[11] Figure 1. Design and Licensing Basis for Nuclear Power Plants (ADAMS Accession No. ML15127A401).

[12] The requirements previously in 10 CFR 50.54(hh)(2) have been relocated to 10 CFR 50.155(b)(2) in accordance with the staff requirements memorandum dated January 24, 2019 (ADAMS Accession No. ML19023A038).

document relates to the consideration of lessons learned as a result of the accident at Fukushima Dai-ichi. This accident highlighted the possibility that certain external events may simultaneously challenge the prevention, mitigation, and emergency preparedness measures that provide defense-in-depth protections for nuclear power plants.

Background

The NRC's assessment of the lessons learned from the experiences at Fukushima Dai-ichi led to the conclusion that additional requirements were needed to increase the capability of nuclear power plants to address certain beyond-design-basis external events. As a result, the NRC imposed new requirements to enhance safety by issuing Order EA–12–049, ''Issuance of Order to Modify Licenses with Regard to Requirements for Mitigation Strategies for Beyond-Design-Basis External Events,'' dated March 12, 2012.[13] The NRC also required licensees to reevaluate seismic and flooding hazards using present-day standards and guidance and provide that information to the NRC in accordance with the March 12, 2012, 10 CFR 50.54(f) letter. Entergy submitted the Pilgrim FHRR dated March 12, 2015, in response to the March 12, 2012, 10 CFR 50.54(f) letter.

The NRC staff reviewed the Pilgrim FHRR as part of the NRC's response to the Fukushima Dai-ichi accident, as noted in the NRC's February 11, 2016, letter to the petitioners.[8] The letter noted, in relevant part, ''the issue [raised by the petitioners] is being addressed by a 10 CFR 50.54(f) letter, dated March 12, 2012. . . .''

The March 12, 2012, 10 CFR 50.54(f) letter states, in relevant part, ''[t]he current regulatory approach, and the resultant plant capabilities, gave the NTTF [Near-Term Task Force] and the NRC the confidence to conclude that an accident with consequences similar to the Fukushima accident is unlikely to occur in the United States. The NRC concluded that continued plant operation and the continuation of licensing activities did not pose an imminent risk to public health and safety.''

On September 30, 2015, the NRC completed an inspection at Pilgrim related to the interim actions Entergy provided as part of the FHRR. Entergy's interim actions included those activities that Entergy used to mitigate the reevaluated hazards at Pilgrim that exceeded Pilgrim's current licensing basis. The staff presented the results of the inspection in Inspection Report 05000293/2015003, dated November 12, 2015.[14] Page 29 of the inspection report documents the NRC's independent verification that Entergy's assumptions used in the FHRR interim actions reflected actual plant conditions. The NRC performed visual inspection of the installed flood protection features, where appropriate. The NRC also conducted external visual inspection for indications of degradation that would prevent the performance of the credited function for each identified feature. Additionally, the NRC determined flood protection feature functionality using either visual observation or review of other documents. The NRC's inspection of interim actions supported Entergy's conclusion that Pilgrim is able to cope with the reevaluated flooding hazard until the remaining assessments were performed.

On August 4, 2016, the NRC staff summarized[15] its assessment of reevaluated flood-causing mechanisms described in the FHRR. The staff's assessment was consistent with Entergy's March 12, 2015, FHRR and concluded that Pilgrim has two flood-causing scenarios that are not bounded or not fully evaluated in the plant's design bases. The two scenarios are flooding caused by a LIP event and flooding caused by the combined effects of storm surge and wind-wave activity from the Atlantic Ocean.

On August 18, 2016, Entergy requested[16] to permanently defer the remaining flooding assessments in response to the 10 CFR 50.54(f) letter of March 12, 2012, in anticipation of the planned permanent shutdown of Pilgrim no later than June 1, 2019[17]. On April 17, 2017, the NRC staff responded[18] to Entergy's request and deferred the remaining flood assessments until December 31, 2019. The NRC noted that any meaningful further improvement to safety would not be achieved before permanent defueling of the plant consistent with Pilgrim's proposed shutdown date. The April 17, 2017, letter from the NRC staff also stated that if the plant continues to operate beyond June 1, 2019, Entergy would still be expected to submit the remaining flooding assessments including a flooding mitigating strategies assessment and a flooding-focused evaluation or integrated assessment (if applicable) in accordance with NRC-endorsed guidance.

The Commission provided additional direction related to reevaluated flood mechanisms in the Affirmation Notice and Staff Requirements Memorandum (SRM) dated January 24, 2019,[19] associated with SECY–16–0142, ''Draft Final Rule—Mitigation of Beyond-Design-Basis Events (RIN 3150–AJ49).'' [20] The SRM states the following:

For ongoing reevaluated hazard assessments, the site-specific 10 CFR 50.54(f) process remains in place to ensure that the agency and its licensees will take the needed actions, if any, to ensure that each plant is able to withstand the effects of the reevaluated flooding and seismic hazards. The staff should continue these efforts, utilizing existing agency processes to determine whether an operating power reactor license should be modified, suspended, or revoked in light of the reevaluated hazard.

On June 10, 2019,[21] Entergy submitted a letter certifying permanent cessation of power operations at Pilgrim in accordance with 10 CFR 50.82(a)(1)(i) and certified that the fuel has been permanently removed from the Pilgrim reactor vessel and placed in the spent fuel pool in accordance with 10 CFR 50.82(a)(1)(ii). Entergy acknowledged in its letter that once these certifications are docketed, the Pilgrim license will no longer authorize operation of the reactor or placement or retention of fuel in the reactor vessel.

On June 19, 2019,[22] Entergy provided its final response to the March 12, 2012, 10 CFR 50.54(f) activities related to the reevaluated seismic and flood hazards and affirmed that Pilgrim is no longer an operating plant and is a permanently shutdown and defueled reactor. Therefore, Entergy stated that it considered the requests of the March 12, 2012, 10 CFR 50.54(f) letter to no longer be applicable to Pilgrim and informed the staff that Entergy no longer plans to proceed with any further implementation of the requests in the March 12, 2012, 10 CFR 50.54(f) letter. In light of the Pilgrim shutdown, the staff assessed the need for any additional regulatory actions associated with the spent fuel pool in relation to the reevaluated flood hazard, as documented in its assessment dated July 5, 2019.[23] The NRC staff concluded in the July 5, 2019, assessment letter that no further responses or actions associated with the 10 CFR 50.54(f) letter are necessary for Pilgrim because Entergy is no longer authorized to load fuel into the vessel, and potential fuel-related accident scenarios are limited to the spent fuel pool. Unlike fuel in the reactor, the safety of fuel located in the spent fuel pool is assured for an extended period through maintenance of pool structural integrity, which preserves coolant inventory and maintains margin to prevent criticality. Small changes in the flooding hazard elevation would not threaten the structural integrity of the spent fuel pool because the bottom of the spent fuel pool is over 50 feet above plant grade level. As stated above, the two reevaluated flood-causing scenarios that are not bounded or fully evaluated in the plant's design bases are flooding caused by the combined effects of storm surge and wind-wave activity from the Atlantic Ocean and flooding caused by a LIP event. The staff evaluated these two reevaluated flood-causing scenarios and determined that the changes in flooding hazard evaluation would be small, particularly at plant grade level, and therefore, would not threaten the structural integrity of the spent fuel pool.

The NRC sent a copy of the proposed director's decision to the petitioners and to Holtec Decommissioning International, LLC and Holtec Pilgrim, LLC for comment on October 8, 2019. The NRC did not receive any comments on the proposed director's decision.

Response to Petitioners' Concerns

Concern 1: Pilgrim's flood hazard reevaluations indicate that as a result of heavy rainfall events, the site could experience flood levels nearly 10 feet higher than anticipated when the plant was

[13] ADAMS Accession No. ML12054A735.

[14] ADAMS Accession No. ML15317A030.

[15] ADAMS Accession No. ML16215A086.

[16] ADAMS Accession No. ML16250A018.

[17] ADAMS Accession No. ML15328A053.

[18] ADAMS Accession No. ML16278A313.

[19] ADAMS Accession No. ML19023A038.

[20] ADAMS Accession No. ML16291A186.

[21] ADAMS Accession No. ML19161A033.

[22] ADAMS Accession No. ML19170A391.

[23] ADAMS Accession No. ML19168A231.

originally licensed. Although existing doors protect important equipment from being submerged and damaged, neither regulatory requirements nor enforceable commitments exist that ensure the continued reliability of those doors. The petitioners seek to rectify this safety shortcoming by revising the current licensing basis to include flooding caused by heavy rainfall events.

The NRC staff's assessment dated July 5, 2019, concluded that no further regulatory actions are necessary; therefore, the staff will not revise Pilgrim's current licensing basis to include flooding caused by heavy rainfall events. Had the plant not permanently ceased operations, the staff would have reviewed the March 12, 2012, 10 CFR 50.54(f) reevaluated flood hazard information in accordance with the Commission direction provided in the SRM dated January 24, 2019, and determined whether further regulatory action was warranted.

Concern 2: Being outside the licensing basis means there are no applicable regulatory requirements. As a direct result, there can be no associated compliance commitments. Being within the current licensing basis invokes a wide array of associated regulatory requirements. For example, 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' Appendix B, ''Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants,'' requires that licensees find and fix problems with SSCs having safety functions credited within the current licensing basis.

The staff concluded in its July 5, 2019, letter that no further response or actions associated with the March 12, 2012, 10 CFR 50.54(f) letter are necessary, and therefore, SSCs relied on to address the reevaluated flood hazard are not required to be safety-related [24] and do not need to meet the quality assurance requirements in 10 CFR part 50, Appendix B. Had the plant not permanently ceased operations, the staff would have reviewed the March 12, 2012, 10 CFR 50.54(f) reevaluated flood hazard information in accordance with the Commission direction provided in the SRM dated January 24, 2019, and determined whether further regulatory action was warranted.

III. Conclusion

The NRC evaluated the petitioners' concerns and determined that the petitioners' request is addressed through the staff's conclusion as stated in the July 5, 2019, letter and that no further response or actions associated with the March 12, 2012, 10 CFR 50.54(f) letter are necessary for Pilgrim because there is no longer an entity authorized to load fuel into the vessel, and potential fuel-related accident scenarios are limited to the spent fuel pool. Unlike fuel in the reactor, the safety of fuel located in the spent fuel pool is assured for an extended period through maintenance of pool structural integrity, which preserves coolant inventory and maintains margin to prevent criticality. The staff concludes that the small changes in the flooding hazard elevation projected for the two reevaluated flood-causing scenarios do not threaten the structural integrity of the spent fuel pool.

As provided in 10 CFR 2.206(c), a copy of this director's decision will be filed with the Secretary of the Commission for the Commission to review. The decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 25th day of November, 2019.

For the Nuclear Regulatory Commission.

Ho K. Nieh,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–26191 Filed 12–3–19; 8:45 am]

BILLING CODE 7590–01–P

[24] 10 CFR 50.2.

OVERSEAS PRIVATE INVESTMENT CORPORATION

[No. 3210–01–M]

Sunshine Act Meeting Notice

AGENCY: U.S. International Development Finance Corporation, Overseas Private Investment Corporation.

TIME AND DATE: Wednesday, December 11, 2019 1:30 p.m. (OPEN Portion), 1:45 p.m. (CLOSED Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW, Washington, DC.

STATUS: Meeting OPEN to the Public.

MATTERS TO BE CONSIDERED:

1. Chief Executive Officer's Report
2. Minutes of the Open Session of the June 12, 2019, Board of Directors Meeting

FURTHER MATTERS TO BE CONSIDERED (CLOSED TO THE PUBLIC 1:15 P.M.)

1. Reports
2. Pending Projects

ATTENDANCE AT THE OPEN PORTION OF THE MEETING: Members of the public planning to attend the the open portion of the Board meeting are asked to register no later than Monday, December 9, 2019. To register, attendees must email *Catherine.Andrade@opic.gov* with the attendee's full name as it appears on their official, government-issued identification. Access will not be granted to the open portion of the Board meeting without official, government-issued identification.

SUPPLEMENTARY INFORMATION: The Better Utilization of Investments Leading to Development (BUILD) Act of 2018, Public Law 115–254 creates the U.S. International Development Finance Corporation (DFC) by bringing together the Overseas Private Investment Corporation (OPIC) and the Development Credit Authority (DCA) office of the U.S. Agency for International Development (USAID). Section 1465(a) of the Act tasks OPIC staff with assisting DFC in the transition. Section 1466(a)–(b) provides that all completed administrative actions and all pending proceedings shall continue through the transition to the DFC. Accordingly, OPIC is issuing this Sunshine Act Meeting notice and on behalf of the DFC.

CONTACT PERSON FOR MORE INFORMATION: Information on the meeting may be obtained from Catherine F.I. Andrade at (202) 336–8768, or via email at *Catherine.Andrade@opic.gov*.

Dated: December 2, 2019.

Catherine Andrade,

Corporate Secretary, U.S. International Development Finance Corporation.

[FR Doc. 2019–26258 Filed 12–2–19; 4:15 pm]

BILLING CODE 3210–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–617, OMB Control No. 3235–0728]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 17Ab2–2

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17Ab2–2 (17 CFR 240.17Ab2–2) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Exchange Act Rule 17Ab2–2 establishes procedures for the Commission to make a determination, either of its own initiative or upon application by any clearing agency or member of a clearing agency, whether a covered clearing agency is systemically important in multiple jurisdictions and procedures to determine, if the Commission deems appropriate, whether any of the activities of a clearing agency providing central counterparty services, in addition to clearing agencies registered with the Commission for the purpose of clearing

security-based swaps, have a more complex risk profile. In addition, Exchange Act Rule 17Ab2–2 provides a procedure for the Commission to determine whether to rescind any such determinations previously made by the Commission.

Because determinations made by the Commission pursuant to Exchange Act Rule 17Ab2–2 may be made upon the request of a clearing agency, respondent clearing agencies have the burden of preparing such requests for submission to the Commission.

Commission staff estimates that Rule 17Ab2–2 imposes a PRA burden on registered clearing agencies that seek a determination from the Commission regarding the covered clearing agency's status as systemically important in multiple jurisdictions. Commission staff estimates that two registered clearing agencies or their members on their behalf will apply for a Commission determination, or may be subject to a Commission-initiated determination, regarding whether a registered clearing agency is involved in activities with a more complex risk profile or whether a covered clearing agency is systemically important in multiple jurisdictions.

Commission staff estimates that each respondent clearing agency incurs a one-time burden of 10 hours and a one-time cost of $2,000 to draft and review a determination request submitted to the Commission, for a total of 20 hours and $4,000 for all respondents. The total annualized burden and cost for all respondents are 6.66 hours and $1,333.33.

Any agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov* and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 29, 2019.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–26223 Filed 12–3–19; 8:45 am]

BILLING CODE 8011–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36349]

The Indiana Rail Road Company—Amended Trackage Rights Exemption—CSX Transportation, Inc.

The Indiana Rail Road Company (INRD), a Class II rail carrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(7) for its acquisition of amended, limited overhead trackage rights over a line of railroad of CSX Transportation, Inc. (CSXT), between the connection with INRD at approximately CSXT milepost OZA 204.5 at Sullivan, Ind., and the connection with trackage serving the Oaktown Mine at approximately CSXT milepost OZA 219.05 at Oaktown, Ind., including the connection with trackage serving the Sunrise Mine at approximately CSXT milepost OZA 214.5 at Carlisle, Ind., a total distance of approximately 14.55 miles (the Line).

INRD states that, pursuant to a May 15, 2008 trackage rights agreement and two subsequent supplements to that agreement, dated August 1, 2009, and November 20, 2009, INRD holds trackage rights over the Line for the purpose of handling unit coal trains from mines at Carlisle and Oaktown to specified destinations on INRD or other railroads with which INRD interchanges.[1] Subsequently, pursuant to a series of temporary trackage rights exemptions, CSXT and INRD agreed to temporarily expand the existing Sullivan-Oaktown trackage rights to allow INRD to handle unit coal trains to an additional off-line destination.[2]

Pursuant to the written Supplemental Agreement No. 7 dated July 19, 2019, INRD and CSXT have updated their arrangement.[3] The parties have agreed to amend the existing trackage rights to, among other things, make permanent the previously temporary trackage rights (to Kentucky Utilities), clarify other allowable destinations, and delete destinations that have ceased receiving coal.[4] Specifically, according to the verified notice, the purpose of these rights is to permit INRD to handle loaded and empty unit coal trains between the Oaktown Mine or the Sunrise/Carlisle Mine and the following destinations: The Indianapolis Power & Light generating station at Petersburg, Ind.; the Hoosier Energy generating station at Merom, Ind.; Vectren and Alcoa generating stations at Warrick, Ind.; and Kentucky Utilities.[5] INRD states that this proposed trackage rights exemption is intended to subsume and replace INRD's prior trackage rights exemptions granted in Docket Nos. FD 35137, 35287, and 35328.

The transaction may be consummated on or after December 18, 2019, the effective date of the exemption (30 days after the verified notice was filed).

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than December 11, 2019 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36349, must be filed with the Surface Transportation Board, either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on INRD's representative, Thomas J. Litwiler,

[1] *See Ind. Rail Rd.—Trackage Rights Exemption—CSX Transp., Inc.,* FD 35328 (STB served Dec. 31, 2009); *Ind. Rail Rd.—Trackage Rights Exemption—CSX Transp., Inc.,* FD 35287 (STB served Sept. 2, 2009); *Ind. Rail Rd.—Amended Trackage Rights Exemption—CSX Transp., Inc.,* FD 35137 (STB served May 22, 2008).

[2] The temporary trackage rights to that additional off-line destination, the Kentucky Utilities E.W. Brown generating station in Harrodsburg, Ky. (Kentucky Utilities), are scheduled to expire on December 31, 2019. *See Ind. Rail Rd.—Trackage Rights Exemption—CSX Transp., Inc.,* FD 36068 (STB served Oct. 14, 2016); *Ind. Rail Rd.—Temporary Trackage Rights Exemption—CSX Transp., Inc.,* FD 36068 (Sub-No. 2) (STB served Feb. 8, 2019).

[3] A redacted copy of the agreement is attached to the verified notice. An unredacted copy has been filed under seal along with a motion for protective order pursuant to 49 CFR 1104.14. That motion is addressed in a separate decision.

[4] To the extent INRD seeks to discontinue its trackage rights to any previously authorized destination, it must separately seek appropriate relief under 49 U.S.C. 10903 or explain why such authority is unnecessary.

[5] The parties also have agreed to modify contractual provisions regarding compensation and contemplated volumes of traffic.

Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

According to the verified notice, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: November 26, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–26067 Filed 12–3–19; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Public Information Sessions on Alternatives Analysis for the Proposed LaGuardia Airport Access Improvement Project at LaGuardia Airport (LGA), New York City, Queens County, New York

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of Public Information Sessions.

SUMMARY: The Federal Aviation Administration (FAA) announces its intent to hold Public Information Sessions to present the Alternatives Analysis for the Proposed LaGuardia Airport Access Improvement Project Environmental Impact Statement (EIS) for LaGuardia Airport (LGA), New York City, Queens County, New York. The FAA is the lead agency on the preparation of the EIS and is providing this opportunity for the public to learn about the Alternatives Analysis that has been conducted.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Brooks, Environmental Program Manager, Eastern Regional Office, AEA–610, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, NY 11434. Telephone: 718–553–2511.

SUPPLEMENTARY INFORMATION: As the lead federal agency for the preparation of the EIS for the Proposed Action at LaGuardia Airport (LGA or Airport) in New York City, Queens County, New York, the FAA is preparing the EIS in compliance with the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*) and Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–15080). The preparation of the EIS follows FAA regulations and policies for implementing NEPA published in FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures* and FAA Order 5050.4B, *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions.*

The Port Authority of New York and New Jersey (Port Authority), the operator of LGA, proposes the following project components of the Proposed Action:

- Construction of an above ground fixed guideway automated people mover (APM) system approximately 2.3 miles in length that extends from the LGA Central Hall Building to the Metropolitan Transportation Authority (MTA) New York City Transit (NYCT) Subway 7 Line Mets-Willets Point Station and the Port Washington Branch of the MTA Long Island Rail Road (LIRR) Mets-Willets Point Station;
- Construction of two on-Airport APM stations;
- Construction of one off-Airport APM station at Mets-Willets Point that provides connections to the Mets-Willets Point LIRR and NYCT Subway 7 Line stations;
- Construction of on-airport passenger walkway systems to connect the APM stations to the passenger terminals, parking garages, public transportation, and ground transportation facilities;
- Construction of a multi-level APM operations, maintenance, and storage facility (OMSF) that includes approximately 500 Airport employee parking spaces, 250 MTA employee parking spaces, 50 APM employee parking spaces, and 200 replacement parking spaces for Citi Field event parking;
- Construction of three traction power substations: one located near the on-Airport East APM Station, another near the Willets Point APM Station, and the third at the OMSF to provide power to the APM guideway;
- Construction of a 27kV main substation located within the OMSF structure; and
- Construction of utilities infrastructure, both new and modified, as needed, to support the Proposed Action.

The Proposed Action also includes various enabling projects to allow construction and connected actions, including utility relocation and demolition of certain existing facilities; reconstruction and/or relocation of the Passerelle Bridge; modifications to the MTA LIRR Mets-Willets Point Station, including service changes to the LIRR Port Washington Line; and the relocation of several Flushing Bay World's Fair Marina facilities, including a boat lift, Travelift finger piers and floating dock, Marina office, and boat storage.

The Port Authority will be requesting to Impose and Use Passenger Facility Charges (PFC) for the construction of the Proposed Action. The FAA's decision over whether to approve a PFC application is a federal action that must first be reviewed under NEPA. The proposed action is also an undertaking that must be reviewed under Section 106 of the National Historic Preservation Act.

The FAA is required to consider a range of reasonable alternatives that could potentially meet the purpose and need: To provide a time-certain transit alternative for air passenger and employee access to LGA; to provide supplemental access to LGA; to reduce passenger vehicle trips to and from LGA; and to provide adequate airport employee replacement parking. A total of 47 project alternatives have been identified for the Proposed Action from various sources including the Port Authority, scoping comments, past studies, and the FAA. Because of the number of alternatives considered and the complexity of the alternatives analysis, the FAA is sharing the alternatives analysis to afford the public an opportunity to ask questions on the alternatives analysis prior to completion and release of the Draft EIS; the Draft EIS is currently scheduled to be released in summer 2020. We cannot accept verbal testimony or formal comments at the information session. Formal comments on the alternatives analysis and the overall project will be solicited during the review of the Draft EIS.

The alternatives evaluated have been categorized into ten groups, as follows:

Group One—No Action Alternative (1 alternative): Under this alternative, the Port Authority would take no action to develop an APM system or other alternative form of transportation to and from the Airport.

Group Two—Diversion of Air Traffic from LGA (2 alternatives): Transfer or shifting of aviation activity or air passengers to another existing public airport (or airports) in the New York metropolitan area or to another form of transportation.

Group Three—Use of Other Modes of Transportation (3 alternatives): Use of other modes of transportation, including, ferry service, helicopter service, or gondola service.

Group Four—Transportation Systems Management (3 alternatives):

Modifications to existing bus service to LGA.

Group Five—Transportation Demand Management (1 alternative): Use of measures to reduce vehicular travel to and from the Airport.

Group Six—Emerging Technologies (2 alternatives): Use of Transportation Network Companies (TNC) or autonomous vehicles.

Group Seven—Off-Airport Roadway Expansion (5 alternatives): Increase the capacity of roadways surrounding and providing access to the Airport such as the Grand Central Parkway or providing dedicated bus lanes or an elevated busway.

Group Eight—Subway Extension (7 alternatives): Extension of existing subway lines to LGA.

Group Nine—Fixed Guideway (20 alternatives): Construction of an elevated fixed guideway APM system to LGA.

Group Ten—Rail (3 alternatives): Extension of existing commuter rail or construction of a new commuter rail alignment to LGA.

The FAA developed screening criteria to evaluate the 47 alternatives and conducted a screening analysis of all alternatives using those criteria. The purpose of the screening analysis is to assist the FAA in its determination of which of the alternatives to the Proposed Action are reasonable. The public information sessions will provide the public information on the alternatives evaluated, the screening criteria, the alternatives screening process, and the results of the screening evaluation. The FAA has not made a decision regarding the Proposed Action.

Two public information sessions for the general public will be held. The public information sessions will be held from 6:30 p.m. to 8:30 p.m. Eastern Time on Tuesday, January 14, 2020 and from 6:30 p.m. to 8:30 p.m. Eastern Time on Wednesday, January 15, 2020. The public information sessions will be conducted at the New York LaGuardia Airport Marriott Hotel at 102–05 Ditmars Boulevard, East Elmhurst, New York. A legal notice will also be placed in newspapers having general circulation in the study area. The newspaper notice will notify the public that information sessions will be held to share the alternatives screening process and results. The public information sessions will be conducted in an open house format with project information displayed and representatives from the FAA and the EIS Team available to answer questions. Translation services, including an assistive listening device, and sign and oral interpretation can be made available at the information sessions, if requested 10 calendar days before the sessions. The information sessions will be open to all persons on a space-available basis. There will be no admission fee or other charge, including parking, to attend and participate (parking validation will be available).

More information about the LGA Access Improvement Project, the EIS, and the public information sessions can be found at: *www.LgaAccessEIS.com.*

Issued in Jamaica, New York, November 25, 2019.

Evelyn Martinez,

Manager, New York Airport District Office, Airports Division, Eastern Region.

[FR Doc. 2019–26071 Filed 12–3–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement (EIS): Westchester County

AGENCY: Federal Highway Administration (FHWA), United States Department of Transportation (DOT).

ACTION: Rescinded notice of intent (NOI).

SUMMARY: The FHWA is issuing this rescinded NOI to advise the public that the FHWA will not be preparing and issuing an Environmental Impact Statement (EIS) on a proposal to improve NYS Route 9A in the Towns of Greenburgh and Mount Pleasant and the Village of Elmsford, Westchester County, New York [New York State Department of Transportation (NYSDOT) Project Identification Number (PIN) 8103.22]. The NOI to prepare an EIS was published in the **Federal Register** on March 11, 2002.

FOR FURTHER INFORMATION CONTACT: Lance MacMillan, Regional Director, New York State Department of Transportation, 4 Burnett Boulevard, Poughkeepsie, New York 12603, Telephone: (845) 431–5750; or Richard Marquis, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 7th Floor, 11A Clinton Avenue, Albany, New York 12207, Telephone (518) 431–4127.

SUPPLEMENTARY INFORMATION: The FHWA, in coordination with the NYSDOT, previously intended to prepare an EIS to evaluate the effects of a proposal to improve NYS Route 9A in the Towns of Greenburgh and Mount Pleasant and the Village of Elmsford, Westchester County, New York. The proposed improvements involved the reconstruction of approximately 2.5 miles of the existing route from just south of Route 119 to just north of Route 100C. The objectives of the proposal include ''to mitigate existing vehicular congestion and delays and accommodate future vehicular growth; correct identified safety problems with appropriate accident countermeasures; and provide a safer and convenient multi-modal facility for transit, cyclist, and pedestrian traffic.''

The project was initiated to address structural deficiencies on the existing Route 100C bridge over Route 9A; deterioration of the Route 9A Portland cement concrete pavement; inadequacies of the existing drainage system along Route 9A; and sidewalk deficiencies along Route 9A within the project limits. As stated in the original NOI, alternatives under consideration included: (1) Taking no actions; (2) widening and reconstructing Route 9A; (3) widening and reconstructing Route 9A and providing a new eastbound Cross Westchester Expressway (I–287) off ramp; (4) widening and reconstructing Route 9A, providing new eastbound Cross Westchester Expressway (I–287) off ramp, and improving access to major industrial/commercial area; and (5) constructing a bypass on new alignment in association with the widening and reconstruction of Route 9A. These potential alternatives, except for taking no actions, included the common elements of widening and reconstructing Route 9A and replacing the Route 100C bridge over Route 9A. The project would have required the removal of 18 buildings (one residence and 17 commercial structures). In 2002 dollars, the total estimated cost of the action was between 37 and 79 million dollars. Due to the effects of the right-of-way acquisitions and insufficient funding for the project, the project was not advanced as originally envisioned. In addition, the widening of Route 9A and the construction of a new I–287 eastbound exit ramp are no longer being considered.

The identified operational deficiencies at the Route 9A intersection with Route 119 have been addressed as part of a separate, independent action to improve vehicle capacity, improve pedestrian safety, maintain parking, and improve intersection geometrics via provision of left turn lanes and protected left turn signal phases (NYSDOT PIN 8103.37). The existing Route 100C over Route 9A bridge has also been replaced as part of a separate, independent action to address numerous structural deficiencies (NYSDOT PIN 8025.00).

The NYSDOT will be evaluating improvements to provide access from

Route 119 and the eastbound Cross Westchester Expressway (I–287) to the Warehouse Lane/Route 9A intersection (NYSDOT PIN 8103.52). This independent action will have a unique project purpose and objectives.

Comments and questions concerning the proposed action should be directed to the FHWA contact person at the address provided above.

Issued on: November 25, 2019.

Richard Marquis,

New York Division Administrator, Albany, New York.

[FR Doc. 2019–26181 Filed 12–3–19; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0389; FMCSA–2013–0107; FMCSA–2016–0011; FMCSA–2017–0181]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for seven individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before January 3, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0389, Docket No. FMCSA–2013–0107, Docket No. FMCSA–2016–0011, or Docket No. FMCSA–2017–0181 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2011–0389, FMCSA–2013–0107, FMCSA–2016–0011, or FMCSA–2017–0181), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–2011–0389, FMCSA–2013–0107, FMCSA–2016–0011, or FMCSA–2017–0181, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2011–0389, FMCSA–2013–0107, FMCSA–2016–0011, or FMCSA–2017–0181, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

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

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The seven individuals listed in this notice have requested renewal of their exemptions from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the seven applicants has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The seven drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period. In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of November and are discussed below.

As of November 6, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Christopher Bird (OH)
Ronald Bohr (IA)
Joseph D'Angelo (NY)
Craig Lasecki (WI)

The drivers were included in docket numbers FMCSA–2011–0389; FMCSA–2013–0107; and FMCSA–2016–0011. Their exemptions are applicable as of November 6, 2019, and will expire on November 6, 2021.

As of November 14, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers: Gary J. Gress (PA); Kenneth Lewis (NC); and Sean Moran (MA).

The drivers were included in docket number FMCSA–2017–0181. Their exemptions are applicable as of November 14, 2019, and will expire on November 14, 2021.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based on its evaluation of the seven exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Issued on: November 26, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–26186 Filed 12–3–19; 8:45 am]

BILLING CODE 4910–EX–P

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0355; FMCSA–2012–0050; FMCSA–2013–0106; FMCSA–2014–0214; FMCSA–2014–0381; FMCSA–2015–0115; FMCSA–2015–0117; FMCSA–2017–0180]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 10 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2008–0355; FMCSA–2012–0050; FMCSA–2013–0106; FMCSA–2014–0214; FMCSA–2014–0381; FMCSA–2015–0115; FMCSA–2015–0117; FMCSA–2017–0180, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

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

II. Background

On October 1, 2019, FMCSA published a notice announcing its decision to renew exemptions for 10 individuals from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (84 FR 52157). The public comment period ended on October 31, 2019, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based on its evaluation of the 10 renewal exemption applications, FMCSA announces its decision to exempt the following drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8).

As of September 2, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), Daniel Maben (MI) has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (84 FR 52157).

This driver was included in docket number FMCSA–2017–0180. The exemption is applicable as of September 2, 2019, and will expire on September 2, 2021.

As of September 12, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (84 FR 52157):

Ronald Boogay (NJ)
Todd W. Brock (CO)
Jason Kirkham (WI)
Ivan M. Martin (PA)
Charles A. McCarthy, III (MA)
Douglas S. Slagel (OH)
Cory R. Wagner (IL)
Timothy M. Zahratka (MN)

The drivers were included in docket number FMCSA–2008–0355; FMCSA–2012–0050; FMCSA–2013–0106; FMCSA–2014–0214; FMCSA–2014–0381; FMCSA–2015–0115; FMCSA–2015–0117. Their exemptions are applicable as of September 12, 2019, and will expire on September 12, 2021.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals.

Issued on: November 26, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–26189 Filed 12–3–19; 8:45 am]

BILLING CODE 4910–EX–P

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–2000–7165; FMCSA–2000–7918; FMCSA–2003–15892; FMCSA–2004–17984; FMCSA–2005–20560; FMCSA–2005–21711; FMCSA–2007–29019; FMCSA–2008–0021; FMCSA–2009–0086; FMCSA–2009–0121; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2010–0161; FMCSA–2011–0057; FMCSA–2011–0124; FMCSA–2011–0141; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2014–0300; FMCSA–2014–0304; FMCSA–2015–0048; FMCSA–2015–0052; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2016–0377; FMCSA–2017–0017; FMCSA–2017–0020; FMCSA–2017–0022; FMCSA–2017–0023]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 79 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001,

fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–2000–7165; FMCSA–2000–7918; FMCSA–2003–15892; FMCSA–2004–17984; FMCSA–2005–20560; FMCSA–2005–21711; FMCSA–2007–29019; FMCSA–2008–0021; FMCSA–2009–0086; FMCSA–2009–0121; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2010–0161; FMCSA–2011–0057; FMCSA–2011–0124; FMCSA–2011–0141; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2014–0300; FMCSA–2014–0304; FMCSA–2015–0048; FMCSA–2015–0052; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2016–0377; FMCSA–2017–0017; FMCSA–2017–0020; FMCSA–2017–0022; or FMCSA–2017–0023, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

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

II. Background

On October 2, 2019, FMCSA published a notice announcing its decision to renew exemptions for 79 individuals from the vision requirement in 49 CFR 391.41(b)(10) to operate a CMV in interstate commerce and requested comments from the public (84 FR 52585). The public comment period ended on November 1, 2019, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based on its evaluation of the 79 renewal exemption applications and comments received, FMCSA confirms its decision to exempt the following drivers from the vision requirement in § 391.41(b)(10).

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of November and are discussed below. As of November 3, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 56 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (65 FR 33406; 65 FR 57234; 65 FR 66286; 66 FR 13825; 68 FR 13360; 68 FR 52811; 68 FR 61860; 69 FR 33997; 69 FR 61292; 70 FR 12265; 70 FR 48797; 70 FR 61165; 70 FR 61493; 71 FR 62147; 72 FR 11426; 72 FR 27624; 72 FR 54971; 73 FR 15567; 73 FR 27015; 74 FR 8302; 74 FR 19267; 74 FR 19270; 74 FR 26461; 74 FR 28094; 74 FR 34630; 74 FR 37295; 74 FR 48343; 74 FR 49069; 74 FR 53581; 75 FR 19674; 75 FR 39725; 75 FR 61833; 76 FR 12216; 76 FR 25762; 76 FR 32016; 76 FR 37168; 76 FR 40445; 76 FR 53710; 76 FR 62143; 76 FR 64171; 77 FR 23797; 77 FR 56262; 78 FR 18667; 78 FR 20376; 78 FR 24300; 78 FR 24798; 78 FR 32703; 78 FR 34141; 78 FR 34143; 78 FR 46407; 78 FR 51269; 78 FR 52602; 78 FR 68137; 78 FR 77782; 79 FR 4531; 79 FR 23797; 79 FR 51642; 80 FR 2473; 80 FR 14223; 80 FR 16500; 80 FR 18693; 80 FR 25768; 80 FR 26139; 80 FR 26320; 80 FR 29149; 80 FR 31635; 80 FR 33011; 80 FR 35699; 80 FR 37718; 80 FR 44188; 80 FR 48404; 80 FR 48409; 80 FR 49302; 80 FR 50917; 80 FR 59225; 80 FR 59230; 80 FR 62161; 81 FR 1284; 81 FR 71173; 82 FR 13045; 82 FR 18956; 82 FR 20962; 82 FR 32919; 82 FR 33542; 82 FR 34564; 82 FR 37499; 82 FR 37504; 82 FR 43647; 82 FR 47296; 82 FR 47309; 82 FR 47312; 83 FR 2289; 83 FR 3861; 83 FR 4537):

Steven B. Anderson (ID)
Gregory W. Babington (MA)
Ronald Bostick (SC)
Brian M. Bowman (TN)
Eric L. Boyle, Jr. (MD)
Steven J. Brauer (NJ)
Robert J. Burns (KY)
Charles C. Chapman (NC)
Roderick Croft (FL)
Jeffrey S. Daniel (VA)
Mark P. Davis (ME)
John J. Davis (SC)
Chris M. DeJong (NM)
Dan J. Feik (IL)
Saul E. Fierro (AZ)
John A. Gartner (MN)
Elias Gomez, Jr. (TX)
Keith N. Hall (UT)
Donald A. Hall (NC)
Walter A. Hanselman (IN)
Robert D. Hattabaugh (AR)
Dustin L. Hawkins (MO)
Dean R. Hawley (NC)
Steven E. Hayes (IN)
Amos S. Hostetter (OH)
James T. Johnson (KY)
Michael A. Kelly (TX)
Mark L. LeBlanc (MN)
David F. LeClerc (MN)
Stephen C. Linardos (FL)
Daniel C. Linares (CA)
Robert E. Mayers (MN)
James G. Miles (TN)
Jeffrey M. Mueller (MO)
Charles W. Mullenix (GA)
Pablo R. Murillo (TX)
Ricky Nickell (OH)
Jesse A. Nosbush (MN)
Lonnie D. Prejean (TX)
Matias P. Quintanilla (CA)
Alonzo K. Rawls (NJ)
Berry A. Rodrigue (LA)
Roger D. Rogers (PA)
Manuel H. Sanchez (TX)
Ricky J. Sanderson (UT)
Brandon L. Siebe (KY)
Gregory C. Simmons (VA)
Efren J. Soliz (NM)
Wayne M. Stein (FL)
John B. Stiltner (KY)
Dale G. Stringer (TX)
James B. Taflinger, Sr. (VA)
James B. Tucker (KY)
Arnulfo J. Valenzuela (TX)

Danny L. Watson (TN)
William E. Zezulka (MN)

The drivers were included in docket numbers FMCSA–2000–7165; FMCSA–2000–7918; FMCSA–2003–15892; FMCSA–2004–17984; FMCSA–2005–21711; FMCSA–2008–0021; FMCSA–2009–0086; FMCSA–2009–0121; FMCSA–2009–0154; FMCSA–2010–0161; FMCSA–2011–0141; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2014–0300; FMCSA–2014–0304; FMCSA–2015–0048; FMCSA–2015–0052; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2016–0377; FMCSA–2017–0017; FMCSA–2017–0020; FMCSA–2017–0022; and FMCSA–2017–0023. Their exemptions are applicable as of November 3, 2019, and will expire on November 3, 2021.

As of November 6, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (70 FR 17504; 70 FR 30997; 70 FR 48797; 70 FR 61493; 72 FR 40362; 72 FR 54971; 74 FR 34394; 74 FR 43217; 74 FR 49069; 74 FR 57551; 76 FR 18824; 76 FR 29024; 76 FR 34136; 76 FR 54530; 76 FR 55463; 76 FR 66123; 78 FR 77782; 79 FR 24298; 80 FR 63869; 83 FR 3861):

James J. Doan (PA)
James E. Fix (SC)
James P. Greene (NY)
Steven R. Lechtenberg (NE)
Joseph L. Mast (OR)
Jesse R. McClary, Sr. (MO)
Halman Smith (DE)
Jerry W. Stanfill (AR)
Scott C. Teich (MN)

The drivers were included in docket numbers FMCSA–2005–20560; FMCSA–2005–21711; FMCSA–2009–0206; FMCSA–2011–0057; and FMCSA–2011–0124. Their exemptions are applicable as of November 6, 2019, and will expire on November 6, 2021.

As of November 28, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following eight individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (69 FR 33997; 69 FR 61292; 70 FR 48797; 70 FR 61493; 71 FR 55820; 72 FR 54971; 72 FR 58362; 72 FR 67344; 73 FR 65009; 74 FR 49069; 74 FR 57553; 76 FR 4413; 76 FR 70212; 80 FR 63869; 83 FR 3861):

Robert W. Bequeaith (IA)
Clarence N. Florey, Jr. (PA)
Loren H. Geiken (SD)
Michael A. Hershberger (OH)
Patrick J. Hogan, Jr. (DE)
Amilton T. Monteiro (MA)
David G. Oakley (SC)
Brent L. Seaux (LA)

The drivers were included in docket numbers FMCSA–2004–17984; FMCSA–2005–21711; and FMCSA–2007–29019. Their exemptions are applicable as of November 28, 2019, and will expire on November 28, 2021.

As of November 30, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following six individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (64 FR 27027; 64 FR 40404; 64 FR 51568; 64 FR 66962; 66 FR 63289; 68 FR 64944; 70 FR 67776; 72 FR 64273; 74 FR 62632; 76 FR 70215; 78 FR 64280; 80 FR 63869; 83 FR 3861):

Terry J. Aldridge (MS)
Jerry D. Bridges (TX)
Gary R. Gutschow (WI)
James J. Hewitt (WI)
Thomas E. Walsh (CA)
Kevin P. Weinhold (MA)

The drivers were included in docket numbers FMCSA–1999–5578; and FMCSA–1999–5748. Their exemptions are applicable as of November 30, 2019, and will expire on November 30, 2021.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: November 26, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–26208 Filed 12–3–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0015]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 15 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. They are unable to meet the vision requirement in one eye for various reasons. The exemptions enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: The exemptions were applicable on November 1, 2019. The exemptions expire on November 1, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0015* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

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

II. Background

On October 1, 2019, FMCSA published a notice announcing receipt of applications from 15 individuals requesting an exemption from vision requirement in 49 CFR 391.41(b)(10) and requested comments from the public (84 FR 52160). The public comment period ended on October 31, 2019, and two comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that

granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received two comments in this proceeding. Mahatab Hossain submitted a comment that was not directed to FMCSA, and was unrelated to the content of this notice.

Vicky Johnson, from the Minnesota Department of Public Safety, submitted a comment stating that MN has no objections to FMCSA's decision to grant an exemption to an individual who was not specified in the comment.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on medical reports about the applicants' vision, as well as their driving records and experience driving with the vision deficiency. The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the October 1, 2019, **Federal Register** notice (84 FR 52160) and will not be repeated here.

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The 15 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, cataract, corneal scars, lenticonus, macular hole, macular scar, paracentral scotoma, prosthesis, retinal detachment, and retinopathy. In most cases, their eye conditions did not develop recently. Ten of the applicants were either born with their vision impairments or have had them since childhood. The five individuals that developed their vision conditions as adults have had them for a range of 8 to 26 years. Although each applicant has one eye that does not meet the vision requirement in § 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and, in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV.

Doctors' opinions are supported by the applicants' possession of a valid license to operate a CMV. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV with their limited vision in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions.

The applicants in this notice have driven CMVs with their limited vision in careers ranging for 5 to 85 years. In the past three years, one driver was involved crashes, and no drivers were convicted of moving violations in CMVs. All the applicants achieved a record of safety while driving with their vision impairment that demonstrates the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

Consequently, FMCSA finds that in each case exempting these applicants from the vision requirement in § 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in § 391.41(b)(10) and (b) by a certified medical examiner (ME) who attests that the individual is otherwise physically qualified under § 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 15 exemption applications, FMCSA exempts the following drivers from the vision requirement, § 391.41(b)(10), subject to the requirements cited above:

David E. Bryant, Jr. (NC)
Zackary C. Crichton (WY)
Terence P. Dailey (FL)
Robert K. Eggleston (OH)
Luis Gonzalez (NJ)
Ahmed M. Gutale (MN)
James W. Harris (TX)
Dobbin L. Kirkbride (OH)
Daniel F. Large (MO)
Jonathan D. Matlasz (CT)
James Muldoon (NY)
Andrew R. Peel (MT)
William D. Shelt (AL)
James L. Stacy (AR)
James J. Walsh (NH)

In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than

was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: November 26, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–26190 Filed 12–3–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0036]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from seven individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to control a commercial motor vehicle (CMV) to drive in interstate commerce. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: Comments must be received on or before January 3, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Operations Docket No. FMCSA–2019–0036 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2019-0036*. Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2019–0036), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0036.* Click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0036* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

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

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The seven individuals listed in this notice have requested an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The criteria states that if an individual has had a sudden episode of a non-epileptic seizure or loss of

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the ME in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver has had a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.,* drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

As a result of MEs misinterpreting advisory criteria as regulation, numerous drivers have been prohibited from operating a CMV in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified ME based on the physical qualification standards and medical best practices.

On January 15, 2013, FMCSA announced in a Notice of Final Disposition titled, ''Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders,'' (78 FR 3069), its decision to grant requests from 22 individuals for exemptions from the regulatory requirement that interstate CMV drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' Since that time, the Agency has published additional notices granting requests from individuals for exemptions from the regulatory requirement regarding epilepsy found in § 391.41(b)(8).

To be considered for an exemption from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), applicants must meet the criteria in the 2007 recommendations of the Agency's Medical Expert Panel (78 FR 3069).

III. Qualifications of Applicants

David Crouch

Mr. Crouch is a 63-year-old class D driver in Kentucky. He has a history of seizure disorder and has been seizure free since 1995. He takes anti-seizure medication with the dosage and frequency remaining the same since May 2012. His physician states that he is supportive of Mr. Crouch receiving an exemption.

Demetrius Furman

Mr. Furman is a 45-year-old class A CDL holder in South Dakota. He has a history of seizure disorder and has been seizure free since 2009. He takes anti-seizure medication with the dosage and frequency remaining the same since June 2010. His physician states that he is supportive of Mr. Furman receiving an exemption.

Christopher Gilbert

Mr. Gilbert is a 33-year-old class D driver in Virginia. He has a history of seizure disorder and has been seizure free since 2011. He takes anti-seizure medication with the dosage and frequency remaining the same since 2011. His physician states that he is supportive of Mr. Gilbert receiving an exemption.

Jeffrey Koesterer

Mr. Koesterer is a 49-year-old class A CDL holder in Missouri. He has a history of a single provoked seizure and has been seizure free since 1994. His anti-seizure medications were discontinued in 1994. His physician states that he is supportive of Mr. Koesterer receiving an exemption.

Kevin Market

Mr. Market is a 40-year-old class D driver in Ohio. He has a history of single provoked seizure and has been seizure free since 2010. He takes anti-seizure medication with the dosage and frequency remaining the same since May 2011. His physician states that he is supportive of Mr. Market receiving an exemption.

Randy Wentz

Mr. Wentz is a 52-year-old class CM driver in Pennsylvania. He has a history of seizure disorder and has been seizure free since 2002. He takes anti-seizure medication with the dosage and frequency remaining the same since 2002. His physician states that she is supportive of Mr. Wentz receiving an exemption.

Robert Williams

Mr. Williams is a 52-year-old class A CDL holder in Illinois. He has a history of seizure disorder and has been seizure free since 2002. He takes anti-seizure medication with the dosage and frequency remaining the same since 2002. His physician states that she is supportive of Mr. Williams receiving an exemption.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Issued on: November 26, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–26185 Filed 12–3–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–2001–10578; FMCSA–2002–11426; FMCSA–2002–12844; FMCSA–2003–15892; FMCSA–2003–16241; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2008–0231; FMCSA–2009–0054; FMCSA–2009–0154; FMCSA–2011–0124; FMCSA–2011–0142; FMCSA–2011–26690; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2014–0297; FMCSA–2014–0298; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; FMCSA–2015–0072; FMCSA–2017–0019]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 77 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirements in one eye.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before January 3, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Operations Docket No. FMCSA–1999–5578, Docket No. FMCSA–1999–5748, Docket No. FMCSA–2001–10578, Docket No. FMCSA–2002–11426, Docket No. FMCSA–2002–12844, Docket No. FMCSA–2003–15892, Docket No. FMCSA–2003–16241, Docket No. FMCSA–2005–21711, Docket No. FMCSA–2005–22194, Docket No. FMCSA–2008–0231, Docket No. FMCSA–2009–0054, Docket No. FMCSA–2009–0154, Docket No. FMCSA–2011–0124, Docket No. FMCSA–2011–0142, Docket No. FMCSA–2011–26690, Docket No. FMCSA–2013–0025, Docket No. FMCSA–2013–0027, Docket No. FMCSA–2013–0028, Docket No. FMCSA–2013–0029, Docket No. FMCSA–2013–0030, Docket No. FMCSA–2013–0165, Docket No. FMCSA–2013–0166, Docket No. FMCSA–2013–0168, Docket No. FMCSA–2013–0169, Docket No. FMCSA–2013–0170, Docket No. FMCSA–2014–0297, Docket No. FMCSA–2014–0298, Docket No. FMCSA–2015–0055, Docket No. FMCSA–2015–0056, Docket No. FMCSA–2015–0070, Docket No. FMCSA–2015–0071, Docket No. FMCSA–2015–0072, or Docket No. FMCSA–2017–0019, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–2001–10578; FMCSA–2002–11426; FMCSA–2002–12844; FMCSA–2003–15892; FMCSA–2003–16241; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2008–0231; FMCSA–2009–0054; FMCSA–2009–0154; FMCSA–2011–0124; FMCSA–2011–0142; FMCSA–2011–26690; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2014–0297; FMCSA–2014–0298; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; FMCSA–2015–0072; or FMCSA–2017–0019), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–2001–10578; FMCSA–2002–11426; FMCSA–2002–12844; FMCSA–2003–15892; FMCSA–2003–16241; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2008–0231; FMCSA–2009–0054; FMCSA–2009–0154; FMCSA–2011–0124; FMCSA–2011–0142; FMCSA–2011–26690; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2014–0297; FMCSA–2014–0298; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; FMCSA–2015–0072; or FMCSA–2017–0019, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–2001–10578; FMCSA–2002–11426; FMCSA–2002–12844; FMCSA–2003–15892; FMCSA–2003–16241; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2008–0231; FMCSA–2009–0054; FMCSA–2009–0154; FMCSA–2011–0124; FMCSA–2011–0142; FMCSA–2011–26690; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2014–0297; FMCSA–2014–0298; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; FMCSA–2015–0072; or FMCSA–2017–0019, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in

the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

The 77 individuals listed in this notice have requested renewal of their exemptions from the vision standard in § 391.41(b)(10), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 77 applicants has satisfied the renewal conditions for obtaining an exemption from the vision standard (see 64 FR 27027; 64 FR 40404; 64 FR 51568; 64 FR 66962; 66 FR 53826; 66 FR 63289; 66 FR 66966; 67 FR 10471; 67 FR 19798; 67 FR 68719; 68 FR 2629; 68 FR 52811; 68 FR 61857; 68 FR 61860; 68 FR 64944; 68 FR 69434; 68 FR 75715; 69 FR 19611; 70 FR 48797; 70 FR 53412; 70 FR 57353; 70 FR 61165; 70 FR 61493; 70 FR 67776; 70 FR 72689; 70 FR 74102; 71 FR 646; 72 FR 62897; 72 FR 64273; 72 FR 71998; 73 FR 46973; 73 FR 54888; 74 FR 11988; 74 FR 21427; 74 FR 37295; 74 FR 48343; 74 FR 53581; 74 FR 60021; 74 FR 62632; 74 FR 65846; 76 FR 29026; 76 FR 34136; 76 FR 44652; 76 FR 49528; 76 FR 53708; 76 FR 55463; 76 FR 61143; 76 FR 64169; 76 FR 64171; 76 FR 70210; 76 FR 70215; 76 FR 75942; 76 FR 75943; 76 FR 78729; 78 FR 20376; 78 FR 24798; 78 FR 27281; 78 FR 30954; 78 FR 34141; 78 FR 34143; 78 FR 41188; 78 FR 41975; 78 FR 46407; 78 FR 47818; 78 FR 52602; 78 FR 56986; 78 FR 62935; 78 FR 63302; 78 FR 63307; 78 FR 64274; 78 FR 64280; 78 FR 65032; 78 FR 66099; 78 FR 67452; 78 FR 67454; 78 FR 67460; 78 FR 67462; 78 FR 68137; 78 FR 76395; 78 FR 77778; 78 FR 77780; 78 FR 77782; 78 FR 78477; 79 FR 4803; 79 FR 63211; 79 FR 69985; 80 FR 2471; 80 FR 8927; 80 FR 33007; 80 FR 37718; 80 FR 44188; 80 FR 48411; 80 FR 50917; 80 FR 59225; 80 FR 59230; 80 FR 62161; 80 FR 63869; 80 FR 67472; 80 FR 67476; 80 FR 67481; 80 FR 70060; 81 FR 1284; 81 FR 11642; 81 FR 15404; 81 FR 16265; 82 FR 18818; 82 FR 32919; 82 FR 35043; 82 FR 47295; 82 FR 47312; 82 FR 47313; 83 FR 2306; 83 FR 3861). They have submitted evidence showing that the vision in the better eye continues to meet the requirement specified at § 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of December and are discussed below. As of December 3, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 34 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (64 FR 40404; 64 FR 66962; 66 FR 63289; 67 FR 68719; 68 FR 2629; 68 FR 52811; 68 FR 61860; 68 FR 64944; 70 FR 48797; 70 FR 61165; 70 FR 61493; 70 FR 67776; 72 FR 64273; 73 FR 46973; 73 FR 54888; 74 FR 11988; 74 FR 21427; 74 FR 37295; 74 FR 48343; 74 FR 53581; 74 FR 62632; 76 FR 29026; 76 FR 34136; 76 FR 44652; 76 FR 49528; 76 FR 53708; 76 FR 55463; 76 FR 61143; 76 FR 64171; 76 FR 70215; 78 FR 20376; 78 FR 24798; 78 FR 27281; 78 FR 30954; 78 FR 34141; 78 FR 34143; 78 FR 41188; 78 FR 41975; 78 FR 46407; 78 FR 47818; 78 FR 52602; 78 FR 56986; 78 FR 63307; 78 FR 64280; 78 FR 68137; 78 FR 77782; 78 FR 78477; 79 FR 63211; 79 FR 69985; 80 FR 2471; 80 FR 8927; 80 FR 33007; 80 FR 37718; 80 FR 44188; 80 FR 48411; 80 FR 50917; 80 FR 59225; 80 FR 59230; 80 FR 62161; 80 FR 63869; 80 FR 67472; 80 FR 67476; 81 FR 1284; 81 FR 11642; 81 FR 15404; 82 FR 18818; 82 FR 32919; 82 FR 35043; 82 FR 47295; 82 FR 47312; 82 FR 47313; 83 FR 2306; 83 FR 3861):

Thomas E. Adams (IN)
Rickie L. Boone (NC)
Jerry A. Bordelon (LA)
Rickie L. Brown (MS)
Timothy V. Burke (CO)
James E. Byrnes (MO)
Westcott G. Clarke (MA)
Joseph Coelho (RI)
Kevin R. Cowger (ID)
Jeffrey M. Dauterman (OH)
Edward J. Genovese (IN)
Nirmal S. Gill (CA)
Britt A. Green (ND)
Bradley O. Hart (UT)
Dennis H. Heller (KS)
Jesus J. Huerta (NV)
Darrell W. Knorr (IL)
Dale R. Knuppel (CO)
Carmelo A. Lana (NJ)
Michael Lancette (WI)
Keith A. Lang (TX)
Larry W. Lunde (WA)
Rodney M. Mimbs (GA)
Michael A. Mitchell (MS)
Dennis L. Morgan (WA)
James A. Parker (PA)
Chris A. Ritenour (MI)
Steven L. Roberts (AR)
Derek J. Savko (MT)
Manjinder Singh (WA)
Wesley C. Slattery (KS)
Mark R. Stevens (IA)
Daniel R. Viscaya (NC)
Paul B. Williams (NY)

The drivers were included in docket numbers FMCSA–1999–5748; FMCSA–2002–12844; FMCSA–2003–15892; FMCSA–2005–21711; FMCSA–2008–0231; FMCSA–2009–0054; FMCSA–2009–0154; FMCSA–2011–0124; FMCSA–2011–0142; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–

0165; FMCSA–2014–0297; FMCSA–2014–0298; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; and FMCSA–2017–0019. Their exemptions are applicable as of December 3, 2019, and will expire on December 3, 2021.

As of December 5, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (76 FR 64169; 76 FR 75943; 78 FR 62935; 78 FR 65032; 78 FR 76395; 80 FR 67481; 83 FR 2306):

Kevin G. Clem (SD)
Rocky J. Lachney (LA)
Chase L. Larson (WA)
Fred L. Stotts (OK)

The drivers were included in docket numbers FMCSA–2011–26690; and FMCSA–2013–0166. Their exemptions are applicable as of December 5, 2019, and will expire on December 5, 2021.

As of December 6, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (70 FR 57353; 70 FR 72689; 72 FR 62897; 74 FR 60021; 76 FR 70210; 78 FR 66099; 80 FR 67481; 83 FR 2306):

Thomas C. Meadows (NC)
Scott A. Tetter (IL)
Richard P. Stanley (MA)
David A. Morris (TX)

The drivers were included in docket number FMCSA–2005–22194. Their exemptions are applicable as of December 6, 2019, and will expire on December 6, 2019.

As of December 15, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (80 FR 70060; 81 FR 16265; 83 FR 2306):

Ricky A. Bray (AR)
Michael D. Judy (KS)
Joel H. Kohagen (IA)
Kelly K. Kremer (OR)
Edward R. Lockhart (MS)
Rodolfo Martinez (TX)
Tobias G. Olsen (ND)
Gregory A. Woodward (OR)
Alton R. Young (MS)

The drivers were included in docket number FMCSA–2015–0072. Their exemptions are applicable as of December 15, 2019, and will expire on December 15, 2019.

As of December 17, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 62935; 78 FR 76395; 80 FR 67481; 83 FR 2306):

Herbert R. Benner (ME); Henry D. Smith (NC); and Kolby W. Strickland (WA)

The drivers were included in docket number FMCSA–2013–0166. Their exemptions are applicable as of December 17, 2019, and will expire on December 17, 2021.

As of December 22, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (76 FR 49528; 76 FR 61143; 78 FR 67460; 80 FR 67481; 83 FR 2306):

Robert E. Morgan, Jr. (GA)

The driver was included in docket number FMCSA–2011–0142. The exemption is applicable as of December 22, 2019, and will expire on December 22, 2021.

As of December 24, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 63302; 78 FR 64274; 78 FR 77778; 78 FR 77780; 80 FR 67481; 83 FR 2306):

Ernest J. Bachman (PA)
Eugene R. Briggs (MI)
Bradley R. Dishman (KY)
Thomas G. Gholston (MS)
Chad A. Miller (IA)
Kerry R. Powers (IN)
Robert Thomas (PA)
Herman D. Truewell (FL)
Janusz K. Wis (IL)

The drivers were included in docket numbers FMCSA–2013–0168; and FMCSA–2013–0169. Their exemptions are applicable as of December 24, 2019, and will expire on December 24, 2021.

As of December 27, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (64 FR 27027; 64 FR 51568; 66 FR 53826; 66 FR 63289; 66 FR 66966; 67 FR 10471; 67 FR 19798; 68 FR 64944; 68 FR 69434; 69 FR 19611; 70 FR 48797; 70 FR 53412; 70 FR 57353; 70 FR 61493; 70 FR 67776; 70 FR 72689; 70 FR 74102; 74 FR 60021; 76 FR 75942; 78 FR 67452; 80 FR 67481; 83 FR 2306):

Stanley E. Elliott (UT)
Elmer E. Gockley (PA)
Randall B. Laminack (TX)
Robert W. Lantis (MT)
Eldon Miles (IN)
Neal A. Richard (LA)
Rene R. Trachsel (OR)
Kendle F. Waggle, Jr. (IN)
DeWayne Washington (NC)

The drivers were included in docket numbers FMCSA–1999–5578; FMCSA–2001–10578; FMCSA–2002–11426; FMCSA–2005–21711; and FMCSA–2005–22194. Their exemptions are applicable as of December 27, 2019, and will expire on December 27, 2021.

As of December 31, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (68 FR 61857; 68 FR 75715; 71 FR 646; 72 FR 71998; 74 FR 65846; 76 FR 78729; 78 FR 67454; 78 FR 67462; 79 FR 4803; 80 FR 67481; 83 FR 2306):

Martiniano L. Espinosa (FL); Dustin K. Heimbach (PA); and Lonnie Lomax, Jr. (IL)

The drivers were included in docket numbers FMCSA–2003–16241; and FMCSA–2013–0170. Their exemptions are applicable as of December 31, 2019, and will expire on December 31, 2021.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must undergo an annual physical examination (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a certified medical examiner (ME), as defined by § 390.5, who attests that the driver is otherwise physically qualified under § 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file or keep a copy of his/her driver's qualification if he/her is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with

the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the 77 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the vision requirement in § 391.41(b)(10), subject to the requirements cited above. In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: November 26, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–26192 Filed 12–3–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0383; FMCSA–2014–0387; FMCSA–2015–0325]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for four individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on November 15, 2019. The exemptions expire on November 15, 2021. Comments must be received on or before January 3, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2014–0383 or Docket No. FMCSA–2014–0387 or Docket No. FMCSA–2015–0325 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2014-0383* or *http://www.regulations.gov/docket?D=FMCSA-2014-0387* or *http://www.regulations.gov/docket?D=FMCSA-2015-0325.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2014–0383; FMCSA–2014–0387; FMCSA–2015–0325), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov/docket?D=FMCSA-2014-0383* or *http://www.regulations.gov/docket?D=FMCSA-2014-0387* or *http://www.regulations.gov/docket?D=FMCSA-2015-0325.* Click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2014-0383* or *http://www.regulations.gov/docket?D=FMCSA-2014-0387* or *http://www.regulations.gov/docket?D=FMCSA-2015-0325* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

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

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear

at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

The four individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the four applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The four drivers in this notice remain in good standing with the Agency. In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of November 15, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Daniel T. Harnish (UT)

Tami S. Richardson-Nelson (NE)

Anthony J. Saive (OH)

Jennifer L. Valentine (TX)

The drivers were included in docket number FMCSA–2014–0383 or FMCSA–2014–0387 or FMCSA–2015–0325. Jennifer Valentine was previously published under the name Jennifer Campbell. Their exemptions are applicable as of November 15, 2019, and will expire on November 15, 2021.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must report any crashes or accidents as defined in § 390.5; and (2) report all citations and convictions for disqualifying offenses under 49 CFR 383 and 49 CFR 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the four exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41(b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: November 26, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–26184 Filed 12–3–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0201]

Agency Information Collection Activities; Renewal of a Currently-Approved Information Collection Request: Licensing Applications for Motor Carrier Operating Authority

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The information collected will be used to help ensure that motor carriers of passengers and property maintain appropriate levels of financial responsibility to continue their operating authority.

DATES: We must receive your comments on or before January 3, 2020.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2019–0201. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503. In the 60-day **Federal Register** notice (84 FR 48000) published on September 11, 2019 FMCSA received 0 comments.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Secrist, Office of Registration and Safety Information, Chief, Registration, Licensing and Insurance Division, Department of Transportation, Federal Motor Carrier Safety Administration,

West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202–385–2367; email: *jeff.secrist@dot.gov.* Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Title: Licensing Applications for Motor Carrier Operating Authority.

OMB Control Number: 2126–0016.

Type of Request: Renewal of a currently approved collection.

Respondents: Carrier compliance officer or equivalent from motor carriers, motor passenger carriers, freight forwarders, brokers, and certain Mexico-domiciled motor carriers subject to FMCSA's licensing, registration and certification regulations.

Estimated Number of Respondents: 73,538.

Estimated Time per Response: 2 hours for forms OP–1, OP–1(P), and OP–1(FF); 4 hours for forms OP–1(MX) and OP–1(NNA).

Expiration Date: January 31, 2020.

Frequency of Response: Other (as needed).

Estimated Total Annual Burden: 147,124 hours.

Background

FMCSA registers for-hire motor carriers of regulated commodities and of passengers, under 49 U.S.C. 13902(a); surface freight forwarders, under 49 U.S.C. 13903; property brokers, under 49 U.S.C. 13904; and certain Mexico-domiciled motor carriers, under 49 U.S.C. 13902(c). These motor carriers may conduct transportation services in the United States only if they are registered with FMCSA. Each registration is effective from the date specified and remains in effect for such period as the Secretary of Transportation (Secretary) determines by regulations.

Prior to 2015, all entities seeking authority (both first-time applicants and registered entities seeking additional authorities) were required to apply for such authority using the OP–1 series of forms, including OP–1, OP–1(P), OP–1(FF), OP–1(NNA), and OP–1(MX) (for Mexico-domiciled carriers only).

The Final Rule titled ''Unified Registration System,'' (78 FR 52608) dated August 23, 2013, implemented statutory provisions for an online registration system for entities that are subject to FMCSA's licensing, registration, and certification regulations. The Unified Registration System (URS) streamlines the registration process and serves as a clearinghouse and repository of information on motor carriers, brokers, freight forwarders, intermodal equipment providers, hazardous materials safety permit applicants, and cargo tank facilities required to register with FMCSA. When developing URS, FMCSA planned that the OP–1 series of forms—except for OP–1(MX)—would ultimately be folded into one overarching form (MCSA–1), which would be used by all motor carriers seeking authority.

FMCSA began a phased rollout of URS in 2015. The first phase, which went into effect on December 12, 2015, impacts only first-time applicants seeking an FMCSA-issued registration. FMCSA had planned subsequent rollout phases for existing registrants; however, there have been substantial delays, and subsequent phases have not been rolled out to date.

On January 17, 2017, FMCSA issued a Final Rule titled ''Unified Registration System; Suspension of Effectiveness,'' which indefinitely suspended URS effectiveness dates for existing registrants only (82 FR 5292). Pursuant to this Final Rule, FMCSA is still accepting forms OP–1, OP–1(P), OP–1(FF), and OP–1(NNA) for existing registrants wishing to apply for additional authorities. Separately, FMCSA requires Form OP–1(MX) for Mexico-domiciled carriers that wish to operate beyond the U.S. municipalities on the U.S.-Mexico border and their commercial zones.

Forms in the OP–1 series request information to identify the applicant, the nature and scope of its proposed operations, a narrative description of the applicant's safety policies and procedures, and information regarding the drivers and vehicles it plans to use in U.S. operations. The OP–1 series also requests information on the applicant's familiarity with relevant safety requirements, the applicant's willingness to comply with those requirements during its operations, and the applicant's willingness to meet any specific statutory and regulatory requirements applicable to its proposed operations. Information collected through these forms aids FMCSA in determining the type of operation a company may run, the cargo it may carry, and the resulting level of insurance coverage the applicant will be required to obtain and maintain to continue its operating authority.

Changes From Previous Estimates

The previously approved version of this ICR estimated the average annual burden to be 24,853 hours, with 37,240 total annual respondents. The current ICR estimates 147,124 annual burden hours, with 73,538 total annual respondents. The program change increase of 122,271 estimated annual burden hours and 36,298 respondents is due to a change in assumptions and circumstances.

In the previously approved ICR, FMCSA calculated the burden estimate for forms OP–1, OP–1(P), OP–1(FF), and OP–1(NNA) for only 1 year, because the Agency expected that all motor carriers would begin using Form MCSA–1 via URS beginning in 2017. However, as discussed above, FMCSA has experienced delays in rolling out Phase II of URS (which applies to existing registrants) and has indefinitely suspended the effective date of URS requirements for such entities. Until further notice, existing registrants must still use the OP–1 series of forms to apply for additional authorities. FMCSA is assuming that this will be the case for the 3-year period covered by this ICR. This has resulted in an increase in the number of annual responses and burden hours.

As described above, only first-time applicants seeking an FMCSA-issued registration must apply via URS. Under URS, all forms in the OP–1 series, except OP–1(MX), are folded into Form MCSA–1. Information collection activities associated with MCSA–1 are covered under a different ICR, titled ''FMCSA Registration/Updates,'' OMB Control Number 2126–0051.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA to perform it's functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87 on: November 27, 2019.

Kelly Regal,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2019–26193 Filed 12–3–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0118]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew an exemption for one individual from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemption enables this individual who has had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: The exemption was applicable on October 22, 2019. The exemption expires on October 22, 2021. Comments must be received on or before January 3, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2015–0118, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2015-0118.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2015–0118), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to FMCSA–2015–0118. Click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to FMCSA–2015–0118 and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

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

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The individual listed in this notice have requested renewal of their exemptions from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), the applicant has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The driver in this notice remains in good standing with the Agency, has maintained their medical monitoring and has not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period. In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of October 22, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), Anthony Martens (SD) has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers.

This driver was included in docket number FMCSA–2015–0118. The exemption is applicable as of October 22, 2019, and will expire on October 22, 2021.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based on its evaluation of the one exemption application, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Issued on: November 26, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–26188 Filed 12–3–19; 8:45 am]

BILLING CODE 4910–EX–P

FEDERAL REGISTER

Vol. 84 Wednesday,
No. 233 December 4, 2019

Part II

Securities and Exchange Commission

17 CFR Part 240
Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a–8; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–87458; File No. S7–23–19]

RIN 3235–AM49

Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a–8

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend certain procedural requirements and the provision relating to resubmitted proposals under the shareholder-proposal rule. The proposed amendments to the procedural requirements would replace the current ownership requirements with a tiered approach that would provide three options for demonstrating an ownership stake through a combination of amount of securities owned and length of time held; require certain documentation to be provided when a proposal is submitted on behalf of a shareholder-proponent; require shareholder-proponents to state when they would be able to meet with the company in person or via teleconference to engage with the company with respect to the proposal; and provide that a person may submit no more than one proposal, directly or indirectly, for the same shareholders' meeting. The proposed amendments to the resubmission thresholds would raise the current resubmission thresholds of 3, 6, and 10 percent to 5, 15, and 25 percent, respectively; and add a new provision that would allow companies to exclude proposals under certain circumstances where shareholder support for the matter has declined.

DATES: Comments should be received on or before February 3, 2020.

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/concept.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–23–19 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 S7–23–19. 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. We will post all comments on our website (*https://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.

We or the staff may add studies, memoranda, or other substantive items 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 our website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Matt McNair, Senior Special Counsel in the Office of Chief Counsel, at (202) 551–3500, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing amendments to 17 CFR 240.14a–8 (''Rule 14a–8'') under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*] (''Exchange Act'').

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D. Projected Reporting, Recordkeeping and Other Compliance Requirements
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I. Introduction

A. Background

Under state corporate law, shareholders have the right to vote their shares to elect directors and to approve or reject major corporate transactions at shareholder meetings, and shareholders may appoint proxies to vote on their behalf at such meetings.[1] Because most shareholders do not attend public company shareholder meetings in person and, instead, vote their shares by the use of proxies that are solicited before the shareholder meeting takes place, the proxy solicitation process rather than the shareholder meeting

[1] *See* Concept Release on the U.S. Proxy System, Release No. 34–62495 (Jul. 14, 2010) [75 FR 42982 (Jul. 22, 2010)], at 42984 (''Proxy Plumbing Release'').

itself has become the ''forum for shareholder suffrage.'' [2]

Issuers with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (''Exchange Act'') and issuers that are registered under the Investment Company Act of 1940 (''Investment Company Act'') are generally required to comply with the federal proxy rules in Regulation 14A when soliciting proxies from shareholders.[3] These rules include the requirement that issuers publicly file and provide shareholders with a proxy statement containing certain information. Individual shareholders and other persons may also solicit proxies in support of proposals that a shareholder wishes to present for a vote at a shareholder meeting. Such solicitations must also generally comply with the federal proxy rules.

Rule 14a–8 requires companies that are subject to the federal proxy rules to include shareholder proposals in their own proxy statements to shareholders, subject to certain procedural and substantive requirements.[4] By giving shareholder-proponents the ability to have their proposals included alongside management's in the company's proxy statement, Rule 14a–8 enables shareholder-proponents to easily present their proposals to all other shareholders, and to have proxies solicited for their proposals, at little or no expense to themselves. The rule, the concept of which was first adopted by the Commission in 1942, thus facilitates shareholders' traditional ability under state law to present their own proposals for consideration at a company's annual or special meeting, and it facilitates the ability of all shareholders to consider and vote on such proposals.[5]

However, this mechanism for shareholders to require inclusion of their proposals in companies' proxy materials is not without limits. Rule 14a–8 permits a company to exclude a shareholder proposal from its proxy statement if the proposal fails to meet any of several specified substantive requirements, or if the shareholder-proponent does not satisfy certain eligibility or procedural requirements. All of these requirements are generally designed to ensure that the ability under Rule 14a–8 for a shareholder to have a proposal included alongside management's in the company's proxy materials—and thus to draw upon company resources and to command the time and attention of other shareholders—is not excessively or inappropriately used.[6]

A proposal may be excluded if the rule's procedural requirements are not satisfied. These rules set forth the level of share ownership necessary to be eligible to submit a proposal, the number of proposals that a shareholder may submit for a particular shareholders' meeting, the proposal's permitted length and the deadline for submitting proposals.

The substantive requirements permit a company to exclude a proposal if the proposal would violate applicable law; would violate the proxy rules; relates to a proponent's personal grievance or personal interest; is not significantly related to the company's business; is not capable of being implemented by the company; deals with matters relating to the company's ordinary business operations; or has already been substantially implemented, among other grounds. Proponents and companies do not always agree on the application of these exclusions. Accordingly, if a company intends to exclude a shareholder proposal from its proxy materials on these grounds or any other ground, it is required under Rule 14a–8(j) to ''file its reasons'' for doing so with the Commission. These notifications are generally submitted in the form of a no-action request seeking the staff's concurrence that they may exclude a shareholder proposal under one or more of the procedural or substantive bases under Rule 14a–8. The staff of the Divisions of Corporation Finance and Investment Management, as a convenience to both companies and shareholder-proponents, has for many years engaged in the informal practice of expressing whether the staff would recommend enforcement action to the Commission if a company excludes a proposal from its proxy materials. This is done to provide guidance as to the staff's views and to assist both companies and shareholder-proponents in complying with the federal proxy rules.

We are proposing modifications to, and seeking public comment on, two of the rule's procedural requirements and one of its substantive requirements.

The first proposed amendment is to Rule 14a–8(b), which establishes the eligibility requirements a shareholder-proponent must satisfy to have a proposal included in a company's proxy statement. Under the current rule, to be eligible to submit a proposal, a shareholder-proponent must have continuously held at least $2,000 in market value or 1 percent of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date the proposal is submitted.[7] The $2,000 ownership threshold was last substantively reviewed and updated by the Commission in 1998.[8]

[2] *See* Proposed Amendments to Rule 14a–8, Release No. 34–19135 (Oct. 14, 1982) [47 FR 47420 (Oct. 26, 1982)], at 47420–21 (''1982 Proposing Release''); Proxy Plumbing Release, *supra* note 1, at 42984; *Roosevelt* v. *E. I. Du Pont de Nemours & Co.,* 958 F.2d 416, 422 (D.C. Cir. 1992) (quoting 1982 Proposing Release).

[3] Foreign private issuers are exempt from the federal proxy rules. See 17 CFR 240.3a12–3(b). In addition, debt securities registered under Section 12(b) are exempt from the federal proxy rules, with some exceptions. *See* 17 CFR 240.3a12–11(b).

[4] Unless otherwise noted, references to ''shareholder proposal,'' ''shareholder proposals,'' ''proposal,'' or ''proposals'' refer to submissions made in reliance on Rule 14a–8.

[5] *See, e.g., Securit[ies] and Exchange Commission Proxy Rules: Hearings on H.R. 1493, H.R. 1821, and H.R. 2019 Before the House Comm. on Interstate and Foreign Commerce,* 78th Cong., 1st Sess. 17–19 (1943) (Statement of the Honorable Ganson Purcell, Chairman, Securities and Exchange Commission) (explaining the initial Commission rules requiring the inclusion of shareholder proposals in company proxy materials: ''We give [a stockholder] the right in the rules to put his proposal before all of his fellow stockholders along with all other proposals . . . so that they can see then what they are and vote accordingly. . . . The rights that we are endeavoring to assure to the stockholders are those rights that he has traditionally had under State law, to appear at the meeting; to make a proposal; to speak on that proposal at appropriate length; and to have his proposal voted on.'').

[6] The Commission has expressed recurring concern over the years that Rule 14a–8 is susceptible to misuse. In 1948, the Commission adopted three new bases for exclusion to ''relieve the management of harassment in cases where [shareholder] proposals are submitted for the purpose of achieving personal ends rather than for the common good of the issuer and its security holders.'' *See* Notice of Proposal to Amend Proxy Rules, Release No. 34–4114 (July 6, 1948) [13 FR 3973 (Jul. 14, 1948)], at 3974 (''1948 Proposing Release''). In 1953, the Commission amended the shareholder-proposal rule to allow companies to omit the name and address of the shareholder-proponent to ''discourage the use of this rule by persons who are motivated by a desire for publicity rather than the interests of the company and its security holders.'' *See* Notice of Proposed Amendments to Proxy Rules, Release No. 34–4950 (Oct. 9, 1953) [18 FR 6646 (Oct. 20, 1953)], at 6647. In amending the resubmission basis for exclusion in 1983, the Commission noted that commenters ''felt that it was an appropriate response to counter the abuse of the security holder proposal process by certain proponents who make minor changes in proposals each year so that they can keep raising the same issue despite the fact that other shareholders have indicated by their votes that they are not interested in that issue.'' *See* Amendments to Rule 14a–8 Under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34–20091 (Aug. 16, 1983) [48 FR 38218 (Aug. 23, 1983)], at 38221 (''1983 Adopting Release''). In addressing the personal-grievance basis for exclusion in 1982, the Commission noted that ''[t]here has been an increase in the number of proposals used to harass issuers into giving the proponent some particular benefit or to accomplish objectives particular to the proponent.'' *See* 1982 Proposing Release, *supra* note 2, at 47427.

[7] 17 CFR 240.14a–8(b)(1).

[8] *See* Amendments To Rules On Shareholder Proposals, Release No. 34–40018 (May 21, 1998) [63

Continued

The second proposed amendment is to Rule 14a–8(c), which provides that each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.[9]

The third proposed amendment is to Rule 14a–8(i)(12), which allows companies to exclude a shareholder proposal that ''deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years'' if the matter was voted on at least once in the last three years and did not receive at least:

(i) 3 percent of the vote if previously voted on once;

(ii) 6 percent of the vote if previously voted on twice; or

(iii) 10 percent of the vote if previously voted on three or more times.[10]

These resubmission thresholds have been in place since 1954 [11] and, like the ownership thresholds in Rule 14a–8(b), were last substantively reviewed by the Commission in 1998.[12]

B. Roundtable on the Proxy Process

On November 15, 2018, the Commission's staff held a roundtable on the proxy process (''Proxy Process Roundtable''), which included a panel discussion on Rule 14a–8 and the shareholder-proposal process. The shareholder-proposal panelists expressed their views on the application of Rule 14a–8 and shared their experiences with shareholder proposals and the related benefits and costs involved for companies and shareholders. Among the topics addressed were ownership and resubmission thresholds under Rule 14a–8(b) and Rule 14a–8(i)(12), respectively, and the extent to which these thresholds are in need of updating.

Panelists from the issuer community recommended revising the ownership and/or resubmission thresholds,[13] while the panelists who have submitted shareholder proposals generally opposed revisions to these rules.[14] Among those favoring changes to these thresholds, several cited the costs to companies and their shareholders as a primary basis for raising ownership and/or resubmission thresholds.[15] Among those who support the current thresholds, one panelist stated that Rule 14a–8 already appropriately balances the costs and benefits of the shareholder-proposal process,[16] and another panelist suggested that Rule 14a–8 is currently a cost-effective mechanism that facilitates private ordering.[17]

In connection with the Proxy Process Roundtable, the staff invited members of the public to provide their views on the proxy process via written comments.[18] We received many comment letters addressing Rule 14a–8. Some of these commenters recommended raising the ownership and/or resubmission thresholds,[19] while others were supportive of the current thresholds.[20] Several commenters expressed concern about the costs associated with

FR 29106 (May 28, 1998)] (''1998 Adopting Release'').

[9] 17 CFR 240.14a–8(c).

[10] 17 CFR 240.14a–8(i)(12).

[11] *See* Adoption of Amendments to Proxy Rules, Release No. 34–4979 (Jan. 6, 1954) [19 FR 246 (Jan. 14, 1954)] (''1954 Adopting Release'').

[12] *See* 1998 Adopting Release, *supra* note 8. The Commission sought public comment on the ownership and resubmission requirements in 2007 in connection with a proposed rule on proxy access, but these requirements have not been substantively revisited since 1998. *See* Shareholder Proposals, Release No. 34–56160 (Jul. 27, 2007) [72 FR 43488 (Aug. 3, 2007)] (''2007 Proxy Access Proposing Release'').

[13] *See* Transcript of the Roundtable on the Proxy Process (Nov. 15, 2018) (''Roundtable Transcript''), *available at https://www.sec.gov/files/proxy-round-table-transcript-111518.pdf,* comments of Ning Chiu, Counsel, Capital Markets Group, Davis Polk & Wardwell LLP; Maria Ghazal, Senior Vice President, Business Roundtable; Tom Quaadman, Executive Vice President, U.S. Chamber of Commerce Center for Capital Markets Competitiveness; and Dannette Smith, Secretary to the Board of Directors and Senior Deputy General Counsel, UnitedHealth Group.

[14] *See* Roundtable Transcript, *supra* note 13, comments of Michael Garland, Assistant Comptroller, Corporate Governance and Responsible Investment, Office of the Comptroller, New York City; Jonas Kron, Senior Vice President and Director of Shareholder Advocacy, Trillium Asset Management; Aeisha Mastagni, Portfolio Manager, Corporate Governance Unit, California State Teachers' Retirement System; James McRitchie, Publisher, *CorpGov.net;* and Brandon Rees, Deputy Director of Corporations and Capital Markets, American Federation of Labor and Congress of Industrial Organizations.

[15] *See* Roundtable Transcript, *supra* note 13, comments of Ning Chiu, Counsel, Capital Markets Group, Davis Polk & Wardwell LLP, at 127; Tom Quaadman, Executive Vice President, U.S. Chamber of Commerce Center for Capital Markets Competitiveness, at 136; and Dannette Smith, Secretary to the Board of Directors and Senior Deputy General Counsel, UnitedHealth Group, at 148–49.

[16] *See* Roundtable Transcript, *supra* note 13, comments of Aeisha Mastagni, Portfolio Manager, Corporate Governance Unit, California State Teachers' Retirement System, at 134.

[17] *See* Roundtable Transcript, *supra* note 13, comments of Jonas Kron, Senior Vice President and Director of Shareholder Advocacy, Trillium Asset Management, at 124.

[18] Comment letters related to the Proxy Process Roundtable are available at *https://www.sec.gov/comments/4-725/4-725.htm.*

[19] *See* letters in response to the Proxy Process Roundtable from Advent Capital Management, LLC dated July 29, 2019; American Securities Association dated June 7, 2019; Braemar Hotels & Resorts Inc. dated January 4, 2019; Business Roundtable dated June 3, 2019; U.S. Chamber of Commerce Center for Capital Markets Competitiveness dated November 12, 2018 and December 20, 2018; Center on Executive Compensation dated August 1, 2018; Chevron Corporation dated August 20, 2019; Exxon Mobil Corporation dated July 26, 2019; Group 1 Automotive, Inc. dated January 11, 2019; Institute for Policy Innovation dated October 11, 2018; Investment Company Institute dated March 15, 2019; National Association of Manufacturers dated October 30, 2018; Nareit dated November 12, 2018; Nasdaq, Inc. dated November 14, 2018; Nasdaq, Inc. et al. dated February 4, 2019; Society for Corporate Governance dated November 9, 2018; The Capital Group Companies, Inc. dated November 14, 2018; The Vanguard Group dated September 20, 2019; Tyler Technologies, Inc. dated September 20, 2019.

[20] *See* letters in response to the Proxy Process Roundtable from Addenda Capital et al. dated November 13, 2018; Adrian Dominican Sisters dated December 11, 2018; American Federation of Labor and Congress of Industrial Organizations dated November 9, 2018; Anonymous (19 commenters); California Public Employees' Retirement System dated December 11, 2018; California State Teachers' Retirement System dated November 30, 2018; City of New York Office of the Comptroller dated January 2, 2019; Conference for Corporate Responsibility Indiana and Michigan dated December 4, 2018; Council of Institutional Investors dated January 31, 2019; Theodore S. Cochrane dated January 2, 2019; Congregation of Sisters of St. Agnes dated December 4, 2018; Congregation of St. Basil dated December 3, 2018; CtW Investment Group dated January 16, 2019; Dana Investment Advisors dated November 30, 2018; Decatur Capital Management Inc. dated August 13, 2019; Dominican Sisters Grand Rapids dated December 2, 2018; Dominican Sisters of Springfield Illinois dated December 3, 2018; The Episcopal Church received December 11, 2018; Everence Financial dated December 6, 2018; FAIRR Initiative dated December 4, 2018; Franciscan Sisters of Perpetual Adoration dated December 5, 2018; Glass Lewis dated November 14, 2018; Green Century Capital Management, Inc. dated December 5, 2018; Interfaith Center on Corporate Responsibility dated November 6, 2018; Investor Voice, SPC dated November 14, 2018; Jantz Management LLC dated October 7, 2019; Jesuit Committee on Investment Responsibility dated December 10, 2018; Loring, Wolcott & Coolidge dated December 4, 2018; James McRitchie received November 27, 2018 and August 22, 2019; Mercy Investment Services, Inc. dated December 3, 2018; MFS Investment Management dated November 14, 2018; Midwest Coalition for Responsible Investment dated December 6, 2018; Missionary Oblates of Mary Immaculate dated December 12, 2018; Morningstar, Inc. dated December 17, 2018; NorthStar Asset Management, Inc. dated December 4, 2018; Pax World Funds dated November 9, 2018; Pension Investment Association of Canada dated April 17, 2019; Praxis Mutual Funds dated December 6, 2018; Presbyterian Church U.S.A. dated November 13, 2018; Priests of the Sacred Heart dated December 3, 2018; Province of St. Joseph of the Capuchin Order dated December 3, 2018; Racine Dominicans dated December 5, 2018; Robert E. Rutkowski dated November 15, 2018; Shareholder Rights Group dated September 17, 2018; Sisters of Charity—Halifax dated December 5, 2018; Sisters of St. Joseph of Orange dated December 18, 2018; Sisters of the Holy Cross dated December 10, 2018; Sisters of the Presentation of the Blessed Virgin Mary dated December 3, 2018; State of New York Office of the State Comptroller dated November 13, 2018; Trinity Health dated November 9, 2018; US SIF dated November 9, 2018; ValueEdge Advisors dated July 17, 2019; Washington State Investment Board dated November 14, 2018; Kyle Wright dated December 4, 2018.

management's consideration of a proposal and/or its inclusion in the proxy statement.[21] Two commenters cited an estimate indicating an average cost to companies of $87,000 per shareholder proposal,[22] another commenter estimated its cost at more than $100,000 per proposal,[23] and another commenter cited a cost of approximately $150,000 per proposal.[24] Other commenters suggested the costs to companies are low and noted that most companies receive few, if any, shareholder proposals.[25] Some commenters expressed concern that a large number of proposals are submitted by a small number of individuals who own nominal stakes in the companies to which they submit proposals.[26] One commenter disagreed with this concern because proposals submitted by these individuals between 2004 and 2017 received an average level of support of 40 percent and, in the commenter's opinion, this level of support ''indicates these filers provide a valuable service to fellow shareholders by promoting good corporate governance.'' [27]

Below we discuss the proposed amendments to Rule 14a–8, which have been informed by the public input we have received, including in response to the Proxy Process Roundtable. We welcome 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. Discussion of Proposed Amendments

A. Rule 14a–8(b)—Eligibility Requirements

1. Relevant History and Background of Rule 14a–8(b)

At the time the shareholder-proposal rule was initially adopted, a shareholder-proponent's eligibility to submit a proposal was not conditioned on owning a minimum amount of a company's securities, or holding the securities for a specified period of time. Instead, the rule enabled ''a qualified security holder'' to submit a proposal for inclusion in the company's proxy materials.[28] In 1947, the rule text was revised to specify that ''any security holder entitled to vote at a meeting of security holders of the issuer'' could submit a proposal.[29] In 1976, the Commission considered, but decided not to adopt, minimum ownership requirements, believing that there was not ''sufficient justification'' at that time for such requirements because the existing eligibility requirements ''have not been abused.'' [30]

However, the Commission later reconsidered the matter in response to ''criticisms of the current rule that have increased with the pressure placed upon the existing mechanism by the large number of proposals submitted each year and the increasing complexity of the issues involved in those proposals, as well as the susceptibility of certain provisions of the rule and the staff's interpretations thereunder to abuse by a few proponents and issuers.'' [31] The Commission found merit in the views of many commenters that ''abuse of the security holder proposal rule could be curtailed by requiring shareholders who put the company and other shareholders to the expense of including a proposal in a proxy statement to have some measured economic stake or investment interest in the corporation.'' [32] The Commission accordingly amended the rule in 1983 to require shareholder-proponents to own ''at least 1% or $1,000 in market value of securities entitled to be voted at the meeting'' and to ''have held such securities for at least one year.'' [33] Co-proponents, however, were permitted to aggregate their holdings for purposes of meeting the ownership requirements.[34]

In 1998, the Commission raised the $1,000 threshold to $2,000.[35] When it proposed this increase, the Commission explained that the revision was partly to adjust for inflation.[36] Upon adoption of the $2,000 threshold, the Commission noted that ''[t]here was little opposition to the proposed increase among commenters.'' [37] While the Commission had elected not to propose an amount higher than $2,000 ''out of concern that a more significant increase could restrict access to companies' proxy materials by smaller shareholders,'' [38] the Commission noted upon adopting the $2,000 threshold that several commenters ''do not believe the increase is great enough to be meaningful, especially in light of the overall increase in stock prices over the last few years.'' [39] The Commission accordingly indicated that it had ''decided to limit the increase to $2,000 *for now*.'' [40] The Commission also sought comment on whether to shorten or lengthen the one-year holding period,[41] but it was not revised because, at that time, ''there was no significant support for any modifications'' to that

[21] *See, e.g.,* letters in response to the Proxy Process Roundtable from American Securities Association dated June 7, 2019; Blackrock, Inc. dated November 16, 2018; Business Roundtable dated November 9, 2018; Exxon Mobil Corporation dated July 26, 2019; Nasdaq, Inc. dated November 14, 2018; Society for Corporate Governance dated November 9, 2018.

[22] *See* letters in response to the Proxy Process Roundtable from Blackrock, Inc. dated November 16, 2018; Society for Corporate Governance dated November 9, 2018.

[23] *See* letter in response to the Proxy Process Roundtable from Exxon Mobil Corporation dated July 26, 2019.

[24] *See* letter in response to the Proxy Process Roundtable from the American Securities Association dated June 7, 2019 (citing H.R. Rep No. 115–904, at 2 (2018)).

[25] *See, e.g.,* letters in response to the Proxy Process Roundtable from Council of Institutional Investors dated November 8, 2018 (citing Ceres et al., The Business Case for the Current SEC Shareholder Proposal Process 11–12 (2017), *available at https://www.ussif.org/files/Public_Policy/Comment_Letters/Business%20Case%20for%2014a-8.pdf* (''Ceres Business Case'')); Addenda Capital et al. dated November 13, 2018 (citing Adam M. Kanzer, *The Dangerous* ''*Promise of Market Reform*''*: No Shareholder Proposals,* Harvard Law School Forum on Corporate Governance and Financial Regulation (Jun. 15, 2017), *available at https://corpgov.law.harvard.edu/2017/06/15/the-dangerous-promise-of-market-reform-no-shareholder-proposals/*).

[26] *See, e.g.,* letters in response to the Proxy Process Roundtable from Business Roundtable dated November 9, 2018; Center on Executive Compensation dated August 1, 2018.

[27] *See* letter in response to the Proxy Process Roundtable from Mercy Investment Services, Inc. dated December 3, 2018.

[28] *See* Release No. 34–3347 (Dec. 18, 1942) [7 FR 10655 (Dec. 22, 1942)].

[29] *See* Adoption of Revised Proxy Rules, Release No. 34–4037 (Dec. 17, 1947) [12 FR 8768 (Dec. 24, 1947)].

[30] *See* Adoption of Amendments Relating to Proposals by Security Holders, Release No. 34–12999 (Nov. 22, 1976) [41 FR 52994 (Dec. 3, 1976)] (''1976 Adopting Release'').

[31] 1982 Proposing Release, *supra* note 2. at 47421. The Commission further explained: ''It has been suggested that under current construction of the rule, a few proponents have been able to use the rule as a publicity mechanism to further personal interests that are unrelated to the interests of security holders as security holders and that certain sophisticated proponents, who submit proposals annually to a variety of issuers, are able to require the inclusion of a proposal which has generated little security holder interest by simply changing its form or minimally varying its coverage. The rule was not designed to burden the proxy solicitation process by requiring the inclusion of such proposals.'' *Id.* at 47422 n.8.

[32] *See* 1983 Adopting Release, *supra* note 6.

[33] *Id.* In addition, the Commission noted in 2007 that the one-year holding period ensures that shareholder proposals are submitted ''by shareholders with a significant long-term stake in the company.'' *See* 2007 Proxy Access Proposing Release, *supra* note 12.

[34] *See* 1983 Adopting Release, *supra* note 6.

[35] *See* 1998 Adopting Release, *supra* note 8.

[36] The Commission explained that the actual inflation adjustment would have been $600, which would have set the new threshold at $1,600. A new threshold of $2,000 was proposed, however, to account for future inflation and to simplify the calculation process. *See* Amendments to Rules on Shareholder Proposals, Release No. 34–39093 (Sep. 18, 1997) [62 FR 50682 (Sep. 26, 1997)] (''1997 Proposing Release'').

[37] *See* 1998 Adopting Release, *supra* note 8.

[38] *See* 1997 Proposing Release, *supra* note 36.

[39] *See* 1998 Adopting Release, *supra* note 8.

[40] *Id.* (emphasis added).

[41] *See* 1997 Proposing Release, *supra* note 36.

aspect of the rule.[42] The Commission has not revised the share ownership requirements since 1998.

2. Public Views on Rule 14a–8(b)

In recent years, some observers have advocated increasing the amount of securities a shareholder must own to be eligible to submit a shareholder proposal.[43] These groups have suggested alternative ownership requirements, such as eliminating the flat dollar threshold in favor of relying solely on a percentage-of-shares-owned test,[44] or raising the ownership threshold to $50,000, indexed annually for inflation.[45] Some observers have suggested raising the ownership requirements to lessen the burden on companies,[46] or to ensure that shareholder-proponents have a meaningful stake in the companies to which they submit proposals.[47] Others have suggested keeping the existing $2,000 requirement, or limiting any increase, to avoid excluding smaller investors,[48] and some have suggested that dropping the flat dollar threshold in favor of a percentage-only test would significantly limit shareholders' ability to submit shareholder proposals for inclusion in companies' proxy materials.[49] Several observers also have suggested lengthening the current one-year holding period requirement,[50] while at least one observer has suggested shortening it.[51]

3. Need for Proposed Amendments

The shareholder-proposal process established by Rule 14a–8 facilitates engagement between shareholders and the companies they own. The rule also enables individual shareholders to shift to the company, and ultimately other shareholders, the cost of soliciting proxies for their proposals. Because it shifts burdens from proponents to companies, it is susceptible to overuse.[52] As the Commission has previously recognized, the ownership threshold and holding period in Rule 14a–8(b) aim to strike an appropriate balance such that a shareholder has some meaningful ''economic stake or investment interest'' in a company before the shareholder may draw upon company resources to require the inclusion of a proposal in the company's proxy statement, and before the shareholder may use the company's proxy statement to command the attention of other shareholders to consider and vote upon the proposal.[53]

Much has changed since the Commission last considered amendments to Rule 14a–8, including the level and ease of engagement between companies and their shareholders. For instance, shareholders now have alternative ways, such as through social media, to communicate their preferences to companies and effect change.[54]

[42] *See* 1998 Adopting Release, *supra* note 8.

[43] *See, e.g.,* Business Roundtable, Responsible Shareholder Engagement and Long-Term Value Creation (Oct. 31, 2016), *available at https://s3.amazonaws.com/brt.org/archive/reports/BRT%20Shareholder%20proposal%20paper-final.pdf* (''BRT Report''); Nasdaq, The Promise of Market Reform: Reigniting America's Economic Engine (last updated Feb. 2018), *available at https://www.nasdaq.com/docs/Nasdaq_Blueprint_to_Revitalize_Capital_Markets_April_2018_tcm5044-43175.pdf* (''Nasdaq Report''); U.S. Dep't of Treasury, A Financial System That Creates Economic Opportunities 32 (Oct. 2017), *available at https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf* (''Treasury Report''); *see also* letters in response to the Proxy Process Roundtable from Advent Capital Management, Inc. dated July 29, 2019; Braemar Hotels & Resorts Inc. dated January 4, 2019; Business Roundtable dated November 9, 2018 and June 3, 2019; Center on Executive Compensation dated August 1, 2018; Group 1 Automotive, Inc. dated January 11, 2019; National Association of Manufacturers dated October 30, 2018; Nasdaq, Inc. dated November 14, 2018; Nasdaq, Inc. et al. dated February 4, 2019; Society for Corporate Governance dated November 9, 2018; The Capital Group Companies dated November 14, 2018. At the Commission's 38th Annual Government-Business Forum on Small Business Capital Formation held on August 14, 2019, one of the forum participant recommendations was to amend the submission thresholds.

[44] *See* BRT Report, *supra* note 43; Nasdaq Report, *supra* note 43.

[45] *See* letter in response to the Proxy Process Roundtable from Society for Corporate Governance dated November 9, 2018.

[46] *See id.*

[47] *See, e.g.,* Nasdaq Report, *supra* note 43.

[48] *See* Ceres et al., An Investor Response to the U.S. Chamber's Proposal to Revise SEC Rule 14a–8, (Nov. 9, 2017), *available at http://www.iccr.org/sites/default/files/resources_attachments/investor_response_to_chamber_14a-8_nov_9_final_2.pdf; see also* letters in response to the Proxy Process Roundtable from Addenda Capital et al. dated November 13, 2018; Dominican Sisters of Adrian, Michigan dated December 11, 2018; American Federation of Labor and Congress of Industrial Organizations dated November 9, 2018; Anonymous (19 commenters); California Public Employees' Retirement System dated December 11, 2018; California State Teachers' Retirement System dated December 3, 2018; Conference for Corporate Responsibility Indiana and Michigan dated December 3, 2018; Congregation of Sisters of St. Agnes dated December 4, 2018; Council of Institutional Investors dated January 31, 2019; Theodore S. Cochrane dated January 2, 2019; Congregation of St. Basil dated December 3, 2018; CtW Investment Group dated January 16, 2019; Dominican Sisters—Grand Rapids dated December 2, 2018; Dominican Sisters of Springfield Illinois dated December 3, 2018; The Episcopal Church received December 11, 2018; Everence Financial dated December 6, 2018; FAIRR Initiative dated December 4, 2018; Form Letter A (18,614 letters); Franciscan Sisters of Perpetual Adoration dated December 5, 2018; Glass Lewis dated November 14, 2018; Interfaith Center on Corporate Responsibility dated November 6, 2018; Investor Voice, SPC dated November 14, 2018; Jesuit Committee on Investment Responsibility dated December 10, 2018; Loring, Wolcott & Coolidge dated December 4, 2018; James McRitchie received November 27, 2018; Mercy Investment Services, Inc. dated December 3, 2018; MFS Investment Management dated November 14, 2018; NorthStar Asset Management, Inc. dated December 4, 2018; Pax World Funds dated November 9, 2018; Pension Investment Association of Canada dated April 17, 2019; Praxis Mutual Funds dated December 6, 2018; Presbyterian Church (U.S.A.) dated November 13, 2018; Priests of the Sacred Heart dated December 3, 2018; Province of St. Joseph of the Capuchin Order dated December 3, 2018; Racine Dominicans dated December 5, 2018; Robert E. Rutkowski dated November 15, 2018; Shareholder Rights Group dated December 4, 2018; Sisters of Charity—Halifax dated December 5, 2018; Sisters of the Presentation of the Blessed Virgin Mary dated December 3, 2018; Sisters of St. Joseph of Orange dated December 18, 2018; Sisters of the Holy Cross dated December 10, 2018; State of New York Office of the State Comptroller dated November 13, 2018; Trinity Health dated November 9, 2018; Washington State Investment Board dated November 14, 2018.

[49] *See* Letter to Jeb Hensarling, Chairman and Maxine Waters, Ranking Member, House Financial Services Committee from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, dated April 24, 2017, *available at https://democrats-financialservices.house.gov/uploadedfiles/letter_-_cii_04.27.2017.pdf.*

[50] *See* BRT Report, *supra* note 43; *see also* letters in response to the Proxy Process Roundtable from Advent Capital Management, LLC dated July 29, 2019; Business Roundtable dated November 9, 2018; Nasdaq, Inc. dated November 14, 2018; The Vanguard Group, Inc. dated September 20, 2019.

[51] *See* Roundtable Transcript, *supra* note 13, at 150, comments of Brandon Rees, Deputy Director of Corporations and Capital Markets, American Federation of Labor and Congress of Industrial Organizations.

[52] *See* Frank H. Easterbrook & Daniel R. Fischel, The Economic Structure of Corporate Law 85 (1991) (Under Rule 14a–8, ''the majority must subsidize the activities of the minority who are allowed to make proposals without incurring the costs.'').

[53] *See* 1982 Proposing Release, *supra* note 2; 1983 Adopting Release, *supra* note 6.

[54] *See, e.g.,* Donna Fuscaldo, *Say Gives Retail Investors A Voice And Tesla Listens,* Forbes (Feb. 19, 2019), *https://www.forbes.com/sites/donnafuscaldo/2019/02/19/say-gives-retail-investors-a-voice-and-tesla-listens/;* Vanessa Fuhrmans, *Some U.S. Companies Bow to Social-Media Pressure, Sever NRA Ties, Wall Street Journal* (Feb. 24, 2018), *https://www.wsj.com/articles/some-u-s-companies-bow-to-social-media-pressure-sever-nra-ties-1519431715.*

We are concerned that the $2,000/one-year threshold established in 1998 does not strike the appropriate balance today. We believe that holding $2,000 worth of stock for a single year does not demonstrate enough of a meaningful economic stake or investment interest in a company to warrant the inclusion of a shareholder's proposal in the company's proxy statement. As the table below demonstrates, the $2,000 threshold, adjusted for inflation, would be equal to $3,152 in 2019 dollars.[55] Moreover, using the cumulative growth of the Russell 3000 Index as a proxy for the average increase in companies' values, a $2,000 investment in a company in 1998 would be worth approximately $8,379 today.[56] We believe that the increase in price of shares and changes in inflation have contributed, in part, to the need to revisit the one-year holding period associated with the $2,000 threshold.

OWNERSHIP THRESHOLD COMPARISON

Threshold established in 1998	1998 threshold adjusted for inflation	Change in Russell 3000 Index
$2,000	$3,152	$8,379

We recognize that the amount of stock owned is not the only way to demonstrate an interest in a company, particularly for small investors. In many cases, the length of time owning the company's securities may be a more meaningful indicator that a shareholder has a sufficient interest that warrants use of the company's proxy statement. A shareholder's demonstrated long-term investment interest in a company may make it more likely that the shareholder's proposal will reflect a greater interest in the company and its shareholders, rather than an intention to use the company and the proxy process to promote a personal interest or publicize a general cause. A shareholder's demonstrated long-term investment interest may also make it more likely that a shareholder will continue to hold the shares after the shareholder's proposal is voted upon, and thus more likely that any costs of implementing the shareholder's proposal will be borne in part by the shareholder responsible for the proposal. We believe having a longer holding period is particularly important if the dollar value of the ownership interest is minimal because a person seeking to misuse the shareholder-proposal process could more easily purchase the smallest possible stake in a company to take advantage of the process.

4. Proposed Amendments

We are proposing to establish enhanced ownership requirements under Rule 14a–8(b) that take into account both the amount of securities owned and the length of time held, in determining a shareholder's eligibility to submit a shareholder proposal. Under the proposed ownership requirements, the shareholder-proposal process would remain available to a wide range of shareholders, including those with smaller investments, but would require those with smaller investments to hold their shares for a longer period of time. We believe these new thresholds would more appropriately balance the interests of shareholders who seek to use the company's proxy statement to advance their own proposals, on the one hand, with the interests of companies and other shareholders who bear the burdens associated with the inclusion of such proposals, on the other hand. We also believe the new thresholds would be a better indicator of a shareholder's investment interest in the company.

Under the proposed rule, a shareholder would be eligible to submit a Rule 14a–8 proposal for inclusion in a company's proxy materials if the shareholder satisfies one of three ownership requirements, each of which is designed to show that the shareholder-proponent has a demonstrated economic stake or investment interest in the company to which the proposal is submitted. Specifically, a shareholder would be eligible to submit a Rule 14a–8 proposal if the shareholder has continuously held at least:

- $2,000 of the company's securities entitled to vote on the proposal for at least three years;
- $15,000 of the company's securities entitled to vote on the proposal for at least two years; or
- $25,000 of the company's securities entitled to vote on the proposal for at least one year.[57]

The proposed rule would retain the key elements of a minimum amount of securities owned and minimum time period held, including retaining the current $2,000 threshold for shares held continuously for at least three years. The tiered approach under the proposed revision would provide multiple options for demonstrating an ownership stake through a combination of amount of securities owned and length of time held. We believe this approach takes into account the varying situations of shareholders and would be preferable to a one-size-fits-all approach. Under the proposed rule, shareholders owning a smaller amount of securities could utilize the rule, provided that ownership was continuous over a longer period of time. The tiered approach would enable other shareholders to demonstrate an economic stake or investment interest through larger ownership interests and shorter holding periods.

Under the proposed rule, the current $2,000 threshold would remain the same to preserve the ability of long-term shareholders owning a relatively small amount of shares to continue to utilize Rule 14a–8, but these investors would be required to hold the securities for at least three years to be eligible to submit a proposal. In light of the small investment amount required under this ownership tier, we believe that a longer holding period is warranted to demonstrate a shareholder's sufficient investment interest in the company and, in turn, to justify requiring the company to include such a shareholder's proposal in its proxy statement.

We are proposing two additional eligibility options for shareholders, reflecting differences in amount of securities held and length of time held. We believe that the proposed thresholds

[55] $3,152 = $2,000 × 1.576 (cumulative rate of inflation between May 1998 and August 2019 using the CPI inflation calculator, *available at https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=11%2C600.00&year1=201011&year2=201906*).

[56] $8,379 = $2,000 × 4.190 (cumulative rate of growth of the Russell 3000 index between May 1998 and August 2019 assuming dividends are reinvested). Data is retrieved from Compustat Daily Updates—Index Prices.

[57] Due to market fluctuations, the value of a shareholder's investment in a company may vary throughout the applicable holding period before the shareholder submits the proposal. In order to determine whether the shareholder satisfies the relevant ownership threshold, the shareholder should look at whether, on any date within the 60 calendar days before the date the shareholder submits the proposal, the shareholder's investment is valued at the relevant threshold or greater, based on the average of the bid and ask prices. *See* 1983 Adopting Release, *supra* note 6.

of $15,000 for at least two years and $25,000 for at least one year are each indicative of a shareholder having an economic stake or investment interest in the company that would justify requiring the company to include such a shareholder's proposal in its proxy statement.

We also propose to eliminate the current 1 percent ownership threshold, which historically has not been utilized. The vast majority of investors that submit shareholder proposals do not meet a 1 percent ownership threshold.[58] In addition, we understand that the types of investors that hold 1 percent or more of a company's shares generally do not use Rule 14a–8 as a tool for communicating with boards and management.[59]

The following table compares the proposed dollar thresholds as a percentage of market value as of December 2018 for the S&P 500 Index constituents and May 2019 for the Russell 3000 Index constituents:[60]

Registrant	$2,000 Threshold as a percentage of market value	$15,000 Threshold as a percentage of market value	$25,000 Threshold as a percentage of market value
Largest Registrant in the S&P 500 Index	0.0000003	0.0000019	0.0000032
500th Registrant in the S&P 500 Index	0.0001	0.0005	0.0009
3,000th Registrant in the Russell Index	0.0013	0.0098	0.0164

The proposed rule would not allow shareholders to aggregate their securities with other shareholders to meet the applicable minimum ownership thresholds to submit a Rule 14a–8 proposal. Although the Commission allowed shareholders to aggregate their holdings when it first adopted ownership thresholds in 1983, it did not provide reasons for doing so. We believe that allowing shareholders to aggregate their securities to meet the new proposed thresholds would undermine the goal of ensuring that every shareholder who wishes to use a company's proxy statement to advance a proposal has a sufficient economic stake or investment interest in the company.

Shareholders, however, would continue to be permitted to co-file or co-sponsor shareholder proposals as a group if each shareholder-proponent in the group meets an eligibility requirement. Shareholder-proponents often co-file or co-sponsor a shareholder proposal for a variety of reasons, such as conveying to the company's management, board, and other shareholders that the proposal has support from other shareholders. A lead filer is sometimes designated as the primary point of contact for the proposal, and each co-filer authorizes the lead filer to negotiate with the company and/or withdraw the proposal on the co-filer's behalf. Currently the rules do not require shareholder-proponents to designate a lead filer or make explicit other arrangements, but we believe this practice could facilitate engagement and reduce administrative burdens on companies, co-filers, and the staff. We believe that, as a best practice, shareholder-proponents should clearly state in their initial submittal letter to the company that they are co-filing the proposal with other proponents and identify the lead filer, specifying whether such lead filer is authorized to negotiate with the company and withdraw the proposal on the co-filer's behalf. Although we are not proposing to require this practice in our rules, we request comment as to whether we should revise the rules to require that co-filers identify a lead filer.[61]

We believe the proposed tiered thresholds would appropriately balance shareholders' ability to submit proposals with the attendant burdens. We are mindful of concerns that any revisions to the ownership requirements may have a greater effect on shareholders with smaller investments. We believe that the amendments we are proposing today adequately preserve the ability of smaller shareholders to submit proposals. Importantly, the proposed thresholds allow small and large shareholders to continue to participate in the shareholder-proposal process. We are, however, seeking comment on whether we should use other thresholds and/or criteria for determining eligibility to submit shareholder proposals and, if so, what thresholds or criteria should be considered.

We request and encourage any interested person to submit comments regarding the proposed amendments, specific issues discussed in this release, and other matters that may have an effect on the proposals. We note that comments are of the greatest assistance if accompanied by supporting data and analysis of the issues addressed in those comments.

Request for Comment

1. We are proposing to amend Rule 14a–8(b) to establish new ownership requirements for establishing an investor's eligibility to submit a shareholder proposal to be included in a company's proxy statement. Should we amend Rule 14a–8(b) as proposed?

[58] *See* letter to Bill Huizenga, Chairman and Carolyn B. Maloney, Ranking Member, Subcommittee on Capital Markets, Securities, and Investment Committee on Financial Services from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, dated May 22, 2018 (explaining that ''[e]ven [the Council of Institutional Investors'] largest public pension fund members rarely hold 1% of a public company''), *available at https://www.cii.org/files/May%2022,%202018%20Letter%20to%20Capital%20Markets%20Subcommittee%20(final).pdf;* letter to The Honorable Maxine Waters, Ranking Member, Committee on Financial Services from Jack Ehnes, Chief Executive Officer, CalSTRS, (June 5, 2017), at 1 (''While one percent may sound like a small amount, even a large investor like the $200 billion CalSTRS fund does not own one percent of publicly traded companies.''), *available at https://www.calstrs.com/sites/main/files/fileattachments/06-05-2017_maxine_financial_choice_act.pdf;* Statement of New York City Comptroller Scott M. Stringer on the April 19th Discussion Draft of the Financial CHOICE Act of 2017 (Apr. 25, 2017), at 1 (''Despite being among the largest pension investors in the world, we rarely hold more than 0.5% of any individual company, and most often hold less.''), *available at https://comptroller.nyc.gov/newsroom/testimonies/statement-of-new-york-city-comptrollerscott-m-stringer-on-the-april-19th-discussion-draft-of-the-financial-choice-act-of-2017-act/.*

[59] *See, e.g.,* Roundtable Transcript, *supra* note 13, at 150, comments of Brandon Rees, Deputy Director of Corporations and Capital Markets, American Federation of Labor and Congress of Industrial Organizations.

[60] Data for the S&P 500 constituents is retrieved from CRSP and data for the Russell 3000 constituents is retrieved from *Market Capitalization Ranges,* FTSE Russell Market, *https://www.ftserussell.com/research-insights/russell-reconstitution/market-capitalization-ranges* (last visited Oct. 31, 2019).

[61] We note that ambiguities in the nature of coordination on a proposal's submission could prompt companies to seek exclusion under Rule 14a–8(i)(11). Specifically, if two or more shareholder-proponents submit substantially duplicative proposals but fail to clearly indicate that they intend to co-file or co-sponsor the proposal, the later-received proposal may be susceptible to exclusion under Rule 14a–8(i)(11).

2. The proposed amendments seek to strike a balance between maintaining an avenue of communication for shareholders, including long-term shareholders, while also recognizing the costs incurred by companies and their shareholders in addressing shareholder proposals. Are there other considerations we should take into account?

3. Should we adopt a tiered approach, providing multiple eligibility options, as proposed? Are there other approaches that would be preferable instead?

4. How is a sufficient economic stake or investment interest best demonstrated? Is it by a combination of amount invested and length of time held, as proposed, or should another approach to eligibility be used?

5. Are the proposed dollar amounts and holding periods that we propose for each of the three tiers appropriate? Are there other dollar amounts and/or holding periods that would better balance shareholders' ability to submit proposals and the related costs? Should any dollar amounts be indexed for inflation or stock-market performance?

6. We are proposing to maintain the $2,000 ownership level, but increase the corresponding holding period to three years. Should we also increase the $2,000 threshold? If so, what would be an appropriate increase? For example, should we adjust for inflation (*e.g.,* $3,000) or otherwise establish a higher amount?

7. Are there potential drawbacks with the tiered approach? If so, what are they?

8. Instead of adopting a tiered approach, should we simply increase the $2,000/one-year requirement? If so, what would be an appropriate threshold?

9. Should the current 1 percent test be eliminated, as proposed? Should the 1 percent threshold instead be replaced with a different percentage threshold? Are there ways in which retaining a percentage-based test would be useful in conjunction with the proposed tiered thresholds?

10. Should we instead use only a percentage-based test? If so, at what percentage level? Are there practical difficulties associated with a percentage-based test such as calculation difficulties that we should take into consideration?

11. Should we prohibit the aggregation of holdings to meet the thresholds, as proposed? Would allowing aggregation of holdings be consistent with a shareholder having a sufficient economic stake or investment interest in the company to justify the costs associated with shareholder proposals?

12. If we were to allow shareholders to aggregate their holdings to meet the thresholds, should there be a limit on the number of shareholders that could aggregate their shares for purposes of satisfying the proposed ownership requirements? If so, what should the limit be? For example, should the number of shareholders that are permitted to aggregate be limited to five so as to reduce the administrative burden on companies associated with processing co-filed submissions?

13. Should we require shareholder-proponents to designate a lead filer when co-filing or co-sponsoring a proposal? Would doing so facilitate engagement and reduce administrative burdens on companies and co-filers? If we required shareholder-proponents to designate a lead filer, should we require that the lead filer be authorized to negotiate the withdrawal of the proposal on behalf of the other co-filers? Would such a requirement encourage shareholders to file their own proposals rather than co-file? Would the number of shareholder proposal submissions increase as a result?

14. What other avenues can or do shareholders use to communicate with companies besides the Rule 14a–8 process? Has the availability and effectiveness of these other channels changed over time?

15. Unlike other issuers, open-end investment companies generally do not hold shareholder meetings each year. As a result, several years may pass between the submission of a shareholder proposal and the next shareholder meeting. In these cases, the submission may no longer reflect the interest of the proponent or may be in need of updating, or the shareholder may no longer own shares or may otherwise be unable to present the proposal at the meeting. Should any special provisions be considered, after some passage of time (*e.g.,* two years, three years, five years, etc.), to require shareholders to reaffirm submission of shareholder proposals for open-end investment companies or, absent reaffirmation, for the proposals to expire?

16. Does the Rule 14a–8 process work well? Should the Commission staff continue to review proposals companies wish to exclude? Should the Commission instead review these proposals? Is there a different structure that might serve the interests of companies and shareholders better? Are states better suited to establish a framework governing the submission and consideration of shareholder proposals?

B. Proposals Submitted on Behalf of Shareholders

1. Background

Companies receive proposals under Rule 14a–8 from individuals and entities that may not qualify to submit proposals at a particular company in their own name, but have arrangements to serve as a representative to submit a proposal on behalf of individuals or entities that have held a sufficient number of shares for the requisite period. We also understand that shareholders may wish to use a representative for a number of reasons, including to obtain assistance from someone who has more experience with the shareholder-proposal process or as a matter of administrative convenience. Often, the shareholder has an established relationship with the representative (*e.g.,* the shareholder has previously used the representative to submit proposals on his or her behalf, or the representative serves as the shareholder's investment adviser). In practice, the representative typically submits the proposal to the company on the shareholder's behalf along with necessary documentation, including evidence of ownership (typically in the form of a broker letter) and the shareholder's written authorization for the representative to submit the proposal and act on the shareholder's behalf. After the initial submission, the representative acts on the shareholder's behalf in connection with the matter, and communications between the shareholder and company related to the shareholder proposal are generally handled by the representative.

Rule 14a–8 does not address a shareholder's ability to submit a proposal for inclusion in a company's proxy materials through a representative; absent Commission regulation, this practice has been governed by state agency law.[62] Nevertheless, proposals are submitted by representatives who may or may not themselves have an economic stake in the relevant company. Some commenters have raised concerns about the use of a representative in the shareholder-proposal process.[63] For

[62] Although Rule 14a–8 does not address a shareholder's ability to submit a proposal through a representative, it contemplates a representative presenting a proposal on the shareholder's behalf at a shareholders' meeting. Specifically, Rule 14a–8(h) states that the shareholder, or a ''representative who is qualified under state law to present the proposal on [the shareholder's] behalf, must attend the meeting and present the proposal.'' 17 CFR 240.14a–8(h).

[63] *See, e.g.,* BRT Report, *supra* note 43; Statement of Darla C. Stuckey, President and CEO, Society for

Continued

example, some observers have suggested that it may be difficult in some cases to ascertain whether the shareholder in fact supports the proposal that has been submitted on their behalf.[64] When a representative speaks and acts for a shareholder, there may be a question as to whether the shareholder has a genuine and meaningful interest in the proposal, or whether the proposal is instead primarily of interest to the representative, with only an acquiescent interest by the shareholder. This uncertainty may also raise questions about whether the eligibility requirements of Rule 14a–8(b) have been satisfied.[65] We also note that it can be burdensome for companies to verify the purported agency relationship where the documentation provided by the person or entity submitting the proposal does not clearly establish that relationship.

2. Proposed Amendments

To help address these challenges and concerns, we are proposing to amend the eligibility requirements of Rule 14a–8 to require shareholders that use a representative to submit a proposal for inclusion in a company's proxy statement to provide documentation attesting that the shareholder supports the proposal and authorizes the representative to submit the proposal on the shareholder's behalf. Specifically, the proposed rule would require documentation that:

- Identifies the company to which the proposal is directed;
- Identifies the annual or special meeting for which the proposal is submitted;
- Identifies the shareholder-proponent and the designated representative;
- Includes the shareholder's statement authorizing the designated representative to submit the proposal and/or otherwise act on the shareholder's behalf;
- Identifies the specific proposal to be submitted;
- Includes the shareholder's statement supporting the proposal; and
- Is signed and dated by the shareholder.

We believe an affirmative statement that the shareholder authorizes the designated representative to submit the proposal and/or otherwise act on the shareholder's behalf would help to make clear that the representative has been so authorized. In addition, we believe that a shareholder's affirmative statement that it supports the proposal would help to ensure that the interest being advanced by the proposal is the shareholder's own.

We believe that these proposed amendments would help safeguard the integrity of the shareholder-proposal process and the eligibility restrictions by making clear that representatives are authorized to so act, and by providing a meaningful degree of assurance as to the shareholder-proponent's identity, role, and interest in a proposal that is submitted for inclusion in a company's proxy statement. We also believe that the burden on shareholders of providing this information would be minimal, and we note that much of it is often already provided by shareholders. We also believe that these requirements would reduce some of the administrative burdens on companies associated with confirming the principal-agent relationship.

Request for Comment

17. We are proposing to amend Rule 14a–8's eligibility requirements to require certain additional information when a shareholder uses a representative to act on its behalf in the shareholder-proposal process. Should we amend the rule as proposed?

18. Are the informational requirements we are proposing appropriate? Should we require any additional information or action? If so, what additional information or action should we require? For example, should there be a notarization requirement? How would these measures affect the burden on shareholders?

19. Is any of the proposed information unnecessary to demonstrate the existence of a principal-agent relationship and/or the shareholder-proponent's role in the shareholder-proposal process? If so, what information is unnecessary?

20. Are there legal implications outside of the federal securities laws that we should be aware of or consider in allowing a principal-agent relationship in the context of the shareholder-proposal rule?

21. As part of the shareholder-proposal submission process, representatives generally deliver to companies the shareholder's evidence of ownership for purposes of satisfying the requirements of Rule 14a–8(b). Where the shareholder's shares are held in street name, this evidence comes in the form of a broker letter from the shareholder's broker. Since a broker letter from the shareholder's broker generally cannot be obtained without the shareholder's authorization, does the fact that the representative is able to provide this documentation sufficiently demonstrate the principal-agent relationship and/or the shareholder's role in the shareholder-proposal process? Is the answer different if the representative is the shareholder's investment adviser that owes a fiduciary duty to the shareholder?

C. The Role of the Shareholder-Proposal Process in Shareholder Engagement

1. Background

While Rule 14a–8 provides a means for shareholder-proponents to advance proposals and solicit proxies from other shareholders, the rule is only one of many mechanisms for shareholders to engage with companies and to advocate for the measures they propose. Other forms of engagement, including dialogue between a shareholder and management, may sometimes accomplish a shareholder's goals without the burdens associated with including a proposal in a company's proxy statement. Company-shareholder engagement can thus be an important aspect of the shareholder-proposal process, which we encourage both before and after the submission of a shareholder proposal. Proactive company engagement with shareholders has increased in recent years,[66] and shareholders frequently withdraw their proposals as a result of company-shareholder engagement.[67] We believe

Corporate Governance, Before the H. Comm. on Financial Services Subcomm. on Capital Markets and Government Sponsored Enterprises, Sept. 21, 2016; *see also* letter in response to the Proxy Process Roundtable from Exxon Mobil Corporation dated July 26, 2019.

[64] *See, e.g.,* Statement of Darla C. Stuckey, President and CEO, Society for Corporate Governance, Before the H. Comm. on Financial Services Subcomm. on Capital Markets and Government Sponsored Enterprises, Sept. 21, 2016.

[65] In 2017, the staff of the Division of Corporation Finance (the ''Division'') issued Staff Legal Bulletin No. 14I (''SLB 14I'') to address some of the challenges and concerns stemming from a shareholder's use of an agent in the shareholder-proposal process. In SLB 14I, the Division explained that, in evaluating whether the eligibility requirements of Rule 14a–8(b) have been satisfied, it would look to whether a shareholder who uses an agent in the shareholder-proposal process provides documentation describing the shareholder's delegation of authority to the agent. SLB 14I also explained that, where this information is not provided, there may be a basis to exclude the proposal under Rule 14a–8(b). SLB 14I represents the views of the staff of the Division. It is not a rule, regulation, or statement of the Commission. Furthermore, the Commission has neither approved nor disapproved its content. SLB 14I, like all staff guidance, has no legal force or effect, it does not alter or amend applicable law, and it creates no new or additional obligations for any person.

[66] *See* letters in response to the Proxy Process Roundtable from Business Roundtable dated June 3, 2019; Chevron Corporation dated August 20, 2019; Society for Corporate Governance dated November 9, 2018.

[67] Company-shareholder engagement with respect to shareholder proposals has led to an increase in

that encouraging this trend would be beneficial both to companies and to shareholders.

We understand that shareholder proposals are at times used as the sole method of engaging with companies despite a company's willingness to discuss, and possibly resolve, the matter with the shareholder.[68] In those cases, Rule 14a–8 may cause a shareholder to burden a company and other shareholders with a proxy vote that may have been avoided had meaningful engagement taken place. While we recognize that engagement may not always obviate the need for a proposal to be put to a vote, we believe that shareholders should be required to state when they are available to engage with a company when they submit a proposal for inclusion in the company's proxy statement. We believe that such a statement of availability would encourage greater dialogue between shareholders and companies in the shareholder-proposal process, and may lead to more efficient and less costly resolution of these matters.

2. Proposed Amendment

We are proposing to amend Rule 14a–8(b) to add a shareholder engagement component to the current eligibility criteria. Specifically, the proposed amendment would require a statement from each shareholder-proponent that he or she is able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal.[69] The shareholder would be required to include contact information as well as business days and specific times that he or she is available to discuss the proposal with the company.[70]

We believe that this proposed eligibility requirement would encourage shareholders to engage with companies, and could facilitate useful dialogue between the parties by enabling the company to reach out directly to a shareholder-proponent to understand his or her concerns, potentially leading to a more mutually satisfactory and less burdensome resolution of the matter.

Request for Comment

22. We are proposing to amend Rule 14a–8(b) to add a shareholder engagement component to the current eligibility criteria that would require a statement from the shareholder-proponent that he or she is able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. Should we adopt the amendment as proposed? Could the shareholder engagement component be unduly burdensome or subject to abuse rather than facilitating engagement between the shareholder-proponent and the registrant? If so, how could we address such undue burden or abuse?

23. We are also proposing to require that the shareholder-proponent include contact information as well as business days and specific times that he or she is available to discuss the proposal with the company. Should we adopt this amendment as proposed? Should we specify any additional requirements for the contact information or availability? For example, should we require a telephone number or email address to be included? Should we require a minimum number of days or hours that the shareholder-proponent be available?

24. Would companies be more likely to engage with shareholders if the proposed amendment was adopted? Are there other ways to encourage such engagement that we should consider? Are there potential negative consequences of encouraging such engagement between individual shareholders and a company, or are there other potential negative consequences of this proposal?

25. As proposed, a shareholder would have to provide a statement that he or she is able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. Is this timeframe appropriate? If not, what would be an appropriate timeframe?

26. If the shareholder uses a representative, should we also require that the representative provide a similar statement as to his or her ability to meet to discuss the proposal with the company?

27. Should companies be required to represent that they are able to meet with shareholder-proponents?

28. What are ways that companies engage with shareholders outside of the shareholder-proposal process?

D. One-Proposal Limit

1. Background

Rule 14a–8(c) provides that ''each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.'' As the Commission explained when it adopted this restriction in 1976, the submission of multiple proposals by a single shareholder-proponent ''constitute[s] an unreasonable exercise of the right to submit proposals at the expense of other shareholders'' and also may ''tend to obscure other material matters in the proxy statement of issuers, thereby reducing the effectiveness of such documents.'' [71]

At the time the one-proposal limitation was adopted, the Commission explained that it was ''aware of the possibility that some proponents may attempt to evade the new limitations through various maneuvers, such as having other persons whose securities they control submit . . . proposals each in their own names.'' [72] To combat this type of abuse, the Commission clarified that the limitation ''will apply collectively to all persons having an interest in the same securities (*e.g.,* the record owner and the beneficial owner, and joint tenants).'' [73]

We continue to believe that this one-proposal limit is appropriate. In our view, the Commission's stated reasoning for the one-proposal limit applies equally to representatives who submit proposals on behalf of shareholders they represent. We believe permitting representatives to submit multiple proposals for the same shareholders' meeting would undermine the purpose of the one-proposal limit.

the number of withdrawn proposals in recent years. *See, e.g.,* letters in response to the Proxy Process Roundtable from Everence Financial dated December 6, 2018 (''an increasing number of resolutions end up being withdrawn by the proponent because of conversations between [the proponent] and the company''); Praxis Mutual Funds dated December 6, 2018 (same); Principles for Responsible Investment dated November 14, 2018 (''a growing number of shareholder proposals are withdrawn due to corporate management developing workable solutions with investors'').

[68] We recognize that some shareholder-proponents use a shareholder proposal as a way to open a dialogue with management and not with the objective of having the matter go to a vote. *See* Roundtable Transcript, *supra* note 13, comments of Michael Garland, Assistant Comptroller, Corporate Governance and Responsible Investment, Office of the Comptroller, New York City.

[69] The proposal's date of submission is the date the proposal is postmarked or transmitted electronically. In the event the proposal is hand delivered, the submission date would be the date of hand delivery.

[70] The contact information and availability would have to be the shareholder's, and not that of the shareholder's representative (if the shareholder uses a representative). A shareholder's representative could, however, participate in any discussions between the company and the shareholder.

[71] *See* 1976 Adopting Release, *supra* note 30.

[72] *Id.*

[73] *Id. This limitation would continue to apply under the proposed amendments.*

2. Proposed Amendment

We propose an amendment to Rule 14a–8(c) to apply the one-proposal rule to ''each person'' rather than ''each shareholder'' who submits a proposal. The amended rule would state, ''Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.'' Under the proposed rule, a shareholder-proponent may not submit one proposal in its own name and simultaneously serve as a representative to submit a different proposal on another shareholder's behalf for consideration at the same meeting. Similarly, a representative would not be permitted to submit more than one proposal to be considered at the same meeting, even if the representative would be submitting each proposal on behalf of different shareholders. In our view, a shareholder submitting one proposal personally and additional proposals as a representative for consideration at the same meeting, or submitting multiple proposals as a representative at the same meeting, would constitute an unreasonable exercise of the right to submit proposals at the expense of other shareholders and also may tend to obscure other material matters in the proxy statement. We believe this amendment to the rule text would more consistently apply the one-proposal limit to shareholders and representatives of shareholders.

The amendment is not intended to prevent shareholders from seeking assistance and advice from lawyers, investment advisers, or others to help them draft shareholder proposals and navigate the shareholder-proposal process. Providing such assistance to more than one shareholder would still be permissible. However, to the extent that the provider of such services submits a proposal, either as a proponent or as a representative, it would be subject to the one-proposal limit and would not be permitted to submit more than one proposal in total. We seek comment, however, on whether the proposed amendment would have unintended consequences on the practice of shareholders using representatives to submit shareholder proposals.

We also are seeking comments on whether we should eliminate the practice of allowing natural-person shareholders to use a representative to submit a proposal. We request comment on whether the concerns raised by a shareholder's use of a representative would be better addressed with an amendment to the rule text, as proposed, or by prohibiting such use of a representative for the purpose of Rule 14a–8.

Request for Comment

29. We are proposing to amend Rule 14a–8(c) to explicitly state, ''Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.'' Should we amend the rule as proposed?

30. Would the proposed amendment have unintended consequences on shareholders' use of representatives or other types of advisers, such as lawyers or investment advisers, and, if so, what are those consequences?

31. Alternatively, should we amend Rule 14a–8 to explicitly state that a proposal must be submitted by a natural-person shareholder who meets the eligibility requirements and not by a representative? If so, should we clarify that although a shareholder may hire someone to draft the proposal and advise on the process, the shareholder must be the one to submit the proposal?

32. Alternatively, should we require the shareholder-proponent to disclose to the company how many proposals it has submitted in the past to that company? For example, should we require disclosure of the number of proposals the shareholder has submitted directly, through a representative, or as a representative to the company in the last five years? Should companies be required to disclose this information in the proxy statement? Would this information be material to other shareholders when considering how to vote on the proposal?

33. If adopted, would the proposed informational requirements discussed in Section II.B alleviate the concerns addressed in this section such that the proposed amendments to Rule 14a–8(c) would be unnecessary?

34. In lieu of, or in addition to, limiting the number of proposals a shareholder would be able to submit directly or as a representative for other shareholders, should we adopt a total limit on the number of proposals allowed to be submitted per company per meeting? If so, what numerical limit would be appropriate, and how should such a limit be imposed?

35. As an alternative or in addition to limiting the number of proposals a shareholder would be able to submit directly or as a representative for other shareholders, should we adopt a limit on the aggregate number of shareholder proposals a person could submit in a particular calendar year to all companies? If so, what would be an appropriate limit, and how would such a limit be imposed?

36. Should we require companies to disclose how many proposals were withdrawn and therefore not included in the proxy statement, and how many were excluded pursuant to a no-action request?

E. Rule 14a–8(i)(12)—Resubmissions

1. Relevant History and Background of Rule 14a–8(i)(12)

Since 1948, the Commission has not required a company to include a proposal in its proxy statement ''if substantially the same proposal was submitted to the security holders for action at the last annual meeting of security holders or at any special meeting held subsequent thereto and received less than three percent of the total number of votes cast in regard to the proposal.'' [74] The Commission explained that the purpose of the provision was ''to relieve the management of the necessity of including proposals which have been previously submitted to security holders without evoking any substantial security holder interest therein.'' [75] In 1954, the Commission observed that the ability to resubmit proposals that received 3 percent or more of the vote ''resulted in the repetition year after year of proposals which have evoked very modest stockholder interest,'' and amended the provision to add two additional resubmission thresholds; 6 percent if the matter had been previously voted on twice and 10 percent if the matter had been previously voted on three or more times.[76] As a result from 1954 to until today, a shareholder proposal was excludable if substantially the same proposal, or substantially the same subject matter, had previously been submitted during the relevant lookback period and received less than 3, 6, or 10 percent of the vote the last time it was voted on if voted on once, twice, or three or more times, respectively.[77]

[74] *See* Adoption of Amendments to Proxy Rules, Release No. 34–4185 (Nov. 5, 1948) [13 FR 6678 (Nov. 13, 1948)].

[75] *See id.*

[76] *See* 1954 Adopting Release, *supra* note 11.

[77] *See id.*

In 1983, the Commission raised the 3 and 6 percent thresholds to 5 and 8 percent, respectively, but these new thresholds subsequently were vacated because a court found that the Commission had not provided adequate notice of its proposal to raise the thresholds. The Commission accordingly reinstated the 3 and 6 percent thresholds in 1985, and it elected not to propose new thresholds at that time.[78]

In 1997, the Commission proposed increasing the resubmission thresholds to 6, 15, and 30 percent and, in doing so, stated that ''a proposal that has not achieved these levels of support has been fairly tested and stands no significant chance of obtaining the level of voting support required for approval.'' [79] The Commission also explained that it ''propose[d] to increase the second and third thresholds by relatively larger amounts because the proposal will have had two or three years to generate support.'' [80] While the Commission adopted other amendments (including increasing the share ownership threshold), it chose not to adopt this proposed amendment to the resubmission thresholds because ''many commenters from the shareholder community [had] expressed serious concerns.'' [81] The resubmission thresholds have remained 3, 6, and 10 percent since 1954.

2. Public Views on Rule 14a–8(i)(12)

Over the last several years, public interest in revisiting the resubmission thresholds has grown. For example, in April 2014, the Commission received a rulemaking petition in support of revising the thresholds (the ''Rulemaking Petition'').[82] In response to the Rulemaking Petition, the Commission received twenty-three comment letters, expressing a range of views on possible changes to the thresholds.[83] There have also been other calls for reform in this area,[84] as well as congressional interest.[85]

Some groups have expressed support for raising the resubmission thresholds because they believe the current thresholds no longer serve their intended purpose.[86] These observers suggest that resubmitted proposals distract shareholders and their fiduciaries from potentially more important matters by requiring them to spend additional time and resources reconsidering issues that have already been rejected by a majority of shareholders.[87]

In contrast, other groups suggest that, while the process may take time, resubmitted proposals can increase interest in, and shareholder support for, issues that at least some shareholders consider important.[88] In response to the Rulemaking Petition, one commenter cited as an example of an issue that took time to gain broader shareholder support, climate-change proposals, which averaged voting support of approximately 5 percent in 1999 and approximately 38 percent by 2017.[89]

Some groups have suggested that a significant number of shareholder proposals are resubmissions of previously-submitted proposals. For example, one study indicates that 1,063 of 3,392 proposals that were included in the proxy statements of Fortune 250 companies between 2007 and 2016 were resubmitted proposals.[90] This report also states that 100 proposals were resubmitted three or more times between 2006 and 2013.[91]

A separate report states that one-third of proposals voted on between 2011 and 2018 were submitted two or more times at the same company.[92] This report also finds that approximately 95 percent of proposals are eligible for resubmission after the first submission and 90 percent are eligible after the second and third submission, and that ''nearly all proposals that clear those thresholds and are submitted again remain eligible in subsequent submissions.'' [93] In addition, the report indicates that the overwhelming majority of proposals that win majority support do so the first time they are submitted, and less than 9 percent of proposals that fail to win majority support the first time go on to pass in a subsequent attempt.[94] It further notes that ''[w]hen the SEC first adopted the [resubmission] thresholds, between one-half and three-quarters of proposals failed to win sufficient support for resubmission,'' and that ''the 3%, 6% and 10% resubmission thresholds preclude a much smaller proportion of shareholder proposals today than in the past.'' [95]

Members of other groups have indicated that ''[r]esubmissions for a

[78] *See* Proposals of Security Holders, Release No. 34–22625 (Nov. 14, 1985) [50 FR 48180 (Nov. 22, 1985)]. The U.S. District Court for the District of Columbia held that there was inadequate notice of the proposed rulemaking under the Administrative Procedure Act, explaining that the Commission had requested comment on ''the appropriate levels for the percentage tests,'' but ''did not propose new percentage thresholds,'' did not ''reveal the theories that prompted the SEC to propose the change,'' and did not indicate ''whether the agency proposed the percentages to be raised, lowered, or maintained.'' *See United Church Bd. for World Ministries* v. *SEC,* 617 F. Supp. 837, 839 (D.D.C. 1985).

[79] *See* 1997 Proposing Release, *supra* note 36.

[80] *See id.* These new thresholds were introduced as part of a broader rulemaking that included other proposed revisions to Rule 14a–8 that, if adopted, were expected to result in fewer excludable proposals under the rule, and one of the reasons the Commission gave for proposing these revised resubmission thresholds was that higher thresholds would ''counter-balance'' the effect the other revisions would have had on the excludability of proposals.

[81] *See* 1998 Adopting Release, *supra* note 8. Some commenters had expressed concern that the increases ''would operate to exclude too great a percentage of proposals—particularly those focusing on social policy issues which tend to receive lower percentages of the shareholder vote.'' *Id.*

[82] *See* Rulemaking Petition from the U.S. Chamber of Commerce, National Association of Corporate Directors, National Black Chamber of Commerce, American Petroleum Institute, American Insurance Association, The Latino Coalition, Financial Services Roundtable, Center on Executive Compensation, and Financial Services Forum, April 9, 2014, *available at https://www.sec.gov/rules/petitions/2014/petn4-675.pdf.*

[83] Comment letters received in response to the Rulemaking Petition are available at *https://www.sec.gov/comments/4-675/4-675.shtml.*

[84] *See, e.g.,* BRT Report, *supra* note 43; Center for Capital Markets Competitiveness, Shareholder Proposal Reform: The Need to Protect Investors and Promote the Long-Term Value of Public Companies (2017), *available at https://www.centerforcapitalmarkets.com/wp-content/uploads/2013/08/023270_CCMC-SEC-Shareholder-Proposal-Reform-Report_Online_Report.pdf* (''CCMC Report''); Nasdaq Report, *supra* note 43; Treasury Report, *supra* note 43. At the Commission's 38th Annual Government—Business Forum on Small Business Capital Formation held on August 14, 2019, one of the forum participant recommendations was to amend the resubmission thresholds.

[85] *See, e.g., Corporate Governance: Fostering a System That Promotes Capital Formation and Maximizes Shareholder Value: Hearing Before U.S. H.R. Subcomm. on Capital Markets and Government Sponsored Enterprises of the Committee on Financial Services,* 114th Cong. (2016); *Proxy Process and Rules: Examining Current Practices and Potential Changes: Hearing Before U.S. S. Comm. on Banking, Housing, and Urban Affairs,* 115th Cong. (2018); H.R. 5756, 115th Cong. (2018); Financial CHOICE Act of 2017, H.R. 10, 115th Cong. § 844 (2017).

[86] *See, e.g.,* CCMC Report, *supra* note 84; Rulemaking Petition, *supra* note 82.

[87] *See, e.g.,* Rulemaking Petition, *supra* note 82, at 8–9.

[88] *See* Ceres Business Case, *supra* note 25; letter in response to the Proxy Process Roundtable from Dominican Sisters of Springfield Illinois dated December 3, 2018; letter in response to the Rulemaking Petition from The Nathan Cummings Foundation dated April 30, 2018.

[89] *See* letter in response to the Rulemaking Petition from The Nathan Cummings Foundation dated April 30, 2018.

[90] *See* James R. Copland & Margaret M. O'Keefe, An Annual Report on Corporate Governance and Shareholder Activism, Manhattan Institute for Policy Research (2016), *available at https://media4.manhattan-institute.org/sites/default/files/pmr_2016.pdf.*

[91] *Id.*

[92] *See* Brandon Whitehill, Clearing the Bar, Shareholder Proposals and Resubmission Thresholds, Council of Institutional Investors (Nov. 2018), *available at https://docs.wixstatic.com/ugd/72d47f_092014c240614a1b9454629039d1c649.pdf* (''CII Report''). For a discussion of our findings with respect to this data, see *infra* note 197.

[93] *Id.*

[94] *Id.* at 8.

[95] *Id.*

third or fourth time are very rare,'' stating that since 2010 (and presumably through the report's publication date in 2017), a total of 35 environmental and social proposals that received less than 20 percent of the shareholder vote for two or more years were resubmitted.[96] According to this report, these 35 proposals were resubmitted to 26 companies.[97]

Some observers argue that the resubmission thresholds should be raised because companies incur significant expense as a result of receiving shareholder proposals, including resubmitted proposals, that are unlikely to win majority support.[98] In response to the Proxy Process Roundtable, some commenters expressed views that: Resubmitted shareholder proposals often take a disproportionate amount of time compared to annual management proposals; [99] resubmitted proposals exacerbate the costs of shareholder proposals; [100] the cost in terms of corporate resources spent to deal with resubmitted proposals is significant; [101] resubmitted proposals divert management time and resources; [102] and all shareholders bear the costs associated with resubmitted shareholder proposals.[103] Others contend that the costs are much lower.[104] It has also been suggested that the inability to resubmit shareholder proposals may drive shareholders to pursue alternative strategies that would be more costly and time-consuming for companies.[105] We are interested in obtaining, and request comment on, additional data about the costs incurred as a result of receiving shareholder proposals, including resubmitted proposals.

Various alternatives have been suggested for addressing the concerns with resubmitted proposals. A number of those who support raising the resubmission thresholds have suggested that raising them to 6, 15, and 30 percent would be appropriate.[106] One commenter suggested thresholds of 10, 25, and 50 percent, where failure to achieve the thresholds would render a proposal excludable for an amount of time equal to the number of years the proposal had previously been included in the company's proxy statement.[107]

3. Need for Proposed Amendments

We continue to believe, as the Commission stated when it first proposed a resubmission threshold for shareholder proposals in 1948, that resubmission thresholds are appropriate to ''relieve the management of the necessity of including proposals that have been previously submitted to security holders without evoking any substantial security holder interest therein.'' [108]

Having considered the feedback discussed above, and recognizing the range of views expressed, we are concerned that the current resubmission thresholds may allow proposals that have not received widespread support from a company's shareholders to be resubmitted—in some cases, year after year—with little or no indication that support for the proposal will meaningfully increase or that the proposal ultimately will obtain majority support. Companies and their shareholders bear the burdens associated with management's and shareholders' repeated consideration of these proposals and/or their recurrent inclusion in the proxy statement. While we recognize that some proposals may necessitate resubmission to obtain majority support, we do not believe shareholders whose proposals are unlikely ever to obtain or at least without a significant change in circumstances obtain such support—and thus to reflect the interests of a majority of shareholders—should be permitted to require companies and other shareholders to bear the costs associated with their proposals. If a proposal fails to generate meaningful support on its first submission, and is unable to generate significantly increased support upon resubmission, it is doubtful that the proposal will earn the support of a majority of shareholders in the near term or without a significant change in circumstances.[109] In light of these concerns, we are proposing to increase the resubmission thresholds to allow companies to exclude resubmitted proposals that have not received broad support and appear less likely to be on a sustainable path toward achieving majority shareholder support. In these circumstances, we believe a ''cooling-off'' period may be warranted to help ensure that the inclusion of such proposals does not result in unjustified burdens on companies and shareholders.

[96] *See* Jonas Kron, Trillium Asset Management & Brandon Rees, AFL–CIO Office of Investment and co-chair CII Shareholder Advocacy Committee, *Frequently Asked Questions about Shareholder Proposals,* Council of Institutional Investors (last visited Oct. 30, 2019), *available at https://www.cii.org/files/10_10_Shareholder_Proposal_FAQ(2).pdf.*

[97] *Id.*

[98] *See, e.g.,* Rulemaking Petition, *supra* note 82, at 16; Statements of James R. Copland, Senior Fellow and Director, Legal Policy, Manhattan Institute for Policy Research and Darla C. Stuckey, President and CEO, Society for Corporate Governance, Before the H. Comm. on Financial Services Subcomm. on Capital Markets and Government Sponsored Enterprises, Sept. 21, 2016; *see also* letters in response to the Proxy Process Roundtable from American Securities Associations dated June 7, 2019; Exxon Mobil Corporation dated July 26, 2019 (stating that the company's cost per shareholder proposal, including resubmitted proposals, is more than $100,000).

[99] *See* letter in response to the Proxy Process Roundtable from Investment Company Institute dated March 15, 2019.

[100] *See* letter in response to the Proxy Process Roundtable from Business Roundtable dated June 3, 2019.

[101] *See* letter in response to the Proxy Process Roundtable from U.S. Chamber of Commerce Center for Capital Markets Competitiveness dated December 20, 2018.

[102] *See* letter in response to the Proxy Process Roundtable from National Association of Manufacturers dated October 30, 2018.

[103] *See* letter in response to the Proxy Process Roundtable from Society for Corporate Governance dated November 9, 2018.

[104] *See* Adam M. Kanzer, *The Dangerous ''Promise of Market Reform'': No Shareholder Proposals,* Harvard Law School Forum on Corporate Governance and Financial Regulation (Jun. 15, 2017), *available at https://corpgov.law.harvard.edu/2017/06/15/the-dangerous-promise-of-market-reform-no-shareholder-proposals/* (''Kanzer 2017''); letter in response to the Rulemaking Petition from the Shareholder Rights Group dated October 5, 2017, at 11.

[105] *See, e.g.,* letters in response to the Rulemaking Petition from The McKnight Foundation dated June 11, 2018; Nathan Cummings Foundation dated April 30, 2018.

[106] *See, e.g.,* BRT Report, *supra* note 43; CCMC Report, *supra* note 84; letters in response to the Proxy Process Roundtable from American Securities Association dated June 7, 2019; Braemer Hotels & Resorts dated January 4, 2019; U.S. Chamber of Commerce Center for Capital Markets Competitiveness dated November 12, 2018; Center on Executive Compensation dated November 12, 2018; Group 1 Automotive, Inc. dated January 11, 2019; Nareit dated November 12, 2018; Nasdaq, Inc. et al. dated February 4, 2019; Society for Corporate Governance dated November 9, 2018; Tyler Technologies, Inc. dated September 20, 2019.

[107] *See* letter in response to the Proxy Process Roundtable from Exxon Mobil Corporation dated July 26, 2019.

[108] *See* 1948 Proposing Release, *supra* note 6.

[109] Based on our review of shareholder proposals that received a majority of the votes cast between 2011 and 2018, approximately 90% received such support on the first submission. Of the remaining 10%, 60% received 40% or more of the votes cast on the initial submission. *See* discussion *infra* Section IV.B.3.iv.

Under the current rule, proposals that are not supported by up to approximately 97 percent of votes cast on the first submission, 94 percent on the second submission, and 90 percent on the third or subsequent submissions remain eligible for resubmission. We recognize that initially lower levels of shareholder support do not always indicate how shareholders will vote on an issue in the future. Nevertheless, we are concerned that thresholds of 3, 6, and 10 percent may not demonstrate sufficient shareholder support to warrant resubmission, or adequately distinguish between proposals that ultimately are more likely to obtain majority support upon resubmission and those that are not. As one commenter has noted, ''the current thresholds leave no less than 90% of proposals eligible for resubmission.'' [110] These resubmitted proposals are permitted despite the fact that, according to the commenter, less than 9 percent of proposals that fail to win majority support the first time go on to pass in a subsequent attempt.[111] Thus, it appears that under the current thresholds the vast majority of shareholder proposals are eligible for resubmission regardless of their likelihood of gaining broader shareholder support or, ultimately, garnering a majority of the votes cast, at least in the near term.

In addition, the current resubmission thresholds may not have the same effect today on resubmissions as they did when they were initially adopted. According to one commenter, the percentage of shareholder proposals eligible for resubmission today is considerably higher than at the time the thresholds were first introduced, when ''between one-half and three-quarters of proposals failed to win sufficient support for resubmission.'' [112] It has been suggested that this difference may be due to a number of factors, including the role proxy advisory firms now play in the shareholder voting process,[113] and greater participation by institutional investors in that process.[114] Consequently, we are concerned that the current thresholds may not be functioning effectively to alleviate companies and their shareholders of the obligation to consider, and spend resources on, matters that have previously been voted on and rejected by shareholders without sufficient indication that a proposal will gain traction among the broader shareholder base in the near future.

4. Proposed Amendments

To address these concerns, we are proposing revisions to Rule 14a–8(i)(12) that would replace the current resubmission thresholds of 3, 6, and 10 percent with new thresholds of 5, 15, and 25 percent, respectively, and add an additional provision to the rule that would allow companies to exclude proposals that have been submitted three or more times in the preceding five years if they received more than 25 percent, but less than 50 percent, of the vote and support declined by more than 10% the last time substantially the same subject matter was voted on compared to the immediately preceding vote. We believe these proposed amendments would allow proposals to receive due consideration without imposing on companies and their shareholders the burden of having to repeatedly consider matters on which they have already indicated a lack of interest, or where interest has waned.

(i) Proposed Resubmission Thresholds

Under proposed Rule 14a–8(i)(12), a shareholder proposal may be excluded from a company's proxy materials if it deals with substantially the same subject matter as a proposal,[115] or proposals, previously included in a company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and that vote was:

- Less than 5 percent of the votes cast if previously voted on once;
- Less than 15 percent of the votes cast if previously voted on twice; or
- Less than 25 percent of the votes cast if previously voted on three times or more.[116]

We are proposing a modest increase to the initial resubmission threshold of 2 percent, and more significant increases to the second and third thresholds of 9 and 15 percent, respectively. As a result, there will be a 10 percent spread between the first and second threshold and the second and third threshold. We believe that more significant revisions to the second and third thresholds are appropriate due to the fact that a proposal will have already been considered by shareholders two or three times before becoming subject to these thresholds.

Currently, 90 percent or more of all proposals are eligible for resubmission at each threshold.[117] Under the current thresholds, many of these proposals fail to obtain meaningful, or majority, support upon resubmission. From 2011 to 2018, there were 864 unique proposals that were resubmitted.[118] Of these, only 54 (6.5%) ultimately garnered majority support (as noted in Table 9 in Section IV.C.2.iii below, only one of these would have been excludable under the proposed resubmission thresholds). The proposed increases in the resubmission thresholds to 5, 15, and 25 percent reflect our experience with shareholder proposals and are intended to reduce the number of proposals eligible for resubmission that have little or no chance of gaining meaningful, or majority, shareholder support while still providing

[110] *See* CII Report, *supra* note 92, at 16. Based on our analysis, approximately 94% of proposals remain eligible for resubmission after the initial submission, 90% after the second submission, and 94% after the third or subsequent submission under the current resubmission thresholds. In total, approximately 93% of proposals remain eligible for resubmission under the current resubmission thresholds. Of these eligible proposals that were submitted from 2011 to 2018, approximately 6.5% garnered majority support at some point during that period following initial submission. *See* discussion *infra* Section IV.B.3.iv.

[111] *See* CII Report, *supra* note 92, at 8. Based on our analysis of proposals submitted between 2011 and 2018, 6.5% of resubmitted proposals that failed to win majority support on the first submission went on to pass in a subsequent attempt.

[112] *See* CII Report, *supra* note 92, at 6 (citing Lewis D. Gilbert, Dividends and Democracy 108 (1956) (noting that ''[b]etween half and three quarters of the proposals being submitted would be banned'' by the Commission's proposed thresholds of 3%, 7%, and 10%)). We note that the Commission ultimately adopted thresholds of 3%, 6%, and 10%.

[113] *Cf.* Rulemaking Petition, *supra* note 82, at 6–7.

[114] *See* CII Report, *supra* note 92, at 6.

[115] The condition in Rule 14a–8(i)(12) that the shareholder proposals deal with ''substantially the same subject matter'' does not mean that the previous proposal(s) and the current proposal must be identical. In 1983, the Commission amended the language in the exclusion from ''substantially the same proposal'' to ''substantially the same subject matter.'' *See* 1983 Adopting Release, *supra* note 6. In doing so, the Commission explained that the purpose of amending the exclusion was to ''counter the abuse of the security holder proposal process by certain proponents who make minor changes in proposals each year so that they can keep raising the same issue despite the fact that other shareholders have indicated by their votes that they are not interested in that issue.'' *Id.* When considering whether proposals deal with substantially the same subject matter, the staff has focused on whether the proposals share the same ''substantive concerns'' rather than the ''specific language or actions proposed to deal with those concerns.'' *Id.* We are not proposing changes to the ''substantially the same subject matter'' standard, but seek comment on whether such a change would be appropriate or necessary in light of the proposed amendments.

[116] Only votes for and against a proposal would be included in the calculation of the shareholder vote. Abstentions and broker non-votes would not be included in the calculation.

[117] *See supra* note 110.

[118] The number of unique proposals that were resubmitted refers to the count of proposals that were resubmitted and voted on at least once during the sample period 2011 to 2018. The number of proposals (864) differs from the number referred to in the tables in Section IV.B.3.iv (1,442) because the latter is not limited to unique proposals.

shareholders with the opportunity to build support for their proposals.

In particular, our proposed increase for the initial resubmission threshold from 3 to 5 percent would exclude proposals that are very unlikely to earn majority support upon resubmission, but would still permit a very large percentage of proposals to be resubmitted.[119] We believe that a cooling-off period is warranted if a matter is unable to garner the support of at least 1 in 20 shareholders upon its initial submission. Based on our analysis of the proposals that ultimately garnered majority support from 2011 to 2018, 90 percent did so on the first submission, and more than half of the proposals that were resubmitted garnered more than 40 percent on the first submission.[120] Of the remaining proposals, nearly all garnered support of at least 5 percent on the first submission.[121] While we recognize that there have been a few instances in which proposals that have failed to receive at least 5 percent of the votes cast have gone on to garner significantly greater shareholder support, these instances appear to be infrequent and may be the result of factors other than or in addition to the resubmission.[122]

The proposed increase for the second and third resubmission thresholds to 15 and 25 percent are also intended to provide a better indicator of proposals that are more likely to ultimately obtain majority support than the current thresholds. We believe that proposals receiving these levels of support will have better demonstrated a sustained level of shareholder interest to warrant management and shareholder consideration upon resubmission, subject to the discussion in Section II.E.4.ii below. As indicated in Section IV.B.3.iv below, these thresholds are below the average and median support for initial submissions of 34 and 30 percent, respectively. Of the resubmitted proposals that ultimately obtain majority support, the overwhelming majority garner more than 15 percent on their second try and more than 25 percent on their third submission.[123] As with the initial resubmission threshold, these thresholds would exclude proposals that are unlikely to earn majority support, but would still permit a significant number of proposals to be resubmitted.[124] We believe that a cooling-off period also is warranted if, after three or more submissions, more than 75 percent of the votes cast have not supported the matter.

We recognize, as discussed in Section IV below, that raising the resubmission thresholds would be expected to result in the exclusion of more proposals than currently. Our analysis in Table 9 in Section IV.C.2.iii indicates that under the proposed 15%/25% thresholds, there would be 14%/27% more proposals that would be excludable than under the current rules. While these are increases in the overall number of excludable proposals, we believe these thresholds would better distinguish those excludable proposals that are on a path toward more meaningful shareholder support from those that are not. In other words, we believe that, under the proposed resubmission thresholds, any increase in the number of excludable proposals that would have been on a path toward more meaningful shareholder support would be small.

We also believe that the proposed resubmission thresholds would reduce the costs associated with management's and shareholders' repeated consideration of these proposals and their recurrent inclusion in the proxy statement while still maintaining shareholders' ability to submit proposals, and engage with companies, on matters of interest to shareholders. We believe that the proposed resubmission thresholds may lead to the submission of proposals that will evoke greater shareholder interest in, and foster more meaningful engagement between, management and shareholders, as the proposed thresholds would incentivize shareholders to submit proposals on matters that resonate with the broader shareholder base to avoid exclusion under Rule 14a–8(i)(12).

We believe that the proposed resubmission thresholds strike an appropriate balance between reducing the costs to companies of responding to proposals that do not garner significant shareholder support and may be unlikely to do so in the future, with preserving shareholders' ability to engage with a company and other shareholders through the shareholder-proposal process. In addition, as is currently the case, the resubmission thresholds would not act as a permanent bar and, thus, shareholders would be able to resubmit substantially similar proposals after a three-year cooling-off period. We recognize, however, that there may be alternative thresholds that could also achieve this balance, and we seek public comment on whether the proposed thresholds strike the correct balance.

We also considered whether to propose any changes to the vote-counting methodology. For example, we considered whether votes by insiders should be excluded from the calculation of votes cast for purposes of determining whether the resubmission thresholds have been satisfied. In addition, we considered whether to apply a different vote-counting methodology for companies with dual-class voting structures.[125] We elected not to propose alternative vote-counting methodologies, however, because we believe that including these votes in the voting calculation more accurately captures the sentiment of all shareholders, including insiders and controlling shareholders. Nevertheless, we seek comment on whether changes to the current vote-counting methodology are necessary. We also considered whether to adopt an exception to the rule that would allow an otherwise excludable proposal to be resubmitted if there are material developments that suggest a resubmitted proposal may garner significantly more votes than when previously voted on. We elected not to propose such an exception, however, because we believe it would be difficult in many cases to determine how the intervening developments would affect shareholders' voting decisions. We seek

[119] Of the proposals resubmitted between 2011 and 2018, we estimate that approximately 85% would have been eligible for resubmission under the proposed resubmission thresholds. *See infra* Table 9 in Section IV.C.2.iii.

[120] *See infra* Section IV.B.3.iv.

[121] *Id.*

[122] Based on our review of shareholder proposals that received a majority of the votes cast on a second or subsequent submission between 2011 and 2018, only 2% of the proposals that have failed to receive at least 5% of the votes cast have gone on to garner majority support. *See infra* Section IV.B.3.iv.

[123] Based on our review of shareholder proposals that received a majority of the votes cast on a second or subsequent submission between 2011 and 2018, 95% received support greater than 15% on the second submission, and 100% received support greater than 25% on the third or subsequent submission. In addition, of the 22 proposals that obtained majority support on their third or subsequent submissions, approximately 95% received support of over 15% on their second submission, and 100% received support of over 25% on their third or subsequent submission. *See infra* Section IV.B.3.iv.

[124] *See infra* Section IV.B.3.iv.

[125] *Cf.* letter in response to the Proxy Process Roundtable from CtW Investment Group dated January 16, 2019 (noting that increasing the resubmission thresholds will make it more difficult to satisfy the resubmission thresholds at companies with dual-class voting structures); letter in response to the Rulemaking Petition from the Shareholder Rights Group dated October 5, 2017 (''When one considers dual class share ownership, insider ownership and the non-involvement of passive investors, the percent of support for a proposal reflected by the Rule's counting methods may reflect a sharp underestimate of the support by those investors known to actively consider shareholder proposals.'').

comment on whether such an exception should be added to the rule.

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37. Should we maintain the current approach of three tiers of resubmission thresholds but increase the thresholds to 5, 15, and 25 percent, as proposed? Would alternative thresholds such as 5, 10, and 15 percent, or 10, 25, and 50 percent, be preferable? If so, what should the thresholds be? Should we instead adopt the thresholds that were proposed by the Commission in the 1997 Proposing Release (*i.e.,* 6, 15, and 30 percent)? Do the proposed resubmission thresholds better distinguish those proposals that are on a path to meaningful shareholder support from those that are not?

38. Alternatively, should we remove resubmission thresholds for the first two submissions and, instead, allow for exclusion if a matter fails to receive majority support by the third submission within a certain number of years? Under such an approach, what would be an appropriate lookback period and how long should the cooling-off period be (*e.g.,* three years, five years, or some other period of time)?

39. What are the estimated costs companies incur as a result of receiving resubmitted proposals? Are the costs different for resubmitted proposals than for initial submissions? In particular, which specific costs incurred (*e.g.,* printing costs, staff time, fees paid to external parties such as legal advisors or proxy solicitors, management time, board time, etc.) may differ between resubmitted proposals and initial submissions?

40. Is there a voting threshold that, if not achieved initially, a proposal is unlikely to surpass in subsequent years? Conversely, is there a voting threshold that, if achieved, a proposal is unlikely to fall below in subsequent years?

41. Should we shorten or lengthen the relevant five-year and three-year lookback periods? If so, what should the lookback periods be?

42. Should the vote-counting methodology under Rule 14a–8(i)(12) be revised? For example, should shares held by insiders be excluded from the voting calculation, or should broker non-votes and/or abstentions count as votes ''against''? Should there be a different vote-counting methodology for companies with dual-class voting structures? If so, what should that methodology be?

43. Would the proposed changes in resubmission thresholds meaningfully affect the ability of shareholders to pursue initiatives for which support may build gradually over time? Do legal or logistical impediments to shareholder communications affect the ability of shareholders to otherwise pursue such longer horizon initiatives? If so, how? Are there ways to mitigate any potential adverse effects of the proposed resubmission thresholds while limiting costs to companies and shareholders?

44. When considering whether proposals deal with substantially the same subject matter, the staff has focused on whether the proposals share the same ''substantive concerns'' rather than the ''specific language or actions proposed to deal with those concerns.'' Should we consider adopting this standard, or its application? Should we consider changing this standard, or its application? For example, should we adopt a ''substantially the same proposal'' standard?

(ii) Momentum Requirement for Proposals Addressing Substantially the Same Subject Matter as Those Previously Voted on Three or More Times in the Preceding Five Calendar Years

In addition to raising the resubmission thresholds to 5, 15, and 25 percent, we are proposing to amend Rule 14a–8(i)(12) to allow companies to exclude proposals dealing with substantially the same subject matter as proposals previously voted on by shareholders three or more times in the preceding five calendar years that would not otherwise be excludable under the 25 percent threshold if (i) the most recently voted on proposal received less than a majority of the votes cast *and* (ii) support declined by 10 percent or more compared to the immediately preceding shareholder vote on the matter (the ''Momentum Requirement''). For example, under such a requirement, a proposal would be excludable where proposals dealing with substantially the same subject matter had previously been voted on three times in the preceding five calendar years and received 26 percent of the votes cast on the third submission compared to 30 percent on the second submission. In this case, the percentage of votes cast on the third submission (26 percent) declined by more than 10 percent compared to the percentage of votes cast on the second submission (30 percent) and, thus, proposals dealing with substantially the same subject matter would be excludable during the relevant lookback period.

The purpose of this requirement would be to relieve management and shareholders from having to repeatedly consider, and bear the costs related to, matters for which shareholder interest has declined. We note that it would apply only to matters that have been previously voted on three or more times in the preceding five years, giving shareholder-proponents a number of years to advocate for, and the broader shareholder base ample opportunity to consider, the matters raised. We further believe that a 10 percent decline in the percentage of votes cast may demonstrate a sufficiently significant decline in shareholder interest to warrant a cooling-off period. Nevertheless, we seek comment on whether 10 percent is an appropriate figure, or whether some other method or figure would be more appropriate, to gauge shareholder interest.

The Momentum Requirement would not apply where the previously voted on proposal(s) received a majority of the votes cast at the time of the most recent shareholder vote, even if shareholder support had declined by 10 percent or more compared to the immediately preceding vote.[126] We believe proposals that receive a majority of the votes cast have demonstrated a sufficient level of shareholder interest to qualify for resubmission. In addition, it is our understanding that companies frequently act on proposals, including non-binding proposals, that receive a majority of the votes cast, which can reduce the likelihood of resubmitted proposals.

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45. Should we adopt the Momentum Requirement, as proposed? If so, should we adopt this requirement instead of, rather than in addition to, the proposed resubmission thresholds? Would this requirement be difficult to apply in practice?

46. As proposed, a proposal that receives a majority of the votes cast at the time of the most recent shareholder vote would not be subject to the Momentum Requirement. Is there a voting threshold below a majority of the votes cast that demonstrates a sufficient level of shareholder interest in the matter to warrant resubmission regardless of whether future proposals addressing substantially the same subject matter gain additional shareholder support? If so, what is an appropriate threshold?

47. As proposed, a proposal that receives a majority of the votes cast at

[126] If, after receiving a majority of the votes cast, a matter receives less than a majority of the votes cast upon a subsequent submission, the Momentum Requirement would apply. We believe that the same rationale underlying the Momentum Requirement applies where shareholder support declines below a majority of the votes cast, but we seek comment on this point.

the time of the most recent vote would not be excludable under the Momentum Requirement. Should this exception to the Momentum Requirement be limited to the most recent shareholder vote, or should it apply to a different lookback period such as three years or five years?

48. Should the Momentum Requirement apply to all resubmitted proposals, not just those that have been resubmitted three or more times? For example, assuming adoption of the proposed resubmission thresholds, should a proposal be excludable if proposals addressing substantially the same subject matter received 19 percent on the first submission and 16 percent on the second submission, even though 16 percent exceeds the relevant proposed threshold of 15 percent for a second submission?

49. Does a 10 percent decline in the percentage of votes cast demonstrate a sufficiently significant decline in shareholder interest to warrant a cooling-off period for any proposal receiving less than majority support? Would a different percentage—such as 20, 30, or 50 percent—or an alternative threshold, be more appropriate?

50. Should the cooling-off period for proposals that fail the Momentum Requirement be shorter than the cooling-off period for proposals that fail to satisfy the existing resubmission thresholds? If so, what would be an appropriate cooling-off period?

51. Are there other mechanisms we should consider that would demonstrate that a proposal has lost momentum? For example, should there be a separate basis for exclusion if the level of support has not increased by more than 10 percent in the last two votes in the previous five years? Or, should there be a separate basis for exclusion if the level of support does not reach 50 percent within 10 years of first being proposed? If so, what would be an appropriate cooling-off period?

III. General Request for Comment

We request and encourage any interested person to submit comments on any aspect of our proposals, other matters that might have an impact on the proposed amendments, and any suggestions for additional changes. With respect to any comments, we note that they are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments and by alternatives to our proposals where appropriate.

IV. Economic Analysis

A. Introduction

We are proposing to amend certain procedural requirements and the provision relating to resubmitted proposals under the shareholder-proposal rule. We are sensitive to the economic effects that may result from the proposed rule amendments, including the benefits, costs, and the effects on efficiency, competition, and capital formation. Section 3(f) of the Exchange Act, Section 2(b) of the Securities Act of 1933, and Section 2(c) of the Investment Company Act require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in (or, with respect to the Investment Company Act, consistent with) the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Additionally, Section 23(a)(2) of the Exchange Act requires us, when making rules or regulations under the Exchange Act, to consider, among other matters, the impact that any such rule or regulation would have on competition and states that the Commission shall not adopt any such rule or regulation which would impose a burden on competition that is not necessary or appropriate in furtherance of the Exchange Act.

We discuss the potential effects of the proposed rule amendments as well as possible alternatives to the proposed amendments below. Where possible, we have attempted to quantify the costs, benefits, and effects on efficiency, competition, and capital formation expected to result from the proposed rule amendments. In some cases, however, we are unable to quantify the economic effects because we lack the information necessary to provide a reasonable and reliable estimate. Where we are unable to quantify the economic effects of the proposed rule, we provide a qualitative assessment of the potential effects and encourage commenters to provide data and information that would help quantify the benefits, costs, and the potential impacts of the proposed rule amendments on efficiency, competition, and capital formation.

B. Economic Baseline

The baseline against which the costs, benefits, and the impact on efficiency, competition, and capital formation of the proposed rule amendments are measured consists of the current regulatory framework and the current practices for shareholder proposal submissions.

1. Current Regulatory Framework

State laws, corporate bylaws, and federal securities laws jointly govern the shareholder-proposal process. Under state law, a shareholder generally has the right to appear in person at an annual or special meeting and put forth a resolution to be voted on by the shareholders. Such resolutions can include, for example, proposals to adopt, amend, or repeal bylaws or to request the board to take certain actions. State law also governs shareholders' ability to submit a proposal through a representative.[127] Company bylaws can limit shareholders' ability to attend or present at shareholder meetings. Federal securities law governs communications in advance of shareholder meetings, including solicitation of proxies for items to be voted on at the meeting. Federal securities law also requires companies to allow shareholders to vote by proxy at shareholder meetings and requires companies to include a shareholder's proposal in the company's proxy statement unless a ground for exclusion is met. Most shareholders currently vote in advance of shareholder meetings through the proxy process.

Rule 14a–8 addresses when a company must include a shareholder proposal in its proxy statement at an annual or special meeting of shareholders.[128] Rule 14a–8 also sets forth procedural and substantive bases upon which a company can exclude a shareholder proposal from its proxy statement. Under Rule 14a–8(b), to be eligible to submit a proposal, a proponent ''must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date [the proponent] submit[s] the proposal.'' The Commission currently allows investors to aggregate their securities with other investors to meet the applicable minimum ownership thresholds to submit a Rule 14a–8 proposal. The rule does not currently require a shareholder-proponent to provide information specific to the use of a representative in the shareholder-proposal process, or state when he or she is able to meet with the company to discuss the proposal.

Rule 14a–8(c) provides that a shareholder may submit no more than

[127] *See supra* Section II.B.

[128] A shareholder may alternatively solicit proxies by filing its own proxy statement that complies with the federal proxy rules.

one proposal to a company for a particular shareholders' meeting.

Rule 14a–8(i)(12) allows companies to exclude a shareholder proposal that ''deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years'' if the matter was voted on at least once in the last three years and did not receive: (i) 3 percent of the vote if previously voted on once; (ii) 6 percent of the vote if previously voted on twice; or (iii) 10 percent of the vote if previously voted on three or more times.

2. Affected Entities

The proposed amendments to Rule 14a–8(b), Rule 14a–8(c), and Rule 14a–8(i)(12) could affect all companies subject to the federal proxy rules that receive shareholder proposals, the proponents of these proposals, and other non-proponent shareholders of these companies.[129] Companies that have a class of equity securities registered under Section 12 of the Exchange Act are subject to the federal proxy rules, including Rule 14a–8.[130] In addition, there are certain registered companies that voluntarily file proxy materials. Finally, Rule 20a–1 under the Investment Company Act subjects all management companies to the federal proxy rules.[131]

As of December 31, 2018, there were 5,746 companies that had a class of securities registered under Section 12 of the Exchange Act (including 98 Business Development Companies (''BDCs'')).[132] As of the same date, there were 120 companies that did not have a class of securities registered under Section 12 of the Exchange Act that voluntarily filed proxy materials.[133] As of August 31, 2019, there were 12,718 management companies that were subject to the federal proxy rules: (i) 12,040 open-end funds, out of which 1,910 were Exchange Traded Funds (''ETFs'') registered as open-end funds or open-end funds that had an ETF share class; (ii) 664 closed-end funds; and (iii) 14 variable annuity separate accounts registered as management investment companies.[134] The summation of these estimates yields 18,584 companies where there is a possibility of being affected by the proposed rule amendments.[135]

The above mentioned estimates are an upper bound of the number of potentially affected entities because a substantial portion of these entities would not be expected to file proxy materials or receive a shareholder proposal in a given year. Out of the 18,584 potentially affected entities mentioned above, 5,690 filed proxy materials with the Commission during calendar year 2018.[136] Out of the 5,690 companies, 4,758 (84%) were Section 12 or Section 15(d) reporting companies and the remaining 932 (16%) were management companies.[137]

[129] The proposed amendments could also have second-order effects on providers of administrative and advisory services related to proxy solicitation and shareholder voting.

[130] We are not aware of any asset-backed issuers that have a class of equity securities registered under Section 12 of the Exchange Act. Most asset-backed issuers report pursuant to under Section 15(d) of the Exchange Act and thus are not subject to the federal proxy rules. Nine asset-backed issuers had a class of debt securities registered under Section 12 of the Exchange Act as of December 2018. As a result, these asset-backed issuers are not subject to the federal proxy rules.

Foreign private issuers are exempt from the federal proxy rules under Rule 3a12–3(b) of the Exchange Act. 17 CFR 240.3a12–3(b).

[131] Rule 20a–1 of the Investment Company Act requires management companies to comply with regulations adopted pursuant to Section 14(a) of the Exchange Act that would be applicable to a proxy solicitation if it were made in respect of a security registered pursuant to Section 12 of the Exchange Act. *See* 17 CFR 270.20a–1.

''Management company'' means any investment company other than a face-amount certificate company or a unit investment trust. *See* 15 U.S.C. 80a–4.

[132] We estimate the number of companies with a class of securities registered under Section 12 of the Exchange Act by reviewing all Forms 10–K filed during calendar year 2018 with the Commission and counting the number of unique companies that identify themselves as having a class of securities registered under Section 12(b) or Section 12(g) of the Exchange Act. Foreign private issuers that filed Forms 20–F and 40–F and asset-backed issuers that filed Forms 10–D and 10–D/A during calendar year 2018 with the Commission are excluded from this estimate. *See supra* note 130.

BDCs are all entities that have been issued an 814-reporting number. Our estimate includes BDCs that may be delinquent or have filed extensions for their filings, and it excludes 6 wholly owned subsidiaries of other BDCs.

[133] We identify registered companies that voluntarily file proxy materials as companies reporting pursuant to Section 15(d) of the Exchange Act but not registered under Section 12(b) or Section 12(g) of the Exchange Act that filed any proxy materials during calendar year 2018 with the Commission. The proxy materials we consider in our analysis are Forms DEF14A, DEF14C, DEFA14A, DEFC14A, DEFM14A, DEFM14C, DEFR14A, DEFR14C, DFAN14A, N–14, PRE 14A, PRE 14C, PREC14A, PREM14A, PREM14C, PRER14A and PRER14C. Form N–14 can be a registration statement and/or proxy statement. We manually review all Forms N–14 filed during calendar year 2018 with the Commission and we exclude from our estimates Forms N–14 that are exclusively registration statements.

To identify companies reporting pursuant to Section 15(d) but not registered under Section 12(b) or Section 12(g) of the Exchange Act, we review all Forms 10–K filed in calendar year 2018 with the Commission and count the number of unique companies that identify themselves as reporting pursuant to Section 15(d) of the Exchange Act and not registered under Section 12(b) or Section 12(g) of the Exchange Act.

[134] We estimate the number of unique management companies by reviewing all Forms N–CEN filed between June 2018 and August 2019 with the Commission. Open-end funds are series of trusts registered on Form N–1A. Closed-end funds are trusts registered on Form N–2. Variable annuity separate accounts registered as management companies are trusts registered on Form N–3.

The number of potentially affected Section 12 and Section 15(d) reporting companies is estimated over a different time period (*i.e.,* January 2018 to December 2018) than the number of potentially affected management companies (*i.e.,* June 2018 to August 2019) because there is no complete N–CEN data for the most recent full calendar year (*i.e.,* 2018). Management companies started submitting Form N–CEN in September 2018 for the period ended on June 30, 2018 with the Commission.

[135] 18,584 = 5,746 companies with a class of securities registered under Section 12 of the Exchange Act + 120 companies without a class of securities registered under Section 12 of the Exchange Act that voluntarily filed proxy materials + 12,718 management companies.

[136] *See supra* note 133 for details on the estimation of companies that filed proxy materials with the Commission during calendar year 2018.

[137] According to data from Forms N–CEN filed with the Commission between June 2018 and August 2019, there were 965 management companies that submitted matters for its security holders' vote during the reporting period: (i) 729 open-end funds, out of which 86 were ETFs registered as open-end funds or open-end funds that had an ETF share class; (ii) 235 closed-end funds; and (iii) one variable annuity separate account (*see* Form N–CEN Item B.10). The discrepancy in the estimated number of management companies using proxy filings (*i.e.,* 932) and Form N–CEN data (*i.e.,* 965) likely is attributable to the different time periods over which the two statistics are estimated.

Proponents of shareholder proposals also could be affected by the proposed rule amendments. We estimate that there were 170 proponents—38 individual proponents and 132 institutional proponents—that submitted a shareholder proposal that was included in a proxy statement and was subsequently voted on as lead proponent or co-proponent during calendar year 2018.[138]

Non-proponent shareholders of companies also could be affected by the proposed rule amendments. As broad context, we note that the ratio of the number of estimated proponents whose proposals appeared in proxy statements during 2018 (170) to the number of direct and indirect investors in companies subject to the proxy rules is extremely small. According to a recent study based on the 2016 Survey of Consumer Finances, approximately 65 million households owned stocks directly or indirectly (through other investment instruments).[139] Our analysis of institutional investor data also shows that there were 4,558 unique institutional investors during 2018.[140] The ratio is roughly three proponent shareholders per million investors.

3. Current Practices

i. General Discussion

In this section, we provide descriptive statistics on shareholder proposals to understand the baseline against which we compare the effects of the proposed amendments, informing the analysis of the potential effects of the proposed amendments to Rule 14a–8 in later sections. In particular, we provide descriptive statistics on all proposals and descriptive statistics by proposal outcome over time (*i.e.,* voted, omitted, and withdrawn proposals). We provide these statistics to understand how the number of proposals has changed over time, including because, from the perspective of a company, the costs and benefits of a shareholder proposal may vary with the outcome of the proposal.

Similarly, we provide descriptive statistics by the type of company that receives the proposal (*i.e.,* large versus small companies), by proposal topic (*i.e.,* governance, environmental, and social proposals), and by proponent type (*i.e.,* institutions versus individuals). These factors are relevant to our analysis of the proposed amendments to the ownership and resubmission thresholds because the economic effects of the proposed amendments may depend on company size, proposal topic, and proponent type.[141] Further, we provide descriptive statistics on the concentration of proposals to better understand how the proposal submission is distributed across the various proponents.[142]

Finally, we provide descriptive statistics on the voting support and the probability of obtaining majority support for all proposals, by proposal topic, and by proponent type. This analysis allows us to provide some evidence on the effects of the proposed amendments on proposals that may garner high and/or majority shareholder support, and to examine whether the proposed amendments to the resubmission thresholds may have larger effects for some types of proposals and proponents than for others.

To understand current and historical practices for shareholder proposals, we study a sample of submitted shareholder proposals to Russell 3000 companies that were either (i) included in companies' proxy statements; (ii) identified by companies for exclusion through the SEC staff no-action process (whether ultimately voted on by shareholders, excluded by the company, or withdrawn by the proponent); or (iii) submitted by the proponents (based on information provided by the proponents) but never appeared on the company's proxy statement.[143] The study of a sample of submitted shareholder proposals allows us to establish a baseline against which we will compare effects of the proposed amendments. Figure 1 shows the number of shareholder proposals submitted to Russell 3000 companies between 1997 and 2018. The dashed line in Figure 1 shows the number of submitted shareholder proposals between 1997 and 2003, and the solid line shows the number of submitted proposals from 2004 to 2018. Data on submitted proposals prior to 2004 is incomplete. Hence, our economic analysis focuses on shareholder proposals submitted between 2004 and 2018. Nevertheless, to provide an understanding of longer term trends in the number of submitted proposals, we use data prior to 2004 for the purposes of Figure 1 only.

Between 1997 and 2018, shareholders submitted a total of 20,804 proposals to Russell 3000 companies. Out of the 20,804 proposals, 14,860 were submitted in the 2004 to 2018 period. Shareholders submitted 831 proposals to Russell 3000 companies in 2018, representing a 4 percent decrease relative to the number of shareholder proposals submitted in 2017. As Figure 1 shows, the number of submitted shareholder proposals has fluctuated from a low of 745 in 2001 to a high of 1,136 in 2008, with an average of 946 submitted shareholder proposals between 1997 and 2018. Our analysis shows no discernible trend in the number of submitted shareholder proposals in the 1997 to 2018 period.[144]

[138] Data is retrieved from proxy statements (*see infra* note 182). *See infra* Section IV.C.2.i for a discussion of limitations of the proxy statement data.

We also estimate that there were 278 proponents that submitted a voted, omitted, or withdrawn proposal as lead proponent or co-proponent during calendar year 2018. Data is retrieved from ISS Analytics. *See infra* Section IV.B.3.i for a discussion of limitations of the ISS Analytics data.

[139] *See* Jesse Bricker et al., *Changes in U.S. Family Finances from 2013 to 2016: Evidence from the Survey of Consumer Finances,* 103 Fed. Res. Bull., Sept. 2017, at 20, 39, *available at https://www.federalreserve.gov/publications/files/scf17.pdf* (51.9% of the 126.0 million families represented owned stocks). This is a triennial survey, and the latest data available as of this time is from the 2016 survey.

Based on industry data provided by a proxy services provider, we estimate that there were 22.2 million retail accounts that directly held shares of U.S. public companies during calendar year 2017. The number of retail accounts is an approximation of the number of retail investors because each retail investor can hold multiple accounts and multiple retail investors can hold a single account. Further, the data covers a subset of all retail accounts (*i.e.,* approximately 80% of all retail accounts).

[140] Data is retrieved from the Thomson Reuters Institutional (13f) Holdings dataset. Unique institutional investors are the unique Manager Numbers that filed a Form 13F at least for one quarter during calendar year 2018 with the Commission. The estimated number of institutional investors is a lower bound of the actual number of institutional investors because only institutional investors that exercise discretion over $100 million or more in Section 13(f) securities must file Form 13F with the Commission.

[141] These statistics are also relevant in light of commenters' concerns that the proposed amendments may affect certain proposals and proponents differently. *See, e.g.,* letter in response to the Proxy Process Roundtable from Shareholder Rights Group dated October 25, 2019.

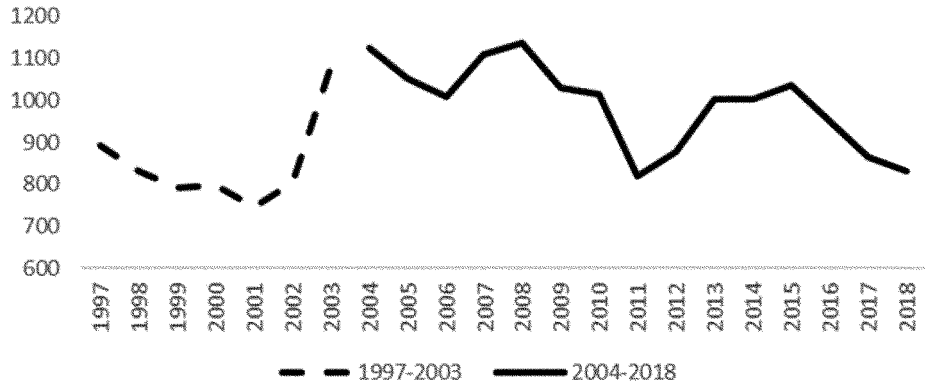
[142] These statistics are also relevant in light of commenters' concerns that a few shareholders submit the majority of the proposals. *See infra* note 166.

[143] Unless stated otherwise, all data in this section is retrieved from ISS Analytics. ISS Analytics identifies proposals that were withdrawn based on whether the proponent had submitted a withdrawal letter to the company as part of the no-action process, or whether the proponent had informed ISS or otherwise made known (for example, through its website) that it had withdrawn the proposal. To the extent that a proponent did not submit a withdrawal letter to the company or did not inform ISS Analytics or otherwise make known that it had withdrawn the proposal, our sample may not include all withdrawn proposals.

We exclude from our analysis shareholder proposals related to proxy contests for the election of directors because these proposals are usually included in shareholders' (as opposed to companies') proxy statements and thus are not subject to Rule 14a-8.

[144] In this and all subsequent analyses, to examine if there is a statistically significant time trend in the data, we regress the variable of interest

Figure 1
Number of submitted shareholder proposals over time



Source: ISS Analytics.

Figure 2 shows the percentage of voted, omitted, and withdrawn shareholder proposals for Russell 3000 companies between 2004 and 2018. We study the percentage of voted, omitted, and withdrawn proposals separately because each of these categories of proposals may impose different burdens on—and also provide different benefits to—companies and their shareholders. Voted proposals are those that went to a shareholder vote. Omitted proposals are those that were omitted following an issuance of a no-action letter by Commission staff.[145] Withdrawn proposals are primarily those that the proponent voluntarily withdrew after reaching an agreement with management or without reaching an agreement.[146]

As Figure 2 shows, out of all proposals submitted to Russell 3000 companies between 2004 and 2018, 56 percent went to a shareholder vote, 15 percent were omitted following a no-action letter issued by Commission staff, and 29 percent were withdrawn. The percentage of voted, omitted, and withdrawn proposals has largely remained stable during our sample period.[147]

to a year trend variable, and we test whether the coefficient on the trend variable is statistically different from zero. We use a two-tailed t-test and a 90% confidence interval. *See, e.g.,* William H. Greene, Econometric Analysis (6th ed. 2007) (''Greene (2007)'').

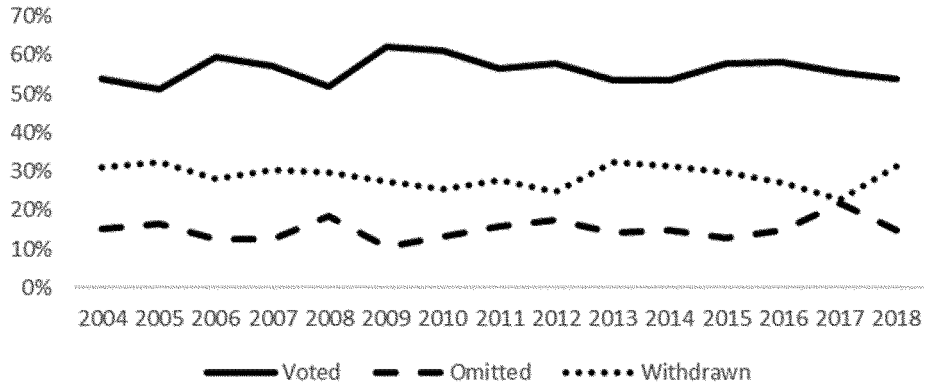
The *p*-value on the trend variable is equal to 0.35.

[145] A proposal may be omitted without a no-action letter from the Commission staff. In particular, a company may give notice to the Commission that it will exclude the proposal or give notice to the Commission that it plans to exclude the proposal and seek relief from a court. Those proposals likely are captured in the withdrawn proposals category in our ISS Analytics dataset because ISS Analytics only classifies proposals for which the Commission staff has issued a no-action letter as omitted proposals.

[146] We classify as ''withdrawn'' proposals that: (i) Were withdrawn by the proponent (3,292 or 76.8% of all withdrawn proposals); (ii) were not found in the company's proxy materials and for which it is yet to be determined whether they were withdrawn or omitted (802 or 18.7% of all withdrawn proposals); (iii) were on the ballot but never came to a vote because the proponent did not appear at the meeting to present the proposal (120 or 2.8% of all withdrawn proposals); (iv) the proponent indicated it intended to submit but that were never actually submitted (52 or 1.2% of all withdrawn proposals); (v) were not voted on because the meeting was cancelled, usually due to a merger, acquisition, bankruptcy, or calling of a special meeting (18 or 0.4% of all withdrawn proposals); and (vi) were not voted on because the meeting was postponed, usually due to a merger, acquisition, bankruptcy, or calling of a special meeting (4 or 0.1% of all withdrawn proposals). The above mentioned proposal categories are available through ISS Analytics.

[147] Untabulated analysis shows no statistically significant trend in the number of voted, omitted, and withdrawn proposals over time (*p*-values are equal to 0.93, 0.37, and 0.34, respectively).

Figure 2
Percentage of shareholder proposals by outcome over time



Source: ISS Analytics.

Out of the 831 proposals submitted in 2018, 447 were voted, 123 were omitted, and 261 were withdrawn.[148] The proposed rule amendments would enhance disclosure requirements for proposals submitted through a representative. To understand how frequently proposals are submitted through a representative, we manually collect information on the identity of the proponents and representatives from the proxy statements, and we estimate that from the 447 voted proposals submitted for inclusion in a company's proxy materials for 2018 shareholder meetings, 363 provided some information related to the identity of the proponents, out of which 67 (or 18% = 67/363) were submitted by a representative.[149]

In all subsequent analysis in this section (except for the analysis that relates to voting support), we examine all submitted proposals (rather than focusing on just one of voted, omitted, or withdrawn proposals) to determine the potential impact of the proposed amendments because Rule 14a–8 applies to all submitted proposals.

Next, we compare the average number of proposals submitted to large and small companies because the frequency of submitted proposals, and thus the effects of the proposed amendments, may vary with company size. In particular, Figure 3 compares the average number of proposals submitted to large companies relative to our universe of companies (*i.e.,* Russell 3000 companies). Large companies are represented by the S&P 500 constituents.[150] As Figure 3 shows, S&P 500 companies (*i.e.,* solid line in Figure 3) received on average 1.56 proposals each year, and Russell 3000 companies (*i.e.,* dashed line in Figure 3) received on average 0.33 proposals each year during our sample period. The average number of proposals submitted to S&P 500 companies is statistically significantly higher than the average number of proposals submitted to Russell 3000 companies during our sample period.[151] The average number of proposals submitted to S&P 500 companies has decreased from 1.85 in 2004 to 1.24 in 2018, representing a 33 percent decrease during our sample period, and the average number of proposals submitted to Russell 3000 companies has decreased from 0.38 in 2004 to 0.28 in 2018, representing a 26 percent decrease during our sample period.[152] Results are qualitatively similar when we compare voted rather than all submitted shareholder proposals for S&P 500 and Russell 3000 companies.[153]

Overall, our analysis shows that larger companies receive more proposals than smaller companies, and the number of proposals received by both large and small companies has decreased over time.

[148] A few proposals were submitted to companies outside of the Russell 3000 index. Using FactSet's corporate governance database, SharkRepellent (*available at https://sharkrepellent.net*), we estimate that in 2018, there were 19 voted shareholder proposals at 11 companies outside of the Russel 3000 index. Our analysis focuses on proposals submitted to companies within the Russell 3000 index because this sample represents the vast majority of submitted shareholder proposals.

[149] We potentially underestimate the percentage of proposals submitted by a representative because companies might provide information on the identity of the proponent but might not mention that the proposal was submitted via a representative in the proxy statement.

[150] The median market capitalization of Russell 3000 constituents was $1.7 billion as of May 10, 2019 and the median market capitalization of S&P 500 constituents was $22 billion as of August 30, 2019. *See Market Capitalization Ranges,* FTSE Russell Market, *https://www.ftserussell.com/research-insights/russell-reconstitution/market-capitalization-ranges* (last visited Sept. 23, 2019); *S&P 500, S&P Dow Jones Indices, https://us.spindices.com/indices/equity/sp-500* (last visited Sept. 23, 2019).

We retrieve data on whether a proposal was submitted to an S&P 500 and/or a Russell 3000 company from ISS Analytics.

The ISS Analytics data only covers Russell 3000 companies. S&P 500 companies usually are a subset of the Russell 3000 companies. To the extent that some S&P 500 companies are not part of the Russell 3000 index, our analysis underestimates the average number of proposals submitted to S&P 500 companies, because those proposals are missing from our data.

[151] In this and all subsequent analysis, we use a two-tailed t-test and a 90% confidence interval to compare differences in means across groups.

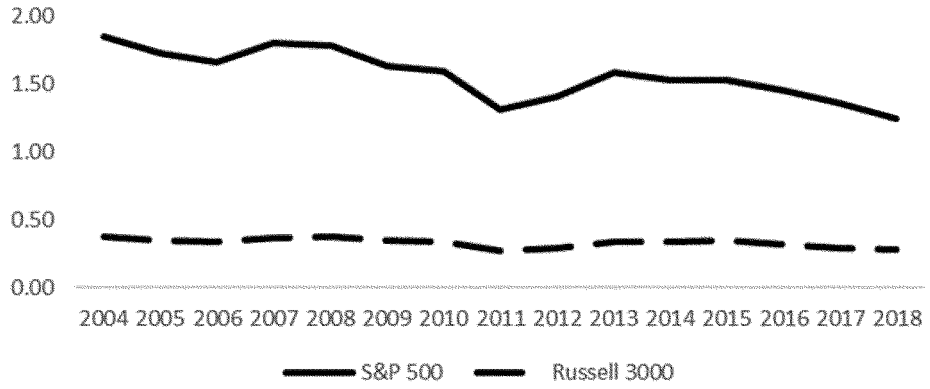
The *p*-value is equal to zero.

[152] Untabulated analysis shows a statistically significant downward trend in the average number of proposals submitted to S&P 500 and Russell 3000 companies during our sample period (*p*-values are equal to zero).

[153] Untabulated analysis shows that the average number of voted proposals for S&P 500 companies has decreased from 0.99 in 2004 to 0.70 in 2018, representing a 29% decrease during our sample period, and the average number of voted proposals for Russell 3000 companies has decreased from 0.20 in 2004 to 0.15 in 2018, representing a 26% decrease during our sample period.

Figure 3

Average number of proposals submitted to S&P 500 vs. Russell 3000 issuers



Source: ISS Analytics.

We also examine the frequency of submitted proposals by proposal topic because the effects of the proposed amendments may vary by proposal topic. More specifically, the effects of the proposed amendments to the resubmission thresholds may vary by proposal topic because the topic of a proposal may be related to the voting support of a proposal as well as the time it may take for a proposal to garner majority support. However, we also recognize that the garnering of support over time may be the result of a variety of factors other than or in addition to the continued inclusion of the proposal in the proxy. In addition, the effects of the proposed amendments to the ownership thresholds may vary by proposal topic to the extent that the proposed amendments have a disproportionate effect on different types of proponents and the type of proposal varies by proponent type.

Figure 4 shows the percentage of all submitted shareholder proposals by proposal topic over time. ISS Analytics classifies proposals into three categories: Governance, environmental, and social proposals.[154] The results of any analysis that involves classification of proposals into various categories should be interpreted with caution for various reasons, including because there is a level of subjectivity involved in the classification of the proposals to the various categories. For example, proposals on board diversity could be considered either governance or social proposals. In addition, each proposal category includes a wide range of proposals. For example, governance proposals can include proposals related to executive compensation as well as proposals related to the sale of company assets.

Our analysis shows that, during our sample period, 59 percent of the submitted shareholder proposals (*i.e.,* 8,829 proposals) regarded governance issues, 11 percent (*i.e.,* 1,601 proposals) regarded environmental issues, and 30 percent (*i.e.,* 4,397 proposals) regarded social issues. The percentage of governance proposals relative to all submitted proposals has decreased from 70 percent in 2004 to 44 percent in 2018, with a corresponding increase in the percentage of environmental proposals from 5 percent in 2004 to 16 percent in 2018 and an increase in the percentage of social proposals from 25 percent in 2004 to 39 percent in 2018.[155] Results are qualitatively similar when we examine voted (rather than submitted) shareholder proposals by topic.[156]

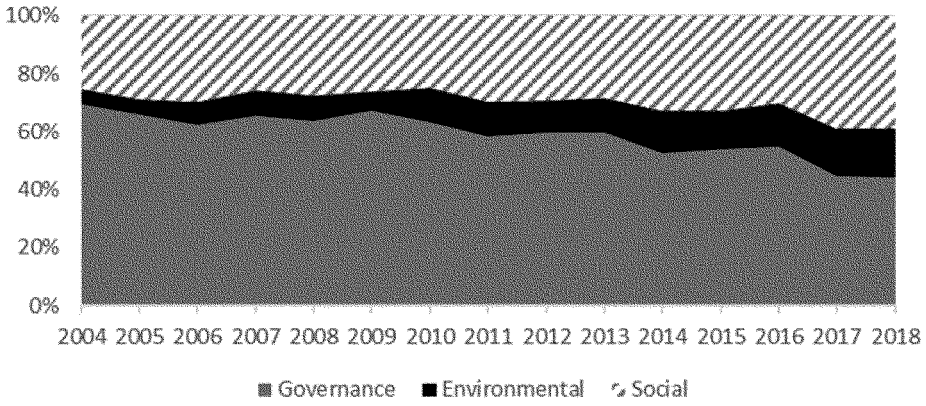
Overall, our analysis shows an increase in the frequency of social and environmental proposals and a decrease in the frequency of governance proposals during our sample period.

[154] We retrieve data on the topic of the shareholder proposal from ISS Analytics. In this dataset, proposals are classified in three categories: Governance, environmental, and social. Governance proposals include, among others, proposals related to audits, board issues, compensation, voting, proxy matters, and shareholder meetings. Environmental proposals include, among others, proposals related to sustainability, greenhouse gas emissions, climate change, community/environmental impact, and renewable energy. Social proposals include, among others, proposals related to political contributions, sexual orientation, political lobbying disclosure, human rights, and board diversity. We manually classify 250 proposals with missing shareholder proposal topics into one of the three above-mentioned topics by reviewing the description of the shareholder proposal in the ISS Analytics dataset. We do not reclassify other proposals in the ISS Analytics dataset to ensure the replicability of our analysis. We exclude from this analysis 33 proposals with missing shareholder proposal topics and missing descriptions of the shareholder proposal because we lack the necessary information to classify these proposals into one of the three above-mentioned categories.

[155] Untabulated analysis shows a statistically significant downward trend in the percentage of governance proposals (*p*-value is equal to zero) and a statistically significant upward trend in the percentage of environmental and social proposals over time (*p*-values are equal to zero).

[156] Untabulated analysis shows that the percentage of voted governance proposals relative to all voted proposals has decreased from 69% in 2004 to 62% in 2018, with a corresponding increase in the percentage of voted environmental proposals from 3% in 2004 to 11% in 2018, and a small decrease in the percentage of voted social proposals from 28% in 2004 to 27% in 2018.

Figure 4
Percentage of submitted shareholder proposals by topic over time



Source: ISS Analytics.

Next, we analyze the frequency of submitted proposals by proponent type because the effects of the proposed amendments may vary with the type of proponent. This is because the level and duration of holdings, as well as chosen proposal topics, may vary with proponent type. Figure 5 shows the percentage of submitted shareholder proposals by proponent type over time. We classify proponents into three categories: Individuals, institutions, and unknown.[157] As Figure 5 shows, the average percentage of proposals submitted by individuals (*i.e.,* gray-shaded area in Figure 5) was 31 percent during our sample period, and it ranged from a low of 26 percent in 2011 to a high of 39 percent in 2018. Further, as Figure 5 shows, the average percentage of proposals submitted by institutions (*i.e.,* line-patterned area in Figure 5) was 67 percent during our sample period, and it ranged from a low of 59 percent in 2018 to a high of 71 percent in 2011. Our analysis shows no significant time-series trends in the percentage of proposals submitted by individuals and institutions.[158] Institutions submitted approximately twice the number of proposals submitted by individuals, and the difference in the number of proposals submitted by institutions and individuals was statistically significant.[159] The percentage of proposals with missing proponent information (*i.e.,* black-shaded area in Figure 5) has decreased from 6 percent in 2004 to 2 percent in 2018, but this decrease is statistically insignificant.[160] Our results are qualitatively similar when we examine the percentage of voted rather than submitted shareholder proposals by proponent type over time.[161]

Overall, our analysis shows that institutions submitted proposals more frequently than individuals, and the percentage of proposals submitted by institutions and individuals has not changed significantly during our sample period.

[157] We retrieve data on proponent types from ISS Analytics. Whenever there are multiple proponents submitting a proposal, the proponent type corresponds to the type of the lead proponent. Whenever the proponent type is missing, we manually classify the proponent into one of the three categories (*i.e.,* individual, institution, or unknown) using the proponent name. Individual proponents are all retail investors. Institutional proponents comprise: (i) Asset managers (25% of all institutional proposals); (ii) unions (25% of all institutional proposals); (iii) pension funds (20% of all institutional proposals); (iv) religious organizations (12% of all institutional proposals); (v) nonprofit organizations (11% of all institutional proposals); and (vi) others (8% of all institutional proposals). An institutional proponent is classified as ''other'' whenever the proponent does not fall into any of the other institutional proponent categories. ''Unknown'' proponents are those with missing identities. The identity of the proponent presumably is missing in the ISS Analytics dataset because companies are not required to disclose the identity of the proponent in the proxy statements. *See* 17 CFR 240.14a–8(l) (Rule 14a–8(l)).

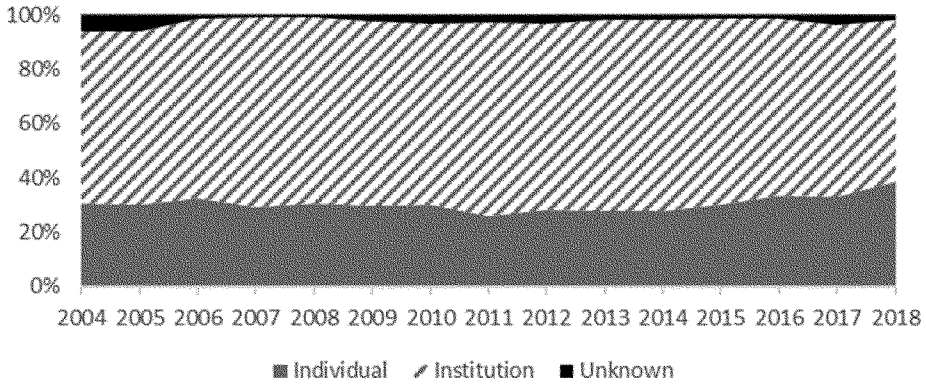
[158] The *p*-values are equal to 0.19 and 0.64, respectively.

[159] The *p*-value is equal to zero.

[160] Untabulated analysis shows a statistically significant downward trend in the percentage of proposals submitted by proponents with missing identity over time (the *p*-value is equal to 0.17).

[161] The average percentage of voted proposals that were submitted by individuals was 32% during our sample period, and it ranged from a low of 25% in 2011 to a high of 49% in 2018. The average percentage of voted proposals that were submitted by institutions was 64% during our sample period, and it ranged from a low of 48% in 2018 to a high of 71% in 2011.

Figure 5
Percentage of submitted shareholder proposals by proponent type over time



Source: ISS Analytics.

We also study the number of unique proponents and average number of proposals submitted by each proponent to shed some light on the concentration of shareholder proposals across proponents. Figures 6A, 6B, and 6C show the number of unique proponents (*i.e.,* gray bars) and the average number of proposals submitted by each proponent over time (*i.e.,* black line) for all proponents, for proponents that are individuals, and for proponents that are institutions, respectively. For this analysis, we count separately proposals submitted by proponents and proposals submitted by co-proponents. We exclude proposals with missing proponent identity. To avoid over-counting the number of unique proponents and undercounting the average number of proposals submitted by each proponent, we review and manually correct the proponent names whenever ISS Analytics uses variations of the same name for a proponent (*e.g.,* ''CalPERS'' and ''California Public Employees' Retirement System''). Nevertheless, to the extent that the same proponent appears with a slightly different name in our dataset, our analysis potentially overestimates the number of unique proponents and underestimates the average number of proposals submitted by each proponent.

As Figure 6A shows, the average number of unique proponents was 228 during our sample period, and it ranged from a low of 181 in 2011 to a high of 286 in 2004. The average number of proposals submitted by each proponent was 4.9 during our sample period, and it ranged from a low of 3.9 in 2004 to a high of 6.7 in 2015. Untabulated analysis shows no time-series trends in the number of unique proponents and the average number of proposals submitted by each proponent during our sample period.[162]

A different picture emerges when splitting the observations into proposals submitted by individuals (Figure 6B) and institutions (Figure 6C).[163] As Figure 6B shows, the average number of unique proponents that were individuals was 90 during our sample period, and it ranged from a low of 64 in 2012 to a high of 155 in 2004. The average number of proposals submitted by each individual proponent was 3.9 during our sample period, and it ranged from a low of 2.3 in 2004 to a high of 5.2 in 2017. Untabulated analysis shows a statistically significant downward trend in the number of unique individual proponents and a statistically significant upward trend in the average number of proposals submitted by each individual proponent.[164]

As Figure 6C shows, the average number of unique proponents that were institutions was 143 during our sample period, and it ranged from a low of 107 in 2006 to a high of 207 in 2017. The average number of proposals submitted by each institutional proponent was 5.7 during our sample period, and it ranged from a low of 3.7 in 2017 to a high of 7.6 in 2007. Untabulated analysis shows a statistically significant upward trend in the number of unique institutional proponents and a statistically significant downward trend in the average number of proposals submitted by each institutional proponent.[165]

Overall, the results of our analysis suggest that there has been an increase (decrease) in the concentration of proposals submitted by individuals (institutions) during our sample period.

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[162] The *p*-values are equal to 0.84 and 0.45, respectively.

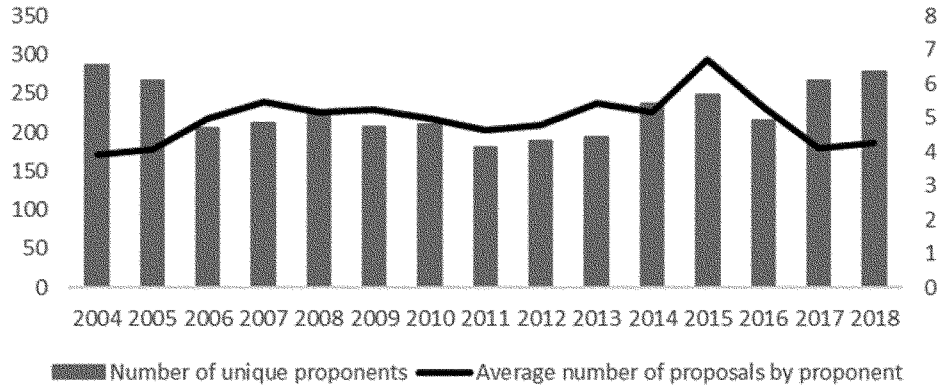
[163] For proposals that are submitted through a representative, when classifying proponents into institutions and individuals, ISS takes into account the identity of the shareholder rather than the identity of the representative that submitted the proposal.

[164] The *p*-values are equal to zero.

[165] The *p*-values are equal to zero and 0.04, respectively.

Figure 6A

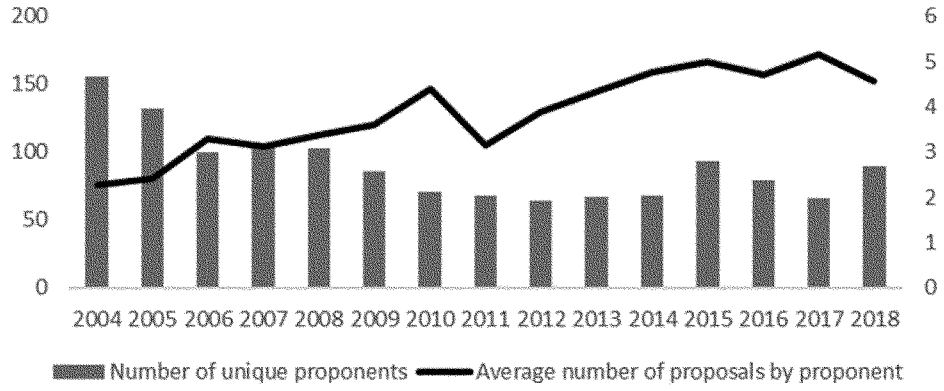
Number of unique proponents & average number of proposals - All proponents



Source: ISS Analytics.

Figure 6B

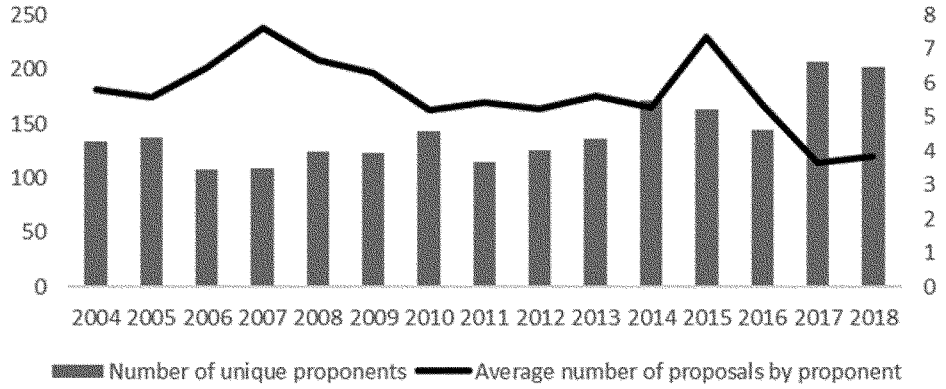
Number of unique proponents & average number of proposals - Individuals



Source: ISS Analytics.

Figure 6C

Number of unique proponents & average number of proposals - Institutions



Source: ISS Analytics.

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Relatedly, an academic study, using a sample of shareholder proposals submitted to S&P 1500 companies between 2003 and 2014, shows that five individual proponents submitted 78 percent of all proposals submitted by individuals and 27 percent of all proposals submitted by all proponents.[166]

Finally, we examine voting outcomes for all proposals, by proposal topic, and by proponent type to inform analysis of the effects of the proposed amendments on proposals that may garner high shareholder support. In addition, the level of voting support may determine which shareholder proposals would be affected by the proposed amendments to Rule 14a–8(i)(12). Figures 7A, 7B, and 7C show the average voting support for all proposals, by proposal topic, and by type of proponent, respectively. Voting support is defined as the ratio of ''for'' votes divided by the sum of ''for'' and ''against'' votes.[167] As Figure 7A shows, the average voting support was 33 percent in 2018, and it ranged from a low of 27.8 percent in 2004 to a high of 37.5 percent in 2009, with an average of 33.4 percent during our sample period.[168]

As Figure 7B shows, the average voting support for governance proposals (*i.e.,* solid line in Figure 7B) has remained stable during our sample period at an average of 42.1 percent, while there has been an upward trend in the average voting support for environmental and social proposals (*i.e.,* dotted and dashed lines in Figure 7B).[169] In particular, the average voting support for environmental proposals increased from a low of 11.8 percent in 2004 to a high of 28.9 percent in 2018, with an average of 21.9 percent during our sample period. The average voting support for social proposals increased from a low of 9.3 percent in 2005 to a high of 24.6 percent in 2018, with an average of 17.4 percent during our sample period. Untabulated analysis also shows that the average voting support for governance proposals is statistically significantly higher than the average voting support for environmental and social proposals, and the average voting support for environmental proposals is statistically significantly higher than the average voting support for social proposals.[170]

Finally, as Figure 7C shows, the average voting support for proposals submitted by institutions (*i.e.,* solid line) has remained stable during our sample period at an average of 35.4 percent during our sample period, and the average voting support submitted by individuals (*i.e.,* dashed line) has remained stable during our sample period at an average of 32.2 percent.[171] Untabulated analysis also shows that the average voting support for proposals submitted by institutions is statistically significantly higher than the average voting support for proposals submitted by individuals.[172]

In sum, our analysis shows that the average voting support of all proposals has remained stable during our sample period, but there is an increase in the average voting support for environmental and social proposals over the sample period.

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[166] Nickolay Gantchev & Mariassunta Giannetti, *The Costs and Benefits of Shareholder Democracy* 8–9, 37 (European Corporate Governance Institute, Working Paper No. 586/2018, 2018) (''Gantchev & Giannetti (2018)''). 27% = (290 + 222 + 157 + 133 + 125)/3,384. These statistics are estimated using the identity of the proponents rather than the identity of the representatives, in cases where a representative submitted a proposal on behalf of a proponent.

For related statistics, *see* letters in response to the Proxy Process Roundtable from U.S. Chamber of Commerce Center for Capital Markets Competitiveness dated November 12, 2018, at 11 (''[D]uring 2017, just three individuals . . . sponsored 25% of proposals submitted at the Fortune 250.''); Ceres dated November 13, 2018, at 6 (''From 2004–2017, the Chevedden, Steiner, and McRitchie families submitted 14.5% of the 11,706 proposals filed.''); Mercy Investment Services, Inc. dated December 3, 2018, at 2 (same); Investment Company Institute dated November 14, 2018, at 1–3 of attachment.

[167] We define voting support as the ratio of ''for'' divided by the sum of ''for'' and ''against'' votes because this is how voting support is defined for the purposes of Rule 14a–8(i)(12). *See supra* note 116. Abstentions and broker non-votes are excluded from the calculation of voting support for the purposes of Rule 14a–8(i)(12). *See supra* note 116.

[168] Untabulated analysis shows no statistically significant trend in the average voting support for all proposals during our sample period (the *p*-value is equal to 0.40).

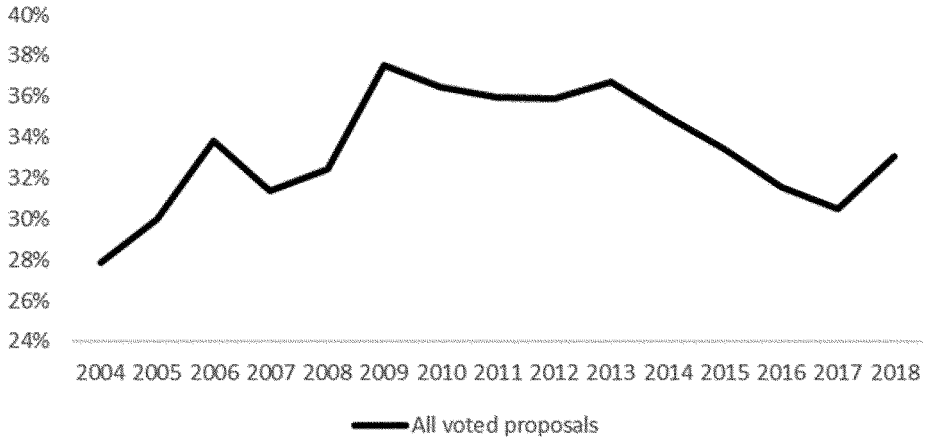
[169] Untabulated analysis shows a statistically significant upward trend in the average voting support for environmental and social proposals (*p*-values are equal to zero) and no statistically significant trend in the average voting support for governance proposals during our sample period (the *p*-value is equal to 0.83).

[170] The *p*-values are equal to zero.

[171] Untabulated analysis shows no statistically significant trend in the average voting support for proposals submitted by institutions and individuals during our sample period. The *p*-values are equal to zero 0.22 and 0.97 respectively.

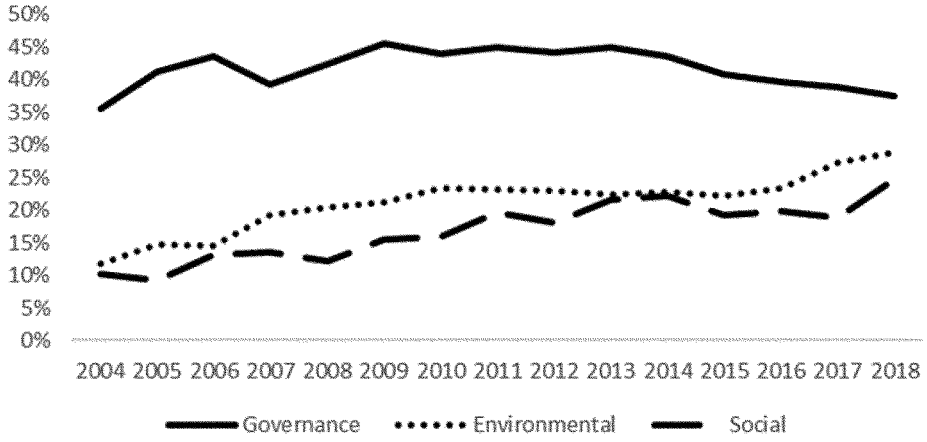
[172] The *p*-value is equal to 0.01.

Figure 7A
Average voting support

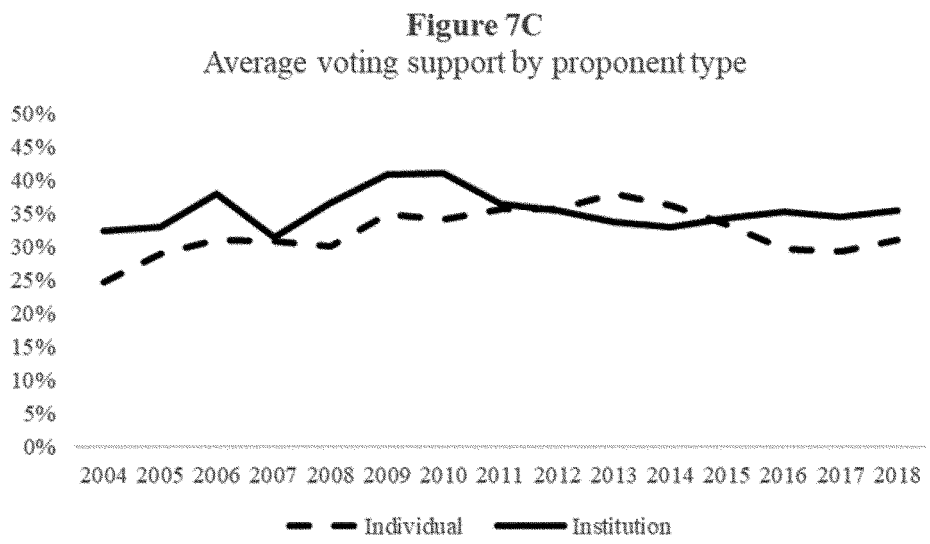


Source: ISS Analytics.

Figure 7B
Average voting support by topic



Source: ISS Analytics.



Source: ISS Analytics.

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Figures 8A, 8B, and 8C show the percentage of proposals that received majority support for all proposals, by proposal topic, and by proponent type, respectively. Majority support is defined as more than 50 percent of the ''for'' votes divided by the sum of ''for'' and ''against'' votes.[173] We examine the percentage of proposals that received majority support as opposed to some other voting threshold because studies show that the probability of implementation of a shareholder proposal increases significantly once the proposal receives majority support.[174]

As Figure 8A shows, there is a statistically significant downward trend in the percentage of proposals that received majority support during our sample period.[175] In particular, the percentage of proposals that received majority support ranged from a high of 27.7 percent in 2009 to a low of 11.9 percent in 2018, with an average of 20.6 percent during our sample period.

As Figure 8B shows, few environmental and social proposals received majority support during our sample period, while one out of three governance proposals received majority support.[176] More specifically, the percentage of governance proposals that received majority support (*i.e.,* solid line in Figure 8B) ranged from a high of 37.7 percent in 2009 to a low of 14.9 percent in 2018, with an average of 30.6 percent during our sample period. The percentage of environmental proposals that received majority support (*i.e.,* dotted line in Figure 8B) ranged from a low of 0 percent in 2004 to a high of 16.3 percent in 2018, with an average of 2.6 percent during our sample period. The percentage of social proposals that received majority support (*i.e.,* dashed line in Figure 8B) ranged from a low of zero percent in 2010 to a high of 4.5 percent in 2016, with an average of 1.8 percent during our sample period. Untabulated analysis shows that there is a statistically significant downward trend in the percentage of governance proposals that received majority support, and a statistically significant upward trend in the percentage of environmental and social proposals that received majority support during our sample period.[177] Interpretation of these results should be undertaken with caution due to various factors, including the uncertainties inherent in categorization and the evolution of voting support for proposals over time.

As Figure 8C shows, there is a statistically significant downward trend in the percentage of proposals submitted by individuals that received majority support, while the percentage of proposals submitted by institutions that received majority support has not changed significantly during our sample period.[178] In particular, the percentage of proposals submitted by individuals that received majority support (*i.e.,* dashed line in Figure 8C) ranged from a high of 35 percent in 2009 to a low of 12.3 percent in 2014, with an average of 23.7 percent during our sample period. In addition, the percentage of proposals submitted by institutions that received majority support (*i.e.,* solid line in Figure 8C) ranged from a high of 24.3 percent in 2013 to a low of 11.1 percent in 2018, with an average of 18.7 percent during our sample period. The percentage of proposals submitted by individuals that received majority support is statistically significantly higher than the percentage of proposals

[173] *See supra* note 167.

[174] For example, a 2010 study by Ertimur et al. shows that ''proposals that won at least one majority vote in the past are more likely to be implemented (34.2% versus 22.9%).'' *See* Yonca Ertimur, Fabrizio Ferri, & Stephen R. Stubben, *Board of Directors' Responsiveness to Shareholders: Evidence from Shareholder Proposals,* 16 J. Corp. Fin. 53 (2010) (''Ertimur et al. (2010)''). Similarly, a 2017 study by Bach and Metzger showed that ''when the 50%-threshold is passed, there is a very sizeable jump of about 20% of the implementation likelihood.'' *See* Laurent Bach & Daniel Metzger, *How Do Shareholder Proposals Create Value?* (Working Paper, Mar. 2017) (''Bach & Metzger (2017)''). However, only crossing the management-defined majority threshold (as opposed to the simple majority threshold defined as the ratio of ''for'' votes divided by the sum of ''for'' and ''against'' votes) has an effect of the probability that the proposal is implemented. *Id.* The management-defined majority threshold may differ from a simple majority threshold. *Id.* In 43% of their sample, the management threshold is the same as the simple majority threshold. *See id.* In our analysis, we define majority support as the simple majority threshold because we lack data on the management-defined majority threshold.

[175] The *p*-value is equal to zero.

[176] Untabulated analysis shows that the percentage of governance proposals that received majority support is statistically significantly higher than the percentage of environmental and social proposals that received majority support (the *p*-values are equal to zero), and the percentage of environmental proposals that received majority support is not statistically significantly different than the percentage of social proposals that received majority support (the *p*-value is equal to 0.23).

[177] The *p*-values are equal to 0.01, 0.02, and 0.05, respectively.

[178] The *p*-values are equal to zero and 0.48, respectively.

submitted by institutions that received majority support.[179]

In sum, our analysis shows that there is a decrease in the number of proposals that received majority support during our sample period and this decrease is primarily attributable to governance proposals and proposals submitted by individuals.

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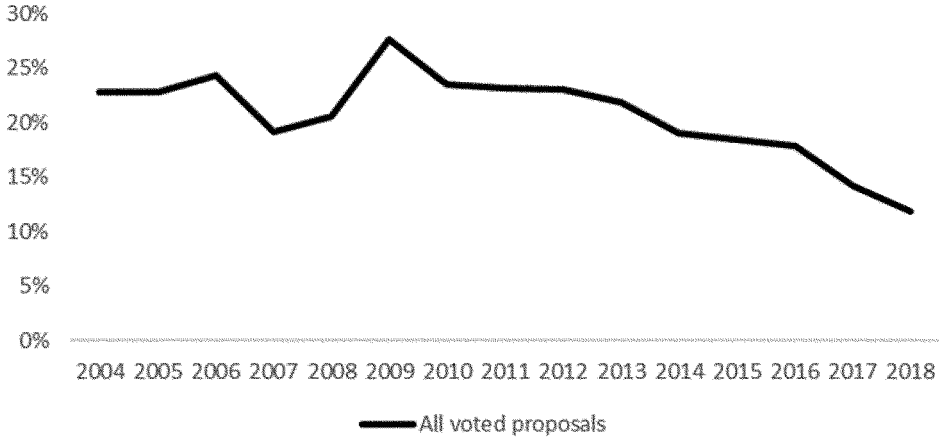
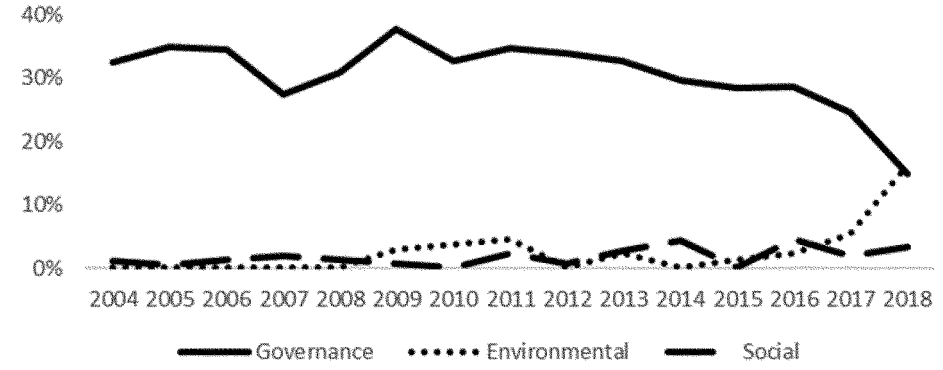
Figure 8A
Percentage of proposals receiving majority support



Source: ISS Analytics.

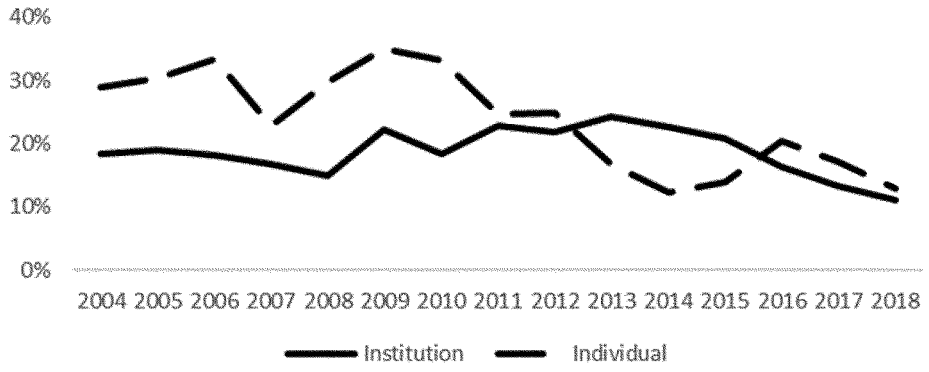
Figure 8B
Percentage of proposals receiving majority support by topic



Source: ISS Analytics.

[179] The *p*-value is equal to 0.02.

Figure 8C
Percentage of proposals receiving majority support by proponent type



Source: ISS Analytics.

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Because many proposals are non-binding, not all proposals that garner majority support are implemented. Using a sample of governance-related proposals for S&P 1500 companies between 1997 and 2011, previous studies have shown that between 31 percent and 56 percent of the shareholder proposals that received majority support were implemented by management, and this percentage has increased over time.[180] These studies have also shown that the probability of a proposal being implemented depends on the influence of the proponent, the type of proposal, the past performance of the company, and whether voting support exceeds majority support as defined by a company's governing documents.[181]

ii. Discussion Specific to Proposed Amendments to Rule 14a–8(b) and Rule 14a–8(c)

To provide insight into the distribution of ownership across proponents, we perform two sets of analysis. First, we review proponents' ownership information as disclosed in companies' proxy statements for proposals to be considered at shareholder meetings held in 2018.[182] Companies have discretion in the type of information they must include in the proxy statements regarding proponents.[183] In particular, the company's proxy statement must either include the name and address of the proponents as well as the number of the voting securities that the proponent holds, or alternatively, a statement that this information will be provided to shareholders upon request. Whenever the company discloses the identity of the proponents, the company may disclose the identity of all or a subset of the proponents. Whenever the company discloses proponents' ownership information, the company may disclose the actual dollar value, the actual number of shares, a minimum dollar value, or a minimum number of shares held by the proponent. In addition, whenever the company discloses proponents' ownership information, the company may disclose ownership information for a subset of the proponents submitting a proposal, and the company may disclose actual holdings information for some of the proponents and minimum holdings information for the rest of the proponents submitting the same proposal. The type of ownership information the company discloses (*i.e.,* actual holdings versus minimum holdings and dollar value versus number of shares) frequently depends on the type of information provided in the proof-of-ownership letter furnished by the proponent. In particular, proponents also have discretion in the type of information they must provide in the proof-of-ownership letters.[184] Proponents may disclose the exact duration and level of their holdings or they may confirm that they meet the minimum ownership thresholds. For these reasons, data on proponent ownership from proxy statements may not be representative of the overall distribution of proponent ownership.

Table 1 summarizes the distribution of proponents' ownership in our sample of proposals.[185] There were 447 unique voted proposals for shareholder meetings held in 2018. Out of the 447 proposals, 287, or 64 percent, contained information on proponents' actual and/or minimum holdings, whereas the remaining 160, or 36 percent, did not

[180] Bach and Metzger use a sample of governance-related proposals for S&P 1500 companies between 1997 and 2011 and find that 56% of the proposals that received majority support were implemented by management, and this percentage increased from 29% in 1997 to 70% in 2011. Bach & Metzger (2017), *supra* note 174. Ertimur et al. use a sample of governance-related proposals for S&P 1500 companies between 1997 and 2004 and find that 31% of the proposals that received majority support were implemented by management, and this percentage increased from 16% in 1997 to 40% in 2004. Ertimur et al. (2010), *supra* note 174. The differences in the statistics of the two cited papers is likely due to the different definition of implemented proposals. Bach and Metzger consider a proposal to be implemented ''if management adopts the content of the proposal within two years after the shareholder meeting,'' while Ertimur et al. consider a proposal to be implemented if ''the board takes a significant step toward a partial or full implementation within one year from the majority vote.'' *See* Bach & Metzger (2017), *supra* note 174; Ertimur et al. (2010), *supra* note 174. A 2007 study by Thomas and Cotter provide similar rates of implementation of shareholder proposals that received majority support as Ertimur et al. (2010). *See* Randall S. Thomas & James F. Cotter, *Shareholder Proposals in the New Millennium: Shareholder Support, Board Response, and Market Reaction,* 13 J. Corp. Fin. 368 (''Thomas & Cotter (2007)'').

[181] *See* Thomas & Cotter (2007), *supra* note 180; Ertimur et al. (2010), *supra* note 174; Bach & Metzger (2017), *supra* note 174.

[182] Proxy statements filed with the Commission are available at *https://www.sec.gov/edgar/searchedgar/companysearch.html.*

[183] *See* Rule 14a–8(l).

[184] *See* Rule 14a–8(b).

[185] There is some information on proponents' duration of ownership in only 5 out of the 447 reviewed proposals. Because the sample is small, we do not provide descriptive statistics on proponents' duration of ownership using information from the proxy statements.

contain information on proponents' ownership. In our sample of proxy statements, there were 198 proponents that submitted 150 unique proposals for which the proxy statements mentioned the proponents' actual holdings, and 159 proponents that submitted 139 unique proposals for which the proxy statements mentioned the proponents' minimum holdings.[186]

From the 198 proponents with actual holdings information, (i) 3 proponents, or 2 percent, held less than $2,000 worth of shares, and those proponents submitted 2 unique proposals; (ii) 85 proponents, or 43 percent, held more than or equal to $2,000 but less than $15,000 worth of shares, and those proponents submitted 75 unique proposals; (iii) 16 proponents, or 8 percent, held more than or equal to $15,000 but less than $25,000 worth of shares, and those proponents submitted 16 unique proposals; and (iv) 94 proponents, or 47 percent, held more than or equal to $25,000 worth of shares, and those proponents submitted 65 unique proposals.[187] The median ownership for proponents with actual holdings information was $16,758 and the average ownership was $17.4 million.[188]

From the 159 proponents with minimum holdings information, (i) all of the proponents held at least $2,000 worth of shares, and those proponents submitted 139 unique proposals; (ii) 23 proponents, or 14 percent, held at least $15,000 worth of shares, and those proponents submitted 23 unique proposals; and (iv) 16 proponents, or 10 percent, held at least $25,000 worth of shares, and those proponents submitted 16 unique proposals.

As mentioned above, in our sample, there were three proponents (*i.e.,* one percent of all proponents with ownership information), whose individual holdings were below the current $2,000 ownership threshold, and those proponents submitted two unique proposals (*i.e.,* one percent of all proposals submitted by proponents with ownership information in the proxy statements). For one of the two proposals, there were two co-proponents, whose both aggregate and individual holdings did not meet the $2,000 current ownership threshold.[189] For the other of the two proposals, there were four co-proponents, whose aggregate holdings met the $2,000 current threshold and the individual holdings of one of the co-proponents did not meet the $2,000 current ownership threshold.

Further, in our sample, two entities submitted more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. In particular, one entity submitted two proposals to one company and another entity submitted two proposals to each one of six different companies, resulting in a total of 14 submitted proposals.

TABLE 1—PROPONENTS' OWNERSHIP (FROM PROXY STATEMENTS)

	Number of proponents	Number of proposals
Actual Holdings	198	150
Holdings <$2,000	3	2
Holdings ≥$2,000, but <$15,000	85	75
Holdings ≥$15,000, but <$25,000	16	16
Holdings ≥$25,000	94	65
Minimum Holdings	159	139
Holdings >$0	159	139
Holdings ≥$2,000	159	139
Holdings ≥$15,000	23	23
Holdings ≥$25,000	16	16
No Holdings Information	156	160

Sources: *CRSP, ISS Analytics, Proxy Statements from EDGAR.*

Second, we review proponents' ownership information from the proof-of-ownership letters submitted in connection with the proposal that can be found as an attachment to the Commission staff's no-action letters issued under Rule 14a–8 during calendar year 2018.[190] Our sample comprises 254 unique shareholder

[186] Multiple proponents may submit a single proposal. Hence, the number of proponents in Table 1 can be higher than the number of proposals. Also, for the same reason, within each panel, the sum of proposals for the various ownership ranges can be higher than the total number of proposals. For example, in the Actual Holdings panel, the sum of proposals for the various ownership ranges (*i.e.,* 158 = 2 + 75 + 16 + 65) is higher than the total number of proposals in the panel (*i.e.,* 150).

Further, companies may disclose information on actual holdings for some proponents and information on minimum holdings for other proponents submitting the same proposal. Hence, in Table 1, the sum of the proposals with (i) information on proponents' actual holdings (*i.e.,* 150 proposals); (ii) information on proponents' minimum holdings (*i.e.,* 139 proposals); and (iii) no information on proponents' holdings (*i.e.,* 160 proposals) is higher than the number of unique proposals in our sample (*i.e.,* 447).

The proxy statements provide information on the identity of the proponents for a subset of the proposals with no holdings information.

[187] In cases where the company reports the number of shares rather than the dollar amount of the proponent's holdings, we convert the number of shares to dollars using the average of the bid and ask prices during a 60-day period before the filing date of the proxy statement. We use the filing date of the proxy statement rather than the date that the proponent submitted the proposal (*see supra* note 57) because proxy statements do not report the date of the shareholder proposal submission. Stock prices are retrieved from CRSP.

[188] In untabulated analysis, we examine whether the probability that a proposal would receive majority support depends on the proponents' ownership level. To measure voting support, we use the ISS Analytics data for the sample of proposals that were voted on in 2018 shareholder meetings. We only use data on proponents with information on their exact holdings. We compare the probability that the proposal would receive majority support for proposals submitted by proponents with above and below median dollar ownership levels and we find a negative and statistically significant relation between the probability that a proposal would receive majority support and the level of proponents' ownership (*p*-value equal to 0.06), but we find no relation between the level of the voting support and the level of proponents' ownership (*p*-value equal to 0.14). The results of this analysis should be interpreted with caution because of the small sample used for this analysis.

[189] The dollar value of proponents' ownership may be measured with error in cases where we use the filing date of the proxy statement to estimate the dollar value of proponents' ownership (*see supra* note 187). Hence, the aggregate holdings of the proponents that submitted the abovementioned proposal may be higher than or equal to $2,000.

[190] The no-action letters that include the proof-of-ownership letters are available at *https://www.sec.gov/divisions/corpfin/cf-noaction/2019_14a-8.shtml* and *https://www.sec.gov/investment/investment-management-no-action-letters#P87_900.* We analyze a sample (rather than the universe) of all proof-of-ownership letters attached to no-action letters available on the Commission's website because ownership data in proof-of-ownership letters are unstructured, and thus information must be manually collected.

proposals submitted by 242 unique proponents, yielding 485 proponent-proposal pairs. For 433, or 89 percent of all proponents that submitted a proposal for which the company submitted a no-action request, there is information on proponents' actual and/or minimum holdings. For the remaining 52 proponents, or 11 percent, there is no information on proponents' actual or minimum holdings. Further, there are 284 proponents that submitted 155 unique proposals, for whom there is information on their actual holdings, and 149 proponents that submitted 99 unique proposals, for whom there is only information on proponents' minimum holdings.[191]

From the 284 proponents with actual holdings information, (i) eight proponents, or three percent, held less than $2,000 worth of shares, and those proponents submitted six unique proposals; (ii) 140 proponents, or 49 percent, held more than or equal to $2,000 but less than $15,000 worth of shares, and those proponents submitted 98 unique proposals; (iii) 19 proponents, or seven percent, held more than or equal to $15,000 but less than $25,000 worth of shares, and those proponents submitted 16 unique proposals; and (iv) 117 proponents, or 41 percent, held more than or equal to $25,000 worth of shares, and those proponents submitted 79 unique proposals.[192] The median ownership for proponents with actual holdings information is $13,076, and the average ownership is $11.8 million.

From the 149 proponents with minimum holdings information, (i) 148 proponents, or 99 percent, hold at least $2,000 worth of shares, and those proponents submitted 98 unique proposals; (ii) 18 proponents, or 12 percent, hold at least $15,000 worth of shares, and those proponents submitted 18 unique proposals; and (iii) 12 proponents, or eight percent, hold at least $25,000 worth of shares, and those proponents submitted 12 unique proposals.

As Table 2 shows, in our sample, there are nine proponents with individual holdings below the current $2,000 ownership threshold (*i.e.,* eight proponents with exact holdings information and one proponent with minimum holdings information below the $2,000 threshold) and those proponents submitted seven unique proposals. For one of the seven proposals, there were two co-proponents, whose aggregate holdings met the $2,000 current ownership threshold. For another one of the seven proposals, there was only one proponent whose holdings did not meet the $2,000 threshold.[193] For the remaining five proposals, there was at least one other co-proponent whose share ownership met the current $2,000 threshold.

TABLE 2—PROPONENTS' OWNERSHIP (FROM PROOF-OF-OWNERSHIP LETTERS)

	Number of proponents	Number of proposals
Actual Holdings	284	155
Holdings <$2,000	8	6
Holdings ≥$2,000, but <$15,000	140	98
Holdings ≥$15,000, but <$25,000	19	16
Holdings ≥$25,000	117	79
Minimum Holdings	149	99
Holdings <$2,000	149	99
Holdings ≥$2,000	148	98
Holdings ≥$15,000	18	18
Holdings ≥$25,000	12	12
No Holdings Information	52	34

Sources: *CRSP, Proof-of-Ownership Letters attached to no-action letters found on Commission's website.*

Data on proponent ownership from proxy statements and proof-of-ownership letters cannot inform the analysis of shareholder-proponents' duration of holdings in excess of one year.[194] One commenter has provided an estimate of average holding period of four to eight months across all types of

[191] Multiple proponents may submit a single proposal. Hence, the number of proponents in Table 2 can be higher than the number of proposals. Also, for the same reason, within each panel, the sum of proposals for the various ownership ranges can be higher than the total number of proposals in the corresponding panel. For example, in the Actual Holdings panel, the sum of proposals for the various ownership ranges (*i.e.,* 199 = 6 + 98 + 16 + 79) is higher than the total number of proposals in the panel (*i.e.,* 155).

In Table 2, the sum of the proposals with (i) information on proponents' actual holdings (*i.e.,* 155 proposals); (ii) information on proponents' minimum holdings (*i.e.,* 99 proposals); and (iii) no information on proponents' holdings (*i.e.,* 34 proposals) is higher than the number of unique proposals in our sample (*i.e.,* 254) because for the same proposal, the proof-of-ownership letters submitted by the proponents can provide information on proponents' actual and/or minimum holdings.

[192] Data on proponent ownership from proof-of-ownership letters may not be representative of the overall distribution of proponent ownership because companies do not seek to omit every shareholder proposal. Companies sought to omit proposals by requesting a no-action letter from the Commission staff for 31% of shareholder proposals during the calendar year 2018. The percentage of proposals that companies sought to omit in 2018 is estimated as the number of unique proposals for which the Commission received a no-action request in 2018—*see supra* note 190—divided by the number of all unique proposals (*i.e.,* voted, omitted, and withdrawn proposals) to be considered in 2018 shareholder meetings from ISS Analytics. Hence, this percentage is an approximation of the actual percentage of proposals that companies sought to omit in 2018 because some of the no-action requests received by the Commission in 2018 regarded 2019 shareholder meetings.

In addition, data on proponent ownership from proof-of-ownership letters is limited because proponents are not required to disclose in the proof-of-ownership letter their exact stock ownership but only to confirm that they meet the minimum ownership thresholds. *See* Rule 14a–8(b).

In cases where the proponent reports the number of shares rather than the dollar amount of his/her holdings, we convert the number of shares to dollars using the average of the bid and ask prices during the 60 calendar days before the date the shareholder submitted the proposal. *See supra* note 57. In cases where the no-action letter does not contain the date that the proposal was mailed or emailed, we use the date that the company received the proposal to estimate the highest of the average of the bid and ask prices during a 60-day period. In cases where the no-action letter does not contain the date that the proposal was mailed or emailed or the date that the company received the proposal, we use the date that the proposal was signed by the proponent. Stock prices are retrieved from CRSP.

[193] Commission staff issued a no-action letter for this proposal following the company's request because the proponent did not satisfy the minimum ownership requirement under Rule 14a–8(b).

[194] *See supra* note 185 and accompanying text. Because under current eligibility requirements, shareholder-proponents are required to have held shares for at least one year, we can reasonably assume a minimum of one year ownership duration for proponents' reported holdings unless the proposal was challenged on the basis of not satisfying the ownership eligibility requirements.

shareholders.[195] We solicit public comment on the duration of ownership for all shareholders, and specifically for shareholders likely to submit shareholder proposals, in Section IV.E below.

iii. Discussion Specific to Proposals Submitted on Behalf of Shareholders

As mentioned in Section IV.B.3.i above, from the 447 proposals submitted for a vote at a shareholder meeting in 2018, 363 provided information related to the identity of the proponents. Out of those 363 proposals, 67 (or 18 percent) were submitted by a representative. The documentation that would be mandated by the proposed amendments is generally non-public. We are able to verify if the proponent provided the documentation that would be mandated by the proposed amendments only in cases where the company submitted a no-action request for the proposal at issue, and thus submitted to the Commission the necessary supporting documentation, including the shareholder proposal and related disclosures. Companies submitted a no-action request for 12 out of the 67 proposals submitted by a representative.[196] In eight out of the 12 requests, the proponent provided all documentation that would be mandated by the proposed amendments. In the remaining four cases, the shareholder proposal attached to the no-action letter posted on the Commission's website was signed by the representative rather than the proponent.

iv. Discussion Specific to Rule 14a–8(i)(12)

To understand current practices for shareholder proposal resubmissions, we study a sample of shareholder proposal resubmissions for Russell 3000 companies from 2011 to 2018.[197] Out of the 3,620 proposals that went to a vote between 2011 and 2018, 2,168 (60 percent) were a first submission, 678 (19 percent) were a second submission, and the remaining 774 (21 percent) were a third or higher submission (*see* Table 3 below).[198] During the same time period, the average support for first time proposals was 34 percent and the median support was 30 percent. The average support for second and third or higher submissions was slightly lower than first-time proposals, each receiving approximately 30 percent and 32 percent, on average.[199]

[195] *See* letter in response to the Proxy Process Roundtable from the Shareholder Rights Group dated December 4, 2018, at 9 (noting ''[t]he average time an investor held a share holding a stock [sic] in the 1960s when the rule was passed was eight years, today it is between four and eight months'').

There is limited academic research on share ownership duration, primarily due to data limitations. Some studies infer average duration of holdings for all shareholders (rather than just proponents) from data on aggregate share trading volumes. In particular, one white paper has looked at share turnover for NYSE listed securities to estimate an average duration of holdings of less than two years in 2014. *See* Michael W. Roberge et al., Lengthening the Investment Time Horizon (2016), *available at https://www.pionline.com/article/20161101/WHITE_PAPERS/161109903.* Any such analysis inferring average duration of holdings across all investors masks potential heterogeneity of holding periods across different types of investors. In particular, because some of the trading volume may come from high-frequency traders, these average statistics may underestimate the holding duration of institutional and individual investors likely to submit shareholder proposals.

Other academic research has relied on information on holdings for specific types of shareholders. In particular, one strand of literature has looked at daily trading records of 78,000 households from January 1991 to December 1996 from a U.S. discount brokerage house. A survey article notes that the estimated average holding period for individuals in this sample is 16 months. *See* Brad M. Barber & Terrance Odean, *The Behavior of Individual Investors,* 2 Handbook of the Economics of Finance, 1533, 1539 (2013). Another paper finds that the median holding period of individual investors in this dataset is 207 trading days. *See* Deniz Anginer, Snow Xue Han, & Celim Yildizhan, *Do Individual Investors Ignore Transaction Costs?* 6 (Working Paper, 2018), *available at https://ssrn.com/abstract=2972845.* Another strand of literature uses information from 13F filings with the Commission to estimate statistics of duration of holdings for a subset of institutional investors. For example, one paper documents that the value-weighted composition of long-term institutional investors with securities holdings in public U.S. companies has nearly doubled from approximately 35 percent since the early 2000s to 65 percent in 2017. Long-term institutional investors are defined as those with an implied average holding period of longer than three years. *See* Wei Jiang, *Who Are the Short-Termists?,* J. Applied Corp. Fin., Fall 2018, at 19 (2018). A second paper documents a median duration of holdings of approximately two years in 2015 among this set of investors. *See* K.J. Martijn Cremers & Simone M. Sepe, *Institutional Investors, Corporate Governance, and Firm Value,* 41 Seattle U.L. Rev. 387, 403 (2018).

Lastly, we provide some evidence on holding periods using data on reported sales of corporate stocks retrieved from individual tax returns. *See* Janette Wilson & Pearson Liddell, *Sales of Capital Assets Data Reported on Individual Tax Returns, 2007–2012,* IRS Statistics of Income Bull., Winter 20167, at 58, *available at https://www.irs.gov/pub/irs-soi/soi-a-inca-id1604.pdf* (Table 4B). In 2012 (the last year with available data), we estimate that among all transactions with reported holding duration, 46% were for corporate stocks held for a period longer than one year, 27% were for stocks held longer than 2 years, and 18% were for stocks held longer than 3 years. Estimates of holdings duration from reported sales may not be representative of the overall distribution of duration of stockholdings because the propensity to sell a stock may be dependent on the amount of time the stock has been held. *See* Zoran Ivković, James Poterba, & Scott Weisbenner, *Tax-Motivated Trading by Individual Investors,* 95 Amer. Econ. Rev. 1605 (2005).

[196] *See supra* note 190 (providing links to no-action letters).

[197] *See* CII Report, *supra* note 92. Because the CII Report does not use data on shareholder proposal submissions prior to 2011, the analysis in the report is conducted under the assumption that all proposals submitted in the earlier years are first-time submissions. Nevertheless, some proposals in the earlier years are actually resubmissions from previous years. As a result, the CII Report underestimates the number of resubmitted proposals in the sample and overestimates the number of proposals eligible for resubmission in the following year. To correct for these biases, we supplement data in the CII Report with data on voted shareholder proposals from ISS Analytics during the years 2006 to 2010. We apply the CII Report's methodology to identify resubmitted proposals for years 2011 to 2013 using the description of the shareholder proposal in the ISS data. As a result, we identify 1,442 shareholder proposals as resubmissions compared to 1,314 in the CII Report. Therefore, some of the statistics on resubmitted proposals in our analysis differ from those presented in the CII Report.

When considering eligibility for resubmission, we only consider whether the proposal is eligible for resubmission in the following year, and not whether the proposal is eligible for resubmission at some other point in the future. This distinction is important because, under the current resubmission thresholds, all proposals are eligible for resubmission following a three-year cooling-off period. Of all the proposals resubmitted during 2011 to 2018, 84% were voted on in the previous year and 12% (5%) were not voted in the previous year, but were voted on two (three) years prior.

Statistics on resubmitted shareholder proposals are subject to measurement error because ISS Analytics' classification of resubmitted shareholder proposals is not always the same as what the Commission's staff or courts might deem to be a proposal on ''substantially the same subject matter.''

Lastly, the total number of voted shareholder proposals in the CII Report is slightly lower than the counts in the ISS Analytics data. For example, there are 423 shareholder proposals that appear as first-time submissions or resubmissions in the CII Report during 2018, while we estimate that 447 shareholder proposals were voted on during the same period using the ISS Analytics data. *See supra* Section IV.B.3.i.

[198] A proposal is categorized as first submission if it has not been voted on in the preceding three calendar years. A proposal is categorized as second (third or greater) submission if it has been voted on within the preceding three calendar years and it has been voted on once (two or more times) in the past five calendar years.

[199] Throughout the analysis in this section, when comparing estimates across subsamples of the data (*e.g.,* average support for first time and second time proposals, or the propensity to resubmit proposals across proposal types, etc.), we verify that the estimates are statistically different from one another. In particular, we test whether the difference in a particular pair of estimates is statistically significant using hypothesis tests for continuous and discrete random variables and a *p*-value of 10%. *See, e.g.,* Greene (2007), *supra* note 144.

The median support for second-time submissions, 29 percent, was slightly lower than first-time submissions, while the median support for third-time or subsequent submissions, 31 percent, was slightly higher. While the difference in median voting support between first-time and second-time submissions is statistically significant, the difference in the median voting support between first-time and third or subsequent submissions is not.

TABLE 3—SHAREHOLDER PROPOSALS BY NUMBER OF SUBMISSIONS, 2011–2018

	Number of proposals	% of proposals	Average % support	Median % support	% of proposals eligible for resubmission next year
First	2,168	60	34	30	94
Second	678	19	30	29	90
Third or subsequent	774	21	32	31	94
Total	3,620	100	32	30	93

Sources: *CII Report, ISS Analytics.*

Some types of proposals are more likely to be resubmitted than others and thus, the effect of proposed amendments to the resubmission thresholds may vary with proposal type. Therefore, what follows is a discussion of how the likelihood of shareholder proposal resubmission is related to: (i) Prior voting support; (ii) proposal topic; (iii) firm size; (iv) dual-class structure of shares; and (v) proponent type.

Shareholders' propensity to resubmit previously voted proposals depends on the voting support a proposal has previously received. Using a sample of voted shareholder proposals from 2011 to 2018, we find that a shareholder proposal was more likely to be resubmitted in the following year if it has garnered greater than 10 percent, but less than majority, support (*see* Table 4 below).[200] In particular, among proposals that were eligible to be resubmitted in the following year under the current resubmission thresholds, 32 percent of proposals that received less than 10 percent of votes in favor were actually resubmitted in the following year, as compared to 44 percent of proposals that received between 10 percent and 50 percent of votes in favor. We assume that because shareholder proposals garnering majority support are more likely to be implemented than those receiving lower levels of support, these proposals are less likely to be resubmitted.[201]

TABLE 4—SHAREHOLDER PROPOSALS SUPPORT AND RESUBMISSIONS BY PROPOSAL TOPIC, 2011–2017

% Vote for	<10%	10%–50%	>=50%	Total
All Proposals:				
Number of proposals	648	1,997	552	3,197
Eligible for resubmission	418	1,997	552	2,967
(% of proposals)	(65%)	(100%)	(100%)	(93%)
Resubmitted	133	878	65	1,076
(% of eligible proposals)	(32%)	(44%)	(12%)	(36%)
Governance Proposals:				
Number of proposals	176	1,196	522	1,894
Eligible for resubmission	117	1,196	522	1,835
(% of proposals)	(66%)	(100%)	(100%)	(97%)
Resubmitted	28	453	62	543
(% of eligible proposals)	(24%)	(38%)	(12%)	(30%)
Environmental Proposals:				
Number of proposals	152	301	9	462
Eligible for resubmission	105	301	9	415
(% of proposals)	(69%)	(100%)	(100%)	(90%)
Resubmitted	36	132	2	170
(% of eligible proposals)	(34%)	(44%)	(22%)	(41%)
Social Proposals:				
Number of proposals	320	500	21	841
Eligible for resubmission	196	500	21	717
(% of proposals)	(61%)	(100%)	(100%)	(85%)
Resubmitted	69	293	1	363
(% of eligible proposals)	(35%)	(59%)	(5%)	(51%)

Sources: *CII Report, ISS Analytics.*

The tendency to resubmit shareholder proposals differs by proposal topic (*see* Table 4 above). Because governance-related shareholder proposals received greater voting support than environmental and social shareholder proposals, on average, governance-related proposals were more likely to be eligible for resubmission in the following year.[202] Despite more proposals being eligible for resubmission, governance-related

[200] For this analysis, we look at proposals submitted during the calendar years 2011 to 2017 and whether they were resubmitted in the following year using data from 2012 to 2018. Because we do not have data on whether these proposals were resubmitted in 2019, we exclude proposals submitted in 2018.

The analysis shows that, in our sample, 10 shareholder proposals submitted to nine companies were resubmitted and voted on despite being eligible for exclusion under the current resubmission thresholds. Five of these proposals were resubmitted in the year following a previous vote during 2011 to 2017. Thus, these five proposals are included in the results presented in Table 4.

[201] *See supra* note 180 and accompanying text.

[202] *See* Section IV.B.3.i for an analysis of voting support by shareholder proposal topic. We rely on the proposal categorization from the CII Report, *supra* note 92, to group proposals into governance, environmental, and social categories.

proposals were less likely to be resubmitted than environmental and social proposals. In particular, among proposals that received less than 10 percent support, 24 percent of governance-related shareholder proposals eligible for resubmission in the following year were actually resubmitted, as compared to 34 percent of environmental and 35 percent of social shareholder proposals eligible for resubmission. Among proposals that received between 10 percent and 50 percent support, 38 percent of governance-related shareholder proposals eligible for resubmission in the following year were actually resubmitted, as compared to 44 percent of environmental and 59 percent of social shareholder proposals eligible for resubmission.

The tendency to resubmit shareholder proposals also differs by the type of company. In particular shareholder proposals received by S&P 500 companies were more likely to be resubmitted in the following year than shareholder proposals received by those companies not in the S&P 500 (*see* Table 5 below). For example, among shareholder proposals receiving less than 10 percent support, 33 percent of eligible shareholder proposals were resubmitted at S&P 500 companies, as compared to 22 percent at non-S&P 500 companies. Among shareholder proposals receiving between 10 percent and 50 percent support, 47 percent of eligible shareholder proposals were resubmitted at S&P 500 companies, as compared to 31 percent at non-S&P 500 companies.

TABLE 5—SHAREHOLDER PROPOSALS SUPPORT AND RESUBMISSIONS BY COMPANY SIZE, 2011–2017

% Vote for	<10%	10%–50%	≥50%	Total
S&P 500:				
Number of proposals	556	1,663	337	2,556
Eligible for resubmission	359	1,663	337	2,359
(% of proposals)	(65%)	(100%)	(100%)	(92%)
Resubmitted	120	774	47	941
(% of eligible proposals)	(33%)	(47%)	(14%)	(40%)
Non S&P 500:				
Number of proposals	92	334	215	641
Eligible for resubmission	59	334	215	608
(% of proposals)	(64%)	(100%)	(100%)	(95%)
Resubmitted	13	104	18	135
(% of eligible proposals)	(22%)	(31%)	(8%)	(22%)

Sources: *CII Report, ISS Analytics.*

Fewer shareholder proposals were eligible for resubmission in the following year in companies with dual-class shares as compared to those without such shares (*see* Table 6 below).[203] Among shareholder proposals that received less than 10 percent in voting support, only 50 percent were eligible for resubmission the following year for companies with dual-class shares, as compared to 66 percent for companies without dual-class shares. However, eligible shareholder proposals at dual-class companies were more likely to be resubmitted in the following year. Among proposals eligible for resubmission in the following year, 71 percent were resubmitted at dual-class companies, while only 29 percent were resubmitted at non-dual class companies.

TABLE 6—SHAREHOLDER PROPOSALS SUPPORT AND RESUBMISSIONS BY TYPE OF COMPANY SHARES, 2011–2017

% Vote for	<10%	10%–50%	≥50%	Total
Companies with dual-class shares:				
Number of proposals	48	116	4	168
Eligible for resubmission	24	116	4	144
(% of proposals)	(50%)	(100%)	(100%)	(86%)
Resubmitted	17	69	0	86
(% of eligible proposals)	(71%)	(59%)	(0%)	(60%)
Companies without dual-class shares:				
Number of proposals	600	1,881	548	3,029
Eligible for resubmission	394	1,881	548	2,823
(% of proposals)	(66%)	(100%)	(100%)	(93%)
Resubmitted	116	809	65	990
(% of eligible proposals)	(29%)	(43%)	(12%)	(35%)

Sources: *CII Report, ISS Analytics.*

The tendency to resubmit shareholder proposals also differs by the type of proponent (*see* Table 7 below). In particular shareholder proposals submitted by individual proponents receiving between 10 percent and 50 percent of the votes in support were less likely to be resubmitted than proposals submitted by other proponent types.[204]

[203] To identify firms with two or more classes of common shares, we use the classification of dual-class firms in the ISS Governance dataset.

[204] Shareholder proposals with individual proponents were less likely to be resubmitted than proposals with non-individual proponents for all three proposal types: Governance-related, environmental, and social. However, the difference is most pronounced for social proposals, for which individuals were five times less likely to resubmit eligible proposals.

TABLE 7—SHAREHOLDER PROPOSALS SUPPORT AND RESUBMISSIONS BY TYPE OF PROPONENT, 2011–2017

% Vote for	<10%	10%–50%	≥50%	Total
Individual proponents:				
Number of proposals	171	725	182	1,078
Eligible for resubmission	97	725	182	1,004
(% of proposals)	(57%)	(100%)	(100%)	(93%)
Resubmitted	29	266	11	306
(% of eligible proposals)	(30%)	(37%)	(6%)	(30%)
Non-individual proponents:				
Number of proposals	477	1,272	370	2,119
Eligible for resubmission	321	1,272	370	1,963
(% of proposals)	(67%)	(100%)	(100%)	(93%)
Resubmitted	104	612	54	770
(% of eligible proposals)	(32%)	(48%)	(15%)	(39%)

Sources: *CII Report, ISS Analytics.*

We also analyze how voting support changes with the number of times a particular proposal is submitted. Fifty-two percent of resubmitted shareholder proposals saw an increase in voting support relative to the last time they were voted on (*see* Table 8 below). Shareholder proposals that got less than 10 percent voting support in the past were more likely to see increases in voting support as compared to proposals receiving between 10 percent and 50 percent of votes in favor. For those proposals for which voting support increased, the average increase in voting support is approximately six percent for all proposals, six percent for governance-related proposals, and five percent for environmental and social proposals.

TABLE 8—CHANGE IN VOTING SUPPORT FOR RESUBMITTED PROPOSALS, 2011–2018

% Vote for	<10%	10%–50%	≥50%	Total
All Proposals:				
Number of proposals	178	1,165	109	[205] 1,452
% Proposals with increase in voting	55%	52%	47%	52%
Average increase in voting support	7%	5%	6%	6%
Governance Proposals:				
Number of proposals	42	657	106	805
% Proposals with increase in voting	52%	50%	48%	50%
Average increase in voting support	17%	6%	6%	6%
Environmental Proposals:				
Number of proposals	47	157	2	206
% Proposals with increase in voting	62%	55%	0%	56%
Average increase in voting support	4%	5%	N/A	5%
Social Proposals:				
Number of proposals	89	351	1	441
% Proposals with increase in voting	53%	54%	0%	53%
Average increase in voting support	5%	5%	N/A	5%

Sources: *CII Report, ISS Analytics.*

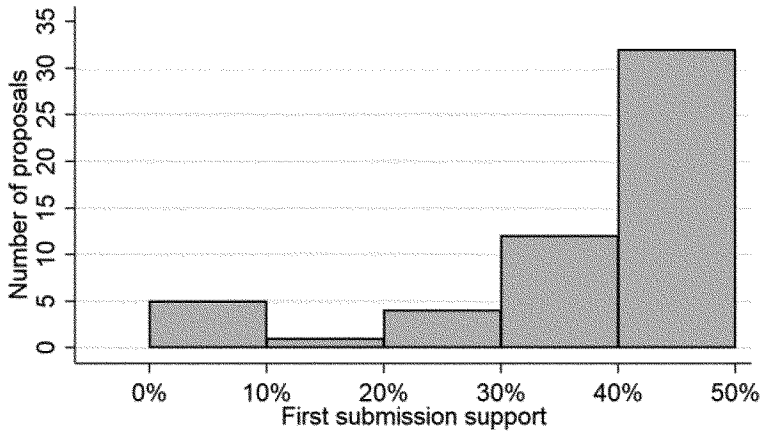
Lastly, we analyze the extent to which initial support for shareholder proposals is related to the likelihood of the shareholder proposal ultimately obtaining majority support.[206] During 2011 to 2018, 533 unique shareholder proposals have garnered majority support, of which 479 (90 percent) obtained majority support on their initial submission.[207] Of the remaining 54 shareholder proposals that received majority support following a resubmission, 32 (60 percent) obtained majority support on their second submission and 22 (40 percent) obtained majority support on their third or subsequent submissions. Figure 9 below shows the distribution of first submission voting support for the 54 shareholder proposals that garnered majority support following a resubmission. Of these, approximately 60 percent started with support of over 40 percent in their first submission, and 98 percent started with support of over 5 percent in their first submission. Of the 22 proposals that obtained majority support on their third or subsequent submissions, approximately 95 percent received support of over 15 percent on their second submission, and 100 percent received support of over 25 percent on their third or subsequent submission.

[205] The total number of proposals in Table 8 represents the total number of proposals that were resubmitted (not first time submissions) in the years 2011 to 2018, which differs from the total number of proposals in Tables 4, 5, 6, and 7 (*i.e.,* 3,197 proposals). This is because the analysis on the propensity to resubmit shareholder proposals excludes proposals resubmitted in 2011 and those that were resubmitted after a period longer than one year. *See supra* note 200.

[206] Note that in this analysis, we may be underestimating the likelihood of proposals ultimately obtaining majority support, especially for proposals toward the end of our sample that could get majority support following a future resubmission. For example, if a new proposal fails to garner majority support in 2018, but is resubmitted in 2019, our data does not allow us to see whether such a proposal would garner majority support following a resubmission in a year after 2018. *See supra* note 200.

[207] Note that this number is lower than 552 proposals receiving majority support in Table 4. This is because the former measure counts unique proposals while the latter counts each time a proposal is submitted and receives over 50% support. Therefore, in some instances, the latter measure will count twice a proposal that receives majority support, is resubmitted, and receives majority support again.

Figure 9: Voting Support Received on Initial Submission by Proposals Garnering Majority Support on a Subsequent Resubmission, 2011-2018



Sources: CII Report, ISS Analytics

The results of the analyses in Tables 3–8, Figure 9, and accompanying text should be interpreted with caution—our analysis of shareholder proposal resubmissions is subject to selection bias because the data only includes resubmissions that appeared in proxy materials. The data does not capture resubmissions that were withdrawn because proponents reached an agreement with management or because proponents decided to withdraw the resubmission for other reasons, and it does not capture resubmissions that were excluded pursuant to one of the substantive bases under Rule 14a–8.[208]

C. Benefits and Costs and Effects on Efficiency, Competition, and Capital Formation of Proposed Rule Amendments

Below we discuss the anticipated economic effects of the proposed rule amendments. Section IV.C.1 discusses economic considerations relevant to shareholder proposals generally, Section IV.C.2 discusses the general economic effects of the proposed rule amendments, Section IV.C.3 discusses the specific benefits and costs of each proposed amendment, and Section IV.C.4 discusses the effects of the proposed amendments on efficiency, competition, and capital formation.

1. General Economic Considerations Relevant to Shareholder Proposals

As mentioned in Section IV.B above, Rule 14a–8 was designed to facilitate shareholders' ability under state law to appear in person at an annual or special meeting and, subject to certain requirements governed by state law and the company's governing documents, present their own proposals for a vote by shareholders at that meeting. By giving proponents the ability to have their proposals included alongside management's in the company's proxy statement, Rule 14a–8 allows shareholders to consider and vote on matters raised by other shareholders for consideration at an annual or special meeting of shareholders.

A shareholder proposal could be value enhancing not only because it could motivate a value-enhancing change,[209] but also because it could limit insiders' entrenchment [210] and provide management with information about the views of shareholders.[211] On the other hand, a shareholder proposal may not be value enhancing, and companies may bear direct costs associated with the consideration of a proposal and/or its inclusion in the proxy statement and these costs may be passed down to shareholders. A shareholder proposal may not be value enhancing if it serves the interests of a minority rather than the majority of shareholders.[212] Shareholders may also bear costs associated with their own consideration of a proposal. Our economic analysis does not speak to whether any particular shareholder proposal or type of proposals are value enhancing, whether the proposed amendments would exclude value-enhancing proposals, or whether the proposed amendments would have a disproportionate effect on proposals that are more or less value enhancing.

In addition, companies and their shareholders may bear opportunity costs associated with considering proposals that are ultimately not supported by a majority of shareholders or implemented by a company instead of engaging in other value-enhancing activities.[213] Therefore, the value of a shareholder proposal depends fundamentally on the tradeoff between the potential for value-creation and the cost borne by companies and their shareholders. Furthermore, the value of shareholder proposals is limited by the

[208] For a similar discussion, *see* the letter in response to the Proxy Process Roundtable from the Shareholder Rights Group dated December 4, 2018, at 13.

[209] *See, e.g.,* Vicente Cuñat, Mireia Gine, & Maria Guadalupe, *The Vote Is Cast: The Effect of Corporate Governance on Shareholder Value,* 67 J. Fin. 1943 (2012) (''Cuñat et al. (2012)'').

[210] *See, e.g.,* Bach & Metzger (2017), *supra* note 174.

[211] *See, e.g.,* J. Robert Brown, Jr., *Corporate Governance, Shareholder Proposals, and Engagement Between Managers and Owners* (University of Denver Sturm College of Law, Legal Research Paper Series, Working Paper No. 17–15, 2017) (''Brown (2017)'').

[212] For a related argument, *see* the letter in response to the Proxy Process Roundtable from Business Roundtable dated November 9, 2018.

[213] *See, e.g.,* CCMC Report, *supra* note 84; Rulemaking Petition, *supra* note 82, at 8–9; Roundtable Transcript, *supra* note 13, comments of Ning Chiu, Counsel, Capital Markets Group, Davis Polk & Wardwell LLP, at 127; Tom Quaadman, Executive Vice President, U.S. Chamber of Commerce Center for Capital Markets Competitiveness, at 136; Dannette Smith, Secretary to the Board of Directors and Senior Deputy General Counsel, UnitedHealth Group, at 148–49; letters in response to the Proxy Process Roundtable from Blackrock, Inc. dated November 16, 2018; Business Roundtable dated November 9, 2018; Society for Corporate Governance dated November 9, 2018 (discussing costs associated with shareholder proposals).

extent to which shareholders participate in the voting process and the extent to which management implements those proposals.

Some empirical literature has examined whether proposals are value enhancing by studying the stock price reaction around announcements associated with shareholder proposals, and finds that shareholder proposals are, on average, associated with small or negligible changes in target companies' market value.[214] More specifically, a literature review of prior studies in this area shows that shareholder proposals are associated, with an average 0.06 percent short-window stock price reaction.[215] These results, however, mask significant cross-sectional variation in the valuation effects of shareholder proposals. In particular, literature finds significant stock market reaction to shareholder proposals that pass by a small margin relative to proposals that fail by a small margin on the day of the vote. For example, one study found a 1.3 percent higher increase in stock price on the day of the vote for proposals that pass by a small margin compared to proposals that fail by a small margin.[216]

The market reaction can differ with the topic of the shareholder proposal. For example, one study finds more positive market reaction for shareholder proposals related to eliminating poison pills and proposals seeking the adoption of cumulative voting relative to other types of governance proposals.[217] Another study finds larger market reaction for shareholder proposals that reduce antitakeover protection than other types of governance-related proposals.[218] Some literature provides evidence that environmental and social proposals that pass by a small margin elicit a positive stock market reaction on the day of the shareholder meeting.[219]

Market reaction to shareholder proposals also can depend on the type of the proponent. For example, Gillan and Starks (2000) find that market reaction is higher for proposals sponsored by individuals than institutions, whereas Cuñat et al. (2012) show that market reaction is higher for proposals submitted by institutions than individuals.[220] Gantchev and Giannetti (2018) show that market reaction is higher for proposals submitted by individuals that submit proposals infrequently.[221] Matsusaka et al. (2019) find a negative market reaction to shareholder proposals submitted by labor unions in years that a new labor contract must be negotiated.[222]

Finally, the market reaction to shareholder proposals typically is higher for firms that would benefit the most from the changes sought by the shareholder proposal. For example, Renneboog and Szilagyi (2011) find that the market reaction around the dates the proposals were first announced is higher for firms with poor governance quality,[223] and Cuñat et al. (2012) show that market reaction to governance-related proposals on the day of the shareholder meeting is higher for firms with a large number of antitakeover provisions in place.[224]

As mentioned above, companies may bear both direct and opportunity costs associated with the consideration of a proposal, and these costs may be passed down to shareholders.[225] In particular, to the extent applicable, companies incur costs to: (i) Review the proposal and address issues raised in the proposal; (ii) engage in discussions with the proponent(s); (iii) print and distribute proxy materials, and tabulate votes on the proposal; (iv) communicate with proxy advisory firms and shareholders (*e.g.,* proxy solicitation costs); (v) if they intend to exclude the proposal, file a notice with the Commission; and (vi) prepare a rebuttal to the submission.

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[214] The majority of prior studies find no long-term effects of shareholder proposals on companies' returns, earnings, operations, and corporate governance. *See, e.g.,* Matthew R. Denes, Jonathan M. Karpoff, & Victoria B. McWilliams, *Thirty Years of Shareholder Activism: A Survey of Empirical Research,* 44 J. Corp. Fin. 405 (2017) (''Denes et al. (2017)''). We focus our discussion on short-term market reactions to shareholder proposals because findings on the long-term effects are less reliable than the findings on the short-term effects as it can be hard to attribute the long-term effects to the shareholder proposals.

[215] *See* Denes et al. (2017), *supra* note 214. The results of these studies should be interpreted with caution because they do not identify a clean announcement date for proposals by which to gauge the market reaction. For example, companies frequently include multiple proposals in the same proxy statement and they announce other news, such as dividends, at shareholder meetings. For related arguments, *see* Thomas & Cotter (2007), *supra* note 180.

[216] *See* Cuñat et al. (2012), *supra* note 209. One reason why the market reaction is concentrated in proposals that pass by a small margin is that for proposals that pass or fail by a large margin, the stock price may already reflect the voting outcome because it is largely anticipated. For proposals that fail by a small margin, there is typically negligible or no stock price reaction because proposals that fail even by a small margin are significantly less likely to be implemented than proposals that pass by a small or large margin. *See also* Bach & Metzger (2017), *supra* note 174.

Nevertheless, Bach & Metzger also argue that the estimates of stock price reaction around majority support thresholds likely are biased because of the ability of management to sway the outcome of the vote, although the direction of this bias is difficult to estimate. Laurent Bach & Daniel Metzger, *How Close Are Close Shareholder Votes?,* 32 Rev. Fin. Stud. 3183 (2019) (''Bach & Metzger (2019)'').

[217] Stuart L. Gillan & Laura T. Starks, *Corporate Governance Proposals and Shareholder Activism: The Role of Institutional Investors,* 57 J. Fin. Econ. 275 (2000) (''Gillan & Starks (2000)''). This study examines a sample of proposals submitted between 1987 and 1994. Hence, the generalizability of some of the findings of this study could be limited.

[218] *See* Cuñat et al. (2012), *supra* note 209.

[219] Caroline Flammer, *Does Corporate Social Responsibility Lead to Superior Financial Performance? A Regression Discontinuity Approach,* 61 Mgmt. Sci. 2549 (2015). Nevertheless, the study also notes that ''although [the] results imply that adopting close call [environmental and social] proposals is beneficial to companies, they do not necessarily imply that [environmental and social] proposals are beneficial in general.'' *Id.* In particular, the study finds that shareholder proposals on social and environmental issues receive low shareholder support, on average, and only a small and unrepresentative sample of shareholder proposals on social and environmental issues is associated with positive stock market reactions. *Id.*

[220] The different findings of the cited papers likely are attributable to different samples and methodologies used.

[221] Gantchev & Giannetti (2018), *supra* note 166.

[222] John G. Matsusaka, Oguzhan Ozbas, & Irene Yi, *Opportunistic Proposals by Union Shareholders,* 32 Rev. Fin. Stud. 3215 (2019). For similar evidence of stock market reaction to union-sponsored proposals, *see* Jie Cai & Ralph A. Walkling, *Shareholders' Say on Pay: Does it Create Value?,* 46 J. Fin. & Quantitative Analysis 299 (2011) and Andrew K. Prevost, Ramesh P. Rao, & Melissa A. Williams, *Labor Unions as Shareholder Activists: Champions or Detractors?,* 47 Fin. Rev. 327 (2012).

[223] Luc Renneboog & Peter G. Szilagyi, *The Role of Shareholder Proposals in Corporate Governance,* 17 J. Corp. Fin. 167 (2011). The dates the proposals were first announced were (i) the mailing dates of the definitive proxy statements; (ii) the dates of a preliminary statement released by the target firm; or (iii) the dates that the proxy materials were filed by the proponent in the event of a proxy contest. Governance quality is measured using two separate indices: (i) An index that tracks 24 antitakeover provisions and (ii) an index that tracks the following six provisions: Staggered boards, limits to shareholder bylaw amendments, poison pills, golden parachutes, and supermajority requirements for mergers and charter amendments.

[224] Cuñat et al. (2012), *supra* note 209, use a sample of shareholder proposals that Riskmetrics classifies as governance-related. These proposals are broadly classified into the following six categories: (i) Antitakeover proposals, (ii) compensation, (iii) voting, (iv) auditors, (v) board structure, and (vi) other.

[225] Costs would not be passed down to shareholders if managers absorbed some of these costs by decreasing their compensation or by offsetting the cost increases by decreasing other types of costs.

There is disagreement among commenters regarding the costs associated with processing shareholder proposals.[226] Based on data from a 1996 SEC questionnaire, the average cost for a company to determine whether to place a proposal on a ballot was $58,309 and the average cost to print and distribute proxy materials, and tabulate votes on the proposal was $78,795.[227] Commenters, however, have expressed concerns that these cost estimates likely are unreliable because: (i) They likely cover the cost of all proposals received by a company in a year, not the cost of a single proposal; (ii) they are averages, based on a wide range of responses from companies; (iii) printing and mailing costs have decreased in recent years due to the increased use of electronic dissemination of proxy materials; [228] and (iv) they capture the overall cost of printing and distributing proxy materials, not the cost of an additional shareholder proposal.[229] More recently, a representative from an industry group estimated a cost of $50,000 per proposal.[230] In response to the Proxy Process Roundtable, one commenter also stated that the company's cost per shareholder proposal, including resubmitted proposals, is more than $100,000,[231] while another commenter cited to a House Report that estimated the cost associated with shareholder proposals to be $150,000.[232] In addition, the Commission has previously estimated that companies spend, on average, $11,600 to file with the Commission a notice that they intend to exclude a shareholder proposal, which is equivalent to $13,602 today.[233] We lack data to estimate the dollar cost of the remaining activities associated with shareholder proposal submissions, but we request comment and data on these costs in Section IV.E below.

We note that the cost of processing a resubmission may be lower than the cost of processing a first-time proposal.[234] Further, some of the above mentioned costs, such as the expenses to draft a no-action request or campaigning to increase retail voters' participation, involve a degree of management discretion as to the level of expenses incurred, and there is disagreement about the level of such expenses that is value-enhancing.[235]

Shareholder proposals also impose opportunity costs on companies and their shareholders because management, the board, and the voting shareholders could spend the time spent on processing a shareholder proposal and voting on the proposal to engage in other value-enhancing activities. We are unable to estimate the dollar amount of some of the direct administrative costs and opportunity costs associated with shareholder proposals because we lack the necessary data. Thus, we seek comment on these costs, and any corresponding cost savings of the proposed amendments, in Section IV.E below.

As mentioned above, in addition to the costs to companies that may be passed down to shareholders, individual shareholders may bear costs associated with their own consideration and voting on a proposal. Although these costs may be difficult to quantify, many investment advisers (among others) retain proxy advisory firms to perform a variety of services to reduce the burdens associated with proxy voting determinations, including determinations on shareholder proposals.

2. General Economic Effects of the Proposed Amendments

i. Discussion Specific to Proposed Amendments to Rule 14a–8(b) and Rule 14a–8(c)

The proposed amendments to the ownership thresholds in Rule 14a–8(b) would allow companies to exclude the following additional proposals relative to the proposals that can be excluded under the current ownership thresholds: [236] (i) Proposals submitted by shareholders that hold at least $2,000 and less than $15,000 worth of shares for a period between one and three years and (ii) proposals submitted by shareholders that hold at least $15,000 and less than $25,000 worth of shares for a period between one and two

[226] *See supra* notes 21–25 and accompanying text.

[227] The cumulative rate of inflation between May 1998 and August 2019 is 157.6%. *See Consumer Price Index (CPI) Inflation Calculator,* U.S. Dep't of Labor, Bureau of Labor Statistics (last visited Oct. 31, 2019), *https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=11%2C600.00&year1=201011&year2=201906*. The average costs to companies were $37,000 and $50,000, respectively. *See* 1998 Adopting Release, *supra* note 8.

$58,309 = $37,000 × 1.576.

$78,795 = $50,000 × 1.576.

[228] The processing fee for the electronic dissemination of proxy materials cannot exceed 50 cents per set of proxy materials. *See* NYSE Rule 451.90. Automatic Data Processing Inc. estimated that ''the average cost of printing and mailing a paper copy of a set of proxy materials during the 2006 proxy season was $5.64.'' *See* Shareholder Choice Regarding Proxy Materials, Release No. 34–56135, (Jul. 26, 2007) [72 FR 42221 (Aug. 1, 2007)]. There is also a processing fee for the dissemination of proxy materials via mail. The processing fee for the dissemination of proxy materials via mail can be lower than the processing fee for the dissemination of proxy materials via email. *See* letter from the Investment Company Institute (Jan. 17, 2019), at 3, *available at https://www.ici.org/pdf/18_ici_nysefees_ltr.pdf* (noting that ''[e]very beneficial account pays the NYSE schedule maximum fee of 15 cents in processing fees to receive a paper shareholder report in the mail. . . . Every beneficial account pays the NYSE schedule maximum fee of 25 cents (15 cents plus 10 cents) to receive a shareholder report by email.''). The letter from the Investment Company Institute refers to processing fees to disseminate a shareholder report, but we expect that the processing fees to disseminate proxy materials would be comparable. Nevertheless, the cost of printing and mailing the proxy materials would offset any cost savings arising from lower processing fees for proxy materials disseminated via mail compared to proxy materials disseminated via email. *See, e.g.,* Broadridge, 2019 Proxy Season Key Statistics and Performance Rating (2019), *available at https://www.thecorporatecounsel.net/member/Memos/Broadridge/09_19_2019.pdf* (estimate of cost savings as a result of the increased electronic dissemination of proxy materials).

[229] *See, e.g.,* letter in response to the Proxy Process Roundtable from the Shareholder Rights Group dated December 4, 2018; Kanzer (2017), *supra* note 104, at 2–3; Brown (2017), *supra* note 211.

[230] *See* Statement of Darla C. Stuckey, President and CEO, Society for Corporate Governance, Before the H. Comm. on Financial Services Subcomm. on Capital Markets and Government Sponsored Enterprises, Sept. 21, 2016, at 8 (noting ''a lower legal cost estimate based on anecdotal discussions with [the Society for Corporate Governance] members of $50,000 per proposal'').

[231] *See* letter in response to the Proxy Process Roundtable from Exxon Mobil Corporation dated July 26, 2019.

[232] *See* letter in response to the Proxy Process Roundtable from the American Securities Association dated June 7, 2019, at 4.

[233] *See* Facilitating Shareholder Director Nominations, Release No. 34–62764 (Aug. 25, 2010) [75 FR 56668 (Sept. 16, 2010)], at 56742 n. 797. $11,600 = 116 hours/notice × 0.25 time of outside professionals × $400 hourly wage of outside professionals; $13,602 = $11,600 × 1.173 cumulative rate of inflation between November 2010 and August 2019. *See Consumer Price Index (CPI) Inflation Calculator,* U.S. Dep't of Labor, Bureau of Labor Statistics (last visited Oct. 31, 2019), *https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=11%2C600.00&year1=201011&year2=201906*.

[234] *See, e.g.,* letter in response to the Proxy Process Roundtable from the Shareholder Rights Group dated December 4, 2018, at 14 (noting ''[o]ur experience as proponents of proposals leads us to believe that companies expend less resources on proposals that are resubmitted. If resources are expended in opposition to proposals, the lion's share of those resources and board attention to a proposal are most likely expended in the first effort to oppose the proposal''). In certain instances, however, resubmissions could be costlier than initial submissions. For example, companies might decide to challenge a resubmission and incur the associated costs following low support for the initial submission.

[235] *See, e.g.,* Brown (2017), *supra* note 211, at 21; Kanzer (2017), *supra* note 104, at 2; James McRitchie, *SRI Funds & Advisors Send Open Letters on Lawsuits Against Shareholders, CorpGov.net* (Mar. 24, 2014), *https://www.corpgov.net/2014/03/sri-funds-advisors-send-open-letters-on-lawsuits-against-shareholders/; see also* letter in response to the Proxy Process Roundtable from Investor Voice, SPC dated November 14, 2018, at 3.

[236] As of August 2019, the $2,000 threshold as adopted in May 1998 would be equal to $3,152 after adjusting for inflation, *see supra* note 55, and it would be equal to $8,379 after adjusting for the growth in Russell 3000 index, *see supra* note 56.

years.[237] The proposed amendments to Rule 14a–8(b) would not allow shareholders to aggregate their holdings, and, therefore, companies would be able to exclude proposals submitted by shareholders that do not individually meet the minimum ownership thresholds under Rule 14a–8. In addition, the proposed amendments to Rule 14a–8(b) would require a shareholder-proponent to provide contact information as well as availability to discuss the proposal with the company, and, where a representative is used, documentation authorizing the representative to submit the proposal on the shareholder-proponent's behalf. Lastly, the proposed amendments to 14a–8(c) would allow companies to exclude proposals where the proponent, either individually or serving as a representative, has submitted more than one proposal for the same meeting. As a result, the proposed amendments could increase the number of excludable shareholder proposals because they could discourage proponents from submitting proposals that would not satisfy the requirements of the proposed amendments to Rule 14a–8(b) and Rule 14a–8(c) and they could allow issuers to exclude proposals that do not satisfy the requirements of the proposed amendments to Rule 14a–8(b) and Rule 14a–8(c).[238]

To estimate the number of proponents and proposals that could be excludable as a result of the proposed amendments to Rule 14a–8(b) and Rule 14a–8(c), we analyze proponents' ownership information using data from proxy statements (*see* Table 1 above). With respect to any dollar ownership category, the data does not indicate whether the proponents in that category held their shares for more than one year. Assuming all proponents held the shares for at least three years, the proposed amendments to the ownership thresholds would not result in the exclusion of any additional proponents or proposals to be considered in shareholder meetings held in 2018 relative to the current threshold.[239] On the other hand, if one were to assume (again, without any data to support the assumption) that all proponents bought the shares one year in advance of the shareholder submission and plan to hold those shares only through the date of the meeting, we find that the increase in the ownership threshold from $2,000 with a one-year holding period to $25,000 with a one-year holding period could result in the exclusion of 51 percent of the proponents and 56 percent of the proposals that were submitted to be considered at shareholder meetings held in 2018, assuming also that none of those proponents would increase their holdings to meet the new thresholds in order to be able to file a proposal.[240]

The proposed rule amendments also would prohibit shareholders from aggregating their holdings to meet the applicable minimum ownership thresholds to submit a Rule 14a–8 proposal. As shown in Table 1 above, there are three proponents that submitted two unique proposals, whose individual holdings were below the $2,000 threshold. One of the two proposals was submitted by two co-proponents, whose both aggregate and individual holdings did not meet the $2,000 current ownership threshold, and this proposal is excludable under the current rules. For the other of the two proposals, there were four co-proponents, whose aggregate holdings met the $2,000 threshold, but the individual holdings of one of the co-proponents did not meet the $2,000 threshold. Assuming that a proposal would be submitted if at least one of the co-proponents met the ownership threshold and assuming no change in the ownership threshold, the proposed amendments to proponents' ability to aggregate their holdings would not result in the exclusion of any proposals relative to the current requirements.

Finally, our analysis of proxy statements suggests that 7, or 2 percent of, additional proposals would be excludable under the proposed amendments to Rule 14a–8(c) (*i.e.,* one-proposal limit).[241]

We also analyze proponents' ownership information using data from proof-of-ownership letters that have been made available as part of no-action requests submitted to the staff during calendar year 2018 (*see* Table 2 above). With respect to any dollar ownership category, the data does not indicate whether the proponents in that category held their shares for more than one year. Assuming proponents held the shares for three years, the proposed amendments to the ownership thresholds would not result in the exclusion of any additional proponents or proposals to be considered in shareholder meetings held in 2018 relative to the current threshold.[242] On the other hand, if one were to assume (again, without any data to support that assumption) that all proponents bought the shares one year in advance of the shareholder submission and plan to hold those shares only through the date of the meeting, we find that the increase in the ownership threshold from $2,000 with a one-year holding period to $25,000 with a one-year holding period could result in the exclusion of 56 percent of the proponents and 40 percent of the proposals, for which the

[237] Proposals submitted by shareholders that hold less than $2,000 worth of shares or hold the shares for less than one year are excludable under the current rule, and thus are not listed as additional excludable proposals under the proposed amendments to the ownership thresholds.

[238] The effect of the proposed rule amendments on proponents' willingness to submit proposals is distinct from the effect of the proposed rule amendments on company's ability to exclude certain proposals because companies occasionally allow proposals that do not meet the current eligibility thresholds to be voted on. At the same time, companies may expend additional time and resources to exclude proposals that are submitted despite not being eligible for submission. Hence, to the extent that the proposed rule amendments would discourage proponents from submitting certain proposals, the proposed rule amendments would have an effect that may be different than and incremental to the effect of companies' ability to exclude certain proposals.

[239] We have data that shows which shareholder-proponents held varying minimum holdings, based on information the companies provided in the proxy statements. However, we have not prepared estimates of excludable proposals under the proposed amendments based on that data since it is not clear how much each shareholder-proponent actually holds and why the company selected the specific minimum that they decided to report.

[240] 51% = 43% + 8%. We estimate that the total number of excludable proponents is 101. Eighty-five proponents, or 43 percent, held between $2,000 and $15,000, while 16 proponents, or 8 percent, held between $15,000 and $25,000 worth of shares.

56% = (84 excludable proposals)/(150 proposals with exact information on proponents' ownership). Note that the number of proposals that would be excludable is different from the summation of the proposals from the ''# of proposals'' column in Table 1 above because the latter double-counts proposals that were submitted by multiple proponents.

In estimating the number of excludable proposals, we make the following assumptions about proposals that are submitted by multiple proponents. First, we assume that a proposal would still be submitted if at least one of the co-proponents met the proposed dollar ownership threshold. Assuming that a proposal with multiple proponents would be excludable if at least one proponent does not meet the proposed eligibility requirements, the number of excludable proposals would be 90 or 60 percent.

Second, in cases where we have data on exact ownership for some proponents and minimum ownership for the remaining proponents submitting a joint proposal (there are two such proposals), we assume proponents reporting minimum holdings would continue to be eligible to submit the proposal under proposed amendments. Assuming that a proposal would be submitted only in cases where the proponents reporting minimum holdings have reported minimum holdings in excess of $25,000, the number of excludable proposals would be 84 or 56 percent.

[241] 2% = (7 excludable proposals)/(363 proposals with proponents' identity information in the proxy statements submitted to be considered in 2018 shareholder meetings).

Our analysis assumes that persons that submitted multiple proposals to the same company and for the same shareholder meeting, either directly or indirectly, would withdraw all but one proposal.

[242] *See supra* note 239.

company submitted a no-action request to Commission staff, assuming also that none of those proponents would increase their holdings to meet the new thresholds in order to be able to file a proposal.[243]

The proposed rule amendments also would prohibit shareholders from aggregating their holdings to meet the applicable minimum ownership thresholds to submit a Rule 14a–8 proposal. As shown in Table 2, there are nine proponents that submitted seven unique proposals, whose individual holdings were below the $2,000 threshold. For one of the seven proposals, there were two co-proponents, whose aggregate holdings met the $2,000 current ownership threshold. For another one of the seven proposals, there was only one proponent whose holdings did not meet the $2,000 threshold, and this proposal is excludable under the current threshold. For the remaining five proposals, there was at least one other co-proponent, whose share ownership met the current $2,000 threshold. Hence, assuming that a proposal would be submitted if at least one of the co-proponents met the ownership threshold and assuming no change in the ownership thresholds, the proposed amendments could result in the exclusion of one unique proposal, or 0.4 percent of the proposals with ownership information for which the company submitted a no-action request to the Commission staff.[244]

The results of the analysis of the proponents' ownership information using data from proxy statements and proof-of-ownership letters should be interpreted with caution for several reasons. First, we are unable to estimate the number of excludable proponents taking into account the proposed amendments to both the dollar and the duration thresholds because we lack data on proponents' duration of ownership, but, as noted above, there would be no impact to long-term shareholders who have held their shares for three years or more.[245] While we have limited data on duration of ownership from proxy statements or proof-of-ownership letters, we recognize that there may be a relation between duration of ownership and the propensity of a shareholder to submit a proposal. In particular, longer ownership duration could be an indicator that a shareholder has sufficient interest in engaging with the company and is therefore more likely to submit a shareholder proposal. On the other hand, we may observe shareholders buying and holding on to their shares for long periods of time because they are following a passive investment strategy and are therefore less likely to engage with management or other shareholders. We hypothesize that these types of shareholders would be less likely to submit shareholder proposals. Depending on whether the former or the latter effect is more prevalent, the effect of the proposed amendments to the ownership thresholds could be closer to the lower or higher end of the range of excludable proposals discussed above, respectively.

Second, our analysis is subject to sample selection bias because the ownership data in the proof-of-ownership letters only concerns proponents whose proposals were the subject of a no-action request, and the ownership data in the proxy statements only concerns proposals that ultimately were included in the proxy statement and went to a vote.[246]

Third, our analysis is subject to self-reporting bias because the proof-of-ownership letters are not required to disclose the proponents' exact holdings but only need to affirm that proponents meet the minimum ownership requirements.[247] Relatedly, companies are not required to disclose the holdings of the proponents in their proxy statements. In fact, 34 percent of the proof-of-ownership letters only state that the proponents meet the minimum ownership requirements rather than report the proponents' exact holdings.[248] In addition, there is information on ownership for only 70 percent of the proponents found in proxy statements and there is information on minimum ownership for 45 percent of the proponents with ownership information in the proxy statements.[249] Hence, the

[243] 56% = 49% + 7%. We estimate that the total number of excludable proponents is 159. One hundred and forty proponents, or 49 percent, held between $2,000 and $15,000, while 19 proponents, or 7 percent, held between $15,000 and $25,000.

40% = (62 excludable proposals)/(155 proposals for which the proof-of-ownership letters provided exact information on proponents' ownership). Note that the number of proposals that would be excludable is different from the summation of the proposals from the ''# of proposals'' column in Table 2 above because the latter double-counts proposals that were submitted by multiple proponents.

In estimating the number of excludable proposals, we make the following assumptions about proposals that are submitted by more than one proponent. First, we assume that a proposal would still be submitted if at least one of the co-proponents met the proposed dollar ownership threshold. Assuming that a proposal with multiple proponents would be excludable if at least one proponent does not meet the proposed eligibility requirements, the number of excludable proposals would be 102 or 66 percent.

Second, in cases where we have data on exact ownership for some proponents and minimum ownership for the remaining proponents submitting a joint proposal (there are 27 such proposals), we assume proponents reporting minimum holdings would continue to be eligible to submit the proposal under proposed amendments. Assuming that a proposal would be submitted only in cases where the proponents reporting minimum holdings have reported minimum holdings in excess of $25,000, the number of excludable proposals would be 72 or 46 percent.

[244] 0.4% = (1 excludable proposal under the proposed prohibition to aggregation of holdings)/(227 proposals with proponents' ownership information attached to the no-action letters).

[245] Staff received some non-public retail share ownership data from a market participant who requested confidential treatment for the data. Those data provide some information about level and duration of ownership but do not allow us to identify those shareholders that have submitted or are likely to submit shareholder proposals. Additional challenges posed by the data include that the sample spans a limited time period and information about holdings cannot be aggregated to the shareholder level. We would welcome empirical data to assist in estimating the number of excludable proponents under the proposed thresholds, and we encourage commenters to submit data to the public comment file that allow us to aggregate holdings to the shareholder level, identify shareholders likely to submit shareholder proposals, and that span a sufficiently long time period.

[246] In particular, it is difficult to draw inferences about the total effect of proposed amendments to the eligibility requirements on precluding shareholders from submitting proposals or on the number of excludable submitted proposals using ownership data from proxy statements or proof-of-ownership letters included with no-action requests. For example to the extent that companies may be more likely to choose to request no-action relief for proposals of certain types of proponents or topics, our results may not be generalizable for the full set of submitted proposals. We estimate that of the proposals for which companies have requested no-action relief, 51% were submitted by individual proponents. Therefore, compared to the number of total submissions by individual proponents in 2018 (39% estimated in Section IV.B.3.i above), our analysis may be over-representative of the proposals submitted by individuals.

[247] In particular, of the 433 proposal-proponent pairs for which we collected information on ownership from proof-of-ownership letters, these letters disclosed exact, as opposed to minimum, holdings information for 53 percent of individual proponents and 72 percent of non-individual proponents, and this difference is statistically significant at the 1 percent level. Hence, our results using only information on exact holdings may under-represent individual proponents relative to non-individual ones.

[248] 34% = 149/(149 + 284) from Table 2 above.

[249] 70% = (198 + 159)/(198 + 159 + 156) from Table 1 above.

45% = 159/(198 + 159) from Table 1 above.

In particular, of the 348 proposal-proponent pairs for which companies reported proponent identity and ownership information, the proxy statements disclosed exact, as opposed to minimum, holdings information for 41 percent of individual proponents and 69 percent of non-individual proponents, and this difference is statistically significant at the 1 percent level. Hence, our results using only information on exact holdings may under-represent individual proponents relative to non-individual ones.

The number of proposal-proponent pairs (*i.e.,* 348) for which companies reported proponent identity and ownership information is lower than the sum of proponents with ownership information

generalizability of the results of our analysis to all proponents that potentially could be affected by the proposed rule amendments is limited.

We expect that more proposals would be excludable with increases in share turnover. Literature documents a general upward trend in share turnover over time.[250] As share turnover increases and thus investors hold shares for a shorter period of time, it becomes less likely that investors would meet the ownership duration thresholds of the proposed rule amendments.[251] Further, the proposed increase in the ownership requirements would become more difficult to satisfy with decreases in the issuers' stock prices to the extent investors' holdings are at or near the ownership thresholds. The reason is that proponents' holdings are more likely to fall below the ownership dollar thresholds as the market value of the company decreases.

We do not expect the proposed amendments to the ownership thresholds to affect all types of shareholders and companies in the same way. First, the proposed amendments could have a greater effect on retail investors compared to institutional investors because the average holdings of retail investors are typically lower than the average holdings of institutional investors. Second, to the extent that investors with smaller holdings are more likely to submit proposals on certain topics, by reducing the number of such investors who are eligible to submit proposals, the proposed rule amendments could decrease the number of proposals on those topics more than other types of proposals. For example, individual investors are more likely to submit governance proposals than institutional investors. Untabulated analysis shows that 86 percent of the proposals submitted by individual investors are governance proposals, whereas 47 percent of the proposals submitted by institutional investors are governance proposals.[252] Hence, the proposed rule amendments could decrease the number of governance proposals more than environmental and social proposals, but this effect may be mitigated to the extent that institutional proponents submit a larger fraction of shareholder proposals.[253] Third, the proposed rule amendments could affect companies with smaller market capitalization more than those with larger market capitalization. The reason is that, for firms with smaller market capitalization, proponents' holdings are more likely to be below the proposed ownership thresholds, assuming that investors hold stocks proportionately to the companies' market capitalization (*i.e.,* investors hold the market portfolio).[254] Fourth, the proposed amendments could decrease the number of proposals received by companies that have been public for fewer than three years more than the number of proposals received by seasoned companies because the average duration of investors' holdings would be, by their nature, shorter for those firms.[255]

The proposed rule amendment would also eliminate the alternative one-percent ownership threshold. The one-percent ownership threshold currently is rarely utilized in light of the $2,000/one-year threshold. In particular, none of the proxy statements and proof-of-ownership letters we reviewed refer to the one-percent ownership threshold as evidence that the proponents met the current ownership thresholds (*see* Section IV.B.3.ii above). Further, as of December 2018, there were no companies for which the one-percent ownership threshold would be relevant (*i.e.,* the one-percent threshold would result in an ownership requirement of less than $2,000).[256] Hence, we believe that the proposed elimination of the one-percent ownership threshold would not have a significant economic effect.

ii. Discussion Specific to Proposed Amendments for Proposals Submitted on Behalf of Shareholders

The majority of shareholders that submit a proposal through a representative already provide the documentation that would be mandated by the proposed amendments, consistent with existing staff guidance.[257] In particular, as discussed in Section IV.B.3.iii above, 67 percent of the proposals that were submitted through a representative (67% = 8/12) included the documentation that would be mandated by the proposed amendments. For the remaining 33 percent of the proposals that were submitted through a representative and provide only some of the documentation mandated by the proposed amendments, we expect that the cost of providing the proposed additional documentation would be small because the information that would be required is readily available to the proponents and the proposed disclosure is not lengthy. Hence, we expect that the economic effects of this aspect of the proposed amendments likely would be minimal.

iii. Discussion Specific to Proposed Amendments to Rule 14a–8(i)(12)

The proposed amendments to Rule 14a–8(i)(12) comprise (i) the proposed amendments to the resubmission thresholds and (ii) the proposed Momentum Requirement. Relative to the current thresholds, the proposed amendments to the resubmission thresholds would allow companies to exclude the following additional resubmitted proposals: (i) Those that received shareholder support between 3 and 5 percent on a first submission; (ii) those that received shareholder support between 6 and 15 percent on a second submission; and (iii) those that received shareholder support between 10 and 25 percent on a third or subsequent submission. In addition to the proposed amendments to the resubmission thresholds, the proposed Momentum Requirement would allow companies to exclude proposals previously voted on by shareholders three or more times in the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and, at the time of the most recent shareholder

in Table 1 above (*i.e.,* 357 = 198 + 159) because companies occasionally provide the count and ownership of the proponents but do not provide information on the identity of the proponents.

[250] *See, e.g.,* Tarun Chordia, Richard Roll, & Avanidhar Subrahmanyam, *Recent Trends in Trading Activity and Market Quality,* 101 J. Fin. Econ. 243 (2011).

[251] Proponents have discretion in how frequently they trade shares, and thus they may decide to hold shares for a longer period of time to satisfy the proposed ownership duration thresholds.

See supra note 198 for a discussion of changes in investors' holding period over time.

[252] Data is retrieved from ISS Analytics for Russell 3000 companies between 2004 and 2018. *See* CII Report, *supra* note 92 (showing that retail investors largely focus on governance proposals).

[253] *See supra* Section IV.B.3.i.

[254] *See, e.g.,* John Y. Campbell, *Household Finance,* 61 J. Fin. 1553 (2006) (discussing households' stock holdings).

We note that smaller companies currently receive proposals less frequently than larger companies, and thus, while there may be a greater reduction in eligible proponents under the proposed amendments at smaller companies, the overall impact of the proposed increase in the ownership thresholds might be less pronounced for smaller companies.

[255] We note that newly-listed companies currently receive proposals less frequently than seasoned companies, and thus the overall impact of the proposed increase in the ownership thresholds might be less pronounced for newly-listed companies. *See* Kron & Rees, *supra* note 96, at 1; *see also* Roundtable Transcript, *supra* note 13, comments of Jonas Kron, Senior Vice President and Director of Shareholder Advocacy, Trillium Asset Management, at 142 (''Less than 9 percent of Russell 3000 companies that have had an IPO since 2004 have received a shareholder proposal.''); Ning Chiu, Counsel, Capital Markets Group, Davis Polk & Wardwell LLP, at 147 (acknowledging that ''IPO companies don't always get a lot of proposals'').

[256] We estimate the number of companies with market capitalization below $200,000 as of December 2018. Data is retrieved from CRSP.

[257] *See* SLB 14I, *supra* note 65.

vote, the proposal did not receive a majority of the votes cast and support declined by 10 percent or more compared to the immediately preceding shareholder vote on the same subject matter. As a result, the proposed amendments to Rule 14a–8(i)(12) could increase the number of excludable shareholder proposals because they could (i) decrease proponents' willingness to submit proposals on matters for which it may be difficult to garner sufficient support in the future or matters that did not receive sufficient support to qualify for resubmission when previously voted on and (ii) allow companies to exclude such proposals.

Using the 2011 to 2018 data on shareholder proposals for Russell 3000 companies, we estimate that the proposed amendments to the resubmission thresholds would result in an additional 212 resubmitted proposals being excludable (15 percent of the total resubmitted proposals in this timeframe) (*see* Table 9 below).[258] The largest increase in the number of excludable proposals would result from the increase in the third submission threshold. In particular, raising that threshold from 10 percent to 25 percent would result in the excludability of 27 percent of proposals that have been submitted three or more times. Approximately 48 percent (*i.e.,* 101 out of the 212) of the newly excludable proposals saw no increase in support from the previous time they were voted on. The other 52 percent (*i.e.,* 111 out of 212) saw increases in support, averaging 5 percent more votes in favor of the proposal compared with the proposal's prior submission. However, almost all of these newly excludable proposals (*i.e.,* 211 of 212 proposals) ultimately failed to generate majority support.

TABLE 9—RESUBMITTED SHAREHOLDER PROPOSALS INELIGIBLE FOR RESUBMISSION UNDER PROPOSED THRESHOLDS, 2011–2018

Resubmitted after:	First submission	Second submission	Third or subsequent submission	Total
All Proposals:				
Resubmitted proposals	677	322	443	1,442
Excludable proposals under proposed amendments:				
Number (%)	47 (7%)	45 (14%)	120 (27%)	212 (15%)
Number (%) with support increase	20 (3%)	29 (9%)	62 (14%)	111 (8%)
Average increase in support	7%	4%	5%	5%
Number (%) with majority support	1 (0%)	0 (0%)	0 (0%)	1 (0%)
Governance Proposals:				
Resubmitted proposals	355	191	255	801
Excludable proposals under proposed amendments:				
Number (%)	14 (4%)	12 (6%)	60 (24%)	86 (11%)
Number (%) with support increase	5 (1%)	10 (5%)	37 (15%)	52 (6%)
Average increase in support	21%	7%	5%	7%
Number (%) with majority support	1 (0%)	0 (0%)	0 (0%)	1 (0%)
Environmental Proposals:				
Resubmitted proposals	118	43	42	203
Excludable proposals under proposed amendments:				
Number (%)	10 (8%)	15 (35%)	12 (29%)	37 (18%)
Number (%) with support increase	8 (7%)	9 (21%)	5 (12%)	22 (11%)
Average increase in support	3%	1%	3%	2%
Number (%) with majority support	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Social Proposals:				
Resubmitted proposals	204	88	146	438
Excludable proposals under proposed amendments:				
Number (%)	23 (11%)	18 (20%)	48 (33%)	89 (20%)
Number (%) with support increase	7 (3%)	10 (11%)	20 (14%)	37 (8%)
Average increase in support	1%	4%	5%	4%
Number (%) with majority support	0 (0%)	0 (0%)	0 (0%)	0 (0%)

Sources: *CII Report, ISS Analytics*.

Further, we estimate that the proposed Momentum Requirement would result in an additional 57 (4 percent) resubmitted proposals being excludable. Of these 57, 42 are governance proposals, 12 are social proposals and 3 are environmental and all would be excludable following a third or subsequent submission. Overall, the proposed amendments to rule 14a–8(i)(12) could result in 269 (19 percent) additional excludable proposals relative to the current resubmission thresholds.[259]

We do not expect the proposed amendments to Rule 14a–8(i)(12) to affect all types of shareholder proposals in the same way. First, the proposed amendments to Rule 14a–8(i)(12) could have a greater impact on shareholder proposals relating to environmental and social issues compared to shareholder proposals on governance issues for the following reasons. Shareholder proposals on environmental and social issues tend to receive lower support than those on governance issues, on average. In particular, as Figure 7B above shows, the average voting support for governance proposals was 42.1 percent, the average voting support for environmental proposals was 21.9 percent, and the average voting support for social proposals was 17.4 percent during our sample period, and the difference in the voting support between

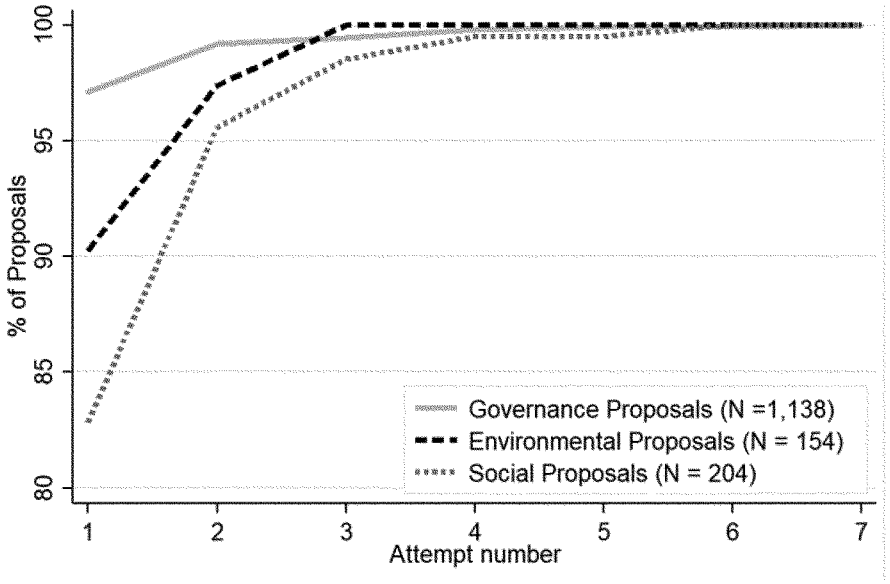
[258] This analysis assumes that shareholders' voting behavior and proponents' proposal submission behavior would not change as a result of the proposed amendments to the resubmission thresholds. Also, we exclude from this analysis 10 shareholder proposals that were resubmitted but were eligible for exclusion under the old resubmission thresholds. *See supra* note 200.

[259] The proposed amendments to rule 14a–8(i)(12) could result in 30 additional excludable proposals in 2018.

governance and environmental and social proposals is statistically significant.[260] Further, proposals on environmental and social issues are more likely to be resubmitted compared to proposals on governance issues, and thus would be more likely to be affected by the changes in the resubmission thresholds. In particular, as Table 4 above shows, 30 percent of the governance proposals that were eligible for resubmission were actually resubmitted, while 41 percent of the environmental and 51 percent of social proposals that were eligible for resubmission were actually resubmitted.

In addition, as shown by our analysis in Figure 10 (below), shareholder proposals on social and environmental issues generally take longer to gain support than proposals on governance issues.[261] More specifically, we analyze all of the shareholder proposals submitted to Russell 3000 companies during 2011 to 2018 that received more than 25 percent of voting support at some point. Our analysis shows that while more than 97 percent of the governance-related proposals received more than 25 percent of the voting support in the first submission, only 83 percent of the social proposals and 90 percent of the environmental proposals received more than 25 percent of the voting support in the first submission. Almost all of the governance and environmental proposals had received more than 25 percent of the voting support by the third submission, whereas it took more than five submissions for the social proposals to receive more than 25 percent of the voting support.[262] The results of the analysis in Figure 10 (below) suggest that environmental and social proposals take longer to gain support than proposals on governance issues. However, it is not clear how much of the increased support for certain resubmitted environmental and social proposals is attributable to proposals gaining traction through the resubmission process as opposed to other factors, such as changing opinions on environmental and social issues. In particular, various proposals in each proposal category evolve over time as a result of various factors, including shareholder engagement. For example, we would expect that proponents would be incentivized to adjust their proposals over time based on interactions with companies and other shareholders with an eye toward garnering more support.

Figure 10: Timing of receiving support >25% by proposal topic, 2011-2018



Our analysis above suggests that the increase in the resubmission thresholds could have a greater effect on shareholder proposals relating to environmental and social issues compared to shareholder proposals on governance issues. Out of the 269 additional excludable proposals under the proposed rule amendments, 128 were related to governance issues and 40 were related to environmental issues and 101 were related to social issues. Therefore, although environmental and social proposals made up 44 percent (= 641/1,442) of all resubmitted proposals in Russell 3000 firms during 2011 to 2018, these types of proposals made up 52 percent (= 141/269) of newly excludable proposals under the proposed amendments to the resubmission thresholds and the Momentum Requirement.

Second and relatedly, the proposed amendments to Rule 14a–8(i)(12) could have a greater effect on shareholder proposals submitted by non-individual proponents because these proponents tend to submit environmental and social proposals at a higher frequency than do individual investors.[263] In particular, the proposed increase in the resubmission thresholds could increase the number of excludable proposals

[260] *See supra* note 154 for details on the classification of shareholder proposals into environmental, social, and governance proposals. *Also see* letters in response to the Proxy Process Roundtable from AEquo, et al. dated May 14, 2019; Canadian Coalition for Good Governance dated May 15, 2019; Shareholder Rights Group dated December 4, 2018.

[261] *See, e.g.,* letter in response to the Proxy Process Roundtable from CtW Investment Group dated January 16, 2019.

[262] The conclusions are qualitatively similar if we analyze shareholder proposals that receive majority support at some point. Out of all governance-related shareholder proposals that garnered majority support, 91% did so in the first submission, while only 61% of the environmental proposals and 60% of the social proposals did so in the first submission.

[263] *See supra* note 252 and accompanying text.

resubmitted by non-individual proponents by 186 (19 percent).[264] In contrast, the proposed increase in the thresholds could increase the number of excludable proposals resubmitted by individual proponents by 92 (17 percent).

Third, the proposed amendments to Rule 14a–8(i)(12) could have a greater effect on larger companies because larger companies are more likely to receive shareholder proposals.[265] In particular, we find that 20 percent of resubmitted shareholder proposals at S&P 500 companies would be excludable under the proposed resubmission thresholds, as compared to 12 percent of proposals resubmitted to non-S&P 500 firms.[266]

Fourth, the proposed amendments to Rule 14a–8(i)(12) could have a greater effect on companies with dual-class voting shares for which insiders hold the majority of the voting shares.[267] In particular, we find that 32 percent of resubmitted shareholder proposals at companies with dual-class shares would be newly excludable under the proposed resubmission thresholds, as compared to 18 percent in companies without dual-class shares.[268] For these companies, shareholder proposals generally receive lower levels of support than in other companies, because insiders usually oppose shareholder proposals.[269]

3. Benefits and Costs of the Proposed Amendments

i. Benefits

a. General Discussion of Benefits

As a result of the proposed amendments, companies could exclude more proposals and shareholders could be discouraged from submitting proposals that likely would be excluded based on the proposed amendments. Consequently, companies could experience cost savings because they would be required to process fewer proposals (*see* Section IV.B.3.i above for a detailed discussion of the costs associated with shareholder proposals).[270] Shareholders of these companies also could benefit from the potential decrease in proposals to the extent that any potential costs savings would be passed down to them in the form of higher returns on their investment.

Shareholders also could benefit from the decrease in the number of proposals because they could spend fewer resources reviewing and voting on shareholder proposals. Relatedly, the decrease in the number of proposals could result in more efficient use of shareholder resources.[271] More specifically, the decrease in the number of proposals could allow shareholders to focus on the processing of proposals that are more likely to garner majority support and be implemented by management, which ultimately could benefit shareholders because it would result in more efficient use of their resources.

b. Discussion Specific to Proposed Amendments to Rule 14a–8(b) and Rule 14a–8(c)

As discussed in Section IV.C.3.i.a above, the proposed amendments to Rule 14a–8(b) and Rule 14a–8(c) could decrease the number of proposals that companies must process, and thus could decrease the costs associated with processing shareholder proposals. We estimate that, as a result of the proposed amendments to Rule 14a–8(b) and Rule 14a–8(c), all Russell 3000 companies together could experience annual cost savings associated with a decrease in the number of voted proposals of up to $70.6 million per year.[272] In addition,

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[264] Data is retrieved from the CII Report for shareholder proposals submitted to Russel 3000 companies between 2011 and 2018. *See supra* note 197.

Numbers of newly excludable proposals under proposed resubmission thresholds are computed relative to the total resubmitted proposals during the sample period by each type of proponent.

[265] *See supra* Figure 3.

[266] Data is retrieved from ISS Analytics and the CII Report for shareholder proposals submitted to Russel 3000 companies between 2011 and 2018. *See supra* note 197.

[267] Shareholder proposals are less likely to exceed the resubmission thresholds whenever insiders hold a large percentage of the voting stock. Nevertheless, commenters have expressed concerns particularly in cases in which insiders hold a large percentage of the voting stock through dual-class shares. *See* letters in response to the Proxy Process Roundtable from the City of New York Office of the Comptroller dated January 2, 2019; CtW Investment Group dated January 16, 2019; *see also* letter in response to the Rulemaking Petition from the Shareholder Rights Group dated October 5, 2017. This is because dual-class shares result in the separation of voting and cash flow rights, giving insiders disproportionate voting power relative to their cash flow rights.

[268] Data is retrieved from ISS Analytics and the CII Report for shareholder proposals submitted to Russell 3000 companies between 2011 and 2018. *See supra* note 197. Our analysis of proposals submitted to companies with dual-class shares should be interpreted with caution because our data does not allow us to identify companies for which insiders hold the majority of dual-class shares. Our data also does not allows us to distinguish companies for which the dual-class shares provide differential voting rights as opposed to other types of rights, such as dividend payments, to shareholders.

[269] Literature provides some evidence that insider holdings of voting rights are larger in firms with dual-class voting shares, and that in companies for which insiders hold the majority of the voting shares, insiders are more likely to vote against shareholder proposals. *See* Rob Bauer, Robin Braun, & Michael Viehs, *Industry Competition, Ownership Structure and Shareholder Activism* (Working Paper, Sept. 2010), *available at https://ssrn.com/abstract=1633536*.

[270] To the extent that proponents would continue submitting proposals that would be excludable under the proposed rule amendments, companies would incur costs to exclude those proposals (*e.g.,* issuers would need to file a notice with the Commission that they intend to exclude the proposal). These costs would partially offset any cost savings arising from the proposed rule amendments.

Any potential cost savings arising from the proposed rule amendments could be limited by the extent to which proponents change their behavior. For example, proponents could (i) alter their portfolio allocation to meet the ownership thresholds; (ii) rotate proposals on similar topics among different companies; or (iii) submit proposals to the same company but on a different topic.

[271] *See* letter in response to the Proxy Process Roundtable from Business Roundtable dated June 3, 2019, at 5 (noting ''shareholders can lose sight of matters of true economic significance to the company if they are spending time considering one, or even numerous, immaterial proposals. The resources and attention expended in addressing shareholder proposals cost the company and its shareholders in absolute dollars and management time and, perhaps worse, divert capital resources to removal of an immediate distraction and away from investment in value-adding allocations, such as research and development and corporate strategy.'').

[272] $70.6 million = $150,000 (*i.e.,* cost estimate provided by the American Securities Association in their letter in response to the Proxy Process Roundtable dated June 7, 2019 (*see supra* note 232)) × 471 (*i.e.,* maximum number of excludable proposals as a result of the proposed amendments to Rule 14a–8(b) and Rule 14a–8(c)). 471 = [84 (*i.e.,* maximum number of excludable proposals as a result of the proposed amendments in Rule 14a–8(b) using only data for proposals with exact information on proponents' ownership in proxy statements, *see supra* note 240) + 1 (*i.e.,* incremental number of excludable proposals as a result of the proposed amendments to 14a–8(c) using only data for proposals with exact information on proponents' ownership)] × 831 (*i.e.,* all proposals submitted to be considered in 2018 shareholders' meetings)/150 (*i.e.,* proposals with exact information on proponents' ownership in proxy statements).

The following caveats apply to our cost savings estimates. Our analysis assumes that the distribution of ownership for proponents with exact ownership information in the proxy statements is the same as the distribution of ownership for proponents with minimum or no ownership information in the proxy statements and the distribution of ownership for proponents that submitted proposals that were ultimately withdrawn or omitted. Our analysis also applies the same per-proposal cost estimate (*i.e.,* $150,000) to voted, omitted, and withdrawn proposals and it applies the same per-proposal cost estimate to operating companies and management companies. Lastly, our analysis assumes that companies will not reallocate the time and resources that would free up as a result of the reduction in proposals to process the remaining proposals.

On the other hand, the lower bound of cost savings would be $1.4 million. $1.4 million = $50,000 (*i.e.,* cost estimate provided by Darla Stuckey in her 2016 testimony before the House Committee on Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises, *see supra* note 230) × 28 (*i.e.,* minimum number of excludable proposals as a result of the proposed amendments to 14a–8(b) and 14a–8(c)). 28 = [0 (*i.e.,* minimum number of excludable proposals

the decrease in the number of proposals could free up resources so that companies and their shareholders could pursue other value-enhancing activities.

As a result of the proposed increase in the ownership thresholds, proponents could bear a larger percentage of the total cost that companies and their shareholders incur to process a shareholder proposal. For example, a shareholder that owns $25,000 worth of stock in a company would bear a larger percentage of the costs associated with processing a shareholder proposal relative to a proponent that owns $2,000 worth of stock in a company. As a result of bearing a larger percentage of the total costs, proponents could be less willing to submit proposals that are less likely to garner majority support and be implemented by management.

In addition, by eliminating shareholders' ability to aggregate their holdings with those of other shareholders, the proposed amendments would require each proponent to have a sufficient economic stake or investment interest in the company to justify the costs associated with a shareholder proposal.

Further, by providing that a person, directly or indirectly, may submit only one proposal for a shareholder's meeting, the proposed amendments would prohibit shareholders from imposing disproportionate costs on the company and other shareholders by submitting multiple proposals for the same meeting.

Finally, by requiring a statement from the proponent that he or she is willing to meet with the company after submission of the shareholder proposal, the proposed amendments could encourage direct communication between the proponent and the company, which could promote more frequent resolution of the proposals outside the voting process. Such resolutions could decrease the costs that companies and their shareholders incur to process shareholder proposals.

c. Discussion Specific to Proposed Amendments for Proposals Submitted on Behalf of Shareholders

To the extent that the practices of certain proponents are not consistent with the proposed amendments related to proposals submitted through a representative, the proposed amendments could benefit companies and other shareholders because they could demonstrate the existence of a principal-agent relationship and could provide assurance that the shareholder supports the proposals. Further, the proposed amendments could result in cost savings to companies that would no longer be required to expend resources to obtain some of the information that is not provided by the proponents but would be required under the proposed amendments.

d. Discussion Specific to Proposed Amendments to Rule 14a–8(i)(12)

As discussed in Section IV.C.3.i.a above, the proposed increase in the resubmission thresholds and the proposed Momentum Requirement could benefit companies and their shareholders because it could decrease the number of proposals for companies and shareholders to consider. As a result of the proposed amendments, we estimate that all Russell 3000 companies together could experience annual cost savings associated with a decrease in the number of voted proposals of up to $8.9 million per year.[273]

In addition, the decrease in the number of proposals could free up resources so that companies and their shareholders could pursue other value-enhancing activities. Relatedly, the proposed amendments to the resubmission thresholds and the Momentum Requirement could exclude proposals that have historically garnered low levels of support and thus would allow shareholders to focus on the processing of proposals that may garner higher levels of voting support and may be more likely to be implemented by management.

The proposed amendments to the resubmission thresholds could also benefit companies and their shareholders to the extent that they change proponents' behavior. In particular, due to the higher thresholds, proponents may spend more resources to more carefully prepare proposals that are more likely to garner sufficient levels of shareholder support. In addition, proponents may spend more resources to market their proposal to other shareholders to increase support for their proposal. As a result, companies and their shareholders could benefit from the submission of shareholder proposals that are more likely to receive higher levels of support and thus are more likely to be implemented by management.

Similarly, the proposed resubmission thresholds may discourage the submission of proposals that are less likely to garner majority voting support.[274] Similarly, the Momentum Requirement may discourage the submission of proposals that garner significant but not majority support and recently have experienced a decrease in shareholder support, which may indicate waning shareholder interest in the proposal.

ii. Costs

a. General Discussion of Costs

The proposed amendments could result in the exclusion of certain proposals that would have otherwise been included in the proxy statement and voted on. To the extent that such shareholder proposals would be value enhancing, the potential exclusion of value-enhancing proposals could be detrimental to companies and their shareholders.[275] One way the exclusion of certain proposals could be

as a result of the proposed amendments to 14a–8(b) using only proposals with exact information on proponents' ownership in proxy statements, *see supra* Section IV.C.2.i) + 5 (*i.e.,* incremental number of excludable proposals as a result of the proposed amendments to 14a–8(c) using only proposals with exact information on proponents' ownership in proxy statements)] × 831 (*i.e.,* all proposals submitted to be considered in 2018 shareholders' meetings)/150 (*i.e.,* proposals with exact information on proponents' ownership).

[273] $8.9 million = $150,000 (*i.e.,* cost estimate provided by the American Securities Association in their letter in response to the Proxy Process Roundtable, *see supra* note 232) × 59 (*i.e.,* number of excludable proposals as a result of the proposed amendments to 14a–8(i)(12)). 59 = 30 (*i.e.,* number of excludable proposals as a result of the proposed amendments to 14a–8(i)(12) that were included in proxy statements to be considered in 2018 shareholder meetings) × 831 (*i.e.,* proposals submitted to be considered in 2018 shareholders' meetings)/423 (*i.e.,* voted proposals in the CII Report in 2018). The following caveats apply to our cost savings estimates. Our analysis applies the same per-proposal cost estimate (*i.e.,* $150,000) to voted, omitted, and withdrawn proposals and to operating companies and management companies. In addition, our analysis assumes that the proposed amendments to 14a–8(i)(12) will have the same effect on proposal eligibility of voted, withdrawn, and omitted proposals. Lastly, our analysis assumes that companies will not reallocate the time and resources that would free up as a result of the reduction in proposals to process the remaining proposals.

On the other hand, the lower bound of cost savings would be $3.1 million. $3.1 million = $50,000 (*i.e.,* cost estimate provided by Darla Stuckey in her 2016 testimony before the House Committee on Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises, *see supra* note 230) × 63 (*i.e.,* number of excludable proposals as a result of the proposed amendments to 14a–8(i)(12)).

[274] Proponents incur costs to submit proposals, which may already deter some proponents from resubmitting proposals that have a low likelihood of receiving sufficient levels of shareholder support.

[275] *See supra* Section IV.C.I for a detailed discussion of literature that examines the value of shareholder proposals.

The potential decrease in the number of shareholder proposals also could be costly to the various providers of administrative and advisory services related to shareholder voting because the demand for the services of these providers could decrease. Examples of these service providers include proxy advisory firms, tabulators of voting, and proxy solicitors.

detrimental is by limiting or slowing the adoption of potential improvements.

Shareholder proposals are one way for shareholders to communicate with management and other shareholders. The proposed amendments would alter the eligibility requirements in a manner that could increase companies' ability to exclude certain proposals, which could restrict shareholders' ability to use this avenue of communication with other shareholders. In addition to increasing companies' ability to exclude certain proposals, the proposed amendments could decrease shareholders' willingness to submit certain proposals, which could further inhibit communication between shareholders and also inhibit shareholders' engagement with management.[276]

By limiting the shareholder proposals channel of communication, the proposed amendments could lead to proponents seeking alternative avenues of influence, such as public campaigns, litigation over the accuracy of proxy materials, or demands to inspect company documents. As a result, companies could confront greater uncertainty in their interaction with shareholders.[277]

Any negative effects of the proposed amendments would be more pronounced for shareholders that follow passive index strategies because those shareholders are more limited in their ability to sell shares of an underperforming stock and thus might be more likely to rely on the proxy proposal process to encourage value-enhancing changes.[278]

b. Discussion Specific to Proposed Amendments to Rule 14a–8(b) and Rule 14a–8(c)

In addition to the costs discussed in Section IV.C.3.ii.a above, the proposed amendments to 14a–8(b) and 14a–8(c) could impose certain costs on shareholder-proponents. These costs could arise from: (i) Shareholder-proponents' efforts to reallocate shareholdings in their portfolio to satisfy the proposed dollar ownership thresholds; (ii) decreased diversification of shareholder-proponents' portfolio because a larger portion of their wealth may be invested in a particular company; (iii) shareholder-proponents holding the shares for longer periods of time to satisfy the proposed duration thresholds; and (iv) shareholder-proponents making themselves available to communicate with management after submitting a proposal. The latter costs to shareholder-proponents consist of the direct costs of meeting with management, and the opportunity costs associated with spending time to meet with management instead of engaging in other activities. There are also costs associated with disclosing the times the proponents would be available to communicate with management but we believe that any such costs likely are minimal.

Further the proposed change from a single-tier to three-tiered ownership thresholds could increase compliance complexity because companies and proponents would be required to consider multiple thresholds to establish whether a proposal is eligible for exclusion.

The proposed increase in the ownership thresholds and the prohibition of aggregation of shareholdings could disproportionately affect certain types of shareholder-proponents. In particular, the proposed amendments could disproportionately affect individuals.[279] This disproportionate effect would be more costly if individuals submit more value-enhancing proposals than institutions. Two academic papers suggest that proposals submitted by individual investors elicit a stronger market reaction than proposals submitted by institutional investors,[280] while one suggests otherwise.[281] The potentially negative consequences of this disproportionate effect on individuals could be amplified by the fact that (i) institutional investors generally may have more direct channels of communication with companies than individual investors who rely more on the shareholder-proposal process to communicate with management and other shareholders [282] and (ii) larger shareholders have, on average, greater success in seeing their contested proposals ultimately included in the proxy.[283]

As explained above, the proposed amendments could disproportionately affect smaller companies that receive

[276] *See supra* note 48; *see also* letter in response to the Proxy Process Roundtable from American Federation of Labor & Congress of Industrial Organizations dated November 9, 2018.

[277] *See* Brown (2017), *supra* note 211, at 24–25; *see also* letter to Jeb Hensarling, Chairman, and Maxine Waters, Ranking Member, House Financial Services Committee, from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, dated April 24, 2017, *available at https://democrats-financialservices.house.gov/uploadedfiles/letter_-_cii_04.27.2017.pdf* (stating that the proposed rule amendments are ''likely to have unintended consequences, including shareowners more often availing themselves of the blunt instrument of votes against directors, and increased reliance on hedge fund activists to push for needed corporate changes.''); Ceres Business Case, *supra* note 25, at 11 (noting that ''[a]lternatives to shareholder proposals include voting against directors, lawsuits, books and records requests, and requests for additional regulations. Each of these is more onerous and adversarial than including a 500-word proposal in the proxy statement for the consideration of shareholders''); letters in response to the Proxy Process Roundtable from Council of Institutional Investors dated January 31, 2019; Los Angeles County Employees Retirement Association dated October 30, 2018; MFS Investment Management dated November 14, 2018; US SIF dated November 9, 2018.

[278] *See* letter in response to the Proxy Process Roundtable from the City of New York Office of the Comptroller dated January 2, 2019, at 1 (noting that ''[b]ecause of our long-term investment horizon, and the fact that we allocate more than 80% of the funds' investments in U.S. public equity through passive index strategies, we cannot readily sell shares in a company when we have concerns about the company's performance, board composition and quality, management, executive compensation, workplace practices or management of risks, including those related to climate change''); Ceres Business Case, *supra* note 25, at 10 (noting that ''[w]hile active investors have the option of selling shares of companies whose management they do not trust to add value, passive investors' options are more limited'').

At the same time, passive investors are more likely to hold shares for a long period of time than active investors, and thus are less likely to be affected by the proposed amendments to Rule 14a–8(b).

[279] *See supra* Section IV.C.2.i.

[280] *See, e.g.,* Gillan & Starks (2000), *supra* note 217; Gantchev & Giannetti (2018), *supra* note 166. Gillan and Starks (2000) interpret the more positive stock market reaction to proposals submitted by individuals compared to institutions as consistent with the idea that the market views shareholder proposals submitted by an institution as evidence of management's unwillingness to negotiate with such investors. *See* Gillan & Starks (2000).

[281] *See* Cuñat et al. (2012), *supra* note 209.

[282] *See, e.g.,* letters in response to the Proxy Process Roundtable from MFS Investment Management dated November 14, 2018, at 2 (noting ''[a]s a large institutional investor, we generally have access to management teams and directors that smaller shareholders may not have''); Pax World Funds dated November 9, 2018, at 2 (noting ''[w]hile some asset managers or owners with hundreds of billions in assets can often engage with management and boards as often as they wish, smaller investors' inquiries to companies often die in investor relations departments.''); and the Shareholders Right Group dated December 4, 2018, at 8–9 (noting ''larger investors often do not need the shareholder proposal process in order to persuade companies to engage with them on their concerns. In contrast, the shareholder proposal process provides an appropriate avenue through which all shareholders, including Main Street's shareholders, as well as their chosen representatives, can raise issues and elicit consideration and support from their fellow shareholders''); *see also* Ceres Business Case, *supra* note 25, at 9 (noting that ''[a] system that allows shareholders to file proposals is needed in part because individual investors and smaller shareholders nearly always lack large enough holdings to get the board and management's attention in any other way''); Eugene Soltes, Suraj Srinivasan, & Rajesh Vijayaraghavan, *What Else do Shareholders Want? Shareholder Proposals Contested by Firm Management* (Working Paper, July 2017) (''Soltes et al. (2017)'') (finding that the level of shareholder ownership is positively associated with the probability that a contested proposal is withdrawn, which is consistent with the idea that large shareholders ''are more influential and are more likely to have dialogue with managers that would facilitate implementation of their proposal prior to a shareholder vote'').

[283] *See* Soltes et al. (2017), *supra* note 282.

proposals.[284] This is because investors' holdings in smaller companies are more likely to be below the proposed ownership thresholds than investors' holdings in larger companies, assuming investors hold the market portfolio.[285] As a result, to the extent that the proposals excluded as a result of the proposed amendments would be value enhancing, any negative effects of the proposed amendments on smaller companies could be larger than the effects on larger companies. At the same time, however, smaller companies would enjoy larger cost savings as a result of the potentially larger increase in the number of excludable proposals. Hence, the net effect of the proposed rule amendments on smaller relative to larger companies is unclear.

Any effects of the proposed amendments would be, at least partially, mitigated by the fact that companies can elect to include in their proxy materials proposals of proponents that do not meet the proposed eligibility requirements, if the companies believe that those proposals would benefit shareholders.[286]

c. Discussion Specific to Proposed Amendments for Proposals Submitted on Behalf of Shareholders

Shareholders that submit a proposal through a representative could incur minimal costs to ensure that their practices are consistent with the proposed amendments. In addition, to the extent that the practices of certain proponents are not consistent with the proposed amendments, the proposed amendments could impose minimal costs on proponents to provide this additional documentation. We lack data to quantify these costs but we request comment on these costs in Section IV.E below.

d. Discussion Specific to Proposed Amendments to Rule 14a–8(i)(12)

The proposed amendment to the resubmission thresholds and the proposed Momentum Requirement could impose costs on proponents because they could spend more resources in preparing a proposal to seek to garner sufficient levels of support to satisfy the proposed requirements.

The proposed amendments also could increase the complexity of the shareholder proposal eligibility requirements because the Momentum Requirement would be a new requirement.

Literature also shows that management may spend resources to influence the success rate of shareholder proposals.[287] The Momentum Requirement would allow companies to exclude proposals that do not meet but are close to the majority threshold. Hence, the Momentum Requirement could provide further incentives to management to expend resources to influence the voting outcome of a shareholder proposal because the benefit of influencing the voting outcome (*i.e.,* three year exclusion of the proposal) could be greater than under current rules.

As discussed in Section IV.C.2 above, the proposed amendments to the resubmission thresholds and the proposed Momentum Requirement could have a larger effect on certain types of proposals and companies. In particular, the proposed amendments could have a larger effect on larger companies because larger companies are more likely to receive shareholder proposals.[288] To the extent that the proposals excluded as a result of the proposed amendments would be value enhancing, larger companies could be more negatively affected by the proposed amendments than smaller firms. The disproportionate effect on larger companies could be amplified by the fact that larger companies are less likely to be the target of hedge fund activism and thus experience improvements through alternative forms of activism,[289] and larger companies are more likely to contest shareholder proposals.[290] At the same time, any negative effects could be at least partially mitigated by the fact that larger companies would enjoy larger cost savings as a result of the decrease in the number of proposal resubmissions.

The proposed amendments to the resubmission thresholds and the proposed Momentum Requirement also could have a larger effect on companies with dual-class voting shares for which insiders hold the majority of the voting shares.[291] At such controlled companies, it may be difficult to get support for a shareholder proposal above the proposed thresholds. While shareholder proposals may be less likely to gain majority support and be implemented at these companies,[292] they may still provide a valuable communication mechanism between shareholders. We note that the non-voting stock of companies for which the majority of voting stock is held by insiders could trade at a discount to compensate the owners of the non-voting stock for the reduced ability of shareholder proposals to garner sufficient support for those companies. In addition, literature suggests that the probability of a proposal being implemented is negatively related to insider ownership. Hence, the decrease in the number of resubmitted proposals as a result of the proposed rule amendments for firms with dual-class voting stock for which insiders hold the majority of the voting shares likely would be limited because the probability of a proposal being implemented in those firms would be already low.[293]

[284] *See supra* Section IV.C.2.i.

[285] *See supra* note 254.

[286] Our analysis of proponents' ownership information from proxy statements shows that there was one proposal submitted by two co-proponents whose aggregate holdings did not meet the $2,000 current ownership threshold. This proposal is excludable under the current ownership threshold, but nevertheless appeared in the company's proxy statement. *See supra* note 189 for caveats related to this analysis.

[287] Management may influence the voting outcome either by encouraging shareholders that would favor them to vote or by encouraging shareholders to vote in line with management. *See* Bach & Metzger (2019), *supra* note 216.

[288] *See supra* Section IV.B.3.i.

[289] Alon Brav, Wei Jiang, Frank Partnoy, & Randall Thomas, *Hedge Fund Activism, Corporate Governance, and Firm Performance,* 63 J. Fin. 1729 (2008).

[290] Soltes et al. 2017, *supra* note 282.

[291] *See supra* Section IV.B.3.iv.

[292] *See* Roundtable Transcript, *supra* note 13, comments of Brandon Rees, Deputy Director of Corporations and Capital Markets, American Federation of Labor and Congress of Industrial Organizations, at 167; CII Report, *supra* note 197, at 21; Ceres Business Case, *supra* note 25, at 14; letter in response to the Proxy Process Roundtable from the City of New York Office of the Comptroller dated January 2, 2019, at 11.

[293] *See, e.g.,* Ertimur et al. (2010), *supra* note 174.

A commenter also suggested that an increase in the resubmission thresholds could provide stronger incentives to some proponents to submit proposals on certain topics with the intent of obtaining low levels of support for certain subject matters, and thus rendering proposals on the same subject matter excludable for three years. Nevertheless, we believe that any such activity is unlikely to be widespread. *See* letter in response to the Proxy Process Roundtable from the City of New York Office of the Comptroller dated January 2, 2019, at 11 (noting ''we have seen efforts to pre-empt proposals in a given year urging stronger policies on climate change by a group submitting a proposal to go in the opposite direction. With high resubmission thresholds, that kind of mischief-making would be encouraged on a broader scale as long as the SEC policy refers to 'the same subject matter' rather than 'the same proposal' ''). For related discussion, *see also* the letter in response to the Proxy Process Roundtable from Sustainable Investments Institute dated November 12, 2018, at 13 (noting ''[n]ew this year were proposals from the free market activist group the National Center for Public Policy Research (NCPPR) that used precisely the same resolved clause as the one used in the main campaign on lobbying. In two instances, because they were filed first, these resolutions pre-empted proposals filed later from the disclosure advocates, on lobbying at Duke Energy and about election spending at General Electric, where the question turned on third-party spending groups. The NCPPR proposals went to votes in each case and while the presenters argued against disclosure in their

Continued

The potential costs of the proposed rule amendments would be more pronounced in instances where material developments could change shareholder support for the proposal but the proposal is otherwise ineligible for resubmission under the proposed rule for a period of time.[294]

Any negative effects of the proposed amendments would be, at least partially, mitigated by the fact that companies would be able to exclude only proposals for which there is an observable measure of low shareholder interest (*i.e.,* low voting support among shareholders and lack of momentum toward achieving a more substantial level of shareholder support). In addition, any negative effects of the proposed rule amendments would be mitigated by the fact that companies could elect to include in their proxy materials resubmissions that would otherwise be excludable if they believed that those resubmissions would benefit shareholders.[295] Also, companies' ability to exclude certain resubmissions would be limited to a three-year cooling-off period regardless of the level of support the proposal last received.

Finally, any potential effects of the proposed amendments would be moderated by changes in proponent behavior, such as submitting a proposal on a different topic when the initial proposal is ineligible for resubmission or submitting a proposal on the same topic but at a different company to continue investor conversations on that topic.

4. Effects of Proposed Amendments on Efficiency, Competition, and Capital Formation

To the extent that the proposed amendments could reduce the costs of processing shareholder proposals and could free up management resources for more valuable activities, the proposed amendments could result in efficiency improvements. Any improvements in efficiency could be offset by the costs associated with the exclusion of shareholder proposals that could have resulted in changes that would have enhanced efficiency.

Further, to the extent that the proposed amendments would permit shareholders to focus on the processing of proposals that are more likely to receive majority support and be implemented, the proposed amendments could result in more efficient use of shareholder resources.

In addition, to the extent that the proposed amendments could reduce costs to companies associated with the shareholder-proposal process, the proposed amendments could be a positive factor in the decision of firms to go public, which could positively affect capital formation on the margin.[296] Nevertheless, we believe that any such effects likely would be minimal because most firms receive only few proposals each year and the costs of responding to proposals likely are a small percentage of the costs associated with being a public company.[297] In addition, companies that have recently had an initial public offering infrequently receive shareholder proposals.[298]

To the extent that the proposed amendments would have disproportionate effects on U.S. relative to foreign firms because foreign firms are not subject to federal proxy rules,[299] the proposed amendments could improve competition. Further, to the extent that the proposed amendments to the ownership (resubmission) thresholds would have disproportionate effects on smaller (larger) companies, the proposed amendments could harm competition. Nevertheless, we expect that any such effects likely would be minimal because the cost of processing shareholder proposals likely is a small percentage of companies' total cost of operations.

Finally we do not expect that the proposed amendments for proposals submitted by a representative would have a meaningful effect on efficiency, competition, and capital formation.

D. Reasonable Alternatives

1. Shareholder Ownership Thresholds

i. Alternative Ownership Thresholds

We considered a number of alternative approaches to the ownership thresholds. First, we considered whether to simply increase the $2,000/one-year threshold in the current requirement to a $50,000/one-year threshold without providing additional eligibility options. Using proponents' exact ownership information from the proxy statements and assuming no change in proponents' ability to aggregate their holdings to submit a joint proposal, such an increase would have resulted in the excludability of 96 proposals, or 65 percent of the proposals with exact proponents' ownership information to be considered at 2018 shareholder meetings.[300] The advantage of increasing only the dollar amount in the current threshold is that the rule would be easier to implement and monitor. The disadvantage of such an approach would be that shareholders would not have the flexibility to become eligible to submit shareholder proposals by either increasing their holdings or holding the shares of a company for a longer period of time as under the proposed approach.

Alternatively, we considered using a tiered approach, as proposed, but with different combinations of minimum dollar amounts and holding periods. For example, we considered $2,000 for five years, $15,000 for three years and $25,000 for one year or $2,000 for three years, $10,000 for two years, and $50,000 for one year. We are unable to estimate the incremental effects of the former alternative (*i.e.,* $2,000 for five years, $15,000 for three years, and $25,000 for one year) relative to the

support statement, investors appeared to vote on the basis of what was in the resolved clause and support levels were comparable to those filed by disclosure proponents—34.6 percent at Duke (33.3 percent last year) and 21.2 percent at GE (no previous election proposals but 28.6 percent on a traditional lobbying resolution in 2017).'').

[294] *See* letter in response to the Proxy Process Roundtable from the City of New York Office of the Comptroller dated January 2, 2019.

[295] Among shareholder proposals resubmitted to Russell 3000 companies during 2011 to 2018, 10 proposals appeared in company proxies and were voted on despite receiving low voting support in prior submissions and being eligible for exclusion under the current resubmission thresholds. *See supra* note 200.

[296] *See, e.g.,* letter in response to the Proxy Process Roundtable from Center for Capital Markets Competitiveness dated December 20, 2018, at 7 (noting ''[t]he decline in public companies is a multifaceted issue with no single solution. . . . Those issues include proxy advisory firm reforms as discussed earlier as well as shareholder resubmission thresholds.'').

[297] Between 1997 and 2018 for Russell 3000 companies that received a proposal, the median number of proposals was one per year. *See* Roundtable Transcript, supra note 13, comments of Brandon Rees, Deputy Director of Corporations and Capital Markets, American Federation of Labor and Congress of Industrial Organizations, at 140, 142 (noting ''the average publicly listed company in the United States can expect to receive a shareholder proposal once every 7.7 years, and the median number of proposals received is one. . . . [S]hareholder proposals make up less than 2 percent of the total number of ballot items. Less than 4 percent of shareholder proposals were filed at companies with under $1 billion in market capitalization. Less than 9 percent of Russell 3000 companies that have had an IPO since 2004.''); *see also* letters in response to the Proxy Process Roundtable from Ceres dated November 13, 2019; Mercy Investment Services, Inc. dated December 3, 2018, at 3; Presbyterian Church U.S.A. dated November 13, 2018, at 3–4.

[298] *See supra* note 297.

[299] *See supra* note 130.

[300] 65% = 97 (excludable proposals under a $50,000/one-year threshold)/150 (proposals with exact proponents' ownership information in proxy statements). For proposals that are submitted by more than one proponent, these estimates assume that the proposals would still be submitted if the aggregate ownership of the co-proponents met the alternative dollar ownership threshold. For proposals that are submitted by multiple proponents, some of which provide exact and others provide minimum holdings information, we assume that the ownership of the proponents with minimum holdings information is equal to the lowest end of the ownership range.

effects of the proposed amendments discussed in Section IV.C.2.i above because we lack data on proponents' ownership duration. Assuming all proponents held the shares for only one year, the increase in the dollar ownership thresholds from $2,000 to $50,000 (*i.e.,* third tier of the alternative ownership threshold) could result in the exclusion of 97 proposals, or 65 percent of the proposals with exact proponents' ownership information related to 2018 shareholder meetings.[301] On the other hand, assuming all proponents held the shares for at least three years, the proposed ownership thresholds would not result in a change in the number of excludable proposals relative to the current thresholds.

Different thresholds could result in the exclusion of more or fewer proposals, depending on the threshold. While we believe that the proposed tiers would appropriately balance the interests of shareholders who seek to use the company's proxy statement to advance their own proposals, on the one hand, with the interests of companies and other shareholders who bear the burdens associated with the inclusion of such proposals, on the other hand, we solicit comment as to whether any refinements of those thresholds would strike a better balance.

We also considered whether to index the proposed ownership thresholds for inflation. The benefit of such an approach would be that thresholds would adjust over time without the need for additional rulemaking. The disadvantage of such an approach would be that compliance with the rule could be more cumbersome as companies and proponents would have to monitor periodically evolving ownership thresholds.

ii. Percent-of-Ownership Threshold

We considered whether to propose an ownership requirement based solely on the percentage of shares owned. For example, we considered eliminating the dollar ownership threshold and retaining the one-percent ownership threshold. Using proponents' exact ownership information from the proxy statements and assuming no change in proponents' ability to aggregate their holdings to submit a joint proposal, we estimate that using a one-percent ownership threshold and removing the $2,000/one-year threshold would have resulted in 149 proposals, or 99 percent of the proposals to be considered in 2018 shareholder meetings that provide exact proponents' ownership information, being excludable under the proposed amendments.[302]

The advantage of a percentage-of-ownership threshold is that it would permit shareholders owning the same proportion of a larger company as of a smaller company to submit a proposal. The percentage-of-ownership threshold, however, would be marginally harder to implement because of changes in the stock price of the company over time. We also believe that a percentage-of-ownership threshold of one percent would prevent the vast majority of shareholders from submitting proposals,[303] which, in turn, could have a chilling effect on shareholder engagement. In addition, the types of investors that hold more than one percent of a company's shares are more likely to be able to communicate directly with management, and thus do not typically use shareholder proposals.[304]

2. Shareholder Resubmission Thresholds

i. Alternative Resubmission Thresholds

We considered proposing different resubmission thresholds, including raising the thresholds to 5/10/15 percent, 6/15/30 percent, or 10/25/50 percent. All three alternatives threshold levels would increase the number of proposals eligible for exclusion relative to the baseline, with the first expected to have smaller effects relative to the proposed amendments and second and third expected to have larger effects relative to the proposed amendments. We estimate that 92 (6 percent), 328 (23 percent), and 668 (46 percent) additional proposals that were resubmitted between calendar years 2011 and 2018 would have fallen below the 5/10/15 percent, 6/15/30 percent, and 10/25/50 percent thresholds, respectively. In addition, we are requesting comment on whether the rule should remove resubmission thresholds for the first two submissions and, instead, allow for exclusion if a matter fails to receive majority support by the third submission. Under this alternative, no proposal would be eligible for exclusion on its first two submissions, allowing shareholder proposals at least two years to gain traction. We estimate that 418 (29 percent) additional proposals that were resubmitted between calendar years 2011 and 2018 would have failed to garner majority support by third submission.[305] We also are requesting comment on the appropriate cooling-off periods under this approach, such as three and five years.

ii. Different Vote-Counting Methodologies

We considered whether to propose changes to how votes are counted for purposes of applying the resubmission thresholds. For example, we considered whether votes by insiders should be excluded from the calculation of the fraction of votes that a proposal received. We also considered whether to apply a different vote-counting methodology for companies with dual-class voting structures. One commenter has highlighted how the presence of a subset of shareholders with special voting rights could make the voting threshold requirement difficult to satisfy.[306] The advantage of applying different kind of vote-counting methodologies for votes by insiders and for companies with dual-class shares is that it would make it easier for shareholder proposals to meet the resubmission thresholds and thus potentially could mitigate management entrenchment for those firms.[307] The disadvantage of such an approach is that companies and their shareholders would continue to incur costs associated with processing proposals that are less likely to garner majority support and be implemented by management.

iii. Exception to the Rule if Circumstances Change

We considered whether to propose an exception to the proposed rule amendments that would allow an otherwise excludable proposal to be resubmitted if there were material developments that suggest a resubmitted proposal may garner significantly more votes than when it was previously voted

[301] *See supra* note 300.

[302] 99% = 149 (number of excludable proposals under a 1% threshold)/150 (proposals with exact proponents' ownership information in proxy statements). For proposals that are submitted by more than one proponent, these estimates assume that the proposals would still be submitted if the aggregate ownership of the co-proponents met the alternative percent-of-ownership threshold. For proposals that are submitted by multiple proponents, some of which provide exact and others provide minimum holdings information, we assume that the ownership of the proponents with minimum holdings information is equal to the lowest end of the ownership range.

[303] *See supra* note 302.

[304] *See supra* note 282.

[305] This estimate is an upper bound of the number of excludable proposals under this alternative because it would allow all proposals following first and second submissions to be resubmitted. We cannot identify all proposals that would have been resubmitted but were not because they were eligible for exclusion under the current resubmission thresholds for first and second submissions.

[306] *See* letter in response to the Proxy Process Roundtable from City of New York Office of the Comptroller dated January 2, 2019.

[307] *See supra* note 267.

on. Several commenters pointed out the possibility of an unpopular proposal gaining popularity in subsequent years following changes in company circumstances or other market developments.[308] We expect that such an exception would lower the number of proposals eligible for exclusion under the proposed amendments, but the magnitude of the decrease would depend on what types of developments qualify for the exception and how many companies experience these particular types of developments. We expect the additional costs of such an exception would include those associated with determining whether changes in circumstances qualify for the exception. On the other hand, shareholders may benefit from being able to submit proposals on matters that would otherwise be excludable under Rule 14a–8(i)(12) and may have gained popularity among shareholders following a material development at the company.

E. Request for Comment

We request comment on all aspects of our economic analysis, including the potential costs and benefits of the proposed amendments and alternatives thereto, and whether the amendments, if adopted, would promote efficiency, competition, and capital formation. In addition, we request comments on our selection of data sources, empirical methodology, and the assumptions we have made throughout the analysis. Commenters are requested to provide empirical data, estimation methodologies, and other factual support for their views, in particular, on costs and benefits estimates. In addition, we request comment on the following:

1. Are there any entities affected by the proposed rule amendments that are not discussed in the economic analysis? In which ways are those entities affected by the proposed amendments? Please provide an estimate of the number of any additional affected entities.

2. Are there any costs or benefits of the proposed rule amendments that are not discussed in the economic analysis? If so, please describe the types of costs and benefits and provide a dollar estimate of these costs and benefits.

3. What would be the effects of the proposed rule amendments, including any effects on efficiency, competition, and capital formation? Would the proposed rule amendments be beneficial or detrimental to proponents, companies, and the companies' shareholders, and why in each case?

4. What is the dollar cost for companies to engage with proponents, process, and manage a shareholder proposal (including up to or after a vote on the proposal)? In particular, what is the dollar cost for companies to: (i) Review the proposal and address issues raised in the proposal; (ii) engage in discussion with the proponent; (iii) print and distribute proxy materials and tabulate votes on the proposal; (iv) communicate with proxy advisory firms and shareholders (*e.g.,* proxy solicitation costs); (v) if they intend to exclude the proposal, file with the Commission a notice that they intend to exclude the proposal; and (vi) prepare a rebuttal to the proposal? Do these costs vary with the issue raised in the proposal? Do these costs vary with the type of shareholder-proponent (*i.e.,* institutional versus retail investor)? Are these costs different for first-time submissions relative to resubmissions? Do these costs vary with the number of resubmissions? Do these costs vary with the number of proposals received by the company? Do these costs vary with company size? Do these costs differ in cases in which a no-action request is prepared and in other cases, such as where a proposal's exclusion is challenged in court? Do managers have discretion with respect to these costs?

5. In response to a questionnaire the Commission made available in 1997, some respondents indicated that costs associated with determining whether to include or exclude a shareholder proposal averaged approximately $37,000 (which figure may have included estimates for considering multiple proposals). The Commission also sought information about the average printing cost and 67 respondent companies reported that the average cost was approximately $50,000. How do these costs compare with costs today? Has ''notice and access'' or other technological advancements had an effect on the costs associated with disseminating proxy materials? If so, what are those effects?

6. What are the differences in cost incurred by companies with respect to proposals for which a no-action request is prepared and submitted to the staff and those for which a no-action request is not prepared? What are the specific costs incurred?

7. In general, how do costs differ for proposals that are submitted during shareholder meetings and not presented in the proxy and those that are presented in the proxy?

8. What are the costs, if any, associated with shareholders' consideration and voting on a shareholder proposal? Do these costs differ depending on the shareholder proposal topic? Do these costs differ depending on whether the shareholder proposal is a first-time submission or a resubmission?

9. How likely is it that market practices would change in response to the proposed rule amendments? What type of market practices that are not discussed in the economic analysis would change in response to the proposed rule amendments? For example, would larger shareholders become more likely to submit proposals in cases where smaller shareholders would no longer be eligible to submit proposals on their own? Are there frictions associated with this type of reallocation? To what extent would these changes in market practice or other effects mitigate the potential effects of the proposed amendments?

10. To what extent would the proposed amendments affect incentives for shareholders to engage with companies prior to and/or following the submission of a shareholder proposal? What are the costs to shareholders and companies associated with such engagement? To what extent would the proposed amendments affect the outcome of such engagement? Would the requirement that the proponent provide a statement that he or she is willing to meet with the company after submission of the shareholder proposal promote more frequent resolution of the proposals outside the voting process? What would be the cost savings, if any, to proponents and companies associated with such resolutions? Do answers to the above questions differ when considering individual or institutional shareholder-proponents?

11. Relatedly, would the proposed amendments affect shareholder engagement outside of the shareholder-proposal process? Would the possible reduction in the number of shareholder proposals allow company resources to be directed towards alternative engagement efforts? What are the costs associated with alternative types of shareholder engagement to companies and shareholders?

12. What are the opportunity costs to companies and shareholders of shareholder proposal submissions? Please provide a dollar estimate per proposal for these opportunity costs. Do these opportunity costs vary with the type of proposal, the type of proponent, or the type of company? Please provide an estimate of the hours the board of directors and management spend to

[308] *See* letters in response to the Proxy Process Roundtable from the Shareholder Rights Group dated December 4, 2018; Teachers Insurance and Annuity Association of America (TIAA) dated June 10, 2019; City of New York Office of the Comptroller dated January 2, 2019.

review and process each shareholder proposal.

13. Is the distribution of the dollar value and the duration of firm-specific holdings different for institutional and individual investors? Are there distributional differences when comparing the subsets of individual and institutional shareholders likely to submit shareholder proposals? Please provide any relevant data or summary statistics of the holdings of retail and institutional investors recently and over time.

14. Does the majority of shareholders that submit a proposal through a representative already provide the documentation that would be mandated by the proposed rule amendments? To the extent that the practices of certain proponents are not consistent with the proposed amendments, would the costs to proponents to provide this additional documentation be minimal? Are there any costs and benefits of providing the additional disclosures that we haven't identified in the economic analysis? If so, please provide a dollar estimate for these costs and benefits. Would the proposed amendments related to proposals submitted by a representative have any effect on efficiency, competition, or capital formation?

15. What is the relation, if any, between the level and duration of proponent's ownership and the likelihood of submitting shareholder proposals? What is the relationship, if any, between the level and duration of proponents' ownership and the likelihood of submitting shareholder proposals that are more likely to garner majority support and be implemented by management? Do answers to the above questions vary based on the shareholder type or proposal topic?

16. What are the concerns, if any, associated with drawing inferences about the effects of the proposed amendments from analysis of data on proponents' ownership from proxy statements and proof-of-ownership letters?

17. To what extent are there additional costs to companies and shareholders associated with applying a three-tiered ownership threshold instead of a single-tier threshold in determining a shareholder's eligibility to submit shareholder proposals?

18. We have observed instances of shareholder proposals going to a vote despite being eligible for exclusion under Rule 14a–8. What are the costs and benefits to companies of including such proposals in the proxy statement? To what extent may these practices change if proposed amendments are adopted?

V. Paperwork Reduction Act

A. Summary of the Collections of Information

Certain provisions of our rules and schedules that would be affected by the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[309] We are submitting the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[310] The hours and costs associated with preparing, filing, and sending the schedules, including preparing documentation required by the shareholder-proposal process, constitute paperwork burdens imposed by the collection of information. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number. Compliance with the information collection is mandatory. Responses to the information collection are not kept confidential and there is no mandatory retention period for the information disclosed. The title for the affected collection of information is: ''Regulation 14A (Commission Rules 14a–1 through 14a–21 and Schedule 14A)'' (OMB Control No. 3235–0059).

We adopted the existing regulations and schedule pursuant to the Exchange Act. The regulations and schedule set forth the disclosure and other requirements for proxy statements filed by issuers and other soliciting parties. A detailed description of the proposed amendments, including the need for the information and its proposed use, as well as a description of the likely respondents, can be found in Section II above, and a discussion of the expected economic effects of the proposed amendments can be found in Section IV above.

B. Summary of the Proposed Amendments' Effects on the Collections of Information

The following table summarizes the estimated effects of the proposed amendments on the paperwork burdens associated with Regulation 14A.

[309] 44 U.S.C. 3501 *et seq.*

[310] 44 U.S.C. 3507(d); 5 CFR 1320.11.

PRA TABLE 1—ESTIMATED PAPERWORK BURDEN EFFECTS OF THE PROPOSED AMENDMENTS

Proposed amendments	Estimated effect
Rule 14a–8(b)(1)(i): • Revise the ownership requirements that shareholders must satisfy to be eligible to submit proposals to be included in an issuer's Schedule 14A proxy statement to the following levels: ○ ≥$2K to <$15K for at least 3 years; ○ ≥$15K to <$25K for at least 2 years; or ○ ≥$25K for at least 1 year.	28% decrease in the number of shareholder proposal submissions,[311] resulting in a reduction in the average burden per response of 5.08 hours.[312]
Rule 14a–8(b)(1)(iii): • Require shareholders to provide the company with a written statement that they are able to meet with the company in person or via teleconference no less than 10 calendar days nor more than 30 calendar days after submission of the shareholder proposal, and to provide contact information as well as business days and specific times that they are available to discuss the proposal with the company.	Increase in the average burden per response of 0.04 hours.[313]
Rule 14a–8(b)(1)(iv): • Require shareholders to provide certain written documentation to companies if the shareholder appoints a representative to act on its behalf in submitting a proposal under the rule.	Increase in the average burden per response of 0.01 hours.[314]
Rule 14a–8(b)(1)(v): • Disallow aggregation of holdings for purposes of satisfying the ownership requirements	0.2% decrease in the number of shareholder proposal submissions,[315] resulting in a reduction in the average burden per response of 0.04 hours.[316]
Rule 14a–8(c): • Provide that shareholders and other persons cannot submit, directly or indirectly, more than one proposal for the same shareholders' meeting.	2% decrease in the number of shareholder proposal submissions,[317] resulting in a reduction in the average burden per response of 0.36 hours.[318]
Rule 14a–8(i)(12): • Increase the prior vote thresholds for resubmission of a proposal that addresses substantially the same subject matter as a proposal previously included in company's proxy materials within the preceding 5 calendar years if the most recent vote occurred within the preceding 3 calendar years to: ○ Less than 5% of the votes cast if previously voted on once; ○ less than 15% of the votes cast if previously voted on twice; or ○ less than 25% of the votes cast if previously voted on three or more times. Permit exclusion of proposals that addresses substantially the same subject matter as proposals that have been previously voted on three or more times in the last five years, notwithstanding having received at least 25% of the votes cast on the most recent submission, if the most recently voted on proposal (i) received less than 50% of the votes cast and (ii) experienced a decline in shareholder support of 10% or more of the votes cast compared to the immediately preceding vote.	7% reduction in the number of shareholder proposals by reducing the number of resubmissions,[319] resulting in a reduction in the average burden per response of 1.26 hours.[320]
Total	Net decrease in the average burden per response of 6.69 hours.[321]

[311] *See supra* Section IV.C.2.i. We estimate that the decrease in the number of shareholder proposals could range from 0 to 56%, depending on shareholders' holding periods. For purposes of the PRA, we assume an estimated decrease of 28%.

[312] In response to the Proxy Process Roundtable, commenters provided several cost estimates associated with a company's receipt of a shareholder proposal. These estimates are $87,000 (*see* letters in response to the Proxy Process Roundtable from Blackrock, Inc. dated November 16, 2018; Society for Corporate Governance dated November 9, 2018); more than $100,000 (*see* letter in response to the Proxy Process Roundtable from Exxon Mobil Corporation dated July 26, 2019); and approximately $150,000 (*see* letter in response to the Proxy Process Roundtable from the American Securities Association dated June 7, 2019). In addition, one observer estimated a cost of approximately $50,000 ''based on anecdotal discussions with [members of the Society for Corporate Governance].'' *See* Statement of Darla C. Stuckey, President and CEO, Society for Corporate Governance, Before the H. Comm. on Financial Services Subcomm. on Capital Markets and Government Sponsored Enterprises, Sep. 21, 2016. At an estimated hourly cost of $400 per hour, these estimated costs would correspond to the following estimated burden hours: 125 hours ($50,000 / $400 = 125), 218 hours ($87,000 / $400 = 218), 250 hours ($100,000 / $400 = 250), and 375 hours ($150,000 / $400 = 375).

A July 2009 survey of Business Roundtable companies, in which 67 companies responded, indicated that the average burden associated with preparing a no-action request related to a shareholder proposal is approximately 47 hours with associated costs of $47,784. The survey also indicated that the average burden for a company associated with printing and mailing a single shareholder proposal is 20 hours with associated costs of $18,982. *See* letter in response to Facilitating Shareholder Director Nominations, Release No. 34–60089 (Jun. 10, 2009) [74 FR 29024 (Jun. 18, 2009)] from Business Roundtable dated August 17, 2009, *available at https://www.sec.gov/comments/s7-10-09/s71009-267.pdf.* Thus, based on the Business Roundtable's survey, the combined effect of these two aspects of processing a shareholder proposal was estimated at 67 hours with associated costs of $66,766.

Informed by the range of estimates provided, we estimate that the burden hours for a company associated with considering and printing and mailing a shareholder proposal (not including burdens associated with the no-action process) would be 100 hours (80 hours associated with activities unrelated to printing and mailing, and 20 hours associated with printing and mailing). In addition, we estimate that the burden hours associated with seeking no-action relief would be 50 hours.

We further estimate that 40% of proposals are included in the proxy statement without seeking no-action relief, 16% are included after seeking no-action relief, 15% are excluded after seeking no-action relief, and 29% are withdrawn. Thus, we estimate 107 burden hours associated with a company's receipt of a shareholder proposal, calculated as follows:

C. Incremental and Aggregate Burden and Cost Estimates for the Proposed Amendments

The paperwork burden estimate for Regulation 14A includes the burdens imposed by our rules that may be incurred by all parties involved in the proxy process leading up to and associated with the filing of a Schedule 14A. This would include both the time that a shareholder-proponent spends to prepare its proposals for inclusion in a company's proxy statement, as well as the time that the company spends to respond to such proposals. Our incremental and aggregate reductions in paperwork burden as a result of the proposed amendments represent the average burden for all respondents, including shareholder-proponents and large and small registrants. In deriving our estimates, we recognize that the burdens would likely vary among individual proponents and registrants based on a number of factors, including the propensity of a particular shareholder-proponent to submit proposals, or the number of shareholder proposals received by a particular company, which may be related to its line of business or industry or other factors.

- 100 hours for 40% of proposals (*i.e.,* proposals that are included in the proxy statement without seeking no-action relief);
- 150 hours for 16% of proposals (*i.e.,* proposals that are included in the proxy statement after seeking no-action relief);
- 130 hours for 15% of proposals (*i.e.,* proposals that are excluded from the proxy statement after seeking no-action relief); and
- 80 hours for 29% of proposals (*i.e.,* proposals that are withdrawn).

The reduction in the average burden per response of 5.08 hours is calculated by multiplying the expected reduction in proposals (28%) by the average number of proposals received between 1997 and 2018 (946) for a reduction in the total number of proposals of 265. This reduction in the number of proposals (265) is then multiplied by the estimated burden hours per proposal (107) for a total of 28,355 burden hours. This total number of burden hours (28,355) is then divided by the total number of responses (5,586) for a reduction in the average burden per response of 5.08 hours.

[313] The increase in the average burden per response of 0.04 hours is calculated by multiplying the expected amount of time to provide this information (20 minutes) by the expected average number of expected proposals after taking account of the total reduction in proposals submitted as a result of the proposed amendments (615) for a total increase of 205 hours. This increase in burden hours (205 hours) is then divided by the total number of responses (5,586) for an increase in the average burden per response of 0.04 hours.

[314] The increase in the average burden per response of 0.01 hours is calculated by multiplying the expected amount of time to provide this information (20 minutes) by the expected number of proposals submitted by a representative. We estimate that approximately 18% of proposals are submitted by a representative; thus, we multiply the average number of expected proposals after taking into account the reduction in proposals as a result of the proposed amendments (615) by 18% for a total of 111 proposals submitted by a representative. The number of proposals (111) is multiplied by the estimated amount of time to provide this information (20 minutes) for a total of 37 hours. This increase in burden hours (37 hours) is then divided by the total number of responses (5,586) for an increase in the average burden per response of 0.01 hours.

[315] *See supra* Section IV.C.2.i. We estimate that the decrease in the number of proposals could range from 0 to 0.4%. For purposes of the PRA, we assume an estimated decrease of 0.2%.

[316] The reduction in the average burden per response of 0.04 hours is calculated by multiplying the expected reduction in proposals (0.2%) by the average number of proposals received between 1997 and 2018 (946) for a reduction in the total number of proposals of 2. This reduction in the number of proposals (2) is then multiplied by the estimated burden hours per proposal (107) for a total of 214 burden hours. This total number of burden hours (214) is then divided by the total number of responses (5,586) for a reduction in the average burden per response of 0.04 hours.

[317] *See supra* Section IV.C.2.i.

[318] The reduction in the average burden per response of 0.36 hours is calculated by multiplying the expected reduction in proposals (2%) by the average number of proposals received between 1997 and 2018 (946) for a reduction in the total number of proposals of 19. This reduction in the number of proposals (19) is then multiplied by the estimated burden hours per proposal (107) for a total of 2,033 burden hours. This total number of burden hours (2,033) is then divided by the total number of responses (5,586) for a reduction in the average burden per response of 0.36 hours.

[319] *See supra* Section IV.C.2.iii, Table 9 for a discussion regarding the estimated decrease in resubmitted proposals. That discussion estimates that there would have been 269 additional excludable resubmitted proposals (212 attributable to the revised resubmission thresholds of 5%, 15%, and 25% and 57 attributable to the Momentum Requirement) between 2011 and 2018 out of a total of 1,442 resubmitted proposals under the proposed amendments. A total of 3,620 proposals were included in proxy statements during that period. Thus, the estimated reduction in the number of shareholder proposals is estimated by dividing 269 by 3,620, which yields 7%.

[320] The reduction in the average burden per response of 1.26 hours is calculated by multiplying the expected reduction in proposals (7%) by the average number of proposals received between 1997 and 2018 (946) for a reduction in the total number of proposals of 66. This reduction in the number of proposals (66) is then multiplied by the estimated burden hours per proposal (107) for a total of 7,062 burden hours. This total number of burden hours (7,062) is then divided by the total number of responses (5,586) for a reduction in the average burden per response of 1.26 hours.

[321] $(5.08 + 0.04 + 0.36 + 1.26) - (0.04 + 0.01) =$ 6.69 hours decrease in average burden per response.

As shown in PRA Table 1, the burden estimates were calculated by estimating the number of parties expected to expend time, effort, and/or financial resources to generate, maintain, retain, disclose or provide information required by the proposed amendments and then multiplying by the estimated amount of time, on average, each of these parties would devote in response to the proposed amendments. For purposes of the PRA, the burden is to be allocated between internal burden hours and outside professional costs. For Regulation 14A we estimate that 75% of the burden is carried by the company or the shareholder-proponent internally and that 25% of the burden of preparation is carried by outside professionals retained by the company or the shareholder-proponent at an average cost of $400 per hour.[322]

PRA TABLE 2—CALCULATION OF THE INCREMENTAL CHANGE IN BURDEN ESTIMATES OF CURRENT RESPONSES RESULTING FROM THE PROPOSED AMENDMENTS

Number of estimated responses	Burden hour reduction per response	Reduction in burden hours for responses	Reduction in internal hours for responses	Reduction in professional hours for responses	Reduction in professional costs for responses
(A)[323]	(B)	(C) = (A) × (B)[324]	(D) = (C) × 0.75	(E) = (C) × 0.25	(F) = (E) × $400
5,586	6.69	37,370	28,027	9,343	$3,737,200

The following table summarizes the requested paperwork burden, including the estimated total reporting burdens and costs, under the proposed amendments.

PRA TABLE 3—REQUESTED PAPERWORK BURDEN UNDER THE PROPOSED AMENDMENTS

Current burden			Program change			Requested change in burden		
Current annual responses	Current burden hours	Current cost burden	Number of affected responses	Reduction in internal hours	Reduction in professional costs	Annual responses	Burden hours	Cost burden
(A)	(B)	(C)	(D)	(E)[325]	(F)[326]	(G) = (A)	(H) = (B) − (E)	(I) = (C) − (F)
5,586	551,101	$73,480,012	5,586	28,027	$3,737,200	5,586	523,074	$69,742,812

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 would have practical utility;
- Evaluate the accuracy and 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 amendments 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 20549–1090, with reference to File No. S7–23–19. Requests for materials submitted to OMB by the Commission with regard to the collection of information should be in writing, refer to File No. S7–23–19 and be submitted to the U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this 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.

VI. Initial Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (''RFA'')[327] requires the Commission, in promulgating rules under Section 553 of the Administrative Procedure Act, to consider the impact of those rules on small entities. The Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with Section 603 of the

[322] 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 would be an average of $400 per hour. This estimate is based on consultations with several issuers, law firms, and other persons who regularly assist issuers in preparing and filing reports with the Commission.

[323] The number of estimated affected responses is based on the number of responses in the Commission's current OMB PRA filing inventory. The OMB PRA filing inventory represents a three-year average. We do not expect that the proposed amendments will materially change the number of responses in the current OMB PRA filing inventory.

[324] The estimated reductions in Columns (C), (D) and (E) are rounded to the nearest whole number.

[325] From Column (D) in PRA Table 2.

[326] From Column (F) in PRA Table 2.

[327] 5 U.S.C. 601 *et seq.*

RFA.[328] This IRFA relates to proposed amendments to Rule 14a–8 of the Exchange Act.

A. Reasons for, and Objectives of, the Proposed Action

Rule 14a–8 facilitates the proxy process for shareholders seeking to have proposals considered at a company's annual or special meeting; however, the burdens associated with this process are primarily borne by issuers. The proposed amendments are intended to balance shareholders' ability to submit proposals with the attendant burdens for companies and other shareholders associated with the inclusion of such proposals in a company's proxy statement. The reasons for, and objectives of, the proposed amendments are discussed in more detail in Sections I and II, above.

B. Legal Basis

We are proposing amendments to the rules under the authority set forth in Sections 3(b), 14 and 23(a) of the Securities Exchange Act of 1934, as amended.

C. Small Entities Subject to the Proposed Rules

The proposed amendments would affect some small entities that are either: (i) Shareholder-proponents that submit Rule 14a–8 proposals, or (ii) issuers subject to the federal proxy rules that receive Rule 14a–8 proposals. The RFA defines ''small entity'' to mean ''small business,'' ''small organization'' or ''small governmental jurisdiction.'' [329] The definition of ''small entity'' does not include individuals. For purposes of the RFA, under our rules, an issuer of securities or a person, 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.[330] We estimate that there are approximately 881 issuers that are subject to the federal proxy rules, other than investment companies, that may be considered small entities. We are unable to estimate the number of potential shareholder-proponents that may be considered small entities; [331] therefore, we request comment on the number of these small entities.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

As noted above, the primary purpose of the proposed amendments is to balance shareholders' ability to submit proposals with the attendant burdens for companies and other shareholders associated with the inclusion of such proposals. If adopted, the proposed amendments would likely reduce the number of proposals required to be included in the proxy statements of issuers subject to the federal proxy rules, including small entities. In turn, the proposed amendments would likely reduce the costs to these issuers of complying with Rule 14a–8. If adopted, the proposed amendments may reduce the number of proposals that shareholder-proponents that are small entities would be permitted to submit to issuers for inclusion in their proxy statements. In turn, these small entities may experience an increase in shareholder-engagement costs to the extent these small entities elect to increase their investment to meet the eligibility criteria or pursue alternatives methods of engagement, such as conducting their own proxy solicitation. The proposed amendments that would require shareholder-proponents to provide written documentation regarding their ability to meet with the issuer and relating to the appointment of a representative would slightly increase the compliance burden for shareholder-proponents, including those that are small entities.[332] Compliance with the proposed amendments may require the use of professional skills, including legal skills. The proposed amendments are discussed in detail in Section II, above. We discuss the economic impact, including the estimated costs and benefits, of the proposed rule to all affected entities, including small entities, in Section IV and Section V, above.

E. Duplicative, Overlapping or Conflicting Federal Rules

We believe that the proposed amendments would not duplicate, overlap or conflict with other federal rules.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

- Establishing different compliance or reporting requirements that take into account the resources available to small entities;
- Clarifying, consolidating, or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.

Rule 14a–8 generally does not impose different standards or requirements based on the size of the issuer or shareholder-proponent. We do not believe that establishing different compliance or reporting obligations in conjunction with the proposed amendments or exempting small entities from all or part of the requirements is necessary. We believe the proposed amendments are equally appropriate for shareholder-proponents of all sizes seeking to engage with issuers through the Rule 14a–8 process. While we do anticipate a moderate increase in burden for shareholder-proponents, we do not believe that imposing different standards or requirements based on the size of the shareholder-proponent will accomplish the purposes of the proposed amendments, and may result in additional costs associated with ascertaining whether a particular shareholder-proponent may avail itself of such different standards. For issuers, the proposed amendments would not impose any significant new compliance obligations. To the contrary, the proposed amendments would reduce the compliance costs of affected issuers, including small entities, by decreasing the number of shareholder proposals that may be submitted. For these reasons, we are not proposing differing compliance or reporting requirements or timetables for issuers that are small entities, or an exception for small entities. However, we seek comment on whether and how the proposed amendments could be modified to provide differing compliance or reporting requirements or timetables for small entities and whether such separate requirements would be appropriate.

We believe that the proposed amendments do not need further clarification, consolidation or simplification for small entities, although we solicit comment on how the proposed amendments could be revised to reduce the burden on small entities.

[328] 5 U.S.C. 603.

[329] 5 U.S.C. 601(6).

[330] 17 CFR 240.0–10(a).

[331] For the purposes of our Economic Analysis, we have estimated that there were 22,162,828 retail accounts that held shares of U.S. public companies during calendar year 2017. There were 170 unique proponents that submitted proposals that were included in a company's proxy statement as lead proponent or co-proponent during calendar year 2018. *See supra* Section IV.B.2. Out of these 170 unique proponents, 38 were individuals and 132 were non-individuals. Thus, no more than 132 of these unique proponents would be considered small entities.

[332] *See supra* Section V.B.

The proposed amendments generally use design standards rather than performance standards in order to promote uniform submission requirements for all shareholder-proponents. We solicit comment as to whether there are aspects of the proposed amendments for which performance standards would be appropriate.

G. Request for Comment

We encourage the submission of comments with respect to any aspect of this IRFA. In particular, we request comments regarding:

- How the proposed rule and form amendments can achieve their objective while lowering the burden on small entities;
- The number of small entities, including shareholder-proponents, that may be affected by the proposed amendments;
- The existence or nature of the potential impact of the proposed amendments on small entities discussed in the analysis; and
- How to quantify the impact of the proposed amendments.

Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

VII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA),[333] the Commission must advise OMB as to whether the proposed amendments 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 U.S. 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 the proposed amendments would be a ''major rule'' for purposes of SBREFA. In particular, we request comment on the potential effect of the proposed amendments on the U.S. economy on an annual basis; any potential increase in costs or prices for consumers or individual industries; and any potential effect on competition, investment or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

[333] 5 U.S.C. 801 *et seq.*

VIII. Statutory Authority

The amendments contained in this release are being proposed under the authority set forth in Sections 3(b), 14 and 23(a) of the Exchange Act, as amended.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of the Proposed Amendments

In accordance with the foregoing, the Commission is proposing to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 2. Amend § 240.14a–8 as follows:
■ a. Revise paragraphs (b)(1) and (2);
■ b. Revise paragraph (c); and
■ c. Revise paragraph (i)(12).

The revisions read as follows:

§ 240.14a–8 Shareholder proposals.

* * * * *

(b) * * *

(1) To be eligible to submit a proposal, you must satisfy the following requirements:

(i) You must have continuously held:

(A) At least $2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or

(B) At least $15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or

(C) At least $25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; and

(ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with § 240.14a–8(b)(1)(i)(A) through (C), through the date of the shareholders' meeting for which the proposal is submitted; and

(iii) You must provide the company with a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. You must include contact information as well as business days and specific times that you are available to discuss the proposal with the company; and

(iv) If you use a representative to submit a shareholder proposal and/or otherwise act on your behalf in connection with the shareholder proposal, you must provide the company with written documentation that:

(A) Identifies the company to which the proposal is directed;

(B) Identifies the annual or special meeting for which the proposal is submitted;

(C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;

(D) Includes your statement authorizing the designated representative to submit the proposal and/or otherwise act on your behalf;

(E) Identifies the specific proposal to be submitted;

(F) Includes your statement supporting the proposal; and

(G) Is signed and dated by you.

(v) For purposes of paragraph (b)(1)(i)(A) through (C), you may not aggregate your holdings with those of another shareholder to meet the requisite amount of securities.

(2) The following methods may be used to demonstrate eligibility to submit a proposal:

(i) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with § 240.14a–8(b)(1)(i)(A) through (C), through the date of the meeting of shareholders.

(ii) If, like many shareholders, you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your

eligibility to the company in one of two ways:

(A) The first way is to submit to the company a written statement from the ''record'' holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held at least $2,000, $15,000, or $25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with § 240.14a–8(b)(1)(i)(A) through (C), through the date of the meeting of shareholders; or

(B) The second way to prove ownership applies only if you were required to file, and filed, a Schedule 13D (§ 240.13d–101), Schedule 13G (§ 240.13d–102), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter), and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents or updated forms, demonstrating that you meet at least one of the share ownership requirements under § 240.14a–8(b)(1)(i)(A) through (C). If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:

(*1*) A copy of the schedule(s) and/or form(s), and any subsequent amendments reporting a change in your ownership level;

(*2*) Your written statement that you continuously held at least $2,000, $15,000, or $25,000 in market value of the company's securities entitled to vote for at least three years, two years, or one year, respectively; and

(*3*) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with § 240.14a–8(b)(1)(i)(A) through (C), through the date of the company's annual or special meeting.

(c) *Question 3:* How many proposals may I submit? Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.

* * * * *

(i) * * *

(12)(i) *Resubmissions.* If the proposal addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was:

(A) Less than 5 percent of the votes cast if previously voted on once;

(B) Less than 15 percent of the votes cast if previously voted on twice; or

(C) Less than 25 percent of the votes cast if previously voted on three or more times.

(ii) A proposal that is not excludable under § 240.14a–8(i)(12)(i)(C) may nevertheless be omitted if it deals with substantially the same subject matter as proposals previously voted on by shareholders three or more times in the preceding five calendar years if, at the time of the most recent shareholder vote, the proposal:

(A) Received less than 50 percent of the votes cast; and

(B) The percentage of votes cast declined by 10 percent or more compared to the immediately preceding shareholder vote on substantially the same subject matter.

* * * * *

By the Commission.

Dated: November 5, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–24476 Filed 12–3–19; 8:45 am]

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Part III

Securities and Exchange Commission

17 CFR Part 240
Amendments to Exemptions From the Proxy Rules for Proxy Voting Advice; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–87457; File No. S7–22–19]

RIN 3235–AM50

Amendments to Exemptions From the Proxy Rules for Proxy Voting Advice

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing amendments to its rules governing proxy solicitations to help ensure that investors who use proxy voting advice receive more accurate, transparent, and complete information on which to make their voting decisions, in a manner that does not impose undue costs or delays that could adversely affect the timely provision of proxy voting advice. The proposed amendments would condition the availability of certain existing exemptions from the information and filing requirements of the federal proxy rules for proxy voting advice businesses upon compliance with additional disclosure and procedural requirements. In addition, the proposed amendments would codify the Commission's interpretation that proxy voting advice generally constitutes a solicitation within the meaning of the Securities Exchange Act of 1934. Finally, the proposed amendments would amend the proxy rules to clarify when the failure to disclose certain information in proxy voting advice may be considered misleading within the meaning of the rule, depending upon the particular facts and circumstances at issue.

DATES: Comments should be received by February 3, 2020.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/submitcomments.htm*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–22–19 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 S7–22–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method 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 available publicly.

We or the staff may add studies, memoranda, or other substantive items 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 our website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Daniel S. Greenspan, Senior Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing amendments to 17 CFR 240.14a–1(*l*) (''Rule 14a–1(*l*)''), 17 CFR 240.14a–2 (''Rule 14a–2''), and 17 CFR 240.14a–9 (''Rule 14a–9'') under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*] (''Exchange Act'').[1]

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I. Introduction

Annual and special meetings of publicly-traded corporations, where shareholders are provided the opportunity to vote on various matters, are a key component of corporate governance. For various reasons, including the widely dispersed nature of public share ownership, most shareholders do not attend these meetings in person. Proxies are the means by which most shareholders of publicly traded companies exercise their right to vote on corporate matters.[2] Congress vested in the Commission the broad authority to oversee the proxy solicitation process when it originally enacted the Exchange Act in 1934.[3] As

[1] Unless otherwise noted, when we refer to the Exchange Act, or any paragraph of the Exchange Act, we are referring to 15 U.S.C. 78a of the United States Code, at which the Exchange Act is codified, and when we refer to rules under the Exchange Act, or any paragraph of these rules, we are referring to title 17, part 240 of the Code of Federal Regulations [17 CFR 240], in which these rules are published.

[2] *See Concept Release on the U.S. Proxy System,* Release No. 34–62495 (Jul. 14, 2010) [75 FR 42982 (July 22, 2010)] (''Concept Release''), at 42984.

[3] *See Regulation of Communications Among Shareholders,* Release No. 34–31326 (Oct. 16, 1992)

the securities markets have become increasingly more sophisticated and complex, and the intermediation of share ownership and participation of various market participants has grown in kind,[4] the Commission's interest in ensuring fair, honest and informed markets, underpinned by a properly functioning proxy system, dictates that we regularly assess whether the system is serving investors as it should.[5]

One of the defining characteristics of today's market is the significant role played by institutional investors,[6] which today own, by some estimates, between 70 and 80 percent of the market value of U.S. public companies.[7] Investment advisers voting on behalf of clients and other institutional investors, by virtue of their significant holdings (often on behalf of others, including retail investors) in many public companies, must manage the logistics of voting in potentially hundreds, if not thousands, of shareholder meetings and on thousands of proposals that are presented at these meetings each year, with the significant portion of those voting decisions concentrated in a period of a few months.[8]

Investment advisers and other institutional investors often retain proxy advisory firms to assist them in making their voting determinations on behalf of clients and to handle other aspects of the voting process.[9] For purposes of this release, we refer to these firms and any person who markets and sells proxy voting advice as ''proxy voting advice businesses.'' [10] Unless otherwise indicated, the term ''proxy voting advice'' as used in this release refers to the voting recommendations provided by proxy voting advice businesses on specific matters presented at a registrant's shareholder meeting or for which written consents or authorizations from shareholders are sought in lieu of a meeting, along with the analysis and research underlying the voting recommendations, and delivered to the proxy voting advice business's clients through any means, such as in a standalone written report or multiple reports, an integrated electronic voting platform established by the proxy voting advice businesses, or any combination thereof.[11]

Proxy voting advice businesses typically provide institutional investors and other clients a variety of services that relate to the substance of voting, such as: Providing research and analysis regarding the matters subject to a vote; promulgating general voting guidelines that their clients can adopt; and making voting recommendations to their clients on specific matters subject to a shareholder vote, either based on the proxy voting advice business's own voting guidelines or on custom voting guidelines that the client has created.[12] This advice is often an important factor in the clients' proxy voting decisions. Clients use the information to obtain a more informed understanding of different proposals presented in the proxy materials, and as an alternative or supplement to using their own internal resources when deciding how to vote.[13]

Proxy voting advice businesses may also provide services that assist clients in handling the administrative tasks of the voting process, typically through an electronic platform that enables their clients to cast votes more efficiently.[14] In some cases, proxy voting advice businesses are given authority to execute votes on behalf of their clients in accordance with the clients' general guidance or specific instructions.[15] One way a proxy voting advice business may assist clients with voting execution is through an electronic vote management system that allows the proxy voting advice business to (1) populate each client's ballots with recommendations

[57 FR 48276 (Oct. 22, 1992)] (''Communications Among Shareholders Adopting Release''), at 48277 (''Underlying the adoption of section 14(a) of the Exchange Act was a Congressional concern that the solicitation of proxy voting authority be conducted on a fair, honest and informed basis. Therefore, Congress granted the Commission the broad 'power to control the conditions under which proxies may be solicited' . . . .'').

[4] *See* Concept Release, *supra* note 2, at 42983 (''This complexity stems, in large part, from the nature of share ownership in the United States, in which the vast majority of shares are held through securities intermediaries such as broker-dealers or banks . . .'').

[5] *See, e.g., id.* at 43020 (''The U.S. proxy system is the fundamental infrastructure of shareholder suffrage since the corporate proxy is the principal means by which shareholders exercise their voting rights. The development of issuer, securities intermediary, and shareholder practices over the years, spurred in part by technological advances, has made the system complex and, as a result, less transparent to shareholders and to issuers. It is our intention that this system operate with the reliability, accuracy, transparency, and integrity that shareholders and issuers should rightfully expect.'').

[6] *See generally* Janette Rutterford & Leslie Hannah, *The Rise of Institutional Investors,* Financial Market History: Reflections on the Past of Investors Today (David Chambers & Elroy Dimson eds., 2017); Lucian A. Bebchuk, Alma Cohen & Scott Hirst, *The Agency Problems of Institutional Investors,* 31 J. Econ. Perspectives, Summer 2017, at 89; Marshall E. Blume & Donald B. Keim, *Institutional Investors and Stock Market Liquidity: Trends and Relationships,* SSRN Electronic Journal (2012), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2147757.*

[7] *Compare* Charles McGrath, *80% of equity market cap held by institutions,* Pensions & Investments (Apr. 25, 2017), *https://www.pionline.com/article/20170425/INTERACTIVE/170429926/80-of-equity-market-cap-held-by-institutions, with* Broadridge & PwC, *2018 Proxy Season Review,* ProxyPulse 1 (Oct. 2018), *https://www.pwc.com/us/en/governance-insights-center/publications/assets/pwc-broadridge-proxypulse-2018-proxy-season-review.pdf* (estimating that institutions own 70% of public company shares). This report also notes that institutional investors have significantly higher voter participation rates than retail investors, casting votes representing 91 percent of all the shares they held in 2018, compared to only 28 percent for retail investors during the same period. *Id.* at 2.

[8] The Investment Company Institute (''ICI'') has stated that during the 2017 proxy season, registered investment funds cast more than 7.6 million votes on 25,859 proxy proposals on corporate proxy ballots and that the average mutual fund voted on 1,504 separate proxy proposals for U.S.-listed portfolio companies (figures exclude companies domiciled outside the U.S.). *See* Morris Mitler et al., *Funds and Proxy Voting: The Mix of Proposals Matters,* Investment Company Institute (Nov. 5, 2018), *https://www.ici.org/viewpoints/view_18_proxy_environment;* Letter from Paul Schott Stevens, President and CEO of ICI (March 15, 2019) (''ICI Letter''), at 3. In addition, the Ohio Public Employees Retirement System has noted that it receives in excess of 10,000 proxies in any given proxy season. *See* Letter from Karen Carraher, Executive Director & Patti Brammer, Corporate Governance Officer, Ohio Public Employees Retirement System (Dec. 13, 2018) (''OPERS Letter''), at 2. Unless otherwise indicated, comment letters cited in this release are to the Commission's Roundtable on the Proxy Process held Nov. 15, 2018 (''2018 Proxy Roundtable''), *available at https://www.sec.gov/proxy-roundtable-2018.*

[9] *See generally* GAO Report to Congress, *Corporate Shareholder Meetings—Proxy Advisory Firms' Role in Voting and Corporate Governance Practices* (Nov. 2016) (''2016 GAO Report''); GAO Report to Congress, *Corporate Shareholder Meetings—Issues Relating to Firms that Advise Institutional Investors on Proxy Voting* (June 2007) (''2007 GAO Report''); *see also Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers,* Release No. IA–5325 (Aug. 21, 2019) [84 FR 47420 (Sept. 10, 2019)] (''Commission Guidance on Proxy Voting Responsibilities''), at 5; Letter from Gary Retelny, President and CEO of Institutional Shareholder Services, Inc. (Nov. 7, 2018) (''ISS Letter''), at 1.

[10] *See* proposed Rule 14a–1(l)(iii)(A).

[11] The reference to ''proxy voting advice,'' as used in this release, is not intended to encompass (1) research reports or data that are not used to formulate the voting recommendations or (2) administrative or ministerial services.

[12] ISS Letter, *supra* note 9.

[13] *See* Commission Guidance on Proxy Voting Responsibilities, *supra* note 9 (''Contracting with proxy advisory firms to provide these types of functions and services can reduce burdens for investment advisers (and potentially reduce costs for their clients) as compared to conducting them in-house.''); *see also* OPERS Letter, *supra* note 8, at 1 (''However, with limited staff and resources, it is extremely difficult to devote the necessary time and attention to the thousands of proxies we receive each proxy season. Consequently, OPERS has chosen to partner with a proxy advisory firm, which allows us to fulfill our engagement and governance obligations in a more productive and efficient manner.''); Letter from Kenneth A. Bertsch, Executive Director, Council of Institutional Investors (Nov. 8, 2018) (''CII Letter''), at 16 (''Proxy research firms, while imperfect, play an important and useful role in enabling effective and cost-efficient independent research, analysis and informed proxy voting advice for large institutional shareholders, particularly since many funds hold shares of thousands of companies in their investment portfolios.'').

[14] *See* Commission Guidance on Proxy Voting Responsibilities, *supra* note 9.

[15] *Id.*

based on that client's voting instructions to the business (''pre-population''); and (2) submit the client's ballots to be counted. Clients utilizing such services may choose to review the proxy voting advice business's pre-populated ballots before they are submitted or to have them submitted automatically, without further client review (''automatic submission'').[16]

Proxy voting advice businesses play an integral role in the proxy voting process by providing an array of voting services that can help clients manage their proxy voting needs and make informed investment decisions.[17] Although estimates vary, each year proxy voting advice businesses provide voting advice to thousands of clients that exercise voting authority over a sizable number of shares that are voted annually.[18] Accordingly, proxy voting advice businesses are uniquely situated in today's market to influence these investors' voting decisions.

Given these market realities, it is vital that proxy voting advice be based on the most accurate information reasonably available and that the businesses providing such advice be sufficiently transparent with their clients about the processes and methodologies used to formulate the advice.[19] This is especially true when proxy voting advice businesses provide advice to investment advisers, which often make voting determinations on behalf of investors. The Commission has a strong interest in protecting those investors by ensuring that information provided by proxy voting advice businesses enables investment advisers to make informed voting determinations on investors' behalf.[20] In this regard, because proxy voting advice provided by proxy voting advice businesses generally constitutes a ''solicitation'' subject to the federal proxy rules,[21] it is important that our rules governing the proxy solicitation process are working to achieve these goals. In recent years, registrants, investors, and others have expressed concerns about proxy voting advice businesses.[22] As described in more detail below, these concerns have focused on the accuracy and soundness of the information and methodologies used to formulate proxy voting advice businesses' recommendations as well as potential conflicts of interest that may affect those recommendations. Given proxy voting advice businesses' potential to influence the voting decisions of investment advisers and other institutional investors,[23] who often vote on behalf of others, we are concerned about the risk of proxy voting advice businesses providing inaccurate or incomplete voting advice (including the failure to disclose material conflicts of interest) that could be relied upon to the detriment of investors. In light of these concerns, we are proposing amendments to the federal proxy rules that are designed to enhance the accuracy, transparency of process, and material completeness of the information provided to clients of proxy voting advice businesses when they cast their votes, as well as amendments to enhance disclosures of conflicts of interest that may materially affect the proxy voting advice businesses' voting advice.

In undertaking this rulemaking effort, we acknowledge the existence of a wider public debate about the role and impact of proxy voting advice businesses in the proxy voting system.[24]

[16] *See, e.g.,* Letter from Katherine Rabin, Chief Executive Officer, Glass, Lewis & Co., LLC (Nov. 14, 2018) (''Glass Lewis Letter''), at 2, 4 (describing how ballots are populated and submitted).

[17] *Id.; see* Letter from Yves P. Denizé, Senior Managing Director, Teachers Insurance and Annuity Association of America (June 10, 2019) (''TIAA Letter''), at 3, 6, 7 (''Proxy advisory services are a crucial part of [TIAA's] voting process. . . . Every year, [TIAA] completes a proxy voting review of more than 3,000 U.S. and 11,000 global companies and processes more than 100,000 unique agenda items. . . . [W]e rely on proxy advisory firms to gather and synthesize the information we need to make informed voting decisions in a timely and efficient manner.''); Letter from Michael Garland, Assistant Comptroller, Office of N.Y.C. Comptroller (Jan. 2, 2019) (''NYC Comptroller Letter''), at p. 4 of enclosed statement before the Senate Banking Committee on Dec. 8, 2018 (''During the peak of U.S. proxy season . . . the number of meetings and votes is very large, putting a premium on having a high-quality, efficient process, to which the proxy advisory firms are indispensable.''); OPERS Letter, *supra* note 8, at 2 (''OPERS receives in excess of 10,000 proxies in any given proxy season. We have determined it is more operationally efficient to use the workflow of our proxy advisory firm to cast votes on these matters.''); Letter from Gail C. Bernstein, General Counsel, Investment Adviser Association (Dec. 31, 2018) (''IAA Letter''), at 2 (''[P]roxy advisory firms . . . provide important support, particularly voting-related administration services. Indeed, investment advisers of all sizes would face extreme logistical difficulty if they were unable to use these services to assist in the mechanics of voting proxies and for research.'').

[18] One major proxy voting advice business, Institutional Shareholder Services, Inc. (''ISS''), reported that it had approximately 2,000 institutional clients. *See The ISS Advantage,* Institutional Shareholder Services, *available at https://www.issgovernance.com/about/about-iss/* (last visited Sept. 20, 2019). Another major firm, Glass, Lewis & Co., LLC (''Glass Lewis''), reported that, as of 2019, it had ''1,300+ clients, including the majority of the world's largest pension plans, mutual funds, and asset managers, who collectively manage more than $35 trillion in assets.'' *See Company Overview,* Glass Lewis, *available at https://www.glasslewis.com/company-overview/* (last visited Sept. 20, 2019).

[19] *See, e.g.,* Concept Release, *supra* note 2, at 8 (''[T]he proxy system involves a wide array of third-party participants . . . including proxy advisory firms . . . the increased reliance on these third parties . . . adds complexity to the proxy system and makes it less transparent to shareholders and to issuers.''). The Commission has previously conducted rulemaking in this area, as well as engaged with the public through various forums and statements on these issues. *See, e.g., Commission Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice,* Release No. 34–86721 (Aug. 21, 2019) [84 FR 47416 (Sept. 10, 2019)] (''Commission Interpretation on Proxy Voting Advice''); 2018 Proxy Roundtable, *supra* note 8; *2013 Roundtable on Proxy Advisory Services* (Dec. 5, 2013), *available at https://www.sec.gov/spotlight/proxy-advisory-services.shtml; Proxy Voting by Investment Advisers,* Release No. IA–2106 (Jan. 31, 2003), 68 FR 6585 (Feb. 7, 2003) (''2003 Proxy Voting Release'').

[20] In addition, the Commission recently issued guidance regarding how an investment adviser's fiduciary duty and Rule 206(4)–6 under the Investment Advisers Act of 1940 [15 U.S.C. 80b] (the ''Advisers Act'') relate to an investment adviser's exercise of voting authority on behalf of clients. *See* Commission Guidance on Proxy Voting Responsibilities, *supra* note 9, at 3. Proxy voting advice businesses also provide their services to a range of clients other than investment advisers, and those clients would also benefit from improvements in the quality of the voting advice they receive.

[21] *See* Commission Interpretation on Proxy Voting Advice, *supra* note 19 at 4; *infra* Section II.A.

[22] *See, e.g., infra* notes 24 and 70. *See generally* comment letters submitted in connection with the 2018 Proxy Roundtable, *supra* note 8; comment letters submitted in connection with the *2013 Roundtable on Proxy Advisory Services, supra* note 19, *available at https://www.sec.gov/comments/4-670/4-670.shtml.*

[23] *See supra* note 17.

[24] For example, representatives of the registrant and retail investor communities have expressed concerns about the oversight and accountability over proxy voting advice businesses. *See, e.g.,* Letter from Darla Stuckey, President and CEO, Society for Corporate Governance (Nov. 9, 2018) (''Soc. for Corp. Gov. Letter''), at 4 (''There is no regulatory regime that governs the manner in which [proxy advisory firms] develop their policies or form the recommendations or ratings they make.''); Letter from Henry D. Eickelberg, Chief Operating Officer, Center on Executive Compensation (March 7, 2019) (''Center on Exec. Comp. Letter''), at 1 (noting a ''concerning lack of accountability'' for proxy advisory firms); Letter from James L. Martin, 60 Plus Association (Oct. 5, 2018); Letter from Nan Bauroth, Member, Main Street Investors Coalition Advisory Council (Jan. 25, 2019); Letter from Rasa Mokhoff (March 11, 2019); Letter from Pauline Yee (Apr. 9, 2019), at 1; Letter from Marie Reed (Apr. 16, 2019), at 1; Letter from Christopher Burnham, President, Institute for Pension Fund Integrity (Apr. 29, 2019), at 3; Letters from Bernard S. Sharfman (Oct 8, 2018, Oct. 12, 2018, and Nov. 27, 2018); Letter from Tom D. Seip (Oct. 20, 2010), at 4–6, *available at https://www.sec.gov/comments/s7-14-10/s71410.shtml;* Letter from Mark Latham, Founder, *VoterMedia.org* (Sep. 29, 2010), at 5–6, *available at https://www.sec.gov/comments/s7-14-10/s71410.shtml;* Letter from Wachtell, Lipton, Rosen & Katz (Oct. 19, 2010) (''Wachtell Letter''), at 4–6, *available at https://www.sec.gov/comments/s7-14-10/s71410.shtml* (commenting in response to the Concept Release, *supra* note 2); 38th Annual SEC Government-Business Forum on Small Business Capital Formation (Aug. 14, 2019) (at which participants developed recommendations for reform of the proxy solicitation system, including ''effective oversight of proxy advisory firms''); James R. Copland, David F. Larcker & Brian Tayan, *Proxy Advisory Firms—Empirical Evidence and the Case for Reform,* Manhattan Institute 6 (May 2018),

The focus of our rule proposal, however, is not on all aspects of proxy voting advice businesses' role in the proxy process. Rather, it is on measures that, if adopted, would address certain specific concerns about proxy voting advice businesses and would help to ensure that the recipients of their voting advice make voting determinations on the basis of materially complete and accurate information. The proposed amendments are designed to achieve these purposes without generating undue costs or delays that might adversely affect the timely provision of proxy voting advice.

We welcome feedback and encourage interested parties to submit comments on any or all aspects of the proposed rule amendments. When commenting, it would be most helpful if you include the reasoning behind your position or recommendation.

II. Discussion of Proposed Amendments

A. Proposed Codification of the Commission's Interpretation of ''Solicitation'' Under Rule 14a–1(l) and Section 14(a)

Exchange Act Section 14(a) [25] makes it unlawful for any person to ''solicit'' any proxy with respect to any security registered under Exchange Act Section 12 in contravention of such rules and regulations prescribed by the Commission.[26] The purpose of Section 14(a) is to prevent ''deceptive or inadequate disclosure'' from being made to shareholders in a proxy solicitation.[27] Section 14(a) grants the Commission broad authority to establish rules and regulations to govern proxy solicitations ''as necessary or appropriate in the public interest or for the protection of investors.'' [28]

The Exchange Act does not define what constitutes a ''solicitation'' for purposes of Section 14(a) and the Commission's proxy rules. Accordingly, the Commission has exercised its rulemaking authority over the years to define what communications are solicitations and to prescribe rules and regulations when necessary and appropriate to protect investors in the proxy voting process.[29] The Commission first promulgated rules in 1935 to define a solicitation to include any request for a proxy, consent, or authorization or the furnishing of a proxy, consent or authorization to security holders.[30] Since then, the Commission has amended the definition as needed to respond to new market practices that have raised investor protection concerns.[31]

In particular, the Commission expanded the definition of a solicitation in 1956 to include not only requests for proxies, but also any ''communication to security holders under circumstances reasonably calculated to result in the procurement, execution, or revocation of a proxy.'' [32] This expanded definition was prompted by recognition that some market participants were distributing written communications designed to affect shareholders' voting decisions well in advance of any formal request for a proxy that would have triggered the filing and information requirements of the federal proxy rules.[33] Since 1956, the Commission understood its definition of a solicitation to be broad and applicable regardless of whether persons communicating with shareholders were seeking proxy authority for themselves.[34] Recognizing the breadth of this definition, the Commission adopted an exemption from the information and filing requirements of the federal proxy rules for communications by persons not seeking proxy authority, but continued to include such communications within the definition of a ''solicitation.'' [35] The Commission also adopted another exemption from the information and filing requirements for proxy voting advice given by advisors to their clients under certain circumstances, but likewise continued to include such advice within the definition of ''solicitation,'' subject to an exception discussed below.[36] By adopting these exemptions, the Commission removed requirements that were considered unnecessary for these forms of solicitations, in order for shareholders to have access to more sources of

available at https://media4.manhattan-institute.org/sites/default/files/R-JC-0518-v2.pdf. Others, however, have expressed skepticism about these concerns. *See, e.g.,* Sagiv Edelman, *Proxy Advisory Firms: A Guide for Regulatory Reform,* 62 Emory L.J. 1369, 1409 (2013) (concluding that ''[t]he concerns of the critics of proxy advisory firms are overstated and distort how proxy advisory firms function and are used by their clients''); Stephen Choi, Jill Fisch & Marcel Kahan, *The Power of Proxy Advisors: Myth or Reality?,* 59 Emory L.J. 869, 905–06 (2010) (estimating that the impact of proxy advisory firms' voting recommendations on actual voting outcomes is far less than commonly attributed); TIAA Letter, *supra* note 17, at 5 (asserting that the correlation between proxy advisory firms' recommendations and the voting patterns of their clients is due more to the firms' alignment with their clients' voting philosophy than the clients' overreliance on the voting advice); CII Letter, *supra* note 13, at 15 (citing a lack of compelling evidence that additional regulation of proxy advisory firms is necessary).

[25] 15 U.S.C. 78n(a).

[26] Registrants only reporting pursuant to Exchange Act Section 15(d) are not subject to the federal proxy rules, while foreign private issuers are exempt from the requirements of Section 14(a). 17 CFR 240.3a12–3(b).

[27] *J.I. Case Co.* v. *Borak,* 377 U.S. 426, 432 (1964); *see* S. Rep. No. 1455, 73d Cong., 2d Sess., 74 (1934) (''In order that the stockholder may have adequate knowledge as to the manner in which his interests are being served, it is essential that he be enlightened not only as to the financial condition of the corporation, but also as to the major questions of policy, which are decided at stockholders' meetings.''); H.R. Rep. No. 1383, 73d Cong., 2d Sess., 14 (1934) (explaining the need for ''adequate disclosure'' and ''explanation''); Communications Among Shareholders Adopting Release, *supra* note 3, at 48277.

[28] 15 U.S.C. 78n(a); *see Borak,* 377 U.S. at 432 (noting the ''broad remedial purposes'' evidenced by the language of Section 14(a)); S. Rep. No. 73–792, 2d Sess., at 12 (1934) (''The committee recommends that the solicitation and issuance of proxies be left to regulation by the Commission.''); H.R. Rep. No. 1383, 73d Cong., 2d Sess., 14 (1934) (explaining the intention to give the Commission the ''power to control the conditions under which proxies may be solicited'').

[29] *See* 15 U.S.C. 78n(a); 15 U.S.C. 78c(b); 15 U.S.C. 78w.

[30] *See* Exchange Act Release No. 34–378, 1935 WL 29270 (Sept. 24, 1935).

[31] The Commission revised the definition in 1938 to include any request for a proxy, regardless of whether the request is accompanied by or included in a written form of proxy. *See* Release No. 34–1823 (Aug. 11, 1938) [3 FR 1991 (Aug. 13, 1991)], at 1992. It subsequently revised the definition in 1942 to include ''any request to revoke or not execute a proxy.'' *See* Release No. 34–3347 (Dec. 18, 1942) [7 FR 10653 (Dec. 22, 1942)], at 10656.

Courts have also taken a broad view of solicitation, with one noting that a report provided by a broker-dealer to shareholders of the target company in a contested merger constituted a solicitation because it advised the shareholders that one bidder's offer was ''far more attractive'' than the other and therefore was a communication reasonably calculated to affect the shareholders' voting decisions. *See* Commission Interpretation on Proxy Voting Advice, *supra* note 19, at 5 n.13 (citing *Union Pac. R.R. Co.* v. *Chicago & N.W. Ry. Co.,* 226 F. Supp. 400, 408 (N.D. Ill. 1964)); *see also Long Island Lighting Co.* v. *Barbash,* 779 F.2d 793, 796 (2d Cir.1985) (stating that the proxy rules applied not only to direct requests to furnish, revoke or withhold proxies, but also to communications which may indirectly accomplish such a result and finding newspaper and radio advertisements that encouraged citizens to advocate for a state-run utility company to be solicitation made in connection with an upcoming director election); *SEC* v. *Okin,* 132 F.2d 784, 786 (2d Cir. 1943) (holding that the defendant shareholder who sent a letter to fellow shareholders in connection with an annual meeting asking them not to sign any proxies for the company was engaged in a solicitation).

[32] 17 CFR 240.14a–1(l)(1)(iii); *see Adoption of Amendments to Proxy Rules,* Release No. 34–5276 (Jan. 17, 1956) [21 FR 577 (Jan. 26, 1956)], at 577; *see also Broker-Dealer Participation in Proxy Solicitations,* Release No. 34–7208 (Jan. 7, 1964) [29 FR 341 (Jan. 15, 1964)] (''Broker-Dealer Release''), at 341 (''Section 14 and the proxy rules apply to any person—not just management, or the opposition. This coverage is necessary in order to assure that all materials specifically directed to stockholders and which are related to, and influence their voting will meet the standards of the rules.'').

[33] *See generally* Communications Among Shareholders Adopting Release, *supra* note 3.

[34] *See id.* at 48276 (adopting Exchange Act Rule 14a–2(b)(1)).

[35] *See id.*

[36] *See Shareholder Communications, Shareholder Participation in Corporate Electoral Process and Corporate Governance Generally,* Release No. 34–16356 (Nov. 21, 1979) [44 FR 68764 (Nov. 29, 1979)] (''1979 Adopting Release''), at 68766.

information when voting, though the antifraud provisions of the proxy rules continued to apply.

The Commission has previously observed that the breadth of the definition of a solicitation may result in proxy advisory firms being subject to the federal proxy rules because they provide recommendations that are reasonably calculated to result in the procurement, withholding, or revocation of a proxy and that, as a general matter, the furnishing of proxy voting advice constitutes a solicitation.[37] Most recently, the Commission issued an interpretative release regarding the application of the federal proxy rules to proxy voting advice.[38] As the Commission explained in that release, the determination of whether a communication is a solicitation depends upon both the specific nature and content of the communication and the circumstances under which the communication is transmitted.[39] The Commission noted several factors that indicate proxy advisory firms generally engage in solicitations when they give proxy voting advice to their clients, including:

- The proxy voting advice generally describes the specific proposals that will be presented at the registrant's upcoming meeting and presents a ''vote recommendation'' for each proposal that indicates how the client should vote;
- Proxy advisory firms market their expertise in researching and analyzing matters that are subject to a proxy vote for the purpose of assisting their clients in making voting decisions;
- Many clients of proxy advisory firms retain and pay a fee to these firms to provide detailed analyses of various issues, including advice regarding how the clients should vote through their proxies on the proposals to be considered at the registrant's upcoming meeting or on matters where shareholder approval is sought; and
- Proxy advisory firms typically provide their recommendations shortly before a shareholder meeting or authorization vote,[40] enhancing the likelihood that their recommendations will influence their clients' voting determinations.[41]

Where these or other significant factors (or a significant subset of these or other factors) is present,[42] the proxy advisory firms' voting advice generally would constitute a solicitation subject to the Commission's proxy rules because such advice would be ''a communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.'' [43] Furthermore, the Commission explained that such advice generally would be a solicitation even if the proxy advisory firm is providing recommendations based on the client's own tailored voting guidelines, and even if the client chooses not to follow the advice.[44]

We are proposing to codify this Commission interpretation by amending Rule 14a–1(l). The proposed amendment would add paragraph (A) to Rule 14a–1(l)(1)(iii) [45] to make clear that the terms ''solicit'' and ''solicitation'' include any proxy voting advice that makes a recommendation to a shareholder as to its vote, consent, or authorization on a specific matter for which shareholder approval is solicited, and that is furnished by a person who markets its expertise as a provider of such advice, separately from other forms of investment advice, and sells such advice for a fee. We believe the furnishing of proxy voting advice by a person who has decided to offer such advice, separately from other forms of investment advice, to shareholders for a fee, with the expectation that its advice will be part of the shareholders' voting decision-making process, is conducting the type of activity that raises the investor protection concerns about inadequate or materially misleading disclosures that Section 14(a) and the Commission's proxy rules are intended to address.[46] We further believe that the regulatory framework of Section 14(a) and the Commission's proxy rules, with their focus on the information received by shareholders as part of the voting process, is well-suited to enhancing the quality and availability of the information that clients of proxy voting advice businesses are likely to consider as part of their voting determinations.[47]

We recognize that the major proxy voting advice businesses may use more than one benchmark voting policy or set of guidelines in formulating their voting recommendations on a particular matter to be voted on at a shareholder meeting (or for which written consents or authorizations are sought in lieu of a meeting). For example, a proxy voting advice business may offer differing voting recommendations on a matter based on the application of its benchmark policy or specialty voting policies, such as a socially responsible policy, a sustainability policy, or a Taft-Hartley labor policy. The voting recommendations formulated under the benchmark policy and each of these specialty policies would be considered to be separate communications of proxy voting advice under proposed Rule 14a–1(l)(1)(iii)(A) and for purposes of the proposed rule amendments discussed below.

We also recognize that the term ''solicit'' in Section 14(a) arguably might be construed more narrowly than how the Commission has long interpreted

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[37] *See* Concept Release, *supra* note 2, at 43009; *see also* Broker-Dealer Release, *supra* note 32, at 341.

[38] Commission Interpretation on Proxy Voting Advice, *supra* note 19.

[39] *See* Question and Response 1 of Commission Interpretation on Proxy Voting Advice, *supra* note 19, at 6; *see also* Concept Release, *supra* note 2 at 43009 n.244.

[40] *See, e.g.,* Letter from Maria Ghazal, Senior Vice President and Counsel, Business Roundtable (June 3, 2019) (''Business Roundtable Letter 2''), at 9 (''[R]ecent survey results support the contention that a spike in voting follows adverse voting recommendations by ISS during the three-business day period immediately after the release of the recommendation.''); Transcript of Roundtable on the Proxy Process, at 242 (Nov. 15, 2018), *available at https://www.sec.gov/files/proxy-round-table-transcript-111518.pdf* (''2018 Roundtable Transcript''); Frank Placenti, *Are Proxy Advisors Really A Problem?,* American Council for Capital Formation 3 (Oct. 2018), *http://accfcorpgov.org/wp-content/uploads/2018/10/ACCF_ProxyProblemReport_FINAL.pdf.*

[41] Commission Interpretation on Proxy Voting Advice, *supra* note 19, at 8.

[42] Such other factors may include the fact that many proxy advisory firms' recommendations are typically distributed broadly.

[43] *See* Question and Response 1 of Commission Interpretation on Proxy Voting Advice, *supra* note 19, at 9.

[44] *Id.*

[45] The proposed amendment is intended to make clear that proxy voting advice provided under the specified circumstances constitutes a solicitation under current Rule 14a–1(l)(1)(iii). It is not intended to amend, limit, or otherwise affect the scope of Rule 14a–1(l)(1)(iii).

[46] We understand that investment advisers may discuss their views on proxy voting with clients or prospective clients, as part of their portfolio management services or other common investment advisory services. Such discussions could be prompted (such as in the case of a client or prospective client that has asked the adviser for its views on a particular transaction) or unprompted. For example, a mutual fund board may request that a prospective subadviser discuss its views on proxy voting, including particular types of transactions such as mergers or corporate governance. The proposed amendments are not intended to include these types of communications as solicitations for purposes of Section 14(a). Instead, the proposed amendments are intended to apply to entities that market their proxy voting advice as a service that is separate from other forms of investment advice to clients or prospective clients.

[47] We understand that a proxy voting advice business might, if applicable requirements are met, be registered as an investment adviser and subject to additional regulation under the Advisers Act and the Commission's rules thereunder. However it is not unusual for a registrant under one provision of the securities laws to be subject to other provisions of the securities laws when engaging in conduct that falls within the other provisions. Given the focus of Section 14(a) and the Commission's proxy rules on protecting investors who receive communications regarding their proxy votes, it is appropriate that proxy voting advice businesses be subject to applicable rules under Section 14(a) when they provide proxy voting advice.

that term. Under such a view, ''solicitation'' arguably might be limited to requests to obtain proxy authority or to obtain shareholder support for a preferred outcome, which might exclude certain proxy voting advice by a person retained to provide such advice to a client. We do not believe, however, such a narrow reading of Section 14(a) is required or warranted, and we adhere to the Commission's longstanding view since 1956 that any communications reasonably calculated to result in a shareholder's proxy voting decision may be regarded as a solicitation subject to Commission rules under Section 14(a). The term ''solicit'' did not have a single, narrow meaning when Section 14(a) was enacted.[48] Moreover, as discussed above, an overarching purpose of Section 14(a) is to ensure that communications to shareholders about their proxy voting decisions contain materially complete and accurate information.[49] It would be inconsistent with that goal if persons whose business is to offer and sell voting advice broadly to large numbers of shareholders, with the expectation that their advice will factor into shareholders' voting decisions, were beyond the reach of Section 14(a).[50] The fact that shareholders may retain providers of proxy voting advice to advance their own interests does not obviate these concerns; to the contrary, in many circumstances it makes the role of this advice all the more important to those shareholders' decisions, and all the more significant in the proxy process.

Although we adhere to the Commission's longstanding view that any communication reasonably calculated to result in a proxy voting decision is a solicitation, we understand that there may be circumstances in which a person, such as a broker-dealer or an investment adviser, may receive requests for voting advice from a client that are unprompted by that person. The breadth of the Commission's definition of a solicitation could raise questions about whether such voting advice is a communication reasonably calculated to influence proxy voting by shareholders. The Commission has expressed the view in the past that such a communication should not be regarded as a solicitation subject to the proxy rules.[51] We are proposing to codify this view through an amendment to Rule 14a–1(l)(2), which currently lists activities and communications that do not constitute a solicitation. As proposed, the definition of a solicitation would exclude any proxy voting advice furnished by a person who furnishes such advice only in response to an unprompted request.[52]

The proposed amendment would make clear that the federal proxy rules do not apply to this form of proxy voting advice. We continue to believe that providing voting advice to a client where the client's request for the advice has been invited and encouraged by the person's marketing, offering, and selling such advice should be distinguished from advice provided by a person only in response to an unprompted request from its client.[53] The information and filing requirements of the proxy rules [54] (including the filing and furnishing of a proxy statement with information about the registrant and proxy cards with means for casting votes) or compliance with the proposed conditions of the exemptions described below, while appropriate for a person who chooses to actively market and sell its proxy voting advice, are ill-suited for a person who receives an unprompted request from a client for its views on an upcoming matter to be presented for shareholder approval. For example, a person who does not sell voting advice as a business and who provides such advice only in response to an unprompted request from his or her client is unlikely to anticipate the need to establish the internal processes necessary to comply with our proposed new conditions to the exemptions in Rules 14a–2(b)(1) and 14a–2(b)(3).[55]

Furthermore, the proposed amendment to Rule 14a–1(l)(2) is intended to permit the furnishing of proxy voting advice without triggering the federal proxy rules under circumstances that present significantly less risk to investor protection. It is reasonable to expect that a person who does not promote himself or herself as an expert in proxy voting advice and provides voting advice only in response to unprompted requests will be furnishing such advice only to a client with whom there is an existing business relationship.[56] We do not believe proxy voting advice provided under these limited circumstances presents the same investor protection or regulatory concerns as proxy voting advice businesses engaged in widespread marketing and sale of proxy voting advice to large numbers of investment advisers and other institutional investors who are often voting on behalf of other investors.

If such advice were considered a solicitation, a person may, in the interest of caution, decline to share his or her advice or views on the upcoming matter with the client due to concerns about the need to file a proxy statement or his or her inability to comply with the exemptions from such a requirement. We believe that our proposed amendments to the definition of a solicitation in Rule 14a–1(l) are appropriately tailored to apply the protections of the federal proxy rules to proxy voting advice where they are most needed and in a manner consistent with Section 14(a).

Request for Comment

1. Should we codify the Commission interpretation on proxy voting advice and the Commission view about unprompted requests for proxy voting

[48] Contemporaneous dictionaries ascribed several relevant meanings to the term ''solicit,'' including ''[t]o take charge or care of, as business''; ''[t]o move to action''; ''[t]o approach with a request or plea, as in selling''; and ''[t]o urge'' or ''insist upon.'' *See, e.g.,* Webster's New International Dictionary (2d ed. 1934); Funk & Wagnalls New Standard Dictionary of the English Language (1932) (defining ''solicit'' as including to ''influence to action'').

[49] *See Business Roundtable* v. *SEC,* 905 F.2d 406, 410 (D.C. Cir. 1990) (''Proxy solicitations are, after all, only *communications* with potential absentee voters. The goal of federal proxy regulation was to improve those communications and thereby to enable proxy voters to control the corporation as effectively as they might have by attending a shareholder meeting.'').

[50] Courts have expressed similar concerns that the protections established by Section 14(a) would be hollow if the statutory provision is interpreted in an overly narrow manner. *See, e.g., SEC* v. *Okin,* 132 F.2d 784, 786 (2d Cir. 1943) (declining to view the Commission's authority as strictly limited to only requests for proxies, consents, or authorizations and stating regulation of written communications made prior to such formal requests but [that] are part of a continuous plan for a successful solicitation is needed ''if the purpose of Congress is to be fully carried out.'').

[51] Commission Interpretation on Proxy Voting Advice, *supra* note 19 at 10 (''We view these services provided by proxy advisory firms as distinct from advice prompted by unsolicited inquiries from clients to their financial advisors or brokers on how they should vote their proxies, which remains outside the definition of solicitation.''); *see* Broker-Dealer Release, *supra* note 32, at 341 (setting forth the opinion of the SEC's General Counsel that a broker is not engaging in a ''solicitation'' if it is merely responding to his customer's request for advice and ''not actively initiating the communication''); 1979 Adopting Release, *supra* note 36, at 68766.

[52] *See* proposed Rule 14a–1(l)(2)(v).

[53] Some observers contend that a proxy voting advice business that ''is contractually obligated to furnish vote recommendations based on client-selected guidelines does not provide 'unsolicited' proxy voting advice, and thus is not engaged in a 'solicitation' subject to the Exchange Act proxy rules.'' *See* ISS Letter, *supra* note 9, at 8. For the reasons stated in this section, we do not agree with this view.

[54] Rules 14a–3 through 14a–6 set forth the filing, delivery, information, and presentation requirements for the proxy statement and form of proxy for solicitations subject to Regulation 14A [17 CFR 240.14a–3 through 14a–6].

[55] *See supra* Section II.B.

[56] For example, a broker-dealer's role as a financial advisor for a client on investment matters may cause the client to seek voting advice from the broker-dealer as well. *See* Broker-Dealer Release, *supra* note 32, at 341.

advice?[57] Would the proposed codification (adding paragraph (A) to Rule 14a–1(l)(iii) and paragraph (v) to Rule 14a–1(l)(2)) provide market participants with better notice as to the applicability of the federal proxy rules?

2. Does the proposed amendment inadvertently include certain communications made by proxy voting advice businesses or other parties, such as investment advisers, that should not fall within the definition of ''solicitation''? If so, which communications, and how? Are there any revisions that we should consider that would better address these concerns or provide greater clarity?

3. For example, the proposed amendment seeks to distinguish proxy voting advice businesses from investment advisers who provide voting advice as part of a broader advisory business that already is subject to an array of investor protection regulations by referring to proxy voting advice that is marketed and sold separately from other forms of investment advice. Instead of the proposed approach, should we refer to proxy voting advice that is marketed as a ''standalone service''? What would be the advantages and disadvantages of this approach? Would any further clarification of ''standalone services'' be required?

4. Is there a different, more appropriate way of distinguishing proxy voting advice from other forms of investment advice?

5. Should the proposed amendment be expanded to specify any other type of activity as constituting a solicitation?

6. Should the proposed amendment clarifying that proxy voting advice provided by a person only in response to an unprompted request from his or her client be limited to persons who are registered broker-dealers or investment advisers? Should there be other limits on the types of persons who should fall outside the definition of a solicitation?

B. Proposed Amendments to Rule 14a–2(b)

Under the Commission's proxy rules, any person engaging in a proxy solicitation, unless exempt, is generally subject to filing and information requirements designed to ensure that materially complete and accurate information is furnished to shareholders solicited by the person. Among other things, the person making the solicitation is required to prepare a proxy statement with the information prescribed by Schedule 14A,[58] together with a proxy card in a specified format, file these materials with the Commission, and furnish them to every shareholder who is solicited.[59] Schedule 14A requires extensive information to be included in the proxy statement, such as descriptions of matters up for shareholder vote, securities ownership information of certain beneficial owners and management, disclosures of the registrant's executive compensation and related party transactions, and, for certain matters, financial statements. Once a proxy statement is furnished to shareholders, any other written communications that constitute solicitations must be filed with the Commission as additional soliciting materials no later than the date they are first sent to shareholders.[60]

Over the years, the Commission has recognized that these filing and information requirements may, in certain circumstances, impose burdens that deter communications useful to shareholders, and in such circumstances, may not be necessary to protect investors in the proxy voting process.[61] Accordingly, the Commission has exempted certain kinds of solicitations from the filing and information requirements of the proxy rules, subject to various conditions, where such requirements are not necessary for investor protection. Rule 14a–9, the antifraud provision of the federal proxy rules, still applies, however, to these exempt solicitations.[62]

For example, Rule 14a–2(b)(1) generally exempts solicitations by persons who do not seek the power to act as proxy for a shareholder and do not have a substantial interest in the subject matter of the communication beyond their interest as a shareholder.[63] This exemption was primarily intended to enable such shareholders to freely communicate with other shareholders on matters subject to a proxy vote, subject to other requirements outside of the proxy rules, such as Section 13(d) of the Exchange Act and the rules thereunder.[64] Another exemption, Rule 14a–2(b)(3), generally exempts proxy voting advice furnished by an advisor[65] to any other person with whom the advisor has a business relationship. This exemption was designed to remove an impediment to the flow of such advice to shareholders from advisors such as financial analysts, investment advisers, and broker-dealers who may be especially familiar with the affairs of registrants.[66]

These exemptions, however, have remained subject to various limitations and conditions designed to ensure that investors are protected where the Commission's filing and information requirements do not apply. For example, any person who wishes to rely on the Rule 14a–2(b)(3) exemption may not receive special commissions or remuneration from anyone other than the recipient of the advice and must disclose any significant relationship or material interest bearing on the voting advice.[67] Furthermore, any person who

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[57] *See* Commission Interpretation on Proxy Voting Advice, *supra* note 19.

[58] 17 CFR 240.14a–101.

[59] 17 CFR 240.14a–3(a).

[60] 17 CFR. 240.14a–6(b).

[61] *See, e.g.,* Communications Among Shareholders Adopting Release, *supra* note 3, at 49278 (''[S]hareholders can be deterred from discussing management and corporate performance by the prospect of being found after the fact to have engaged in a proxy solicitation. The costs of complying with [the proxy] rules also has meant that . . . shareholders and other interested persons may effectively be cut out of the debate regarding proposals . . . .'').

[62] 17 CFR 240.14a–9.

[63] Specifically, Rule 14a–2(b)(1) provides that Sections 240.14a–3 to 240.14a–6 (other than paragraphs 14a–6(g) and 14a–6(p)), Section 240.14a–8, Section 240.14a–10, and Sections 240.14a–12 to 240.14a–15 do not apply to:

Any solicitation by or on behalf of any person who does not, at any time during such solicitation, seek directly or indirectly, either on its own or another's behalf, the power to act as proxy for a security holder and does not furnish or otherwise request, or act on behalf of a person who furnishes or requests, a form of revocation, abstention, consent or authorization. *Provided, however,* that the exemption set forth in this paragraph shall not apply to [various interested parties, including the registrant, its officers and directors, and other persons likely to benefit from successful solicitation.]

17 CFR 240.14a–2(1).

[64] *See* Communications Among Shareholders Adopting Release, *supra* note 3, at 48280.

[65] When the Commission adopted this rule (formerly Rule 14a–2(b)(2)), it made clear that ''advisor'' should be understood to mean ''one who renders financial advice in the ordinary course of [its] business.'' *See* 1979 Adopting Release, *supra* note 36, at 68767. As the Commission stated, ''The definition [of advisor] focuses on persons with financial expertise and who are likely to be particularly familiar with information about corporate affairs which may be pertinent to voting decisions.'' *Id.* Rule 14a–2(b)(3) reflects this by making the exemption contingent, among other things, on the advisor rendering financial advice in the ordinary course of [its] business. *See* Rule 14a–2(b)(3)(i).

[66] *See* 1979 Adopting Release, *supra* note 36, at 68766.

[67] The conditions to Rule 14a–2(b)(3) are:

(i) The advisor renders financial advice in the ordinary course of his business;

(ii) The advisor discloses to the recipient of the advice any significant relationship with the registrant or any of its affiliates, or a security holder proponent of the matter on which advice is given, as well as any material interests of the advisor in such matter;

(iii) The advisor receives no special commission or remuneration for furnishing the proxy voting advice from any person other than a recipient of the advice and other persons who receive similar advice under this subsection; and

(iv) The proxy voting advice is not furnished on behalf of any person soliciting proxies or on behalf

relies on Rule 14a–2(b)(1) or Rule 14a–2(b)(3) remains subject to Rule 14a–9's prohibition on false or misleading statements.

Proxy voting advice businesses typically rely upon the exemptions in Rule 14a–2(b)(1) and Rule 14a–2(b)(3) to provide advice without complying with the filing and information requirements of the proxy rules.[68] Both exemptions, however, were adopted by the Commission before proxy voting advice businesses played the significant role that they now do in the proxy voting process and in the voting decisions of investment advisers and other institutional investors.[69] Their role in the process today has led some to express concerns about, among other things, the services they provide to their clients, particularly: (i) The adequacy of disclosure of any actual or potential conflicts of interest that could materially affect the objectivity of the proxy voting advice; (ii) the accuracy and material completeness of the information underlying the advice; and (iii) the inability of proxy voting advice businesses' clients to receive information and views from the registrant, potentially contrary to that presented in the advice, in a manner that is consistently timely and efficient.[70]

We recognize that proxy voting advice businesses can play a valuable role in the proxy voting process. We also believe it is unnecessary for such businesses to comply with the filing and information requirements of the proxy rules to the same extent as non-exempt soliciting persons, provided other measures are in place to protect investors. However, in light of the substantial role that proxy voting advice businesses have in the voting decisions of their clients, who often vote on behalf of investors, we are proposing new conditions to the exemptions in Rules 14a–2(b)(1) and 14a–2(b)(3) that would apply specifically to persons furnishing proxy voting advice that constitutes a solicitation within the scope of proposed Rule 14a–1(l)(1)(iii)(A).[71]

We believe that our proposed rule amendments would (i) improve proxy voting advice businesses' disclosures of conflicts of interests that would reasonably be expected to materially affect their voting advice, (ii) establish effective measures to reduce the likelihood of factual errors or methodological weaknesses in proxy voting advice, and (iii) ensure that those who receive proxy voting advice have an efficient and timely way to obtain and consider any response a registrant or certain other soliciting person may have to such advice. We believe that these amendments would ensure that investment advisers, who vote on behalf of investors, and others who rely on the advice of proxy voting advice businesses, receive accurate, transparent, and materially complete information when they make their voting decisions.

1. Conflicts of Interest

Proxy voting advice businesses engage in activities or have relationships that could affect the objectivity or reliability of their advice, which may need to be disclosed in order for their clients to assess the impact and materiality of any actual or potential conflicts of interest with respect to a voting recommendation.[72] In recent years, observers have noted the many ways in which these activities and relationships could result in conflicts of interest.[73] Examples include:

- A proxy voting advice business providing voting advice to its clients on proposals to be considered at the annual meeting of a registrant while the proxy voting advice business also earns fees from that registrant for providing advice on corporate governance and compensation policies;[74]
- A proxy voting advice business providing voting advice on a matter in which its affiliates or one of its clients has a material interest, such as a business transaction or a shareholder proposal put forward by that client;
- A proxy voting advice business providing ratings to institutional investors of registrants' corporate governance practices while at the same time consulting for the registrants that are the subject of the ratings to help increase their corporate governance scores; and
- A proxy voting advice business providing voting advice with respect to a registrant's shareholder meeting while affiliates of the business hold a significant ownership interest in the registrant, sit on the registrant's board of directors, or have relationships with the shareholder presenting the proposal in question.

These types of circumstances, where the interests of a proxy voting advice business may diverge materially from the interests of investors, create a risk that the proxy voting advice business's voting advice could be influenced by the business's own interests.[75] Although proxy voting advice businesses have described various measures they believe mitigate this risk,[76] the voting decisions

of a participant in an election subject to the provisions of § 240.14a–12(c).

17 CFR 240.14a–2(b)(3).

[68] *See* Commission Interpretation on Proxy Voting Advice, *supra* note 19, at 7 (discussing the ''two exemptions to the federal proxy rules that are often relied upon by proxy advisory firms'').

[69] *See supra* note 18 (providing client statistics for ISS and Glass Lewis).

[70] *See, e.g.,* Soc. for Corp. Gov. Letter, *supra* note 24, at 1; Business Roundtable Letter 2, *supra* note 40, at 10–13; Letter from Tom Quaadman, Executive Vice President, U.S. Chamber of Commerce Center for Capital Markets Competitiveness (Nov. 12, 2018) (''Chamber of Commerce Letter''), at 5–8; Letter from Tony Huang, Director, Advent Capital Management, LLC (July 29, 2019) (''Advent Capital Letter''), at 6–7 (advocating in favor of Commission rulemaking to reduce the ''opacity of the proxy advisory process and the potential for financial conflicts of interest''); Wachtell Letter, *supra* note 24. But commenters also submitted letters generally disputing the need for regulatory reform of proxy advisory firms. *See, e.g.,* CII Letter, *supra* note 13, at 14; OPERS Letter, *supra* note 8, at 2; NYC Comptroller Letter, *supra* note 17, at p. 3 of enclosed statement before the Senate Banking Committee on Dec. 8, 2018; Letter from Thomas DiNapoli, Comptroller, State of New York (Nov. 13, 2018), at 4.

[71] *See supra* Section II.A. Other persons providing voting advice that is beyond the scope of proposed Rule 14a–1(l)(1)(iii)(A), such as financial advisors providing advice to clients with whom they have a business relationship, will be able to continue relying on the Rule 14a–2(b)(1) and Rule 14a–2(b)(3) exemptions without complying with the proposed new conditions.

[72] Concept Release, *supra* note 2, at 43011.

[73] *See* 2018 Roundtable Transcript, *supra* note 40, at 202–16; 2016 GAO Report, *supra* note 9, at 32–33; 2007 GAO Report, *supra* note 9, at 9; Center on Exec. Comp. Letter, *supra* note 24, at 2–3; Soc. for Corp. Gov. Letter, *supra* note 24, at 6–7; Wachtell Letter, *supra* note 24, at 8–9; Timothy M. Doyle, *The Conflicted Role of Proxy Advisors,* American Council for Capital Formation 6 (May 22, 2018), *available at https://corpgov.law.harvard.edu/2018/05/22/the-conflicted-role-of-proxy-advisors/* (''ACCF 2018 Report''); Edelman, *supra* note 24, at 1409; Manhattan Institute, supra note 24, at 16.

[74] *See, e.g.,* Glass Lewis Letter, *supra* note 16, at 9 (''For instance, Glass Lewis strongly believes that the provision of consulting services to corporate issuers, directors, dissident shareholders and/or shareholder proposal proponents, creates a problematic conflict of interest that goes against the very governance principles for which we advocate.'').

[75] *See* 2016 GAO Report, *supra* note 9, at 32–33; 2007 GAO Report, *supra* note 9, at 9; *see also* U.S. Dep't of the Treasury, *A Financial System That Creates Economic Opportunities—Capital Markets* 31 (Oct. 2017), *https://www.treasury.gov/press-center/press-releases/documents/a-financial-system-capital-markets-final-final.pdf* (''Public companies also had concerns about potential conflicts of interest that arise when a proxy advisory firm provides voting advice to its clients on public companies while simultaneously offering consulting services to those same companies to improve their corporate governance rankings.'').

[76] *See, e.g.,* ISS Letter, *supra* note 9, at 10 (recognizing its duty of loyalty to its clients as a registered investment adviser and summarizing its various policies and procedures designed to ensure the integrity and independence of its advice, such as: A physical and functional firewall between ISS and ISS Corporate Solutions, Inc. (''ICS''); providing clients with conflicts disclosure; the inclusion of a legend in each proxy report alerting clients to potential conflicts; and the ability of ISS clients to obtain lists of all ICS clients); Glass Lewis Letter, *supra* note 16, at 6 (discussing its policies and procedures to help monitor, manage, and address

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of persons who rely on these businesses would be better informed if they received information sufficient for them to understand and assess these potential risks and measures.[77] Investment advisers that use proxy voting advice businesses for voting advice cannot fully understand potential risks and the proxy voting advice businesses' mitigation measures if they do not have access to sufficiently detailed disclosure about the full extent and nature of any conflicts that are relevant to the voting advice they receive.[78]

To help ensure that sufficient information about material conflicts of interest is provided consistently across proxy voting advice businesses and in a reasonably accessible manner to the clients of proxy voting advice businesses, we are proposing amendments to the exemptions from the proxy solicitation rules in Rules 14a–2(b)(1) and (b)(3) to specify that they will be available to proxy voting advice businesses only to the extent that they provide specified disclosures about their material conflicts of interest.[79] Rule 14a–2(b)(1) currently does not have a specified disclosure requirement for conflicts of interests. We recognize that the existing Rule 14a–2(b)(3) exemption does require advisors, including proxy voting advice businesses, to disclose to their clients the existence of significant relationships and material interests,[80] a condition which the Commission adopted to address concerns that certain conflicts of interest might negatively affect the value of an advisor's advice.[81] However, a number of observers have expressed concerns about the adequacy of these disclosures and have stated that more specific, prominent disclosure about conflicts is needed to enable clients to make a more informed assessment of proxy voting advice businesses' voting advice.[82] For example, some observers have asserted that the conflicts disclosures provided by proxy voting advice businesses are vague or boilerplate disclosures that do not provide sufficient information about the nature of potential conflicts.[83] In light of these concerns, we are proposing to require that persons who provide proxy voting advice within the scope of proposed Rule 14a–1(l)(1)(iii)(A) include in such advice (and in any electronic medium used to deliver the advice) the following disclosures, which are intended to be more illuminating than what is currently specifically required by the existing Rule 14a–2(b)(1) and (b)(3) exemptions and specifically tailored to proxy voting advice businesses and the nature of their conflicts: [84]

- Any material interests, direct or indirect, of the proxy voting advice business (or its affiliates [85]) in the matter or parties concerning which it is providing the advice;
- Any material transaction or relationship between the proxy voting advice business (or its affiliates) and (i) the registrant (or any of the registrant's affiliates), (ii) another soliciting person (or its affiliates), or (iii) a shareholder proponent (or its affiliates), in connection with the matter covered by the proxy voting advice;
- Any other information regarding the interest, transaction, or relationship of the proxy voting advice business (or its affiliate) that is material to assessing the objectivity of the proxy voting advice in light of the circumstances of the particular interest, transaction, or relationship; and
- Any policies and procedures used to identify, as well as the steps taken to address, any such material conflicts of interest arising from such interest, transaction, or relationship.

As revised, the exemptions in Rules 14a–2(b)(1) and 14a–2(b)(3) would not be available unless the disclosures required by proposed Rule 14a–2(b)(9)(i) are provided. By extending these disclosure requirements to both Rule 14a–2(b)(1) and Rule 14a–2(b)(3), the proposed amendments would help ensure that investment advisers and other clients that use proxy voting advice businesses for voting advice receive the same information about potential conflicts of interests, regardless of which exemption a proxy voting advice business may rely upon for its proxy voting advice.

Proposed Rule 14a–2(b)(9)(i) would augment current disclosure requirements in Rules 14a–2(b)(1) and 14a–2(b)(3) [86] by specifying that enhanced disclosure about material conflicts of interest must be included in the proxy voting advice. In addition, it would utilize a principles-based requirement to elicit disclosure of any other information regarding the interest, transaction, or relationship that would be material to a reasonable investor's assessment of the objectivity of the proxy voting advice. The disclosures provided under these provisions should be sufficiently detailed so that clients of proxy voting advice businesses can understand the nature and scope of the interest, transaction, or relationship to appropriately assess the objectivity and reliability of the proxy voting advice they receive. This may include the identities of the parties or affiliates involved in the interest, transaction, or relationship triggering the proposed disclosure requirement and, when

potential conflicts and its practice of fully disclosing to clients the existence of potential conflicts by adding a disclosure note to the front cover of relevant proxy research reports). However, as discussed *infra,* concerns remain about the adequacy of these firms' conflicts of interest disclosures. We note that there is no uniform set of standards that applies to the policies and procedures utilized by the various proxy voting advice businesses to address risks posed by conflicts of interest, the absence of which can lead to inconsistent and inadequate disclosures and mitigation measures.

[77] For example, the Commission recently discussed, in a separate release, steps that investment advisers should consider taking when deciding whether to retain or continue retaining a proxy advisory firm. *See* Question and Response 2 of Commission Interpretation on Proxy Voting Advice, *supra* note 19, at 11–12.

[78] *See* Chamber of Commerce Letter, *supra* note 70, at 3–4 (stating the Chamber's concern that conflicts of interest are pervasive at both ISS and Glass Lewis); ACCF 2018 Report, *supra* note 73, at 24 (''The proxy advisory industry is immensely complex and interwoven. Its offerings and conflicts of interest are vague and unclear and yet the largest institutional investors, pensions, and hedge funds vote based on ISS and Glass Lewis recommendations.''); Wachtell Letter, *supra* note 24, at 8; Letter from John Okray, Vice President and Assistant Counsel, OppenheimerFunds, Inc. (Sep. 24, 2009) (''Oppenheimer Letter''), at 2, *available at https://www.sec.gov/comments/s7-13-09/s71309.shtml.*

However, some clients of proxy advisory firms have expressed that they are satisfied with their proxy advisory firms' efforts at managing conflicts of interest and the quality of conflicts disclosures. *See, e.g.,* 2018 Roundtable Transcript, *supra* note 40, at 211–13; CII Letter, *supra* note 13, at 14; OPERS Letter, *supra* note 8, at 2; NYC Comptroller Letter, *supra* note 17, p. 3 of enclosed statement before the Senate Banking Committee on Dec. 8, 2018.

[79] *See* proposed Rule 14a–2(b)(9)(i).

[80] *See* current Rule 14a–2(b)(3)(ii).

[81] *See* 1979 Adopting Release, *supra* note 36, at 68766–67.

[82] *See, e.g.,* Soc. for Corp. Gov. Letter, *supra* note 24, at 6–7; Wachtell Letter, *supra* note 24, at 8–9.

[83] *See, e.g.,* ACCF 2018 Report, *supra* note 73, at 24 (noting that the proxy advisory industry's ''conflicts [disclosures] are vague and unclear''); Wachtell Letter, *supra* note 24, at 8 (describing the current practice of ''minimal and vague disclosure, sometimes in the form of blanket statements that simply note that conflicts may generally exist''); Oppenheimer Letter, *supra* note 79, at 2.

[84] *See* proposed Rule 14a–2(b)(9)(i).

[85] The term ''affiliate,'' as used in proposed Rule 14a–2(b)(9)(i), would have the meaning specified in Exchange Act Rule 12b–2. We recognize that proxy voting advice businesses may not necessarily have access to the information needed to determine whether an entity is an affiliate of a registrant, another soliciting person, or the shareholder proponent. Therefore, as proposed, proxy voting advice businesses would only be required to use publicly-available information to determine whether an entity is an affiliate of registrants, other soliciting persons, or shareholder proponents.

[86] The exemption in Rule 14a–2(b)(1) does not currently require conflicts of interest disclosure, while Rule 14a–2(b)(3)(ii) requires disclosure of ''any significant relationship with the registrant or any of its affiliates, or a security holder proponent of the matter on which advice is given, as well as any material interests in such matter.'' 17 CFR 240.14a–2(b)(3)(ii).

necessary for the client to adequately assess the potential effects of the conflict of interest, the approximate dollar amount involved in the interest, transaction, or relationship. Boilerplate language that such relationships or interests may or may not exist would be insufficient for purposes of satisfying this condition to the exemptions.

The proposed amendments also would require a discussion of the policies and procedures, if any, used to identify and steps taken to address such potential and actual conflicts of interest. Such disclosure should include a description of the material features of the policies and procedures that are necessary to understand and evaluate them. Examples include the types of transactions or relationships covered by the policies and procedures and the persons responsible for administering these policies and procedures. We believe that clients of proxy voting advice businesses would benefit from having this information as they assess the objectivity of the voting advice in light of disclosures about actual or potential conflicts of interest, develop a better understanding of the businesses' approaches for handling conflicts of interests, evaluate whether the conflicts were addressed effectively, and make decisions regarding whether and how to use the voting advice.

Furthermore, the proposed conflicts of interest disclosures would be required to be included in the proxy voting advice provided to clients.[87] For example, the disclosures would have to be part of the written report, if any, containing the proxy voting advice provided to the business's clients. To the extent that a proxy voting advice business provides its voting advice through means of an electronic voting platform or other electronic medium in addition to or in lieu of a written report, proposed Rule 14a–2(b)(9)(i) also would require that the disclosure be conveyed on such voting platform or other electronic medium to ensure that the information is prominently disclosed regardless of the means by which the advice is disseminated. Due to this proposed requirement, it would be insufficient for a proxy voting advice business only to provide such disclosures upon request from the client. We believe that imposing an affirmative duty on proxy voting advice businesses to provide the proposed disclosures of material conflicts of interest is consistent with obligations to disclose potential conflicts of interest in other contexts.[88] The proposed requirement also would standardize the manner in which conflicts of interest are disclosed by proxy voting advice businesses and assure that the required information receives due prominence and can be considered together with proxy voting advice at the time voting decisions are made.

We are aware that some proxy voting advice businesses have asserted that they have practices and procedures that adequately address conflict of interest concerns.[89] Nevertheless, we believe that disclosure of such conflicts and any practices to address them should be more consistent across proxy voting advice businesses so that all clients of proxy voting advice businesses have materially complete information upon which to make informed voting decisions.[90] As such, the proposed amendments would establish a baseline disclosure standard to which a proxy voting advice business must adhere in order to avail itself of the exemptions in Rule 14a–2(b)(1) and (3). We believe that by requiring proxy voting advice businesses to provide standardized disclosure regarding conflicts of interest, clients of these businesses would be in a better position to evaluate these businesses' ability to manage their conflicts of interest, both at the time the proxy voting advice business is first retained and on an ongoing basis.[91]

Request for Comment

7. Is the text of proposed Rule 14a–2(b)(9)(i) sufficient to elicit appropriate disclosure of a proxy voting advice business's conflicts of interest to its clients? Are there other examples of conflicts of interest that the Commission should take into account in considering the text of proposed Rule 14a–2(b)(9)(i)? Is the principles-based requirement in Rule 14a–2(b)(9)(i)(C) sufficient to capture material information about conflicts of interest not otherwise included within the scope of paragraphs (9)(i)(A) and (B)? Is there additional material information that should be required?

8. Would the proposed disclosures provide clients of proxy voting advice businesses with adequate and appropriate information about the businesses' conflicts of interest when making their voting determinations?

9. To what extent do existing disclosures address the concerns discussed in this release? What additional information may be required to ensure that they provide clients with the information clients need?

10. Is there specific information, whether qualitative or quantitative, about proxy voting advice businesses' conflicts of interest that they should be required to disclose? For example, should proxy voting advice businesses be required to disclose the specific amounts that they receive from the relationships or interests covered by the

[87] Currently, Rule 14a–2(b)(3)(ii) requires that disclosure of conflicts-related information be conveyed to the recipient of the proxy voting advice, but does not specify in what manner.

[88] For example, the information about the interests of participants in a matter presented for a vote required by Item 5 of Schedule 14A and information about related party transactions required by Item 404 of Regulation S–K [17 CFR 229.404] must be affirmatively disclosed. *See* 17 CFR 229.404. In addition to the existing disclosure requirements of Rule 14a–2(b)(3)(ii), some proxy voting advice businesses are registered as investment advisers under the Advisers Act, and therefore have obligations to disclose conflicts of interest. The proposed requirements would apply to all proxy voting advice businesses and are tailored to address concerns that arise in the context of those activities. The proposed requirements would not limit, in any way, the obligations of a proxy voting advice business registered under the Advisers Act and would complement existing requirements. However, where the substance of the disclosure requirements overlap, we do not anticipate that proxy voting advice businesses registered as investment advisers would incur substantial duplicative costs because, in complying with the proposed requirements, these proxy voting advice businesses will have already needed to complete at least some of the work of identifying conflicts and developing disclosures to explain the conflicts.

[89] *See supra* note 76 and accompanying text.

[90] Currently, proxy voting advice businesses have differing ways of disclosing their conflicts of interest. ISS discloses the details of its potential conflicts of interest, such as the identities of the parties and the amounts involved, through its ProxyExchange platform while Glass Lewis states that its disclosures are on the front cover of the report with its proxy voting advice. *See ISS FAQs Regarding Recent Guidance from the U.S. Securities and Exchange Commission Regarding Proxy Voting Responsibilities of Investment Advisers* (Oct. 17, 2019) (''ISS FAQs''), *available at https://www.issgovernance.com/file/faq/ISS_Guidance_FAQ_Document.pdf.;* Glass Lewis Letter, *supra* note 16.

[91] Although some commenters have advocated in favor of public disclosure of a proxy advisory firm's conflicts of interest, in addition to requiring disclosure in the advisor's proxy voting advice, *see, e.g.,* Center on Exec. Comp. Letter, *supra* note 24, at 2; Wachtell Letter, *supra* note 24, at 8, we are not proposing such a requirement. The Commission's primary concern in proposing these amendments to Rule 14a–2(b) is with the recipients of proxy voting advice, including investment advisers who use that advice to make voting decisions on behalf of clients with whom they have a fiduciary relationship. Moreover, we are aware that some proxy voting advice businesses may have compelling and legitimate business reasons for limiting the dissemination of this information. For example, ISS has stated that it maintains a strict firewall between itself and its subsidiary, ICS, in order to control the risk that a conflict of interest might jeopardize the independence of its proxy voting advice business. ISS Letter, *supra* note 9, at 13. ISS indicates that ''a key goal of the firewall is to keep the ISS Global Research team from learning the identity of ICS' clients, thereby insuring the objectivity and independence of ISS' research process and vote recommendation.'' *Id.* ISS has stated that requiring public disclosure of relevant details about ICS' clients might compromise this information barrier and severely undermine the company's conflict mitigation program. *Id.* at 14.

proposed conflicts of interests disclosures?

11. Would requiring specific disclosure of this sort raise competitive or other concerns for proxy voting advice businesses? For example, would the proposed disclosures be incompatible with firewalls or other mechanisms used by proxy voting advice businesses to prevent conflicts of interest from affecting the advice these businesses provide?

12. What information would be most relevant to an investment adviser or other client of a proxy voting advice business in seeking to understand how the proxy voting advice business identifies and addresses conflicts of interest?

13. Do proxy voting advice businesses consult on particular matters where their input influences the substance of the matter to be voted on (*e.g.,* providing consulting services to a hedge fund with respect to transformative transactions, such as a proxy contest where the fund is presenting a competing slate of directors)? If so, what type of disclosure would help investors to understand the proxy voting advice business's role and potential conflicts of interest regarding these situations? Is the text of proposed Rule 14a–2(b)(9)(i) sufficient to elicit disclosure of material conflicts of interest of this type?

14. Currently, Rule 14a–2(b)(3) requires disclosure to the recipient of the voting advice of ''any significant relationship'' with the registrants and other parties as well as ''any material interests'' of the advisor in the matter. By contrast, disclosure under proposed Rule 14a–2(b)(9)(i) would be required only to the extent that the information would be material to assessing the objectivity of the proxy voting advice. Is the terminology in each provision sufficiently clear with respect to the types of relationships or interests that are covered by each requirement? For example, is there sufficient clarity on how to assess whether a relationship is ''material,'' or is additional guidance needed? Should we consider alternative thresholds or language for the proposed conflicts of interests disclosure requirement of Rule 14a–2(b)(9)(i)? If so, what language should we consider? As an alternative, should we use the same terminology as Rule 14a–2(b)(3)? Should we look instead to Item 404 of Regulation S–K, which requires disclosure of a ''direct or indirect material interest''? Is Item 5 of Schedule 14A, which requires disclosures of ''any substantial interest'' of the covered persons, an alternative that we should consider?

15. Should proposed Rule 14a–2(b)(9)(i) limit the matters which a proxy voting advice business must disclose to those that occurred on or after a certain date, or is a more principles-based disclosure requirement preferable?

16. Proposed Rule 14a–2(b)(9)(i) is a principles-based requirement that does not specify the manner in which conflicts of interest should be disclosed, so long as the disclosure is included in the proxy voting advice business's voting advice and, if applicable, conveyed through any electronic medium that the proxy voting advice business uses in lieu of or in addition to a written report. Should proposed Rule 14a–2(b)(9)(i) be more prescriptive regarding the presentation of conflicts of interest disclosure, or is it preferable to let the proxy voting advice business and its client determine how this information will be presented to the client?

17. Is it important that the conflicts of interest disclosure required by proposed Rule 14a–2(b)(9)(i) be included in the proxy voting advice, or would providing it separately suffice?

18. To the extent that a proxy voting advice business uses a voting platform or other electronic medium to convey its voting advice, should we require that the conflicts of interest disclosure be conveyed in the same manner?

19. Should we require the conflicts of interest disclosure that a proxy voting advice business provides to its clients be made public? If public disclosure were required, when and in what manner should the disclosures be released to the public? Would this raise competitive or other concerns for proxy voting advice businesses?

20. The proposed amendments are intended to promote consistency in the disclosures proxy voting advice businesses make about their conflicts of interest. Is the consistency of this information an important consideration?

21. Should we require proxy voting advice businesses to include in their disclosure to clients a discussion of the policies and procedures used to identify, as well as the steps taken to address, any conflicts of interest, as proposed? Do proxy voting advice businesses have sufficient incentive to include this disclosure on their own?

22. What are the anticipated costs to proxy voting advice businesses and their clients associated with requiring additional conflicts of interest disclosure, as proposed? For example, what are the costs for proxy voting advice businesses to determine whether an entity is an affiliate of a registrant, another soliciting person, or shareholder proponent? Should we impose structural requirements (*e.g.,* like the structural reforms in the global analyst research settlements) [92] in addition to disclosure requirements?

23. Are there existing regulatory models of conflicts of interest disclosure that would be useful for us to consider? If so, what are the alternatives that we should consider in lieu of proposed Rule 14a–2(b)(9)(i)? For example, should we require all proxy voting advice businesses to disclose conflicts to the same extent that their clients (*e.g.,* an investment adviser) would be reasonably expected to disclose such conflicts to their own clients (*e.g.,* the funds or retail investor clients to whom the investment adviser provides advice)?

2. Registrants' and Other Soliciting Persons' Review of Proxy Voting Advice and Response

a. Need for Review of Proxy Voting Advice by Registrants and Other Soliciting Persons

For the clients of proxy voting advice businesses to be able to rely on the voting advice they receive to make informed voting decisions, the analysis and research supporting the advice must be accurate and complete in all material respects.[93] This is especially critical when an investment adviser retains a proxy voting advice business to provide information that will inform the adviser's voting determinations. However, in recent years concerns have been expressed by a number of commentators, particularly within the registrant community, that there could be factual errors, incompleteness, or methodological weaknesses in proxy voting advice businesses' analysis and information underlying their voting advice that could materially affect the reliability of their voting recommendations and could affect voting outcomes, and that processes currently in place to mitigate these risks are insufficient.[94] These concerns are

[92] *See* Federal Court Approves Global Research Analyst Settlement, SEC Litigation Release No. 18438 (Oct. 31, 2003). *See also* SEC Fact Sheet on Global Analyst Research Settlements (April 28, 2003), *available at https://www.sec.gov/news/speech/factsheet.htm.*

[93] *See* Concept Release, *supra* note 2, at 43011 (''To the extent that proxy advisory firms develop, disseminate, and implement their voting recommendations without adequate accountability for informational accuracy . . . informed shareholder voting may be likewise impaired.'').

[94] *See, e.g.,* Letter from Maria Ghazal, Senior Vice President and Counsel, Business Roundtable (Nov. 9, 2018) (''Business Roundtable Letter 1''), at 11 (discussing examples of errors in voting advice and registrants' interactions with proxy advisory firms to address perceived errors); Letter from Neil Hansen, Vice President, Investor Relations and

coupled with the perception of many registrants that (i) they lack an adequate opportunity to review proxy voting advice before it is disseminated, (ii) there are not meaningful opportunities to engage with the proxy voting advice businesses and rectify potential factual errors or methodological weaknesses in the analysis underlying the proxy voting advice before votes are cast, particularly for registrants that do not meet certain criteria (such as inclusion in a particular stock market index),[95] and (iii) once the voting advice is delivered to the proxy voting advice business's clients, which typically occurs very shortly before a significant percentage of votes are cast and the meeting held, it is often not possible for the registrant to inform investors in a timely and effective way of its contrary views or errors it has identified in the voting advice.[96] Although communication between proxy voting advice businesses and registrants may have improved over time,[97] recent feedback and studies suggest that many registrants remain concerned about the limited ability of registrants to provide input that might address errors, incompleteness, or methodological weaknesses in proxy voting advice.[98]

In response, proxy voting advice businesses have pointed to internal policies and procedures aimed at ensuring the integrity of their research [99] and the steps they have taken to enable feedback from registrants before their voting advice is issued. ISS and Glass Lewis, for example, both have systems in place to share certain information with registrants.[100] In the United States, ISS offers the constituent companies of the Standard and Poor's 500 Index the opportunity to review a draft of ISS' voting advice before it is delivered to clients.[101] Glass Lewis has a program that allows registrants who participate to receive a data-only version of its voting advice before publication to clients.[102] In addition, Glass Lewis implemented a pilot program for the 2019 proxy season, known as its Report Feedback Statement (''RFS'') service, which offers U.S. public companies and shareholder proponents the opportunity to express differences of opinion they may have with Glass Lewis' research.[103] Participants in this pilot program were able to submit feedback about the analysis of their proposals, and have comments delivered directly to Glass Lewis's investor clients along with Glass Lewis' response to the RFS.[104]

Although some proxy voting advice businesses provide opportunities for review and feedback, these existing practices may be inadequate to address registrants' and others' concerns and ensure that those who make proxy voting decisions receive information that is accurate and complete in all material respects. For example, some proxy voting advice businesses do not provide registrants with an opportunity to review their reports containing voting advice in advance of distribution to their clients. Even those proxy voting advice businesses that provide such review opportunities do not provide all registrants with an advance copy of their reports containing their voting advice.[105] For example, it is our understanding that proxy voting advice businesses do not typically extend this opportunity to registrants with smaller market capitalization or to registrants holding special meetings. Those registrants that do have an opportunity to review the draft reports are often given a short period of time, sometimes

Corporate Secretary, Exxon Mobil Corporation (June 26, 2019) (''Exxon Letter''), at 4–5 (addressing perceived methodological limitations of proxy advisory firms' evaluation of executive compensation structures); Richard Levick, *'Vinny' and the Proxy Advisors: A Five Trillion Dollar Debate, Forbes.com* (Dec. 17, 2018), *https://www.forbes.com/sites/richardlevick/2018/12/17/vinny-and-the-proxy-advisors-a-five-trillion-dollar-debate/#73164b9f2f4b;* Placenti, *supra* note 40, at 10–11. *But see, e.g.,* Letter from Kenneth A. Bertsch, Executive Director, Council of Institutional Investors (Oct. 24, 2019) (asserting the lack of evidence of pervasive inaccuracies in proxy voting advice); OPERS Letter, *supra* note 8, at 3 (discussing the effectiveness of OPERS' internal controls to identify and mitigate errors in proxy reports and indicating its satisfaction with the quality of the advice it receives from its proxy advisory firm); CII Letter, *supra* note 13, at 15 (noting a lack of compelling evidence indicating that more regulation of proxy advisory firms is necessary or in the best interests of investors, companies, or the capital markets generally).

[95] *See* ISS Letter, *supra* note 9, at 10.

[96] *See, e.g.,* Business Roundtable Letter 1, *supra* note 94, at 16 (discussing survey results and testimonials supporting the contention that a spike in shareholder voting follows adverse voting recommendations during the period immediately after the release of proxy voting advice); Soc. for Corp. Gov. Letter, *supra* note 24, at 5 (''The inability to review draft reports from proxy advisory firms as a matter of right means that companies who want factual errors or omissions corrected are often unable to get a response from proxy advisory firms until it is too late, *i.e.,* until after votes have been cast on the basis of a recommendation that relied—at least in part—on inaccurate or incomplete information.''); Business Roundtable Letter 2, *supra* note 40, at 9 (''This high incidence of voting immediately on the heels of the publication of proxy advisory reports suggests, at best, that investors spend little time evaluating proxy advisory firms' guidance and determining whether it is in the best interests of their clients and, at worst, that they simply outsource the vote to the proxy advisor.''); *see also* 2018 Roundtable Transcript, *supra* note 40, at 226–40.

[97] *See* 2016 GAO Report, *supra* note 9, at 23.

[98] *See, e.g.,* Business Roundtable Letter 1, *supra* note 94, at 11; Placenti, *supra* note 40, at 7 (discussing the results from a survey of one hundred public companies about the quality of information in proxy voting advice and its impact on *shareholder* voting); *2015 Proxy Season Survey,* Nasdaq & U.S. Chamber of Commerce 2 (as of Sept. 24, 2019), *http://www.centerforcapitalmarkets.com/wp-content/uploads/2013/08/2015-Proxy-Season-Survey-Summary.pdf* (summarizing the results of a survey of public companies' concerns about the accuracy of information in the proxy voting advice pertaining to their companies, as well as complaints about the efficacy of engaging with proxy advisory firms to impact the voting advice).

[99] For example, ISS has stated that it offers all registrants a free copy of its published analysis for their shareholder meetings upon request, which ISS believes affords the registrants the opportunity to bring any factual errors to ISS' attention. *See* ISS Letter, *supra* note 9, at 9. When it does become aware of material factual errors, ISS notes that it promptly issues a ''Proxy Alert'' to inform clients of any corrections and, if necessary, any resulting changes in ISS' vote recommendations. *Id.* at 11. Glass Lewis has similar policies to address factual errors and omissions. *See* Glass Lewis Letter, *supra* note 16, at 6. ISS has also noted that, as a registered investment adviser, it has a fiduciary duty of care to make a reasonable investigation to determine that it is not basing vote recommendations on materially inaccurate or incomplete information. *See* ISS Letter, *supra* note 9, at 2. We note, however, that not all proxy voting advice businesses are registered as investment advisers. It is also important to note that there is often disagreement between proxy voting advice businesses and registrants over whether information in proxy voting advice should be classified as an ''error.'' *See id.* at 10.

[100] *See* ISS Letter, *supra* note 9, at 2; Glass Lewis Letter, *supra* note 16, at 6–7; *see also* 2016 GAO Report, *supra* note 9, at 28 (summarizing the issuer-review programs of ISS and Glass Lewis).

[101] *See* ISS Letter, *supra* note 9, at 10. ISS states that drafts of its proxy advice are always provided on a ''best efforts'' basis and it does not guarantee that an issuer in the S&P 500 will have an opportunity to review a draft analysis. *See ISS Draft Review Process for U.S. Issuers,* ISS, *https://www.issgovernance.com/iss-draft-review-process-u-s-issuers/* (last visited Sept. 20, 2019). Participating companies need to register with ISS in advance to receive a draft, and drafts are provided only for the reports for annual shareholder meetings, not special meetings, nor for any meeting where the agenda includes a merger or acquisition proposal, proxy fight, or any item that ISS, in its sole discretion, considers to be of a contentious nature, such as a ''vote-no'' campaign. *Id.*

[102] Glass Lewis refers to this as its Issuer Data Report (IDR) service. *See Issuer Data Report,* Glass Lewis, *https://www.glasslewis.com/issuer-data-report/*(last visited Oct. 25, 2019); 2018 Roundtable Transcript, *supra* note 40, at 230.

[103] *See* Katherine Rabin, CEO of Glass, Lewis, & Co., *Glass Lewis' Report Feedback Service: Direct, Unfiltered Commentary from Issuers and Shareholder Proponents,* Harvard Law School Forum on Corporate Governance and Financial Regulation, *https://corpgov.law.harvard.edu/2019/03/31/glass-lewis-report-feedback-service-direct-unfiltered-commentary-from-issuers-and-shareholder-proponents/; Report Feedback Statement—Frequently Asked Questions,* Glass Lewis (May 2019), *available at https://www.glasslewis.com/report-feedback-statement-service/.*

[104] Registrants generally must pay the proxy voting advice business to obtain access to the information that they can then review. This is true as well for the RFS service. Rabin, *supra* note 103 (''In order to facilitate processing and distribution, there is a distribution fee associated with participation in the RFS service, and subscribers must also purchase a copy of the relevant Proxy Paper on which they wish to provide feedback.'').

[105] *See* 2018 Roundtable Transcript, *supra* note 40, at 230.

with little advance notice, to provide their feedback to the proxy voting advice business and are not given an opportunity to see the final report sent to clients to determine the business's response, if any, to their feedback. Finally, because a substantial percentage of proxy votes are typically cast within a few days or less of the proxy voting advice business's release of its proxy voting advice [106] and registrants often become aware of the recommendations in the proxy voting advice only after the advice has already been distributed, it can be difficult for the clients of proxy voting advice businesses to obtain registrants' factual, methodological, or other objections to the voting advice before submitting their votes.[107] Although we recognize that some proxy voting advice businesses have policies in which they would issue alerts informing their clients of errors in their voting advice or updated information released by the registrant, such policies result in the proxy voting advice businesses, not the client, determining whether the errors or information are material to a voting decision and sharing such information only after their advice has already been published.[108] As a result, some have advocated for the establishment of mandatory review periods that would allow registrants a meaningful opportunity to review and provide their feedback on proxy voting advice before the businesses provide the advice to clients and before the clients make their voting decisions.[109]

We believe there would be value in establishing a mechanism that would foster enhanced engagement between proxy voting advice businesses and registrants and, as discussed below, certain other soliciting persons (such as dissident shareholders engaged in a proxy contest), so that investors or those who vote on their behalf would have the benefit of the input and views of registrants and certain other soliciting persons as they consider and potentially act on proxy voting advice. Such a mechanism has the potential to improve the accuracy, transparency, and completeness of the information available to those making voting determinations. Indeed, we believe such benefits could be realized even where the proxy voting advice business's voting recommendation is not adverse to the registrant's or certain other soliciting person's recommendation and no errors exist in the analysis underlying the advice. The registrant and certain other soliciting person may have disagreements that extend beyond the accuracy of the data used, such as differing views about the proxy advisor's methodological approach or other differences of opinion that they believe are relevant to the voting advice. In these circumstances, providing the clients of proxy voting advice businesses with convenient access to the views of the registrant and certain other soliciting persons at the same time they receive the proxy voting advice could improve the overall mix of information available when the clients make their voting decisions.[110]

Accordingly, we are proposing measures intended to (i) facilitate improved dialogue among proxy voting advice businesses and registrants and certain other soliciting persons (including certain dissident shareholders) before the advice is disseminated to clients of the proxy voting advice business and (ii) provide a means for registrants and certain other soliciting persons to communicate their views about the advice before the proxy voting advice businesses' clients cast their votes. We believe that establishing a process that allows registrants and other soliciting persons a meaningful opportunity to review proxy voting advice in advance of its publication and provide their corrections or responses would reduce the likelihood of errors, provide more complete information for assessing proxy voting advice businesses' recommendations, and ultimately improve the reliability of the voting advice utilized by investment advisers and others who make voting determinations, to the ultimate benefit of investors.

b. Review of Proxy Voting Advice by Registrants and Other Soliciting Persons

The proposed amendments to Rule 14a–2(b) would require one standardized opportunity for timely review and feedback by registrants of proxy voting advice before a proxy voting advice business disseminates its voting advice to clients, regardless of whether the advice on the matter is adverse to the registrant's own recommendation.[111] The proposal would provide the same opportunity to review and provide feedback on the proxy voting advice to persons who are conducting non-exempt solicitations through the use of a proxy statement and proxy card pursuant to Regulation 14A, such as a person soliciting proxies in support of its director nominees in a contested election or its own proposal that is unrelated to director elections (*e.g.,* a solicitation by a dissident shareholder against a proposed business combination transaction). As noted above, a registrant or certain other soliciting person may have disagreements with the proxy voting advice, whether factual, methodological or otherwise, which if available to investors would help inform their voting decisions, even in instances where the registrant or certain other soliciting person's voting recommendation on the matter is the same as that of the proxy voting advice business.[112]

[106] *See* Business Roundtable Letter 2, *supra* note 40, at 9.

[107] *See* 2018 Roundtable Transcript, *supra* note 40, at 227–28 (''So once the report is issued, it is an uphill battle . . . filing SEC solicitation materials or doing other things to try to correct the record are very difficult.''); Placenti, *supra* note 40, at 3 (''[C]ompanies do not have the opportunity to adequately respond to the recommendation, even if it is factually incorrect.''). Registrants may file supplemental proxy materials to counter negative proxy voting recommendations and to alert investors to any factual or analytical errors they have identified in a proxy advisor's advice or disagreements with regard to methodology or analysis, but the efficacy of this is uncertain. *Id.* Although shareholders have the ability to change their vote at any time prior to the shareholder meeting, to our knowledge this seldom occurs. There may be a number of explanations for this, including the degree of inconvenience to a shareholder entailed in changing his or her vote.

[108] *See, e.g., ISS FAQs Regarding Recent Guidance from the U.S. Securities and Exchange Commission Regarding Proxy Voting Responsibilities of Investment Advisers* (Oct. 17, 2019) (''ISS FAQs''), *available at https://www.issgovernance.com/file/faq/ISS_Guidance_FAQ_Document.pdf.*

[109] *See, e.g.,* Business Roundtable Letter 1, *supra* note 94, at 11; Center on Exec. Comp. Letter, *supra* note 24, at 3; Letter from Gary A. LaBranche, President and CEO, National Investor Relations Institute (Nov. 13, 2018) (''NIRI Letter''), at 4; Soc. for Corp. Gov. Letter, *supra* note 24, at 5; Wachtell Letter, *supra* note 24, at 7 (recommending that proxy advisory firms should give registrants the opportunity to review proxy voting advice before it is disseminated to clients); *see also,* ICI Letter, *supra* note 8, at 13 (noting its amenability to exploring ways in which registrants' objections to proxy voting advice could be communicated to investors in a more timely way and convenient way, including ''pushing'' company views to clients of proxy advisory firms).

[110] *See* Communications Among Shareholders Adopting Release, *supra* note 3, at 48280 (''Shareholders will be better protected by having access to as many sources of opinions relating to voting matters as possible. . . .'').

[111] *See* proposed Rule 14a–2(b)(9)(ii).

[112] Under our proposal, registrants and certain other soliciting persons would have the opportunity to review and provide feedback on the proxy voting advice, regardless of whether that advice is adverse to the voting recommendation of the registrant or certain other soliciting person. For ease of administration, we do not think that our proposed requirement should put the burden on the proxy voting advice business, registrant, or certain other soliciting person to determine whether proxy voting advice is ''adverse'' to another person's voting recommendation. For example, in a contested director election, it is common for a proxy voting advice business to recommend the election of some nominees of the registrant's slate of candidates as well as the election of some nominees of the dissident shareholders' slate. Making a determination whether such advice would be

New proposed Rule 14a–2(b)(9)(ii) would require, as one of the conditions to the exemptions in Rules 14a–2(b)(1) and 14a–2(b)(3), that, subject to certain conditions, the proxy voting advice business provide registrants and certain other soliciting persons covered by its proxy voting advice a limited amount of time to review and provide feedback on the advice before it is disseminated to the business's clients, with the length of time provided depending on how far in advance of the shareholder meeting the registrant or other soliciting person has filed its definitive proxy statement. Given the challenges typically faced by proxy voting advice businesses to prepare and deliver their proxy voting advice to clients within very narrow timeframes,[113] the proposed rule is intended to provide an incentive for registrants and others to file their definitive proxy statements as far in advance of the meeting date as practicable,[114] thereby allowing more time for proxy voting advice businesses and their clients to formulate and consider voting recommendations.[115] As proposed, if the registrant (or certain other soliciting person) files its definitive proxy statement less than 45 but at least 25 calendar days before the date of its shareholder meeting, the proxy voting advice business would be required to provide the registrant (or certain other soliciting person) no fewer than three business days to review the proxy voting advice and provide feedback as a condition of the exemptions.[116] However, if the registrant (or certain other soliciting person) files its definitive proxy statement 45 calendar days or more before its shareholder meeting, the proxy voting advice business would be required to provide the registrant (or certain other soliciting person) at least five business days to review the proxy voting advice and provide feedback.[117] To the extent that registrants customarily file their definitive proxy materials 35–40 days in advance of a shareholder meeting,[118] we expect that this five-business day period would be available to many issuers only if they file earlier than they typically do today. In the event a registrant (or certain other soliciting person) files its definitive proxy statement less than 25 calendar days before the meeting, the proxy voting advice business would have no obligation under the proposed amendment to provide the proxy voting advice to the registrant (or certain other soliciting person) as a condition of the exemption. As proxy voting advice businesses perform much of the work related to their voting advice only after the filing of the definitive proxy statements describing the matters presented for a proxy vote,[119] we do not believe there would be sufficient time for a meaningful assessment of the advice or opportunity to make revisions in response to any feedback provided when the definitive proxy statements are filed so close to the date of the shareholder meeting.[120] By requiring that registrants and other soliciting persons file their definitive proxy statements at least 25 calendar days in advance of the shareholder meeting in order to avail themselves of the review and feedback process, we believe that the proposed amendments would afford proxy voting advice businesses a reasonable amount of time to engage with registrants and other soliciting persons without jeopardizing their ability to provide timely voting advice to their clients.

In addition to the review and feedback period, in order to rely on the exemptions in Rules 14a–2(b)(1) or (b)(3), a proxy voting advice business would be required to provide registrants and certain other soliciting persons with a final notice of voting advice. This notice, which must contain a copy of the proxy voting advice that the proxy voting advice business will deliver to its clients, including any revisions to such advice made as a result of the review and feedback period, must be provided by the proxy voting advice business no later than two business days prior to delivery of the proxy voting advice to its clients.[121] This would provide registrants and certain other soliciting persons the opportunity to determine the extent to which the proxy voting advice has changed, including whether the proxy voting advice business made any revisions as a result of feedback from the registrant. We note, however, that registrants and certain other soliciting persons would be entitled to this two-business day final notice period whether or not they provided

adverse to the registrant or the dissident shareholder could be difficult and highly subjective. It is also common for a proxy voting advice business to present in a single, integrated written report its voting recommendations on all matters to be voted at the registrant's meeting, with its recommendations on some matters aligned with the registrant's recommendations but recommendations on other matters contrary to those of the registrant. Requiring the proxy voting advice business to separate its written report so that only adverse recommendations would be presented for review could require additional time, burden, and cost for the proxy voting advice business.

[113] *See, e.g.,* Letter from Donna F. Anderson, Head of Corporate Governance & Eric Veiel, Co-Head of Global Equity, T. Rowe Price (Dec. 13, 2018), at 3 (discussing the ''compressed'' proxy voting process); IAA Letter, *supra* note 17, at 5 (noting the ''extremely tight timeline for the entire proxy voting process'').

[114] Registrants customarily file their definitive proxy materials 35–40 days before a shareholder meeting. *The Proxy Materials,* Broadridge Financial Solutions, Inc., *https://www.shareholdereducation.com/SHE-proxy_materials.html. See also 2019 Proxy Statements,* Ernest & Young LLP, *available at https://www.ey.com/publication/vwluassetsdld/2019proxystatements_05133-181us_6december2018-v2/$file/2019proxystatements_05133-181us_6december2018-v2.pdf?OpenElement* (noting that registrants generally mail proxy statements 30 to 50 days before the annual meeting). Furthermore, registrants using the ''notice and access'' method of delivery for proxy materials must make their proxy materials publicly available and send the Notice of internet Availability of the Proxy Materials at least 40 calendar days prior to the shareholder meeting date. *See* Exchange Act Rule 14a–16.

[115] *See, e.g.,* ICI Letter, *supra* note 8, at 13 (''Timeliness also is a crucial consideration. In the current compressed proxy voting schedule, any response that a company wishes to make to a proxy advisory firm's recommendation . . . must occur promptly, so that investors can consider it prior to casting their votes.'').

[116] Proposed Rule 14a–2(b)(9)(ii)(A)*(2)*. We note that the proxy voting advice required to be provided may include multiple reports, if applicable, that the proxy voting advice business produces for its clients. For example, some proxy voting advice businesses may provide a so-called ''benchmark report,'' as well as separate ''specialty reports'' to a client. *See* Exxon Letter, *supra* note 94, at p. 7.

[117] Proposed Rule 14a–2(b)(9)(A)*(1)*. Where the registrant is soliciting written consents or authorizations from shareholders for an action in lieu of a meeting, the proxy voting advice business must allow no fewer than three business days for the review and feedback period if the registrant files its definitive soliciting materials less than 45 but at least 25 calendar days before the action is effective. Similarly, if the registrant files its definitive soliciting materials for written consents or authorizations for a proposed action at least 45 calendar days before the expected effective date of the action, it must be given at least five business days to review and provide feedback on the proxy voting advice.

[118] *See supra* note 114.

[119] *See* ISS Letter, *supra* note 9, at 10 (describing the availability of the registrant's proxy statement as the ''hard start'' of the firm's process for formulating the proxy voting advice that will be delivered to clients.).

[120] Based on the staff's experience, it is relatively uncommon for registrants or other soliciting persons to file their definitive proxy statement so close to the date of shareholder meeting. For example, registrants and soliciting persons typically are motivated to file the definitive proxy statements as soon as possible in order to maximize the period of time they have to solicit and obtain the votes needed for approval of their proposals.

[121] Proposed Rule 14a–2(b)(9)(ii)(B). Both paragraphs (A)*(1)* and (A)*(2)* of proposed Rule 14a–2(b)(9)(ii) specify that the proxy voting advice business is required to provide the version of its proxy voting advice that it ''intends to deliver to its clients,'' which allows for the possibility that the proxy voting advice business may subsequently revise such advice. However, proposed Rule 14a–2(b)(9)(ii)(B) refers to the proxy voting advice that the proxy voting advice business ''will deliver to its clients,'' which effectively requires that the version of voting advice included in the final notice of voting advice will be the actual voting advice that will be disseminated to clients, including any revisions made that were not incorporated into the advice as a result of the review and feedback period under Rules 14a–2(b)(9)(ii)(A)*(1)* or (A)*(2)*, as applicable.

comments on the version of proxy voting advice they received in connection with the review and feedback period.[122] This final notice would allow the registrant and/or soliciting person to determine whether or not to provide a statement in response to the advice and request that a hyperlink to its response be included in the voting advice delivered to clients of the proxy voting advice business.[123]

Once the two-day final notice period has expired, proposed Rule 14a–2(b)(9)(ii) would not impose any obligation on the proxy voting advice business to provide registrants or certain other soliciting persons with any additional opportunities to review its proxy voting advice with respect to the same shareholder meeting in order to rely on the exemptions in Rules 14a–2(b)(1) and 14a–2(b)(3).[124]

To provide a means for proxy voting advice businesses to maintain control over the dissemination of their proxy voting advice and minimize the risk of unintentional or unauthorized release, our proposed amendment would allow a proxy voting advice business to require that registrants and certain other soliciting persons, as applicable, agree to keep the information confidential, and refrain from commenting publicly on the information, as a condition of receiving the proxy voting advice.[125] The terms of such agreement would apply until the proxy voting advice business disseminates its proxy voting advice to one or more clients and could be no more restrictive than similar types of confidentiality agreements the proxy voting advice business uses with its clients.[126]

Proxy voting advice businesses would not be required to extend the review and feedback period or final notice of voting advice to persons conducting solicitations that are exempt pursuant to Rule 14a–2[127] or to proponents who submit shareholder proposals pursuant to Exchange Act Rule 14a–8 and whose proposal will be voted upon at the registrant's upcoming meeting. We are mindful of the potential disruptions and costs that the proposed review and feedback period and final notice of voting advice requirements could have on the current practices of proxy voting advice businesses and their clients. Therefore, we are proposing to require proxy voting advice businesses to extend the review and feedback and final notice opportunities to parties other than the registrant only in those instances in which the registrant's solicitation is contested by soliciting persons who intend to deliver their own proxy statements and proxy cards to shareholders.[128] We believe that the proxy voting advice businesses' voting advice in these types of contested situations likely will be based on the soliciting persons' proxy statements, other mandated disclosure documents, and public statements containing substantive information.[129] By contrast, neither shareholder proponents nor persons conducting exempt solicitations are required to file substantive disclosure documents with the Commission or to make public statements containing substantive information that proxy voting advice businesses likely will include in their analyses. Accordingly, we believe it is appropriate to limit the proposed review and feedback period and final notice requirements to those solicitations where the soliciting persons are providing mandated disclosures or other substantive information that are likely to be part of the proxy voting advice businesses' analyses. Providing such soliciting persons with the same opportunity to review and provide feedback on proxy voting advice that is afforded to registrants would ensure equality of treatment among contesting parties and should enable investment advisers and other clients of proxy voting advice businesses to receive more accurate and complete information at the time they are casting votes.

It is important to note that while our rule proposal would require, as a condition of the exemptions in Rules 14a–2(b)(1) and 14a–2(b)(3), that proxy voting advice businesses provide an opportunity for registrants and other parties engaged in non-exempt solicitations to review proxy voting advice and suggest revisions before the distribution of the advice, it does not require proxy voting advice businesses to accept any such suggested revisions.[130] It is equally important to recognize, however, that proxy voting advice subject to the Rule 14a–2(b) exemptions is not exempt from Rule 14a–9 liability, which prohibits materially misleading misstatements or omissions in proxy solicitations.

A number of alternative approaches for a review and feedback mechanism have been suggested by commenters,[131] with a range of different review periods,[132] as well as the ability of registrants to include full written statements in the body of the proxy voting advice business's written reports containing its advice.[133] Others have expressed concerns about increased

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[122] Providing this final notice of voting advice, whether or not the registrant or certain other soliciting person chooses to provide comments to the proxy voting advice business during the review and feedback period, would, we believe, eliminate the possibility that such parties might provide frivolous comments to the proxy voting advice business during the review and feedback period merely to preserve their right to receive the final notice of voting advice.

[123] *See, e.g.,* Center on Exec. Comp. Letter, *supra* note 24 (recommending that registrants be allowed two opportunities to review proxy voting advice before it is issued—the first time to review the ''draft'' proxy report and the second time to review the ''final'' proxy report).

[124] *See* Note 1 to paragraph (ii) of proposed Rule 14a–2(b)(9).

[125] *See* Note 2 to paragraph (ii) of proposed Rule 14a–2(b)(9).

[126] We note by way of analogy that express agreements to maintain material non-public information in confidence are sufficient to exempt communication of such information from triggering the public disclosure requirements of Regulation FD [17 CFR 243.100 to 103] (''Regulation FD''). *See* 17 CFR 243.100(b)(2)(ii).

We also recognize that certain proxy voting advice businesses currently have policies that expressly prohibit the businesses from considering or using any material non-public information provided by registrants during their engagement with the businesses. These policies also call for the registrants to promptly disclose to the public any non-public information shared with the businesses or any commitments with respect to future actions or behavior during the engagement process. *See FAQs: Engagement on Proxy Research,* ISS, *https://www.issgovernance.com/contact/faqs-engagement-on-proxy-research/* (last visited Sept. 23, 2019).

[127] *See* 17 CFR 240.14a–2. For example, under our proposal, the review requirement would not apply to solicitations in which:

- A person is soliciting that shareholders cast ''withhold'' or ''against'' votes with respect to one or more of the registrant's director nominees, without seeking proxy authority, which is generally a soliciting activity exempt under Rule 14a–2(b)(1); or
- a person is not acting on behalf of the registrant and the aggregate number of persons solicited is not more than ten, which are exempt under Rule 14a–2(b)(2).

[128] Our proposed approach is similar to existing review and comment practices used by certain proxy voting advice businesses, which also differentiate such practices based on whether a matter to be considered at the meeting is contested or not. *See* ISS, *supra* note 126 (''Notably, during the annual meeting season, in-person meetings are typically limited to contentious issues, including contested mergers, proxy contests, or other special situations . . . .'').

[129] *See supra* note 126 (''ISS research and recommendations are based exclusively on public information . . . .'').

[130] As proposed, the rule would leave the content of proxy voting advice entirely within the proxy voting advice business's discretion, the only exception being the inclusion of the registrant's or other soliciting person's hyperlink (or other analogous electronic medium, as discussed *infra* in Section II.B.2.c.). We believe leaving the content to the proxy voting advice businesses' discretion may allay concerns that a registrant's or certain other soliciting person's review of proxy voting advice could interfere with the business's objectivity and independence. *See, e.g.,* ISS Letter, *supra* note 9, at 11; Glass Lewis Letter, *supra* note 16, at 8.

[131] *See supra* note 109.

[132] *See, e.g.,* Center on Exec. Comp. Letter, *supra* note 24, at 3 (recommending ''a review period of at least five business days''); NIRI Letter, *supra* note 109, at 4 (recommending review ''at least five business days before issuance'').

[133] *See, e.g.,* Soc. for Corp. Gov. Letter, *supra* note 24, at 2; Wachtell Letter, *supra* note 24, at 8.

costs and timing pressures, emphasizing the need to consider the impact of any additional regulation on the ability of proxy voting advice businesses to deliver timely, cost-effective advice to their clients.[134] We believe the amendments we have proposed would give registrants and certain other soliciting persons sufficient time to assess the voting advice without being overly intrusive to proxy voting advice businesses and their clients. In formulating the proposed review and feedback period and notice of voting advice requirements, we have sought to improve the quality of information available to investors while balancing, on the one hand, the need for registrants and certain soliciting persons to conduct a meaningful assessment of the advice and communicate any concerns or errors regarding the advice with, on the other hand, the concerns about imposing an undue delay or otherwise jeopardizing the ability of proxy voting advice businesses to meet their contractual commitments to clients and their clients' ability to make timely and informed voting decisions.[135] However, we are soliciting comment on whether the proposed review and feedback period and notice requirements are appropriate and invite comments on how this proposed process could be revised to improve the information available to investors and better serve the needs of the various parties involved in the proxy process.

c. Response to Proxy Voting Advice by Registrants and Other Soliciting Persons

In addition to the proposed review and feedback period and final notice requirements, registrants and certain soliciting persons would also have the option under the proposed amendments to request that proxy voting advice businesses include in their proxy voting advice (and on any electronic medium used to distribute the advice) a hyperlink or other analogous electronic medium directing the recipient of the advice to a written statement prepared by the registrant that sets forth its views on the advice. Although registrants are able, under the existing proxy rules, to file supplemental proxy materials to respond to negative proxy voting recommendations and to alert investors to any disagreements they have identified with a proxy voting advice business's voting advice, the efficacy of these responses may be limited, particularly given the high incidence of voting that takes place very shortly after a proxy voting advice business's voting advice is released to clients and before such supplemental proxy materials can be filed.[136] The proposed amendments would provide a more efficient and timely means of ensuring that a proxy voting advice business's clients, including investment advisers, are able to consider registrants' views at the same time they are considering the proxy voting advice and before making their voting determinations, thus improving the overall mix of information available to them at that time.[137]

Under proposed Rule 14a–2(b)(9)(iii), as a condition to the exemptions found in Rules 14a–2(b)(1) and 14a–2(b)(3), a proxy voting advice business must, upon request, include in its proxy voting advice and in any electronic medium used to deliver the advice a hyperlink (or other analogous electronic medium) that leads to the registrant's statement about the proxy advisor's voting advice. To improve the overall mix of information available to the clients of proxy voting advice businesses, such a hyperlink (or other analogous electronic medium) would need to be included upon request regardless of whether the advice is adverse to the registrant's recommendation to its shareholders.[138] Although we considered proposing a requirement that proxy voting advice businesses include a full written statement from the registrant in the proxy voting advice delivered to clients, we believe that requiring the inclusion of a hyperlink or other analogous electronic medium is a more efficient and straightforward approach that enables sufficient access to the registrant's statement without unduly restricting the proxy voting advice businesses' flexibility to design and prepare their proxy voting advice in the manner that they and their clients prefer. A hyperlink or other analogous electronic medium would likewise allow registrants flexibility to present their views in the manner they deem most appropriate or effective.[139] It is important to note, however, that the registrant's statement would constitute a ''solicitation'' as defined in Rule 14a–1(l) and be subject to the anti-fraud prohibitions of Rule 14a–9,[140] as well as the filing requirements of Exchange Act Rule 14a–12,[141] which would necessitate that it be filed as supplemental proxy materials no later than the date that the proxy voting advice, and thereby the registrant's statement, is first published, sent, or given to shareholders.[142] To prevent undue delays in the distribution of the proxy voting advice to clients,

[134] *See, e.g.,* 2018 Roundtable Transcript, *supra* note 40, at 233, 251–52; *see also* CII Letter, s*upra* note 13, at 15–16 (''More regulation of proxy research firms could increase costs for pension plans and other institutional investors, with no clear benefits. . . . [E]xcessive regulation of proxy research firms could impair the ability of institutional investors to promote good corporate governance and accountability at the companies in which they own stock.'')

[135] *See* ISS Letter, *supra* note 9, at 10 (cautioning that the imposition of additional burdens and requirements might be untenable given the firm's existing time constraints) (''In many cases, ISS has a contractual obligation to deliver proxy reports and vote recommendations to clients ten days to two weeks in advance of the meeting. . . . Given the limited time between the hard start of receiving the proxy statement and the hard stop of delivering the report to clients sufficiently in advance of the meeting, along with the concentration of a large percentage of meetings during so called 'proxy season,' there simply is not time to afford all of the approximately 39,000 issuers ISS covers globally the opportunity to review draft reports.''); *see also* CII Letter, *supra* note 13, at 14–15.

[136] *See supra* note 96 and accompanying text.

[137] *See* Question 2 of Commission Guidance on Proxy Voting Responsibilities, *supra* note 9, at 12 (discussing steps an investment adviser could use to evaluate its compliance). We expect that the proposed amendments to permit a registrant to review and provide its response to proxy voting advice would aid an investment adviser that has determined to take such steps. For example, we expect that the proposed requirement for inclusion of a hyperlink or other analogous electronic medium directing the recipient of the proxy voting advice to a written statement prepared by the registrant that sets forth the registrant's views on the advice could assist a proxy voting advice business's clients by alerting them to matters where, due to the differing views expressed by the registrant, the clients' assessment of any ''pre-populated'' votes made by the proxy voting advice business may be warranted before such votes are submitted.

[138] *See supra* note 112.

[139] In cases where the proxy voting advice is electronically accessible, the proposed rule contemplates that the client would be able to click on a hyperlink, for example, and be directed to the registrant's statement. Alternatively, the client could type in the relevant URL (web address) using a web browser on the internet.

[140] In general, the inclusion of the hyperlink (or analogous electronic medium) required under proposed Rule 14a–2(b)(9)(iii) would not, by itself, make the proxy voting advice business liable for the content of the statements made by the registrant or certain other soliciting persons about the proxy voting advice. The Commission has previously stated a person's responsibility for hyperlinked information depends on whether the person has involved itself in the preparation of the information or explicitly or implicitly endorsed or approved the information. *See Use of Electronic Media,* Release No. 34–42728 (Apr. 28, 2000) [65 FR 25843 (May 4, 2000)]. We believe our view is consistent with this framework as a proxy voting advice business would not likely be involved in the preparation of the hyperlinked statement and would likely be including the hyperlink (or analogous electronic medium) to comply with proposed Rule 14a–2(b)(9)(iii), and not to endorse or approve the content of the statement. We seek comment on the need for rule amendments to codify this view.

[141] 17 CFR 240.14a–12.

[142] Activation of the hyperlink (or other analogous electronic medium) so that the response is publicly available would trigger the registrant's obligation to publicly file its statement of response pursuant to Rule 14a–6 [17 CFR 240.14a–6]. Additional soliciting materials would be filed with the Commission on EDGAR under submission type DEFA 14A or DFAN 14A.

registrants would be required to provide the hyperlink (or other analogous electronic medium) to the proxy voting advice business no later than the expiration of the two-day final notice period that would be required under proposed Rule 14a–2(b)(9)(ii)(B) as a condition of the exemptions in Rules 14a–2(b)(1) and 14a–2(b)(3).

As with the proposed review and feedback period and final notice requirements, our proposal to require inclusion of a hyperlink (or other analogous electronic medium) would provide other persons who are conducting non-exempt solicitations through the use of a proxy statement and proxy card pursuant to Regulation 14A with the same opportunity to include in the proxy voting advice and in any electronic medium used to deliver the advice a hyperlink (or other analogous electronic medium) that would lead to their response to the voting advice. We believe it is appropriate to limit the proposed requirement to extend this opportunity to parties other than the registrant to contested situations where shareholders and those acting on their behalf, including investment advisers, are actively being solicited by opposing sides through delivery of each side's own proxy statements and proxy cards and must decide with whom they wish to vote. Accordingly, proxy voting advice businesses would not be obligated to provide the same opportunity to persons conducting exempt solicitations. As with the proposed review and feedback period and final notice requirements, we are cognizant of the costs and potential logistical complications arising from the need to include a means for proxy voting advice businesses' clients to access a response to the proxy voting advice businesses' recommendations. Similarly, as discussed above, it is likely that the disclosures in these proxy statements and other mandated disclosure documents filed by the opposing sides, as well other public substantive statements that they make, would be considered by proxy voting advice businesses when formulating their voting advice. Accordingly, in our view, clients of proxy voting advice businesses have a greater need in non-exempt solicitations to be aware of disagreements over facts or opinions presented in the voting advice provided by proxy voting advice businesses. As with the registrant's statement of response, any such statements by dissident shareholders and other persons conducting non-exempt solicitations would constitute a ''solicitation'' as defined in Rule 14a–1(l), and would therefore be subject to the anti-fraud prohibitions of Rule 14a–9, and must be filed with the Commission as additional soliciting materials pursuant to Rule 14a–12.

The timing of the review and feedback period and final notice of voting advice under proposed Rule 14a–2(b)(9)(ii) generally would operate as follows: [143]

Action	Timing
Person conducts solicitation exempt under § 240.14a–2 or submits shareholder proposal pursuant to Exchange Act Rule 14a–8.	N/A. Proposed rules do not apply.
Registrant and/or soliciting person conducts non-exempt solicitation and files definitive proxy statement for shareholder meeting.	N/A. Proposed rules do not dictate when the registrant and/or soliciting person files its definitive proxy statement.
Proxy voting advice business provides the registrant and/or soliciting person with the version of the voting advice † that the business intends to deliver to its clients [proposed Rule 14a–2(b)(9)(ii)].	Subject to the proxy voting advice business's discretion, so long as it provides its voting advice to the registrant and/or soliciting person and complies with the required review and feedback and final notice periods in proposed Rule 14a–2(b)(9)(ii) prior to the distribution of such advice to the business's clients.
Review and feedback period:	
Registrant and/or soliciting person has an opportunity to review and provide feedback, if any, on the proxy voting advice business's voting advice [proposed Rules 14a–2(b)(9)(ii)(A)*(1)* and (A)*(2)*]	• If definitive proxy statement is filed at least 45 calendar days before the date of the meeting, registrant and/or soliciting person has at least five business days to review and provide feedback; or • If definitive proxy statement is filed less than 45 but at least 25 calendar days before the date of the meeting, registrant and/or soliciting person has at least three business days to review and provide feedback; or • If definitive proxy statement is filed less than 25 calendar days before the date of the meeting, the proxy voting advice business is not required to provide its voting advice to registrant or soliciting person.
Proxy voting advice business may revise its voting advice, as applicable.	N/A. Subject to the proxy voting advice business's discretion.
Final notice of voting advice:	No earlier than upon expiration of review and feedback period.
Proxy voting advice business provides a copy of its voting advice that it will deliver to its clients to allow the registrant and/or soliciting person to assess whether or not to provide a statement with its response to the advice [proposed Rules 14a–2(b)(9)(ii)(B) and 14a–2(b)(9)(iii)]	Registrant and/or soliciting person has at least two business days to provide a hyperlink (or other analogous electronic medium) with its response, if any.
Proxy voting advice business publishes its proxy voting advice to clients, which includes an active hyperlink * (or other analogous electronic medium) with the registrant's and/or soliciting person's response, if requested [proposed Rule 14a–2(b)(9)(iii)].	Subject to the proxy voting advice business's discretion, but no earlier than upon expiration of two-business day period allotted for the final notice of voting advice.
* Registrant and/or soliciting person is responsible for providing a web address (URL) for the response and is expected to coordinate with the proxy voting advice business as necessary to ensure that the hyperlink (or other analogous electronic medium) is functional when included in the proxy voting advice.	
Registrant holds its shareholder meeting	N/A.

† *See supra* note 121.

[143] For purposes of illustration, the following chart assumes that the registrant or other soliciting party is soliciting proxies for a meeting of shareholders. However, the description of timing would be identical if, in lieu of a shareholder meeting, the registrant or other soliciting party were soliciting proxies for a proposed action to be effected by shareholder vote, consent or authorization.

The information in this chart is intended only as an illustration and, as such, should be read together with the complete text of this release.

We designed proposed Rules 14a–2(b)(9)(ii) and (iii) so they would not overly prescribe the manner in which proxy voting advice businessess and registrants (and certain other soliciting persons) interact with each other, but instead allow the parties the flexibility to determine the most effective and cost-efficient methods of compliance. Because our approach is meant to allow the parties flexibility within this general framework, there may be a number of market solutions capable of facilitating the parties' compliance with this proposed review process. There may be existing providers and/or services readily available to support the parties' needs or, alternatively, new services and providers may emerge to satisfy demand for effective market solutions. The parties may coordinate directly with each other to manage the review process or they could elect to enter into arrangements with third-party service providers who could coordinate the process on their behalf. We recognize that there also may be various technological solutions available to the parties that would facilitate their coordination. For example, we note that one commenter suggested the use of a digital portal as a draft review mechanism, as well as for management and dissemination of the registrant's statement in response to the proxy advisor's voting advice.[144]

Because there may be a number of implementation details to resolve, effective coordination between proxy voting advice businesses and registrants (and certain other soliciting persons, as applicable) would be needed. For example, to ensure that the hyperlink to the statement from the registrant (or certain other soliciting persons) is activated concurrently with the release of the proxy voting advice and that the registrant (or certain other soliciting persons) is able to timely file its statement of response as additional soliciting materials, it would be necessary for the parties to coordinate the release date of the proxy voting advice containing the active hyperlink.[145]

In light of the potentially significant adverse result for a proxy voting advice business if it experiences an immaterial or unintentional failure to comply with the conditions of new Rule 14a–2(b)(9),[146] the proposed amendments provide that such failure will not result in the loss of the exemptions in Rules 14a–2(b)(1) or 14a–2(b)(3) so long as (A) the proxy voting advice business made a good faith and reasonable effort [147] to comply and (B) to the extent that it is feasible to do so, the proxy voting advice business uses reasonable efforts to substantially comply with the condition as soon as practicable after it becomes aware of its noncompliance.[148] We believe this provision would serve to mitigate the risk of any unintended adverse consequences for proxy voting advice businesses as they seek to comply with the review and feedback and other provisions that we are proposing as new conditions to Rules 14a–2(b)(1) and 14a–2(b)(3). Also, failure to comply with the conditions of new Rule 14a–2(b)(9) does not create a new private right of action for registrants against proxy voting advice businesses.

Request for Comment

24. How prevalent are factual errors or methodological weaknesses in proxy voting advice businesses' analyses? To what extent do those errors or weaknesses materially affect a proxy voting advice business's voting recommendations? To what extent are disputes between proxy voting advice businesses and registrants about issues that are factual in nature versus differences of opinion about methodology, assumptions, or analytical approaches?

25. As a condition to the exemptions in Rules 14a–2(b)(1) and 14a–2(b)(3), should registrants and certain other soliciting persons be permitted an opportunity to review proxy voting advice and provide feedback to the proxy voting advice businesses before the businesses provide the advice to clients, as proposed? If yes, how much time should be given to review and provide feedback on proxy voting advice? Are the timeframes set forth in proposed Rule 14a–2(b)(9)(ii) appropriate? What would the impact of these proposed timeframes be on registrants, proxy voting advice businesses, and their clients? Are there alternative timeframes that would be more appropriate? Should we allow a proxy voting advice business to provide its final notice of voting advice to the registrant at any time after the registrant has provided its comments during the review and feedback period, regardless of whether the review and feedback period has expired? Are there alternative conditions to the exemptions that the Commission should consider to address the concerns regarding inaccuracies and the ability for investors to get information that is accurate and complete in all material respects?

26. Should the number of days for the review and feedback period be contingent on the date that the registrant files its definitive proxy statement? For example, should there be a longer period (*e.g.,* five business days instead of three) if the registrant files its definitive proxy statement some minimum number of days before the shareholder meeting at which proxies will be voted, as proposed? Would registrants and other soliciting persons be likely to take advantage of the additional time by filing their definitive proxy statements early enough to qualify for this treatment?

27. What impact would the proposed review and feedback period and final notice of voting advice have on the ability of proxy voting advice businesses to complete the formulation of their voting advice and deliver such advice to their clients in a timely manner? Are there additional timing considerations or logistical challenges that we should take into account?

28. Should there generally be a review and feedback period and a final notice of voting advice, as proposed? Should we allow registrants (and certain other soliciting persons) more or fewer opportunities to review the voting advice than proposed? Should a proxy voting advice business be required to provide the final notice of voting advice only if the registrant (or certain other soliciting person) provides comments to the proxy voting advice business during the review and feedback period and the proxy voting advice business's revisions are pertinent to such comments? Should the period allotted for the final notice of

[144] *See* Letter from Barbara Novick, Vice Chairman, & Ray Cameron, Managing Director, Blackrock (''Blackrock Letter'') (Nov. 16, 2018), at 3.

[145] If the parties do not adequately coordinate the activation of the hyperlink with the release of the proxy voting advice, there is a risk that the hyperlink could be functional prematurely, and therefore that the registrant's or other soliciting person's statement of response would be publicly available before the registrant or other soliciting person was able to comply with Rule 14a–12(b) and timely file the statement with the Commission as additional soliciting material.

[146] For example, without such an exception, a proxy voting advice business that failed to give a registrant the full number of days for review of the proxy voting advice due to technical complications beyond its control, even if only a few hours shy of the requirement, would be unable to rely on the exemptions in Rule 14a–2(b)(1) and (b)(3). Without an applicable exemption on which to rely, the proxy voting advice business likely would be subject to the proxy filing requirements found in Regulation 14A and its proxy voting advice required to be publicly filed.

[147] Similar to analogous provisions in other Commission rules, the determination of whether there has been a good faith and reasonable effort to comply with the proposed conditions would depend on the particular facts and circumstances. See, *e.g.,* 17 CFR 230.164 (providing relief for immaterial and unintentional failures to file or delays in filing free writing prospectuses.)

[148] *See* paragraph (iv) of proposed Rule 14a–2(b)(9).

voting advice be two business days, as proposed? Should it be longer or shorter?

29. Are there specific ways in which, if we allow the opportunity for registrants and certain other soliciting persons to review and provide feedback on the proxy voting advice, questions may arise about possible influencing of the proxy voting advice by the reviewing parties? How, if at all, could the independence of the advice be called into question if other parties reviewed and commented on it? [149] How could we address such concerns? For example, would disclosure of the specific comments raised by the reviewing party and the proxy voting advice businesses' responses to this feedback help alleviate concerns about the independence of the advice?

30. What effect will the proposals, if adopted, have on proxy voting advice businesses' ability to provide timely voting advice to their clients? What are the anticipated compliance burdens and corresponding costs that proxy voting advice businesses are expected to incur as a result of the proposed new conditions? What impact will these burdens and costs have on proxy voting advice businesses' clients?

31. Should the proposed amendments allow a proxy voting advice business to seek reimbursement from registrants and other soliciting persons of reasonable expenses associated with the review and feedback period and final notice of voting advice in proposed Rule 14a–2(b)(9)(ii)? If so, what would constitute reasonable expenses and how should these amounts be calculated? Should the calculation of these amounts be dependent on the size or other attributes of the proxy voting advice business, or on the size of the registrant, or number of recommendations? Should there be limits on the amount beyond reasonable expenses for which a proxy voting advice business can seek to be reimbursed?

32. We proposed to limit the review and feedback period and final notice of voting advice requirements to only registrants and soliciting persons conducting non-exempt solicitations. Should the opportunity to review and provide feedback and receive final notice of voting advice also be given to other parties, such as shareholder proponents or persons engaged in exempt solicitations, such as in ''vote no'' or withhold campaigns?

33. Should the voting advice formulated under the custom policies established by clients whose specialized needs are not addressed by a proxy voting advice business's benchmark or specialty policies [150] be subject to the proposed review and feedback period and final notice of voting advice requirements? Are there any confidentiality concerns, such as the revelation of the client's investment strategies, which would arise from the ability of registrants or others to review the advice formulated under these customized policies? If so, is there a need for a method for distinguishing voting advice formulated under a proxy voting advice business's benchmark or specialty policy from advice formulated under a client's custom policy, and what would be the appropriate method for making this distinction? We note, for example, at least one major proxy voting advice business asserts that it is not the ''norm'' for its clients to adopt all or some of the business's benchmark policy, with the ''vast majority of institutional investors'' opting for ''increasingly more detailed policies with specific views'' on the issues presented for a vote in the proxy materials.[151]

34. Should the review and feedback period and final notice of voting advice requirements be a condition to the exemptions in all cases, as proposed, or should they be required only where a proxy voting advice business's voting recommendations are adverse to the reviewing party? In a proxy contest, should we require the review and feedback period and final notice of voting advice requirements only if voting recommendations are adverse to the reviewing party? In the case of a split vote recommendation, who should have the right to review the voting advice?

35. Would the proposed review and feedback period and final notice of voting advice requirements work effectively in the context of a contested solicitation? Are there unique challenges or specific issues with the parties' compliance with these proposed requirements that are foreseeable in contested solicitations?

36. Should we require the entirety of the proxy voting advice, including separate specialty reports,[152] to be provided to the reviewing party or only excerpts or certain reports? If the latter, which excerpts or reports? How should the scope of any such excerpts or reports be determined? Should only the portions of the voting advice that are adverse to the registrant or certain other soliciting persons be subject to the review and feedback period and final notice of voting advice requirements? Should we require only the factual information and/or data underlying the advice to be provided to the reviewing party?

37. Should proxy voting advice on certain topics or kinds of proposals be excluded from the proposed review and feedback period and final notice of voting advice requirements? If so, which ones? If some are excluded, are there topics or kinds of proposals for which proxy voting advice should always be subject to the proposed requirements?

38. Are there any risks raised by proxy voting advice businesses providing advance copies of voting advice (*e.g.,* misuse of material, nonpublic information, or misappropriation of proprietary information), and if so, how can such risks be managed?

39. Should we allow proxy voting advice businesses to require registrants and other soliciting persons to enter into confidentiality agreements prior to providing their proxy voting advice? If so, should we specify any terms or parameters of the required confidentiality agreement? For example should the rule stipulate that the terms of the confidentiality agreement may be no more restrictive than similar types of confidentiality agreements the proxy voting advice business uses with its clients, as proposed? Should we stipulate in the rule that a proxy voting advice business is not required to comply with the proposed review and feedback period and final notice of voting advice requirements unless the reviewing party has entered into an agreement to keep the information received confidential? Are there similar types of confidentiality agreements between proxy voting advice businesses and their clients? If so, what are the terms of those agreements? Is it appropriate for the rule to address the nature of a private contract between two parties?

40. Can the confidentiality of information that a proxy voting advice business would provide to registrants and other soliciting persons under the proposal be effectively safeguarded? Would it be feasible for a proxy voting advice business to obtain a confidentiality agreement from the numerous registrants or soliciting persons with whom it interacts? Could confidentiality be assured through other means?

[149] *See* Glass Lewis Letter, *supra* note 16, at 8 (noting that its policy of not engaging with registrants during the solicitation period preceding the shareholder meeting is due to concerns that such engagement could be viewed as affecting the independence of the voting advice provided to its clients).

[150] *See supra* note 116.

[151] *See* Glass Lewis Letter, *supra* note 16, at 2.

[152] *See supra* note 116.

41. Should proxy voting advice businesses be required to include in their voting advice to clients a hyperlink (or other analogous electronic medium) to the response by the registrant and certain other soliciting persons, as a condition to the exemptions in Rules 14a–2(b)(1) and 14a–2(b)(3)? Are there better methods of making the response available to the clients of proxy voting advice businesses? Should the proposed rule provide certain guidelines or limitations on the responses (*e.g.,* responses may cover only certain topics, such as disagreements on facts used to formulate the proxy voting advice)?

42. Would the proposed condition that proxy voting advice businesses include a hyperlink (or other analogous electronic medium) directing their clients to the registrant's (or certain other soliciting person's) statement impact clients of proxy voting advice businesses, such as investment advisers? If so, how?

43. In our view, proxy voting advice businesses would not be liable for the content of the registrant's (or certain other soliciting person's) statement solely due to inclusion of a hyperlink (or other analogous electronic medium) to such a statement in their voting advice. Should we codify this view in the text of proposed Rule 14a–2(b)(9)?

44. In instances where proxy voting advice businesses provide voting execution services (pre-population and automatic submission) to clients, are clients likely to review a registrant's response to voting advice? Should we amend Rules 14a–2(b)(1) and 14a–2(b)(3) so that the availability of the exemptions is conditioned on a proxy voting advice business structuring its electronic voting platform to disable the automatic submission of votes in instances where a registrant has submitted a response to the voting advice? Should we require proxy voting advice businesses to disable the automatic submission of votes unless a client clicks on the hyperlink and/or accesses the registrant's (or certain other soliciting persons') response, or otherwise confirms any pre-populated voting choices before the proxy advisor submits the votes to be counted? What would be the impact and costs to clients of proxy voting advice businesses of disabling pre-population or automatic submission of votes? Could there be effects on registrants? For example, if a proxy voting advice business were to disable the automatic submission of clients' votes, could that deter some clients from submitting votes at all, thereby affecting a registrant's ability to achieve quorum for an annual meeting? If we were to adopt such a condition, what transitional challenges or logistical issues would disabling pre-population or automatic submission of votes present for proxy voting advice businesses, and how could those challenges or issues be mitigated?

45. Should we permit proxy voting advice businesses to cure any unintentional or immaterial failure to comply with the proposed conditions so long as they make a good faith and reasonable effort, as proposed? We have proposed that the determination of whether a good faith and reasonable effort has been made should depend on the particular facts and circumstances. Is there a need for further clarity on the actions that may be needed to satisfy this standard? If so, what would be appropriate to consider in satisfying this standard?

46. Should we prescribe a more detailed framework or establish procedural guidelines to help proxy voting advice businesses manage their interactions with registrants and certain other soliciting persons under proposed Rules 14a–2(b)(9)(ii) and (iii)? If so, what would be the appropriate framework?

47. What steps would proxy voting advice businesses need to take to update their systems and procedures such that they would reasonably be able to comply with the new conditions of proposed Rule 14a–2(b)(9)? Are there other steps that proxy voting advice businesses would need to take, such as re-negotiating contracts with their clients? What are the associated costs that proxy voting advice businesses would be anticipated to incur as a result? If the proposal is adopted, how much preparatory time would a proxy voting advice business require following adoption of the proposed amendments, to ensure that its systems and procedures are equipped to facilitate the business's compliance with the new rules?

48. Should proxy voting advice businesses be required to disclose the nature (*e.g.,* frequency, format, substance, etc.) of their communication with registrants (and certain other soliciting persons) to their clients or publicly?

49. What factors and/or conditions are primarily responsible for the incidence of factual errors and methodological weaknesses in proxy voting advice businesses' analyses? How effective would our proposal for standardized review and feedback and opportunity to include responses to the proxy voting advice be in addressing these factual errors and methodological weaknesses?

50. Are there better approaches for addressing factual errors and methodological weaknesses in proxy voting advice businesses' analyses?

51. To what extent have factual errors or methodological weaknesses in proxy voting advice businesses' analyses resulted in impaired voting advice or adversely affected the ability of proxy voting advice businesses' clients to vote securities effectively?

C. Proposed Amendments to Rule 14a–9

Rule 14a–9 prohibits any proxy solicitation from containing false or misleading statements with respect to any material fact at the time and in the light of the circumstances under which the statements are made.[153] In addition, such solicitation must not omit to state any material fact necessary in order to make the statements therein not false or misleading.[154] Even solicitations that are exempt from the federal proxy rules' information and filing requirements are subject to this prohibition, as ''a necessary means of assuring that communications which may influence shareholder voting decisions are not materially false or misleading.'' [155] This includes proxy voting advice that is exempt under Rules 14a–2(b)(1) and (b)(3). The Commission has previously stated that the furnishing of proxy voting advice, while exempt from the information and filing requirements, remains subject to the prohibition on false and misleading statements in Rule 14a–9.[156] We continue to believe that subjecting proxy voting advice businesses to the same antifraud standard as registrants and other persons engaged in soliciting activities is appropriate in the public interest and for the protection of investors. In recent Commission guidance,[157] we specifically addressed the application of Rule 14a–9 to proxy voting advice, stating that:

Any person engaged in a solicitation through proxy voting advice must not make materially false or misleading statements or omit material facts, such as information underlying the basis of its advice or which would affect its analysis and judgments, that would be required to make the advice not misleading. For example, the provider of the proxy voting advice should consider whether, depending on the particular statement, it may need to disclose [certain] types of information in

[153] 17 CFR 240.14a–9.

[154] *Id.*

[155] 1979 Adopting Release, *supra* note 36, at 48942.

[156] *See* Concept Release, *supra* note 2, at 43010.

[157] *See* Question and Response 2 of Commission Interpretation on Proxy Voting Advice, *supra* note 19, at 11.

order to avoid a potential violation of Rule 14a–9.[158]

The types of information a proxy voting advice business may need to disclose could include the methodology used to formulate the proxy voting advice, sources of information on which the advice is based, or material conflicts of interest that arise in connection with providing the advice, without which the proxy voting advice may be misleading.[159]

Currently, the text of Rule 14a–9 provides four examples of what may be misleading within the meaning of the rule. These are:

- Predictions as to specific future market values;
- Material which directly or indirectly impugns character, integrity or personal reputation, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation;
- Failure to so identify a proxy statement, form of proxy and other soliciting material as to clearly distinguish it from the soliciting material of any other person or persons soliciting for the same meeting or subject matter; and
- Claims made prior to a meeting regarding the results of a solicitation.

Consistent with the Commission's recent guidance, we are proposing to amend the list of examples in Rule 14a–9 to highlight the types of information that a proxy voting advice business may, depending upon the particular facts and circumstances, need to disclose to avoid a potential violation of the rule. Thus, the amended rule would list failure to disclose information such as the proxy voting advice business's methodology, sources of information and conflicts of interest as an example of what may be misleading within the meaning of the rule.

In addition, we are aware of concerns that may arise when proxy voting advice businesses make negative voting recommendations based on their evaluation that a registrant's conduct or disclosure is inadequate, notwithstanding that the conduct or disclosure meets applicable Commission requirements.[160] Without additional context or clarification, clients may mistakenly infer that the negative voting recommendation is based on a registrant's failure to comply with the applicable Commission requirements when, in fact, the negative recommendation is based on the determination that the registrant did not satisfy the criteria used by the proxy voting advice business. If the use of the criteria and the material differences between the criteria and the applicable Commission requirements are not clearly conveyed to proxy voting advice businesses' clients, there is a risk that the clients may make their voting decisions based on a misapprehension that a registrant is not in compliance with the Commission's standards or requirements. Similar concerns exist if, due to the lack of clear disclosures, clients are led to mistakenly believe that the unique criteria used by the proxy voting advice businesses were approved or set by the Commission.

For example, if a proxy voting advice business were to recommend against the election of a director who serves on the registrant's audit committee on the basis that the director is not independent under the proxy voting advice business's independence standard for audit committee members, and the standard applied by the proxy voting advice business is more limiting than the Commission's rules,[161] it may be necessary for the proxy voting advice business to make clear that the business's recommendation is based on its own different independence standard, rather than the Commission's standard, in order for such recommendation to be not misleading.

Similarly, a concern could arise if a proxy voting advice business recommends that clients vote against a say-on-pay proposal [162] of a smaller reporting company (''SRC'') [163] that provides scaled executive compensation disclosure in compliance with Commission rules for SRCs,[164] rather than the expanded disclosure required of larger registrants.[165] To the extent that such a proxy voting advice business does not make clear to its clients that it is making a negative voting recommendation based on its own disclosure criteria, notwithstanding that the registrant has complied with the compensation disclosure standards established by the Commission, the proxy voting advice business's clients may misunderstand the basis for the proxy voting advice business's recommendation.

To address these concerns, the proposed amendment would add as an example of what may be misleading within the meaning of Rule 14a–9, depending upon particular facts and circumstances, the failure to disclose the use of standards or requirements that materially differ from relevant standards or requirements that the Commission sets or approves.[166] We

[158] *Id.* at 12.

[159] *Id.*

[160] *See, e.g.,* Business Roundtable Letter 1, *supra* note 94, at 12 (expressing concern over recommendations by proxy advisory firms to vote against (i) directors that do not meet the firms' own definition of ''independence'' and (ii) directors on governance committees where the registrant has excluded shareholder proposals through the Commission staff's no-action letter process); Letter from Tom Quaadman, Vice President, U.S. Chamber of Commerce Center for Capital Markets Competitiveness (Feb. 24, 2014), at 2–3, *available at https://www.sec.gov/comments/4-670/4670-12.pdf* (discussing the practice by proxy advisory firms of adopting policies that favored annual shareholder votes on executive compensation, notwithstanding that the Commission's Rule 14a–21(a) [17 CFR 240.14a–21] requires such a vote no less than once every three years); Timothy Doyle, *The Realities of Robo-Voting,* American Council for Capital Formation 9 (Nov. 2018), *http://accfcorpgov.org/wp-content/uploads/ACCF-RoboVoting-Report_11_8_FINAL.pdf* (''[In cases where] limited legal disclosures are actually required, a proxy advisory recommendation drawn from an unaudited disclosure can in many cases create a new requirement for companies—one that adds cost and burden beyond existing securities disclosures.'').

[161] *See* Exchange Act Rule 10A–3 (specifying the independence standards for members of the audit committee). Further, Item 407 of Regulation S–K requires identification of each nominee for director that is ''independent'' under the standards of independence provided in Item 407(a)(1). 17 CFR 229.407(a)(1).

[162] Rule 14a–21 under the Securities Exchange Act of 1934 requires, among other things, companies soliciting proxies for an annual or other meeting of shareholders at which directors will be elected to include a separate resolution subject to a shareholder advisory vote to approve the compensation of named executive officers.

[163] A smaller reporting company is defined in Item 10(f)(1) of Regulation S–K [17 CFR 229.10(f)(1)] as an issuer that is not an investment company, an asset-backed issuer (as defined in § 229.1101), or a majority-owned subsidiary of a parent that is not a smaller reporting company and that:

(i) Had a public float of less than $250 million; or

(ii) Had annual revenues of less than $100 million and either:

(A) No public float; or

(B) A public float of less than $700 million.

[164] *See* Item 402(l) of Regulation S–K. 17 CFR 229.402(l).

[165] When the Commission adopted comprehensive amendments to its executive compensation and related person disclosure requirements in 2006, it expressly provided certain scaled disclosure requirements for smaller issuers, in recognition of the fact that: (i) The executive compensation arrangements of smaller issuers are typically less complex than those of other public companies and (ii) satisfying disclosure requirements designed to capture more complicated compensation arrangements might impose new, unwarranted burdens on small business issuers. *See Executive Compensation and Related Person Disclosure,* Release No. 33–8732A [71 FR 53158 (Sept. 8, 2006)], at 53192.

[166] *See* note (e) to proposed Rule 14a–9. We understand that some proxy voting advice businesses currently may be providing this type of disclosure, as well as some of the other disclosures described in proposed note (e). Examples of standards or requirements that the Commission approves are the listing standards of the registered national securities exchanges, such as the New York Stock Exchange (NYSE). The SEC supervises, and is authorized to approve rules promulgated by, the

wish to emphasize, however, that including such an example is not meant to imply that it would be inappropriate for proxy voting advice businesses to use standards or criteria that are different from Commission standards or requirements when formulating proxy voting advice. Shareholders may use any standards or criteria when making their proxy voting decisions, and proxy voting advice businesses and their clients may use any standards or criteria for proxy voting advice. By including this example, our focus is on ensuring that any advice provided to those clients is not materially misleading with respect to its underlying bases.

The ability of a client of a proxy voting advice business to make voting decisions is affected by the adequacy of the information it uses to formulate such decisions. As we recently discussed in a separate release, investment advisers may seek information of the type we are proposing from proxy voting advice businesses when exercising voting authority on behalf of clients.[167] The proposed amendments are designed to help ensure that proxy voting advice businesses' clients are provided the information they need to make fully informed decisions and to clarify the potential implications of Rule 14a–9.

Request for Comment

52. Is the proposal to amend the list of examples in Rule 14a–9 necessary in light of the Commission's recent guidance specifically underscoring the applicability of Rule 14a–9 to proxy voting advice? [168] Should the proposal to amend Rule 14a–9 list different or additional examples and, if so, which examples?

53. To what extent do proxy voting advice businesses currently apply their own standards or criteria that materially differ from those set or approved by the Commission, and how well do they alert clients to these differences when it may impact their voting advice?

54. Should the proposed amendment refer only to standards or requirements that the Commission sets or approves or is a wider scope (*i.e.,* rules of other legal or regulatory bodies) more appropriate? If a wider scope is preferable, should the regulatory standards of state or foreign regulatory bodies also be referenced?

55. Alternatively, instead of amending Rule 14a–9 as proposed, should we require, as an additional condition under proposed Rule 14a–2(b)(9), that a proxy voting advice business include in its voting advice (and in any electronic medium used to deliver the proxy voting advice) disclosure of its use or application, in connection with such proxy voting advice, of standards that materially differ from standards or requirements that the Commission sets or approves?

D. Transition Period

We recognize that, if adopted, the proposed amendments would require proxy voting advice businesses to develop processes and systems to comply with the proposed conditions.[169] As such, we propose to provide a one-year transition period after the publication of a final rule in the **Federal Register** to give affected parties sufficient time to comply with the proposed new requirements. We request comment on the specific challenges that would be posed in implementing the proposed amendments, including those related to timing and the need for a transition period to address these issues.

Request for Comment

56. Are there any challenges that proxy voting advice businesses, their clients, or registrants anticipate in undertaking to develop systems and processes to implement the proposed amendments? If so, what are those challenges, and how could they be mitigated?

57. Is the proposed transition period appropriate? If not, how long should the transition period be and why? Please be specific.

58. Are there any other accommodations that we should consider for particular types of proxy voting advice businesses, registrants, or circumstances? Are there other transition issues or accommodations that we should consider?

Request for Comment—General Considerations

We request and encourage interested persons to submit comments on any aspects of the proposed amendments, other matters that may have an impact on the amendments, and any suggestions for additional or alternative changes. With respect to any comments, we note that they are of the greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed by those comments, particularly quantitative information as to the costs and benefits, and any alternatives to the proposals where appropriate. Where alternatives to the proposal are suggested, please include information as to the costs and benefits of those alternatives.

59. How effective would the proposed amendments be in facilitating the ability of proxy voting advice businesses' clients to obtain the information they need to make informed voting determinations, including for investment advisers that are exercising voting authority on behalf of clients?

60. Are there any other conditions that should apply to proxy voting advice businesses seeking to rely on the exemptions in Rules 14a–2(b)(1) and (b)(3)? If so, what are these conditions?

61. Are there other approaches that are better suited to accomplish the Commission's objectives? For example, should proxy voting advice businesses be required to develop policies and procedures to help ensure that conflicts of interest are dealt with appropriately and to improve the accuracy of the information on which their proxy voting advice is based?

62. What effect would these proposals, if adopted, have on competition in the proxy advisory industry? Would adoption of the proposals increase barriers to entry into the market for potential competitors or lead to unhealthy market concentration within the proxy advisory industry or, ultimately, lead to decline in the quality of proxy voting advice provided to investors?

63. To the extent that adoption of the proposed amendments would limit the ability of smaller proxy voting advice businesses or potential new market entrants to operate and compete in the market for these services, should they be subject to the additional conditions in proposed Rule 14a–2(b)(9) in order to rely on the exemptions in Rules 14a–2(b)(1) and (b)(3)? If not, what should the criteria be for determining who is not subject to Rule 14a–2(b)(9)? For example, should we base the availability of an accommodation for smaller proxy voting advice businesses on annual revenues, number of clients or market share? Would investment advisers or other institutional investors be less likely to hire proxy voting advice businesses that take advantage of such an accommodation? Are there other accommodations we should consider in lieu of or in addition to this exemption

NYSE and other national securities exchanges pursuant to Section 19 of the Exchange Act.

[167] *See* Question and Response 3 of Commission Guidance on Proxy Voting Responsibilities, *supra* note 9, at 17–20.

[168] *See* Question and Response 2 of Commission Interpretation on Proxy Voting Advice, *supra* note 19, at 11–13.

[169] *See supra* Section II.B.2.c.; *supra* note 145 and accompanying text (discussing potential logistical issues associated with the proposed amendments to allow registrants and certain other soliciting persons the opportunity to review and respond to proxy voting advice).

for certain proxy voting advice businesses?

III. Economic Analysis

A. Introduction

We are proposing amendments to Exchange Act Rule 14a–2(b) to condition the availability of existing exemptions from the information and filing requirements of the proxy rules in Rules 14a–2(b)(1) and (b)(3) on all proxy voting advice businesses providing the following in connection with their proxy voting advice: (i) Enhanced conflicts of interest disclosure; (ii) a standardized opportunity for review and feedback by registrants and certain other soliciting persons of proxy voting advice before a proxy voting advice business disseminates its proxy voting advice to clients; and (iii) the option for registrants and certain soliciting persons to request that proxy voting advice businesses include in their proxy voting advice (and on any electronic medium used to distribute the advice) a hyperlink or other analogous electronic medium directing the recipient of the advice to a written statement that sets forth the registrant's or soliciting person's views on the proxy voting advice.[170] We also are proposing to codify the Commission's interpretation that, as a general matter, proxy voting advice constitutes a solicitation within the meaning of Exchange Act Rule 14a–1(1). Finally, we are proposing to amend the list of examples in Exchange Act Rule 14a–9 to add as an example of a potentially material misstatement or omission within the meaning of the rule, depending upon particular facts and circumstances, the failure to disclose information such as the proxy voting advice business's methodology, sources of information, conflicts of interest, or the use of standards that materially differ from relevant standards or requirements that the Commission sets or approves.

We are sensitive to the costs and benefits of our rules. When engaging in rulemaking that requires the Commission to consider or determine whether an action is necessary or appropriate in the public interest, Section 3(f) of the Exchange Act requires that the Commission consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[171] In addition, Section 23(a)(2) of the Exchange Act requires the Commission to consider the effects on competition of any rules the Commission adopts under the Exchange Act and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[172]

The parties affected by the proposed amendments would include proxy voting advice businesses, clients of proxy voting advice businesses such as investment advisers and institutional investors, retail investors, as well as registrants and other soliciting persons.

We have considered the economic effects of the proposed amendments, including their effects on competition, efficiency, and capital formation. Many of the effects discussed below cannot be quantified. Consequently, while we have, wherever possible, attempted to quantify the economic effects expected from this proposal, much of the discussion remains qualitative in nature. Where we are unable to quantify the economic effects of the proposed amendments, we provide a qualitative assessment of the potential effects and encourage commenters to provide data and information that would help quantify the benefits, costs, and the potential impacts of the proposed amendments on efficiency, competition, and capital formation.

1. Overview of Proxy Voting Advice Businesses' Role in the Proxy Process

Every year, investment advisers and other institutional investors, whether on behalf of clients or on their own behalf, face decisions on how to vote the shares on a significant number of matters that are subject to a proxy vote, ranging from the election of directors and the approval of equity compensation plans to shareholder proposals submitted under Exchange Act Rule 14a–8.[173] These investment advisers and other institutional investors also face voting determinations when a matter is presented to shareholders for approval at a special meeting, such as a merger or acquisition or a sale of all or substantially all of the assets of the company. As described above, these firms play a large role in proxy voting because of their large aggregate percentage ownership stake in many U.S. public companies.[174] Voting can be resource intensive, involving organizing proxy materials, performing diligence on portfolio companies and matters to be voted on, determining how votes should be cast, and submitting proxy cards to be counted. To assist them in their voting decisions, investment advisers and other institutional investors frequently hire proxy voting advice businesses.[175]

Investment advisers and other institutional investors may retain proxy voting advice businesses to perform a variety of functions, including the following:

- Analyzing and making voting recommendations on the matters presented for shareholder vote and included in the registrants' proxy statements;
- Executing proxy votes (or voting instruction forms) in accordance with their instructions, which may include voting the shares in accordance with a customized proxy voting policy resulting from consultation between a proxy voting advice business and its client,[176] the proxy voting advice businesses' proxy voting policies, or the client's own voting policy;
- Assisting with the administrative tasks associated with voting and keeping track of the large number of voting determinations; and
- Providing research and identifying potential risk factors related to corporate governance.

In the absence of the services offered by proxy voting advice businesses, investment advisers and other clients of these businesses may require considerable resources to independently conduct the work necessary to analyze and make voting determinations.

Proxy voting advice businesses generally are compensated on a fee basis for their services, and they are able to

[170] The registrant's or soliciting person's written statement would constitute a ''solicitation'' under Exchange Act Rule 14a–1(l) and be subject to the anti-fraud prohibitions of Exchange Act Rule 14a–9, as well as the filing requirements of Exchange Act Rule 14a–12.

[171] 15 U.S.C. 78c(f).

[172] 15 U.S.C. 78w(a)(2).

[173] 17 CFR 240.14a–8; *see, e.g.,* Blackrock Letter, *supra* note 144, at 1 (''[A]s a fiduciary to its clients, Blackrock engages with portfolio companies and votes proxies globally at over 17,000 meetings annually.''); NYC Comptroller Letter, *supra* note 17, at 4 (''For the year ending June 30, 2018, our office cast 71,000 individual ballots at 7,000 shareowner meetings in 84 markets around the world . . . .''); OPERS Letter, *supra* note 8, at 2 (''OPERS receives in excess of 10,000 proxies in any given proxy season.'').

[174] *See supra* note 8 and accompanying text. As of the end of 2018, investment companies held approximately 30 percent of the shares of U.S.-listed equities outstanding. *See* 2019 *Investment Company Fact Book,* Investment Company Institute (2019), *https://www.ici.org/pdf/2019_factbook.pdf,* at 37.

[175] *See* 2016 GAO Report, *supra* note 9, at 5.

[176] *See* ISS Letter, *supra* note 9, at 1 (''ISS enables our clients to receive customized proxy voting recommendations based on a client's specific customized voting guidelines. ISS implements more than 400 custom voting policies on behalf of institutional investor clients. As of January 1, 2018, approximately 85% of ISS' top 100 clients used a custom proxy voting policy. During calendar year 2017, approximately 87% of the total shares processed by ISS on behalf of clients globally were linked to such policies.'').

capture economies of scale for several of the services they provide, including supplying voting advice to clients.[177] As a consequence, investment advisers and other institutional investors have found efficiencies in hiring these businesses to perform voting-related services, rather than performing them in-house.[178]

Institutional investors, who hold a majority of the votes cast in the U.S. public equity markets, use to some extent the voting advice provided by proxy voting advice businesses. In 2007, the GAO found that among 31 institutional investors, large institutions relied less than small institutions on the research and recommendations offered by proxy voting advice businesses. Large institutional investors indicated that their reliance on proxy voting advice businesses was limited because they: (i) Conduct their own research and analyses to make voting determinations and use the research and recommendations offered by proxy voting advice businesses only to supplement such analyses; (ii) develop their own voting policies, which the proxy voting advice businesses are responsible for executing; and (iii) contract with more than one proxy voting advice business to gain a broader range of information on proxy issues.[179] In contrast, small institutional investors said they had limited resources to conduct their own research and tended to rely more heavily on the research and recommendations offered by proxy voting advice businesses.[180] The findings of a 2016 GAO study of 11 institutional investors were similar.[181]

Research on the role of proxy voting advice businesses in proxy voting has produced inconclusive results. For example, with respect to the amount of influence that proxy voting advice has on proxy votes, some studies suggest that proxy voting advice has substantial influence on proxy votes,[182] and some studies suggest a more limited influence.[183] Further, existing research has not attempted to characterize the amount of influence that one would expect proxy voting advice to have given the business purpose [184] of hiring a proxy voting advice business in the first place. As a result, existing research provides limited information on the extent to which proxy voting advice business clients incorporate proxy voting advice into their voting determinations relative to what would be expected given such an advice relationship.

Additionally, research on the role of proxy voting advice businesses in proxy voting has produced inconclusive results with respect to the quality of voting advice. For example, proxy voting advice businesses have been the subject of criticism for potentially being influenced by conflicts of interest,[185] producing voting advice that contains inaccuracies, and utilizing one-size-fits-all methodologies in evaluating a diverse array of registrants.[186] To assess the quality of voting advice, studies have sought to examine stock market reactions to announcements by registrants that the registrants will adopt policies consistent with those recommended by proxy voting advice businesses.[187] Such an approach, however, ignores the possibility that proxy voting advice business clients may have goals other than, or in addition to, share value maximization or may have investment objectives that would not be achieved solely on the basis of a positive market reaction.[188] Because investors may be willing to forgo share value to the extent that doing so allows the investor to achieve other goals, we are unable conclusively to infer recommendation quality from stock market reactions.

Finally, studies have shown theoretically that, given certain assumptions, investors could be led to rely too much on proxy voting advice.[189] The over-reliance stems from

[177] *See* Chester S. Spatt, Milken Institute, Proxy Advisory Firms, Governance, Failure, and Regulation 7 (2019) (''Spatt 2019''), *available at https://www.milkeninstitute.org/sites/default/files/reports-pdf/Proxy%20Advisory%20Firms%20FINAL.pdf.*

[178] *See* Concept Release, *supra* note 2, at 42983.

[179] *See* 2007 GAO Report, *supra* note 9, at 17–18; *see also* Blackrock Letter, *supra* note 144, at 6 (''Blackrock's Investment Stewardship team has more than 40 professionals responsible for developing independent views on how we should vote proxies on behalf of our clients.''); NYC Comptroller Letter, *supra* note 17, at 4 (''We have five full-time staff dedicated to proxy voting during peak season, and our least-tenured investment analyst has 12 years' experience applying the NYC Funds' domestic proxy voting guidelines.''); OPERS Letter, *supra* note 8, at 2 (''OPERS also depends heavily on the research reports we receive from our proxy advisory firm. These reports are critical to the internal analyses we perform before any vote is submitted. Without access to the timely and independent research provided by our proxy advisory firm, it would be virtually impossible to meet our obligations to our members.''); 2018 Roundtable Transcript, *supra* note 40, at 194 (comments of Mr. Scot Draeger) (''If you've ever actually reviewed the benchmarks, whether it's ISS or anybody else, they're very extensive and much more detailed than small firm[s] like ours could ever develop with our own independent research.'').

[180] 2007 GAO Report, *supra* note 9, at 17–18.

[181] *See* 2016 GAO Report, *supra* note 9, at 2.

[182] *See* Cindy R. Alexander, Mark A. Chen, Duane J. Seppi, & Chester S. Spatt, *Interim News and the Role of Proxy Voting Advice,* 23 Rev. Fin. Stud. 4419, 4422 (2010); Alon Brav, Wei Jiang, Tao Li, & James Pinnington, Columbia Business School Research Paper No. 18–16, Picking Friends Before Picking (Proxy) Fights: How Mutual Fund Voting Shapes Proxy Contests 4 (2019), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3101473;* James R. Copland, David F. Larcker and Brian Tayan, Stanford Business School Closer Look Series, The Big Thumb on the Scale: An Overview of the Proxy Advisory Industry 3 (2018), *available at https://www.gsb.stanford.edu/sites/gsb/files/publication-pdf/cgri-closer-look-72-big-thumb-proxy-advisory.pdf;* Manhattan Institute, *supra* note 24, at 6; Albert Verdam, VU University of Amsterdam, An Exploration of the Role of Proxy Advisors in Proxy Voting 23 (2006), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=978835.*

[183] *See* Stephen Choi, Jill Fisch & Marcel Kahan, *The Power of Proxy Advisors: Myth or Reality?,* 59 Emory L.J. 869, 905–06 (2010); Alon Brav, Wei Jiang, Tao Li, & James Pinnington, Columbia Business School Research Paper No. 18–16, Picking Friends Before Picking (Proxy) Fights: How Mutual Fund Voting Shapes Proxy Contests 35 (2019), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3101473.* The authors find that larger mutual fund families cast votes ''in ways completely independent from what are recommended by the advisors.'' Alon Brav et al., *supra* note 182, at 35.

[184] For example, Spatt argues that the use of proxy advisory firms to produce relevant information for proxy voting and to make recommendations is an efficient market response to the cost of producing the relevant information oneself. Spatt 2019, *supra* note 177, at 8.

[185] For example, some proxy voting advice businesses provide consulting services to registrants on corporate governance or executive compensation matters, such as assistance in developing proposals to be submitted for shareholder vote. *See* Concept Release, *supra* note 2, at 42989. As a result, some proxy voting advice businesses provide voting recommendations regarding a registrant to their institutional investor clients on matters for which they may also provide consulting services to the registrant.

[186] *See supra* note 70.

[187] *See generally* David F. Larcker, Allan L. McCall & Gaizka Ormazabal, *Outsourcing Shareholder Voting to Proxy Advisory Firms,* 58 J.L. & Econ. 173 (2015). The authors find that when registrants adjust their compensation program to be more consistent with recommendations of proxy voting advice businesses, the stock market reaction is statistically negative.

[188] *See* Spatt 2019, *supra* note 177, at 4; Patrick Bolton, Tao Li, Enrichetta Ravina, & Howard L. Rosenthal, Columbia Business School Research Paper No. 18–21, Investor Ideology 37 (2019), *available at https://www.nber.org/papers/w25717.pdf;* Gregor Matvos & Michael Ostrovsky, *Heterogeneity and Peer Effects in Mutual Fund Proxy Voting,* 98 J. Fin. Econ. 90 (2010); Manhattan Institute, *supra* note 24, at 6; Albert Verdam, *supra* note 182, at 12.

[189] *See generally* Andrey Malenko & Nadya Malenko, *Proxy Advisory Firms: The Economics of Selling Information to Voters,* 74 J. FIN. 2441 (2019). In their theoretical model, the authors assume shareholders have perfectly aligned incentives with all shareholders agreeing on share value maximization as the singular goal of the firm; proxy advice is provided by a single monopolistic proxy advisory firm; and, shareholders follow proxy advisory firm advice without exception. Additionally, the authors assume that when deciding whether to invest in their own independent research, shareholders believe that their votes will be pivotal to the vote outcome. The ownership structure of the company is key to the reported findings: The paper actually shows that proxy advisory services are valuable when ownership is sufficiently dispersed. The negative affect of the use of proxy advisors is likely to arise

Continued

a collective action problem among shareholders with respect to voting because shareholders do not internalize the positive externality of their actions on other shareholders. We note, however, that this conclusion relies on the assumption that investors have the singular goal of share value maximization. The applicability of their results is limited by the extent to which investors have goals other than, or in addition to, share value maximization.

B. Economic Baseline

The baseline against which the costs, benefits, and the impact on efficiency, competition, and capital formation of the proposed amendments are measured consists of the current regulatory requirements applicable to registrants, proxy voting advice businesses, and investment advisers and other clients of these businesses, as well as current industry practices used by these entities in connection with the preparation, distribution, and use of proxy voting advice.

1. Affected Parties and Current Regulatory Framework

a. Clients of Proxy Voting Advice Businesses as Well as Underlying Investors

Clients that use proxy voting advice businesses for voting advice would be affected by the proposed rule amendments. In turn, investors and other groups on whose behalf these clients make voting determinations would be affected. As discussed in greater detail below, to our knowledge, the proxy voting advice industry in the United States consists of five major firms.[190] Three of the five firms are registered with the Commission as investment advisers and as such, provide annually updated disclosure with respect to their types of clients on Form ADV. Table 1 below reports client types as disclosed by these three proxy voting advice businesses.

TABLE 1—NUMBER OF CLIENTS BY CLIENT TYPE

Type of client[b]	Number of clients[a]		
	ISS[c]	ProxyVote Plus[d]	Segal Marco Advisors[e]
Banking or thrift institutions	130	0	0
Investment companies	183	0	0
Pooled investment vehicles	356	0	24
Pension and profit sharing plans	189	131	63
Charitable organizations	113	0	0
State or municipal government entities	12	0	0
Other investment advisers	863	0	0
Insurance companies	49	0	0
Sovereign wealth funds and foreign official institutions	9	0	0
Corporations or other businesses not listed above	127	0	0
Other	[f]208	0	[g]31
Total	2,239	131	118

[a] Form ADV filers indicate the approximate number of clients attributable to each type of client. If the filer has fewer than five clients in a particular category (other than investment companies, business development companies, and pooled investment vehicles), they may indicate that they have fewer than five clients rather than reporting the number of clients.

[b] The table excludes client types for which all three filers indicated either zero clients or less than five clients.

[c] The current Form ADV filing for ISS is available at *https://adviserinfo.sec.gov/IAPD/content/ViewForm/crd_iapd_stream_pdf.aspx?ORG_PK=111940*.

[d] The current Form ADV filing for ProxyVote Plus is available at *https://adviserinfo.sec.gov/IAPD/content/ViewForm/crd_iapd_stream_pdf.aspx?ORG_PK=122222*.

[e] The current Form ADV filing for Segal Marco Advisors is available at *https://adviserinfo.sec.gov/IAPD/content/ViewForm/crd_iapd_stream_pdf.aspx?ORG_PK=114687*. We note that Segal Marco Advisors lists two bases for registration: (i) That they are a large advisory firm, and (ii) that they are a pension consultant with respect to assets of plans having an aggregate value of at least $200,000,000 that qualifies for the exemption in Rule 203A–2(a) under the Advisers Act. As a result, some of their clients may not use Segal Marco Advisors for proxy voting advice.

[f] ISS describes clients classified as ''Other'' as ''Academic, vendor, other companies not able to identify as above.'' *See supra* note c.

[g] *See supra* note e.

Table 1 illustrates the types of clients that utilize the services of proxy voting advice businesses. For example, while investment advisers constitute a 39 percent plurality of clients for ISS, other types of clients include pooled investment vehicles (16 percent), pension and profit sharing plans (8 percent), and investment companies (8 percent). Other users of the services offered by proxy voting advice businesses include corporations, charitable organizations, insurance companies, and academic endowments. Together, these various users of proxy voting advice business services make voting determinations that affect the interests of a wide array of retail investors, beneficiaries and other constituents.

b. Proxy Voting Advice Businesses

Proxy voting advice businesses also would be affected by the proposed amendments. As the Commission has previously stated, voting advice provided by a business such as a proxy voting advice firm that markets its expertise in researching and analyzing proxy issues for purposes of helping its clients make proxy voting determinations (*i.e.,* not merely performing administrative or ministerial services) generally constitutes a solicitation subject to federal proxy rules because it is ''a communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.'' [191] Proxy voting advice businesses engaged in activities constituting solicitations typically rely

in companies with more concentrated ownership, but not very concentrated because in such cases shareholders again find proxy advisory services to be valuable.

[190] These firms are (1) Institutional Shareholder Services (''ISS''), (2) Glass Lewis & Co. (''Glass Lewis''), (3) Egan-Jones Proxy Services (''Egan-Jones''), (4) Segal Marco Advisors, and (5) ProxyVote Plus.

[191] *See* Commission Interpretation on Proxy Voting Advice, *supra* note 19, at 47417.

on two exemptions from the information and filing requirements of the federal proxy rules: Rules 14a–2(b)(1) and (b)(3).[192] Where a proxy voting advice business relies on 14a–2(b)(3), it must disclose to its clients any significant relationship with the registrant or any of its affiliates, or a security holder proponent of the matter on which advice is given, as well as any material interests of the proxy voting advice business in such matter. Even if exempt from the information and filing requirements of the federal proxy rules, the furnishing of proxy voting advice remains subject to the prohibition on false and misleading statements in Rule 14a–9.[193]

As of August 19, 2019, to our knowledge, the proxy advisory industry in the United States consists of five major firms: ISS, Glass Lewis, Egan-Jones, Marco Consulting Group (''Marco Consulting''), and ProxyVote Plus.

• ISS, founded in 1985, is a privately-held company that provides research and analysis of proxy issues, custom policy implementation, vote recommendations, vote execution, governance data, and related products and services.[194] ISS also provides advisory/consulting services, analytical tools, and other products and services to corporate registrants through ISS Corporate Solutions, Inc. (a wholly owned subsidiary).[195] As of June 2019, ISS had more than 1,800 employees in 30 offices in 13 countries, and covered approximately 44,000 shareholder meetings in 115 countries, annually.[196] ISS states that it executes about 10.2 million ballots annually on behalf of those clients.[197] ISS is registered with the Commission as an investment adviser and identifies its work as pension consultant as the basis for registering as an adviser.[198]

• Glass Lewis, established in 2003, is a privately-held company that provides research and analysis of proxy issues, custom policy implementation, vote recommendations, vote execution, and reporting and regulatory disclosure services to institutional investors.[199] As of June 2019, Glass Lewis had more than 360 employees in the U.S., the United Kingdom, Ireland, Germany, and Australia that provide services to more than 1,300 clients that collectively manage more than $35 trillion in assets.[200] Glass Lewis states that it covers more than 20,000 shareholder meetings across approximately 100 global markets annually.[201] Glass Lewis is not registered with the Commission in any capacity.

• Egan-Jones was established in 2002 as a division of Egan-Jones Ratings Company.[202] Egan-Jones is a privately-held company that provides proxy services, such as notification of meetings, research and recommendations on selected matters to be voted on, voting guidelines, execution of votes, and regulatory disclosure.[203] As of September 2016, Egan-Jones' proxy research or voting clients mostly consisted of mid- to large-sized mutual funds [204] and the firm covered approximately 40,000 companies.[205] Egan-Jones Ratings Company (Egan-Jones' parent company) is registered with the Commission as a Nationally Recognized Statistical Ratings Organization.[206]

• The proxy advisory segment of Segal Marco Advisors was originally established in 1988 as Marco Consulting and is a privately-held company that provides investment analysis and advice and proxy voting services to a large number of Taft-Hartley pension and public benefit plans.[207] Marco Consulting was acquired by Segal Advisors in 2017.[208] As of July 2019, Segal Marco Advisors votes proxies for roughly 8,000 companies annually.[209] Segal Marco Advisors is registered with the Commission as an investment adviser and identifies its work as a pension consultant as one basis for registering as an adviser.[210]

• ProxyVote Plus is an employee-owned firm established in 2002 to provide proxy voting services to Taft-Hartley pension fund clients.[211] ProxyVote Plus conducts internal research and analysis of voting issues and executes votes based on its guidelines.[212] ProxyVote Plus reviews and analyzes proxy statements and other corporate filings and reports annually to its clients on proxy votes cast on their behalf.[213] ProxyVote Plus is registered with the Commission as an investment adviser and identifies its work as a pension consultant as the basis for registering as an adviser.[214]

Of the five proxy voting advice businesses identified, ISS and Glass Lewis are the largest and most often used for proxy voting advice.[215]

c. Registrants and Other Soliciting Persons

Registrants and other soliciting persons also would be affected by the proposed amendments. Registrants that have a class of equity securities registered under Section 12 of the Exchange Act as well as non-registrant parties that conduct proxy solicitations in respect to those registrants are subject to the federal proxy rules.[216] In addition, there are certain issuers that voluntarily file proxy materials with the Commission. Finally, Rule 20a–1 under the Investment Company Act subjects all registered management investment companies to the federal proxy rules.[217]

[192] 17 CFR 240.14a–2(b)(1), (b)(3).

[193] 17 CFR 240.14a–9.

[194] *See* 2016 GAO Report, *supra* note 9, at 6.

[195] *Id.*

[196] *See supra* note 18.

[197] *Id.*

[198] *See* 2016 GAO Report, *supra* note 9, at 9.

[199] *See* 2016 GAO Report, *supra* note 9, at 7.

[200] *See* Glass Lewis, supra note 1869.

[201] *Id.*

[202] *See* 2016 GAO Report, *supra* note 9, at 7.

[203] *Id.*

[204] *Id.*

[205] *Id.* While ISS and Glass Lewis have published updated coverage statistics on their websites, the most recent data available for Egan-Jones was compiled in the 2016 GAO Report.

[206] *See* Order Granting Registration of Egan-Jones Rating Company as a Nationally Recognized Statistical Rating Organization, Exchange Act Release No. 34–57031 (Dec. 21, 2007), *available at https://www.sec.gov/ocr/ocr-current-nrsros.html#egan-jones.*

[207] *See* 2016 GAO Report, *supra* note 9, at 7.

[208] *See History,* Segal Marco Advisors, *https://www.segalmarco.com/about-us/history/* (last visited Oct. 3, 2019).

[209] *See Corporate Governance and Proxy Voting,* Segal Marco Advisors, *https://www.segalmarco.com/services/corporate-governance-and-proxy-voting/* (last visited July 9, 2019).

[210] *See* 2016 GAO Report, *supra* note 9, at 9. Segal Marco Advisors also indicates assets under management as another basis for registering as an adviser. *See* Segal Advisors, Inc., Form ADV (July 1, 2019), *available at https://adviserinfo.sec.gov/IAPD/content/ViewForm/crd_iapd_stream_pdf.aspx?ORG_PK=114687.*

[211] *See* 2016 GAO Report, *supra* note 9, at 7.

[212] *Id.* at 7–8.

[213] *Id.* at 8.

[214] *See* 2016 GAO Report, *supra* note 9, at 9.

[215] *See* 2016 GAO Report, *supra* note 9, at 8, 41 (''In some instances, we focused our review on Institutional Shareholder Services (ISS) and Glass Lewis and Co. (Glass Lewis) because they have the largest number of clients in the proxy advisory firm market in the United States.''); *see also* Center on Exec. Comp. Letter, *supra* note 24, at 1 (noting that there are ''two firms controlling roughly 97% of the market share for such services''); Soc. for Corp. Gov. Letter, *supra* note 24, at 1 (''While there are five primary proxy advisory firms in the U.S., today the market is essentially a duopoly consisting of Institutional Shareholder Services . . . and Glass Lewis & Co. . . .'').

[216] Foreign private issuers are exempt from the federal proxy rules under Rule 3a12–3(b) of the Exchange Act. *See* 17 CFR 240.3a12–3.

We are not aware of any asset-backed issuers that have a class of equity securities registered under Section 12 of the Exchange Act. Most asset-backed issuers are registered under Section 15(d) of the Exchange Act and thus are not subject to the federal proxy rules. Nine asset-backed issuers had a class of debt securities registered under Section 12 of the Exchange Act as of December 2018. As a result, these asset-backed issuers are not subject to the federal proxy rules.

[217] Rule 20a–1 under the Investment Company Act requires registered management investment companies to comply with regulations adopted pursuant to Section 14(a) of the Exchange Act that

Continued

As of December 31, 2018, there were 5,746 registrants that had a class of securities registered under Section 12 of the Exchange Act (including 98 Business Development Companies (''BDCs'')).[218] As of the same date, there were 120 companies that did not have a class of securities registered under Section 12 of the Exchange Act that voluntarily filed proxy materials.[219] As of August 31, 2019 there were 12,718 registered management investment companies that were subject to the proxy rules: (i) 12,040 open-end funds, out of which 1,910 were Exchange Traded Funds (''ETFs'') registered as open-end funds or open-end funds that had an ETF share class; (ii) 664 closed-end funds; and (iii) 14 variable annuity separate accounts registered as management investment companies.[220] The summation of these estimates yields 18,584 registrants that may be affected to a greater or lesser extent by the proposed amendments.[221]

The abovementioned estimates are an upper bound of the number of potentially affected registrants because not all of these registrants may file proxy materials related to a meeting for which a proxy voting advice business issues proxy voting advice in a given year. Out of the 18,584 potentially affected registrants mentioned above, 5,690 filed proxy materials with the Commission during calendar year 2018.[222] Out of the 5,690 registrants, 4,758 (84 percent) were Section 12 or Section 15(d) registrants and the remaining 932 (16 percent) were registered management investment companies.[223]

Further, there were 95 other soliciting persons that submitted proxy materials with the Commission during calendar year 2018.[224]

2. Certain Industry Practices

The proposed amendments would codify existing and create certain additional obligations for proxy voting advice businesses that rely on exemptions from the information and filing requirements of the proxy rules. The current practice of proxy voting advice businesses vary and to the extent industry participants may already provide similar information or offer similar review and comment opportunities under their own practices, such practices could affect our analysis of the benefits and costs of the proposed amendments.

For example, we are proposing to augment existing obligations by specifying that detailed disclosure of material conflicts of interest must be provided, as a condition to relying on the exemptions in Rules 14a–2(b)(1) and (3), in the proxy voting advice and in any electronic medium used to deliver the advice, including a discussion of the policies and procedures used to identify, and steps taken to address, potential and actual conflicts of interest. We are aware that some proxy voting advice businesses have disclosure practices and procedures regarding conflicts of interest that may be similar to these proposed disclosure requirements.[225] For example, Glass Lewis has noted that it adds a statement to the front cover of its proxy voting advice when it determines that there is a potential conflict of interest.[226] Further, ISS has noted that its proxy voting advice contains a legend indicating that the subject of the advice may be a client of ISS' subsidiary, ISS Corporate Solutions, Inc. (ICS).[227]

would be applicable to a proxy solicitation if it were made in respect of a security registered pursuant to Section 12 of the Exchange Act. *See* 17 CFR 270.20a–1.

''Registered management investment company'' means any investment company other than a face-amount certificate company or a unit investment trust. *See* 15 U.S.C. 80a–4.

[218] We estimate the number of registrants with a class of securities registered under Section 12 of the Exchange Act by reviewing all Forms 10–K filed during calendar year 2018 with the Commission and counting the number of unique registrants that identify themselves as having a class of securities registered under Section 12(b) or Section 12(g) of the Exchange Act. Foreign private issuers that filed Forms 20–F and 40–F and asset-backed issuers that filed Forms 10–D and 10–D/A during calendar year 2018 with the Commission are excluded from this estimate.

BDCs are all entities that have been issued an 814-reporting number. Our estimate includes BDCs that may be delinquent or have filed extensions for their filings, and it excludes 6 wholly-owned subsidiaries of other BDCs.

[219] We identify issuers that voluntarily file proxy materials as those (1) subject to the reporting obligations of Exchange Act Section 15(d) but that do not have a class of equity securities registered under Exchange Act Section 12(b) or 12(g) and (2) that filed any proxy materials during calendar year 2018 with the Commission. The proxy materials we consider in our analysis are DEF14A, DEF14C, DEFA14A, DEFC14A, DEFM14A, DEFM14C, DEFR14A, DEFR14C, DFAN14A, N–14, PRE 14A, PRE 14C, PREC14A, PREM14A, PREM14C, PRER14A and PRER14C. Form N–14 can be a registration statement and/or proxy statement. We manually review all Forms N–14 filed during calendar year 2018 with the Commission and we exclude from our estimates Forms N–14 that are exclusively registration statements.

To identify issuers reporting pursuant to Section 15(d) but not registered under Section 12(b) or Section 12(g), we review all Forms 10–K filed in calendar year 2018 with the Commission and count the number of unique issuers that identify themselves as subject to Section 15(d) reporting obligations but with no class of equity securities registered under Section 12(b) or Section 12(g).

[220] We estimate the number of unique registered management investment companies based on Forms N–CEN filed between June 2018 and August 2019 with the Commission. Open-end funds are registered on Form N–1A. Closed-end funds are registered on Form N–2. Variable annuity separate accounts registered as management investment companies are trusts registered on Form N–3.

The number of potentially affected Section 12 and Section 15(d) registrants is estimated over a different time period (*i.e.,* January 2018 to December 2018) than the number of potentially affected registered management investment companies (*i.e.,* June 2018 to August 2019) because there is no complete N–CEN data for the most recent full calendar year (*i.e.,* 2018). Registered management investment companies started submitting Form N–CEN in September 2018 for the period ended on June 30, 2018 with the Commission.

[221] The 18,584 potentially affected registrants is the sum of:

- 5,746 registrants with a class of securities registered under Section 12 of the Exchange Act;
- 120 registrants without a class of securities registered under Section 12 of the Exchange Act that voluntarily filed proxy materials; and
- 12,718 registered management investment companies.

[222] For details on the estimation of companies that filed proxy materials with the Commission during calendar year 2018, *see supra* note 218.

[223] According to data from Forms N–CEN filed with the Commission between June 2018 and August 2019, there were 965 registered management investment companies that submitted matters for its security holders' vote during the reporting period: (i) 729 open-end funds, out of which 86 were ETFs registered as open-end funds or open-end funds that had an ETF share class; (ii) 235 closed-end funds; and (iii) 1 variable annuity separate account. *See* Form N–CEN Item B.10). The discrepancy in the estimated number of registered management investment companies submitting proxy filings (*i.e.,* 932) and Form N–CEN data (*i.e.,* 965) likely is attributable to the different time periods over which the two statistics are estimated.

[224] We estimate other soliciting persons as the number of unique CIKs of entities that submitted Forms DEFC14A, DEFN14A, and DFAN14A during calendar year 2018 with the Commission.

[225] *See supra* note 76.

[226] *See* Glass Lewis Letter, *supra* note 16, at 9 (''Glass Lewis makes full disclosure to its clients to enable them the opportunity to understand the nature and scope of the potential conflict and make an assessment about the reliability or objectivity of the recommendation. This is done by adding a disclosure note to the front cover of the relevant proxy research report when Glass Lewis determines that there is a potential conflict of interest (*e.g.,* related to Glass Lewis' ownership structure, business partnerships, client-submitted shareholder proposals, employee and outside advisors' relationships and when an investment manager client is a public company or a division of a public company).'').

[227] *See* Letter from Gary Retelny, President and Chief Executive Officer, Institutional Shareholder Services to the Committee on Banking, Housing and Urban Affairs, U.S. Senate (July 6, 2018), at 4, *available at https://www.issgovernance.com/file/duediligence/20180706-iss-senate-hearing-statement.pdf* (describing measures ISS has historically taken to ensure transparency of any potential conflicts associated with ISS Corporate Solutions, Inc. (''ICS''), which is a subsidiary of ISS that provides governance tools and services to client) (''ISS' institutional clients can readily identify any potential conflict of interest through ISS' primary client delivery platform, ProxyExchange (PX), which provides information about the identity of ICS clients, as well as the types of services provided to those registrants and the revenue received from them. Similarly, each proxy analysis and research report issued by ISS contains a legend indicating that the subject of the analysis or report may be a client of ICS. This legend also advises institutional clients about the way in which they can receive additional, specific details about

We are also proposing conditions that would require that registrants and any other soliciting person covered by the proxy voting advice be provided the opportunity to review and provide feedback on the proxy voting advice that the proxy voting advice business intends to deliver to its clients before such advice is disseminated. The availability and length of the period for review and feedback would depend on how early the registrant filed its definitive proxy statement.[228] These amendments are intended to give registrants and other soliciting persons an opportunity to engage with the proxy voting advice business and identify factual errors or methodological weaknesses in the proxy voting advice before it is disseminated to clients.

We understand that Glass Lewis and ISS both currently provide some opportunities for registrants to review and respond to some aspects of their proxy voting advice. Glass Lewis offers a program that allows participating registrants to request, and be provided with, a data-only version of its proxy voting advice prior to Glass Lewis completing the analysis based on that data.[229] This process enables registrants to notify Glass Lewis of any factual mistakes in the data prior to Glass Lewis completing and publishing the analysis for its clients.[230] Under this program, registrants are provided 48 hours to review the draft analysis and provide corrections.[231] ISS offers Standard & Poor's 500 companies and companies in comparable large capitalization indices in certain countries outside the United States an opportunity to review a draft analysis for factual errors prior to delivery of proxy voting advice to clients.[232] ISS provides registrants one to two business days to review draft proxy voting advice and provide feedback before ISS disseminates the voting advice to clients.[233]

The proposed amendments also would provide registrants and other soliciting persons with a final notice of voting advice. This notice, which must contain a copy of the proxy voting advice that the proxy voting advice business will deliver to its clients, including any revisions to such advice made as a result of the review and feedback period, must be provided by the proxy voting advice business no later than two business days prior to delivery of the proxy voting advice to its clients. We are not aware of any proxy voting advice business that provides registrants with such copies of proxy voting advice before it is provided to clients. Most registrants do not become aware of the data used in the proxy voting advice business's analysis or the recommendations derived therefrom until after the voting advice has been issued to the proxy voting advice business's clients, to the extent the registrant has access to the proxy voting advice at all.[234]

Finally, the proposed amendments would require that proxy voting advice businesses include in their proxy voting advice and in any electronic medium used to deliver the proxy voting advice, if requested by the registrant or other soliciting person, a hyperlink (or other analogous electronic medium) to the registrant's or other soliciting person's statement regarding the proxy voting advice. The statement would constitute a ''solicitation'' as defined in Rule 14a–1(1) and be subject to the anti-fraud prohibitions of Rule 14a–9, as well as the filing requirements of Exchange Act Rule 14a–2. Currently, if registrants have concerns with the recommendations of proxy voting advice businesses, registrants can file additional definitive proxy materials with the Commission to address their concerns with the recommendations or analysis, but such an effort may not be effective. Some registrants have asserted that a large percentage of proxies are voted within 24 to 48 hours of proxy voting advice being issued [235] and that it can be difficult to access and analyze the proxy voting advice, formulate a response, and file the necessary materials with the Commission within that time period.[236]

We do not have data that would allow us to examine with a meaningful degree of precision the timing of when proxies are voted. In 2016, 2017, and 2018, the number of unique registrants that filed proxy materials with the Commission was 5,690, 5,744, and 5,862, respectively.[237] Table 2 below reports the total number of times registrants filed additional definitive proxy materials in response to proxy voting advice in calendar years 2016, 2017, and 2018.[238] Table 2 also reports the number of instances registrants indicated particular concerns with respect to the proxy voting advice.[239]

any registrant's use of products and services from ICS, which can be as simple as emailing our Legal/Compliance department . . . .'').

[228] *See* proposed Rule 14a–2(b)(9)(ii)(A)(*1*) and (A)(*2*). If the registrant files its definitive proxy statement at least 45 calendar days before the security holder meeting date, it will be given five business days to complete an initial review the proxy voting advice; if the registrant files less than 45 calendar days but at least 25 calendar days before the meeting, it will be given no less than three business days to review. If the registrant files 25 calendar days or fewer before the meeting, there would not be a requirement to provide a review opportunity.

[229] Glass Lewis Letter, *supra* note 16, at 6; *see supra* note 102.

[230] Glass Lewis Letter, *supra* note 16, at 6.

[231] *See Issuer Data Report,* Glass Lewis, *https://www.glasslewis.com/issuer-data-report/* (last visited July 30, 2019).

[232] *See* 2018 Roundtable Transcript, *supra* note 40, at 231–32 (comments of Mr. Gary Retelny) (''[W]e distribute prior to publishing our final report, our draft report [to] the S&P 500 generally and other large global companies. We do not do it for everyone.''); *see also* ISS Letter, *supra* note 9, at 10.

[233] *See* 2016 GAO Report, *supra* note 9, at 28.

[234] *See, e.g., supra* note 232.

[235] *See, e.g.,* 2018 Roundtable Transcript, *supra* note 40, at 242 (comment of Mr. Adam Kokas) (''[W]ithin a day or so of the report coming out, depending on the firm, 30 to 45 percent of our shares are voted within 24 to 48 hours.''); Soc. for Corp. Gov. Letter, *supra* note 24, at 3 (''Anecdotal evidence from some of our members consistently shows that as much as 30% of the total shareholder votes are cast within 24 hours of the ISS and Glass Lewis recommendations being released to their subscribers . . . .''); *see also* Placenti, *supra* note 40, at 8.

[236] *See* 2018 Roundtable Transcript, *supra* note 40, at 228 (comment of Mr. Adam Kokas) (''[F]or all of these things related to proxy advisory firm reports and voting, there's a before and there's an after. So once the report is issued, it is an uphill battle, to say the least, from a public company perspective, certainly from a small to mid-market cap company, filing SEC solicitation materials or doing other things to try to correct the record are very difficult.'').

[237] *See supra* note 218 for details on the estimation of registrants that filed proxy materials with the Commission during a calendar year.

[238] *Id.*

[239] We divide registrant concerns into five categories: (1) Factual errors, (2) analytical errors, (3) general or policy disputes, (4) amended or modified proposal, and (5) other. We classify a concern as ''factual errors'' when the registrant identifies what it considers to be incorrect data or inaccurate facts that the proxy voting advice business uses in some part as a basis for its negative recommendation. We classify a concern as ''analytical errors'' when the registrant identifies what it considers to be methodological errors in the proxy voting advice business's analysis that it used as a basis for its negative recommendation. We classify a concern as ''general or policy disputes'' when the registrant does not dispute the facts or the analytical methodology employed but instead generally espouses the view that specific evaluation policies or the evaluation framework established by the proxy voting advice business are overly simplistic or restrictive and do not adequately or holistically capture the merits of the proposal. We classify a concern as ''amended or modified proposal'' when the registrant responds to a current or prior year negative recommendation from a proxy voting advice business by indicating that it has amended or modified proposals or existing governance practices prior to the annual meeting and requests investor consideration of these facts in making their vote. Finally, we classify as ''other'' those concerns where the registrant objects to the proxy voting advice business's negative recommendation but does not specifically cite nor respond to the rationale for the negative recommendation and instead makes a generalized argument in favor of the proposal. Registrants may have more than one concern with a proxy voting advice business's voting advice, so the number of firms filing amended proxy materials may not equal the sum of concern types within a given year.

TABLE 2—REGISTRANT CONCERNS IDENTIFIED IN ADDITIONAL DEFINITIVE PROXY MATERIALS

	Type of registrant concern					
Year	Filings	Factual errors	Analytical errors	General or policy dispute	Amended or modified proposal	Other
2016	99	24	40	54	18	11
2017	77	13	28	42	10	8
2018	84	17	28	58	6	2

Although not required, registrants sometimes indicate in their additional definitive proxy materials the date on which they first became aware of the proxy voting advice business's voting advice. The date may represent the date the proxy voting advice was issued or may represent the date an advance copy was provided to the registrant. For example, in 2018, in 14 of the 84 filings, the registrant indicated the date on which it first became aware of voting advice issued by a proxy voting advice business.[240] Among those 14 filings, the median (average) number of business days between the proxy voting advice business issuing its advice and the registrant filing amended proxy materials was 3 (3.8) business days.[241] The median (average) number of business days remaining until the shareholder meeting was to take place with regard to those 14 filings was 9.5 (10.3) business days.[242]

It may be the case that, as discussed above, some registrants expect a large percentage of proxies to be voted within a short period of time following the issuance of proxy voting advice.[243] As a result, some registrants may not file additional definitive proxy materials if they do not have the resources to do so quickly or if they do not think the effort would have a meaningful impact on votes.[244] This decision may deprive market participants of information that would reasonably be expected to affect a voting or investment decision.

C. Benefits and Costs

We discuss the economic effects of the proposed amendments below. For both the benefits and the costs, we consider each piece of the proposed amendments in turn. The proposed amendments include: (1) Amendments to the definition of solicitation in Rule 14a–1(1); (2) conditioning availability of the exemptions in Rules 14a–2(b)(1) and (b)(3) on proxy voting advice businesses providing disclosure regarding conflicts of interest; (3) conditioning availability of those exemptions on proxy voting advice businesses providing registrants and certain soliciting persons the opportunity to review and respond to draft proxy voting advice, subject to the registrant or other soliciting persons filing definitive proxy statements at least 25 calendar days (45 calendar days, if the longer review and response period is desired) before the relevant meeting; and (4) an amendment to the examples in Rule 14a–9 of disclosure that, if omitted from a proxy solicitation, may be misleading.

1. Benefits

First, we are proposing to codify the Commission's interpretation that, as a general matter, proxy voting advice constitutes a solicitation within the meaning of the Exchange Act Rule 14a–1(l). Overall, we do not expect this proposed amendment to have a significant economic impact because it codifies an already-existing Commission interpretation. Nonetheless, at the margins, this proposed amendment may benefit proxy voting advice businesses and their clients to the extent that codifying this interpretation in the Commission's proxy rules provides more clear notice that Section 14(a) and the proxy rules apply to proxy voting advice. We also are proposing to amend Rule 14a–1(l)(2) to clarify that the furnishing of proxy voting advice by certain persons would not be deemed a solicitation. Specifically, voting advice from a person who furnishes such advice only in response to an unprompted request for the advice would not be deemed a solicitation. Again, we do not expect this proposed amendment to have a significant economic impact because it codifies the Commission's longstanding view that such a communication should not be regarded as a solicitation subject to the proxy rules.

Second, we are proposing to amend rule 14a–2(b) to make the availability of the exemptions in Rules 14a–2(b)(1) and (b)(3) for proxy voting advice businesses contingent on providing enhanced disclosure of conflicts of interest specifically tailored to proxy voting advice businesses and the nature of their services.[245] The proposed conflicts of interest disclosures are intended to augment existing requirements by specifying detailed disclosures about conflicts of interest that must be provided in proxy voting advice. The disclosures provided under the proposed amendments would need to be sufficiently detailed so that clients of proxy voting advice businesses can understand the nature and scope of the interest, transaction, or relationship and assess the objectivity and reliability of the proxy voting advice they receive. In addition, proxy voting advice businesses would be required to disclose any policies and procedures used to identify, as well as the steps taken to address, any material conflicts of interest, whether actual or potential, arising from such relationships and transactions. The proposed amendments also would specify that the enhanced conflicts disclosures must be provided in the proxy voting advice and in any electronic medium used to deliver the advice.

The proposed amendments could benefit the clients of proxy voting advice businesses by enabling them to better assess the objectivity of the proxy voting advice businesses' advice against potentially competing interests. The proposed amendment could also benefit clients of proxy voting advice businesses because they would receive the same information about potential conflicts of interest, regardless of which exemption the proxy voting advice business relies upon for its proxy voting advice (currently, only proxy voting advice businesses relying on the 14a–2(b)(3) exemption are required to provide disclosure about conflicts of interest). Furthermore, the requirement

[240] For 2017 and 2016, the number of filings indicating the date on which the registrant became aware of a proxy voting advice business's voting advice was 14 of 77 and 21 of 99, respectively.

[241] The median (average) number of business days between the proxy voting advice business issuing its advice and the registrant filing additional definitive proxy materials for 2017 and 2016 was 4.5 (6.4) and 3 (5), respectively.

[242] The median (average) number of business days remaining until the shareholder meeting was to take place in 2017 and 2016 was 5.5 (8.4) and 8 (12.8), respectively.

[243] *See supra* note 235.

[244] *See supra* note 236.

[245] *See supra* note 84.

that conflicts of interest disclosures be included in the proxy advisor's voting advice could benefit clients of proxy voting advice businesses by making more standard the manner in which such information is disclosed and ensuring that the required disclosures receive due prominence and can be considered together with proxy voting advice at the time clients are making voting determinations. This may, in turn, make it easier or more efficient for such clients to review and analyze the conflicts disclosure. Disclosure of material conflicts of interest can lead to more informed decision making, and we anticipate that institutional investors would use information from disclosures of material conflicts of interest to make more informed voting decisions. Thus, to the extent they cause the clients of proxy voting advice businesses to make more informed voting decisions on investors' behalf, these disclosure requirements could also benefit investors. Further, these disclosures could make it easier and more efficient for clients that are investment advisers to evaluate and determine whether to retain proxy voting advice businesses, in order to ensure that the investment adviser discharges its fiduciary duty to cast votes in the best interest of its clients.

As we discuss in Section II.B.1 above, we are aware that some proxy voting advice businesses have asserted that that they have practices and procedures that address conflict of interest concerns.[246] Even where certain proxy voting advice businesses may provide detailed disclosure about conflicts of interest under existing practices, requiring this disclosure as a condition to the proxy rule exemptions would help to ensure that the disclosure is more consistent across the proxy voting advice provided by proxy voting advice businesses, and would provide users of that advice with ready and timely access to such disclosure in the proxy voting advice and in any electronic medium used to deliver the advice. We believe this would allow clients of proxy voting advice businesses to more efficiently access and assess the conflicts disclosure. We note, however, to the extent that proxy voting advice businesses currently provide information that meets or exceeds the proposed disclosure requirements, the benefits we describe above would be more limited.[247]

Third, the proposed amendments to Rule 14a–2(b)(9) would, subject to the registrant or other soliciting persons filing definitive proxy statements at least 25 calendar days (45 calendar days, if the longer review and response period is desired) before the relevant meeting, require that proxy voting advice be provided to registrants and other soliciting persons before it is disseminated to clients of proxy advice businesses, in order to allow such registrants and other soliciting persons an opportunity for their review and feedback. The proposed amendments also would require that a proxy voting advice business, upon request, include in its proxy voting advice a hyperlink or other analogous electronic medium that leads to the registrant's or other soliciting person's response to the advice. We believe the proposed amendments would benefit clients of proxy voting advice businesses—and thereby ultimately benefit the investors they serve—by enhancing the overall mix of information available to those clients as they assess voting recommendations and make determinations about how to cast votes. Providing a standardized opportunity for registrants and other soliciting persons to review and provide feedback could also help identify factual errors or methodological weaknesses in the proxy voting advice businesses' analysis that could undermine the reliability of their proxy voting recommendations. To the extent that proxy voting advice businesses refine their advice based on feedback from registrants and other soliciting persons, users of the advice and the investors they serve (if applicable) could benefit from more accurate and complete voting advice. Even where the proxy voting advice is not revised based on feedback received, clients of these businesses may still benefit from having ready and timely access to the registrant's and other soliciting person's perspective when considering the advice, such as where there are differing views about the proxy advisor's methodological approach or other differences of opinion that the registrant or other soliciting person believes are relevant to the voting advice. This is particularly true where, as may often be the case, clients of proxy voting advice businesses must make voting decisions in a compressed time period.

The proposed amendments also could benefit registrants and other soliciting persons by providing them the opportunity to identify any factual errors or methodological weaknesses that may underlie relevant proxy voting advice before it is disseminated and potentially relied upon by clients to make voting determinations. Similarly, by providing registrants and other soliciting persons the opportunity to include within the advice a link to their response, these parties would be able to communicate their views at the same time as the views of the proxy voting advice business are presented and in a manner they deem most appropriate or effective. Taken together, these factors may give assurance to registrants and other soliciting persons that clients of proxy voting advice businesses have access to accurate and reliable information and to all views related to matters upon which they are asked to vote.

As we discuss in Section III.B.2, some proxy voting advice businesses have internal policies and procedures aimed at enabling feedback from registrants before their voting advice is issued. To the extent that proxy voting advice businesses currently enable feedback from registrants, the benefits we describe above would be more limited. While some proxy voting advice businesses provide opportunities for review and feedback, these existing practices may be inadequate to address registrants' or other soliciting persons' concerns and ensure that those who make proxy voting decisions receive information that is complete and accurate in all material respects. In addition, it does not appear that proxy voting advice businesses currently provide all registrants and other soliciting persons with an opportunity to review proxy voting advice.[248] The proposed requirements could benefit clients of proxy voting advice businesses by standardizing the review and feedback process so that all clients would benefit from changes that result from a registrant's feedback and also from the ability to access a registrant's response if the registrant chooses to provide one.

We note that the benefits described above also would be limited to the extent registrants already respond to proxy voting advice by filing additional definitive proxy materials and those additional definitive proxy materials are effective in informing voting determinations. As discussed above, however, due to timing considerations, it may be difficult for registrants or other soliciting persons to respond effectively to proxy voting advice by filing amended proxy materials.[249] We also note that to the extent the 45 and 25 calendar day filing thresholds encourage registrants and other soliciting persons to file their definitive proxy statements earlier than they

[246] *See supra* note 76.

[247] *See supra* note 76.

[248] *See supra* note 100.

[249] *See supra* Section III.B.2.

otherwise would, this could benefit investors generally as they would have more time to review the materials and, as discussed below to help mitigate potential costs for proxy voting advice businesses.

Finally, we are proposing to amend Rule 14a–9 to add as an example of what could be misleading, if omitted, certain disclosures that are relevant to proxy voting advice, specifically disclosures related to the proxy voting advice business's methodology, sources of information, conflicts of interest or the use of standards that materially differ from relevant standards or requirements that the Commission sets or approves. There is a risk that, where such disclosures are omitted, clients of proxy voting advice businesses may make their voting determinations based on incomplete information regarding the basis of the proxy voting advice, or upon a misapprehension that a registrant is not in compliance with applicable laws or regulations.

We do not expect the proposed amendment to the list of examples in Rule 14a–9 to significantly alter existing disclosure practices, as it would largely codify existing Commission guidance on the applicability of Rule 14a–9 to proxy voting advice.[250] To the extent the proposed amendment prompts some proxy voting advice businesses to provide additional disclosure about the bases for their voting advice, the clients of these businesses—and the investors they serve—may benefit from receiving additional information that could aid in making voting determinations. For example, clients may benefit from more clarity about how proxy voting advice business standards or criteria differ from existing regulatory requirements. We note, however, that this benefit to clients of proxy voting advice businesses would be more limited to the extent the clients already are aware of, and incorporate in their consideration of proxy voting advice, existing regulatory requirements and understand how such requirements differ from the standards and criteria applied by proxy voting advice businesses.

2. Costs

We expect that proxy voting advice businesses as well as registrants and other soliciting persons would incur direct costs as a result of the proposed amendments. We expect clients of proxy voting advice businesses and investors may incur indirect costs as well. In this section, we analyze these costs in terms of how the proposed amendments would change disclosure and engagement practices for proxy voting advice businesses relative to the baseline. We note that, to the extent that proxy voting advice businesses incur costs associated with the risk of a failure to comply with the proposed conditions, these costs may be mitigated by the proposed provision specifying that an immaterial or unintentional failure to comply with the new conditions would not result in a loss of the proxy rule exemptions. Further, to the extent that any of the proposed amendments impose direct costs on proxy voting advice businesses and to the extent those costs are passed along, the proposed amendments could create indirect costs for clients of proxy voting advice businesses, including investment advisers and other institutional investors, and the underlying investors they serve, if applicable.

First, with respect to the proposed amendments to Rule 14a–1(l), we do not expect these amendments to have a significant economic impact because they codify already existing Commission interpretations and views about the applicability of the federal proxy rules to proxy voting advice.

Second, the proposed conflicts of interest disclosure requirements would impose a direct cost on proxy voting advice businesses. For example, proxy voting advice businesses would bear any direct costs associated with: (i) Reviewing and preparing disclosures describing their conflicts; (ii) developing and maintaining methods for tracking their conflicts; (iii) seeking legal or other advice; and, (iv) updating their voting platforms. Proxy voting advisory businesses that are investment advisers are already required to identify conflicts and to eliminate or make full and fair disclosure of those conflicts.[251] Further, proxy voting advisory businesses that are retained by investment advisers to assist them in discharging their proxy voting duties may already provide such conflicts disclosure in connection with the investment advisers' evaluation of the capacity and competency of the proxy voting advice business. We are unable to provide quantitative estimates of these direct costs on proxy voting advice businesses for three reasons. The facts and circumstances unique to each proxy voting advice business and the nature of its material interests, transactions, and relationships will dictate the disclosure it provides. In addition, as discussed in Section II.B.1 above, boilerplate language would not be sufficient to satisfy proposed Rule 14a–2(b)(9)(i). Under the rule, a proxy voting advice business would have to provide conflicts disclosure with enough specificity to enable its proxy advisory clients to adequately assess the objectivity and reliability of the proxy voting advice. As a result, the disclosure provided by the proxy voting advice business could differ depending on the circumstances (*e.g.,* depending on the scope of services they provide their clients and the subject registrant) and be subject to change in the future as both the business's and its clients' interests change. Finally, proxy voting advice businesses' direct costs will depend on the extent to which their current practices and procedures would meet or exceed the proposed disclosure requirements.[252]

Third, with respect to the proposed requirement that registrants and other soliciting persons be given an opportunity to review and provide feedback on the proxy voting advice and receive a final notice of voting advice, the business would bear direct costs. Specifically, such businesses would bear any direct costs associated with: (i) Modifying current systems, or developing and maintaining systems to track the timing associated with these new requirements; (ii) modifying current systems and methods, or developing and maintaining new systems and methods to share the proxy voting advice with registrants and other soliciting persons; and (iii) delivering draft voting advice to registrants and other soliciting persons for their review and feedback. While some proxy voting advice businesses may already have systems in place to address some or all of these mechanics,[253] we are not able to estimate the costs associated with modifying or developing these systems and methods. To the extent proxy voting advice businesses already have similar systems in place, any additional direct

[250] *See* Commission Interpretation on Proxy Voting Advice, *supra* note 19, at 11–13.

[251] *See* Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Release No. IA–5248 (June 5, 2019), 84 FR 33669, at 33671 (July 12, 2019).

[252] *See supra* note 89. We solicit comment and data on the extent to which current proxy voting advice business practices and procedures would meet or exceed proposed disclosure requirements.

[253] *See, e.g.,* Glass Lewis Letter, *supra* note 16, at 5–6 (''Glass Lewis has a resource center on its website designed specifically for the issuer community via which public companies, their directors and advisors can, among other things: (i) Submit company filings or supplementary publicly available information; (ii) participate in Glass Lewis' Issuer Data Report ('IDR') program, prior to Glass Lewis completing and publishing its analysis to its investor clients; and (iii) report a purported factual error or omission in a research report, the receipt of which is acknowledged immediately by Glass Lewis, then reviewed, tracked and dealt with internally prior to responding to the company in a timely manner.'').

cost may be limited. Because we lack data on the extent to which proxy voting advice businesses already have similar systems in place, we are unable to quantify this potential cost.

The requirement to provide proxy voting advice to registrants and other soliciting persons for their review and feedback would increase the risk that commercially sensitive information about proxy voting advice may be disseminated more broadly. To mitigate this risk, the proposed amendments to Rule 14a–2(b)(9) would allow proxy voting advice businesses to require that registrants and other soliciting persons agree to keep the information confidential as a condition of receiving the proxy voting advice. We believe this provision would mitigate potential costs to proxy voting advice businesses by allowing them to maintain control over the dissemination of their proxy voting advice and minimize the risk of unintentional or unauthorized release.

The proxy voting advice business may also incur costs associated with processing and considering the registrant's or other soliciting person's feedback and making determinations as to whether changes to the proxy voting advice are necessary or appropriate based on such feedback. Further, allowing registrants and other soliciting persons time to review and provide feedback on voting advice could delay when the businesses deliver their advice to clients. This may require proxy voting advice businesses to renegotiate their agreements with clients to the extent that proxy voting advice businesses may be contractually obligated to deliver their advice by specified dates. Alternatively, the proxy voting advice businesses may need to expend greater resources to ensure delivery by the date on which they would have delivered the advice in the absence of the requirement to allow registrants and other soliciting persons the opportunity to review and provide feedback on the proxy voting advice. These additional costs could be mitigated by the proxy voting advice business receiving more time than it otherwise would to review the definitive proxy statements as a result of the incentives created by the 45 calendar days and 25 calendar days filing thresholds in proposed Rule 14a–2(b)(9)(ii). We lack the data necessary to quantify this cost. Additionally, allowing a registrant or other soliciting person to review and provide feedback on the voting advice before the proxy voting advice business provides it to its clients could impact perceptions about the independence and objectivity of the advice.[254] This, in turn, could affect the willingness of investment advisers and other clients to engage the services of proxy voting advice businesses. Although the feedback process may give users of the advice more confidence that it is accurate and informed by the issuer's review, this consultation process has been noted by some as possibly affecting the independence and objectivity of the advice. This possible concern may be limited by the fact that the proposed rules would not require proxy voting advice businesses to make changes to the voting advice based on a registrant's feedback. Proxy voting advisory businesses also may develop other practices and policies to assure clients of their independence from the registrant.

Registrants and other soliciting persons also would incur direct costs associated with coordinating with proxy voting advice businesses to receive the proxy voting advice, reviewing the proxy voting advice within a relatively compressed timeframe, and determining whether to offer feedback to the proxy voting advice business regarding factual or methodological issues or other matters pertaining to the proxy voting advice. Because the extent of the registrant or other soliciting person's engagement with the proxy voting advice business would depend upon the particular facts and circumstances of the proxy voting advice and any issues identified therein, as well as the resources of the registrant or other soliciting person, it is difficult to provide a quantifiable estimate of these costs.

To the extent proxy voting advice businesses do not deliver their voting advice by the date on which they would have delivered the voting advice in the absence of the requirement to allow registrants and other soliciting persons the opportunity to review and provide feedback on the voting advice, clients of proxy voting advice businesses would incur an indirect cost in that they would have less time to consider the business's voting advice prior to the proxy vote. This cost may be mitigated, however, to the extent that the advice they do eventually receive would be based on more accurate, transparent, and complete information.

If registrants and other soliciting persons choose to provide a statement regarding the proxy voting advice, registrants and other soliciting persons would incur costs of drafting a statement, providing a hyperlink (or other analogous electronic medium) to the proxy voting advice business, maintaining their statement online, and coordinating timing with proxy voting advice businesses for the filing of supplementary proxy materials.[255] We do not have data with respect to these costs. The proxy voting advice business would also incur a direct cost of including that hyperlink or other analogous electronic mechanism. We believe this cost would be small.

Finally, the proposed amendments to Rule 14a–9 may impose direct costs on proxy voting advice businesses to the extent the proposed amendment prompts some proxy voting advice businesses to provide additional disclosure about the bases for their voting advice. We expect any such costs to be minimal, especially given that most of the examples were already included in existing Commission guidance.[256]

D. Effects on Efficiency, Competition, and Capital Formation

1. Efficiency

As discussed in Section II.B above, proxy voting advice businesses perform a variety of functions for their clients, including analyzing and making voting recommendations on matters presented for shareholder vote and included in registrants' proxy statements. As an alternative to utilizing these services, clients of proxy voting advice businesses could instead conduct their

[254] *See* ISS Letter, *supra* note 9, at 11 (''Although we understand that some issuers believe they should have the right to review and object to every vote recommendation ISS makes—and in some cases, even interject their views into ISS proxy research reports—granting issuers such extreme influence over independent proxy advice would interfere with a proxy adviser's fiduciary responsibility to its clients, and hurt both investors and the integrity of the voting process.''); *see also* 2018 Roundtable Transcript, *supra* note 40, at 232 (comment of Gary Retelny) (''[M]any of our clients do not like us sharing our report with registrants prior to them seeing it. They want to be the first ones to see it. So there is a tension there between sharing the report itself with the registrant prior to sending it to the ones that actually pay for it. Right?''); Glass Lewis Letter, *supra* note 16, at 8 (''We believe that allowing an issuer to engage with us during the solicitation period may lead to discussions about the registrant's proxy, thereby providing registrants with an opportunity to lobby Glass Lewis for a change in policy or a specific recommendation against management. To ensure our research is always objective, Glass Lewis takes this added precaution and postpones any engagements until after the solicitation period has ended . . . .'').

[255] Registrants are not required to respond to proxy voting advice nor are required to request that a hyperlink or other analogous electronic means be included in the proxy. Presumably, registrants would respond to proxy voting advice only when they believe doing so would have a net beneficial effect for them.

[256] *See supra* notes 45, 51 and accompanying text.

own analysis and execute votes internally.[257]

We believe that, for purposes of general analysis, it is appropriate to assume that the cost of analyzing matters presented for shareholder vote would not vary significantly with the size of the position being voted. Given the costs of analyzing and voting proxies, the services offered by proxy voting advice businesses may offer economies of scale relative to their clients performing those functions themselves. For example, a GAO study found that among 31 institutional investors, large institutions rely less than small institutions on the research and recommendations offered by proxy voting advice businesses.[258] Small institutional investors surveyed in the study indicated they had limited resources to conduct their own research.[259]

By establishing requirements that promote accuracy and transparency in proxy voting advice, the proposed amendments could lead to an increased demand for voting advice from proxy voting advice businesses. To the extent proxy voting advice businesses offer economies of scale relative to their clients performing certain functions themselves, increased demand for, and reliance upon, proxy voting advice business services could lead to greater efficiencies in the proxy voting process. At the same time, as discussed above and below, the proposed amendments would impose certain additional costs on proxy voting advice businesses. As discussed above, these costs to proxy voting advice businesses could reduce compliance costs for their clients. To the extent these costs are greater than the related benefits (or vice versa) it could lead to decreased (or increased) demand for proxy voting advice business services, and there would be fewer (or more) efficiencies in the proxy voting process.

2. Competition

As noted above, the proposed amendment could lead to increased demand for proxy voting advice business services. Increased demand for their services could, in turn, lead to increased competition among proxy voting advice businesses to meet that increased demand. Alternatively, the increased demand for advisory services could lead to an increase in the number of proxy voting advice businesses in the marketplace, also leading to an increase in competition among proxy voting advice businesses.

In addition to potentially increasing demand for voting advice from proxy voting advice businesses by establishing requirements that promote accuracy and transparency in proxy voting advice, the requirements that promote accuracy and transparency in proxy voting advice could stimulate competition among proxy voting advice businesses with respect to the quality of advice. In particular, clients of proxy voting advice businesses may be better able to assess conflicts and the accuracy of advice, which could, in turn, cause proxy voting advice businesses to compete more on those dimensions.[260]

It is also possible, however, that the proposed amendments could have the opposite effect on competition. The proposed amendments would cause proxy voting advice businesses to incur certain additional compliance costs as discussed in Section II.C.2 above that may or may not be offset by a reduction in compliance costs for their clients. It is difficult to predict how those costs and benefits would be shared among, or between, proxy voting advice businesses and their clients. If costs borne by proxy voting advice businesses are large enough to cause some businesses to exit the market or potential entrants to stay out of the market, the proposed rules could decrease competition. Alternatively, if proxy voting advice businesses do try to pass along the costs, or some component thereof, to their clients, it is possible that those costs would be large enough to cause some clients to develop internal functions to assist with proxy voting responsibilities, thereby reducing demand for, and potentially competition among, proxy voting advice businesses.

Additionally, it is possible that given certain industry practices, the increase in costs could affect proxy voting advice businesses differently. For example, we understand that the two largest proxy voting advice businesses, ISS and Glass Lewis, have processes in place for disclosing certain aspects of their analysis to certain registrants prior to making a recommendation to clients. It is possible that the costs associated with the proposed amendments could affect certain other proxy voting advice businesses more significantly than ISS and Glass Lewis.[261] A differential effect on costs across proxy voting advice businesses could, in turn, affect competition within the proxy advisory industry. Further, to the extent the costs associated with the proposed amendments would disproportionately affect proxy voting advice businesses other than ISS and Glass Lewis, the proposed amendments could lead to a reduction in competition among proxy voting advice businesses.[262]

3. Capital Formation

In facilitating the ability of clients of proxy voting advice businesses to make informed voting determinations, the proposed amendments could ultimately lead to improved investment outcomes for investors. This in turn could lead to a greater allocation of resources to investment. To the extent that the proposed amendments lead to more investment, we could expect greater demand for securities, which could, in turn, promote capital formation. Additionally, more accurate information may improve the efficient allocation of capital. However, given the many factors that can influence the rate of capital formation, any effect of the proposed amendments on capital formation is expected to be small.

[257] Clients of proxy voting advice businesses may also rely on some combination of internal and external analysis.

[258] *See* 2007 GAO Report, *supra* note 9, at 2.

[259] *Id.*

[260] Because disclosure under the proposed amendment occurs within the context of private business relationships rather than being public disclosure, this effect on competition is limited to the extent proxy voting advice business clients would use more than one proxy voting advice business.

[261] We note that one proxy voting advice business commenter recommended rulemaking that would provide registrants with a process by which they could appeal a proxy voting advice business's voting advice. *See* Letter from Saul Grossel, COO, Egan-Jones (Nov. 14, 2018), at 2. In particular, the commenter recommended that, ''issuers should be given the opportunity to review a draft copy of reports prior to their release. *Id.* If issuers disagree with the analysis and/or recommendations of the proxy advisor, they should be provided the opportunity to state their dissent.'' *Id.* The fact that a proxy voting advice business other than Glass Lewis or ISS recommended that registrants should be offered the opportunity to review and provide feedback on proxy voting advice may suggest that the costs associated with the review and feedback process would not disproportionately affect certain proxy voting advice businesses.

[262] The 2007 GAO Report addresses several issues related to the proxy voting advice industry, including a lack of competition within the industry. *See* 2007 GAO Report, *supra* note 9, at 13–14 (''[P]roxy advisory firms must offer comprehensive coverage of corporate proxies and implement sophisticated technology to attract clients and compete. For instance, institutional investors often hold shares in thousands of different corporations and may not be interested in subscribing to proxy advisory firms that provide research and voting recommendations on a limited portion of these holdings. As a result, proxy advisory firms need to provide thorough coverage of institutional holdings, and unless they offer comprehensive services from the beginning of their operations, they may have difficulty attracting clients. . . . The initial investment required to develop and implement such technology can be a significant expense for firms.'').

E. Reasonable Alternatives

1. Require Proxy Voting Advice Businesses To Include Full Registrant Response in the Businesses' Voting Advice

Rather than including a hyperlink or any other analogous electronic medium directing the recipient of the advice to a written statement prepared by the registrant or other soliciting person, we could require proxy voting advice businesses to include a full response in the voting advice these businesses provide to their clients. Including a registrant's full response in the voting advice would benefit clients of proxy voting advice businesses by allowing them to avoid the additional step of ''clicking through'' to the response. Including a full response in the voting advice provided by proxy voting advice businesses also could benefit registrants and other soliciting persons by having their responses more prominently displayed, depending on where in the advice the response is included.

However, requiring inclusion of the registrant's full response in the voting advice provided by proxy voting advice businesses could disrupt the ability of such businesses to effectively design and prepare their reports in the manner that they and their clients prefer. Also, registrants would lose the flexibility to present their views in the manner they deem most appropriate or effective.

2. Different Timing for, or Number of, Reviews

The proposed amendments require a five or three business day review and feedback period depending on how many days before the shareholder meeting the registrant files its definitive proxy statement. Alternatively, we could propose a shorter or longer period. A shorter period could hamper the ability of registrants and other soliciting persons to engage meaningfully with proxy voting advice businesses regarding their advice, whereas a longer period could disrupt the ability of proxy voting advice businesses to deliver their voting advice to clients in a timely fashion. The proposed period reflects a balancing of the ability of registrants and other soliciting persons covered by proxy voting advice to review and provide feedback on the advice before it is disseminated to the business's clients and the challenges typically faced by proxy voting advice businesses to prepare and deliver their voting advice to clients within very narrow timeframes. We believe the proposed timeframes for registrants and other soliciting persons to review and provide feedback on proxy voting advice strike an appropriate balance between those two competing considerations.

Also, the proposed amendments would require that a final notice of proxy voting advice be provided to allow registrants and other soliciting persons two business days to determine whether to provide a statement in response to the proxy advice and request that a hyperlink to the statement be included in the proxy voting advice. Alternatively, we could require that only the review and feedback period be provided, with no subsequent final notice of voting advice. Providing only the review and feedback period would reduce the potential disruptions for proxy voting advice businesses associated with the proposed engagement procedures. However, limiting registrants and other soliciting persons to the review and feedback period, with no subsequent final notice of voting advice also would make it difficult for them to know whether proxy voting advice businesses had incorporated their feedback prior to disseminating their proxy voting advice to clients. The ability for registrants and other soliciting persons to prepare a timely and accurate response and to include in a hyperlink (or other analogous electronic medium) also would be limited.

3. Public Disclosure of Conflicts of Interest

The proposed amendments require that proxy voting advice businesses include in their advice (and in any electronic medium used to deliver the advice) certain conflicts of interest disclosures. We could require that those conflicts of interest disclosures be made publicly rather than just to clients. Public disclosure of proxy voting advice businesses' conflicts of interest could allow beneficial owners to assess the conflicts for themselves. While there may be some benefit to beneficial owners from having access to this information, this benefit may be limited given that many beneficial owners have delegated investment management functions to others in the first place and thus would not be receiving the advice.

4. Require Additional Mandatory Disclosures in Proxy Voting Advice

In addition to requiring the proposed conflicts of interest disclosures, we could require that proxy voting advice businesses include in their proxy voting advice additional disclosures, such as disclosure regarding the proxy voting advice business's methodology, sources of information, or disclosures regarding the use of standards that materially differ from relevant standards or requirements that the Commission sets or approves. Proxy voting advice businesses' clients may benefit from having consistent disclosure on such matters as they assess the voting advice and make decisions regarding their utilization of the voting advice. However, such disclosures may not be material or necessary to assess proxy voting advice in all instances, and would result in increased costs to proxy voting advice businesses. Certain information may also comprise proprietary information, disclosure of which, depending on the degree required, may result in competitive consequences to proxy advisory firm businesses. In light of these considerations, the proposed rules would not require such disclosures in all instances. However, we have requested comment on whether these or other disclosures should be required as a condition to reliance on Rue 14a–2(b)(1) or (3) by proxy voting advice businesses.

5. Require Disabling of Pre-Populated and Automatic Voting Mechanisms

The proposed amendments do not condition the availability of the Rules 14a–2(b)(1) and 14a–2(b)(3) exemptions on a proxy voting advice business structuring its voting platform to disable the automatic submission of votes in instances where a registrant has submitted a response to the voting advice. Alternatively, we could require such a condition. Or, we could require proxy voting advice businesses to disable the automatic submission of votes unless a client of a proxy voting advice business clicks on the hyperlink and/or accesses the registrant's (or certain other soliciting persons') response, if one has been provided. Another alternative would be to require that the proxy voting advice business refrain from pre-populating voting choices for clients once a registrant or other soliciting person has submitted a response.

Disabling pre-populated or automatic submission of votes where registrants or other soliciting persons have submitted responses to voting advice could benefit these parties to the extent that it increases the likelihood that clients of proxy voting advice businesses would review their responses. At the same time, disabling these functions could increase costs for proxy voting advice businesses and increase the burdens on their clients by requiring those clients to devote greater resources to managing the voting process, which may in turn also reduce the value of the services of the proxy voting advice businesses.

Alternatively, clients of proxy voting advice businesses may choose not to vote, which could make it difficult for registrants to meet quorum requirements for their shareholder meetings and cause delays for companies and shareholders.

6. Exempt Smaller Proxy Voting Advice Businesses From the Additional Conditions to the Exemptions

As discussed in Section III.C.2, it is possible that given certain industry practices, increases in costs resulting from the proposed amendments may be different for certain proxy voting advice businesses. For example, ISS and Glass Lewis have processes in place for disclosing certain aspects of their analysis to certain registrants prior to making a recommendation to clients. However, the remaining three proxy voting advice businesses, all of which are smaller than ISS and Glass Lewis, to our knowledge do not have such processes in place. It is possible, then, that the costs associated with the proposed amendments could affect those smaller proxy voting advice businesses more than ISS and Glass Lewis. To the extent the costs associated with the proposed amendments would disproportionately affect proxy voting advice businesses other than ISS and Glass Lewis, the proposed amendments could lead to a reduction in competition among proxy voting advice businesses.

As a means of addressing the potential adverse effect on competition among proxy voting advice businesses, we could exempt smaller proxy voting advice businesses from the additional conditions to the exemptions in Rules 14a–2(b)(1) and 14a–2(b)(3). Although exempting smaller proxy voting advice businesses from the additional conditions would reduce the cost of the proposed amendments for such businesses, it also would mean that their clients would not realize the same benefits in terms of potential improvements in the reliability and transparency of the voting advice they receive. This, in turn, could put smaller proxy voting advice businesses at a competitive disadvantage.

Request for Comment

Throughout this release, we have discussed the anticipated economic effects of the proposed amendments, including their benefits and costs and potential effects on efficiency, competition, and capital formation. We have used the data currently available in considering the effects of the proposed amendments. We request comment on all aspects of this initial economic analysis, including on whether the analysis has: (1) Identified all benefits and costs, including all effects on efficiency, competition, and capital formation; (2) given due consideration to each benefit and cost, including each effect on efficiency, competition, and capital formation; and (3) identified and considered reasonable alternatives to the proposed amendments.

We request and encourage any interested person to submit comments regarding the proposed amendments, our analysis of the potential effects of the proposed amendments and other matters that may have an effect on the proposed amendments. We request that commenters identify sources of data and information with respect to proxy voting in general, and the use of proxy voting advice businesses in particular, as well as provide data and information to assist us in analyzing the economic consequences of the proposed amendments. We are also interested in comments on the qualitative benefits and costs we have identified and any benefits and costs we may have overlooked. We urge commenters to be as specific as possible.

Comments on the following questions are of particular interest.

- Have we correctly characterized the demand for the services of proxy voting advice businesses? What alternatives are available, if any, to the advice of proxy voting advice businesses?
- To what extent would the benefits of more reliable and complete voting advice being provided to investment advisers and other clients of proxy voting advice businesses benefit investors? Please provide supportive data to the extent available.
- The benefits of the proposed amendments for institutional investors and their clients are linked to the extent to which current practices of proxy voting advice businesses would meet the requirements of the proposed conditions. Have we correctly characterized the extent to which the current practices of proxy voting advice businesses would meet such requirements?
- We discuss the possibility that proxy voting advice businesses could attempt to mitigate the delay in delivering advice to clients caused by registrant and other soliciting persons' review by committing additional resources to producing proxy voting advice earlier than they do currently. Would proxy voting advice businesses take these steps? How costly would it be for proxy voting advice businesses to produce proxy voting advice faster than they do currently? Please provide supportive data to the extent available.
- We expect that the costs of the proposed review and feedback period and final notice of voting advice would be lower for proxy voting advice businesses that currently provide registrants with a mechanism for reviewing draft documents prior to proxy voting advice businesses issuing final drafts to their clients. Are we correct in that characterization? If other proxy voting advice businesses would be disproportionately affected, to what extent, and how would such effects manifest? What, if any, additional measures could help mitigate any such disproportionate effects? Please provide supportive data to the extent available.
- To what extent might the increased burdens to proxy voting advice businesses to comply with the proposed conditions be borne by proxy voting advice businesses clients?
- In response to the Commission's recent releases on proxy voting responsibilities and proxy voting advice, one commenter argued that the Commission's interpretation and guidance [263] would likely create substantially increased costs and unnecessary burdens on the process by which proxy voting advice businesses render their advice.[264] According to that commenter, proxy voting advice businesses would face increased litigation, staffing and insurance costs that could be passed on to their institutional investor clients and their underlying retail clients. Would these concerns similarly apply to aspects of the proposed amendments, or is this concern overstated in that the aspects of the interpretation and guidance that are encompassed in the proposed amendments reflect current legal obligations regarding solicitation activities?
- If registrants and other soliciting persons choose to provide a statement regarding the proxy voting advice, registrants and other soliciting persons would incur costs of drafting a statement, providing a hyperlink (or other analogous electronic medium) to the proxy voting advice business, maintaining their statement online, and coordinating timing with proxy voting advice businesses for the filing of supplementary proxy materials. Please provide data with respect to these costs.
- To what extent do investors change their votes? To what extent do investors change their votes in response to a registrant filing additional definitive

[263] *See* Commission Guidance on Proxy Voting Responsibilities, *supra* note 9; Commission Interpretation on Proxy Voting Advice, *supra* note 19.

[264] *See* Letter from Kenneth A. Bertsch, Executive Director, Council of Institutional Investors (Oct. 24, 2019), at 3.

proxy materials? Please provide supportive data to the extent available.

IV. Paperwork Reduction Act

A. Summary of the Collections of Information

Certain provisions of our rules, schedules, and forms that would be affected by the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[265] We are submitting the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[266] The hours and costs associated with maintaining, disclosing, or providing the information required by the proposed amendments constitute paperwork burdens imposed by such collection of information. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number. The title for the affected collection of information is: ''Regulation 14A (Commission Rules 14a–1 through 14a–21 and Schedule 14A)'' (OMB Control No. 3235–0059).

We adopted existing Regulation 14A [267] pursuant to the Exchange Act. Regulation 14A and its related schedules set forth the disclosure and other requirements for proxy statements, as well as the exemptions therefrom, filed by registrants and other soliciting persons to help investors make informed voting decisions.[268] A detailed description of the proposed amendments, including the need for the information and its proposed use, as well as a description of the likely respondents, can be found in Section II above, and a discussion of the expected economic effects of the proposed amendments can be found in Section III above.

B. Incremental and Aggregate Burden and Cost Estimates for the Proposed Amendments

Below we estimate the incremental and aggregate effect on paperwork burden as a result of the proposed amendments. These estimates represent the average burden for all respondents, both large and small. In deriving our estimates, we recognize that the burdens would likely vary among individual respondents based on a number of factors, including the nature and conduct of their business. Compliance with the proposed amendments would be mandatory for proxy voting advice businesses relying on the exemptions in Rules 14a–2(b)(1) or (b)(3). Utilization of the procedures specified in proposed Rule 14a–2(b)(9)(iii) would be voluntary for registrants and other soliciting persons. Information maintained, disclosed, or provided in connection with the proposed amendments may be subject to confidentiality agreements between the proxy voting advice businesses and any soliciting persons that choose to take advantage of the proposed procedures. There is no specified retention period for any information maintained, disclosed, or provided pursuant to the proposed amendments.

We believe that the proposed amendments would increase the number of responses to the existing collection of information for Regulation 14A. Although we do not expect registrants and other eligible soliciting persons to file any different number of proxy statements as a result of our amendments, we do anticipate that the number of additional soliciting materials filed under Rule 14a–12 may increase in proportion to the number of times that registrants and other soliciting persons choose to provide a statement in response to a proxy voting advice business's proxy voting advice under proposed Rule 14a–2(b)(9)(iii). For purposes of this PRA, we estimate that there would be an additional 174 annual responses to the collection of information as a result of the proposed amendments.[269]

In addition to an increase in the number of annual responses, we expect that the proposed amendments would change the estimated burden per response. The burden estimates were calculated by estimating the number of parties we anticipate would expend time, effort, and/or financial resources to generate, maintain, retain, disclose or provide information in connection with the proposed amendments and then multiplying by the estimated amount of time, on average, such parties would devote in response to the proposed amendments. The following table summarizes the calculations and assumptions used to derive our estimates of the aggregate increase in burden corresponding to the proposed amendments.

PRA Table 1—Calculation of Increase in Burden Hours Resulting From the Proposed Amendments

	Affected parties		
	Proxy voting advice businesses (A)	Registrants (B)	Other soliciting persons (C)
Number of Respondents	[a] 5	[b] 1,897	[c] 32
Burden Increase: Hours Per Respondent	[d] 500	[e] 10	[e] 10

[265] 44 U.S.C. 3501 *et seq.*

[266] 44 U.S.C. 3507(d); 5 CFR 1320.11.

[267] 17 CFR 240.14a–1 *et seq.*

[268] To the extent that a person or entity incurs a burden imposed by Regulation 14A, it is encompassed within the collection of information estimates for Regulation 14A. This includes registrants and other soliciting persons preparing, filing, processing and circulating their definitive proxy and information statements and additional soliciting materials, as well as the efforts of third parties such as proxy voting advice businesses whose voting advice falls within the ambit of the federal rules and regulations that govern proxy solicitations.

[269] *See supra* notes 141, 142 and the accompanying discussion in the release. Because a registrant's or other soliciting person's decision to utilize proposed Rule 14a–2(b)(9)(iii) will be entirely voluntary, it is difficult to predict how frequently such parties will choose to avail themselves of this provision and prepare a response to proxy voting advice. For purposes of this PRA estimate, we use as our baseline the number of times firms filed additional definitive proxy materials in response to proxy voting advice in calendar years 2016 (99), 2017 (77) and 2018 (84), discussed in Section III.B.2 *infra* and reflected in Table 2 in that section. We then assume, given the relative convenience of the hyperlink mechanism in proposed Rule 14a–2(b)(9)(iii) and the opportunity to reach shareholders before their votes are cast, that a greater number of registrants and soliciting persons would utilize proposed Rule 14a–2(b)(9)(iii) than have historically filed additional soliciting materials. For purposes of this PRA analysis, we estimate that at least three times as many registrants and other soliciting persons will choose to prepare responses to proxy voting advice and request that their hyperlink be provided to the recipients of the advice pursuant to proposed Rule 14a–2(b)(9)(iii) than otherwise would choose to file additional soliciting materials. As a result, we would expect that three times as many required filings under Rule 14a–12 would be made. Taking the average of the Rule 14a–12 filings made in years 2016, 2017, 2018 (87), we multiply by a factor of three (300%) for an estimate of 261 Rule 14a–12 filings, or an increase of 174 annual responses to the Regulation 14A collection of information.

PRA TABLE 1—CALCULATION OF INCREASE IN BURDEN HOURS RESULTING FROM THE PROPOSED AMENDMENTS—Continued

	Affected parties		
	Proxy voting advice businesses	Registrants	Other soliciting persons
	(A)	(B)	(C)
Column Total[f]	2,500	18,970	320
Aggregate Increase in Burden Hours	[Column A] + [Column B] + [Column C] = 21,790.		

[a] Represents the estimated number of proxy voting advice businesses that would be subject to the proposed amendments to Rule 14a–2(b). We are aware only of five such businesses at this time.

[b] Using 5,690 registrants that filed proxy materials with the Commission during calendar year 2018 as the upper bound (*see* Section III.B.1.c. and note 222 *supra*), we estimate that an average of one-third, or approximately 1,897, would be the subject of proxy voting advice each year, and therefore impacted by the proposed amendments to Rule 14a–2(b).

[c] *See supra* Section III.B.1.c. & note 224. According to our estimates, 95 other soliciting persons filed proxy materials with the Commission during calendar year 2018. Because it is unlikely that all 95 solicitations were the subject of proxy voting advice, we have assumed for purposes of this analysis that only one-third, or approximately 32, should be considered in our calculation of aggregate burden.

[d] This estimate, which is an average of the burden expected to be incurred by each proxy voting advice business, is intended to be inclusive of all burdens reasonably anticipated to be associated with the business's compliance with the conditions of proposed Rule 14a–2(b)(9), including, for example, identification and preparation of disclosure concerning conflicts of interest required by proposed Rule 14a–2(b)(9)(i) and communication with registrants and other eligible soliciting persons. Our assumption is that the burden would be greatest in the first year after adoption, as the businesses incorporate the new requirements into their existing practices and procedures. We estimate that the burden would be 1,000 hours in the first year and 250 hours in each of the following years for a three-year average of 500 burden hours.

[e] In addition to proxy voting advice businesses, we anticipate that registrants and other soliciting persons would incur some additional paperwork burden as a result of the proposed amendments. For example, if they choose to respond to the proxy voting advice,[270] these parties would likely incur some burden in preparing and communicating their responses. Nevertheless, we do not anticipate the corresponding burden would be significant in most cases, particularly when averaged among all affected parties. Therefore, we have estimated that registrants and other soliciting persons would each incur, on average, an increase of ten additional burden hours each year.

[f] Derived by multiplying the number of respondents in each column by either the burden per response or the estimated aggregate burden increase, whichever was applicable.

The table below illustrates the incremental change to the total annual compliance burden in hours and in costs[271] as a result of the proposed amendments. The table sets forth the percentage estimates we typically use for the burden allocation for each response.

PRA TABLE 2—CALCULATION OF INCREASE IN BURDEN HOURS RESULTING FROM THE PROPOSED AMENDMENTS

Number of estimated responses	Total increase in burden hours	Increase in burden hours per response	Increase in internal hours	Increase in professional hours	Increase in professional costs
(A)†	(B)††	(C) = (B)/(A)	(D) = (B) × 0.75	(E) = (B) × 0.25	(F) = (E) × $400
5,760	21,790	4.0†††	16,478	5,493	$2,197,200

† This number reflects an estimated increase of 174 annual responses to the existing Regulation 14A collection of information. *See supra* note 269. The current OMB PRA inventory estimates that 5,586 responses are filed annually.

†† Calculated as the sum of annual burden increases estimated for proxy voting advice businesses (2,500 hours), registrants (18,970 hours), and other soliciting persons (320 hours). *See supra* PRA Table 1.

††† The estimated increases in Columns (C), (D), and (E) are rounded to the nearest whole number.

Finally, the table that follows summarizes the requested paperwork burden that will be submitted to OMB for review in accordance with the PRA, including the estimated total reporting burdens and costs, under the proposed amendments.

PRA TABLE 3—REQUESTED PAPERWORK BURDEN UNDER THE PROPOSED AMENDMENTS

	Current burden			Program change			Revised burden		
	Current annual responses	Current burden hours	Current cost burden	Number of affected responses	Increase in internal hours	Increase in professional costs	Annual responses	Burden hours	Cost burden
	(A)	(B)	(C)	(D)±	(E)‡‡	(F)‡‡‡	(G) = (A) + (D)	(H) = (B) + (E)	(I) = (C) + (F)
Reg. 14A	5,586	551,101	$73,480,012	5,760	16,478	$2,197,200	5,760	567,579	$75,677,212

± From Column (A) in PRA Table 2.
‡‡ From Column (D) in PRA Table 2.
‡‡‡ From Column (F) in PRA Table 2.

[270] *See supra* note 255.

[271] Our estimates assume that 75% of the burden is borne by the company and 25% is borne by outside counsel at $400 per hour. 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 would 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.

Given the number of variables that are highly specific to the unique circumstances of each proxy voting advice business, the matter for which they have been engaged to provide advice, and the course of that engagement, our ability to predict the magnitude of corresponding costs and burdens with any precision is limited. Therefore, we encourage public commenters to consider our assessment and provide additional information and, where available, data that would be helpful in deriving our estimates for purposes of the Paperwork Reduction Act.

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 would have practical utility;
- Evaluate the accuracy and 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 amendments 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 20549–1090, with reference to File No. S7–22–19. Requests for materials submitted to OMB by the Commission with regard to the collection of information should be in writing, refer to File No. S7–22–19 and be submitted to the U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this 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.

V. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[272] the Commission must advise OMB as to whether the proposed amendments 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 U.S. 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 the proposed amendments would be a ''major rule'' for purposes of SBREFA. In particular, we request comment on the potential effect of the proposed amendments on the U.S. economy on an annual basis; any potential increase in costs or prices for consumers or individual industries; and any potential effect on competition, investment or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VI. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'')[273] requires the Commission, in promulgating rules under Section 553 of the Administrative Procedure Act, to consider the impact of those rules on small entities. The Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with Section 603 of the RFA.[274] It relates to the proposed amendments to: The proxy solicitation exemptions in Rule 14a–2(b); the definition of ''solicitation'' in Rule 14a–1(l); and the prohibition on false or misleading statements in solicitations in Rule 14a–9 of Regulation 14A under the Exchange Act.

A. Reasons for, and Objectives of, the Proposed Action

The purpose of the proposed amendments to Rule 14a–2(b) is to help ensure that investors who rely on the advice of proxy voting advice businesses receive more accurate, transparent, and complete information on which to make their voting decisions, in a manner that does not impose undue costs or delays that could adversely affect the timely provision of proxy voting advice. The proposed amendments are designed to enhance the accuracy and reliability of the proxy voting advice available to investors at the time they are casting votes, as well as disclosures about any interests or relationships that may have materially affected the voting advice. In addition, the proposed amendment to Rule 14a–1(l) would codify the Commission's interpretation that, as a general matter, proxy voting advice constitutes a solicitation subject to the federal proxy rules, which would provide more clear notice of the applicability of the protections afforded under these rules to those who receive proxy voting advice from persons marketing their expertise as a provider of such advice, separately from other forms of investment advice, and sell such advice for a fee. Finally, the proposed amendment to Rule 14a–9 would amend the list of examples of what may be misleading within the meaning of the rule in order to help ensure that the recipients of proxy voting advice are provided the information they need to make fully informed decisions and to clarify the potential implications of Rule 14a–9. The reasons for, and objectives of, these proposed amendments are discussed in more detail in Sections I and II above.

B. Legal Basis

We are proposing the rule and form amendments contained in this document under the authority set forth in Sections 3(b), 14, 16, 23(a), and 36 of the Securities Exchange Act of 1934, as amended.

C. Small Entities Subject to the Proposed Rules

The proposed amendments are likely to affect some small entities; specifically, those small entities that are either: (i) Proxy voting advice businesses (*i.e.,* persons who provide proxy voting advice that falls within the definition of a ''solicitation'' under Rule 14a–1(l)(iii)(A), as proposed); and (ii) registrants or other eligible persons under proposed Rule 14a–2(b)(9) conducting solicitations covered by proxy voting advice.

The RFA defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental

[272] 5 U.S.C. 801 *et seq.*

[273] 5 U.S.C. 601 *et seq.*

[274] 5 U.S.C. 603.

jurisdiction.'' [275] For purposes of the RFA, under our rules, an issuer of securities or a person, other than an investment company or an investment adviser, 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.[276] An investment company, including a business development company,[277] is considered to be a ''small business'' if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[278] An investment adviser generally is a small entity if it: (1) Has assets under management having a total value of less than $25 million; (2) did not have total assets of $5 million or more on the last day of the most recent fiscal year; and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year.[279] We estimate that there are 1,171 issuers that file with the Commission, other than investment companies and investment advisers, that may be considered small entities.[280] In addition, we estimate that, as of December 2018, there were 114 registered investment companies that would be subject to the proposed amendments that may be considered small entities.[281] Finally, we estimate that, as of September 30, 2019, there were 575 investment advisers that may be considered small entities.[282] As discussed above, three of the five major firms that comprise the proxy advisory industry are registered investment advisors.[283]

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

If adopted, the proposed amendments would apply to small entities to the same extent as other entities, irrespective of size. Therefore, we expect that the nature of any benefits and costs associated with the proposed amendments would be similar for large and small entities. Accordingly, we refer to the discussion of the proposed amendments' economic effects on all affected parties, including small entities, in Section III above.[284] Consistent with that discussion, we anticipate that the economic benefits and costs likely would vary widely among small entities based on a number of factors, including the nature and conduct of their businesses, which makes it difficult to project the economic impact on small entities with precision.[285] Compliance with the proposed amendments may require the use of professional skills, including legal skills.

As a general matter, however, we recognize that any costs of the proposed amendments borne by the affected entities, such as those related to compliance with the proposed amendments, or the implementation or restructuring of internal systems needed to adjust to the proposed amendments, could have a proportionally greater effect on small entities, as they may be less able to bear such costs relative to larger entities. For example, as discussed in Section III.B.2, ISS and Glass Lewis, currently the two largest proxy voting advice businesses, have existing processes in place for identifying and disclosing conflicts of interest to their clients, as well as providing some registrants access to versions of the businesses' proxy voting advice prior to making a recommendation to clients. If competing proxy voting advice businesses do not have such processes in place, they could be disproportionately affected by the proposed amendments. In particular, any small entities that provide proxy voting advice services, to the extent that their existing practices and procedures would not satisfy the conditions of proposed Rule 14a–2(b)(9), would incur additional compliance costs and, consequently, may be more likely than larger proxy voting advice businesses to exit the market for such services or less able to enter the market in the first place.

We anticipate that any costs resulting from the proposed amendments would primarily relate to proposed Rule 14a–2(b)(9) and, as such, predominantly affect the proxy advice voting businesses that would be required to comply with Rule 14a–2(b)(9) in order to rely on the exemptions in Rule 14a–2(b)(1) or (b)(3).[286] These businesses would likely incur costs to ensure that their internal practices, procedures, and systems are sufficient to meet the conflicts of interest disclosure and review and feedback requirements under proposed Rule 14a–2(b)(9). The magnitude of such costs would depend on the extent to which the businesses are already meeting or exceeding these proposed requirements. However, we believe that, at most, there are currently only a limited number of proxy voting advice businesses that meet the definition of small entity for purposes of the RFA.[287] Accordingly, we do not expect the proposed amendments would have a significant economic impact on a substantial number of such businesses. However, we request comment on the number of proxy voting advice businesses that would be small entities subject to the proposed amendments.

As discussed in Section III.C.2., we do not expect that registrants or other soliciting persons that are small entities would incur significant costs as a result of the proposed amendments, although it is difficult to provide a quantifiable estimate of such costs. We request comment on how to quantify the impact on small entities that, while not directly subject to the proposed amendments, may be affected by the proposal.

E. Duplicative, Overlapping, or Conflicting Federal Rules

We believe that the proposed amendments would not duplicate, overlap, or conflict with other federal rules.

[275] 5 U.S.C. 601(6).

[276] *See* Exchange Act Rule 0–10(a) [17 CFR 240.0–10(a)].

[277] Business development companies are a category of closed-end investment company that are not registered under the Investment Company Act [15 U.S.C. 80a–2(a)(48) and 80a–53–64].

[278] *See* Investment Company Act Rule 0–10(a) [17 CFR 270.0–10(a)].

[279] *See* Advisers Act Rule 0–7(a) [17 CFR 275.0–7(a)].

[280] This estimate is based on staff analysis of issuers, excluding co-registrants, with EDGAR filings of Form 10–K, 20–F and 40–F, or amendments, filed during the calendar year of January 1, 2018 to December 31, 2018. The data used for this analysis were derived from XBRL filings, Compustat, and Ives Group Audit Analytics.

[281] This estimate is derived from an analysis of data obtained from Morningstar Direct as well as data filed with the Commission (Forms N–Q and N–CSR) for the second quarter of 2018.

[282] Based on SEC-registered investment adviser responses to Items 5.F. and 12 of Form ADV.

[283] *See supra* Section III.B.1.b (Economic Analysis).

[284] In particular, we discuss the estimated benefits and costs of the proposed amendments on affected parties in Section III.C. (Economic Analysis) above. We also discuss the estimated compliance burden associated with the proposed amendments for purposes of the PRA in Section IV (Paperwork Reduction Act) above.

[285] *See supra* Section III.C.2. (Economic Analysis).

[286] We do not expect that the proposed amendments to Rule 14a–1(l) and Rule 14a–9 will have a significant economic impact on affected parties, including any small entities, because they codify already-existing Commission positions on the applicability of these rules to proxy voting advice.

[287] As discussed *supra,* at note 190, we understand that the proxy voting advice industry in the United States consists of five major firms. At this time, we do not know of any proxy voting advice businesses that would be considered small entities as defined by the RFA, but acknowledge that there may be some such firms providing proxy voting advice of which we are unaware.

F. Significant Alternatives

The RFA directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

- Establishing different compliance or reporting requirements that take into account the resources available to small entities;
- Exempting small entities from all or part of the requirements;
- Using performance rather than design standards; and
- Clarifying, consolidating, or simplifying compliance and reporting requirements under the rules for small entities.

We do not believe that establishing different compliance or reporting requirements for small entities in connection with our proposed amendments would accomplish the objectives of this rulemaking or minimize significant adverse impacts on small entities. The proposed amendments are intended to help ensure that investors who rely on the advice of proxy voting advice businesses receive accurate, transparent, and materially complete information on which to make their voting decisions. Our objective of improving the quality of proxy voting advice would not be as effectively served if we were to establish different conditions for smaller proxy voting advice businesses that wish to rely on the exemptions in Rules 14a–2(b)(1) or (b)(3). For similar reasons, we do not believe that exempting smaller proxy voting advice businesses from all or part of the proposed amendments would accomplish our objectives.[288]

The proposed amendments generally would use design standards to assure clients of proxy voting advice businesses that all entities providing such advice are following a consistent approach to their disclosures of conflicts of interest and the review and feedback requirements for proxy voting advice. If the goal is accurate and reliable proxy voting advice, using design rather than performance standards minimizes the degree of uncertainty that proxy voting advice businesses and their clients would have regarding whether such businesses are in full compliance with the rules and could help to bolster their confidence in the quality of voting advice they receive. However, while we generally have used design standards for the proposed amendments, we have included features that are intended to minimize the disruption to proxy voting advice businesses, such as requiring the inclusion of a hyperlink to a response by the registrant or certain other soliciting persons. Such features would also provide greater flexibility to registrants and other soliciting persons, including small entities, in providing their response.

In proposing these amendments, we have undertaken to provide rules that are clear and simple for all affected parties. We do not believe that further clarification, consolidation, or simplification for small entities is necessary.

Request for Comment

We encourage the submission of comments with respect to any aspect of this IRFA. In particular, we request comments regarding:

- How the proposed amendments can achieve their objective while lowering the burden on small entities;
- The number of small entity companies that may be affected by the proposed amendments;
- The existence or nature of the potential effects of the proposed amendments on small entities discussed in the analysis; and
- How to quantify the effects of the proposed amendments.

Commenters are asked to describe the nature of any effect and provide empirical data supporting the extent of that effect. Comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rules are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

VII. Statutory Authority

We are proposing the rule amendments contained in this release under the authority set forth in Sections 3(b), 14, 16, 23(a), and 36 of the Securities Exchange Act of 1934, as amended.

List of Subjects in 17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule Amendments

In accordance with the foregoing, the Securities and Exchange Commission proposes to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5521(e)(3); 18 U.S.C. 1350, Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

Sections 240.14a–1, 240.14a–3, 240.14a–13, 240.14b–1, 240.14b–2, 240.14c–1, and 240.14c–7 also issued under secs. 12, 15 U.S.C. 781, and 14, Pub. L. 99–222, 99 Stat. 1737, 15 U.S.C. 78n;

* * * * *

■ 2. Amend § 240.14a–1 by revising paragraph (l)(1)(iii) and adding paragraph (l)(2)(v) to read as follows:

§ 240.14a–1 Definitions.

* * * * *

(l) *Solicitation.* (1) * * *

(iii) The furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy, including:

(A) Any proxy voting advice that makes a recommendation to a security holder as to its vote, consent, or authorization on a specific matter for which security holder approval is solicited, and that is furnished by a person that markets its expertise as a provider of such proxy voting advice, separately from other forms of investment advice, and sells such proxy voting advice for a fee.

(B) [Reserved]

(2) * * *

(v) The furnishing of any proxy voting advice by a person who furnishes such advice only in response to an unprompted request.

■ 3. Amend § 240.14a–2 by:

■ a. Revising paragraph (b)(1) introductory text and (b)(3) introductory text; and

■ b. Adding paragraph (b)(9).

The revisions and addition read as follows:

[288] *See also supra* Section III.E.6. Exempting smaller proxy voting advice businesses from the additional conditions of Rules 14a–2(b)(1) and (3) would reduce the cost of the proposed amendments for such businesses, but it also would mean that their clients would not realize the same benefits in terms of potential improvements in the reliability and transparency of the voting advice they receive. This, in turn, could put smaller proxy voting advice businesses at a competitive disadvantage.

§ 240.14a–2 Solicitations to which § 240.14a–3 to § 240.14a–15 apply.

* * * * *

(b) * * *

(1) Except as provided in paragraph (b)(9) of this section, any solicitation by or on behalf of any person who does not, at any time during such solicitation, seek directly or indirectly, either on its own or another's behalf, the power to act as proxy for a security holder and does not furnish or otherwise request, or act on behalf of a person who furnishes or requests, a form of revocation, abstention, consent or authorization. *Provided, however,* That the exemption set forth in this paragraph shall not apply to * * *

* * * * *

(3) Except as provided in paragraph (b)(9) of this section, the furnishing of proxy voting advice by any person (the ''advisor'') to any other person with whom the advisor has a business relationship, if: * * *

* * * * *

(9) Paragraphs (b)(1) and (b)(3) of this section shall not be available to a person furnishing proxy voting advice covered by § 240.14a–1(l)(1)(iii)(A) (''proxy voting advice business'') unless all of the conditions in the following paragraphs (i), (ii), and (iii) are satisfied:

(i) The proxy voting advice business includes in its proxy voting advice and in any electronic medium used to deliver the proxy voting advice prominent disclosure of:

(A) Any material interests, direct or indirect, of the proxy voting advice business (or its affiliates) in the matter or parties concerning which it is providing the advice;

(B) Any material transaction or relationship between the proxy voting advice business (or its affiliates) and the registrant, another soliciting person, shareholder proponent, or affiliates of any of the foregoing (as determined using publicly available information) connected with the matter covered by the proxy voting advice;

(C) Any other information regarding the interest, transaction, or relationship of the proxy voting advice business (or its affiliates) that is material to assessing the objectivity of the proxy voting advice in light of the circumstances of the particular interest, transaction, or relationship; and

(D) Any policies and procedures used to identify, as well as the steps taken to address, any such material conflicts of interest arising from such interest, transaction, or relationship.

(ii) The proxy voting advice business provides the registrant or any other person conducting a solicitation (other than a solicitation exempt under § 240.14a–2) covered by its proxy voting advice, prior to the distribution of that advice to its clients:

(A)*(1)* A copy of such proxy voting advice that the proxy voting advice business intends to deliver to its clients for a review and feedback period of no less than five business days, if the registrant or other soliciting person has filed its definitive proxy statement at least 45 calendar days before the security holder meeting date, or if no meeting is held, at least 45 calendar days before the date the votes, consents or authorizations may be used to effect the proposed action; or

(2) A copy of such proxy voting advice that the proxy voting advice business intends to deliver to its clients for a review and feedback period of no less than three business days, if the registrant or other soliciting person has filed its definitive proxy statement less than 45 calendar days, but at least 25 calendar days, before the security holder meeting date, or if no meeting is held, less than 45 calendar days, but at least 25 calendar days, before the date the votes, consents or authorizations may be used to effect the proposed action; and

(B) No earlier than the expiration of the period described in paragraph (A)*(1)* or (A)(*2*) of this section, as applicable, and no later than two business days prior to delivery of the proxy voting advice to its clients, a final notice of voting advice which must include a copy of such proxy voting advice that the proxy voting advice business will deliver to its clients, including any revisions to such advice made by the proxy voting advice business after the review and feedback period provided pursuant to paragraph (A)*(1)* or (A)(*2*) of this section, as applicable.

Note 1 to paragraph (b)(9)(ii): Once the two business day period specified in paragraph (B) of this section has expired, the proxy voting advice business will be under no further obligation to provide the registrant or any other soliciting person with additional opportunities to review its proxy voting advice with respect to the same meeting.

Note 2 to paragraph (b)(9)(ii): A proxy voting advice business may require the registrant or other soliciting person, as applicable, to enter into an agreement to maintain the confidentiality of any materials it receives pursuant to paragraph (b)(9)(ii) of this section and refrain from publicly commenting on those materials, provided that the terms of such confidentiality agreement:

(A) Shall be no more restrictive than similar types of confidentiality agreements the proxy voting advice business requires of the recipients of the proxy voting advice; and

(B) Shall cease to apply once the proxy voting advice business provides its advice to one or more recipients. The proxy voting advice business is not required to comply with paragraph (b)(9)(ii) of this section if the registrant or other soliciting person does not enter into such an agreement.

(iii) If requested by the registrant or any other person conducting a solicitation (other than a solicitation exempt under § 240.14a–2) prior to expiration of the period described in paragraph (b)(9)(ii) of this section, the proxy voting advice business shall include in its proxy voting advice and in any electronic medium used to deliver the proxy voting advice an active hyperlink or any other analogous electronic medium that leads to the registrant's or other soliciting person's, as applicable, statement regarding the proxy voting advice.

Note to paragraphs (b)(9)(ii) and (b)(9)(iii): A proxy voting advice business will be under no obligation to comply with the provisions of paragraphs (b)(9)(ii) and (b)(9)(iii) of this section if the registrant or other soliciting person has not filed its definitive proxy statement at least 25 calendar days before the security holder meeting date (or if no meeting is held, at least 25 calendar days before the date the votes, consents or authorizations may be used to effect the proposed action).

(iv) An immaterial or unintentional failure of a proxy voting advice business to comply with one or more conditions of § 240.14a–2(b)(9) will not result in the loss of such proxy voting advice business's ability to rely on the exemptions in paragraphs (b)(1) and (b)(3) of this section, so long as:

(A) The proxy voting advice business made a good faith and reasonable effort to comply; and

(B) To the extent that it is feasible to do so, the proxy voting advice business uses reasonable efforts to substantially comply with the condition as soon as practicable after it becomes aware of its noncompliance.

* * * * *

■ 4. Amend § 240.14a–9 by adding paragraph e. to the Note to read as follows:

§ 240.14a–9 False or misleading statements.

* * * * *

Note: * * *

e. Failure to disclose material information regarding proxy voting advice covered by § 240.14a–1(l)(1)(iii)(A), such as the proxy voting

advice business's methodology, sources of information, conflicts of interest or use of standards that materially differ from relevant standards or requirements that the Commission sets or approves.

* * * * *

By the Commission.

Dated: November 5, 2019.

Vanessa A. Countryman,

Secretary.

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